

# Data Protection Impact Assessment (DPIA)

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## 1. Introduction

The purpose of this document is to report on and assess against any potential Data Privacy Impacts as the result of the implementation of Advocacy in the Children's Hearings system as required by regulation under **Section 122 of the Children's Hearings (Scotland) Act 2011**.

## 2. Document metadata

2.1 Name of Project:

**Implementation Of The Children's Hearings (Scotland) Act 2011 Section 122 - Children's Advocacy Services**

2.2 Author of report:

**Pam Semple**

2.3 Date of report:

27 August 2020

2.4 Name of Information Asset Owner (IAO) of relevant business unit:

**Bill Scott-Watson**

2.5 Date for review of DPIA

Review date	Details of update	Completion date	Approval Date
September 2021			
September 2022			
September 2023			

## 3. Description of the project

3.1 Description of the work:

**The Children's Hearings (Scotland) Act 2011** was introduced in June 2013. The Scottish Government would now like to commence section 122 of the Children's Hearings (Scotland) Act 2011 (the 2011 Act) and make regulations under this section for the provision of advocacy services for the Children's Hearings system.

The advocacy service will be delivered through a grant management project, overseen by the Scottish Government National Advocacy in Children's Hearings Team, in order to provide Scotland-wide coverage. The Team will provide support and oversight of the advocacy programme ensuring consistent service delivery via a range of different local organisations.

The service will be provided, on demand, to children and young people who have been required to attend a children's hearing and are five years old or above.

The Scottish Government as the commissioner of the service and service providers awarded a grant will be joint data controllers of the information processed. The Scottish Government will not process any personal data in the provision of this service to service users but will seek appropriate assurance from providers on their data protection practices and keep these under review.

### 3.2 Personal data to be processed.

Variable	Data Source
Service provider contacts (name and email/telephone).	Service provider (completed grant applications).
Child's name, address, date of birth.	Referral from Social Work. Child referring themselves. Relevant Person referring the child.
Some details of their personal lives such as reasons for referral to a hearing which is likely to contain Special Category information such as religion, health and criminal data.	As above. Reports prepared by Scottish Children's Reporters Administration (SCRA) that the child will have given permission to be viewed.
Details of relevant persons in their lives.	From the relevant person themselves. Through SCRA Reports. From the child themselves.

### 3.3 Describe how this data will be processed:

Scottish Government Grant funding will be made available to provider(s) able to support the provision of Children's Advocacy Services within Children's Hearings. Applications will be invited for funding from provider(s) to make a national and/or regional application. To be successful, providers are required to demonstrate that they meet certain criteria regarding standards, recruitment and service evaluation.

Successful providers are required to submit quarterly monitoring reports for review and collation by the Scottish Government such as the number of children and young people provided with support (including demographic profile: age, gender, place of residence, ethnicity, and additional support needs); number of referrals made under exceptional or emergency circumstances; comments on any service user complaints or compliments received; anonymised case studies to illustrate procedural and policy delivery issues; staff qualifications, training and CPD progress; any results of satisfaction surveys; and feedback from children and young people using the advocacy service.

The provider(s) have autonomy as a joint data controller of the personal data and will follow their own information management practices. However, providers will be required to provide assurances that they adhere to data protection legislation as part of the grant application process and ongoing monitoring of that service by Scottish Government.

The provision of the grants is to enable Scottish Government to meet the duty under S.122 of the Children's Hearing Act and any personal data it processes will fall under Article 6(1)(e) of the GDPR 'Necessary in the performance of a task carried out in the public interest'. It is not envisioned that Scottish Government will process any special category data for this purpose.

#### Brief summary of the provision of advocacy to service users

At the time a decision is made by social workers, police or any other relevant person, that a child or young person is being referred to the Children's Reporter, information will be given to the child/young person about the availability of advocacy for Children's Hearings. Details of the organisation will be passed to the child/young person to make contact. The advocacy worker will explain what the service entails and establish whether the child/young person wishes to take up the opportunity.

The service will be offered on a voluntary basis, therefore the child/young person will be free to choose whether to uptake the service or not and any agreement to engage by an individual will be clearly documented by the provider.

The advocacy worker will meet the child/young person on multiple occasions depending on need and discuss the upcoming hearing and what to expect. They also likely to discuss the intimate details of the reasons for the referral and what actions the child/young person will wish to take to prepare and participate. This could involve sight of the papers the child/young person will have received if aged over 12 (or perhaps the papers their parents or relevant person received if under 12 with their permission) which will contain the reasons (or 'Grounds') for the referral, reports from various organisations such as Social Work; Education; Health; Police and any other relevant paperwork.

Whilst the advocacy worker will not have copies of the reports they will take notes and record the plan of action they will have agreed to with the child/young person and any questions or concerns they wish to raise during their hearing. These notes will be initially hand-written then saved electronically where they can be retrieved when necessary.

During the hearing the advocacy worker will take notes and will speak to the child/young person to find out whether they understand proceedings, if they have any questions they want to raise or have the advocacy worker raise on their behalf or if they need a break. These notes will be treated as above.

After the hearing the advocacy worker will speak with the child/young person and discuss what has just happened and the decision that has been made. They will discuss whether they have understood what the decision is and if they don't agree with it what their potential courses of action could be. Again any notes or recordings will be treated as above.

This process will continue until the case is closed or the child/young person (or parent/relevant person) chooses to no longer engage with the provision, which they can do at any point). Upon closure of a case, a retention period will be applied to the information by the provider and securely destroyed when reached.

Service Providers provided assurances of compliance to Scottish Government as to their processes and procedures as requested in the expressions of interest application

<https://www.gov.scot/publications/advocacy-in-the-childrens-hearings-system-grant-application/>

### 3.4 Explain the legal basis for the sharing with internal or external partners:

The Scottish Government will not share any personal data for this purpose other than the names and contact addresses for service providers and will do so under Article 6(1)(e).

It is understood that the providers will rely on one of two bases to share personal data with partners: Article 6(1)(a) Consent from the child or young person or Article 6(1)(c) legal obligation (where there are child protection concerns).

## 4. Stakeholder analysis and consultation

### 4.1 List all the groups involved in the project, and state their interest.

Group	Interest
Scottish Government	Legally responsible for ensuring section 122 is commenced and an advocacy service is available for those who wish to use it.
Scottish Children's Reporters Administration (SCRA)	Public Body responsible for the administration of Scotland's Children's Hearings system.
Children's Hearings Scotland (CHS)	Public body responsible for the recruitment, and oversight of the panel member community.
Local Advocacy Providers	Provider of advocacy provision within a local authority area.
Partners within the hearings system including SCTS, SLAB, Education Scotland, Police Scotland, NHS, CELCIS, CYCJ, COPFS, Judicial Institute, Law society, COSLA, ADES, SWS.	Partners within the Children's Hearings System.

### 4.2 Method used to consult with these groups when making the DPIA.

All groups were made aware of the consultation by email and face-to-face conversations and invited to comment by the deadline.

#### 4.3 Method used to communicate the outcomes of the DPIA.

DPIA will be shared with SCRA, CHS and the national and local advocacy organisations involved in the service so they will be aware of, and in a position to mitigate any risks identified as far as they are able.

### 5. Questions to identify privacy issues

#### 5.1 Involvement of multiple organisations

Yes this will involve SCRA, CHS, Social Work and the advocacy providers.

#### 5.2 Anonymity and pseudonymity

Scottish Government will receive anonymised statistics from providers regarding the uptake of their service. No data from two or more systems will be combined to create a new dataset that might make it possible to identify or re-identify any individuals.

#### 5.3 Technology

Scottish Government will receive anonymised data by email from service providers.

#### 5.4 Identification methods

Scottish Government will not process any personal data for this purpose other than the contact names and addresses for the service providers

Service providers will apply their own Information Management processes to the data processed for this purpose.

#### 5.5 Sensitive/Special Category personal data

Scottish Government will not process any special category data for this purpose.

Service providers will process sensitive/special category information about individuals but only with the permission of the individual involved and this information will be stored securely.

#### 5.6 Changes to data handling procedures

Scottish Government will not process any personal data for this purpose.

Service providers will ensure that all data processed will be in compliance with data protection requirements following their own existing information management processes.

Service providers will ensure that there are process for enabling any individual wishing to access their personal data can do so. The providers will not share any personal data with external partners without the data subjects express consent unless they are under an legal obligation to do so.

#### 5.7 Statutory exemptions/protection

Not applicable to this processing.

#### 5.8 Justification

This processing introduces an additional data sharing partner into the Children’s Hearing process but as their involvement is based on the permission of the child/young person and ensures that they have access to independent advice and support any risk posed is outweighed by the benefits to the child/young person.

#### 5.9 Other risks

There are no other risks to privacy that are not covered by the questions above.

### 6. General Data Protection Regulation (GDPR) Principles

Principle	Compliant – Yes/No	Description of how you have complied
6.1 Principle 1 – fair and lawful, and meeting the conditions for processing	Yes	<p>Scottish Government are providing the grants to meet the duty under S.122 of the Children’s Hearing (Scotland) Act 2011, and therefore any personal data processed will fall under 6(1)(e) ‘Public Task’</p> <p>Information only gathered after written consent obtained from data subject or their legal guardian if appropriate. Consent can be withdrawn at any time.</p> <p>A Privacy Notice will be provided.</p>

<b>Principle</b>	<b>Compliant – Yes/No</b>	<b>Description of how you have complied</b>
6.2 Principle 2 – purpose limitation	Yes	The information collected by providers will only be that what is necessary to provide the support and advice to that individual with regards to their hearing. The advocacy providers follow the standards for advocacy as detailed in the National Practice Model.
<b>Principle</b>	<b>Compliant – Yes/No</b>	<b>Description of how you have complied</b>
6.3 Principle 3 – adequacy, relevance and data minimisation	Yes	The information recorded will be obtained from interviews with the child/young person. Any inaccurate information will be corrected or removed at their request. Any electronic files will be based on these interviews.
<b>Principle</b>	<b>Compliant – Yes/No</b>	<b>Description of how you have complied</b>
6.4 Principle 4 – accurate, kept up to date, deletion	Yes	The information recorded will be obtained from interviews with the child/young person. Any inaccurate information will be corrected or removed on request and will be securely destroyed at the conclusion of the children's hearing.
<b>Principle</b>	<b>Compliant – Yes/No</b>	<b>Description of how you have complied</b>
6.5 Principle 5 – kept for no longer than necessary, anonymization	Yes	The data will only be kept for as long as outlined in service providers data retention policies.

<b>Principle</b>	<b>Compliant – Yes/No</b>	<b>Description of how you have complied</b>
6.6 GDPR Articles 12-22 – data subject rights	Yes	Service providers are required to have processes and procedures in place to ensure data subjects are able to exercise their rights as required under DP legislation. SG receives assurance that this is in place through the application process.
<b>Principle</b>	<b>Compliant – Yes/No</b>	<b>Description of how you have complied</b>
6.7 Principle 6 - security	Yes	No personal data will be transferred to Scottish Government. Providers are required to provide assurances that they have appropriate security measures in place to protect personal data as required by the legislation. Providers will be required to give assurances to Scottish Government that their practices and processes in relation to security measures are reviewed at least annually. These assurances will be provided in the annual report requirement as part of the grant funding conditions.
<b>Principle</b>	<b>Compliant – Yes/No</b>	<b>Description of how you have complied</b>
6.8 GDPR Article 24 - Personal data shall not be transferred to a country or territory outside the European Economic Area.	Yes	The information will be stored within service providers' case management systems and are asked to provide assurances on compliance with the Data Protection legislation.



## 7. Risks identified and appropriate solutions or mitigation actions proposed

Is the risk eliminated, reduced or accepted?

Risk	Ref	Solution or mitigation	Result
Scottish Government may not obtain appropriate assurance from service providers that they are aware of and comply with their data protection responsibilities.	ADV1	Assurances from advocacy organisations their internal training processes include data protection and GDPR rights and responsibilities as outlined in their Expressions of Interest application.	Reduce
Scottish Government as a joint controller of the data may not be made aware if a service provider is subject of a significant data breach within 72 hours.	ADV2	Grant conditions specify providers have to: "The Grantee shall ensure that all requirements of the Data Protection Laws are fulfilled in relation to the Project." Which includes reporting any potential data breach.	Reduce
Lack of transparency around the processing of data.	ADV3	Service providers will provide clients with a privacy notice in hard copy or direct to published version on their website. Client consent will be sought for sharing special category data with partner organisations.	Reduce
Data subjects may not be able to exercise their rights under the GDPR.	ADV5	Responsibility for facilitating data subject rights will sit with the service providers. Scottish Government will obtain assurances from the providers that have proper procedures and processes are in place to meet these obligations including all staff receive appropriate training.	Reduce
Scottish Government may receive personal data without legal basis from service providers in their quarterly/annual returns	ADV8	As reports from service providers use quantitative information any numbers of less than 5 will not be reported to ensure identification cannot take place. Organisations will illustrate themes by use of anonymised case studies. The potential to receive personal data is minimal but mitigation is in place in the unlikely event of error.	Reduce

## 8. Incorporating Privacy Risks into planning

Explain how the risks and solutions or mitigation actions will be incorporated into the project/business plan, and how they will be monitored. There must be a named official responsible for addressing and monitoring each risk.

Risk	Ref	How risk will be incorporated into planning	Owner
Data processed by other organisation to inform reports to Scottish Government.	ABC1	Assurances from local providers that they adhere to the Data Protection Act and GDPR and that all personnel are trained to ensure compliance with their responsibilities.	Scottish Government Pam Semple Louise Piaskowski
Security of data in hard copies	ABC3	<p>Include in plan the agreement that all advocacy workers involved in the possible transportation of hard copies of personal data have been given advice or training on best handling methods and have agreed to adhere to these.</p> <p>Annual assurances will be obtained from advocacy organisations in relation to all their personnel who may use data in hard copies.</p>	<p>Advocacy organisations</p> <p>Scottish Government Pam Semple Louise Piaskowski</p>

## 9. Authorisation and publication

**I confirm that the impact of introducing a children's advocacy service for children's hearings as per s.122 of the Children's Hearings (Scotland) Act 2011 has been sufficiently assessed against the needs of the privacy duty:**

Name and job title of a IAO or equivalent	Date each version authorised
<p>William Scott-Wilson</p> <p>Deputy Director, Care, Protection and Justice</p> <p>Children and Families Directorate</p>	28 August 2020