



# Child Rights and Wellbeing Impact Assessment (CRWIA) for children's legal aid approval of expert witnesses

## Stage 1 – Screening

### 1.1. What's the aim/purpose of your policy/measure?

SLAB's policy on prior and retrospective approval for expert witnesses explains how the requirements of the relevant Regulations are applied where an application is made (by a solicitor) to employ an expert in the context of children's legal assistance.

The policy provides a clear framework for decision-makers concerning the test to be used when considering requests for expert witnesses. This test focuses on whether the involvement of the proposed expert is reasonable, necessary for advancing the case or achieving its resolution, and proportionate in terms of cost. By setting these criteria, the policy aims to ensure that expert evidence is obtained only when it adds real value to the case and that public funds are used responsibly.

Expert input can be crucial in some children's cases - including those involving complex needs - so the policy helps maintain fairness and access to justice while providing proportionate controls on the use of public money. The employment of an expert witness can also lead to early resolution of a case and acceptance of Statements of Grounds thus avoiding a full evidential proof and associated increased Fund expenditure.

### 1.2. What's the impact of your policy/measure on children?

Children can instruct a solicitor to make a request for an expert witness on their behalf: where a child does not want an expert to be instructed, no such application will be made to us. Our assessment is that this policy has some direct impact on children, because the policy governs the test applied to requests which are made by solicitors on behalf of their clients, some of whom (but by no means all) will be children: the impact is whether or not an expert will be made available via public funding with a view to giving particular expert input in the proceedings. There may also be an indirect impact on children involved in cases where an expert witness is sought by an adult.

We recognise that an expert's evidence can influence case outcomes, and thus our policy on the approval of experts allowing them to be funded to give produce a report and to give in court evidence will directly affect children's rights and wellbeing (though ultimately, the key decisions are for the court). We note that the associated EqIA identified that the policy was of potential relevance to protected characteristic groups: these included age, race, and disability, which may intersect with children's needs more generally.

### 1.3. Are certain groups of children more affected than others?

Children from lower socio-economic backgrounds are more likely to require legal aid given their financial circumstances, though this does not necessarily mean they are more likely to be involved in proceedings for which children's legal aid is available in the first place.

Internal data indicates that a very large majority of requests for expert witnesses are made by adults (99% of total requests), with very few requests being made on behalf of child applicants specifically. Our data and experience suggest that most requests for expert witnesses will relate to assessments that are not directly related to children, though they may well have an indirect relevance and impact: for instance, parenting-capacity evaluations or psychological assessments of parents. Child-specific experts appear less often (for instance *child* psychologists amount to 8% of total requests whilst psychologists are 12% of the total) but are not unknown. This may suggest that whilst children's disabilities (for example) can be relevant, these are not generally the primary reason an expert is sought.<sup>1</sup>

Expert evidence may also be relevant in cases involving race or ethnicity, where specialist cultural or contextual understanding is needed, though this did not feature strongly in the applications reviewed.

### 1.4. Is a full CRWIA required?

- ***What are the results of the EqIA?***

The EqIA identified no significant negative impacts on children with regards to equality. While expert witness requests may be refused in some cases, SLAB is obliged by the Regulation to have a test for prior approval in place and, accordingly, the possibility of refusal must exist. There is no evidence that refusals occur disproportionately to children rather than adults making approval applications for experts or that refusals arise because the applicant is a child rather than an adult.

- ***What's the number of children affected?***

The number of cases in which a child is the direct applicant for legal aid is very small, with data from the year of applications which we considered indicating volumes in single-digit figures. However, in relation to *all* requests for expert witnesses which SLAB considered (142 in the year's data which we reviewed), there will be a child (or children) involved in the court proceedings, even if they are not the applicant responsible for seeking an expert witness.

Nonetheless, it is important to note as context that applications for expert witnesses come overwhelmingly from adults involved in the proceedings. In these cases, it may be that children will be indirectly affected by our policy on expert evidence.

- ***Will the policy/measure be subject to consultation?***

No external consultation is planned. Given the technical and procedural nature of this policy, our assessment is that internal engagement alone is proportionate and appropriate.

- ***Is there a lack of evidence on the impact of the policy/measure on children?***

There is limited applications data across most protected characteristics, with partial data available only for age, sex, race and disability, and incomplete disclosure levels. However, for those protected characteristics, we do have data on the rates of grant and refusals, which we see as a key indicator of the potential impacts on children.

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<sup>1</sup> Internal SLAB data.

More broadly, we lack any direct evidence linking our decisions on expert witness approval to the outcomes of the associated legal proceedings (though there are many factors out of SLAB's control that would be relevant here).

Overall, we recognise that despite some insights from our applications data, the degree of evidence we hold is somewhat limited: this indicates a need for completion of the full CRWIA to ensure potential impacts on children's rights are considered and monitored. It is also important to note given the very low volume of applications from children directly, we can't robustly make a comparison with adults.

- ***Is it difficult to anticipate what the impact will be on children?***

It is not difficult to see the impact of this policy on children. Overall, our assessment is that the operation of the policy and its likely impacts on children are well understood. Approval rates for expert witnesses are high, and the policy does not apply differently to solicitor applications made on behalf of children rather than adults. The policy clearly sets out the information required and the process to be followed. There is no evidence that it unduly restricts a solicitors' ability to seek approval for expert witnesses where they represent a child rather than an adult.

A full CRWIA is required because the policy engages key UNCRC articles (3, 12, and 40) and is likely to have an impact on children's rights and wellbeing. Completing a full assessment will ensure proportionality, transparency, and compliance with child rights duties.

## Approval and sign off

**Director/SRO sign off:** 26/01/2026.

**Chief Executive approval:** 26/01/2026.

## Stage 2 – Full CRWIA

### Step 1: Gathering evidence

#### 1.1. What evidence have you found to inform your assessment?

##### **UNCRC Article 3 – decisions must be in the best interest of the child.**

**SLAB statistics:** Requests for expert witnesses in children's legal aid can arise in complex and/or sensitive cases, including proofs and appeals concerning child welfare issues, care arrangements, mental health issues, or capacity to parent. By their nature, children's proceedings involve decisions affecting the interest of the subject child, and expert witnesses have a role to play in this context. Expert types most frequently requested include psychologists, psychiatrists and medical professionals. Our policy position on retrospective approval means this is available where urgency or personal emergency circumstances faced by the solicitor require expert evidence before prior approval could reasonably be obtained, building flexibility into the policy.

Operational feedback indicates that refusal under this policy is most likely where the input sought does not actually require our prior approval (for instance, because the evidence is not expert evidence), and rarely on the substantive merits of the request: it appears to us very unlikely that refusals be problematic with regards to our obligations in relation to this Article.<sup>2</sup>

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<sup>2</sup> Internal SLAB data.

**General evidence:** Expert assessments are recognised as important in informing decisions about children’s welfare, particularly where mental health, trauma or complex needs are present. Public Health Scotland’s CAMHS found over one in five children aged 8-16 years report anxiety or depression, and CAMHS referrals have risen by 22%, with many waiting beyond the 18-week target, reflecting continued demand for specialist assessment and intervention.<sup>3</sup> Scottish Government child mental health policy recognises the importance of timely, specialist input to support informed decision-making affecting children’s wellbeing.<sup>4</sup>

#### **UNCRC Article 12 – respect for the views of the child.**

**SLAB statistics:** Decisions on expert witness approval influence the availability of objective specialist evidence to inform proceedings, which may support informed consideration of a child’s circumstances, but expert witnesses do not represent a child’s views, and their conclusions may not necessarily align with those views.

**General evidence:** Scottish Government guidance on children and young people’s mental health and wellbeing highlights the importance of ensuring children’s experiences and needs are properly understood within services and decision-making processes.<sup>5</sup> Where children face barriers to direct participation, expert assessments can provide an indirect but important mechanism for ensuring their views and circumstances are considered meaningfully.

#### **UNCRC Article 40 – administration of juvenile justice (right to be treated with dignity and respect after having been accused of breaking the law).**

**SLAB statistics:** In cases involving children accused of offending, which children’s legal aid may be sought for, requests for expert witnesses may be relevant where psychological, psychiatric or other specialist assessments are being sought to inform issues at play in the proceedings such as capacity, maturity, or mitigation. The policy position makes no distinction between cases involving offence grounds and those which do not; we are not aware of evidence to suggest any difference in outcomes.

**General evidence:** UNICEF UK’s analysis of youth justice in the UK highlights the importance of specialist assessments in ensuring children involved in justice processes are treated fairly and with dignity, particularly where mental health or developmental issues are relevant.<sup>6</sup>

### **1.2. Which articles of the UNCRC does this policy/measure impact on?**

This policy primarily engages Article 3 (best interests of the child) and Article 40 (fair treatment in legal proceedings) and has a more limited relevance to Article 12 (right to be heard). Decisions on expert witness approval influence the availability of objective specialist evidence to inform proceedings, which may support informed consideration of a child’s circumstances, but expert witnesses do not represent a child’s views, and their conclusions may not necessarily align with those views. The policy therefore has a potential impact on the information available in proceedings and the quality and fairness of decision-making rather than direct representation of a child’s voice. More broadly, the extent to which any evidence given by the expert ultimately has an impact on the outcome of the proceedings and therefore on the child is not within SLAB’s control.

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<sup>3</sup> [Children’s Health Scotland \(2025\), Mental health data reveals urgent need for action to support our children and young people.](#)

<sup>4</sup> [Scottish Government, Children and young people: mental health.](#)

<sup>5</sup> [Scottish Government, Children and young people: mental health.](#)

<sup>6</sup> [UNICEF UK \(2020\), Youth justice in the UK: a rights-based analysis.](#)

### 1.3. Consider whether there might be different impacts on different groups of children. Are certain groups of children affected differently by the policy/measure?

The impact of the policy is case specific. Expert witness requests are more likely to arise in complex cases, for instance those where specialist assessment is sought in relation to a child's or related adult's mental health, development or broader circumstances. Parents whose ability to care for their children is questioned, perhaps because of issues linked to protected characteristics, such as mental health conditions, and children with complex needs, such as disabilities, may be more likely to be affected by this policy, even if they are not the applicant.

However, the policy applies the same test and factors in all cases, and we are not currently aware of any evidence that suggests that it affects groups of children differently or that refusals have a more consequential impact based on a child's characteristics. Given the very low volume of applications directly from children, there is limited analysis that we can do with regards to actual grant rates by protected characteristics.

### 1.4. How will the policy/measure contribute to the wellbeing of children in Scotland?

See [Annex 2](#).

- **Safe:** By enabling expert evidence where appropriate, the policy supports decisions that protect children from harm.
- **Healthy:** Expert assessments can address mental health and wellbeing needs in complex cases.
- **Achieving:** Fair and informed decisions made by the court (including those which experts have had input into) can help create stable environments for children that support learning and development, though the extent to which this end outcome is within the control of this policy is limited. This is because this policy involves employing an expert to help to disprove allegations made by the Reporter or to support an appeal. This policy does not deal with employing expert witnesses to treat a child or suggest what treatment; help and support they should obtain going forward. This is not a matter for SLAB. This policy is very specific for specific court proceedings and does not deal with the long-term welfare and care of children. That is not SLAB's responsibility or remit.
- **Nurtured:** Not relevant to the scope of this policy area. The policy concerns approval of funding for expert evidence in proceedings for which children's legal aid is available: whilst issues relating to this indicator (for instance the child's long-term care) may be discussed in those proceedings, they are not matters for SLAB.
- **Active:** Not relevant to this policy area.
- **Respected:** The policy can facilitate children's views and experience in the court proceedings in question being considered through expert reports; promoting respect for their voice where a particular expert is sought and granted by us.
- **Responsible:** Not relevant to this policy area.
- **Included:** This policy may have some limited relevance to this indicator: access to appropriate expert evidence could potentially assist the court in understanding any specific needs a child has. This would assist in ensuring that a given child's needs are recognised during proceedings: experts may assist in identifying barriers to inclusion, where relevant to the proceedings at hand. The factors in the policy are wide enough to permit such consideration in our decision-making. However, the policy does not address wider issues of social inclusion in any direct manner.

## Step 2 – Stakeholder involvement and consultation

### 2.1. How have you involved children in the assessment?

Children have not been directly involved in this assessment, as the policy does not involve direct service delivery or interaction with children, given applications are submitted through the solicitor. Our view is that direct engagement would not be proportionate given the technical nature of the policy and its primarily indirect impacts.

### 2.2. List all the stakeholder groups that you will talk to about this policy/measure.

- Internal policy and legal teams
- Equality and diversity colleagues
- Subject matter experts on expert witness approval.

### 2.3. What did you learn from the consultation/involvement?

Discussions with key operational decision-makers indicate agreement with the assessment that while the policy does not directly determine case outcomes, it can influence whether expert evidence is presented, which may indirectly affect children’s rights under Articles 3 and 12 of the UNCRC. The consensus was that a proportionate approach is appropriate: completing a short CRWIA and committing to monitoring at the next policy review.

## Step 3 – Impacts on children and young people and steps to address these

### 3.1 Does the policy/measure have any impacts (whether intended or unintended, neutral, positive or negative) on children?

Our assessment is that the policy has an indirect impact on children; whilst it may be important in facilitating expert evidence being given – potentially on complex topics relating to children’s needs – it does not determine case outcomes for children: a sheriff or judge does this.

However, this policy can assist in representation of children’s views in the court proceedings in question where an expert is sought and granted for this purpose. This policy governs access to expert witness funding in cases that can have a strong bearing on children’s welfare, circumstances or rights. Any impact arises from how the availability of objective specialist evidence may inform legal proceedings involving children.

## UNCRC Clusters

### *Article 3 – decisions must be in the best interest of the child.*

**Impact:** Positive impact.

**Analysis of impact:** The policy supports decision-making in the best interests of the child by enabling expert evidence to be authorised where it is reasonable, with regards to the specific factors we set out. Expert reports can be critical in complex cases involving child welfare, disability, mental health or trauma, helping to ensure that decisions in children’s proofs and appeal in court are informed by a full understanding of the child’s needs and circumstances.

EqlA evidence demonstrates that the policy’s broadly framed factors avoid undue barriers to accessing expert evidence for vulnerable groups, including disabled children. This supports the conclusion that the policy positively contributes to protecting children’s best interests and does not require mitigation.

### **Article 12 – respect for the views of the child.**

**Impact:** Positive impact.

**Analysis of impact:** Expert witnesses *may* support the presentation of children’s experiences, needs and perspectives in proceedings, particularly where their direct participation in the proceedings is otherwise constrained by age, communication needs, trauma or complexity. The policy enables such evidence to be authorised where it assists in advancing the case, supporting meaningful consideration of the child’s views.

The EqIA found no evidence that the policy results in unequal access to expert witnesses by protected characteristic and noted that any variation in outcomes is explained by case-specific factors. This reinforces the conclusion that the policy supports children’s participation rights under Article 12 without introducing disproportionate barriers.

### **Article 40 – administration of juvenile justice (right to be treated with dignity and respect after having been accused of breaking the law).**

**Impact:** Positive impact.

**Analysis of impact:** In juvenile justice contexts, expert evidence can be essential to ensuring fair and proportionate decision-making by a court, particularly where issues of maturity, capacity, mental health or trauma are relevant. The policy supports access to such evidence where justified, and the availability of retrospective approval prevents procedural disadvantage where expert input had been required urgently.

The EqIA identified no evidence of discriminatory outcomes arising from the operation of the policy in relation to protected characteristics. This supports the conclusion that the policy promotes fairness and dignity for children in justice proceedings and does not require additional mitigation.

## **3.2. Which actions have you taken as part of the assessment?**

- Confirm that the policy/measure described at Stage 1 was robust.
- Adjust the policy/measure
- Continue the policy/practice/process/service with adverse impact.
- Stop and remove the policy/practice/process/service

**Please select the outcome of the assessment:** Confirmed that the policy/measure was robust and did not need changes.

**Please explain the changes that have been made:** Not relevant given the assessment above.

## **Step 4 – Monitoring impact of the policy/measure**

### **4.1. Note here how you intend to monitor the impact of this policy/measure on children.**

The impact of this policy on children will be monitored by revisiting this assessment at the next scheduled policy review (within two/three years) or sooner if concerns are raised.

## **Step 5 – How will you communicate to children the impact of the policy/measure on their rights?**

Any changes to children’s legal assistance and associated new legislation/regulations will undergo our policy and development process. Policies laying out our decision-making will either be developed or adjusted and EqIAs will be carried out. Additionally, this CRWIA will be published on our website.

## **Step 6 – Approval and sign off**

*All child rights and wellbeing impact assessments must be signed off by the relevant Director or Senior Responsible Owner (SRO), even where a CRWIA is not required. The Chief Executive must approve all CRWIAs. Note the relevant dates below.*

**Director/SRO sign off:** 26/01/2026.

**Chief Executive approval:** 26/01/2026.

**CRWIA review date**

26/01/2029.

# Annex 1 – UNCRC articles

[CRC Clusters \(unicef-irc.org\)](https://www.unicef-irc.org/)

## **I - General measures of implementation**

Article 4 implementation obligations  
Article 41 respect for existing standards  
Article 42 making Convention widely known  
Article 44 (6) making reports widely available

## **II - Definition of a child**

Article 1

## **III - General principles**

Article 2 non-discrimination  
Article 3 (1) best interest to be a primary consideration  
Article 3 (2) State's obligations to ensure necessary care and protection  
Article 3 (3) standards for institutions services and facilities  
Article 6 the right to life, survival and development  
Article 12 respect for the views of the child

## **IV - Civil rights and freedoms**

Article 7 right to name, nationality and to know and be cared for by parents  
Article 8 preservation of child's identity  
Article 13 freedom of expression  
Article 14 freedom of thought, conscience and religion  
Article 15 freedom of association and peaceful assembly  
Article 16 protection of privacy  
Article 17 child's access to information, and role of mass media  
Article 37(a) right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

## **V - Family environment and alternative care**

Article 5 parental guidance and child's evolving capacities  
Article 18 (1) and (2) parental responsibilities and State's assistance  
Article 9 separation from parents  
Article 10 family reunification  
Article 11 illicit transfer and non-return  
Article 27 (4) recovery of maintenance for the child  
Article 20 children deprived of their family environment  
Article 21 adoption  
Article 25 periodic review of placement and treatment  
Article 19 protection from all forms of violence  
Article 39 rehabilitation and reintegration of victims of violence

## **VI - Basic health and welfare**

Article 6 right to life, survival and development  
Article 18(3) support for working parents  
Article 23 rights of disabled children

Article 24 right to health and health services  
Article 26 right to social security  
Article 27 (1)-(3) right to adequate standard of living

## **VII - Education, leisure and cultural activities**

Article 28 right to education  
Article 29 aims of education  
Article 31 right to leisure, play and participation in cultural and artistic activities

## **VIII - Special protection measures**

### **A - Children in situations of emergency**

Article 22 refugee children  
Article 38 children and armed conflict  
Article 39 rehabilitation of child victims

### **B - Children involved with the system of administration of juvenile justice**

Article 40 administration of juvenile justice  
Article 37(a) prohibition of capital punishment and life imprisonment  
Article 37(b)-(d) restriction of liberty  
Article 39 rehabilitation and reintegration of child victims

### **C - Children in situations of exploitation**

Article 32 child labour  
Article 33 drug abuse  
Article 34 sexual exploitation  
Article 35 sale, trafficking and abduction  
Article 36 other forms of exploitation

### **D - Children belonging to a minority or an indigenous group**

Article 30

## **Violence against children**

Article 19 protection from all forms of violence.  
Article 28 (2) right to education.  
Article 34 sexual exploitation.  
Article 37(a) prohibition of capital punishment and life imprisonment.  
Article 39 rehabilitation and reintegration of child victims.

### **Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict Governments**

should ensure that children under 18 who are members of the armed forces do not take a part in combat. Any recruitment of children under 18 must be voluntary and carried out with the full consent of the child's parents/carers. The UK Government has entered interpretive Declarations to this Optional Protocol. The UK would not exclude the deployment of under 18s who are members of the armed forces in direct combat if there is a genuine military need; it is not practicable to withdraw them before deployment; or doing so would undermine the operational effectiveness of their unit. The minimum age at which children may join the UK armed forces is 16 years, with parental consent required.

**Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography Governments** must prohibit the sale of children, child prostitution and child pornography, and recognise the vulnerability of child victims, protect their privacy, provide appropriate support services and ensure their safety.

## **Annex 2 – Getting It Right For Every Child (GIRFEC) Factors**

Source: [Child rights and wellbeing impact assessment external guidance and templates \(Scottish Government\)](#)

### **Safe**

Protected from abuse, neglect and harm by others at home, at school and in the community.

### **Healthy**

Having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices.

### **Achieving**

Being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community.

### **Nurtured**

Having a nurtured place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting.

### **Active**

Having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community.

### **Respected**

Having the opportunity, along with carers, to be heard and involved in decisions which affect them.

### **Responsible**

Having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them.

### **Included**

Having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn.