

EQUALITY IMPACT ASSESSMENT

SUMMARY

Title of policy, project or function:

GUIDANCE ON SPECIAL URGENCY APPLICATIONS

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

Already exists

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

No

Key findings from the assessment:

Changing the approach taken to special urgency applications where contact has previously been enjoyed but is halted suddenly and without good reason is likely to resulting greater numbers of pursuers being able to access funding at an early stage. There may therefore be a differential impact on different genders because of the different issues that will now fall to be considered in the assessment of the special urgency tests. This is justified as the revised guidance is being put in place to reduce the potential for delay in reinstating contact that was previously being enjoyed. This approach is more likely to lead to a swifter resolution of disputes without the need to involve extensive court hearings and the use of child welfare reports. It has the potential to minimise the disruption in the operation of contact for the benefit of the child or children involved.

The changes may mean that the delays that can sometimes arise in both determining whether civil legal aid should be made available for a contact dispute and then having the matter heard before the court can be reduced. Evidence gathered in consultation has suggested that the longer the delay between the cessation of contact and its reinstatement the more likely there is to be

- several court hearings in respect of the matter;
- the possibility of a child welfare report being prepared; and
- particularly where a child is young, the reintroduction of contact through supported or supervised contact at least initially.

The avoidance of this potentially unnecessary elongated litigation will be beneficial to both children and to parties involved in a dispute and it may encourage earlier resolution of disputes arising as a sudden cessation of contact.

This changed approach to determining whether to allow special urgency cover is appropriate in that it is an opportunity to promote positive benefits for children in that the policy may reduce the time where a child or children may not have contact with a non-resident parent. Unless good cause is shown it is generally accepted that there should be contact with non-resident parents for the benefit of the child or children involved in any relationship breakdown and this policy will help to achieve this aim.



Actions as a result of the assessment:

No immediate action is needed but in light of the findings in relation to the possibility of indirect discrimination in relation to Sex (gender) - see details in EQIA - we will undertake specific monitoring of applications in this category and take action if this is needed.

Date impact assessment published:

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

Lead official(s) responsible for assessment:

Catriona Whyte

Department:

Civil Merits

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

Date of sign off:

18 March 2016

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.*

In 2010 a major review of the special urgency provisions for civil legal aid was completed. The aim of that review was to identify ways of making the best use of public funds where work was being undertaken in terms of regulation 18 of the 2002 regulations. Regulation 18 is used to cover work that needs to be undertaken in any court action as a matter of urgency before an application for civil legal aid can be determined.

The work that can be done is split between listed work which can be undertaken without SLAB's prior approval, subject only to notification that such work has been undertaken within 28 days of commencement of the work and the lodging of a legal aid application within the same 28 day period and any other work not specifically listed which requires SLAB's prior approval.

Prior to 1 April 2011 the work that could be undertaken without SLAB's prior approval included seeking interim orders in terms of section 11 of the Children (Scotland) Act 1995. Most commonly the orders sought were for contact and/or residence in respect of a child or children. Amongst the review's findings was the fact that the vast majority of contact actions were raised using the special urgency provisions. Around 80% of the contact applications received prior to 1 April 2011 commenced using the special urgency provisions irrespective of whether there was any urgency involved that needed the immediate raising of an action. Of this 80%, 20% did not obtain civil legal aid for a variety of reasons including

- the application not meeting the statutory tests;
- the applicant abandoning the action and not wishing to proceed with the Court case; and
- the applicant failing to provide adequate information to allow us to undertake our assessment of the statutory tests.

This work still had to be paid for from the Fund. In light of the concerns raised in the special urgency review recommendations were put forward to amend the scope of regulation 18(1)(a) and (2) which details the work that can be done without prior approval. With effect from 1 April 2011 the ability to raise an action seeking interim orders in terms of section 11 of the 1995 Act without SLAB's prior approval was removed from scope.

When the changes were made to regulation 18 we issued guidance on the approach we would take to such applications. The guidance on contact applications states that applications seeking special urgency cover to raise an action seeking interim

contact will generally only be granted in the context of a variation of existing orders or where there has been a failure to obtemper a court order. It also states that there are only very limited situations where SLAB will be satisfied that obtaining an interim contact order prior to the determination of a legal aid application is a matter that meets the test of special urgency.

As part of the streamlining work discussions took place with firms of solicitors across Scotland. These firms comprise a mix of firms in terms of size, geographical location and the extent of legal assistance work they undertake. In discussions a key areas to explore was the impact of the changes made to regulation 18 in 2011 and in particular whether there had been any unintended consequences as a result of the change in the regulation.

The change in the regulation was intended to reduce unnecessary costs to the Fund by reducing the scope to raise court actions at a very early stage. The changes gave us the opportunity to determine whether or not the statutory tests for civil legal aid were met before publicly funded litigation was entered into thus ensuring that funding was only made available for appropriate and relevant cases. This aim has been largely achieved but one of the unintended consequences is that, in a small number of cases, the overall cost to the public purse may have increased because of the absence of early cover for a court action. Added to this, in this same smaller number of cases, the outcomes for all involved in the litigation including, most importantly, the child or children at the centre of the litigation may not be as satisfactory as they would have been had an earlier action been raised.

The specific category of cases that identified where there have been such unintended consequences are those where contact had been operating satisfactorily but this contact is suddenly ended by the parent with care for, on the face of it, no good reason. Common reasons for cessation of contact include

- the introduction of a new partner to one or other of the parties;
- situations where a non-violent altercation has taken place between parties; or
- where the families of parties become involved in the contact arrangements and tensions arise as a result.

In situations where contact has previously been operating with apparent success and the reason for ceasing contact is unknown or not robust then it is appropriate to grant special urgency cover to allow an immediate court action to be raised. Where an immediate action is raised there is less likelihood of

- elongated litigation;
- the need for a child welfare report;
- the need for several child welfare hearings; and
- the need to introduce supervised or supported contact.

All of these issues add to the cost to the public purse and more importantly long delays are unlikely to be beneficial to the child or children who were previously enjoying contact with their non-resident parent.

As matters presently stand the time taken to correspond with the other party in relation to the possible reinstatement of contact and then seeking legal aid can take several weeks, depending on the extent of the information we get from an applicant and their solicitor. Once legal aid is granted and the writ served on the opponent there is a period of time allowed for the lodging of notice of intention to defend. After that, depending on the location of the Court, it may still be weeks before a child welfare hearing can be fixed.

Someone who was previously enjoying contact with no difficulty may find themselves waiting several months before they are able to go to court to seek a reinstatement of this contact. The gap that arises as a result can lead to the court not immediately allowing contact at the level previously enjoyed. We are amending our approach to special urgency applications to cover such situations.

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.

Information held by SLAB about applicants for civil legal aid in contact disputes shows that those seeking to bring an action for contact are more likely to be males although seeking to defend such an action are more likely to be females. In 2014/15 a total of 3,519 applications were received in respect of contact proceedings. Of those 1,614 came from females and 1,905 from males. There were 1,307 female defender applications and 160 male defender applications. There were 1,685 applications from males to initiate proceedings and 230 applications from females to initiate proceedings.



Given the high number of males applying to initiate proceedings requests made for special urgency cover before an application for civil legal aid is determined to raise actions seeking an interim contact order in terms of section 11 of the Children (Scotland) Act 1995 are predominantly from males.

Age arises as a potential issue because a number of applicants who seek civil legal aid to raise an action seeking an interim order for contact in terms of section 11 of the Children (Scotland) Act 1995 will be grandparents seeking contact with grandchildren. The information held about applications for civil legal aid does not allow us to immediately identify the numbers of applications specifically made by grandparents seeking contact to grandchildren but a percentage of the applications will fall into this category. Again where individuals are seeking contact orders in their favour they are more likely to want to use the special urgency provisions which allow them to raise an action before an application for civil legal aid is finally determined.

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.*

n/a

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:

1. This policy shows no indication of positively or negatively affecting applicants for legal aid under this protective characteristic. The approach to be taken to the assessment of special urgency applications is not one that can be viewed as either putting in place barriers or improving the position for this group of applicants.
2. Not applicable.
3. Not applicable.

Sex (gender)

Is there any potential impact on this group? Yes

Please explain your answer:

This policy changes the approach that will be taken to the examination of special urgency applications to bring an action seeking an interim order in terms of section 11 of the Children (Scotland) Act 1985. It will impact predominantly on male and female pursuers. However the vast majority of pursuers are male as detailed in the statistical information set out in this EQIA. As such this policy, which gives greater access to special urgency provisions in respect of contact proceedings for pursuers who had been exercising contact previously, may have more of an impact on males in that it is likely to broaden their ability to access special urgency provisions. There may therefore be a differential impact on different genders because of the different issues that will now fall to be considered in the assessment of the special urgency tests. This does not mean that this differential impact is not justified. The new guidance is being put in place to reduce the potential for delay in reinstating contact that was previously

being enjoyed and which has been halted for no apparent good reason. This approach is more likely to lead to a swifter resolution of disputes without the need to involve extensive court hearings and the use of child welfare reports. It has the potential to minimise the disruption in the operation of contact for the benefit of the child or children involved.

The changes may mean that the delays that can sometimes arise in both determining whether civil legal aid should be made available for a contact dispute and then having the matter heard before the court can be reduced. Evidence gathered in consultation has suggested that the longer the delay between the cessation of contact and its reinstatement the more likely there is to be

- several court hearings in respect of the matter;
- the possibility of a child welfare report being prepared; and
- particularly where a child is young, the reintroduction of contact through supported or supervised contact at least initially.

The avoidance of this potentially unnecessary elongated litigation will be beneficial to both children and to parties involved in a dispute and it may encourage earlier resolution of disputes arising as a sudden cessation of contact.

It is considered that this changed approach to determining whether to allow special urgency cover is reasonable in that it is an opportunity to promote positive benefits for children in that the policy may reduce the time where a child or children may not have contact with a non-resident parent. Unless good cause is shown it is generally accepted that there should be contact with non-resident parents for the benefit of the child or children involved in any relationship breakdown and this policy will help to achieve this aim.

Gender reassignment

Is there any potential impact on this group? No

Please explain your answer:

1. This policy shows no indication of positively or negatively affecting applicants for legal aid under this protective characteristic. The approach to be taken to the assessment of special urgency applications is not one that can be viewed as either putting in place barriers or improving the position for this group of applicants.
2. Not applicable.



3. Not applicable.

Disability

Is there any potential impact on this group? No

Please explain your answer:

1. This policy shows no indication of positively or negatively affecting applicants for legal aid under this protective characteristic. The approach to be taken to the assessment of special urgency applications is not one that can be viewed as either putting in place barriers or improving the position for this group of applicants.

2. Not applicable.

3. Not applicable.

Pregnancy and maternity

Is there any potential impact on this group? No

Please explain your answer:

1. This policy shows no indication of positively or negatively affecting applicants for legal aid under this protective characteristic. The approach to be taken to the assessment of special urgency applications is not one that can be viewed as either putting in place barriers or improving the position for this group of applicants.

2. Not applicable.

3. Not applicable.

Religion and belief

Is there any potential impact on this group? No

Please explain your answer:

1. This policy shows no indication of positively or negatively affecting applicants for legal aid under this protective characteristic. The approach to be taken to the assessment of special urgency applications is not one that can be viewed as either putting in place barriers or improving the position for this group of applicants.



2. Not applicable.

3. Not applicable.

Age

Is there any potential impact on this group? Yes

Please explain your answer:

This policy shows no indication of positively or negatively affecting applicants for special urgency cover under this protective characteristic but it may be beneficial for all parties involved in a potential dispute and particularly the children at the centre of such disputes if civil litigation can be commenced at an early stage if contact is suddenly ceased and no immediate reinstatement of that contact is on offer. Reference is made to the information set out against sex (gender) above.

1. No.

2. Not applicable.

3. Not applicable.

Marriage and civil partnership

Is there any potential impact on this group? No

Please explain your answer:

1. This policy shows no indication of positively or negatively affecting applicants for legal aid under this protective characteristic. The approach to be taken to the assessment of special urgency applications is not one that can be viewed as either putting in place barriers or improving the position for this group of applicants.

2. Not applicable.

3. Not applicable.

Sexual orientation

Is there any potential impact on this group? No

Please explain your answer:

1. This policy shows no indication of positively or negatively affecting applicants for legal aid under this protective characteristic. The approach to be taken to the assessment of special urgency applications is not one that can be viewed as either putting in place barriers or improving the position for this group of applicants.
2. Not applicable.
3. Not applicable.

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

The revised guidance on the approach to be taken to the assessment of special urgency applications to bring an action seeking an interim order of contact in terms of section 11 of the Children (Scotland) Act 1995 will be subject to monitoring once it has been in place for a number of months - initially after six months. Reports are already given to the LSPC on the outcomes achieved in cases where civil legal has been made available for contact proceedings. Such a review can take into account the speed of resolution of any dispute particularly where special urgency cover has been made available. An assessment can also be made of the overall cost of such disputes to see if the provision of cover to raise an action before the application for civil legal aid was determined assisted in achieving a good outcome for all parties at a proportionate cost to the public fund.

We will obtain information on the number of special urgency applications submitted under this heading together with information on the subsequent grant and refusal rate for a full application to determine the impact both immediately of the revised approach and the impact on the prospects of obtaining full civil legal aid. We will consider any specific impacts there may be on the protected characteristic group of sex (gender).

We will continue to discuss issues raised in relation to our overall approach to the assessment of special urgency applications in respect of contact proceedings and contact applications as a whole with interested bodies such as the Family Law Association and the Law Society of Scotland through meetings with these organisations and through the regular meetings of the Civil Legal Aid Negotiating Team of the Law Society. In addition we will request feedback from organisations such as Families Need Fathers and Scottish Women's Aid once the revised guidance has been in place for one year.

Before we implement this revised approach we will notify the profession and those who took part in the consultation on the operation of civil legal aid which included consideration of the special urgency process. We have also notified the Sheriff's Association and the Sheriffs Principal of this revised approach and will take into account any observations or comments made by any of these bodies or individuals in relation to the impact of this revised guidance.



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.)

Not applicable

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?

Stakeholder engagement was intended to identify any issues that might arise in the operation of our current approach to special urgency applications to bring contact proceedings. The engagement identified concerns that may arise as a result of the existing approach. We have considered the information we obtained from the stakeholders as against information that we hold in relation to applications and their processing. The feedback from the stakeholders was universally supportive of the proposals for change with benefits being seen from all by the implementation of the changed approach in relation to special urgency applications.

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

We engaged with

- Law Society of Scotland's Civil Legal Aid Negotiating Team;
- Families Need Fathers;
- 29 firms of solicitors across Scotland comprising a mix of large and small firms, geographical location and extent of civil legal assistance business undertaken.

We have provided information about our revised approach with the opportunity to provide comments to

- Sheriff's Association; and
- Sheriffs Principal.



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 Executive Team - 18 March 2016 and LSPC - 21 March 2016.

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.

Sheriff's Association - 8 March 2016

Sheriffs Principal - 8 March 2016

Families Need Fathers - 22 March 2016

Various firms of solicitors who engaged with SLAB - 22 March 2016

Law Society of Scotland Civil Legal Aid Negotiating Team - 29 February 2016 and 22 March 2016

Executive Team - 18 March 2016

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:

26/07/2016

Review date:

26/03/2017