Child Rights and Wellbeing Impact Assessment (CRWIA) – Criminal Legal Aid Approval for Use of Counsel

Stage 1 – Screening

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

The policy explains how SLAB applies Regulation 14 of the Criminal Legal Aid (Scotland) Regulations 1996 when deciding whether to grant approval for the employment of counsel in the context of criminal legal aid cases. It sets out the factors which we consider in assessing whether counsel is "appropriate". The policy also sets out the scope of work authorised when approval is granted.

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

Children may be directly affected where they are the accused in criminal proceedings: decisions about approving counsel made under this policy will determine the level of representation available to them. However, importantly, we also note that counsel is *automatically* available in certain circumstances. Evidence indicates that young accused can face barriers to understanding, managing complex information, and participating effectively in the criminal process – all of which counsel may play a role in assisting with – so decisions on counsel can be relevant to Articles 3, 12, 23 and 40 of the UNCRC.

There may also be indirect impacts for children who are witnesses or complainers in cases in which counsel is instructed, particularly where counsel's involvement affects how evidence is prepared or presented as part of the defence case. While applications for approval are made by solicitors, outcomes may therefore influence the environment in which children give evidence or engage with proceedings.

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

Most children involved in criminal legal assistance are aged between 16 and 17, with a smaller number under 16. Children with neurodevelopmental conditions, communication difficulties, and disabilities, as well as those involved in cases which are legally more complex or serious, may be more significantly affected because these characteristics can intersect with case complexity and influence whether the involvement of counsel is appropriate.

1.4. Is a full CRWIA required?

The EqIA does not show negative differential treatment by age, but our consideration of available applications data confirmed that some applicants for counsel will be under 18. Broader evidence considered in the EqIA indicated that decisions about counsel may materially affect children's ability to understand, participate in, and navigate criminal proceedings. Although the data does not suggest

discriminatory impacts, the fact that counsel availability can influence fairness and participation for children means there is still potential relevance to children's rights.

The number of accused persons under 18 who sought SLAB's approval for counsel in the context of criminal legal aid is small compared to adults – amounting to around 5% of the total in the years' worth of data considered (n.191). For those children, decisions about whether counsel is approved could influence their experience of being involved in criminal proceedings. The Scottish Government's CRWIA guidance indicates that the significance of impact can outweigh the size of the affected group. It is important to be clear that counsel is sought only in a minority of criminal legal aid cases.

External consultation is not planned. Internal engagement with operational colleagues has taken place and is proportionate.

There is limited child-specific evidence about how the counsel-approval process affects under-18s, though we are clear as a matter of policy how age can be considered in our decision-making. While SLAB holds age-related applicant data, there is relatively little specific information on how the structure of the policy, including factors such as complexity and equality of arms, specifically impacts children's participation and understanding. There are also several gaps in relation to other protected characteristics. The Scottish Government guidance suggests that where evidence gaps exist, a full CRWIA is appropriate.

The relevance of this policy to children varies significantly depending on the nature of the case, the seriousness of the charges, the child's individual needs, and whether specialist representation is required; where counsel is granted, the ultimate impact of counsel on the applicant's case is difficult to predict and no within SLAB's direct control. Because the policy relies on discretion and the nature of criminal cases involving children can differ widely, it is not possible to fully predict the precise impacts on under-18s: however, having a formal policy with specific factors set out helps to anticipate the situations in which counsel will and will not be granted.

Given the small but significant potential impact on children's rights – particularly with regards to fairness, participation and understanding in the context of potentially serious criminal proceedings – a full CRWIA is required.

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:

Internal SLAB data shows that a small proportion of criminal legal aid applications come from people aged under 24, and a proportion of these applicants will be under 18.[1] 5% of requests for counsel were from applicants aged 18 or younger. Where counsel is sought in cases involving children, it is likely to be in contexts involving serious charges, high evidential complexity, or sensitive subject

[1] Internal SLAB data.

matter. In such cases, access to appropriate representation can influence how effectively the child understands and navigates the criminal process.

General evidence:
Article 3 requires that a child's best interests are a primary consideration in all decisions affecting them.[2] External evidence and research indicates that children and adolescents often struggle with understanding legal processes, assessing consequences and participating fully in complex proceedings due to developmental factors, including reduced future-oriented reasoning and higher susceptibility to pressure.[3] Scottish Government priorities also recognise that many children in conflict with the law present with communication, cognitive or mental-health needs, which can make the criminal process more challenging to navigate.[4] In cases involving serious or complex issues, decisions about approving counsel may therefore be directly relevant to ensuring that the child can participate effectively and that their best interests are properly considered.

Article 12 – respect for the views of the child.

SLAB statistics:
Requests for counsel may be made in cases involving children where communication difficulties, age-related vulnerabilities, or trauma affect a child's ability to participate effectively and in which counsel's specialised skills can assist in the child's participation.[5] In such circumstances, counsel may support the structuring of the defence in a way that takes account of the child's communication and understanding needs.

General evidence:
External research indicates that children in criminal proceedings often struggle to understand what is happening, feel intimidated by the environment, and may find it hard to express their views clearly. These difficulties are increased where a child has communication needs, neurodevelopmental conditions, or trauma-related vulnerabilities, as noted in research on youth participation.[6] Scots law also recognises that vulnerable accused require support to participate effectively.[7] In more complex cases, counsel can help ensure that the child's views are understood and presented clearly, supporting meaningful, not merely formal, participation in line with Article 12.

Article 23 – rights of disabled children.

SLAB statistics:
Some cases involving under-18 accused include children with mental-health needs, learning disabilities or neurodevelopmental conditions, which can affect comprehension, communication or decision-making.[8] Where these needs make the case more complex or sensitive, they may interact with the factors set out in the counsel-approval policy, making the involvement of counsel more relevant to supporting effective participation.

General evidence:
There is strong evidence that children in conflict with the law have disproportionately high rates of

[2] United Nations Committee on the Rights of the Child, General Comment No. 24 (2019) on the right of the child to have his or her best interests taken as a primary consideration.
[3] Laurence Steinberg, Developmental Review (2008), 'A Social Neuroscience Perspective on Adolescent Risk-Taking'.
[4] Scottish Government, Justice for children and young people: vision and priorities 2024–26.
[5] Internal SLAB data.
[6] Centre for Youth & Criminal Justice (2024), Youth Justice in Scotland: Still fit for the future.
[7] Criminal Justice (Scotland) Act 2016.
[8] Internal SLAB data.

disability and neurodivergence, including speech and language difficulties, ADHD, autism spectrum conditions, and mental-health needs. These difficulties can significantly affect a child's ability to understand evidence, give instructions, and engage effectively with proceedings.[9] Article 23 requires steps to ensure disabled children can participate equally in legal processes. In more complex cases, the involvement of counsel may support the child's ability to understand the issues and contribute to the preparation of their defence, helping ensure their views are considered within the process.

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

SLAB statistics:

Where counsel is sought for children in conflict with the criminal law, it is generally in cases involving serious allegations, high evidential complexity, or contested issues of maturity, intent, or mental health. In such cases, counsel may play a key role in ensuring the child's rights to dignity, fairness, and due process are upheld.

General evidence:

Article 40 requires that children accused of offences are treated with dignity, supported to understand the process, and provided with appropriate legal assistance. The UN Committee on the Rights of the Child emphasises that child-friendly justice requires access to qualified representation, particularly where cases involve complexity or vulnerability.[10] Youth justice research shows that children are at heightened risk of misunderstanding proceedings and being disadvantaged in adversarial settings.[11] International standards, including the Council of Europe Guidelines on Child-Friendly Justice, reinforce that effective participation and equality of arms must be ensured.[12] In this context, the availability of counsel in complex youth cases represents an important safeguard for fair process and procedural dignity.

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

This policy most directly engages Articles 3, 12, 23 and 40. These articles relate to best interests, participation and expression of views, disability-related support needs, and the rights of children in the criminal justice process. Decisions about approving counsel can influence how effectively a child understands proceedings and is able to express their views in the context of the administration of the criminal law.

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 this policy is highly case-specific, turning on the specific facts and circumstances of the cases at hand. Children with neurodevelopmental conditions, communication difficulties or disabilities may be more significantly affected because these needs can increase case complexity and may make the involvement of counsel more relevant under the factors considered in the policy. Particularly young children or those with trauma-related needs may also struggle more with understanding adversarial processes and therefore be affected differently.

[9] Youth Justice Board & Ministry of Justice, Assessing the needs of sentenced children in the Youth Justice System 2018/19.
[10] United Nations Committee on the Rights of the Child, General Comment No. 24 (2019) on the right of the child to have his or her best interests taken as a primary consideration.
[11] Centre for Youth & Criminal Justice (2021), Youth Justice in Scotland: Still fit for the future?.
[12] Council of Europe (2010), Guidelines on Child-Friendly Justice.

Children who are witnesses or complainers may be indirectly affected if the instruction of counsel influences how evidence is prepared or handled. However, there is no evidence that any group of children is disadvantaged by the operation of the policy, but those with higher support needs may experience greater benefits where counsel is authorised.

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

See Annex 2.

Safe: Where counsel is authorised in cases involving children, representation can support the child's ability to navigate serious or complex proceedings, helping to uphold procedural safeguards that reduce the risk of harm within the justice process.

Healthy: Children with mental health or neurodevelopmental needs may benefit where counsel helps ensure that relevant assessments, supports or adjustments are properly raised and understood within the criminal process.

Achieving: Not directly engaged. The policy concerns approval of funding for legal representation rather than broader care or welfare issues.

Nurtured: Not directly engaged. The policy concerns approval of funding for legal representation rather than broader care or welfare issues.

Active: Not directly engaged. The policy does not relate to participation in community or recreational activity.

Respected: Access to counsel in complex youth cases may help ensure that a child's views are effectively articulated and considered, supporting their participation rights.

Responsible: Not directly engaged. The policy does not influence personal responsibility outcomes, though effective participation may help a child understand the process and consequences.

Included: Where counsel is authorised in cases involving disability or communication needs, this can help ensure the child is not excluded from understanding or participating in the proceedings. Broader inclusion issues lie beyond the scope of this policy.

Step 2 – Stakeholder involvement and consultation

Finding out about the views of people who may be affected by the policy can help clarify its potential impact on children. Policy & Development can support the identification of appropriate engagement routes or literature to address evidence gaps. The principles of relevance and proportionality apply; not every policy requires external consultation, and for technical, internal decision-making policies, targeted evidence-gathering may be sufficient.

2.1. How have you involved children in the assessment?

Children have not been directly involved. The policy does not involve direct service delivery or interaction with children, as applications for approval for counsel are submitted by solicitors. Given the technical, administrative nature of the policy and its primarily indirect effects on children, direct engagement with children would not be proportionate.

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.

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

Discussions with operational decision-makers in the development of the associated EqIA confirmed that, while this policy does not directly determine the outcome of criminal cases, it can influence whether counsel is instructed, which may have indirect implications for children's participation in the minority of cases involving under-18s. Stakeholders agreed that completing a proportionate CRWIA and committing to monitoring at the next scheduled policy review is an appropriate approach.

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: Where a child is an accused person, decisions about approving counsel can contribute to ensuring their best interests are properly considered in those criminal cases where the factors set out in the policy indicate that additional representation is appropriate. Children receiving criminal legal aid will already be represented by a solicitor; approval for counsel is considered only where factors such as complexity, novelty, seriousness, sensitivity or equality of arms justify augmenting that representation. The policy sets out a clear appropriateness test, which supports transparent and consistent decision-making. In cases involving serious charges, significant evidential issues or developmental vulnerabilities, access to counsel can help ensure the child understands the process and that their defence is prepared in a way that reflects their needs and circumstances.

Article 12 – respect for the views of the child.

Impact: Positive impact.

Analysis of impact: Children may have difficulty understanding criminal proceedings or expressing their views clearly. Legal aid funding for a solicitor is the primary means through which a child's views are communicated and considered within criminal proceedings. In cases where communication needs, trauma, age, vulnerability or case complexity make representation particularly challenging, approval for counsel may provide additional support to the solicitor in ensuring that the child's views are effectively understood and presented. While counsel does not "speak for" the child, approval for counsel in more complex matters can help ensure the child's views are properly considered within an adversarial process.

Article 23 – rights of disabled children.

Impact: Positive impact.

Analysis of impact: Some children accused in criminal proceedings have disabilities or neurodevelopmental conditions that affect comprehension, communication or decision-making. These needs can interact with the policy's factors of complexity or sensitivity. Where counsel is approved, this may assist in ensuring that disability-related needs are appropriately identified and considered in the preparation and presentation of the case, supporting effective participation in proceedings. The policy therefore has potential to support equal and effective participation for disabled children in criminal cases. The policy does not assume that counsel is required whenever a

child has a disability. Rather, disability-related needs may interact with other factors, including complexity and sensitivity, in determining whether the involvement of counsel is appropriate.

***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: Article 40 requires that children accused of offences are treated with dignity and respect and are supported to understand and participate in the proceedings. In youth cases involving serious charges, complex evidence, or issues relating to maturity, intent or mental health, the involvement of counsel may support fair-trial safeguards in cases where the required complexity or sensitivity makes representation by counsel appropriate under the policy. The policy enables access to an appropriate level of representation where the statutory tests are met. Children funded through criminal legal aid will already have solicitor representation; approval for counsel is reserved for cases where the policy factors indicate that additional advocacy is required because of the nature, complexity or sensitivity of the proceedings.

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:
No changes to the substantive policy were required. The CRWIA process has, however, highlighted the importance of ongoing monitoring to ensure the policy continues to operate fairly for the small number of children affected.

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 EqIAs 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
26/05/2029.

Annex 1 – UNCRC articles

CRC Clusters (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
Article19 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.