Child Rights and Wellbeing Impact Assessment (CRWIA) Children's legal aid: prior and retrospective approval for use of counsel

Stage 1 – Screening

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

Children's legal aid: prior and retrospective approval for use of counsel.

SLAB's policy on prior and retrospective approval for the use of counsel in children's legal aid explains how the relevant Regulations are applied in practice. The policy sets out an appropriateness test for decision-makers to determine when authorising counsel is justified, based on factors such as case complexity, novelty or sensitivity, emergency circumstances, forum expectations, and parity of representation.

Higher thresholds apply where multiple junior counsel or senior counsel are sought, reflecting the need for exceptional justification. The policy also covers limited or non-advocacy use of counsel, requiring consideration of whether such involvement is timely and proportionate. Retrospective approval applies the same test, alongside a requirement to demonstrate a "special reason" for late submission.

Overall, the policy aims to support fair and effective representation in children's proceedings while ensuring proportionate and consistent use of public funds.

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

Requests for approval to instruct counsel are made by solicitors rather than by children, so any direct administrative impact falls on the solicitor; any impact on the child is indirect and depends on whether the use of counsel relates to issues affecting their participation or wellbeing. The policy affects the level and type of representation available in children's proceedings, including with regards to parity of representation. Where cases involve particularly sensitive child participation, the sensitivity factor in the policy may support authorising counsel given the specialised skills of counsel, this may assist in handling such proceedings appropriately with specific regard to the child's interests and wellbeing

In terms of possible negative impacts, we note that there is a risk that applicants with an otherwise sound basis for their requests are refused use of counsel because sensitivity or complexity is not clearly evidenced in applications (that is – the specific factors have not been addressed); this risk is not specific to children and is mitigated in part by the existence of a clear policy framework.

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

All children involved in proceedings may be indirectly affected by this policy, but there are some groups for whom applications for counsel may be more likely to arise, depending on the complexity or sensitivity of the issues in the case. These may include disabled children, children with significant communication needs, and children who may need to give evidence on particularly sensitive matters.

Language needs alone would not justify approval of counsel, but in some cases, they may intersect with complexity, for example, where the combination of communication needs and the nature of the issues to be addressed makes the case more challenging. The policy does not treat any protected characteristic as a standalone basis for granting counsel but recognises that certain characteristics may relate to the factors considered when assessing complexity or sensitivity.

1.4. Is a full CRWIA required?

- *What are the results of the EqIA? Is there any indication that the policy/measure might have a negative impact on children?*

The EqIA indicates no evidence of discriminatory impacts across protected characteristics. Outcomes under this policy are primarily driven by case-specific factors such as complexity, novelty, and sensitivity, rather than protected characteristics in and of themselves. Our assessment is that the broad framing of these factors allows consideration of a potentially wide range of issues relating to protected characteristics where relevant, creating potential to advance equality of opportunity. Overall, the EqIA assessment suggests neutral or positive impacts on equality groups, with no indication of negative impacts on children.

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

Children's legal aid cases rarely involve counsel, and most proceed without any request for approval. In 2024-25, SLAB received 172 requests for approval of counsel, but this represents requests, not distinct cases. A single case may generate multiple requests, and more than one party in the same case may be represented by counsel.

Fewer than 10% of requests were made on behalf of child applicants, though all cases necessarily involve at least one child, meaning most impacts are indirect. While the overall volume is low, cases involving counsel tend to be more complex or sensitive, which may increase their significance for children's rights and wellbeing.

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

No external consultation is planned. Given the technical and procedural nature of this policy and our view that the impacts on children are likely to be limited and infrequent, 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 external evidence on children's experiences of proceedings where counsel is involved. While internal data is available on requests and grant rates by age, sex, disability and race – which provides important evidence in those areas, elsewhere, data is incomplete and not available across all protected characteristics.

Moreover, this data is difficult to analyse given the very small number of requests from children and it may not capture children's full lived experience of proceedings (though their experience of applying for counsel forms only a small element of that). These evidence gaps support the need for a full CRWIA.

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

On a case-by-case basis, yes: the application of this policy operates in highly fact-specific and sensitive contexts. Decisions on authorising counsel depend on how factors such as complexity, sensitivity and parity of representation are evidenced in individual cases, which can vary significantly.

As a result, the practical impact on children's participation, safeguarding and the fairness of proceedings may differ from case to case and cannot be fully anticipated in advance, particularly given the limited external evidence on children's lived experience of proceedings where counsel is involved. However, at an aggregate level, having a clear policy in place means that – to the extent that there are broad similarities in cases, like cases will be treated alike, in a consistent and transparent way. We are not aware of any evidence that suggests unintended consequences of our policy position or a lack of clarity as to the factors and how they are applied.

Overall, our assessment is that a full CRWIA is required. The policy has clear relevance to children's rights and wellbeing, affects participation and safeguarding in sensitive proceedings, and evidence gaps exist regarding lived experience and equality impacts. Completing a full CRWIA will ensure these issues are explored and mitigated.

Stage 2 – Full CRWIA

Step 1: Gathering evidence

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

The UNCRC articles have been assessed against SLAB's functions, and we deem the following articles to be the most relevant to work we do across the organisation.

UNCRC Articles

Article 2 – non-discrimination.

SLAB statistics:

Across 2024-25, applicants seeking approval for counsel (including both adults and children) covered a wide range of ages, and while grant rates varied slightly, no meaningful age-related pattern was identified. We note that male applicants are overrepresented among requesters relative to the wider Sheriff Court children's legal aid applicant pool, yet the actual grant rates by sex are near identical.

Disability disclosure among requesters appears lower than population benchmarks, but high non-disclosure constrains our ability to undertake any robust analysis here. With regards to race, high levels of 'prefer not to say' and several repeat applications complicate our analysis. However, in broad terms, we are not aware of any evidence that suggests clear signs of discriminatory outcomes attributable to policy design. [1]

General evidence:

Public authorities in Scotland now have explicit UNCRC compatibility duties and reporting requirements, embedding Article 2 (non-discrimination) into routine decision-making and accountability. This statutory framing expects authorities to evidence how process and outcomes

[1] SLAB internal data.

avoid unjustified differential impact and advance equality of opportunity, reinforcing the need for transparent criteria and monitoring in authorising counsel.[2]

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

SLAB statistics:

Approvals for counsel are most frequently granted where complexity, novelty or sensitivity are clearly evidenced, including cases involving sensitive child participation. These are typically cases that raise more complex legal, factual or procedural issues than the norm. Whilst clearly SLAB's policy in this area does not determine the eventual substantive case outcomes, our policy on approving counsel may have a bearing on how such complexities are addressed within the proceedings. By enabling access to counsel where justified, the policy supports decision-making processes that are informed by appropriate specific expertise in complex or sensitive cases, which in turn may assist courts and other decision-makers in considering the child's best interests.

At the same time, the test set out in our policy recognises that the involvement of counsel may not necessarily be 'appropriate' or required in all circumstances. By setting out a range of factors such as complexity and so on, the policy ensures that counsel is only instructed where there is a proper case for doing so. To some extent, the operation of our policy therefore helps protect the best interests of the child.

General Evidence:

Trauma-informed, skilled advocacy in complex or sensitive proceedings supports decision-making aligned with children's best interests. Scottish guidance on UNCRC implementation emphasises embedding best-interest reasoning into all decisions affecting children.[3]

Article 9 – interested parties to be able to participate in separation proceedings.

SLAB statistics:

Counsel is most sought in contested children's proceedings. Although the assisted person is already able to participate with solicitor representation, the involvement of counsel may, in a small number of cases, further support participation where the issues are particularly complex or sensitive. This is most likely to arise at proof or appeal in Children's Hearings court proceedings, where additional senior representation can assist with the clear and consistent presentation of complex or sensitive matters. This does not imply that solicitors do not already undertake this work effectively.

General evidence:

Research indicates that where proceedings involve complex or sensitive issues, ensuring that arguments and evidence are presented clearly can support meaningful participation. While much of this research relates to civil family contexts, the general principle, that additional legal clarity may assist participation in complex situations, this can also be relevant in Children's Hearings court proceedings, although these are different in nature from civil family cases.

Article 12 – respect for the views of the child.

SLAB statistics:

Operational experience indicates that where a child is to give evidence, and where there are particularly sensitive issues at play in the proceedings, for example, allegations of abuse, this can strengthen a request for counsel, in recognition of the particular advocacy skills that counsel can

[2] Scottish Government, Children's rights and UNCRC implementation.
[3] Scottish Government, Children's rights and UNCRC implementation.

bring about in this context (that is – facilitating the child giving evidence). The fact of a child giving evidence alone does not satisfy the appropriateness test but may contribute to sensitivity where distressing material is involved.[4] Counsel's involvement does not necessarily mean that the outcome of the case will align with the child's views and preferences but may assist in enabling them to participate and give evidence in an appropriate and safe way.

General evidence:
Evidence highlights persistent challenges to effective child participation in justice settings. Advocacy from counsel could potentially improve how children's evidence is elicited, framed and given weight to, particularly where children face barriers to direct participation.[5]

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

SLAB statistics:
N/A.

General evidence:
Children involved in justice processes are disproportionately likely to have learning disabilities, neurodiversity, mental health or communication needs, which can impede understanding and participation. Skilled advocacy can support fairness, dignity and effective engagement in justice proceedings.[6] Children's proceedings involving an offence ground and in particular, those where the child is giving direct evidence regarding the commission or non-commission of serious, alleged offences would generally be considered particularly sensitive, and thus more likely to possibly require the use of counsel. The policy is framed broadly enough to facilitate this.

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

We have assessed the articles under the UNCRC and have deemed the articles listed above to be relevant to SLAB's function and decision making. To the assessment of our proposals under children's legal aid and the impact these may have on children's rights and wellbeing, the following articles are relevant: Articles 2, 3, 9, 12 and 40.

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 relevance of this policy is primarily driven by the nature and content of the proceedings rather than by children's protected characteristics in and of themselves. The policy is likely to be particularly relevant in cases that are complex or sensitive, and in proceedings where other parties are already represented by counsel, engaging parity of representation considerations. While protected characteristics, such as disability, may be relevant to complexity or sensitivity in individual cases, there is no clear evidence that the policy affects groups of children differently because of those characteristics.

[4] Internal SLAB data
[5] Morrison et al. (2020), Research on child participation and family justice and Children and Young People's Commissioner Scotland (2024), UNCRC guidance.
[6] Children and Young People's Commissioner Scotland (2024), UNCRC guidance and UNICEF UK (2020), Youth justice in the UK: a rights-based analysis.

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

See Annex 2.

Safe: Counsel can support trauma-informed handling and protective measures in sensitive cases.

Healthy: Counsel's involvement may help ensure wellbeing issues are fully presented in complex cases, but there's no evidence it reduces stress or shortens proceedings; impacts are case-specific.

Achieving: N/A.

Nurtured: In cases involving decisions about a child's accommodation or care arrangements, including secure accommodation, the involvement of counsel may assist in ensuring that relevant vulnerabilities and circumstances are properly considered. Any impact is case-specific and indirect.

Active: N/A.

Respected: Strengthens child voice and participation in line with Article 12.

Responsible: Not directly applicable.

Included: Parity of representation supports fairness and inclusion where other parties have counsel.

Step 2 – Stakeholder involvement and consultation

2.1. How have you involved children in the assessment?

Our ability to engage directly with children on this policy is limited given the low numbers of children impacted, as well as concerns around sensitivity and proportionality, and the policy concerns the procedural criteria for authorising counsel and does not involve direct service delivery to children.

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

N/A.

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

As no formal consultation or direct involvement with children was undertaken, no additional evidence was identified that altered the assessment findings. Internal consideration of available operational data, EqIA findings and relevant research highlighted that the policy's impact on children is limited, indirect and highly case specific.

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 2 – non-discrimination.

Impact: Positive impact.

Analysis of impact: The policy is framed broadly enough to allow consideration of protected characteristics where relevant to complexity or sensitivity, advancing equality of opportunity. Monitoring by protected characteristic and guidance on parity considerations will help ensure fairness and prevent indirect discrimination.

Article 3 – decisions must be in the best interest of the child.
Impact: Positive impact.
Analysis of impact: By formally setting out the factors used in the test for approving counsel, the policy provides clarity on when counsel may be engaged under legal aid. This transparency and consistent application of criteria help ensure that, in cases with particular complexity or sensitivity, decisions are made in ways that support the best interests of the child.

By setting clear criteria for approving counsel, the policy helps ensure that skilled advocacy is available in cases where it could materially affect the child's welfare. In complex or sensitive cases, counsel can help ensure issues are fully explored and presented, supporting decisions that better reflect the child's best interests.

Article 12 – respect for the views of the child.
Impact: Positive impact.
Analysis of impact: The policy supports children's participation by enabling skilled advocacy, particularly in complex or sensitive cases. Authorising counsel can facilitate child's views and evidence being presented effectively and given proper weight in proceedings.

***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: For children accused of offending, skilled representation by counsel supports fairness, dignity and due process. The policy ensures access to counsel where justified, reducing risks of procedural disadvantage. This helps address inequalities faced by children in the justice system, particularly those from socio-economic or marginalised backgrounds.

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 did not identify any barriers to children's rights or wellbeing arising from the policy that required amendment.

The existing policy framework was found to be consistent with relevant UNCRC articles and supports appropriate consideration of children's participation, best interests and access to effective representation in complex or sensitive proceedings.

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.

We intend to set a review cycle for three years, in line with our EqIA and policy review cycle.

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

Guidance on the operation of this policy is freely available on our website. Any changes to children's legal assistance, including this policy, undergo our policy and development process and, where relevant, consultation is carried out. 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: 20/04/2026.
Chief Executive approval: 20/04/2026.

CRWIA review date
20/04/2029.

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.