

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021
Summary of aims and desired outcomes of Policy	<p>Introduce an opportunity for certain persons to participate in Children's Hearings without the necessity of relevant person status or deemed relevant person status. They set the definitions of who has the opportunity to participate, to what extent and for what reasons. In doing so the rights of the child at the centre of the hearing are paramount</p> <p>Update the drafting of the rules on exclusion from hearings and to clarify procedure on electronic signatures, virtual attendance, and sharing of reports.</p>
Directorate: Division: team	Children and Families: Care, Protection and Justice: Children's Hearings

Executive summary

Children (Scotland) Act 2020 Act ('the Act') gained Royal Assent on 1 October 2020. We have been working with partners in the period since, particularly to commence section 25 of the Act relating to the opportunity to participate in children's hearings.

Regulations are required to define the scope of the opportunity to participate -ensuring the widest possible participation without diluting the rights of the child at the centre of the hearing or the rights of relevant persons.

Early commencement directly responds to the conclusions of the Promise in ensuring wherever possible sibling relationships to be maintained, takes on board the findings of the Supreme Court relating to the ABC and XY cases, and supports the ethos of the Stand Up For Siblings Campaign.

The Scope of the EQIA

The scope includes:

1. the impact of providing opportunity to participate in Children's Hearings for a sibling or someone with a sibling like relationship in providing views to a children's hearing on any matter that is being discussed that will have a significant impact on contact likely to affect the sibling relationship.
2. The Scope should meet the Promise challenge that "Scotland already has a presumption that children will stay together with their brothers and sisters. That presumption must be fully implemented and closely monitored."
3. The impact of regulations on the use of exclusions where the impact on the child is severe enough to cause significant distress or is directly preventing them from giving their views, and any broader situations where exclusion could apply.
4. Impact of excluding any person from the hearing who is being violent or abusive, or so disruptive that the hearing has to be adjourned, or deferred to another day.
5. Impact of allowing further scope in the use of virtual technology for children's hearings.

Key Findings

In summary the policies have either positive or limited equality impact. The impact particularly has a positive outcome for children and young people of including their voice in any decisions by a Children's Hearing relating to or significantly affecting contact.

The policy on opportunity to participate builds and makes a step forward on getting it right for every child, the conclusions of the Promise on families and relationships, the Supreme Court findings in the ABC and XY cases, and

the Stand up for Sibling campaign. Siblings relationships form an extremely important role in development of children and should be supported and maintained.

On virtual attendance and exclusion there is clearly a potential for impact on the protected characteristics of disability and sex. The exclusions section is limited to where the impact on the child is severe enough to cause significant distress or is directly preventing them from giving their views. This broader power is to apply to the exclusion of relevant persons, their representatives, and journalists.

Provision is required to exclude from the hearing any person who is being violent or abusive, or so disruptive that the hearing has to be adjourned, or deferred to another day. This aligns with practice across courts.

It will likely have a positive effect for victims of domestic abuse who attend children's hearings. This is a significant area of concern where the policy is likely to have the most impact, in ensuring that decisions over attendance, and therefore power, are not placed in the control of known perpetrators of domestic abuse. This may result in a proportionately more positive effect for women, with women accounting for approximately 82% of victims of domestic abuse in 2017/18.

It could therefore be interpreted that there will be a disproportionately negative effect on men, as 83% of the perpetrators of domestic abuse are men. However, the use of the power of exclusion or direction to attend by other means should be strictly limited to where there is a clear need for ensuring the safety and participation of others. Indeed the decision to exclude a relevant person for all or part of a hearing will be reserved as a measure of last resort when voluntary measures cannot be implemented. We therefore believe that the power is justifiable and necessary.

Allowing further scope in the use of virtual hearings is a positive step towards ensuring full participation from all parties, to take party in the best practical way for them to provide views in a safe and open forum.

It has the potential to directly affect attendees at Children's Hearings, although not all. It is not anticipated to have any negative effects on protected groups. It has the potential to have a positive impact for some protected groups by reducing barriers in communication, for example

disabled people who may have difficulty travelling to a hearing to attend physically.

For Virtual attendance the most significant potential barrier to the desired outcomes being achieved is whether there is inconsistent and unreliable technology potential demand for use of videoconference technology to ensure that the outcome of broadening options for attendance can be met.

A lack of understanding and confidence in the new powers available to a hearing may also prevent desired outcomes being achieved. Panel members and reporters must have a clear understanding of when and how these powers are to be used appropriately and proportionately. Engagement with Children's Hearings Scotland and the Scottish Children's Reporter Administration has already begun and will ensure that these changes are supported with robust guidance and training for panel members and Reporters, where necessary.

Recommendations and Conclusion

The Scottish Government has concluded that no changes to the policy are necessary as a result of the Equality Impact Assessment as the proposals are the appropriate rights of involvement for siblings whilst protecting the focus of proceedings on the child at the centre of the hearing, whose own best interests remain the paramount consideration. They are a positive step towards protecting relationships which may be the most important relationships in their lives and should be respected. Allowing sibling participating in the Children's Hearings System appear to have no significant differential effect on the basis of the protected characteristics. Exclusion in general is being done to protect the rights and participation of victims of domestic abuse whilst the options around virtual attendance on the whole will be positive for groups who would find attendance at hearings centres difficult, but importantly moves to a position that only those that really need to be in physical attendance do so.