

EQUALITY IMPACT ASSESSMENT

Title of policy/ practice/ strategy/ legislation etc.	The Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020		
Minister	Minister for Community Safety		
Lead official	Simon Stockwell		
Officials involved in the EQIA	Name	Team	
	Claire Martin	Family Law	
Directorate: Division: Team	Justice, Civil Law and Legal System		
Is this new policy or revision to an existing policy?	New policy, but reflects the end of the transitional period for leaving the EU.		

Assessing the impacts and identifying opportunities to promote equality

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	We have not identified any unlawful discrimination, harassment or victimisation.
Advancing equality of opportunity		X		<p>The impact on children and young people mostly relates to the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (SSI 2019/104) which this SSI would make a minor technical amendment to in relation to transitional provision. SSI 2019/104 relates to with family cases and removes reciprocal arrangements on the recognition of judgements between Scotland and other EU Member States.</p> <p>The response by Together (the Scottish Alliance for Children's Rights) to the Scottish Government consultation in 2018 on family and civil law and EU exit noted that: "In summary, children's human rights are being increasingly embedded into EU family law. This is helping to ensure that their rights are protected, respected and fulfilled. Together would welcome EU family law continuing to apply</p>

					after the transition period, with an agreement with the EU to ensure full reciprocity, so that children can continue to benefit from these protections.” The Scottish Government agrees with this assessment and, ideally, full reciprocity with the EU on family law would have continued.
Promoting good relations among and between different age groups			X		We have not identified any impact.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	We have not identified any differential impact on disabled people.
Advancing equality of opportunity			X	We have not identified any differential impact on disabled people.
Promoting good relations among and between disabled and non-disabled people			X	We have not identified any differential impact on disabled people.

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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	We have not identified any differential impact on sex.
Advancing equality of opportunity			X	We have not identified any differential impact on sex.
Promoting good relations between men and women			X	We have not identified any differential impact on sex.

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	We have not identified any differential impact on pregnancy and maternity.
Advancing equality of opportunity			X	We have not identified any differential impact on pregnancy and maternity.
Promoting good relations			X	We have not identified any differential impact on pregnancy and maternity.

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	We have not identified any differential impact on transgender people.
Advancing equality of opportunity			X	We have not identified any differential impact on transgender people.
Promoting good relations			X	We have not identified any differential impact on transgender people.

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	We have not identified any differential impact on people because of their sexual orientation
Advancing equality of opportunity			X	We have not identified any differential impact on people because of their sexual orientation.
Promoting good relations			X	We have not identified any differential impact on people because of their sexual orientation.

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	We have not identified any differential impact on race.
Advancing equality of opportunity			X	We have not identified any differential impact on race.
Promoting good race relations			X	We have not identified any differential impact on race.

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	We have not identified any differential impact on people of religion or belief.
Advancing equality of opportunity			X	We have not identified any differential impact on people of religion or belief.
Promoting good relations			X	We have not identified any differential impact on people of religion or belief.

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

Marriage and Civil Partnership¹	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	N/A	N/A	N/A	N/A

¹ 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.

Decision making and monitoring

Identifying and establishing any required mitigating action

<p>Have positive or negative impacts been identified for any of the equality groups?</p>	<p>There is a negative impact in relation to age as leaving the EU may have an adverse effect on children's rights.</p> <p>The Scottish Government is taking steps, regardless of the departure of the UK from the EU, to enhance children's rights. These measures include:</p> <p>The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill currently before the Scottish Parliament will bring the rights conferred in the UN Convention on the Rights of the Child (UNCRC) directly into Scottish law.</p> <p>The Children (Scotland) Act 2020 will help ensure the views of the child are heard in contact and residence cases; further protect victims of domestic abuse and their children; ensure the best interests of the child are at the centre of contact and residence cases and Children's Hearings; and further compliance with the UNCRC in family court cases.</p> <p>In addition, there are Hague Conventions which provide fall-backs once EU provisions no longer apply.</p>
<p>Is the policy directly or indirectly discriminatory</p>	<p>No</p>

under the Equality Act 2010?	
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	Not applicable
If not justified, what mitigating action will be undertaken?	Not applicable

Describing how Equality Impact analysis has shaped the policy making process

The Scottish Government considers that EU exit is not beneficial for Scotland. However, the Scottish Government needs to implement relevant measures to address issues arising from the UK's exit from the EU. We have taken account of human rights and equalities in preparing this assessment.

In relation to age, the Scottish Government will continue to take steps to enhance children's rights such as, for example, continuing work to improve how children are heard in family cases.

The Scottish Government will also work with the UK Government on continuing involvement in international Conventions (e.g. Hague Conventions) once EU provisions cease to apply in Scotland.

Monitoring and Review

The Scottish Government will continue to monitor the impact of EU exit generally, including the impact on the civil justice matters relevant to this SSI.

Authorisation of EQIA

Please confirm that:

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

Yes

- ◆ 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

- ◆ 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 Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Family Law
October 2020