

Equality Impact Assessment – Results

September 2019

EQUALITY IMPACT ASSESSMENT – RESULTS

Title of Policy	Children (Scotland) Bill
Summary of aims and desired outcomes of Policy	<p>The overarching policy objectives of the Children (Scotland) Bill are to:</p> <ul style="list-style-type: none"> • ensure the views of the child are heard in contact and residence cases; • further protect victims of domestic abuse and their children; • ensure the best interests of the child are at the centre of contact and residence cases and Children’s Hearings; and • further compliance with the United Nations Convention on the Rights of the Child (UNCRC) in family court cases.
Directorate: Division: team	Family Law Unit, Civil Justice & Legal System, Justice.

Executive summary

1. An Equality Impact Assessment (EQIA) was undertaken in connection with the Children (Scotland) Bill to consider potential impacts across the protected characteristics for the provisions included in the Bill. The EQIA impact assessment record has been published separately to this results document. The EQIA record contains more detailed information in relation to the data and evidence gathered and the impacts on the protected characteristics.
2. A draft EQIA was included in the consultation on the Review of the Children (Scotland) Act 1995 (the 1995 Act) which ran between May and September 2018. The responses from the consultation helped to inform the final EQIA and also the policies that have been taken forward in the Bill.
3. The Bill will affect a wide range of people. As part of the consultation on the 1995 Act the Scottish Government met with a range of stakeholders including organisations representing parents, children and grandparents. The Scottish Government has also engaged with Scottish Courts and Tribunals Service (SCTS) and the Scottish Legal Aid Board (SLAB).
4. Equality issues were considered during the policy development process, and none of the proposals are considered to give rise to the possibility of those affected being treated less favourably due to their protected characteristic.
5. The EQIA did identify potential positive impacts of the Bill for some protected groups. In particular, the provisions encouraging the views of younger children to be heard by decision makers has a positive impact on younger children.

6. In addition, as statistics show that significantly more women than men are victims of domestic abuse, the provisions in the Bill aimed at protecting vulnerable parties will have a positive impact for women in relation to the protected characteristic of sex.
7. Provisions in the Bill give the Scottish Ministers the power to make regulations in relation to the conferral of parental responsibilities and rights on unmarried fathers and second female parents where the child's birth is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland. This could have positive impacts on the protected characteristics of sexual orientation, sex and race.

Background

8. The 1995 Act is centred on the needs of children and their families. It defines parental responsibilities and rights (PRRs) in relation to children, as well as who have those responsibilities and rights. It also sets out duties and powers available to public authorities to support children and their families and to intervene when the child's welfare requires it. Part 1 of the 1995 Act covers parental responsibilities and rights and contact and residence cases relating to children when parents are separated or not together.
9. At the time, the 1995 Act was seen as ground-breaking. However, the Scottish Government is aware that many children, parents and organisations are expressing concerns about how Part 1 of the 1995 Act works in practice. The Bill aims to improve the court process in contact and residence cases.
10. Contact and residence disputes can be heard in both the sheriff court and the Court of Session. However, SCTS statistics show that the vast majority are heard in the sheriff court. In 2017/18, only two cases initiated in the Court of Session involved seeking PRRs as the primary crave (the main order sought from the court), as opposed to 2,414 cases initiated in the sheriff court.
11. When contact and residence disputes reach the sheriff court they are usually heard by the sheriff at Child Welfare Hearings. Child Welfare Hearings are normally held in private with both parties present. They are intended to allow the sheriff to speak to the parties directly, identify the issues and establish how the issues are to be dealt with. Child Welfare Hearings are generally informal procedures. The procedure for them is set out in Chapter 33 of the Ordinary Cause Rules for the sheriff court.
12. The Scottish Government and others such as the Family Law Committee of the Scottish Civil Justice Council have been doing work to improve the family courts over the last few years. For example the Scottish Government chaired a working group between 2013 and 2015 on Child Welfare Reporters, who provide advice to the court in contact and residence cases. This led to a number of changes and in particular to rules clarifying the remit of Child Welfare Reporters.

13. The Bill also covers changes to aspects of the Children's Hearings System. The Children's Hearings System deals with children and young people in Scotland under the age of 18 who are in need of help. The Children's Hearings System can help a child or young person who is in need of care and protection or who has got into trouble with the police.
14. The Bill focuses on a number of key themes: ensuring the views of the child are heard in contact and residence cases; protecting victims of domestic abuse; establishing registers of Child Welfare Reporters and curators ad litem; regulation of child contact centres; and PRRs.

The Scope of the EQIA

15. The likely effects of the Bill were informed by a range of evidence, including public consultation on a draft EQIA, stakeholder engagement on the policy proposals of the Bill, SCTS and SLAB statistics, Scottish Government official statistics publications and academic research.
16. During the EQIA process, the potential impact of the Bill on each of the protected characteristics was considered. The Scottish Government considers that the policies are only likely to have a direct impact in relation to age, disability, sex, sexual orientation and race. These impacts are discussed in more detail below.
17. The Scottish Government did not encounter evidence that the Bill would have an impact on other protected characteristics - maternity and pregnancy, gender reassignment, religion or belief and marriage and civil partnership.

Key Findings

Age

18. The Bill is likely to have a positive impact on people because of their age as one of the key provisions removes the presumption that a child aged 12 or over is considered mature enough to give their views. This will have a positive impact in advancing equality of opportunity as younger children will be encouraged to give their views.
19. In addition, the Bill is likely to promote good relations among and between different age groups. One of the factors being introduced for the court to consider when making an order under section 11 of the 1995 Act is the likely effect of the order on the child's relationship with other people. This could include grandparents or other older family members.
20. The Bill also includes provisions regulating child contact centres to ensure that they are safe locations for children and adults to have contact. This would have a positive impact on children and also younger adults as figures from the contact centres suggest that younger adults as parents are more likely to use contact centres.

Disability

21. Research has shown that attending court can be a stressful process.
22. The Bill is likely to have a positive impact in relation to the protected characteristic of disability as the provisions in the Bill allowing the courts to authorise the use of special measures to protect vulnerable parties is likely to reduce stress levels when attending court.

Sex

23. Statistics from SLAB suggest that 82% of defenders in cases under section 11 of the 1995 Act are female compared to 18% of men. In comparison 32% of pursuers are female compared to 68% of men. Therefore, in general improvements to the family courts are more likely to have a positive effect on women acting as defenders and men acting as pursuers.
24. Scottish Government statistics on domestic abuse incidents recorded by the Police suggest that 81% of domestic abuse involved a female victim and a male perpetrator compared to 16% of incidents where the victim is male and the perpetrator is female. The provisions in the Bill are likely to have a positive impact in ensuring that victims of domestic abuse have a greater opportunity to participate in court proceedings without fear of continued abuse.
25. The Bill includes provisions giving the Scottish Ministers the power to make regulations in relation to the conferral of parental responsibilities and rights on unmarried fathers and second female parents where a child's birth is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland. This could advance equality of opportunity.

Sexual orientation

26. The Bill includes provisions giving the Scottish Ministers the power to make regulations in relation to the conferral of parental responsibilities and rights on second female parents where a child's birth is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland. This could advance equality of opportunity.

Race

27. The Bill includes provisions giving the Scottish Ministers the power to make regulations in relation to the conferral of parental responsibilities and rights on unmarried fathers or second female parents where a child's birth is registered overseas and the parent has obtained overseas parental duties, rights or responsibilities in a similar way to obtaining PRRs in Scotland. This could advance equality of opportunity.

Recommendations and Conclusion

28. The evidence collected over the course of the EQIA process has helped the Scottish Government to consider the positive and negative impacts of the Bill.
29. There were no negative consequences identified through the EQIA of this Bill and in terms of the protected characteristics groups identified. In the circumstances, the Scottish Government has concluded that no changes to the Bill are necessary.



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