

EQUALITY/CHILD RIGHTS & WELLBEING IMPACT ASSESSMENT - RESULTS

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| Title of Policy | The Victims' Rights (Scotland) Regulations 2015 ("the Regulations") |
| Summary of aims and desired outcomes of Policy | <p>The Regulations transpose into Scots law the requirements of Council Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. For those Member States participating in Directive 2012/29/EU, it replaces Council Framework Decision 2001/220/JHA.</p> <p>The Victims' Rights Directive ("the Directive") as it is known, seeks to ensure minimum standards throughout the EU so that victims of crime receive appropriate protection and support, are able to participate in criminal proceedings, and are recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind, in all contacts with any public authority, victim support or restorative justice service.</p> <p>The Regulations also introduce The Victims' Code for Scotland ("the Code"). The Code sets out in easy to understand, simple language what rights and entitlements a citizen has in the unfortunate event that they are a victim of crime. The Code also acts as a signpost to further information, advice and support for victims of crime. The Code ensures compliance with Article 4 of the Directive.</p> |
| Directorate: Division: team | Justice Directorate: Criminal Justice Division: EU Criminal Justice Team |

Executive summary

The Directive offers a potential positive effect on victims' and child victims' rights. No negative impacts for this policy have been identified.

The provisions in the Regulations will, to varying degrees, affect all victims (and in some circumstances their families) in Scotland. It will also affect the authorities who interact with and support victims, namely Police Scotland, Crown Office and Procurator Fiscal Service ("COPFS"), the Scottish Courts and Tribunals Service ("SCTS"), the Parole Board for Scotland ("PBS"), Scottish Prison Service ("SPS") and Procurator Fiscals.

The core provisions in the Regulations stem from European Directive 2012/29/EU, itself shaped by extensive exchanges over numbers of years between Member States, justice organisations, legal representative bodies, NGOs and others with an interest in protecting and supporting victims', including child victims', rights and ensuring consistent standards across the EU.

In Scotland, a working group of competent authorities and key stakeholders who work together to ensure that victims feel supported, safe and informed has used available evidence¹ to formulate practical provisions in the Regulations, including The Victims' Code for Scotland, to ensure compliance with the Directive.

The provisions in the Regulations do not discriminate on the basis of age, disability, sex including pregnancy and maternity, gender reassignment, sexual orientation, race or religion and belief. The rights conferred by the Regulations apply equally to all citizens and, in the context of child victims, are adapted to take account of their age, maturity, views, needs and concerns.

As the policy has been developed there has been close consultation with competent authorities and key stakeholders to assess the provisions against the Scottish Government's equality duty.

The Scottish Government Justice Analytical Services has provided analytical expertise to inform the combined Equality Impact Assessment (EQIA) and Child Rights and Wellbeing Impact Assessment (CRWIA) process. This exercise enabled policy officials to identify relevant data and establish an accurate and informed context within which the provisions in the Regulations will operate and against which equality matters can be fully assessed.

This EQIA/CRWIA has identified no negative potential impacts of the provisions which will ensure that victims', including child victims', rights and the obligations of competent authorities are fully enshrined in law.

¹ As set out on page 11 in "[Making Justice Work for Victims and Witnesses, Victims and Witnesses Bill, A Consultation Paper, May 2012](#)"

Background

The Directive is designed to establish minimum standards on the rights, support and protection of victims of crime, strengthening their rights to ensure that any victim can rely on the same basic level of rights, whatever their nationality, whatever their age and wherever in the EU the crime takes place.

The Directive is in keeping with the Scottish Government's general policies of promoting human rights. It calls on Member States to provide enforceable rights for victims of crime which will address inequalities in the consistency of how victims are treated across the EU.

The Regulations will deliver positive outcomes for the people of Scotland, more so than is currently the case as victims will benefit additionally from having clearly defined, enforceable rights set out in The Victims' Code for Scotland and embedded in legislation. This will help avoid the adverse impacts associated with being a victim of crime and offers a very positive, and enforceable, effect on the civil liberties and rights of the victim.

The 2012/13 Scottish Crime and Justice Survey estimates that around one in six (16.9%) Scots aged 16 or over was the victim of at least one crime. Negative issues of being a victim of crime include impacts on emotional, financial and physical health. Across Europe around 30 million crimes against persons and property are recorded annually.

"It is also well known that for many victims of crime their lives are altered forever; physical, emotional, financial and social aspects are affected. Going to work may be a release from these pressures or for some it can be just too much to cope with. The physical and mental health of victims can also be damaged and relationships and family life can suffer."²

This policy directly contributes to the following National Outcomes:

- We live our lives safe from crime, disorder and danger
- Our public services are high quality, continually improving, efficient and responsive to local people's needs
- We have tackled the significant inequalities in Scottish society

The Scope of the EQIA/CRWIA

The Scottish Government has examined a variety of sources in order to ascertain the impact of the policy behind the Regulations on the seven protected characteristics, and on equality and children's rights matters in general.

This EQIA/CRWIA assesses the policy against the three needs of the public sector equality duty, namely to:

- eliminate discrimination, harassment and victimisation
- advance equality of opportunity; and
- foster good relations.

² ["Do you know how supporting victims of crime is helping Scotland?" Victim Support Scotland.](#)

It does so in respect of the seven protected characteristics of age, disability, sex (including pregnancy and maternity), gender reassignment, sexual orientation, race and religion and belief.

The four general principles of the United Nations Convention on the Rights of the Child³ (UNCRC), the guiding principles which underpin each and all of the specific rights outlined in the Convention, have been considered. They cover: non-discrimination; the best interests of the child; the right to life, survival and development; and the right to express their views and have them given due weight, taking into account their age and maturity.

Article 19 of the UNCRC, on the protection from all forms of violence, also states that “Children have a right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Governments must do all that they can to ensure this”.

We have consulted Scottish Government Justice Analytical Services to help understand the impacts of the policy and help identify, collate, weigh up and analyse available evidence on the Directive and related considerations.

We have used evidence utilised in the development of the Victims and Witnesses (Scotland) Act 2014. We have also used material published by the European Union and Victim Support Scotland

Policy for the Scottish context has been developed through close engagement with an operational working group consisting of representatives of Scottish Government Justice Directorate, Police Scotland, COPFS, SPS and SCTS. These represent the competent authorities who interact with victims on a daily basis and will fall under the obligations imposed by the Regulations. It has also been informed by sharing of information across the UK Administrations.

Recital (9) of the preamble to the Directive states: “victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity.”

Recital (14) states: “In applying this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989. Child victims should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise

³ See http://www.unicef.org/crc/index_30177.html

those rights in a manner that takes into account their capacity to form their own views”.

Article 1 also states that “Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child”.

Key Findings

EQIA

In assessing the impact of the Scottish Government's policy to implement the Directive, we judge the effects of the policy will have no negative equalities impacts.

The policies proposed affect people of all different ages, disability, gender, sexual orientation, religion and belief equally.

We have found no adverse equalities impacts in respect of the seven protected characteristics.

Those organisations who interact with victims on a daily basis, including Police Scotland, COPFS, SPS, PBS and SCTS already promote the need to:

- eliminate unlawful discrimination, harassment, victimisation and other prohibited conduct;
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

We believe that none of the provisions in the legislation or the policy intent that supports it should imply any direct or indirect discrimination against any particular section of society; rather it delivers specific, enforceable rights to all members of society. The main beneficiaries of the policy will be victims of crime (and in certain circumstances their families) who will benefit from rights enshrined in The Victims' Code for Scotland in all their interactions with competent authorities.

As well as victims, the policy will also affect the organisations in Scotland who interact with witnesses on a daily basis namely Police Scotland, COPFS, SPS, SCTS and PBS.

In terms of assessing the policy against the public sector equality duty, transposition of the Directive will help ensure that all victims are given help, support and are treated in accordance with their specific needs.

Implementation will also help foster good relations between Scots working in and with the Scottish competent authorities, the other UK administrations and other

European Member States and help foster cross-border cooperation and understanding and promotion of victims' rights generally.

CRWIA

We judge the effects of the policy will have a positive impact on children's rights and will help protect and promote the wellbeing of children and young people by enshrining in law clearly defined and enforceable rights.

The impact of the Directive's provisions has been carefully considered in the drafting of the Regulations where not already provided for by Scots law, with the fundamental principle throughout to consider, as per Article 1 of the Directive, the 'best interests' of the child.

As the rights set out in the Directive apply to all victims in a non-discriminatory manner the Regulations provide for the protection and support of victims of crime regardless of age, where appropriate to Scotland's criminal justice system.

The Regulations also consider the exercise of a child victims' rights by their parents. Where a right set out in the Directive could be extended to the parent or guardian of a child victim, that right has been framed widely in the Regulations so as to enable the right to be exercised by the child victim and their parents or guardians, but only where it is in the best interests of the child victim. This is to avoid any competing interests, for example between a mature seventeen year old estranged and living away from their parents, that may prevent a child from fully exercising their rights.

In these instances, a child's age, maturity, views, needs and concerns will determine the nature and extent of their interaction with Scottish criminal justice agencies and the role of their parents in the criminal justice system.

The Regulations provide Scottish competent authorities the operational flexibility to protect and support child victims, and their parents, in a way that best serves the child's interests.

Recommendations and Conclusion

The EQIA/CRWIA identified no negative impacts for the provisions in the Regulations which are considered to deliver better outcomes for all who are affected.

The task of monitoring the effect of the Regulations would devolve on those who ensure the provision of these services – Police Scotland, COPFS, SPS, SCTS and PBS.

Police Scotland, COPFS, SPS, SCTS and PBS are all subject to both general and specific duties under the Equality Act 2010. The general duties require public bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and other prohibited conduct;
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and

- foster good relations between people who share a protected characteristic and those who do not.

Scottish Ministers and public authorities are also subject to duties in relation to the rights of children under Part 1 of the Children and Young People (Scotland) Act 2014.

The equalities and child rights duties and reporting and evaluation outcomes for all public bodies involved in implementing the Directive are published online.