

**CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT**

**The Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020**

<b>CRWIA front sheet</b>	
<b>Policy/measure</b>  <b>A general description of the policy/measure</b>	The Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 reflects the end of the transitional period for leaving the EU.

<p><b>Initiating department</b></p> <p><b>The responsible team or division. If this is a cross-cutting policy, name the team that has overall responsibility</b></p>	<p>Family Law, Civil Law and Legal System, Justice Directorate</p>
<p><b>Policy aims</b></p> <p><b>What the policy or measure is trying to achieve; what are the expected outcomes</b></p>	<p>The UK left the EU with the withdrawal agreement on 31 January 2020. The transitional period ends on 31 December 2020. This instrument is therefore required to reflect the end of the transitional period. The SSI is technical and will:</p> <ul style="list-style-type: none"> <li>• Make transitional provision in respect of matters and procedures begun but not completed before the end of the transitional period.</li> <li>• Revoke the Cross-Border Mediation (Scotland) Regulations 2011. These partially implemented Directive 2008/52/EC on certain aspects of cross-EU border mediation in civil and commercial matters.</li> <li>• Revoke provisions implementing the Legal Aid Directive 2003/8/EC which relate to improving access to justice in cross-border disputes between individuals in different EU Member states, by establishing minimum common rules relating to legal aid for such disputes. This Part of the SSI also repeals provisions in connection with legal aid for referrals to the European Court of Justice.</li> <li>• Revoke the Multilingual Standard Forms (Fees) (Scotland) Regulations 2018 given that the obligation on National Records of Scotland to issue such forms falls away at the end of the transitional period. This relates to multilingual standard forms issued under EU Regulation 2016/1191 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents (eg birth certificates) in the EU.</li> <li>• Make a number of changes to the Services of Lawyers and Lawyer’s Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 which end the preferential practising rights of EU and EFTA lawyers in Scotland and provides for a range of rights for Swiss nationals or others who are professionally recognised in Switzerland and who have Swiss legal qualifications to practice in Scotland under certain conditions and reflects the withdrawal agreement. In addition, references to “exit day” are updated to “IP completion day”.</li> <li>• Amend the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 before they come into force. It replaces Regulation 6 (saving and transitional provisions) of those Regulations with provision which makes it clear that nothing in those Regulations affects the application of the relevant paragraphs of Article 67 of the withdrawal agreement.</li> </ul>

<b>Timetable</b>  What is the time frame for a policy announcement/consultation/implementation?	The intention is that the SSI will come into force the day before the end of the transitional period on 30 December 2020.
<b>Date</b>	28 October 2020

## CRWIA Stage 1

### Screening - key questions

#### **1. What aspects of the policy/measure will affect children and young people up to the age of 18?**

The Articles of the UNCRC and the wellbeing indicators under the Children and Young People (Scotland) 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

There is a composite SSI covering a range of civil justice matters relating to legal aid, legal services and the legal profession, cross-border mediation and civil status documents.

The SSI relates to family law cases that may affect children and young people.

#### **2. What likely impact - direct or indirect - will the policy/measure have on children and young people?**

'Direct' impact refers to policies/measures where children and young people are directly affected by the proposed changes e.g. in early years, education, child protection or looked after children (children in care).

'Indirect' impact refers to policies/measures that are not directly aimed at children but will have an impact on them. Examples include: welfare reforms, parental leave, housing supply or local transport schemes.

One of the areas covered by the SSI is a technical amendment to reflect the withdrawal agreement on transitional provision to the Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (SSI 2019/104).<sup>1</sup> SSI 2019/104 relates to EU Regulation 2201/2203 (Brussels IIa) which covers some family cases, removing reciprocal arrangements on the recognition of judgements between Scotland and other EU Member States. Cross-border family cases could involve, for example, a dispute over child custody and maintenance between two countries where it needs to be determined which country's court should hear the case, and whether orders granted in one country can be recognised and enforced in the other.

Some stakeholders have suggested that:

- Enforcing orders may be slower and more expensive under Hague Conventions than under EU measures.
- Children's rights are being increasingly respected by EU legislation.

<sup>1</sup> A Child Rights and Wellbeing Assessment (CRWIA) was carried out on SSI 2019/104. This CRWIA is available at [https://www.legislation.gov.uk/ssi/2019/104/pdfs/ssifia\\_20190104\\_en.pdf](https://www.legislation.gov.uk/ssi/2019/104/pdfs/ssifia_20190104_en.pdf)

**3. Are there particular groups of children and young people who are more likely to be affected than others?**

Under the UNCRC 'children' can refer to: individual children, groups of children, or children in general. Some groups of children will relate to the groups with protected characteristics under the Equality Act 2010: disability, race, religion or belief, sex, sexual orientation. It may be possible to align the CRWIA with the EQIA in these cases. 'Groups' can also refer to children by age band or setting, or those who are eligible for special protection or assistance e.g. pre-school children, children in hospital, children in rural areas, looked after children, young people who offend, victims of abuse or exploitation, child asylum-seekers, or children living in poverty.

Children involved in cross-border EU family cases.

**4. Who else have you involved in your deliberations?**

Have you included all policy leads who may have an interest in these developments?

Colleagues in the Civil Law and Legal System Division.

## CRWIA Stage 2

### Scoping - key questions

#### 1. What children's rights are likely to be affected by the policy/measure?

List all relevant Articles of the UNCRC and Optional Protocols (see Annex 1). All UNCRC rights are underpinned by the four general principles: non-discrimination; the best interests of the child; the right to life; survival and development; and the right to have children's views given due weight.

Articles:

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#### 2. How will the policy/measure affect children's wellbeing as defined by the wellbeing indicators?

List all wellbeing indicators relevant to the policy/measure (see Annex 2). The indicators are: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included.

Leaving the EU could have a negative impact on "nurtured" and "included", given the increasing emphasis in EU family law on children's rights.

#### 3. How many children and young people are likely to be affected by the policy or measure?

List potential sources of official and other data, or note the need to locate this information. Are there different levels of impact for different groups of children?

There is a significant number of families with parents of different EU nationalities. A report by Together (the Scottish Alliance for Children's Rights) found that approximately 10% (5,604) of children born in Scotland in 2016 had at least one parent born in another EU country. When such families break down this could result in a cross-border dispute over, for example, in which country the children should reside.

**4. What research evidence is available?**

Preliminary identification of the research base for this policy/measure

The report by Together is at

[https://www.togetherscotland.org.uk/pdfs/Brexit\\_Cross\\_Border\\_Report\\_Oct17.pdf](https://www.togetherscotland.org.uk/pdfs/Brexit_Cross_Border_Report_Oct17.pdf)

**5. Has there been any public or stakeholder consultations on the policy/measure?**

Stakeholders include children and young people, parents/carers, children's workforce, NGOs

There was a consultation by the Scottish Government in 2018 on EU exit and Family Law and Civil Law: <https://www2.gov.scot/Topics/Justice/law/17867/brexit>.

**6. Has there been any estimate of the resource implications of the policy/measure?**

Capital costs, expenditure, recruitment and training costs for the workforce etc.

Generally, the Scottish Government has not been able to quantify the costs to family law cases arising from EU exit however, in broad terms:

- Information on the number of civil cases in the courts is available at the publication Civil Justice Statistics in Scotland 2018-19: <https://www.gov.scot/publications/civil-justice-statistics-scotland-2018-19/>
- Most family cases are domestic only in that they only relate to Scotland. Cross-border cases could be within the UK or within the EU or international.
- Overall, any costs arising are likely to be low in aggregate as most family law cases are domestic (as defined above) but there could be additional costs in individual cases.



## CRWIA Stage 3

### Data Collection, Evidence Gathering, Involvement of/Consultation with Stakeholder Groups - key questions

#### 1. What does the evidence tell you?

The evidence base may include demographic information, academic research, service monitoring/inspection reports, service evaluation reports, user surveys etc. Identify any gaps in the evidence base. In particular, look at what the evidence tells you about children and young people's views and experiences of the relevant service(s); and/or what it tells you about children and young people's views of the policy proposal

There could be an impact on families seeking to resolve cross-border disputes.

#### 2. What further data or evidence is required?

Is the evidence up to date, robust and reliable, sufficiently relevant to what is being proposed, or do you need to commission new research?

A key issue is monitoring the impact of EU exit on children and young people in relation to family law.

#### 3. Has there been any consultation on the development of the proposal(s)?

Public or targeted consultation with children and young people, their parents/carers, the children's workforce - is there enough information on the views of the children and young people who will be affected by the policy/measure?

There was a consultation by the Scottish Government in 2018 on EU exit and Family Law and Civil Law: <https://www2.gov.scot/Topics/Justice/law/17867/brexit>

#### 4. Should children and young people be further involved in the development of this policy? Are there particular groups of children and young people whose views should be sought?

Specify how - outline the purpose, format, timetable and the questions you want to ask

Children and young people should be involved in monitoring the impact of EU exit on family law.

#### 5. Should other stakeholders and experts be further involved in the development of this policy?

Specify how - outline the purpose, format, timetable and the questions you want to ask

## CRWIA Stage 4

### Assessing the Impact and Presenting Options - key questions

#### 1. What likely impact will the policy have on children's rights?

Negative/positive/neutral. For those assessed as having a negative impact, list options for modification or mitigation of the policy/measure, or suggested alternatives to the policy/measure

Negative.

However, the Scottish Government is taking steps to improve how the voice of the child is heard in family cases. These steps, examples of which are outlined below, are being taken regardless of EU exit.

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.

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.

**2 How will the policy/measure contribute to the wellbeing of children and young people?**

Provide any additional assessment using the wellbeing indicators framework.

We have not identified a contribution to the wellbeing of children and young people.

**3. Are some children and young people more likely to be affected than others?**

Which groups of children and young people will be affected by the policy/measure? Are there competing interests between different groups of children and young people, or between children and other groups? List options for modification or mitigation of the proposal.

Children and young people involved in cross-border EU family cases will be more affected than others. The key mitigation is falling back on international (The Hague) Conventions. In addition, as indicated above, we are taking measures domestically to improve how the voice of the child is heard in family cases.

**4. Resource implications of policy modification or mitigation**

If recommending any changes to the policy/measure, include estimates of cost implications

The work outlined above on improving how the voice of the child is heard in family cases in Scotland will continue to proceed regardless of EU exit and there are existing international conventions.

**5. How does the policy/measure promote or impede the implementation of the UNCRC and other relevant human rights standards?**

This will inform Scottish Ministers' duty to report to Parliament on children's rights under the Children and Young People (Scotland) Act 2014.

This would have a negative impact on children's rights in relation to family law given the increasing emphasis in EU provisions regarding the voice of the child.

## CRWIA Stage 5

### Recommendations, Monitoring and Review - key points

#### 1. Record your overall conclusions from the CRWIA

Leaving the EU has a negative impact on children's rights in relation to family law given the increasing emphasis in EU provisions on hearing the voice of the child.

Mitigations include:

- Relying on international Conventions.
- Improving how the voice of the child is heard in family law cases in Scotland.

#### 2. Recommendations

List recommendations on how/whether to proceed with the proposal, referring to your assessment of impact, list of options, and evidence from previous stages of the CRWIA. Justify your recommendations

To proceed with this SSI.

The UK left the EU with the withdrawal agreement on 31 January 2020. The transitional period ends on 31 December 2020. This instrument is therefore required to address deficiencies of retained EU Law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

#### 3. How will the policy/measure be monitored? Date and agreed process for monitoring and review

Responsible official, timetable, methodology, involvement of stakeholders including children and young people

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 and on the courts, on family law and on children and young people.

**Family Law**

**October 2020**