



EQUALITY & HUMAN RIGHTS IMPACT ASSESSMENT (EHRIA)

EHRIA PUBLICATION

Date: 23rd June 2021

This is a summary of the key decisions/actions taken in the recent EHRIA, and has been separated from the full EHRIA document for publication on SCRA's external website in compliance with statutory requirements.

The Scottish Children's Reporter Administration (SCRA) are pleased to publish the outcome of this Equalities and Human Rights Impact Assessment on:

Implementation of Participation Rights etc. in the Children (Scotland) Act 2020 and amended Children's Hearings Procedural Rules

This is a new practice as a result of new legislation which has meant we have had to develop new Practice Direction and Practice Training on sections 14, 25 and 26 of the Children (Scotland) Act 2020 and the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021.

The main element of the new legislation is the creation of participation criteria which, if met, give an individual certain rights in relation to participating in a children's hearing. The most significant category of person who may meet the participation criteria is siblings of referred children. Other elements in the legislation are an extended duty on the reporter to facilitate remote attendance in certain circumstances, power to a PHP to restrict physical attendance at a hearing if certain criteria are met, and extended power for a hearing to exclude persons.

The new legislation covers a range of issues and Practice Direction will be produced as a stand-alone document for the short term but will also be incorporated into various existing Practice Directions.

The legislation will come into force on 26th July 2021.

An internal working group made up of Practice Team, 3 Senior Practitioners and an LRM is supporting development of the Practice Direction and training materials. Consultation has taken place with CHS. The Participation Group will be consulted in relation to any new or amended notifications

or other correspondence. Significant account has been taken of the policy intent behind the new legislation.

This change will have a negative impact on the Public Sector Equality Duties because¹:

There might perhaps be thought to be a negative impact in that a young sibling/individual child who might be capable of forming a view about their contact with the child will not be viewed by the reporter as meeting that element of the participation criteria. However, such an individual would not be capable of exercising the participation rights (to understand the notification, to provide a written report, to attend and participate in the hearing, to instruct a representative to attend with them) and so there is no actual discrimination.

The views of young siblings/individuals who would otherwise meet the participation criteria can and should in any event be provided to the hearing through other routes.

The mitigations we have developed as a result of the equalities impact are:

The views of young siblings/individuals who would otherwise meet the participation criteria can and should be provided to the hearing through other routes.

We are justified in continuing with this approach despite the equalities impact because:

Even if there is considered to be an equalities impact, there is no practical impact and the views of a young sibling/individual should be provided to the hearing through other routes than direct participation by the child/individual.

Our approach avoids the absurdity of a young sibling/individual receiving more information about the hearing than the referred child does (because we do not require to send communications to a referred child who would not be able to understand them).

There is no assessed impact on the Fairer Scotland Duty or on Island / remote communities.

It will uphold human rights articles.



This change will uphold human rights because: The legislation puts the involvement of certain individuals with an interest in maintaining their relationship with a child referred to a hearing on a statutory basis and extends their degree of involvement beyond what was consistently possible before.

¹ Unless this can be effectively mitigated or justified this impact will mean the approach CANNOT CONTINUE.

It will uphold UNCRC articles.

This change will uphold UNCRC articles because: The legislation promotes consideration of sibling relationships and sibling type-relationships where the child does not reside with the individual and provides statutory rights of participation for certain siblings and others.

If you have marked that there is a SHANRRI IMPACT (either negative or positive) please detail it here:

Greater focus on consideration of child's contact with siblings and others, including child's views and direct participation by siblings and others should have a positive impact on being respected and included.

Recommended course of action:
Select relevant outcome and check the relevant box:

Outcome 2: Proceed with adjustments to remove or mitigate any identified potential for discrimination and/or interference in relation to our equality and/or human rights respectively

SCRA Equality Review Group.