

EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy/ legislation etc.	The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023	
Minister	Minister for Community Safety – Elena Whitham	
Lead official	Kieran Burke Bill Team and Commencement Leader	
Officials involved in the EQIA	Name	Team
	Katie Case Diana Nedelcu Kieran Burke Emma Thomson	CLLS: Access to Justice: Legal Aid Policy Team Scottish Government Legal Directorate: Constitutional and Civil Law Division
Directorate: Division: Team	CLLS: Justice: Access to Justice	
Is this new policy or revision to an existing policy?	New Policy	

Screening

Policy Aim

The legal aid provisions aim to: amend the Assistance By Way Of Representation (ABWOR) Regulations which will give the Scottish Legal Aid Board the discretion to grant Publicly Funded Legal Assistance (PFLA) for sibling participants at Children’s Hearings, where certain conditions are met; make provision that compensatory payments made through the Scottish Infected Blood Support Scheme (SIBSS) be disregarded for the purposes of financial assessment when a person is seeking PFLA; and allow payments made in connection to The Social Security (Additional

Payments) Act 2022 to be disregarded for the purposes of financial assessment when a person is seeking PFLA.

Who will it affect?

Sibling participants in Children's Hearings, those that have received payment through the SIBSS and those that have received payments made in connection to The Social Security (Additional Payments) Act 2022.

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 Scottish Government has assessed the potential impact of the proposed regulations on equal opportunities and has determined they do not unlawfully directly or indirectly discriminate with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership).

The amendment to the ABWOR Regulations in relation to Children's Hearings will improve access to legal assistance for individuals with participation rights at Children's Hearings, where certain conditions are met. These individuals will have a relationship of a sibling nature with a subject child at such a hearing, and may be of a similar age to that child.

These provisions will have a positive impact on access to justice by supporting the legal professionals and providing the Scottish Legal Aid Board with the power to determine applications for participants at Children's Hearings.

The amendments to legislation to allow for payments made through the SIBSS and in connection to the The Social Security (Additional Payments) Act 2022 to be disregarded will also have a positive impact on access to justice as it will ensure that those that

have received the above payments will not be prevented from accessing PFLA.

Extent/Level of EQIA required

The Scottish Government will carry out this EQIA taking into account the low risk of the legal aid provisions causing any negative impact on people with protected characteristics. However, the extension or level of this EQIA will be adapted if, during the implementation of these provisions, we gather evidence or receive any information from stakeholders alerting to this type of risk.

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			The amendment to the ABWOR Regulations to provide the Scottish Legal Aid Board the power to grant applications from individuals with participation rights at Children’s Hearings, subject to statutory tests being met. The proposed provisions are considered to promote the protection of the right to access to justice for children and young people. In terms of the other aspects of these regulations, no potential negative impacts or consequences for clients or solicitors in this group have been identified.
Advancing equality of opportunity			X	The ABWOR provisions are considered unlikely to impact the advancing of equality of opportunities of children and young people, beyond providing an opportunity to secure publicly funded legal representation.

				<p>The amendments that will allow for payments made through the SIBSS and in connection to the Social Security (Additional Payments) Act 2022 will be disregarded when assessing an individual's financial eligibility for PFLA. It means those who would normally be eligible for PFLA from SLAB will not be excluded just because they are now also in receipt of one or both of these two types of payment, particularly those who have children.</p>
<p>Promoting good relations among and between different age groups</p>	<p>X</p>			<p>Providing the Scottish Legal Aid Board the ability to make publicly funded legal representation available to individuals who have a sibling type relationship to a subject child at a Children's Hearing, for the purposes of contact arrangements could assist in the promotion of good relations among and between different age groups and protecting children and young people's rights.</p>

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
<p>Eliminating unlawful discrimination, harassment and victimisation</p>	<p>X</p>			<p>Legally aided services perform a valued public function in our society. Proposed amendments are aimed at improving the legal aid service provision which would directly impact on the criminal and</p>

					civil justice system, by protecting the right to a fair trial and available legal counsel, with vulnerable individuals, such as accused persons with learning disabilities, more likely to be at risk in this regard.
Advancing equality of opportunity			X		The proposed provisions are considered unlikely to impact the advancing of equality of opportunities.
Promoting good relations among and between disabled and non-disabled people	X				A proportionate, fair and effective justice system underpinned by the right to access to justice is an essential requirement to the promotion of good relations among and between disabled and non-disabled people.

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	
Advancing equality of opportunity			X	The proposed provisions are considered unlikely to impact the advancing of equality of opportunities.
Promoting good relations between men and women	X			The proposed provisions aim to improve access to publicly funded legal assistance and to continue to assist legal aid providers with cash flow as well as improving the operation of the court system.

					Services paid for by legal aid enable individuals to enforce or protect their rights, resolve disputes, defend themselves when the state or others take action against them ?and use the remedies, processes and facilities the law provides to manage their personal affairs and relationships.
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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			A justice system supported by the right to access to legal representation is an essential requirement to the protection of individuals during pregnancy and maternity, particularly in connection to available legal support for women experiencing any form of abuse and misogyny.
Advancing equality of opportunity			X	The proposed provisions are considered unlikely to impact the advancing of equality of opportunities of women going through pregnancy.
Promoting good relations			X	The proposed provisions are considered unlikely to impact in this regard.

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 provisions detailed above apply to solicitors and clients regardless of gender identity. However, the proposed provisions will help to ensure the availability of legal services for those individuals in society most likely to be affected by discrimination and inequalities and as such any impact is likely to be a positive one.
Advancing equality of opportunity			X	The proposed provisions are considered unlikely to impact the advancing of equality of opportunities of trans people.
Promoting good relations			X	The proposed provisions are considered unlikely to impact the promoting of good relations in respect of trans 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			The right to access to justice is an essential requirement to eliminate unlawful discrimination, harassment and victimisation on people because of their sexual orientation.
Advancing equality of opportunity			X	The proposed provisions are considered unlikely to impact the advancing of equality of opportunities.
Promoting good relations			X	The proposed provisions are considered unlikely to impact the promotion of good relations on the basis of 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			Adequate provision of publicly funded legal representation allows people of different ethnic origins and race to challenge unlawful discrimination.
Advancing equality of opportunity			X	The proposed provisions are considered unlikely to impact the advancing of equality of opportunities.

Promoting good race relations			X	The proposed provisions are considered unlikely to have any impact on promoting race relations.
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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			Adequate provision of publicly funded legal representation allows people with different religions and beliefs to challenge unlawful discrimination.
Advancing equality of opportunity			X	The proposed provisions are considered unlikely to impact the advancing of equality of opportunities.
Promoting good relations			X	The proposed provisions are considered unlikely to promote good relations between people with different religions and beliefs.

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

Marriage and Civil Partnership ²	Positive	Negative	None	Reasons for your decision

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

Eliminating unlawful discrimination	X			Legal aid provisions will apply as detailed above to solicitors and clients regardless of their marital status. However, the proposed provisions will help to ensure the availability of legal services for those individuals in society most likely to be affected by discrimination and inequalities and as such any impact is likely to be a positive one.
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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

Have positive or negative impacts been identified for any of the equality groups?	The Scottish Government has identified positive impacts derived from an efficient and effective legal aid service by providing legal advice and representation to persons of all protected characteristics. An effective justice system is an essential instrument at the disposal of the public to challenge unlawful discrimination.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ³ ?	No direct or indirect discriminatory effect from the policy was identified.
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 has concluded that these regulations will not cause any adverse impact upon groups and communities with protected characteristics, as defined in the Equality Act 2010. As a result of the Equality Impact Assessment, the policy remains unchanged.

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

Monitoring and Review

The Scottish Legal Aid Board (SLAB) is a non-departmental public body which administers legal aid in Scotland and is accountable to the Scottish Government. SLAB has a continuing programme of research and analysis relating to both the supply of and access to legal aid; and any factors which may affect such supply and access. SLAB reports any negative impacts on legal aid provision to the Scottish Government.

The Law Society of Scotland will also report any negative impacts on the legal profession to both Scottish Legal Aid Board and the Scottish Government.

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 Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023 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 of Justice

Authorisation date: 9/11/22