

## EQUALITY IMPACT ASSESSMENT (EqIA)

### Summary results of the EqIA

**Title of policy/ practice/ process/ service:**

Special urgency legal aid cover for criminal summary and solemn matters

**Is the policy new (proposed), a revision to an existing policy or a review of current policy?**

A review of current policy.

**Key findings from this assessment (or reason why an EqIA is not required):**

SLAB has authority to grant legal aid cover for limited purposes in cases of special urgency. SLAB is given wide discretion in the legislation as to the application of this authority. SLAB's policy is that an application for legal aid cover under Regulation 15 for criminal summary and solemn matters will be granted where SLAB is satisfied that a complete legal aid application cannot be processed prior to the upcoming legal procedure, to ensure an individual is not barred from legal assistance due to circumstance.

SLAB's policy is to cover any work required for that procedure, and that the solicitor will be required to complete a full legal aid application for any further work thereafter.

Applications for criminal summary or solemn special urgency legal aid cover are currently rare. SLAB's online application system effectively triages criminal applications so that legal aid cover is provided prior to legal procedures for the majority of matters. When this is not the case, SLAB considers the time-based urgency of the matter when deciding to grant a special urgency cover or not.

There are however factors associated with an individual's protected characteristics which may impact their ability to access legal assistance or produce documentation to support an application. Such factors are evidenced in the broader criminal justice system and are included in the evidence table at Step 2. Future review of this policy should consider any changes to the pattern of applications for special urgency in criminal matters in relation to this evidence.

**Summary of actions taken because of this assessment:**

A review of the data on applications received for legal aid cover under special urgency was undertaken to view rate of approvals. One application was received in 2019-2020 for criminal summary legal aid cover, which was approved.



**Ongoing actions beyond implementation include:**

n/a

**Lead person(s) for this assessment (job title and department only):**

Policy Development Officer and Policy Projects Manager

**Senior responsible owner agreement that the policy has been fully assessed against the needs of the general duty (job title only):**

Chief Executive

**Publication date (for completion by Communications):**

29/10/2020



## Step 1 - Framing the planned change

Discussing step 1 and step 2 with the Corporate Policy Officer (Equalities) at an early stage will help identify appropriate evidence. This may include support from the wider Policy and Development team.

**1.1 Briefly describe the aims, objectives and purpose of the policy/ practice/ process/ service. *You can use the information in your project specification, business case etc.***

The Criminal Legal Aid (Scotland) Regulation 1996 provides SLAB with the authority to make legal aid available on the basis of special urgency in criminal summary and solemn cases, for limited purposes.

This policy outlines SLAB's application of this authority, including the limits placed on work undertaken under this cover.

**1.2 Why is the change required? *Legislative, routine review etc.***

There is no change - this is a review of current policy.

**1.3 Who is affected by this policy/ practice/ process/ service? *Be clear about who the 'customer' is.***

The customer in this policy is the applicant. The solicitor assisting the applicant and SLAB staff may also be affected.

**1.4 Policy/ practice/ process/ service implementation date e.g. *project end date, date new legislation will take effect.***

N/A - This is a review of current policy

**1.5 What other SLAB policies or projects may be linked to or affected by changes to this policy/ practice/ process/ service? The EqIA for related policies might help you understand potential impacts, and/ or your findings might be relevant to share. Refer to SLAB's business plan, our current equality outcomes, current project list etc.**

This is a standalone policy and decision set.

## Step 2: Consider the available evidence and data relevant to your policy/ practice/ process/ service

The information you gather in this section will:

- help you to understand the importance of your policy/ practice/ process/ service for different equality groups,
- inform the depth of equality impact assessment you need to do (this should be proportional to the potential impact on equality groups), and
- provide justification and an audit trail behind your decisions, including where it is agreed an equality impact assessment is not required.

**2.1 What information is available about the experience of each equality group in relation to this policy/ practice/ process/ service?** Stay focused on the topic and scope of your policy/ practice/ process/ service. Does the policy/ practice/ process/ service relate to an area where there are already known inequalities? Refer to the EqIA guidance for sources of evidence.

Note: If you proceed to a full EqIA you should continue to add to this section as you develop the policy/ practice/ process/ service, come across new evidence and/ or **undertake a consultation**.

Equality characteristics	Evidence source (e.g. web link, report, survey, complaint)	What does the evidence tell you about the experiences of this group in relation to the policy/ practice/ process/ service? Lack of evidence may suggest a gap in knowledge/ need for consultation (step 3).
Age	Research paper: Elements of Psychological Maturity and Its Influence on Antisocial and Criminal Behavior (Sharon Casey)	There may be cognitive and neurological factors impacting a young person's decision-making regarding seeking legal assistance: <i>'the theoretical explanations that seek to explain adolescent risk-taking and decision-making all share at their core a struggle in the developing adolescent brain between 'motivational drivers' to action, rooted in the intensity of emotional arousal and increased sensitivity to both rewards and social influence, and their 'cognitive control', their ability to inhibit impulsive behaviours,</i>

Equality characteristics	Evidence source (e.g. web link, report, survey, complaint)	What does the evidence tell you about the experiences of this group in relation to the policy/ practice/ process/ service? Lack of evidence may suggest a gap in knowledge/ need for consultation (step 3).
	Literature Review: The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts (Scottish Sentencing Court)	<i>pause to consider their decisions and plan their actions.</i> ' (Elements of psychological maturity and its influence on antisocial and criminal behaviour)
<b>Disability</b>	<p>Research briefing: Experiences of people with a learning disability in the Scottish criminal justice system (EHRC)</p> <p>Summary Report: Legally Disabled? The Career Experiences of disabled people working in the Legal profession (Professor Deborah Foster; Dr Natasha Hirst)</p> <p>Report: Criminal justice disability project</p> <p>Report: Ensuring fairness, creating more accessible services (Law Society)</p>	<p>Evidence about individuals' with learning disabilities and their capacity to understand what they are required to do in relation to a charge - may cause them to make contact with a solicitor last minute - experiences of people with a learning disability.</p> <p>Lack of specially prepared, accessible and/or easy read information for individuals who are disabled (Criminal Justice Disability Project).</p> <p>There is evidence that a high proportion of those who are in contact with criminal justice services have mental health problems and poor physical health. Mental health problems can contribute to delay in taking action or lack of ability to concentrate on a particular problem that may lead to delay in contacting a solicitor. Poor physical health contributes to risk of hospitalisation or other incapacitation that may lead to delay/ inability to provide evidence.</p>

Equality characteristics	Evidence source (e.g. web link, report, survey, complaint)	What does the evidence tell you about the experiences of this group in relation to the policy/ practice/ process/ service? Lack of evidence may suggest a gap in knowledge/ need for consultation (step 3).
	Summary Report: Reducing offending, reducing inequalities (Public Health Scotland)	
<b>Race</b>	Report: Institutional Racism (Coalition for Racial Equality and Rights)  Guide: Unconscious bias (CDO Insights)  Guide: Everyday bias (Cook Ross)	Unconscious bias and institutional racism can exist in any organisation. This may lead to staff unconsciously treating people from other cultures differently.
<b>Sex</b>	No evidence found	
<b>Gender Reassignment</b>	No evidence found	
<b>Sexual orientation</b>	No evidence found	
<b>Religion or Belief</b>	No evidence found	
<b>Pregnancy or maternity</b>	No evidence found	

Equality characteristics	Evidence source (e.g. web link, report, survey, complaint)	What does the evidence tell you about the experiences of this group in relation to the policy/ practice/ process/ service? Lack of evidence may suggest a gap in knowledge/ need for consultation (step 3).
Marriage or civil partnership	No evidence found	
Care Experienced ( <i>corporate parenting duty</i> )	Summary Report: Reducing offending, reducing inequalities (Public Health Scotland)  SLAB literature review of care experience and legal services	Although less than 1% of all children are in care in Scotland, looked-after children account for more than 25% of all people in prison.  Research has found that a high percentage of young people in the criminal justice system have backgrounds in care and that their experiences within that system are more negative due to their mental health, substance misuse and emotional problems.

**2.2 Using the information above and your knowledge of the policy/ practice/ process/ service, summarise your overall assessment of how important and relevant the policy/ practice/ process/ service is likely to be for equality groups.**

The policy is likely to be important to those rare cases where an especially urgent situation occurs in summary and solemn legal aid application processes. The evidence suggests that those in contact with the criminal justice system generally have a range of issues that may impact on their ability to make contact or provide evidence to a deadline.

**2.3 Outcome of step 2 and next steps. Complete the table below to inform the next stage of the EqIA process.**

Outcome of Step 2 following initial evidence gathering and relevance to equality characteristics	Yes/ No (Y or N)	Next steps
There is no relevance to equality or our corporate parenting duties	N	Proceed to Step 5: agree with decision makers that no EqIA is required based on current evidence
There is relevance to some or all of the equality groups and/ or our corporate parenting duties	Y	Proceed to Step 3: complete full EqIA
It is unclear if there is relevance to some or all of the equality groups and/ or our corporate parenting duties	N	Proceed to Step 3: complete full EqIA

### **Step 3 - stakeholder involvement and consultation**

This step will help you to address any gaps in evidence identified in Step 2. Speaking to people who will be affected by your policy/ practice/ process/ service can help clarify the impact it will have on different equality groups.

**Remember that sufficient evidence is required for you to show ‘due regard’ to the likely or actual impact of your policy/ practice/ process/ service on equality groups. An inadequate analysis in an assessment may mean failure to meet the general duty.**

The Policy and Development team can help to identify appropriate ways to engage with external groups or to undertake research to fill evidence gaps.

**3.1 Do you/did you have any consultation or involvement planned for this policy/ practice/ process/ service?**

No

**3.2 List all the stakeholder groups that you will talk to about this policy/ practice/ process/ service.**

n/a

**3.3 What did you learn from the consultation/ involvement? Remember to record relevant actions in the assessment action log.**

n/a

## Step 4 - Impact on equality groups and steps to address these

You must consider the three aims of the general duty for each protected characteristic. The following questions will help:

- Is there potential for discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010? How will this be mitigated?
- Is there potential to advance equality of opportunity between people who share a characteristic and those who do not? How can this be achieved?
- Is there potential for developing good relations between people who share a relevant protected characteristic and those who do not? How can this be achieved?

### 4.1 Does the policy/ practice/ process/ service have any impacts (whether intended or unintended, positive or negative) on any of the equality characteristics?

In the tables below, record the impact of the policy/ practice/ process/ service, as it is planned or as it operates, might have on each equality characteristic and describe what changes in policy/ practice/ process/ service or actions will be required to mitigate that impact. Copy any actions across to the project action log.

Age	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impact	Negative impact	No impact	
potential for discrimination			X	The policy is permissive. At this stage of the review we note that the policy is currently as open as possible, balancing the needs of people and supporting them into full legal aid where possible. The impacts of the policy will be monitored.
potential for developing good relations			X	
potential to advance equality of opportunity			X	We will monitor special urgency applications for summary and solemn legal aid in order to inform a future review.

Sex	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Disability	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	The policy is permissive. At this stage of the review we note that the policy is currently as open as possible, balancing the needs of people and supporting them into full legal aid where possible. The impacts of the policy will be monitored.
potential for developing good relations			X	
potential to advance equality of opportunity			X	We will monitor special urgency applications for summary and solemn legal aid in order to inform a future review.

Gender Reassignment	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Race	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			x	The policy is permissive. At this stage of the review we note that the policy is currently as open as possible, balancing the needs of people and supporting them into full legal aid where possible. The impacts of the policy will be monitored. .
potential for developing good relations			X	
potential to advance equality of opportunity			X	We will monitor special urgency applications for summary and solemn legal aid in order to inform a future review.

Religion or Belief	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Sexual Orientation	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Pregnancy & Maternity	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Marriage & Civil Partnership	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			X	
potential for developing good relations			X	
potential to advance equality of opportunity			X	

Care experienced young people	Place 'X' in the relevant box(es)			Describe the changes or actions (if any) you plan to take. E.g. to mitigate any impact, maximise the positive impact, or record your justification to not make changes despite the potential for adverse impact.
	Positive impacts	Negative impacts	No impact	
potential for discrimination			x	The policy is permissive. At this stage of the review we note that the policy is currently as open as possible, balancing the needs of people and supporting them into full legal aid where possible. The impacts of the policy will be monitored.
potential for developing good relations			X	
potential to advance equality of opportunity			X	We will monitor special urgency applications for summary and solemn legal aid in order to inform a future review.

Describe how the assessment so far might affect other areas of this policy/ practice/ process/ service and/ or project timeline?

Examples of the items you should consider here include, but are not limited to:

- **Procurement criteria:** does your assessment indicate you should include equality as part of the technical specification for any current, or future, procurement process?
- **Communication plan/ products:** do you need to communicate with people affected by this policy/ practice/ service/ process in a specific format (e.g. audio, subtitled video, different languages) or do you need help from other organisations to reach people (e.g. representative organisations, the Law Society of Scotland)? This might apply to public information, leaflets, or targeted promotion of a change to particular customer groups.
- **Cost:** do you propose any actions because of this assessment which will incur additional cost?

- **Resources:** do the actions you propose require additional or specialist resource to deliver them?
- **Timing:** will you need to build more time into the project plan to undertake research, consultat or to complete any actions identified in this assessment?

**4.2 Having considered the potential or actual impacts of your policy/ practice/ process/ service on equality groups, you should now record the outcome of this assessment below. Choose from one of the following (mark with an X or delete as appropriate):**

Please select (X)	Implications for the policy/ practice/ process/ service
X	<p><b>No major change</b> Your assessment demonstrates that the policy/ practice/ process/ service is robust. The evidence shows no potential for unlawful discrimination and that you have taken all opportunities to advance equality of opportunity and foster good relations, subject to continuing monitoring and review.</p>
	<p><b>Adjust the policy/ practice/ process/ service</b> You need to take steps to remove any barriers, to better advance equality of to foster good relations. You have set actions to address this and have clear ways of monitoring the impact of the policy/ practice/ process/ service when implemented.</p>
	<p><b>Continue the policy/ practice/ process/ service with adverse impact</b> The policy/ practice/ process/ service will continue despite the potential for adverse impact. You have justified this with this assessment and shown how this decision is compatible with our obligations under the public sector equality duty. When you believe any discrimination can be objectively justified you must record in this assessment what this is and how the decision was reached.</p>
	<p><b>Stop and remove the policy/ practice/ process/ service</b> The policy/ practice/ process/ service will not be implemented due to adverse effects that are not justified and cannot be mitigated.</p>



## **Step 5 - Discuss and review the assessment with decision makers and governance structures**

You **must** discuss the findings of this assessment with senior decision makers during the lifetime of the project/ review and before you finalise the assessment. Relevant groups include, but are not limited to, a Project Board, Executive Team or Board members. EqlA should be on every project board agenda therefore only note dates where key decisions have been made (e.g. draft EqlA sign off, discussion about consultation response).

- 5.1 Record details of the groups you report to about this policy/ practice/ process/ service and impact assessment.**  
Include the date you presented progress to each group and an extract from the minutes to reflect the discussion.

Executive Team: 28 May 2020

Executive Team considered that SLAB could address the equalities impacts of this settled policy at this stage.

Executive Team: 15 October 2020

EqlA approved.

## Step 6 - Post-implementation actions and monitoring impact

There may be further actions or changes planned after the policy/ practice/ process/ service is implemented and this assessment is signed off. It is important to continue to monitor the impact of your policy/ practice/ process/ service on equality groups to ensure that your actual or likely impacts are those you recorded. This will also highlight any unforeseen impacts.

**6.1 Record any ongoing actions below.** This can be copied from the project action log or elsewhere in this assessment and should include timescales and person/ team responsible. If there are no outstanding items please make this clear.

Record, and in due time review the records of applications received for summary and solemn criminal legal aid

**6.2 Note here how you intend to monitor the impact of this policy/ practice/ process/ service on equality groups.** In the table below you should:

- list the relevant measures,
- Identify who or which team is responsible for implementing or monitoring any changes
- Where the measure will be reported to ensure any issues can be acted on as appropriate.

Measure	Lead department/ individual	Reporting (where/ frequency)
ICQU will review any refusals at least annually.	Manager of Analytics	Report provided to Director of Operations

**6.3 EqlA review date.** This EqlA should be reviewed as part of the wider post-implementation review of the policy/ practice/ process/ service. The date should not exceed 3 years from the policy/ practice/ process/ service implementation date. Decisions under this policy are rare and we assess the risk associated with this policy area as low and accordingly have assigned a longer than usual review date.



## Step 7 - Assessment sign off

All equality impact assessments must be signed off by the Executive Team, even where an EqIA is not required. Note the relevant meeting date here:

15/10/2020

**Approved:** the Chief Executive's Office will pass the assessment to Communications for publication on our website. All assessments must be published on SLAB's website as early as possible after the decision is made to implement the policy/ practice/ process/ service.

**Not approved:** you must review this assessment in line with the Executive Team's comments.