



## **EQUALITY IMPACT ASSESSMENT (EqIA)**

### **Summary results of the EqIA**

**Title of policy/ practice/ process/ service:**

Interest of Justice test for Summary Criminal Proceedings

**Is the policy new (proposed), a revision to an existing policy or a review of current policy?**

A review of current policy.

**Key findings from this assessment (or reason why an EqIA is not required):**

No evidence was found or received through consultation that suggested a differential impact on accused facing prosecution in the Justice of the Peace (JP) court, as opposed to the sheriff court. Therefore we are satisfied that there is no impediment to changing our approach to the application of the Interests of Justice (IoJ) test at the sheriff court level.

An improvement to the current process would be additional clarification of the evidence that SLAB will take into account when assessing an application against the IoJ test in the JP court.

**Summary of actions taken because of this assessment:**

External and internal guidance to explicitly reference evidence in relation to loss of accommodation and impact on caring responsibilities when assessing an application against the IoJ test in the JP court.

**Ongoing actions beyond implementation include:**

Drafting of Decision Makers Guidance and external guidance for solicitors to reflect slightly amended policy statement resulting from EqIA.

**Lead person(s) for this assessment (job title and department only):**

Policy Projects Manager

**Senior responsible owner agreement that the policy has been fully assessed against the needs of the general duty (job title only):**

Chief Executive

**Publication date (for completion by Communications):**

15/04/2021

## Step 1 - Framing the planned change

Discussing step 1 and step 2 with the Corporate Policy Officer (Equalities) at an early stage will help identify appropriate evidence. This may include support from the wider Policy and Development team.

### 1.1 Briefly describe the aims, objectives and purpose of the policy/ practice/ process/ service. *You can use the information in your project specification, business case etc.*

The policy relates to the application of the interests of justice test for summary criminal legal aid and summary ABWOR in the Sheriff Court and the Justice of the Peace court.

The outcomes of this decision are as follows. For summary legal aid, SLAB may determine that:

- the interests of justice test is satisfied;
- the interests of justice test is not satisfied;
- the interests of justice test is satisfied subject to conditions.

For ABWOR, the solicitor determines whether the interests of justice test is met and SLAB checks how it has been applied. The possible outcomes in relation to ABWOR are:

- SLAB verifies that the interests of justice test was applied by solicitor correctly;
- SLAB determines that the interest of justice test was applied incorrectly by the solicitor.

The factors set out in the 1986 Act for the Interests of Justice test are based on the Widgey Criteria, which were formulated in 1966.<sup>1</sup> The criteria frame the decision around whether representation in criminal cases is required to be funded by the public purse. The 1986 Act envisages that not all cases should attract public funding. Decisions by the European Court of Human Rights have outlined similar factors, focussing on the seriousness of the disposals available and the complexity of the case in

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<sup>1</sup> <https://publications.parliament.uk/pa/cm200304/cmselect/cmconst/746/74605.htm#note9>

understanding whether representation is required to secure a fair trial<sup>2</sup>- where the unrepresented party is not at a substantial disadvantage in relation to the prosecution.<sup>3,4</sup>

SLAB's policy of considering all those statutory and non-statutory factors where evidence is available, is aligned with case law in this area.

SLAB has discretion in relation to this decision, as "interests of justice" is not defined in the statutory framework. There are a number of relevant statutory factors set out in the legislation (see below): however, these are not defined, providing SLAB with further discretion.

- 3) The factors to be taken into account by the Board in determining whether it is in the interests of justice that criminal legal aid be made available in any case shall include—*
- (a) the offence is such that if proved it is likely that the court would impose a sentence which would deprive the accused of his liberty or lead to loss of his livelihood;*
  - (b) the determination of the case may involve consideration of a substantial question of law, or of evidence of a complex or difficult nature;*
  - (c) the accused may be unable to understand the proceedings or to state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise;*
  - (d) it is in the interests of someone other than the accused that the accused be legally represented;*
  - (e) the defence to be advanced by the accused does not appear to be frivolous;*
  - (f) the accused has been remanded in custody pending trial.*

There is case law that demonstrates SLAB can choose in which way to apply or weigh the statutory, or other factors, in coming to a decision on whether it is in the interests of justice that a case is granted summary legal aid.

The same statutory framework covers SLAB's retrospective checking of the interests of justice test under ABWOR, which is applied by solicitors.

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<sup>2</sup> 2009 Council of Europe compendium on criminal procedure, p.249

<sup>3</sup> In *K v. The Scottish Legal Aid Board* 1989 SCLR 144 it was noted that the fact that the defendant would find representation desirable, it is for SLAB to decide if "in the absence of such representation justice would not be done, to the disadvantage of the applicant."

<sup>4</sup> European Court of Human Rights - case of *Steel and Morris v. the UK* (2005) <https://www.legislationline.org/documents/id/17231>

There are three factors where the PSED and corporate parenting duties are integrated, as the characteristics of the person may be relevant:

- There is likely to be a loss of liberty
- The accused may be unable to understand the proceedings or to state their own case because of their age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise
- There is likely to be a loss of livelihood or other consequence such as damage to reputation, blighting career prospects, psychological trauma, emigration or travel difficulties.

The other factors are about the characteristics of the case only and PSED is not relevant to these.

Summary cases can call at a number of levels: however, SLAB's current policy on the interests of justice is to apply it equally in the Justice of the Peace and Sheriff courts. The evidence we receive is different, but the factors are the same, as is the threshold to meet to satisfy us that the Interests of Justice test is satisfied. Our policy is that the threshold is that an unrepresented party would be at a substantial disadvantage in relation to the prosecution and/or an unrepresented party faces serious consequences if convicted.

The maximum sentences in a JP court are: length of imprisonment - 60 days; fine - £2,500. In a sheriff court for summary proceedings the maximums are: length of imprisonment - 1 year days; fine - £10,000. A presumption against short sentences (12 months or less) was introduced in June 2019. The previous presumption was against sentences of 3 months or less.

## 1.2 Why is the change required? *Legislative, routine review etc.*

As well as stating current policy, the review is to investigate whether to change how SLAB applies of the Interests of Justice test in Sheriff Court cases. We refuse very few applications for summary legal aid on the Interests of Justice test (IoJ test). In 2018/19, there were 36,501 applications for summary criminal legal aid for cases at Sheriff Court level, and 38 refusals on the grounds of interests of justice. Further investigation of the refusals found that 15 were actually Justice of the Peace (JP) court cases, leaving 23 Sheriff Court initial refusals. Of these 23 cases, 8 were granted after review, leaving only 15 Sheriff Court applications in 2018/19 which were actually refused. At the JP court level, we refused 13% of cases on the grounds that they did not satisfy the IoJ test in 2018/19.

Given the greater significance of the loJ test to the outcome of applications for JP court proceedings, we do not propose any change there. Our focus is therefore on the potential for a changed approach to the application of the test in Sheriff summary proceedings. There may be an administrative saving available to both SLAB and solicitors. This potential change is aligned to the Legal Aid Review's strategic aim of maintaining scope but simplifying.<sup>5</sup>

We identified two feasible primary options:

- a. No change: all cases are assessed against the loJ test
- b. Option A: any summary case being prosecuted in the Sheriff court is considered to satisfy the loJ test on that basis alone

Given the differentiation of approach between sheriff and JP courts but recognising that there are several parts of Scotland with no separate JP court<sup>6</sup>, a further sub-option has been identified:

- c. Option B: as option A, except in locations with no JP court, where all cases will be subject to the loJ test

Option A was agreed as the option to implement.

### **1.3 Who is affected by this policy/ practice/ process/ service? Be clear about who the 'customer' is.**

The customer is the legal aid applicant, although the policy review will affect SLAB's staff and solicitors.

### **1.4 Policy/ practice/ process/ service implementation date e.g. project end date, date new legislation will take effect.**

22/03/2021

### **1.5 What other SLAB policies or projects may be linked to or affected by changes to this policy/ practice/ process/ service?**

An interests of justice test is also a feature of eligibility criteria in other case types, such as criminal appeals legal aid and immigration tribunal proceedings. Summary criminal proceedings is the first area to be reviewed. The other policy areas will be reviewed separately.

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<sup>5</sup> [www.gov.scot/news/legal-aid-review/](http://www.gov.scot/news/legal-aid-review/)

<sup>6</sup> The six courts are Kirkwall, Lerwick, Lochmaddy, Portree, Stornoway, and Wick, with only the latter being on the mainland. They accounted for 2% (1,188) of national summary court complaints registered in 2018/19.

## Step 2: Consider the available evidence and data relevant to your policy/ practice/ process/ service

The information you gather in this section will:

- help you to understand the importance of your policy/ practice/ process/ service for different equality groups,
- inform the depth of equality impact assessment you need to do (this should be proportional to the potential impact on equality groups), and
- provide justification and an audit trail behind your decisions, including where it is agreed an equality impact assessment is not required.

**2.1 What information is available about the experience of each equality group in relation to this policy/ practice/ process/ service?** Stay focused on the topic and scope of your policy/ practice/ process/ service. Does the policy/ practice/ process/ service relate to an area where there are already known inequalities? Refer to the EqIA guidance for sources of evidence.

Note: If you proceed to a full EqIA you should continue to add to this section as you develop the policy/ practice/ process/ service, come across new evidence and/ or **undertake a consultation.**

Equality characteristics	Evidence source (e.g. web link, report, survey, complaint)	What does the evidence tell you about the experiences of this group in relation to the policy/ practice/ process/ service? Lack of evidence may suggest a gap in knowledge/ need for consultation (step 3).
Age	<ol style="list-style-type: none"> <li>1. SPS 2017 prisoner survey - young males (16-21) <a href="http://www.sps.gov.uk/Corporate/Publications/Publication-6075.aspx">www.sps.gov.uk/Corporate/Publications/Publication-6075.aspx</a></li> <li>2. SPS 2017 prisoner survey - people aged 50+ <a href="http://www.sps.gov.uk/Corporate/Publications/Publication-6093.aspx">www.sps.gov.uk/Corporate/Publications/Publication-6093.aspx</a> 50+</li> <li>3. Prison population stats 2011 -12 <a href="http://www2.gov.scot/Publications/2015/12/5123/downloads">www2.gov.scot/Publications/2015/12/5123/downloads</a> (Table A4)</li> <li>4. 2011 census data (age by sex Scotland) <a href="http://www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml">www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml</a></li> <li>5. Sentencing council consultation YP <a href="https://consultations.scottishsentencingcouncil.org.uk/ssc/young-people/">https://consultations.scottishsentencingcouncil.org.uk/ssc/young-people/</a></li> <li>6. Elements of Psychological Maturity and Its Influence on Antisocial and Criminal Behavior <a href="http://www.researchgate.net/publication/266486743_Elements_of_Psychological_Maturity_and_Its_Influence_on_Antisocial_and_Criminal_Behavior/link/5664d89c08ae15e74632f938/download">www.researchgate.net/publication/266486743_Elements_of_Psychological_Maturity_and_Its_Influence_on_Antisocial_and_Criminal_Behavior/link/5664d89c08ae15e74632f938/download</a></li> </ol>	<p>Prison population has younger age profile than the general population (aged under 35 - PP: 62%, GP: 30%) (3&amp;4). Fewer than 1% of Scottish prison pop are aged over 65 (3).</p> <p>Scottish sentencing council currently<sup>7</sup> consulting on sentencing young people (more consideration of individual circumstances, disproportionate impact of sentence, reduced culpability) (5).</p> <p>Young males less likely to serve longterm (4+ years) sentences (21% vs 42% of adult prison pop). All 21% were serving a sentence 4-10 years. (1) Prisoners aged 50+ slightly more likely to report disability, more likely to report LTI than other prisoners (D: 37% vs 32%, LTI: 49% vs 31%) (2)</p> <p>Evidence (6 &amp; 7) suggests that there are measurable differences in maturation of various cognitive / psychosocial processes between young people and adults. These impact on things such as: assessment of risk and appropriate decision-making. However there is considerable variation. Some differences are only apparent between those under 16 vs. over 16(8);</p>

<sup>7</sup> April 2020 (consultation closes 21/8/20).

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	<p>7. The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts  <a href="http://www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf">www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf</a></p> <p>8. Adolescent competence in Court - MacArthur Foundation  <a href="http://www.macfound.org/press/grantee-news/new-findings-released-macarthur-research-network/">www.macfound.org/press/grantee-news/new-findings-released-macarthur-research-network/</a></p> <p>9. Less guilty by reason of adolescence  <a href="http://www.macfound.org/press/grantee-news/new-findings-released-macarthur-research-network/">www.macfound.org/press/grantee-news/new-findings-released-macarthur-research-network/</a></p> <p>10. Poverty, Inequality &amp; Justice - Scottish Justice Matters  <a href="http://scottishjusticematters.com/the-journal/poverty-inequality-and-justice-november-2015/">http://scottishjusticematters.com/the-journal/poverty-inequality-and-justice-november-2015/</a></p> <p>11. A life sentence for young people - Unlock 2018</p> <p>12. Scottish Courts and Tribunal data, 2017/18</p>	<p>whereas others “can be observed ... as late as 25-30 years” (7). This also differs between individuals, with factors such as experience of ACEs and alcohol /substance use in CYP inhibiting normal brain development. There are also social factors, such as local social norms (9: “[living in] neighborhoods, where losing face can be not only humiliating but dangerous; 10: “violence empowers and is a means of attaining and sustaining status amongst peers”). There are therefore likely to be many factors which cause significant differences between individuals, regardless of age.</p> <p>Current process on disclosing criminal records via standard/enhanced (12) This shows little difference between the Sheriff and JP court- an average date of birth of 1980 in the JP court and 1982 in the Sheriff court.</p>
Disability	<p>1. Sentencing people with mental welfare issues  <a href="http://www.scottishsentencingcouncil.org.uk/publications/">www.scottishsentencingcouncil.org.uk/publications/</a></p>	<p>“Defence solicitor is often the first person who has to consider whether there is a mental health issue”. There is a lack of information including formal assessments which may have been undertaken, but not available / identifiable, poor info sharing</p>



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	<p>2. prison pop with disability  <a href="http://www.sps.gov.uk/Corporate/Publications/Publication-6399.aspx">www.sps.gov.uk/Corporate/Publications/Publication-6399.aspx</a></p> <p>3. SCOPE Disability facts and figures  <a href="http://www.scope.org.uk/media/disability-facts-figures/">www.scope.org.uk/media/disability-facts-figures/</a></p> <p>4. Criminal justice disability project final report  <a href="http://www.copfs.gov.uk/media-site-news-from-copfs/1778-criminal-justice-disability-project-report-published">www.copfs.gov.uk/media-site-news-from-copfs/1778-criminal-justice-disability-project-report-published</a></p> <p>5. Scottish crime &amp; justice survey 2017/18  <a href="http://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Datasets/SCJS/SCJS2016-17-vol-1">www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/Datasets/SCJS/SCJS2016-17-vol-1</a></p> <p>6. Court Users Charter (JP &amp; Sheriff)  <a href="http://www.scotcourts.gov.uk/coming-to-court/attending-a-court">www.scotcourts.gov.uk/coming-to-court/attending-a-court</a></p> <p>7. Measuring Scotland's Social Capital  <a href="http://www.gov.scot/publications/social-capital-scotland-measuring-understanding-scotlands-social-connections/pages/8/">www.gov.scot/publications/social-capital-scotland-measuring-understanding-scotlands-social-connections/pages/8/</a></p> <p>8. No one Knows (PRT)  <a href="http://www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/Learningdisabilitiesanddifficulties/NoOneKnowspublications">www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/Learningdisabilitiesanddifficulties/NoOneKnowspublications</a></p>	<p>between relevant organisations (1). and “lack of a routine procedure for identifying individuals with a learning disability” (9). Also, the number of people in the Criminal Justice System who “do not have an intellectual disability as formally defined but who have much lower cognitive and adaptive abilities [than general or prison populations]” (quoted in 8). Difficulty for solicitor evidenced in 9 (during phone call in advance of Police interview “the solicitor has little or no time to assess the intellectual competence of the individual, or to determine whether they understand and are capable of following their advice”).</p> <p>The proportion of prisoners self-reporting a disability or LTI has increased since 2009 (D - 34% from 19%, LTI 35% from 26%) (2). Compares with 19% working age and 45% pension age adults in general UK population (3). Disabled people are less likely than non-disabled to feel confident that the accused would get a fair trial (70% vs 79%) (5 - table 1.35b). Some courts may be difficult for people with physical disabilities to access (6 - “most courthouses facilitate access for those with a mobility impairment”). The facilities that make a building (or area within a</p>

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	<p>9. Learning disability and the criminal justice system Scotland (EHRC)  <a href="http://www.equalityhumanrights.com/en/publication-download/experiences-people-learning-disability-scottish-criminal-justice-system">www.equalityhumanrights.com/en/publication-download/experiences-people-learning-disability-scottish-criminal-justice-system</a>            10. <a href="#">Disabled people in the labour market in Scotland: 2018</a>            11. <a href="#">Capital District Health Authority guidance</a></p>	<p>building) accessible to an individual are varied. This level of information is unlikely to be easily available (7 “No one is providing information about the environment you will get when you arrive, walking distances and noise and light ... They just say it is fully accessible by which they mean they have a wheelchair ramp”.) There is evidence that those with learning disabilities may not be able to defend themselves in court (8: “over a fifth of prisoners didn’t understand what was going on in court”, 9: “the accused not understanding what was happening”). However, as above, may not have formal diagnosis.            Employment rate much lower for people with disabilities (10). People experiencing mental health problems can make concentrating and remembering things difficult, as well as heighten stress levels (11).</p>
<b>Race</b>	<p>1. Internal analysis of prison population compared to census</p>	<p>Comparing 2011 prison figures with population figures (2011 census weighted for age) suggests that those with a Black ethnicity are over represented, with those of White ethnicity slightly over represented, with Asian, ‘other’ and ‘mixed/</p>

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	<p>2. SPS prisoner survey 17 - ethnic minority  <a href="http://www.sps.gov.uk/Corporate/Publications/Publication-6098.aspx">www.sps.gov.uk/Corporate/Publications/Publication-6098.aspx</a></p> <p>3. Is Scotland Fairer? 2018  <a href="http://www.crer.scot/external-publications">www.crer.scot/external-publications</a></p> <p>4. Scottish Justices Assoc. newsletter  <a href="http://www.scottishjustices.org/2020/scottish-justice-jan-2020/">www.scottishjustices.org/2020/scottish-justice-jan-2020/</a></p> <p>5. Welcoming Our Learners: Scotland’s ESOL Strategy 2015 - 2020 (SG)  <a href="https://education.gov.scot/Documents/ESOLSummaryReportJuly2017.pdf">https://education.gov.scot/Documents/ESOLSummaryReportJuly2017.pdf</a></p> <p>6. <a href="#">Census results</a></p> <p>7. <a href="#">SCILT: Languages in Scotland</a></p> <p>8. <a href="#">Annual Population Survey 2018 - Scotland’s regional employment patterns</a></p>	<p>multiple’ under represented<sup>8</sup>. Evidence from (3 - p78) suggests Black people are over represented, and White people under represented, however this appears to be in relation to total adult population; not weighted for age of prison population. The ‘inadequate knowledge of English’ element of the IoJ test may sometimes (but not always) be relevant to race, dependent on the individual.</p> <p>Unconscious bias re: ethnicity is highlighted to JPs (4)</p> <p>The main intersection between race and being able to understand the proceedings is in English language comprehension. (6) The relevant results from the 2011 census are:</p> <p>“The proportion of the population aged 3 and over reported as not being able to speak English well or at all was 1.4% overall, and 11% for those born outside the UK. This proportion generally increased with age</p>

<sup>8</sup> NB numbers are fairly small, however this does suggest that conclusions in relation to criminal justice in Scotland should rely on Scottish data. Conclusions in relation to the UK will have figures dominated by England & Wales.

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		<p>of arrival into the UK: for those who arrived aged under 16 it was 5% while for those who arrived aged 65 and over it was 31%.</p> <p>The proportion of Scotland’s population aged 3 and over who could speak, read and write English was 94%. This proportion was lowest for those born in the EU Accession countries (75%) or in the Middle East and Asia (89%).”</p> <p>(7) The most commonly spoken languages in Scotland other than English are Polish, Urdu, Scots, Punjabi and Arabic.</p> <p>(8) The employment rate for ethnic minority groups is lower than for the white population in Scotland.</p>
Sex	<p>1. SPS prisoner survey 2017 <a href="http://www.sps.gov.uk/Corporate/Publications/Publication-6399.aspx">www.sps.gov.uk/Corporate/Publications/Publication-6399.aspx</a></p> <p>2. SPS prisoner survey 17 - women in custody <a href="http://www.sps.gov.uk/Corporate/Publications/Publication-6069.aspx">www.sps.gov.uk/Corporate/Publications/Publication-6069.aspx</a></p>	<p>Women are more likely than the general prison population to lose accommodation/tenancy (60% vs 49%) and increased proportion since 2015 (60% vs 28%) (1&amp;2). Women are less likely than men to know where they would live on release (42% vs 34%)</p> <p>Women are less likely than men to have a custodial penalty (8% vs 17%) and more likely to have an</p>

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	<p>3. Criminal proceedings  <a href="http://www.gov.scot/news/criminal-proceedings-in-scotland-2018-19/">www.gov.scot/news/criminal-proceedings-in-scotland-2018-19/</a>            4. <a href="http://www.gov.scot/publications/regional-employment-patterns-scotland-statistics-annual-population-survey-2018/">www.gov.scot/publications/regional-employment-patterns-scotland-statistics-annual-population-survey-2018/</a>            5. Housing (Scotland) Act 2014, in effect from May 2019            6. Mortgage advice search - impact of conviction</p>	<p>‘other’ (27% vs 15%) (3). However (1&amp;2) show women in custody are more likely than general prison pop to have ‘never’ previously been on remand or had a custodial sentence (never remand: 44% vs 29%; never CS: 45% vs 35%).            Female prisoners are more likely than male to have been in care (38% vs 25%) and to have been appointed a social worker as a child (41% vs 30%) (2)            Female prisoners are more likely to have had adverse childhood experiences (ACEs). Compared with males and those in care as children (prison pop) a higher % of females have experienced every single ACE. They are also more likely to have experienced most ACEs compared with young prisoners (1 p.40)            (4) The employment rate for women is lower than for men in Scotland. (5) The Act removes the need for the court to consider if it is reasonable to evict a tenant for a conviction for using the house or allowing it to be used for immoral or illegal purposes so may make more likely an increased loss of accommodation. Women prisoners were more likely than men to lose accommodation and any diminution in rights might be expected to impact</p>

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		disproportionally on women. (6) Unspent convictions have to be disclosed to lenders and can affect the ability to hold a mortgage, (3) more men are convicted than women.
<b>Gender Reassignment</b>	None found in relation to sentencing	N/A
<b>Sexual orientation</b>	None found in relation to sentencing  1. Employment <a href="#">Scottish Surveys Core Questions (SSCQ) 2018</a>	(1) In 2018, people who identified as 'LGB and other' were twice as likely to be unemployed compared to those who identified as 'heterosexual' (4.0 percent versus 2.0 percent). It is important to note that a higher proportion of those identifying as 'LGB and other' were in the age groups 16-24 and 25-34, which were also the age groups where unemployment was higher.
<b>Religion or Belief</b>	1. Internal analysis of prison population compared to census  2. Offender demographics, Dr S Wiltshire Glasgow Uni 2010 <a href="http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/petitions-committee.aspx">www.parliament.scot/parliamentarybusiness/CurrentCommittees/petitions-committee.aspx</a>	Comparing prison figures with population figures (weighted for age) shows that Catholics, Muslims and 'other' religions are overrepresented in the prison population (C: +6.3 percentage points, M: +0.6 pp, O: +0.6 pp) (1) On over representation of Catholics in prison, research suggests "Catholic disproportionality is primarily a result of the fact that most prisoners

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		come from areas of deprivation and that Catholics in Scotland tend to be concentrated there” (2)
Pregnancy or maternity	None found in relation to sentencing (although examples of mitigating factors provided by the SSC <sup>9</sup> include “the likely effect on the offender and their family”)	N/A
Marriage or civil partnership	N/A	N/A
Care Experienced ( <i>corporate parenting duty</i> )	1. SPS prisoner survey 2017 <a href="http://www.sps.gov.uk/Corporate/Publications/Publication-6399.aspx">www.sps.gov.uk/Corporate/Publications/Publication-6399.aspx</a> 2. SPS prisoner survey 2017 (LAC) <a href="http://www.sps.gov.uk/Corporate/Publications/Publication-6087.aspx">www.sps.gov.uk/Corporate/Publications/Publication-6087.aspx</a> 3. Criminalisation of CE <a href="http://www.whocaresscotland.org/what-we-do/policy/reports-and-research/">www.whocaresscotland.org/what-we-do/policy/reports-and-research/</a> 4. Scottish Sentencing Council draft guidelines on sentencing	26% of prisoners in care as a child, 56% of these at age 16. (1&2). Figures for the general population suggest 0.5% (3). Research suggests that being in care may make young people (generally, not confined to secure unit) more visible to the Police (meaning more likely to be criminalised / spoken to / activities noticed / Stop & Searched), and more likely to be criminalised for activities that would unlikely be criminalised within a family setting (3).

<sup>9</sup> [www.scottishsentencingcouncil.org.uk/sentencing-guidelines/guidelines-in-development/sentencing-process-guideline/](http://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/guidelines-in-development/sentencing-process-guideline/)

Equality characteristics	Evidence source (e.g. web link, report, survey, complaint)	What does the evidence tell you about the experiences of this group in relation to the policy/ practice/ process/ service? Lack of evidence may suggest a gap in knowledge/ need for consultation (step 3).
	<a href="http://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/guidelines-in-development/sentencing-process-guideline/">www.scottishsentencingcouncil.org.uk/sentencing-guidelines/guidelines-in-development/sentencing-process-guideline/</a>	Example ‘aggravating factors ... which may make the offence more serious for sentencing purposes’ include “relevant previous convictions (4)”.
Age + care experience	1. Rehabilitation periods (Annex A - Scotland Works for You - Alliance Group (guide to employment after conviction) <a href="http://www.mygov.scot/scotland-works-for-you/">www.mygov.scot/scotland-works-for-you/</a> 2. Management of offenders Act <a href="http://www.gov.scot/news/criminal-disclosure-reforms/">www.gov.scot/news/criminal-disclosure-reforms/</a>	Evidence from CE (3) and CE (4) suggests that CE YP could be more likely to have previous convictions (compared with non CE), and that (due to their recency) these convictions would be less likely to be spent compared to older CE people (1). These potential ‘aggravating factors’ may mean the offence is considered more serious.  The Scottish Government have implemented part two of the Management of Offenders (Scotland) Act 2019, which reduces the time that convictions need to be disclosed for a range of more minor offences (2)
Cross cutting evidence	SLAB’s <a href="#">applicants surveys</a>	SLAB’s applicant surveys show that 74% of applicants for <b>criminal legal aid</b> are male, 54% had a disability or limiting condition, 97% were white (1% Polish and 2% other White) and 1% African, Caribbean or Black. Respondents who reflected on their background cited mental health issues as having an impact on their ability communicate effectively.



**2.2 Using the information above and your knowledge of the policy/ practice/ process/ service, summarise your overall assessment of how important and relevant the policy/ practice/ process/ service is likely to be for equality groups.**

The operation of the criminal justice system overall shows differentiated experiences by equality groups. There is also evidence that equality groups may have characteristics which make proceedings more difficult for them to follow. Lastly, there is evidence that employment levels vary by equality groups (linked to loss of livelihood and career prospects) and that conviction can negatively affect a wide range of people's lives.

**2.3 Outcome of step 2 and next steps. Complete the table below to inform the next stage of the EqIA process.**  
*Consult with the project group and/ or Corporate Policy Officer (Equalities) on completing this section.*

<b>Outcome of Step 2 following initial evidence gathering and relevance to equality characteristics</b>	<b>Yes/ No (Y or N)</b>	<b>Next steps</b>
There is no relevance to equality or our corporate parenting duties	N	Proceed to Step 5: agree with decision makers that no EqIA is required based on current evidence
There is relevance to some or all of the equality groups and/ or our corporate parenting duties	Y	Proceed to Step 3: complete full EqIA
It is unclear if there is relevance to some or all of the equality groups and/ or our corporate parenting duties	N	Proceed to Step 3: complete full EqIA

### Step 3 - stakeholder involvement and consultation

This step will help you to address any gaps in evidence identified in Step 2. Speaking to people who will be affected by your policy/ practice/ process/ service can help clarify the impact it will have on different equality groups.

**Remember that sufficient evidence is required for you to show ‘due regard’ to the likely or actual impact of your policy/ practice/ process/ service on equality groups. An inadequate analysis in an assessment may mean failure to meet the general duty.**

The Policy and Development team can help to identify appropriate ways to engage with external groups or to undertake research to fill evidence gaps.

#### **3.1 Do you/did you have any consultation or involvement planned for this policy/ practice/ process/ service?**

Yes

Evidence and initial assessment of impact suggests that further insight is needed in relation to: any difference in characteristics of those accused in Sheriff Court as opposed to the Justice of the Peace Court; potential impacts of gender reassignment.

#### **3.2 List all the stakeholder groups that you will talk to about this policy/ practice/ process/ service.**

We undertook a formal written consultation and the analysis report can be found on our website, [here](#).

#### **3.3 What did you learn from the consultation/ involvement? Remember to record relevant actions in the assessment action log.**

Respondents noted that, from their experience, some people accused of offences who are prosecuted through the JP court experience mental health problems and language barriers. There was a desire that these needs should be reflected in how SLAB operates the Interests of Justice test.

## Step 4 - Impact on equality groups and steps to address these

You must consider the three aims of the general duty for each protected characteristic. The following questions will help:

- Is there potential for discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010? How will this be mitigated?
- Is there potential to advance equality of opportunity between people who share a characteristic and those who do not? How can this be achieved?
- Is there potential for developing good relations between people who share a relevant protected characteristic and those who do not? How can this be achieved?

### 4.1 Does the policy/ practice/ process/ service have any impacts (whether intended or unintended, positive or negative) on any of the equality characteristics?

For all equality groups, there is a small positive impact of removing discretion in Sheriff Court cases, as it removes any potential for unconscious bias.

Age	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impact	Negative impact	No impact	
potential for discrimination	X			Potential negative impact on: older people if “future prospects” the key; younger people if “livelihood”. The

				threshold approach to reaching a decision mitigates these potential negative impacts- SLAB looks for evidence supporting a grant; we do not weigh evidence against granting. Positive impact of factor relating to “understanding”.
potential for developing good relations			X	None
potential to advance equality of opportunity	X			The “understanding” factor specifically mentions age. Decision makers guidance and external guidance for solicitors will specify how this is taken into account and what information to provide.

Sex	Place ‘X’ in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination	X			Potential negative impact on women where ‘loss of liberty’ is key, given lower rate of custodial sentences. The threshold approach to reaching a decision mitigates this potential negative impact- we looks for evidence supporting a grant across all factors. Positive impact for women through specific guidance for solicitors to consider loss of housing or impact on caring responsibilities in relation to “other consequences”.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Disability	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination	X			<p>Potential negative impact if profile of people with disabilities at JP is different to Sheriff Court, but we have no evidence of this.</p> <p>Potential positive impact on people with disabilities if “loss of liberty” is key factor, given high representation amongst prisoners. Potential negative impact if “loss of livelihood” is key factor due to lower employment rates, although if custodial sentence is likely this will impact benefits payments and therefore livelihood. The threshold approach to making this decision mitigates the potential negative impacts.</p>
potential for developing good relations			x	
potential to advance equality of opportunity	x			<p>Positive impact of ‘unable to understand’ factor in taking into account issues faced by people with disabilities. Decision makers guidance and external guidance for solicitors will specify how this is taken into account and what information to provide.</p>

Gender Reassignment	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Race	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination	X			The threshold approach to making this decision mitigates potential negative impacts - we look for evidence in support of granting across all factors and do not weigh evidence against a grant. Potential positive impact on applicants from Black and White ethnic groups if 'loss of liberty' is key factor, and potential negative impact on people of Asian, other or mixed ethnic origin, given representation in prison population. For those ethnic groups with lower levels of employment, focus on 'loss of livelihood' factor may have adverse impact.

potential for developing good relations			X	
potential to advance equality of opportunity	X			Positive impact of ‘unable to understand proceedings’ factor in taking into account intersection of race (encompassing nationality and ethnicity) and language.

Religion or Belief	Place ‘X’ in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination	X			The threshold approach to making this decision mitigates potential negative impacts. ‘Loss of liberty’ if key factor may have positive impact on Catholic, Muslim and ‘Other’ religious persons, and adverse for others, whilst ‘loss of livelihood’ may have adverse impact given lower employment rates for some religion/belief groups.
potential for developing good relations			x	
potential to advance equality of opportunity			x	

Sexual Orientation	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination	X			'Loss of livelihood' factor may have an adverse impact given lower rates of employment amongst LGBT people. The threshold approach to making this decision mitigates this potential negative impact.
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Pregnancy & Maternity	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination	X			That pregnancy could be a mitigating factor in sentencing would have a positive impact on 'further consequences'.
potential for developing good relations			X	
potential to advance equality of opportunity			X	



Marriage & Civil Partnership	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Care experienced young people	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination	X			Potential positive impact of 'loss of liberty factor' for care experienced persons, given higher rates of imprisonment, though potential adverse impact of 'loss of livelihood' given lower rates of employment; where a custodial sentence is likely, imprisonment impacts on benefits. The threshold approach mitigates the potential negative impact on 'loss of livelihood'.

potential for developing good relations			X	
potential to advance equality of opportunity			X	

**4.2 Describe how the assessment so far might affect other areas of this policy/ practice/ process/ service and/ or project timeline?**

16/6/20: assessment so far indicates that no major change is needed to the overall policy, although some further mitigations could be built into how SLAB asks for evidence in relation to the factors. Such as adding ‘caring responsibilities’ and ‘impact on tenancy’ to the list of potential further consequences.  
 1/12/20: impacts updated to reflect information received through consultation, which did not indicate a difference between the profile of accused at the sheriff and JP court.

**4.3 Having considered the potential or actual impacts of your policy/ practice/ process/ service on equality groups, you should now record the outcome of this assessment below. Choose from one of the following (mark with an X or delete as appropriate):**

Please select (X)	Implications for the policy/ practice/ process/ service
	<b>No major change</b>

	Your assessment demonstrates that the policy/ practice/ process/ service is robust. The evidence shows no potential for unlawful discrimination and that you have taken all opportunities to advance equality of opportunity and foster good relations, subject to continuing monitoring and review.
X	<p><b>Adjust the policy/ practice/ process/ service</b></p> <p>You need to take steps to remove any barriers, to better advance equality of to foster good relations. You have set actions to address this and have clear ways of monitoring the impact of the policy/ practice/ process/ service when implemented.</p>
	<p><b>Continue the policy/ practice/ process/ service with adverse impact</b></p> <p>The policy/ practice/ process/ service will continue despite the potential for adverse impact. You have justified this with this assessment and shown how this decision is compatible with our obligations under the public sector equality duty. When you believe any discrimination can be objectively justified you must record in this assessment what this is and how the decision was reached.</p>
	<p><b>Stop and remove the policy/ practice/ process/ service</b></p> <p>The policy/ practice/ process/ service will not be implemented due to adverse effects that are not justified and cannot be mitigated.</p>



## **Step 5 - Discuss and review the assessment with decision makers and governance structures**

You **must** discuss the findings of this assessment with senior decision makers during the lifetime of the project/ review and before you finalise the assessment. Relevant groups include, but are not limited to, a Project Board, Executive Team or Board members. EqlA should be on every project board agenda therefore only note dates where key decisions have been made (e.g. draft EqlA sign off, discussion about consultation response).

### **5.1 Record details of the groups you report to about this policy/ practice/ process/ service and impact assessment.** Include the date you presented progress to each group and an extract from the minutes to reflect the discussion.

19/6/20: Discussion with Head and Assistant Manager of Criminal Legal Assistance clarified the potential for the current policy to be adjusted to further advance equality of opportunity by asking about the impact of conviction on tenancies and caring responsibilities of a conviction. Clear that threshold approach to the decision, looking for positive evidence that meets the test, mitigates the potential negative impacts of particular factors on their own. In relation to the proposed change option, there is an evidence gap around the characteristics of people being prosecuted, which we will aim to fill by consultation.

19/01/21: Discussed at GALA Review meeting and approved by Chief Executive. Members were asked to approve the draft policy statement and EqlA, noting the issues for review and common issues documents. John advised that the EqlA had helped to draw out what we will ask and had resulted in some minor changes in how the policy is expressed. Marie-Louise said that she was happy with the policy and the EqlA was clear and helpful. The EqlA picked up things to monitor and a few things to clarify. The policy statement and EqlA were approved.

## Step 6 - Post-implementation actions and monitoring impact

There may be further actions or changes planned after the policy/ practice/ process/ service is implemented and this assessment is signed off. It is important to continue to monitor the impact of your policy/ practice/ process/ service on equality groups to ensure that your actual or likely impacts are those you recorded. This will also highlight any unforeseen impacts.

**6.1 Record any ongoing actions below.** This can be copied from the project action log or elsewhere in this assessment and should include timescales and person/ team responsible. If there are no outstanding items please make this clear.

Drafting of Decision Makers Guidance and external guidance for solicitors to reflect slightly amended policy statement resulting from EqIA.

**6.2 Note here how you intend to monitor the impact of this policy/ practice/ process/ service on equality groups.** In the table below you should:

- list the relevant measures,
- Identify who or which team is responsible for implementing or monitoring any changes
- Where the measure will be reported to ensure any issues can be acted on as appropriate.

Measure	Lead department/ individual	Reporting (where/ frequency)
Review refusals on loJ grounds where solicitor has provided evidence against “the accused may be unable to understand the proceedings or to state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise”	Criminal applications	Annual review
Monitor profile of applicants refused on loJ grounds from equalities data inputted to LAOL.	Criminal applications	Annual review



**6.3 EqlA review date.** This EqlA should be reviewed as part of the wider post-implementation review of the policy/ practice/ process/ service. The date should not exceed 3 years from the policy/ practice/ process/ service implementation date.

22/03/2024

### **Step 7 - Assessment sign off**

All equality impact assessments must be signed off by the Executive Team, even where an EqlA is not required. Note the relevant meeting date here:

19/01/2021