



Child Rights and Wellbeing Impact Assessment (CRWIA) – Screening for prior and retrospective approval for counsel in civil legal aid cases

Stage 1 – Screening

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

Civil legal aid: prior and retrospective approval for use of counsel.

The purpose of this policy is to set out how SLAB exercises its statutory discretion in deciding whether it is appropriate to grant prior or retrospective approval for the use of counsel in civil legal aid cases, in accordance with section 13 of the Legal Aid (Scotland) Act 1986 and Regulation 21 of the Civil Legal Aid (Scotland) Regulations 2002.

The policy provides a structured and transparent framework for decision-making, based on factors such as complexity, novelty, difficulty, and emergency circumstances, to ensure that assisted persons receive representation appropriate to the circumstances of their case while enabling SLAB to manage public expenditure responsibly.

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

The policy does not specifically treat children differently from adults, and nor is it designed specifically to affect children's rights or wellbeing.

Children may be affected by this policy where they are assisted persons themselves, or more indirectly where they are involved in civil proceedings (for example in family cases) but are not themselves the applicant seeking use of counsel. However, the policy **does not**:

- alter eligibility for civil legal aid
- affect access to legal representation (applicants will already be represented by a solicitor) but determines whether the use of counsel is appropriate
- remove any procedural safeguards for children.

Decisions on the use of counsel are made on a case-by-case basis, are mediated through solicitors (who are responsible for making the application to SLAB on behalf of their client), and are grounded in factors which primarily relate to the circumstances of the case (such as complexity or difficulty), although characteristics of the applicant, including age or vulnerability, may be relevant insofar as they inform those factors.

The use of counsel may, in some cases, have a direct and beneficial impact on children involved in proceedings, for example by supporting effective representation, assisting in the presentation of complex issues, or helping ensure that a child's position is clearly articulated to the court.

Overall, no adverse or significant differential impact on children's rights or wellbeing has been identified.

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

There is no evidence that particular groups of children (by age, disability, care experience, socioeconomic background, or other protected characteristics) are more affected than others because of this policy.

Any variation in whether counsel is sought or approved arises primarily from the nature of the legal proceedings and the complexity or difficulty of the case, rather than from children's characteristics in themselves. However, disability, communication needs, or other vulnerabilities may be relevant to that extent as they contribute to the complexity or difficulty of the case, and therefore to whether the involvement of counsel is appropriate.

There is no evidence that this results in differential or adverse outcomes for particular groups of children, or that the policy operates unevenly across protected characteristics.

1.4. Is a full CRWIA required?

The Equality Impact Assessment for this policy identified no adverse or differential impacts for children under the protected characteristic of age. Grant rates for the use of counsel did not show statistically significant variation by age, and no qualitative evidence suggested disadvantage for children.

While some children may be indirectly affected through their involvement in civil proceedings, children are not the primary population likely to be affected by this policy. Equality Impact Assessment evidence indicates that applicants aged 18 and under account for a small proportion of requests for counsel in civil legal aid, around 5% in the years' worth of applications we considered - and that outcomes for this group do not differ significantly from other age groups. Overall, the number of children affected specifically by the operation of the counsel approval mechanism is therefore limited.

No consultation is planned, as the policy is procedural in nature, implements existing legislative provisions, and does not introduce changes that would materially affect children's rights or wellbeing.

There is sufficient internal operational and applications data to understand how the policy operates and the likely impacts. There is no evidence indicating potential harm to children.

The impacts of the policy on children are low, indirect, and foreseeable, and do not raise concerns that would warrant further exploration through a full CRWIA.

A full CRWIA is not required for this policy. While SLAB has undertaken CRWIAs for criminal legal aid and children's legal aid counsel policies, those assessments were necessary because those policy areas are more directly engaged in how children's rights are exercised in practice, particularly in contexts where participation, understanding and fairness in proceedings are central considerations.

By contrast, the civil legal aid counsel policy governs whether an additional level of representation is authorised, rather than determining access to representation or the outcomes of cases. While

children may be involved in cases where counsel is sought, and the involvement of counsel may in some instances have a direct and beneficial impact on their participation, the policy itself operates as a discretionary, case-by-case funding approval mechanism. Its impacts are therefore indirect and mediated through the circumstances of the case rather than driven by the policy itself.

The EqIA has identified no adverse or differential impacts on children or young people, and the effects of the policy are sufficiently understood and predictable. On this basis, a screening-level assessment is proportionate and sufficient, and there is no requirement to proceed to a full CRWIA.

Approval and sign off

Director/SRO sign off: 22/06/2026.

Chief Executive approval: 22/06/2026.

CRWIA review date:

22/06/2029.