



Child Rights and Wellbeing Impact Assessment (CRWIA) – Expert witnesses in criminal legal aid cases

Stage 1 – Screening

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

To set out how SLAB exercises discretion when deciding whether to grant, grant in part, or refuse prior (or retrospective) approval for the employment of expert witnesses in criminal legal aid cases. The policy is intended to balance access to appropriate expert advice with proportionate use of public funds.

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

This policy can affect children in several ways. Children may be the accused in criminal proceedings, and decisions about authorising expert witnesses directly influence the extent to which they are able to access expert insights to support their defence, which may ultimately contribute to the extent to which a child accused receives a fair trial. In the context of children’s rights, expert instruction may be required in areas such as psychological assessment, age-related vulnerabilities, or disability-related needs, but experts may also be instructed in relation to other issues not directly related to children’s age (for example, phone or firearm analysis).

The policy may also indirectly affect children who are complainers or witnesses in criminal cases where the nature or scope of expert evidence influences the treatment of evidential issues and case outcomes. Scottish Government CRWIA guidance highlights that indirect impacts must also be considered, even where a policy is not specifically aimed at children.

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

Children involved in criminal proceedings and in receipt of legal aid are those affected by this policy, as decisions on expert evidence can shape the defence in cases involving under 18s. Children with disabilities or neurodevelopmental conditions may be more likely to require expert assessment to support their understanding of, and participation in, proceedings. Applications data indicates that requests for expert witnesses are almost entirely from older children (aged 15 to 18), with none recorded from younger age groups.¹ Children involved in particularly complex or serious cases in which experts are more likely to be required will also be more affected. It should be noted for context that experts are not necessarily instructed in every criminal legal aid case: indeed, in a large majority of cases, experts play no role.

¹ Internal SLAB data.

1.4. Is a full CRWIA required?

The age-related EqlA evidence does not suggest that applicants of different ages experience the expert-witness approval process differently. The grant rate is consistent across all age groups, and variations observed in the patterns of requests reflect the types of cases different age groups are involved in rather than any aspect of the policy itself. The EqlA data also shows that the system is used by accused persons across all ages, with a small but real proportion under 24. Since under-18s fall within this youngest bracket, clearly, there will be a possibility of impact on children even though no age-related negative *differential* treatment is identified.

The number of children involved in criminal legal aid is small, at just under 100 in the years' worth of applications considered (or 2% of total requests for experts). That is, children comprise only a very small minority of people affected by this policy. Regardless of the small numbers of requests directly from children, we recognise that the impact of this policy on them may be significant because decisions on expert evidence affect their experience of the criminal process (for example, the types of defence/mitigations that can be pursued).

This policy will not be subject to consultation.

As well as data on application subject matter and outcomes (grant rate) SLAB holds detailed age-related data for applicants overall, as well as some data on sex, race, and disability: however, there are some gaps in the evidence as to children's other protected characteristics. There are gaps in specific qualitative evidence as to the impact of the expert witness policy on children: for instance, whether any specific elements of the policy are more likely to affect children than adults. With the data available to us and in line with the conclusions of the EqlA, we are not aware of any specific concerns.

The impact in any given case depends heavily on the type of expert required, the circumstances of the case, and the individual needs of the child accused. As the policy relies on wide discretion, and each case is assessed differently, it is not always possible to predict how the policy will influence the experience of children involved in criminal proceedings. However, at an aggregate level, having a formal policy set out with transparent factors, and having completed an EqlA, we are confident that we have an appropriate degree of insight into likely outcomes of the policy.

A full CRWIA is required. Although the EqlA indicates no problematic differential treatment based on age, the policy has material implications for under 18s in criminal proceedings, particularly in relation to their participation, understanding and fair-trial rights. Given the small but significant number of children potentially affected, the evidence gaps identified, and the obligations arising from the UNCRC (Incorporation) (Scotland) Act 2024, further assessment is appropriate.

Approval and sign off

Director/SRO sign off: 26/05/2026.

Chief Executive approval: 26/05/2026.

Stage 2 – Full CRWIA

Step 1: Gathering evidence

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

UNCRC Articles

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

SLAB statistics:

Children under 18 appear in a very small proportion of criminal legal aid cases and as such, are responsible for a minority of requests for expert witnesses. Where expert evidence is sought, it may be in sensitive contexts involving mental health, psychological assessment or possibly communication difficulties, all of which could be directly relevant to determining and upholding a child's best interests in the context of criminal proceedings.²

General evidence:

The UNCRC Act requires public authorities to act compatibly with Article 3, ensuring best interests are a primary consideration in decisions affecting children. Expert evidence often forms part of how best interests are assessed in youth justice.³

Article 12 – respect for the views of the child.

SLAB statistics:

Expert psychologists are sometimes requested in cases involving young or vulnerable accused persons. Their role is typically to assess matters such as communication ability, cognitive functioning, or vulnerability prior to trial and to provide a report. This may include identifying what adjustments or special measures may be appropriate to support the child's participation in proceedings (for example, the need for regular breaks or other adaptations). Experts do not play an active role during the trial or directly support the child in expressing their views, but in their role before the trial, may play an important function in how the child later participates in proceedings.⁴

General evidence:

Psychological impacts of crime such as fear and anxiety may directly affect a child's ability to participate meaningfully in legal processes, increasing the importance of appropriate assessment of their needs.⁵

Article 23 – rights of disabled children.

SLAB statistics:

Our consideration of the applications data confirms that some criminal legal aid cases involving children do involve requests for psychological/psychiatric experts related to disability, neurodivergence or possible communication needs.⁶

General evidence:

National CAMHS statistics show sustained, high demand for child mental-health assessment across

² SLAB internal data.

³ Together Scotland, [UNCRC \(Incorporation\) \(Scotland\) Act 2024: statutory guidance response](#) (2024).

⁴ SLAB internal data.

⁵ BBC Bitesize, [Who commits crime? - Impact of crime on victims, offenders and their families - Higher Modern Studies Revision](#).

⁶ SLAB internal data.

Scotland, which may suggest that in criminal cases involving children, appropriate expert witness input with regards to possible disability may be important.

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

General evidence:

Expert evidence can be pivotal in criminal cases to address maturity, mental health, suggestibility or communication needs: this may be directly relevant to how a child experiences the administration of juvenile justice.

Fair trial safeguards for children in Scotland include strict necessity and competence thresholds for expert opinion and mechanisms to take evidence by commissioner; SLAB's Regulation 14 approval decides if the court receives the expert input needed to secure a fair process and outcome.⁷

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

Articles 3, 12, 23 and 40. Expert-witness instruction in criminal cases involving children may have an impact on best-interest decisions, children's effective participation and ability to express their views, reasonable accommodations for disability or neurodivergence, and fair-trial guarantees in youth justice.

These impacts arise because Regulation 14 requires SLAB prior approval for employing experts and leaves criteria to SLAB's discretion, which can determine whether child-focused expertise reaches the court.

**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 our policy is primarily case-specific and dependent on the individual facts and circumstances of the case at hand. Requests are more likely in complex cases where specialist assessment of mental health, neurodevelopment or communication is sought, or where contextual expertise (for example, digital evidence) is material to the defence being pursued.

Children with disabilities or neurodevelopmental conditions may be more likely to require psychological or psychiatric expertise to assess needs relevant to effective participation; national CAMHS statistics indicate sustained demand for such assessment across Scotland, underscoring why timely approval can matter in individual cases.

Any impact on children involved as witnesses or complainers is indirect and arises through the wider operation of the criminal justice system, as decisions about special measures, expert input for witnesses, and how evidence is taken are matters for the Crown Office and Procurator Fiscal Service and the courts, rather than SLAB.

The policy applies the same test and factors in all cases under Regulation 14, and we are not aware of evidence that refusals disproportionately affect any group of children; given the very low volume of applications directly from children, differential grant-rate analysis by protected characteristic is not currently possible.

⁷ [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#).

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 helps courts make properly informed decisions that reduce procedural harm and re-traumatisation risks for children involved in criminal cases.

Healthy: Not directly engaged.

Achieving: Developmentally informed expert input assists the court to recognise maturity and capacity in line with youth-sentencing principles, supporting decisions that better reflect a young person's prospects and needs, although long-term educational outcomes are beyond this policy's remit.

Nurtured: Not directly engaged. The policy concerns approval of funding for expert evidence in specific proceedings; while nurturing environments may feature in those proceedings, they are not matters for SLAB.

Active: Not directly engaged. The measure governs funding approvals and does not itself create activities or programmes for children.

Respected: Limited positive impact. Expert assessments may inform understanding of a child's communication and participation needs, supporting their views being appropriately heard, although in large part, decisions on special measures and in court support rest with the courts rather than SLAB (via a consequent approval for unusual work).

Responsible: Not directly engaged.

Included: There may be limited relevance where approval of appropriate expertise helps identify and accommodate disability or communication needs and their relevance to the criminal proceedings.

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 via 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 indicated 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. 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?

UNCRC Clusters

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

Impact: Positive impact.

Analysis of impact: By requiring prior approval for experts and allowing retrospective approval where justified (Regulation 14), the policy enables courts to obtain necessary specialist opinion in under 18 cases, supporting informed, best-interests decision-making.

Article 12 – respect for the views of the child.

Impact: Positive impact.

Analysis of impact: Where age, trauma or communication needs limit a child's direct participation, approving communication or psychological expertise may assist in assessing how a child understands and communicates, which can inform decisions about any adjustments required to support effective participation, complementing Scotland's presumption for pre-recorded child evidence in serious cases.

Article 23 – rights of disabled children.

Impact: Positive impact.

Analysis of impact: For disabled or neurodivergent children, timely authorisation of psychological, psychiatric or communication expertise may be essential to equal and effective participation; national CAMHS statistics evidence sustained demand for child mental-health assessment in Scotland, underscoring the importance of enabling appropriate expert input where relevant.

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 youth cases, expert evidence can be pivotal to fair process, for example on maturity, mental health, suggestibility or communication, consistent with Scots rules that such opinion be outside ordinary knowledge and necessary to resolve issues; the Regulation 14 approval step ensures that the right expertise can reach the court when justified.

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

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:

The assessment found no evidence of negative impacts on children's rights or wellbeing. The policy provides a clear and flexible framework for the approval of expert witnesses, allowing case-specific consideration of factors such as complexity, vulnerability and communication needs.

No changes to the policy were required. The only action identified is to continue monitoring applications involving children at the next review point to ensure the policy continues to operate fairly and proportionately.

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 to 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 criminal 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 EqlAs will be carried out.

Additionally, this CRWIA will be published on our website.

Step 6 – Approval and sign off

Director/SRO sign off: 26/05/2026.

Chief Executive approval: 26/05/2026.

CRWIA review date:

13/05/2029.

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.