

FULL EQUALITY IMPACT ASSESSMENT

Summary Sheet	
Title of policy, project or function: Criminal Justice (Scotland) Act 2016	Is the policy, project or function new (proposed) or already exists? New processes and fees being proposed for the implementation of Part 1 of the Criminal Justice (Scotland) Act 2016.
Has a screening exercise been carried out before this full assessment? No, it is our view that the range and potential impacts of the subject were sufficient to move directly to undertaking a full assessment.	
Key findings from the assessment: The provision of 24/7 cover by duty solicitors may present some difficulties for some solicitors as a result of gender, disability, pregnancy/maternity or age. However, these differences are not associated with the policy itself but are features of the populations concerned.	
Actions as a result of the assessment: These can be reduced or eliminated by making duty allocations to firms, not penalising duty solicitors who may be affected by these issues, and retaining separate Police Station and Court duty plans.	
Date impact assessment published: 08/10/2018	

Lead official(s) responsible for assessment: Kingsley Thomas Department: Criminal Legal Assistance	Name of sponsor/ Director who has signed off that the policy/ function has been sufficiently assessed against the needs of the equality duty: Colin Lancaster, Chief Executive Date of sign off: Project Board - 5/06/17 Executive Team - 30/08/18
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Step 1. Examine the information available to assess likely impact of the function/ policy on different equality groups

Describe the policy, project or function. What does it aim to do? What and who will it affect?

You can update or use information from your screening assessment if one was completed.

Our proposals are to ensure that the appropriate changes to criminal legal assistance are in place in time for the full implementation of the Criminal Justice (Scotland) Act. These proposals concern Part 1 of the Act covering new police station procedures and rights, which is now expected to be implemented in January 2018.

Section 32 of the new Act confirms the right for a solicitor to be present at a police interview, very similar to the current right under section 15A of the Criminal Procedure Act. Section 44 gives the right for a consultation with a solicitor for anyone at a police station, and not only those being interviewed.

The Act also brings new provisions for investigative liberation where a suspect can be released then be required to return to the police station to complete the questioning at a later date. New bail conditions can be attached in undertaking cases, and suspects/accused persons can also be questioned after they have been charged. In each of these situations, bail conditions can be attached, and the client has the opportunity to apply to the court to challenge these conditions.

A new form of ABWOR will be needed to cover the court challenges to bail conditions or post charge questioning prior to the service of the complaint. Where these court procedures take place after legal aid has already been granted, the summary and solemn legal aid arrangements will need to accommodate these new procedures as well.

The latest proposals for the new process and fees associated with police station work have the following features:

- A single fixed fee of £30 for legal advice given on Section 44 consultations by phone or in person, with a higher fee (£75) for an attendance with a vulnerable person
- A single fixed fee of £30 for legal advice given on Section 32 interviews by phone, with higher block fees for attendances up to 2 hours (£115), between 2 and 4 hours (£200), with attendances over 4 hours paid £200 plus £50 per hour or part of hour thereafter.
- Mileage and up to 2 hours travelling time paid in addition to the new block fees.
- Extension of the 33% premium for advice given to between 19.00 and 7.00, all day weekends and on public holidays.
- Simplified application and payment process for solicitors

- Solicitor Contact Line to focus on clients without a solicitor and the duty scheme, with police contacting named solicitors direct
- New legal aid arrangements under ABWOR for cases involving challenges to post charge questioning, and reviews of bail conditions in Investigative Liberation and Undertaking cases.

What is known about each of the equality groups who might use or be affected by this policy? For evidence see [Scottish Government equality finder](#) (contains information on equality groups and the justice system), the [SLAB shared drive](#) - information on the different groups (contains other information on equality groups) and [SLAB's research webpage](#) for information on the demographics of applicants of legal aid and solicitors providing work under legal aid.

You need to look at the evidence you have for each group - Race, Sex (gender), Gender Reassignment, Disability, Sexual Orientation, Pregnancy & Maternity, Age, Religion and Belief, and Marriage & Civil Partnership. Think about the people likely to be affected by the policy. Does the policy relate to functions that have been identified as being important to particular protected groups? Does it relate to an area where there are already known inequalities? Good evidence is required for you to show 'due regard'. An inadequate analysis in an assessment may mean failure to meet the general duty.

The main group of people likely to be affected by the policy are solicitors who participate in the Police Station duty plans. There are currently 836 individual solicitors from 345 firms who participate in the 38 separate police station duty plans, although all of the 1,350 or so solicitors who are on the Criminal Legal Assistance Register would be eligible to apply for inclusion in these plans.

Solicitors

The Law Society of Scotland's profile of the profession 2013 showed the following (the LSS published some updated figures on their web site on 22/12/15 but the 2013 profile remains the most recent full profile at the time of preparing this EQIA):

- **RACE** - 86% white Scottish
 10% "other" white groups
 2% other ethnic groups
 Mostly in line with 2011 census findings but those from Asian background may be slightly under-represented (1% sols, 3% census)
 Profile static since 2006

- **SEX** - 50% male/50% female (an update issued by LSS ON 22/12/15 reports that 51% are now female)
Slightly lower proportion of women in profession compared to 2011 census (50% of sols are women while census shows 52% of population are women)
- **GENDER RE-ASSIGNMENT** - Less than 0.5% transgender
- **SEXUAL ORIENTATION** - 94% heterosexual
3% LGBT
5% male respondents gay
1% female respondents lesbian
Stonewall estimates 5% to 7% of Scots are LGBT while 3% of profession LGBT
- **DISABILITY** - 4% disabled (38% long-term illness, 22% sensory impairment, 20% physical disability)
Much lower than census figure (20%)
27% of those with disabilities required an adjustment (software and general equipment, flexibility in hours)
- **RELIGION OR BELIEF** - 46% affiliated to no religion
30% Church of Scotland
17% Roman Catholic/other Christian
4% other (Muslim, Buddhist, Sikh, Jewish, Hindu)
1% civil partnership
Reduction in those from all Christian faiths, increase in no faith and static for non-Christian faiths
- **AGE** - 79% aged between 25 and 55
More females in 25 to 35 age group (42% compared to 23% male)
Males more common over 56 (28% compared to 9% of females)
Decrease in % of profession under 25 and increase in those 56 to 65 and 66 plus.

Update from LSS dated 22/12/15 says 64% of sols under 40 are female compared to 40% for over 40s so trend towards a more female profession likely to continue

- **MARRIAGE AND CIVIL PARTNERSHIP** - 63% married
 30% never married/never registered civil partnership
 4% divorced
 Higher proportion than census of married people and lower for widowed, divorced and single.
- **PREGNANCY AND MATERNITY**- No information in survey except that of those who experienced discrimination (15% of respondents) 19.6% experienced it in relation to pregnancy and maternity

Are there any gaps in understanding of your policy/ function in relation to equality groups?

You should think about opportunities to fill any gaps in evidence through your consultation plans for the policy/ function at Step3.

No identified gaps

Step2. Impacts on priority characteristics and suggested steps to address these.

Does the policy/ function have any impacts (whether intended or unintended, positive or negative) on any of the equality groups? Describe for each group the ways in which the policy, as it is planned or as it operates, might have negative and/ or positive impacts. You should answer these three questions for each group:

1) is there potential for discrimination; 2) is there potential for developing good relations; 3) is there potential to advance equality of opportunity?

Race

No

Please explain your answer:

1. No
2. No
3. No

Sex (gender)	<p>Yes Please explain your answer:</p> <ol style="list-style-type: none"> 1. The provision of 24/7 cover by duty solicitors may present some difficulties for child care and other caring responsibilities which could be weighted by gender. However, these gender differences are not associated with the policy itself but are features of the populations concerned. 2. No 3. No
Gender reassignment	<p>Yes Please explain your answer:</p> <ol style="list-style-type: none"> 1. No 2. No 3. No
Disability	<p>Yes Please explain your answer:</p> <ol style="list-style-type: none"> 1. The provision of 24/7 cover by duty solicitors may present some difficulties for solicitors with disabilities. 2. No 3. No
Pregnancy & maternity	<p>Yes Please explain your answer:</p> <ol style="list-style-type: none"> 1. The provision of 24/7 cover by duty solicitors may present some difficulties for women who are pregnant. 2. No 3. No

Religion and belief	<p>No</p> <p>Please explain your answer:</p> <ol style="list-style-type: none"> 1. No 2. No 3. No
Age	<p>Yes</p> <p>Please explain your answer:</p> <ol style="list-style-type: none"> 1. The provision of 24/7 cover by duty solicitors may present some difficulties for older solicitors. However, these issues are not associated with the policy itself but are features of the populations concerned. 2. No 3. No
Marriage and civil partnership	<p>No</p> <p>Please explain your answer:</p> <ol style="list-style-type: none"> 1. No 2. No 3. No
Sexual Orientation	<p>No</p> <p>Please explain your answer:</p> <ol style="list-style-type: none"> 1. No 2. No 3. No

Where there is potential for indirect/ direct discrimination, what can you do to reduce or eliminate this risk?

- Duty allocations will be made to firms and not individual solicitors to reduce the risk associated with the difficulties of providing 24/7 duty cover as a result of caring responsibilities, disabilities, pregnancy or other health reasons.
- We will also continue with our existing policy of not penalising a duty solicitor who is unable to provide advice or an attendance as a result of one of these issues.
- Separate duty plans for Police Stations and the Courts would give individual solicitors the opportunity to choose which plans to participate in.

Do you need to make changes to your policy or function on the basis of this assessment?

No

What is the likely impact of these changes on the plans for the policy/ function? (resources, cost, timings etc.)

None

Step 3. Consultation and stakeholder engagement

Do you/ did you have any consultation/ involvement planned for the policy/ function?

Yes

Provisions for Police Station and Duty responsibilities were included in the new draft Code of Practice for Criminal Legal Assistance which was consulted on from 6 February to 18 April. Further engagement on the provisions also took place over the summer of 2017.

Full discussions on the proposals also took place with the Law Society of Scotland prior to the regulation changes being laid in Parliament.

If 'no' please continue to step 4.

What do you hope to achieve from your consultation/ involvement?

Agreement on the new processes and fees.

List the main stakeholder agencies that you intend to or have already discussed this policy with.

Give details of any equality groups represented.

Law Society of Scotland

Other solicitors' associations

Other Criminal Justice agencies

Step 4. Discuss and review the assessment with decision makers and governance structures. You **must** discuss the results with senior decision makers before you finalise the assessment.

Give details of the governance structures you will report to on this assessment, or have already reported to - Project Board/ Executive Team/ Board Members

The project is being considered by a project board made up of relevant Directors and Senior Managers from SLAB chaired by the SLAB Chief Executive. It will make recommendations and provide advice to SG who will make final decisions on the fees and processes.

Have you presented the results of the assessment to the groups you have listed above? Please include the date you presented to each group listed.

You must do this to get sign off and allow publication of the assessment.

The proposals were discussed with the profession at a series of 8 regional engagement events round the country in the summer of 2017. The main feedback received at these events was:

- Mixed views on the fee levels, with some areas saying they were insufficient and others indicating that had no difficulty with the fees proposed.
- Overall approval and agreement of a more simplified A&A intimation and payment system.
- Mixed views in some areas on the Police contacting named solicitors direct in the police stations as opposed to the SCL, with some areas having no strong views either way.
- Mixed views in some areas on combined Police Station and Court duty plans, with some areas having no strong views either way.

Will there be any changes made to the plans for the policy/ function or actions as a result of this assessment?

Yes

If yes, give details of likely changes and actions arising from this assessment

Confirmation that single duty plans would continue as this would assist solicitors in participating in the duty plans.

It was agreed that the Police will contact named solicitors direct under the new arrangements, allowing the SCL to concentrate on cases where clients do not have a solicitor, or where their solicitor is unable to advise them.

Step 5. Publication and review of EQIA

All assessments must be published as early as possible after the decision is made to implement a new policy or function

Date of publication:

[Click here to enter a date.](#)

Review date:

The delivery of police station advice is being monitored by a new project Board, and any further changes will be subject to separate EQIAs.