

EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy/ legislation etc.	The Children’s Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021	
Minister	Minister for Community Safety Ash Denham	
Lead official	Jill Stephen Poller – Access to Justice	
Officials involved in the EQIA	name	team
	Kieran Burke Martin Brown	Access to Justice SGLD
Directorate: Division: Team	Justice: CLLS: Access to Justice	
Is this new policy or revision to an existing policy?	Revision to existing: Changes made to align with the Age of Criminal Responsibility Act 2019	

Screening

Policy Aim

The Age of Criminal Responsibility (Scotland) Act 2019

The Age of Criminal Responsibility (Scotland) Act 2019 received Royal Assent on 11 June 2019 and once fully commenced will raise the age of criminal responsibility in Scotland from 8 to 12. Additionally, it provides certain safeguards to ensure that harmful behaviour by children under 12 can be responded to in an appropriate and meaningful way, which will not criminalise children.

Part 5A of the Legal Aid (Scotland) Act 1986 currently provides for children’s legal aid to be available in connection with certain proceedings under the Children’s Hearings (Scotland) Act 2011. The Legal Aid (Scotland) Act 1986 has been amended by section 73 of the 2019 Act to enable Scottish Ministers to make regulations for children’s legal aid to be available in relation to

proceedings under that Act. This allows for children's legal aid to be made available to a child for proceedings before the sheriff and appeals from the sheriff under Part 4 of the 2019 Act, as well as for the other persons (if any) eligible for children's legal aid in connection with such proceedings and appeals to be specified.

The purpose of this SSI is to make children's legal assistance available in relation to proceedings under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019; in particular, for a child to have legal representation before the sheriff and any appeal from the sheriff, and for the other persons eligible for children's legal assistance in connection with such proceedings and appeals, to be specified along with the eligibility criteria to be applied.

These regulations specify when children's legal assistance is available automatically or available on application to the Scottish Legal Aid Board, and state the conditions that must be met for children's legal assistance to be made available. They also provide that first instance and appellate proceedings are not to be treated as distinct for the purposes of applications for children's legal assistance and detail when work may be undertaken on the basis of special urgency.

Who will it affect?

Children subject to proceedings under Part 4 of the 2019 Act, both at first instance and appeal, and the categories of people that are identified in the 2019 Act as having an interest in the proceedings, which includes a parent of the child and any other person the sheriff considers to have an interest in the application.

What might prevent the desired outcomes being achieved?

There may be a lack of solicitor availability within the profession to provide legal assistance when required.

Stage 1: Framing

Results of framing exercise

The framing exercise has identified that there are no specific negative impacts, either direct or indirect, on protected groups. The policy aims to enhance access to legal representation for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings.

This policy will increase access to legal assistance. This will have a positive impact on access to justice.

Extent/Level of EQIA required

The framing exercise suggests that there is only likely to be a positive impact on children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings, therefore only a low level of assessment was deemed necessary.

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			
DISABILITY			
SEX			
PREGNANCY AND MATERNITY			
GENDER REASSIGNMENT			
SEXUAL ORIENTATION			
RACE			
RELIGION OR BELIEF			

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

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)

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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			Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings.
Advancing equality of opportunity	x			Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings.
Promoting good relations among and between different age groups			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination,	x			Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and

harassment and victimisation					for the categories of people that are identified in the 2019 Act as having an interest in the proceedings.
Advancing equality of opportunity	x				Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings.
Promoting good relations among and between disabled and non-disabled people				x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.

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	Awards of legal aid are not restricted by gender.
Advancing equality of opportunity	x			Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings.
Promoting good relations between men and women			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.

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

Pregnancy and	Positive	Negative	None	Reasons for your decision

Maternity				
Eliminating unlawful discrimination			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.
Advancing equality of opportunity			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.
Promoting good relations			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.

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? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			x	Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings, regardless of gender identity.
Advancing equality of opportunity	x			Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings, regardless of gender identity.
Promoting good relations			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.

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	Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings, regardless of sexual orientation.
Advancing equality of opportunity	x			Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings, regardless of sexual orientation.
Promoting good relations			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.

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	Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings, regardless of race.
Advancing equality of opportunity	x			Legal aid will automatically be made available for children subject to proceedings under Part 4 of the 2019 Act and for the categories of people that are identified in the 2019 Act as having an interest in the proceedings, regardless of race.
Promoting good race relations			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.

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 potential negative impacts or consequences for clients or solicitors in this group have been identified.
Advancing equality of opportunity			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.
Promoting good relations			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.

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

Marriage and Civil Partnership²	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			x	No potential negative impacts or consequences for clients or solicitors in this group have been identified.

² 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

If, following the impact analysis, you think you have identified any unlawful discrimination – direct or indirect - you must consider and set out what action will be undertaken to mitigate the negative impact. You will need to consult your legal team in SGLD at this point if you have not already done so.

Have positive or negative impacts been identified for any of the equality groups?	Impacts on clients in equality groups would be positive with favourable impacts around access to justice; no potential negative impacts identified so therefore no likely consequences for equality groups.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ³ ?	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.

³ See EQIA – Setting the Scene for further information on the legislation.

Monitoring and Review

SLAB has a continuing programme of research and analysis relating to both the supply of and access legal aid, and factors which may affect such supply and access.

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 Children's Legal Assistance Amendment (Scotland) Regulations 2021 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Denise Swanson

Position: Interim Deputy Director, Civil Law and Legal System Division, Justice Directorate

Authorisation date: 25/08/2021