

Draft
Equality Impact Assessment Record

Title of policy/ practice/ strategy/ legislation etc.	The Legal Aid (Employment of Solicitors) (Scotland) Amendment Regulations 2018 (Civil Legal Assistance Offices)	
Minister	Annabelle Ewing	
Lead official	Jamie Wilhelm	
Officials involved in the EQIA	Name	Team
	Jamie Wilhelm Neil Swanson	Access to Justice Justice Analytical Services
Directorate: Division: Team	Justice: Civil Law and Legal System: Access to Justice	
Is this new policy or revision to an existing policy?	Revision to an existing policy	

Screening

Policy Background

The Civil Legal Assistance Office (CLAO) was established in 2008 to enable the Scottish Legal Aid Board (SLAB) to address unmet legal need in specific geographic areas by using directly employed solicitors. The CLAO currently operates from four offices in parts of Scotland where it was considered that people required assistance with linking into or otherwise obtaining access to legal advice and assistance under legal aid.

Each CLAO employs solicitors and administrative staff who work in partnership with other local solicitors and agencies in the area to provide legal services to clients who are eligible for legal aid. Part of CLAO's function is to operate a referral service linking people into private sector and third sector sources of legal advice and other assistance. They also accept referrals from local agencies, in addition to self referrals.

A review of the CLAO, carried out by SLAB, concluded early in 2016. The review involved a wide range of stakeholders, including solicitors in private practice and advice agencies/service providers.

The Legal Aid (Employment of Solicitors)(Scotland) Regulations 2001 authorises SLAB to employ solicitors in accordance with sections 26 to 28 of the Legal Aid (Scotland) Act 1986 on such terms and conditions as it may consider appropriate'. There is however a further provision by virtue of regulation 3 to the effect that there is an underlying dependency of SLAB

having received a written request from a local organisation for the services of an employed solicitor, and that SLAB was satisfied that the services of the local organisation would be enhanced thereby. That dependency no longer fits the policy objective and its removal is sought.

Policy Intention

Rationale for Change

The policy aim is amendment of legislation for legal aid in Scotland in relation to the CLAO.

The requirement is to change the regulatory footing to reflect the remit for the CLAO, which is that the CLAO will undertake direct casework where a client presents to the CLAO with an issue that is within their core areas (all within the range of social welfare law) without need for onward referral first. A referral service will still be available where CLAO cannot provide a service.

The regulation change would reflect the fact that CLAO is often best placed to provide advice and representation on that issue, and it would provide a good quality and cost effective service. Separately there might still be engagement with local organisations where appropriate, but that need not underpin all work. The change sought is that SLAB may employ solicitor for the purpose of:

- a) giving advice and assistance to which Part II of the Act applies,
- b) acting for persons receiving legal aid, or
- c) providing any such services as are mentioned in section 26(2) of the 1986 Act for in connection with any organisation.

Who will it affect?

- Individuals seeking legal advice and representation in areas where the CLAO operates, all within the range of social welfare law. Under the regulatory change, they will be advantaged in that there will be no requirement for referral to seek the assistance of the CLAO.
- Solicitors who provide civil legal aid will be unaffected. The proposal will not impact on competition within the civil legal aid market. These Regulations do not directly or indirectly limit the number or range of suppliers. The CLAO take into account existing provision when developing core areas of expertise. For example, the Edinburgh office does not provide family law as there are enough private solicitors practising in family law in the area.
- SLAB which administers the Legal Aid Fund will be unaffected as it is a technical change to the operation of the CLAO.

What might prevent the desired outcomes being achieved?

No factors were identified that might prevent the desired outcomes being achieved.

Stage 1: Framing

Results of framing exercise

The framing exercise has identified that there are no specific negative impacts, either direct or indirect, on protected groups. It identified that the changes to how CLAO provide its service, which will involve undertaking direct casework where a client presents to the CLAO with an issue that is within its core areas (all within the range of social welfare law) without need for referral first, will be of benefit to all, in some cases positively impacting more on some of the groups with protected characteristics.

There would be a positive impact on all identified as a result of the change, in that, as there would be no requirement for a referral prior to CLAO accepting a case, this would allow for a case to receive attention more timeously which may resolve matters sooner.

Disadvantaged groups may be disproportionately negatively affected by delay in resolving legal issues, therefore resolving these matters sooner may positively affect them to a greater extent.

Core areas of law, such as housing / homelessness and welfare benefits, that have been chosen by CLAO are legal problems that tend to disproportionately affect people with certain protected characteristics and other disadvantaged groups. Groups identified were Children (particularly children in migrant and ethnic minority families), migrants and ethnic minorities and young adults (particularly care leavers).

The changes to how CLAO operates may assist in preventing “referral fatigue” for all, something that could disengage people from services aimed at helping them and likely to disproportionately affect those with certain protected characteristics such as people with disabilities who may already have barriers to accessing a service and may be more likely to become disenfranchised if accessing that service is difficult and requires them to make several trips or phone calls to access the service they require.

Extent/Level of EQIA required

The framing exercise suggests that there will be a positive impact on the users of the CLAO and therefore only a high level assessment is required.

Child Rights and Wellbeing Impact Assessment (CRWIA)

As the framing exercise identified the effects of this policy will have no negative effect to children, and it is anticipated this policy will likely have only a positive impact, a CRWIA has not been carried out.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic ¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	Ages of Solicitors undertaking legal aid work Age of applicants of civil legal aid Age of general population in Scotland	Scottish Legal Aid Board Scottish Legal Aid Board 2011 Census	
DISABILITY	Households with at least one person with long-standing illness, health problem or general disability	2015 Scottish Household Survey: http://www.gov.scot/Resource/0050/00506173.pdf 2011 Census	

¹ Refer to Definitions of Protected Characteristics document for information on the characteristics

	<p>General population with a long-term activity-limiting health problem or disability</p> <p>Solicitors undertaking legal aid work who consider themselves to have a disability</p> <p>Recipients of Civil legal aid who consider themselves to have a disability</p>	<p>Scottish Legal Aid Board</p> <p>Scottish Legal Aid Board</p>	
<p>SEX (Pregnancy and Maternity)</p>	<p>Gender of solicitors undertaking legal aid work</p> <p>Gender of the general population in Scotland</p>	<p>Scottish Legal Aid Board</p> <p>2011 Census</p> <p>Scottish Legal Aid Board</p>	

	Gender of applicants of civil legal aid		
GENDER REASSIGNMENT	<p>Solicitors who consider themselves transgender</p> <p>Recipients of civil legal aid who consider themselves transgender</p> <p>National entries on the Gender Recognition Register</p>	<p>Law Society of Scotland</p> <p>Scottish Legal Aid Board</p> <p>NRS Registration Division</p>	
SEXUAL ORIENTATION	<p>Sexual Orientation of Solicitors</p> <p>Sexual Orientation of general population</p> <p>Sexual Orientation of recipients of civil legal aid</p>	<p>Law Society of Scotland</p> <p>Stonewall, and Integrated Household Survey 2013</p> <p>Scottish Legal Aid Board</p>	

	Number of Civil Partnerships	2011 Census	
RACE	Ethnicity of solicitors undertaking legal aid work	Scottish Legal Aid Board	
	Ethnicity of general population	2011 Census	
	Ethnicity of recipients of civil legal aid	Scottish Legal Aid Board	
RELIGION OR BELIEF	Religion of solicitors	Law Society of Scotland	
	Religion of the general population	2011 Census	
	Religion of recipients of civil legal aid	Scottish Legal Aid Board	

<p>MARRIAGE AND CIVIL PARTNERSHIP (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)</p>			

AGE AND GENDER

General population

Data from the 2011 Census shows that, in the general population in Scotland, 16% are aged 0-14; 13% are aged 15-24; 13% are aged 25-34; 14% were aged 35-44; 15% were aged 45-54; 13% were aged 55 to 64; and 17% were aged 65 or above.² The census also showed that 48.5% of the Scottish population were male and 51.5% were female.

Solicitors

In SLAB's solicitor survey of 2010, of the 415 respondents who specified their age: 14% were aged 25-34; 33% were 35-44; 36% were 45-54; and 17% were 55 or above. One partner doing civil work did not disclose their age group. Most respondents, therefore, fell in the middle age bands (ages 35-55).³ This represents a higher proportion compared to distribution in the general population within the 25 to 64 age group, for which 23% are 25-34, 54% are 35-54; and 23% are 55-64.

Of the 416 respondents, 65% were male and 35% were female. Civil respondents and non-partners were relatively evenly split between males and females, however a greater proportion of males made up the samples of criminal respondents (85%) and partners (79%).

² <http://www.scotlandscensus.gov.uk/documents/censusresults/release1a/rel1asbtablea1.pdf>

³ http://www.slab.org.uk/export/sites/default/common/documents/about_us/research/documents/FinalReporttoSLAB.pdf

Comparing the gender data of solicitors to that of the general population, a significantly higher proportion of solicitors are male than in the general population. This difference is even more stark when comparing civil solicitors to the general population.

Solicitors most likely to be affected by changes to civil legal aid are male and aged between 35-55.

Civil Legal Aid Applicants

SLAB's 2017 Civil Legal Aid applicant survey reports that the most common single age category was '35 – 44' (39%), followed by '55 – 65' (28%) These group are therefore the most likely to be affected by these changes.

64% of respondents who provided an answer were female and 36% male meaning women may be marginally more impacted on than men.

DISABILITY

General population

The Scottish Household Survey 2015 shows that about one-quarter (23%) of households in Scotland contain at least one person with a Long-term physical or mental health condition. This figure covers all members of the household including children.

Data from the 2011 census shows that 19.6% of the population in Scotland have a long term activity limiting health problem or disability.⁴

Solicitors

The Board's solicitor survey 2010 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 coordination difficulties, chronic asthma and dyslexia.⁵

This would seem suggest that solicitors as a group are less likely to consider themselves to have a disability than the general population.

⁴ <http://www.gov.scot/Resource/0044/00446638.pdf>

⁵ <http://www.scotland.gov.uk/Resource/0044/00442767.pdf>

Civil Legal Assistance Applicants

SLAB's 2017 Civil Legal Aid applicant survey reports that 52% of respondents said that they had a long-standing illness, health problem or disability.

SEXUAL ORIENTATION

General Population

Although the Census does gather data of those in same-sex civil partnerships, it does not ask about sexual orientation. A case was put forward for a question on sexual orientation to be included in the 2011 Census. This resulted in a small-scale postal survey in Scotland as a first step to understand public attitudes to a sexual orientation. The overall response rate for the survey was only 31%. Overall, only 2.2% of respondents declared non-heterosexual sexual orientation. 6% of those responding did not answer the question, and a further 8.5% of respondents selected "prefer not to answer". The survey results call into question the accuracy of data gathered by such a question and hence the utility of any such data.⁶

Stonewall estimates between 5% and 7% of the population are estimated to be gay. The latest experimental statistic published from the Integrated Household Survey January – December 2014 shows that the number of people who self-identified as lesbian, gay or bi-sexual in Scotland was 1.1%.⁷ In 2011 there were 7,150 people in a registered same sex civil partnership in Scotland.⁸

Solicitors

⁶ <http://www.scotlandscensus.gov.uk/documents/research/sexual-orientation-in-the-census.pdf>

⁷ Integrated Household Survey January – December 2014: Experimental Statistics

⁸ Scotland's 2011 Census (Table KS103sc, Release 2A)

The Law Society of Scotland's 2013 solicitor survey found that the majority of respondents indicated that they were heterosexual (94%); while 3% indicated they were lesbian, gay, bisexual or other (i.e. LGBT), and the remaining 3% declined to answer the question. 5% of male respondents indicated that they were gay, while 1% of females indicated they were lesbians.

The available data suggests that solicitors may be slightly more likely to self-identify as gay, lesbian or bi-sexual than the general population.

Civil Legal Assistance Applicants

The Board's 2013 Civil Legal Aid applicant survey reports 93% of respondents described their sexual identity as heterosexual, with 1% 'gay/lesbian', 1% 'bisexual' and 1% 'other'. 4% chose not to provide an answer to this question.

GENDER REASSIGNMENT

General population

In 2011, there were 24 entries in the Gender Recognition Register, 6 more entries than in 2010.⁹ This represents 24 people in an overall population of 5,295,400.

Solicitors

The Law Society of Scotland's Profile of the Profession 2013: Demographics and work patterns of Scottish solicitors found that fewer than 1% of respondents considered themselves to be transgender.¹⁰ This is broadly in line with the general population.

Civil Legal Assistance Applicants

The Board's 2013 Civil Legal Aid applicant survey reports all respondents were asked if their gender identity was the same as the gender they were assigned at birth. 95% said their gender identity was the same, with 1% stating it was not and 4% did not provide an answer.

⁹ NRS Registration Division

¹⁰ <http://www.lawscot.org.uk/media.226958/profile%20of%20the%20profession%202013.pdf>

RACE

General Population

Data from the 2011 Census¹¹ relating to ethnicity in the Scottish Population showed:

All people	5,295,403
White	96.0%
Mixed or multiple ethnic groups	0.4%
Asian, Asian Scottish or Asian British	2.7%
African	0.6%
Caribbean or Black	0.1%
Other ethnic groups	0.3%

Solicitors

SLAB's solicitor 2010 survey shows that (96%) indicated that they considered their ethnic background to be White; this was made up of those who considered themselves to be either Scottish or British. A further 3% of respondents did not disclose their ethnic background, leaving only 1% spread across other ethnic minority backgrounds.¹²

¹¹ Source: National Records of Scotland

¹² http://www.slab.org.uk/export/sites/default/common/documents/about_us/research/documents/FinalReporttoSLAB.pdf

This compares with the general population where 96% considered their ethnic background to be White, suggesting that the racial diversity of solicitors broadly reflects that of the general population, as shown above.

Civil Legal Assistance Applicants

SLAB's 2017 Civil Legal Aid applicant survey reports that the majority of respondents (88%) were white, the majority of these described themselves as Scottish. Those describing themselves as 'Asian, Asian Scottish or Asian British' made up 4%, with 'other' accounting for 0.2% and 'African, Caribbean or Black' 3%, 4% did not provide an answer.

RELIGION

General Population

The analysis of religion in the 2011 Census shows that the proportion of the population identifying with various religions as: 32.4% Church of Scotland; 15.9% Roman Catholic; 5.5% Other Christian; 0.2% Buddhist; 0.3% Hindu; 0.1% Jewish; 1.4% Muslim; 0.2% Sikh; 0.3% Another Religion; 36.7% No Religion; 7.0% Not Answered.¹³

Solicitors

The Law Society of Scotland's 2013 survey on the whole of the legal profession showed that 46% consider they had no religion/faith; 47% reported themselves to be Christian (30% Church of Scotland, 11% Roman Catholic, 6% other Christian); 2% reported being one of the other main named faiths (Muslim, Buddhist, Sikh, Jewish, Hindu); approximately 2% reported "other"; and 3% chose not to answer the religion question.

This suggests that solicitors are more likely to consider they have no religion than the general population, and slightly less likely to consider themselves Christian.

Civil Legal Assistance Applicants

¹³ <http://www.gov.scot/Publications/2015/03/8716/4>

In SLAB's 2017 Civil Legal Aid applicant survey 38% of respondents who provided an answer described themselves as not belonging to any religion, religious denomination or body. Of the remainder, 'Church of Scotland was the most common response 23%, followed by 'Roman Catholic' 15%, 'Other Christian' 7%, 'Muslim' 3%, and 'Other' 3%. The remaining respondents described themselves as being: Buddhist 1%, Pagan 1%, Sikh 1%, and Hindu under 1%.

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	Legal aid merits tests to allow eligibility for legal aid are the same for all and do not take into account age therefore age is not an advantage or disadvantage as a result of this policy.
Advancing equality of opportunity	X			Disadvantaged groups may be disproportionately negatively affected by delay in resolving legal issues, therefore resolving these matters sooner may positively affect them to a greater extent.
Promoting good relations among and between different age groups			X	

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination,			X	Legal aid merits tests to allow eligibility for legal aid are the same for all and do not take into account disability

harassment and victimisation				therefore this is not an advantage or disadvantage as a result of this policy.
Advancing equality of opportunity	X			Disadvantaged groups may be disproportionately negatively affected by delay in resolving legal issues, therefore resolving these matters sooner may positively affect them to a greater extent.
Promoting good relations among and between disabled and non-disabled people			X	

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	Legal aid merits tests to allow eligibility for legal aid are the same for all and do not take into account gender therefore gender is not an advantage or disadvantage as a result of this policy.
Advancing equality of opportunity	X			Disadvantaged groups may be disproportionately negatively affected by delay in resolving legal issues, therefore resolving these matters sooner may positively affect them to a greater extent.
Promoting good relations between men and women			X	

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision

Eliminating unlawful discrimination				X	Legal aid merits tests to allow eligibility for legal aid are the same for all and do not take into account Pregnancy / Maternity therefore Pregnancy / Maternity is not an advantage or disadvantage as a result of this policy. Disadvantaged groups may be disproportionately negatively affected by delay in resolving legal issues, therefore resolving these matters sooner may positively affect them to a greater extent.
Advancing equality of opportunity	X				
Promoting good relations				X	

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	Legal aid merits tests to allow eligibility for legal aid are the same for all and do not take into account Gender reassignment therefore Gender reassignment is not an advantage or disadvantage as a result of this policy. Disadvantaged groups may be disproportionately negatively affected by delay in resolving legal issues, therefore resolving these matters sooner may positively affect them to a greater extent.
Advancing equality of opportunity	X			
Promoting good relations			X	

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	Legal aid merits tests to allow eligibility for legal aid are the same for all and do not take into account Sexual orientation therefore Sexual orientation is not an advantage or disadvantage as a result of this policy. Disadvantaged groups may be disproportionately negatively affected by delay in resolving legal issues, therefore resolving these matters sooner may positively affect them to a greater extent.
Advancing equality of opportunity	X			
Promoting good relations			X	

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	Legal aid merits tests to allow eligibility for legal aid are the same for all and do not take into account Race therefore Race is not an advantage or disadvantage as a result of this policy.
Advancing equality of opportunity	X			

Promoting good race relations			X	Disadvantaged groups may be disproportionately negatively affected by delay in resolving legal issues, therefore resolving these matters sooner may positively affect them to a greater extent.
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Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	Legal aid merits tests to allow eligibility for legal aid are the same for all and do not take into account Religion / belief therefore Religion / belief is not an advantage or disadvantage as a result of this policy.
Advancing equality of opportunity	X			Disadvantaged groups may be disproportionately negatively affected by delay in resolving legal issues, therefore resolving these matters sooner may positively affect them to a greater extent.
Promoting good relations			X	

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

Marriage and Civil Partnership ¹⁴	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination.				Not relevant as the policy does not relate to an HR policy or practice.

¹⁴ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	Impacts on clients in equality groups would likely be positive with favourable impacts around access to justice; no potential negative impacts identified so therefore no likely consequences for equality groups.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ¹⁵ ?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

The Scottish Government does not believe that the regulations will cause any adverse impact upon groups with protected characteristics as defined in the Equality Act 2010. As a result of the EQIA, the policy remains unchanged.

Monitoring and Review

SLAB has a continuing programme of research and analysis relating to both the supply of and access legal aid, and factors which may affect such supply and access.

¹⁵ See EQIA – Setting the Scene for further information on the legislation.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for The Legal Aid (Employment of Solicitors)(Amendment) (Scotland) Regulations 2018 (Civil Legal Assistance Offices) and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name:

Position: [Deputy Director level or above]

Authorisation date: