

Children’s Rights and Wellbeing Impact Assessment

CRWIA title: The Children’s Legal Assistance (Miscellaneous Amendments) (Scotland) Regulations 2021	
Executive summary	<p>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</p>
Background	<p>The Age of Criminal Responsibility (Scotland) Act 2019</p> <p>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.</p> <p>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.</p> <p>The purpose of this SSI is to extend legal aid provision to ensure children’s legal assistance is automatically made available for a child subject to proceedings under Part 4 of the 2019 Act, both for first instance and appeal proceedings in respect of applications for certain orders under that Part of the Act. Currently a child can only obtain automatic legal aid for proceedings under the Children’s Hearings (Scotland) Act 2011. Section 28LB(1) of the 1986 Act provides that regulations may be made to extend the availability of automatic children’s legal aid under Part 5A of that Act.</p> <p>Children’s legal assistance is also to be made available to the categories of people that are specified in the 2019 Act as capable of being given an opportunity to make representations, at the discretion of the sheriff. This applies to the child themselves but also includes a parent of the child and any other person the sheriff considers to have an interest in the application. It is thought likely that this will usually be social work staff, but it may also extend to any person and their family members affected by the actions allegedly taken by the child who is subject to the proceedings. This could also include the applicant for the order, but as this will be a constable of Police Scotland, legal aid cover need not extend to the applicant. Applications from a parent of the child or any other person should be subject to a means test only - the child will be entitled to automatic legal aid. This has been discussed with the Scottish Legal</p>

	Aid Board (“SLAB”) who advised that the merits test will automatically be on the basis that the sheriff dealing with the application has concluded that they ought to be able to make representations.			
Scope of the CRWIA	Children subject to proceedings under Part 4 of the 2019 Act, both at first instance and appeal, will be affected by these regulations.			
Children and young people’s views and experiences	<p>Extensive engagement has been carried out as part of the work to produce the Age of Criminal Responsibility (Scotland) Act 2019. A Children’s Rights and Wellbeing Impact Assessment was completed in relation to the Bill for the Act. No impact issues were identified. The following links show the relevant documentation:</p> <ul style="list-style-type: none"> Children’s Rights and Wellbeing Impact Assessment: Age of Criminal Responsibility (Scotland) Bill: children's rights and wellbeing impact assessment - gov.scot (www.gov.scot) 			
Key Findings,	Framing exercises carried out as part of the Equality Impact Assessment have 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 therefore only a low level of assessment was deemed necessary.			
Monitoring and review	<p>SLAB monitors changes and reports to the Scottish Government any negative impacts.</p> <p>The Law Society of Scotland will also report any negative impacts on the legal profession to both SLAB and the Scottish Government.</p>			
Bill - Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
Automatic legal aid will be available for children subject to proceedings under Part 4 of the 2019 Act	Increase access to legal assistance and by this improve access to justice	Children	Yes	Will support and promote child wellbeing through the legal system
Automatic legal aid will be available for the categories of people that are identified in the 2019 Act as having an interest in the proceedings	Increase access to legal assistance and by this improve access to justice	Individuals involved in proceedings under Part 4 of the 2019 Act	Yes	Will support and promote child wellbeing through the legal system

CRWIA Declaration				
Authorisation				
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