

CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT

The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019.

CRWIA front sheet	
Policy/measure A general description of the policy/measure	To make provision in respect of EU Regulation 2201/2203 (Brussels IIa) in the event of the UK leaving the EU without a deal.
Initiating department The responsible team or division. If this is a cross-cutting policy, name the team that has overall responsibility	Family Law Team, Civil Law Division, Justice Directorate
Policy aims What the policy or measure is trying to achieve; what are the expected outcomes	To make the best provision possible in this area in the event of no deal. In broad terms, this means relying on international (The Hague) Conventions and basing the jurisdiction of the Scottish courts on provisions in place before there were changes made by EU legislation.
Timetable What is the time frame for a policy announcement/consultation/implementation?	The intention is that the SSI will come into force on exit day.
Date	25 January 2019

CRWIA Stage 1

Screening - key questions

1. What aspects of the policy/measure will affect children and young people up to the age of 18?

The Articles of the UNCRC and the wellbeing indicators under the Children and Young People (Scotland) 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

The SSI relates to family law cases and these cases may affect children and young people.

2. What likely impact - direct or indirect - will the policy/measure have on children and young people?

'Direct' impact refers to policies/measures where children and young people are directly affected by the proposed changes e.g. in early years, education, child protection or looked after children (children in care).

'Indirect' impact refers to policies/measures that are not directly aimed at children but will have an impact on them. Examples include: welfare reforms, parental leave, housing supply or local transport schemes.

Stakeholders have suggested that:

- Enforcing orders may be slower and more expensive under Hague Conventions than under EU measures.
- Children's rights are being increasingly respected by EU legislation.

3. Are there particular groups of children and young people who are more likely to be affected than others?

Under the UNCRC 'children' can refer to: individual children, groups of children, or children in general. Some groups of children will relate to the groups with protected characteristics under the Equality Act 2010: disability, race, religion or belief, sex, sexual orientation. It may be possible to align the CRWIA with the EQIA in these cases. 'Groups' can also refer to children by age band or setting, or those who are eligible for special protection or assistance e.g. pre-school children, children in hospital, children in rural areas, looked after children, young people who offend, victims of abuse or exploitation, child asylum-seekers, or children living in poverty.

Children involved in cross-EU border cases.

4. Who else have you involved in your deliberations?

Have you included all policy leads who may have an interest in these developments?

Colleagues in the Directorate for Children and Families.

CRWIA Stage 2

Scoping - key questions

1. What children's rights are likely to be affected by the policy/measure?

List all relevant Articles of the UNCRC and Optional Protocols (see Annex 1). All UNCRC rights are underpinned by the four general principles: non-discrimination; the best interests of the child; the right to life; survival and development; and the right to have children's views given due weight.

Articles:

3
5
9
10
11
12
13
14
18
19
20
21

2. How will the policy/measure affect children's wellbeing as defined by the wellbeing indicators?

List all wellbeing indicators relevant to the policy/measure (see Annex 2). The indicators are: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included.

Leaving the EU could have a negative impact on "nurtured" and "included", given the growing emphasis in EU family law on children's rights.

3. How many children and young people are likely to be affected by the policy or measure?

List potential sources of official and other data, or note the need to locate this information. Are there different levels of impact for different groups of children?

A report by Together found that approximately 10% (5604) of babies born in Scotland in 2016 had at least one parent born in another EU country.

4. What research evidence is available?

Preliminary identification of the research base for this policy/measure

The report by Together is at

https://www.togetherscotland.org.uk/pdfs/Brexit_Cross_Border_Report_Oct17.pdf

5. Has there been any public or stakeholder consultations on the policy/measure?

Stakeholders include children and young people, parents/carers, children's workforce, NGOs

There was a consultation by the Scottish Government in 2018 on Brexit and Family Law and Civil Law: <https://www2.gov.scot/Topics/Justice/law/17867/brexit>

6. Has there been any estimate of the resource implications of the policy/measure?

Capital costs, expenditure, recruitment and training costs for the workforce etc.

The Scottish Government has not been able to quantify the costs arising from the changes made by this SSI. In broad terms, though:

- There are a large number of family cases in the courts. [Information on the number of civil cases in the courts is available at the publication Civil Justice Statistics in Scotland 2016-17: <https://www.gov.scot/publications/civil-justice-statistics-scotland-2016-17/pages/1/>]
- Most family cases are domestic only (i.e. just relate to Scotland) but anecdotally we hear that a growing number are cross-border. "Cross-border" could be within the UK or within the EU or internationally. Brussels IIa just relates to the EU (excluding Denmark, which does not take part in this EU Regulation).
- Some stakeholders have suggested that enforcing orders may be slower and more expensive under Hague Conventions than under EU provisions: the Scottish Government has not, though, been able to quantify that.
- Overall, costs arising from the changes made by this SSI are likely to be low (as most family cases are domestic) but there could be additional costs in individual cases.

CRWIA Stage 3

Data Collection, Evidence Gathering, Involvement of/Consultation with Stakeholder Groups - key questions

1. What does the evidence tell you?

The evidence base may include demographic information, academic research, service monitoring/inspection reports, service evaluation reports, user surveys etc. Identify any gaps in the evidence base. In particular, look at what the evidence tells you about children and young people's views and experiences of the relevant service(s); and/or what it tells you about children and young people's views of the policy proposal

The impact of this measure will be most significant on families seeking to resolve cross-EU border disputes.

2. What further data or evidence is required?

Is the evidence up to date, robust and reliable, sufficiently relevant to what is being proposed, or do you need to commission new research?

A key issue is monitoring the impact of Brexit on children and young people in relation to family law.

3. Has there been any consultation on the development of the proposal(s)?

Public or targeted consultation with children and young people, their parents/carers, the children's workforce - is there enough information on the views of the children and young people who will be affected by the policy/measure?

There was a consultation by the Scottish Government in 2018 on Brexit and Family Law and Civil Law: <https://www2.gov.scot/Topics/Justice/law/17867/brexit>

4. Should children and young people be further involved in the development of this policy? Are there particular groups of children and young people whose views should be sought?

Specify how - outline the purpose, format, timetable and the questions you want to ask

Children and young people should be involved in monitoring the impact of Brexit on family law.

5. Should other stakeholders and experts be further involved in the development of this policy?

Specify how - outline the purpose, format, timetable and the questions you want to ask

Legal practitioners, children's organisations, relevant voluntary sector bodies.

CRWIA Stage 4

Assessing the Impact and Presenting Options - key questions

1. What likely impact will the policy have on children's rights?

Negative/positive/neutral. For those assessed as having a negative impact, list options for modification or mitigation of the policy/measure, or suggested alternatives to the policy/measure

Negative.

The Scottish Government is taking steps to improve how the voice of the child is heard in family cases. These steps, examples of which are outlined below, are being taken regardless of Brexit.

The Scottish Government's Programme for Government 2018/19

<https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/> said that the Scottish Government will incorporate the principles of the UN Convention on the Rights of the Child into domestic law.

Programme for Government also confirmed that the Scottish Government will introduce a Family Law Bill to:

- ensure that the child's best interests are at the centre of any contact or residence case or children's hearing;
- ensure that the voice of the child is heard; and
- ensure that cases and hearings are dealt with in an efficient way.

The Scottish Government sent a policy paper to the Family Law Committee of the Scottish Civil Justice Council on hearing the voice of the child in family cases:

<http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-07-december-2015-meeting-papers/paper-5-1a-hearing-the-voice-of-the-child-in-family-cases---sg-paper.pdf?sfvrsn=2>

Following this policy paper, the Committee has prepared changes to the F9 form (used by the courts to obtain the voice of the child in contact and residence cases) to make it more child-friendly.

2 How will the policy/measure contribute to the wellbeing of children and young people?

Provide any additional assessment using the wellbeing indicators framework.

NIL

3. Are some children and young people more likely to be affected than others?

Which groups of children and young people will be affected by the policy/measure? Are there competing interests between different groups of children and young people, or between children and other groups? List options for modification or mitigation of the proposal.

Children and young people involved in cross-EU border family cases will be more

affected than others. The key mitigation is falling back on international (The Hague) Conventions.

4. Resource implications of policy modification or mitigation

If recommending any changes to the policy/measure, include estimates of cost implications

The work outlined above on improving how the voice of the child is heard in family cases in Scotland is happening anyway, regardless of Brexit, and the international Conventions already exist.

5. How does the policy/measure promote or impede the implementation of the UNCRC and other relevant human rights standards?

This will inform Scottish Ministers' duty to report to Parliament on children's rights under the Children and Young People (Scotland) Act 2014.

Leaving the EU without a deal has a negative impact on children's rights in relation to family law, given the increasing emphasis in EU provisions on hearing the voice of the child.

CRWIA Stage 5

Recommendations, Monitoring and Review - key points

1. Record your overall conclusions from the CRWIA

Leaving the EU without a deal has a negative impact on children's rights in relation to family law, given the increasing emphasis in EU provisions on hearing the voice of the child.

The best mitigations are:

- Relying on international Conventions.
- Improving how the voice of the child is heard in family law cases in Scotland.

2. Recommendations

List recommendations on how/whether to proceed with the proposal, referring to your assessment of impact, list of options, and evidence from previous stages of the CRWIA. Justify your recommendations

To proceed with this SSI.

The SSI is a "no deal" SSI. This is not the Scottish Government's preferred outcome.

However, the SSI reflects that if there is "no deal", the reciprocity needed to ensure that Brussels IIa operates effectively will no longer be in place.

3. How will the policy/measure be monitored? Date and agreed process for monitoring and review

Responsible official, timetable, methodology, involvement of stakeholders including children and young people

If there is "no deal", the Scottish Government will monitor the impact on Scotland, including the impact on the courts, on family law and on children and young people.