

# EQUALITY IMPACT ASSESSMENT

## SUMMARY

**Title of policy, project or function:**

Children's legal assistance/ the legal aid aspects of the Children's Hearings (Scotland) Act 2011(the 2011 Act)

**Is the policy, project or function new (proposed) or already exists?**

Children's Legal Assistance (CHLA) already exists but its scope is widened by the 2011 Act which also transfers some decision-making from the courts to SLAB.

**Has a screening exercise been carried out before this full assessment?**

Yes

**Key findings from the assessment:**

This policy and wider reforms will strengthen a system that is already designed to put the child, and the child's needs, at the centre. This includes:

- Girls and boys;
- Young people of every sexual orientation and gender identity;
- Disabled and non-disabled children and young people;
- Children and young people of every race; and
- Children and young people of every religion and belief.

It is anticipated that overall the policy will strengthen the rights of, and improve outcomes for, all children and young people referred to the Children's Reporter. Putting the child at the centre of the hearings system and promoting and supporting their rights and welfare.

The policy provides for the replacing of the interim legal representation scheme with a permanent, sustainable, national scheme that will see legal representation for children and parents available through the normal civil legal aid system as administered by the Scottish Legal Aid Board - this makes it possible to provide state-funded legal representation whenever it is required to ensure the effective participation of children or parents. This provision will have a positive impact on children.

**Actions as a result of the assessment:**

No further action required.

**Date impact assessment published:**

**25/07/2014**

**Lead official(s) responsible for assessment:**



Joe Kelly, Head of Civil & Children's Legal Assistance

**Department:**

Civil & Children's Legal Assistance

**Name of sponsor/ Director who has signed off that the policy/ function has been sufficiently assessed against the needs of the equality duty:**

Marie-Louise Fox, Director of Operations

**Date of sign off:**

25/07/2014



## **Step 1 - Examine the information available to assess likely impact of the function/ policy on different equality groups**

### **1.1 Describe the policy, project or function. What does it aim to do? What and who will it affect? *You can update or use information from your screening assessment if one was completed.***

The function deals with applications for and the administration of grants of Advice and Assistance, Assistance by Way of Representation (ABWOR) and Children's Legal Aid, which are collectively known as Children's Legal Assistance (CHLA), in accordance with the governing legislation and regulations passed by the Scottish Parliament.

It will affect those applying for CHLA who are children, relevant persons and deemed relevant persons and those seeking deemed relevant person status. It will also affect children's panel members, Reporters to Children's Panels and solicitors advising those involved or potentially involved in a Children's Hearing or associated court proceedings and those acting for or advising children or others involved in such proceedings in other capacities, such as safeguarders or advocacy workers. Advice and Assistance is already available to children and adults who are parties to children's hearings and Children's Legal Aid is available for associated court proceedings.

Prior to these changes no form of legal aid was available for representation at a children's hearing. The legal aid changes being introduced are that publicly-funded legal representation will now be available at children's hearings and applications for children's legal aid for associated court proceedings currently considered by the courts will be considered by SLAB.

### **Background**

The Children's Hearings System is Scotland's unique system of combining welfare and justice for vulnerable and troubled children/young people from birth to 17 years of age.

It has been operating for more than 30 years. Its formation stemmed from the work of Lord Kilbrandon who found that whether young people had offended or been offended against, their needs were the same. He believed that in taking decisions about their future, the best interests of the child/young person must be the prime concern.



In the Children's Hearings System, decisions on what is best for the child are made by members of the children's panel, trained volunteers from the community. The Children's Hearings System helps children/young people who are vulnerable because they are experiencing, or are at risk of, for example:

- physical, sexual or emotional abuse
- parental neglect
- being out of control
- offending
- not going to school
- taking drugs or alcohol.

It is not just about the children's hearing itself, where members of the children's panel meet the child, family and relevant professionals to discuss the issues and decide what is in the best interests of the child/young person. The system as a whole provides the most appropriate and effective intervention for each child/young person.

There are three 'overarching' principles in law relating to children's hearings, which underpin the system:

- the welfare of the child is paramount
- the child's views must be taken into account
- no order should be made in relation to a child unless it is better to make an order than not to.

When considering the welfare of the child/young person and reaching a decision, the hearing can, where necessary, take into account the protection of the public from serious harm.

The legal aid system contributes to the Scottish Government's Safer and Stronger Strategic Objective. Particularly, it contributes to the National Outcome of "strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others" by ensuring that individuals can be held to account for their actions and can enforce their own legal rights through the effective functioning of our civil and criminal courts.

**1.2 What is known about each of the equality groups who might use or be affected by this policy? For evidence see [Scottish Government equality finder](#) (contains information on equality groups and the justice system), the [SLAB shared drive](#) - information on the different groups (contains other information on equality groups) and [SLAB's research webpage](#) for information on the demographics of applicants of legal aid and solicitors providing work under legal aid.**

*You need to look at the evidence you have for each group - Race, Sex (gender), Gender Reassignment, Disability, Sexual Orientation, Pregnancy & Maternity, Age, Religion and Belief, and Marriage & Civil Partnership. Think about the people likely to be affected by the policy. Does the policy relate to functions that have been identified as being important to particular protected groups? Does it relate to an area where there are already known inequalities? Good evidence is required for you to show 'due regard'. An inadequate analysis in an assessment may mean failure to meet the general duty.*

We have reviewed the EQIA undertaken by the Scottish Government which was published in February 2010 and as a result are of the view that the equality groups most likely to be at risk of negative impacts are age and disability. However, for the reasons set out below we do not consider that negative impacts will arise.

## 1. Age

Age arises as a potential issue as direct result of the focus of the work of the children's hearing system being aimed principally at children and young people and so clearly, although adults are also affected by the work and decisions of children's hearings and associated court proceedings, children and young people are the protected group most likely to be affected by the legal aid changes introduced by the 2011 Act . However the legal aid aspects of the 2011 Act provide for positive impacts for children by making legally aided representation available at hearings and in certain specified circumstances making it available automatically with no legal merits or financial eligibility tests to be met. The requirement for registration of solicitors to undertake CHLA and their obligation to comply with a code of practice and the Board's monitoring of compliance with these obligations is intended to ensure that there will be good quality legal advice and representation available for children.

There were 854,100 people aged under 15 in Scotland on census day 2011. This represents approximately 16% of the total population. Of these, 18,836 children (If we take 2011/2012 numbers as above) had children's hearings held for them representing approximately 2.2% of the total number of children. It should be noted that these numbers represent those under 15 where the term child in relation to children's hearings are under 16.

### Table from Census 2011

	Scotland	females	males
All	5,295,400	2,728,000	2,567,400
0-4	292,800	143,600	149,200
5-9	269,700	131,600	138,000
10-14	291,600	142,000	149,600



15-19            330,800        162,700        168,100

Children's hearings can make short-term decisions to address emergency and/or high risk situations where measures have to be put in place immediately to protect children or address their behaviour. This may include hearings arranged as a result of the Sheriff granting a Child Protection Order (CPO).

In 2011/12, children's hearings: considered the cases of 781 children with CPOs under section 59(2) of the Children (Scotland) Act 1995; and made 1,994 children subject to Place of Safety Warrants under sections 66(1) and 69(7) of the Children (Scotland) Act 1995.

There were 2,571 children on child protection registers as at 31 July 2011, an increase of 2% compared with 31 March 2010. Half of all children on child protection registers were aged 0-4 years, whilst 31% were aged 5-11 years and 16% were aged 12-15 years. Very few children aged 16 or over are on child protection registers.

At 31 July 2011, there were 16,171 children being looked after by local authorities. This represents 15 per 1,000 children of the 0-18 year old population. The number of, and rate per 1,000 population aged 0-18 years has been increasing every year since 2001.

Board application data shows that 4,348 applications for children's legal advice and assistance were made in 2011-12. Around 10% (443) of these applications were made by children aged 16 years or under. Currently, the majority of applicants who apply for legal advice and assistance for children's hearings are adults - 88.5% are aged over 16 years, with the majority of applicants being between 22 and 41 years old. In the 2011 Census, approximately 83% of the Scottish population were aged 15 years or older.

According to the Board's 2010 solicitor survey, 58% of firms who responded (131) handled children's legal assistance cases. However, only two partners indicated that their firm mainly dealt with children's legal assistance cases and only 2% of individual solicitors indicated that they mainly worked on children's cases. The number of respondents providing mainly children's legal assistance is therefore too small to be considered as reliable as data on those providing criminal or civil legal assistance, where sample sizes are much larger. As a result, data in respect of protected characteristics taken from this survey are for all respondents, rather than those dealing mainly with children's legal assistance.



The Board's solicitor 2010 survey shows that there were 416 respondents in total, and of those that specified their age (99.8% of respondents) 14% were aged between 25-34; 33% were aged between 35-44; 36% were aged between 45-55; and 17% were 55 or above.

## **2. Disability**

Around a third of households in Scotland (34 per cent) contain at least one person with a long-standing illness, health problem or disability. Research in 2002 ("The Evaluation of Children's Hearings in Scotland", the Scottish Executive, 2002) showed that just under 20% of children referred to the Reporter had a health problem or disability and Who Cares? Scotland reported in 2008 that 93% of young people in secure accommodation had at least one known disability. Disabled children may experience barriers to communication in obtaining good quality information and advice and children with disabilities may be less able to communicate their needs and to access help outwith their families. The availability of advice and representation is intended to help assist children and young people to overcome these challenges and the code of practice referred to above requires solicitors advising or representing children to have a general understanding of child development and the principles of communicating with children as well as prohibiting discrimination on the grounds of any protected characteristic and making particular provision for the arrangements for consulting with child clients.

Board application data shows that 4,348 applications for children's legal advice and assistance were made in 2011-12. One per cent of applicants declared that they had a disability (13% did not respond).

The Board's 2010 solicitor survey shows that of those that responded to this question (98.6%), 1% considered themselves to have a disability. Descriptions of disability responses included visual impairment, hearing impairment, physical co-ordination difficulties, chronic asthma and dyslexia.

## **3. Gender**

SCRA records show that there is an almost equal split between boys and girls referred to the reporter on care and protection grounds but that boys made up 76% of referrals on offence grounds. The guidance produced by SLAB on the legal merits and financial eligibility tests to be applied to applications for and the administration of grants of CHLA makes it clear that the tests are applied without regard to gender and SLAB has consulted widely with organisations representing the views and interests of children about the guidance and information SLAB makes available to ensure that it is accessible to and mindful of the needs of male and female applicants, including the needs of LGBT applicants, including both children and adults. the code of practice



sets out the standards required of solicitors providing CHLA and specifically prohibits discrimination on the grounds of protected characteristics.

People who might apply for children's legal assistance

Table from Census 2011

	Scotland	females	males
All	5,295,400	2,728,000	2,567,400
0-4	292,800	143,600	149,200
5-9	269,700	131,600	138,000
10-14	291,600	142,000	149,600
15-19	330,800	162,700	168,100

On a gender basis boys are more likely to be referred to the reporter than girls with 53% of referrals being boys and only 45% being girls. Board application data also shows that in 2011-12, of those aged under 16 years old applying for children's legal assistance, the majority were male (60%). This is a slightly higher proportion of boys than the proportion in the general population for this age group.

The highest proportion of referrals come from a single parent home where the mother is the present parent, suggesting that those women will be more likely to be affected than men in the general population.

In the Board's solicitor survey 2010, 65% of solicitors were male and 35% female. This is a significantly higher proportion of men than in the general population, for which the 2011 Census showed that 48.5% of the Scottish population were male and 51.5% were female.

**1.3 Are there any gaps in understanding of your policy/ function in relation to equality groups? *You should think about opportunities to fill any gaps in evidence through your consultation plans for the policy/ function at Step3.***

No significant gaps have been identified.

## Step 2 - Impacts on priority characteristics and suggested steps to address these

Does the policy/ function have any impacts (whether intended or unintended, positive or negative) on any of the equality groups? Describe for each group the ways in which the policy, as it is planned or as it operates, might have negative and/ or positive impacts. You should answer these three questions for each group:

- 1) Is there potential for discrimination?
- 2) Is there potential for developing good relations?
- 3) Is there potential to advance equality of opportunity?

### Race

Is there any potential impact on this group? No

*Please explain your answer:*

This policy shows no indication of positively or negatively affecting children, Relevant Persons or solicitors under this protective characteristic.

- 1) No
- 2) N/A
- 3) N/A

### Sex (gender)

Is there any potential impact on this group? Yes

*Please explain your answer:*

This policy and wider reforms will strengthen a system that is already designed to put the child, and the child's needs, at the centre. This includes girls and boys, and men and women acting as Relevant Persons.

Currently more boys use the hearing system than girls and so more boys than girls are likely to use the policy. This gender difference is not associated with the policy itself but a feature of the population being referred to children's hearings.



Some research suggests that more referrals come from a single parent female household. This would suggest a greater chance of a positive impact on those cases, which would suggest that women are more likely to benefit from this policy than men.

This policy shows no indication of positively or negatively affecting solicitors under this protective characteristic.

1) No

2) N/A

3) N/A

### **Gender reassignment**

Is there any potential impact on this group? No

*Please explain your answer:*

This policy shows no indication of positively or negatively affecting solicitors under this protective characteristic.

1) No

2) N/A

3) N/A

### **Disability**

Is there any potential impact on this group? Yes

*Please explain your answer:*

This policy and wider reforms will strengthen a system that is already designed to put the child, and the child's needs, at the centre. This includes disabled and non-disabled children and young people.

This policy will positively impact on those Relevant Persons or Children involved in children's hearings with learning disabilities and other disabilities making provision for the availability of advice and assistance in the form of ABWOR at certain children's hearings for children, relevant persons and others.

This provision will have a positive impact on Relevant Persons and parents with disabilities.



However there is the possibility of a perception of a negative effect on this particular characteristic given prior responses to similar policy. Responding to the consultation on the introduction of contributions in criminal legal aid and the changes to financial eligibility, an organisation representing disabled people in Scotland raised the issue that, under the policy, disability related expenditure of the accused should be taken into account when determining financial eligibility for criminal legal assistance and in calculating whether any contribution may or may not be due.

However for those in receipt of benefits, this will either be disregarded from the calculation for the purposes of contributions for children's legal aid, or will lead them to be exempt from paying a contribution. Also those who do have to contribute can make payments over an extended period to minimise the impact.

The alternative would be to provide children's legal aid without requiring contributions. This would be inconsistent with the general approach across nearly all civil proceedings, that those who can afford to contribute to the costs of the action should do so.

This policy shows no indication of positively or negatively affecting solicitors under this protective characteristic.

1) No

2) N/A

3) N/A

### **Pregnancy and maternity**

Is there any potential impact on this group? No

*Please explain your answer:*

This policy shows no indication of positively or negatively affecting solicitors under this protective characteristic.

1) No

2) N/A

3) N/A

### **Religion and belief**



Is there any potential impact on this group? No

*Please explain your answer:*

This policy shows no indication of positively or negatively affecting solicitors under this protective characteristic.

1) No

2) N/A

3) N/A

### Age

Is there any potential impact on this group? Yes

*Please explain your answer:*

It is anticipated that overall the policy will strengthen the rights of, and improve outcomes for, all children and young people referred to the Children's Reporter. Putting the child at the centre of the hearings system and promoting and supporting their rights and welfare.

The policy provides for the replacing of the interim legal representation scheme with a permanent, sustainable, national scheme that will see legal representation for children and parents available through the normal civil legal aid system as administered by the Scottish Legal Aid Board - this makes it possible to provide state-funded legal representation whenever it is required to ensure the effective participation of children or parents. This provision will have a positive impact on children.

This policy shows no indication of positively or negatively affecting solicitors under this protective characteristic.

1) No

2) N/A

3) N/A

### Marriage and civil partnership

Is there any potential impact on this group? No

*Please explain your answer:*



This policy shows no indication of positively or negatively affecting solicitors under this protective characteristic.

- 1) No
- 2) N/A
- 3) N/A

### **Sexual orientation**

Is there any potential impact on this group? No

*Please explain your answer:*

This policy shows no indication of positively or negatively affecting solicitors under this protective characteristic.

- 1) No
- 2) N/A
- 3) N/A

### **Where there is potential for indirect/ direct discrimination, what can you do to reduce or eliminate this risk?**

The Board has a duty to monitor solicitors' compliance with the Code of Practice which is intended to reduce or eliminate the risk of any potential indirect or direct discrimination. This will provide the Board with useful information for the implementation of Reform to Scotland's Children's Hearings System. We will review the current children hearing system to explore and understand better the choices made by people about accessing legal advice versus other sources of advice (e.g. from advocates and advice agencies). We will review the information they collect on those attending hearings and on choices made around seeking and accessing legal advice.

The Code of Practice was developed in consultation with other interested, partners, most notably the Law Society of Scotland and the Family Law Association.



The Board, in the course of preparing for the changes, have carefully considered they way we communicate with children and relevant people. For example, we have introduced a series of child friendly leaflets, so that information on legal assistance and aid can be more easily understood. We have also created a childe friendly web page on our webiste. These have been well received by other stakeholders. As part of the development process of creating child friendly material, we liased with SCRA, who were able to share the materials with their Young Apprentices (16-17 year olds) for feedback. The feedback was very useful and allowed us to further enhance our materials.

We have also reviewed the letters and information we send out to children, young people and relevant persons, again, to ensure that information is being communicated in a clear and understandable way. We will keep all our methods of communication under review.

We will also consider how research might be best used to contribute evidence to support the monitoring of the Code of Practice in relation to children’s legal assistance cases. Solicitors and firms will be required to supply to the Board any information which it considers necessary for the purpose of monitoring performance. The Board may also assess the standard of professional service and general compliance with this Code by such means as it thinks fit, including for example interviewing the nominated solicitor, analysing solicitors’ applications, accounts, case files by appropriately qualified persons and assessing advocacy and representation skills. Research would not perform an audit function i.e. solicitors and firms would not be identified however it could help provide useful evidence about how solicitors are operating within the new Children Hearings and how the Children’s Hearing Panels interact with and view the input of the solicitor in the Hearings process.

We would want to develop any research in this area in collaboration with the relevant partners agencies and we would take advice and steer on the approach and design from others. We are a member of the Children’s research network and this network may help us discuss research issues and respective plans for monitoring of the Reforms with analytical colleagues in other organisations such as the Scottish Government, Scottish Children’s Reporter Administration (SCRA) and Children’s Hearings Scotland.

**Do you need to make changes to your policy or function on the basis of this assessment?**

No

**What is the likely impact of these changes on the plans for the policy/ function? (resources, cost, timings etc.)**

n/a

### Step 3 - Consultation and stakeholder engagement

Do you/did you have any consultation/ involvement planned for the policy/ function?

Yes

What do you hope to achieve from your consultation/ involvement?

The consultation provided valuable information about the concerns, priorities and recommendations of key organisations involved in the administration, delivery and use of the function and allowed the Board to reflect those issues in its policies, procedures and the code of practice for solicitors.

List the main stakeholder agencies that you intend to or have already discussed this policy with. Give details of any equality groups represented.

We consulted widely and received specific responses from:

- Children 1st
- Children's Hearings Scotland
- Family Law Association
- Law Society of Scotland Civil Legal Aid Team
- Scotland's Commissioner for Children and Young People
- Scottish Children's Reporter Administration
- Scottish Court Service (confirming no comment))
- Scottish Women's Aid
- Clan Childlaw
- Criggies Solicitors
- Dornoch Sheriff Court (confirming no comment)
- Faculty of Advocates (confirming no comment)
- Jardine Donaldson Solicitors
- McAndrew & Solicitors
- McClure Collins Solicitors
- Susan O'Brien QC



#### **Step 4 - Discuss and review the assessment with decision makers and governance structures**

You must discuss the results with senior decision makers before you finalise the assessment.

**Give details of the governance structures you will report, or have already reported, to about this assessment.** For example, but not limited to, the Project Board, Executive Team or Board members.

The Children's Project Board and the executive team

**If you have presented the results of the assessment to the groups you have listed above please include the date you presented to each group listed.**

Yes

**Will there be any changes made to the plans for the policy/ function or actions as a result of this assessment?**

No

**If yes, give details of likely changes and actions arising from this assessment.**

n/a



## **Step 5 - Publication and review of EQIA**

All assessments must be published as early as possible after the decision is made to implement a new policy or function.

### **Date of publication:**

25/07/2014

### **Review date:**

[Click here to enter a date.](#)