

Instruments under the Police Act 1997 and Rehabilitation of Offenders Act 1974 - Homes for Ukraine Sponsorship Scheme - Children's Rights and Wellbeing Impact Assessment

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Contents

Introduction	3
1. Which articles of the UNCRC does this policy/measure impact on?	4
2. What impact will your policy/measure have on children’s rights?	5
3. Will there be different impacts on different groups of children and young people?	5
4. If a negative impact is assessed for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?.....	6
5. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?	6
6. How have you consulted with relevant stakeholders, including involving children and young people in the development of the policy/measure?.....	7
7. What evidence have you used to inform your assessment?.....	7
8. How will the impact of the policy/measure be monitored?	7
9. How will you communicate to children and young people the impact of the policy/measure on their rights?	7
10. Sign & Date.....	8
Annex 1 – UNCRC Article Clusters.....	9
Annex 2 – General Comments.....	12
Annex 3 – Child-friendly information	14

Introduction

As set out in Part 1 of the Children and Young People (Scotland) Act 2014, Scottish Ministers must keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and if they consider it appropriate to do so, take any of the steps identified by that consideration. Undertaking a CRWIA helps Ministers to fulfil this duty.

There are two key considerations when undertaking a CRWIA:

Participation: The United Nations Convention on the Right of the Child (UNCRC) sets out that children have the right to participate in decisions which affect them. When assessing the impacts of the policy/measure, you are recommended to consult with children and young people. You can do this directly, through organisations that represent children and young people or through using existing evidence on the views and experiences of children where relevant. Participation of children and young people should be meaningful and accessible.

Evidence: You are recommended to gather evidence when assessing the impact of the policy/measure on children's rights and also for measuring and evaluating the policy/measure. If you identify any gaps in the evidence base, you can discuss how you will address these with analytical colleagues.

These instruments have been made in response to the "Homes for Ukraine" scheme ("the scheme") announced by the UK Government and the Scottish Government's intention to act as a "super sponsor" for those fleeing the war in Ukraine. The instruments make amendments to

- the Police Act (Criminal Records) (Scotland) Regulations 2010 ("the 2010 Regulations") to ensure the statutory framework for state disclosure allows for higher level disclosures checks to be carried out on sponsors (volunteers providing accommodation in their homes) and those in the sponsoring household aged over 16 years, to ensure those fleeing the war in Ukraine are placed in safe homes.
- the Rehabilitation of Offenders Act 1974 (Exclusions And Exceptions) (Scotland) Order 2013 so that the rules on self-disclosure and state disclosure of convictions are aligned.

The Rehabilitation of Offenders Act 1974 (Exclusions And Exceptions) (Scotland) Amendment Order 2022 and the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 made amendments so that the appropriate level of disclosure checks could be made in relation to individuals offering to provide accommodation within premises they also reside in (and those over the age of 16 years residing within the same premises) to displaced Ukrainians under the scheme.

Subsequently, the Rehabilitation of Offenders Act 1974 (Exclusions And Exceptions) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Order 2022 and the Police Act 1997 (Criminal Records) (Homes for Ukraine Sponsorship Scheme)

(Scotland) Amendment Regulations 2022 have made substituting amendments to enable enhanced disclosure checks to be carried out when any individual, whose suitability to provide accommodation to a person who has permission to enter into or to stay in the UK under the Homes for Ukraine scheme (regardless of whether that accommodation is restricted to premises in which the individual also resides or not), is being assessed. The substituting instruments do not make any changes to the position for 16 and 17 year olds. Where the individual offering the accommodation is offering a room in their own home, any other individual over the age of 16 years also residing in the household with that individual, will still also be subject to the same level of check.

There is a single policy behind these instruments so a combined CRWIA has been completed.

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

[Article 1](#) – the definition of a child is engaged in relation to disclosure checks sought in respect of 16 and 17 year olds living in hosting households and in respect of children being placed (along with adult family members) in hosting households.

[Article 3](#) - best interest to be a primary consideration

[Article 3](#) - State's obligations to ensure necessary care and protection

[Article 3](#) - standards for institutions services and facilities

[Article 12](#) - respect for the views of the child

[Article 16](#) - protection of privacy

[Article 19](#) - protection from all forms of violence – the policy supports the safe and appropriate placement of displaced Ukrainian families in private unregulated accommodation

Children in situations of emergency

[Article 22](#) – refugee children - the policy contributes to the protection of children who are accompanied by parents or guardians and who are matched to accommodation under the scheme. Arrangements to support the safeguarding of unaccompanied children when placed in care arrangements are covered under other provisions of existing legislation (the Protection of Vulnerable Groups (Scotland) Act 2007 and the 2010 Regulations).

Children in situations of exploitation

[Article 33](#) drug abuse – the policy contributes to the appropriate and safe placement of displaced Ukrainian individuals and their families in private unregulated accommodation

[Article 34](#) sexual exploitation – the policy contributes to the appropriate and safe placement of displaced Ukrainian individuals and their families in private unregulated accommodation

[Article 35](#) sale, trafficking and abduction – the policy contributes to the supporting appropriate and safe placement of displaced Ukrainian individuals and their families in private unregulated accommodation

[Article 36](#) other forms of exploitation – the policy contributes to the appropriate and safe placement of displaced Ukrainian individuals and their families in private accommodation

2. What impact will your policy/measure have on children's rights?

The policy engages the right to privacy of some 16 and 17 year old children who are living in households where an adult is volunteering to provide accommodation in their own home to displaced Ukrainians. The Scottish Ministers consider the impact of this policy on children to be neutral. The scope of the change is limited. Similar policy already applies under the existing disclosure framework in relation to individuals, including 16 and 17 year old children, living in the same household as someone being assessed on suitability to adopt a child, to be a foster carer, to be a host parent or to be a childminder.

Safeguards in relation to the use of criminal history information have been established for over 10 years. This is expanded under question 4.

The policy has a positive impact in relation to addressing public protection concerns, and contributes to preventing the placement of displaced Ukrainians/families, especially those with children, in unsuitable private homes.

3. Will there be different impacts on different groups of children and young people?

The policy will directly impact on 16 and 17 year old children who are living in households where an adult is volunteering to provide accommodation in their own home to displaced Ukrainians and their families.

The policy to carry out enhanced disclosures with suitability check on prospective sponsors, and any individuals aged over 16 who are residing in the same household, recognises that the Homes for Ukraine scheme is likely to predominantly involve women and children who are fleeing the conflict in Ukraine. The safeguarding needs of those individuals are considered to be paramount in order to ensure they have an adequate level of protection in these circumstances. Whilst recognising the vast majority of people volunteering to accommodate displaced Ukrainians and their families will present no risk of harm to them. However, the Scottish Ministers are aware from previous similar schemes that people may seek to exploit vulnerabilities in the system and seek opportunities to cause harm. The Scottish Ministers consider that the safeguarding risks posed in these specific circumstances could be very high. This policy will support the scheme by enabling those making placement decisions to be able to ask relevant questions of hosts, and those over the age of 16 residing in hosting households, and seek verification of that information to contribute to preventing displaced Ukrainians and their families being placed with individuals with a history of harmful behaviour.

Children aged 16 and 17 years will be asked for their consent before an enhanced disclosure application can be sought.

4. If a negative impact is assessed for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?

The policy will directly impact on 16 and 17 year old children who are living in households where an adult is volunteering to provide accommodation in their own home to displaced Ukrainians and their families. The Scottish Ministers consider that this level of vetting is necessary to minimising any risk of placing displaced Ukrainians in accommodation with an unsuitable individual while still allowing for the scheme to achieve its aims. This has been assessed against the general approach to treat children differently from adults and protect them from unnecessary stigma related to disclosure of criminal information. In these circumstances, the Scottish Ministers consider that the safeguarding risks posed could be very high. This policy will support the scheme by enabling those making placement decisions to be able to ask relevant questions of hosts, and those over the age of 16 residing in hosting households, and seek verification of that information to contribute to preventing displaced Ukrainians and their families being accommodated with individuals with a history of harmful behaviour.

Similar policy already applies under the existing disclosure framework in relation to individuals, including 16 and 17 year old children, living in the same household as someone being assessed on suitability to adopt a child, to be a foster carer, to be a host parent or to be a childminder.

The state disclosure system in Scotland is well established. An enhanced disclosure, even in these circumstances, may still only be made by persons or organisations registered with Disclosure Scotland under section 120 of the Police Act 1997 (“the 1997 Act”), and can only be made with the consent of the 16 or 17 year old child.

There are safeguards on the handling of disclosure information by registered bodies (countersigning organisations). Responsibilities in relation to the use of disclosure information by registered bodies are set out in the Code of Practice, issued under section 122 of the 1997 Act. Registered persons and others in receipt of disclosure information must not disclose information in contravention of section 124 of the 1997 Act. Unauthorised disclosure is an offence.

If organisations, registered with Disclosure Scotland to countersign disclosure applications, need to apply for new countersignatories due to potential resourcing impacts caused by the Homes for Ukraine scheme, the existing registration process will still be followed to ensure they understand their responsibilities in relation to the disclosure of criminal history information.

5. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?

This policy will have a marginal impact. The policy makes an extension to circumstances where questions about certain spent conviction history can be asked

and an enhanced disclosure requested. 16 and 17 year olds in similar circumstances, such as where an adult in their household is registering as a childminder, are already eligible. As set out above, there are existing protections on what can be disclosed and the use of this information.

6. How have you consulted with relevant stakeholders, including involving children and young people in the development of the policy/measure?

In ordinary circumstances, Disclosure Scotland would consult with stakeholders to inform its policy. However, recognising the vulnerable status of the displaced Ukrainians and their families in these circumstances, the policy has had to be developed at speed. No consultation has been carried out due to the pace at which a legislative response was needed in order to respond to the circumstances.

It is intended that consultation and review will form part of the scheme, including in relation to this policy, as it is rolled out.

7. What evidence have you used to inform your assessment?

Data on the number of households with children aged over 16 years who have registered to volunteer accommodation within their homes under the Homes for Ukraine scheme is not available.

Disclosure Scotland are able to track applications made under the scheme and the number of applications from 16 and 17 year olds can be extracted using date of birth. As of 11 May 2022, 1,091 disclosures were made under this scheme. 29 were for people who were 16 or 17 year olds and none of these certificates included criminal history information.

Data on those applying to be hosted under the Homes for Ukraine scheme is not currently available. Information from the United Nations High Commissioner for Refugees (UNHCR) is that over 3.5 million displaced Ukrainians are seeking refuge in neighbouring countries. They estimate 90% of those who have fled Ukraine are women and children¹.

8. How will the impact of the policy/measure be monitored?

Disclosure Scotland will monitor applications and feedback on applications made in relation to the scheme (bespoke internal arrangements have been made to allow for monitoring). More widely, Disclosure Scotland will work with local authorities and other partners to continue to assess how the scheme is operating in relation to enhanced disclosure checks.

9. How will you communicate to children and young people the impact of the policy/measure on their rights?

¹ [Document - UKRAINE SITUATION FLASH UPDATE #4 \(unhcr.org\)](#)

Disclosure Scotland provides simplified explanations of the normal enhanced disclosure process on mygov.scot². Specific guidance on applying for a disclosure as part of the Ukraine sponsorship scheme is available³. Our guidance is written at a reading level of 9 years old. Disclosure Scotland's helpline is also available to help people who have not previously completed an enhanced disclosure and who may require additional support.

Disclosure Scotland's privacy statement⁴ is written to be easily understood by customers. The data protection team is reviewing whether a specific child-friendly statement is required. Applicants are directed to it as part of the application process. A more in depth full privacy policy is also available via mygov.scot.

Simplified information from this CRWIA is included at [Annex 3](#).

10. Sign & Date

Policy Lead Signature & Date of Sign Off: Kevin Lee, 12 May 2022

Deputy Director Signature & Date of Sign Off: Gerard Hart, 12 May 2022

² [Enhanced disclosure - mygov.scot](https://mygov.scot)

³ [Criminal record checks for hosts of displaced Ukrainian people - mygov.scot](#)

⁴ [Disclosure Scotland's privacy statement - mygov.scot](#)

Annex 1 – UNCRC Article Clusters

[CRC Clusters \(unicef-irc.org\)](https://www.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 (see also: [VI Basic health and welfare](#))

[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

[Article 19](#) protection from all forms of violence

[Article 39](#) rehabilitation and reintegration of victims of violence (see also: [VIII - Special protection measures](#))

VI Basic health and welfare

[Article 6](#) right to life, survival and development (see also: [III - General principles](#))

[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 (see also: [V Family environment and alternative care](#))

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 (see also: [V Family environment and alternative care](#))

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](#)

[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 – General Comments

General Comments are non-legally binding interpretive aids issued by the UN Committee on the Rights of the Child to provide State parties with assistance regarding the interpretation of an article or issue relating to the UNCRC, and what actions governments should take to ensure its implementation. New General Comments appear at irregular intervals.

[Treaty bodies Search \(ohchr.org\)](#)

1. [The aims of education \(2001\)](#)
2. [The role of independent National Human Rights Institutions in the protection and promotion of the rights of the child \(2002\)](#)
3. [HIV/AIDS and the rights of children \(2003\)](#)
4. [Adolescent health and development in the context of the Convention on the Rights of the Child \(2003\)](#)
5. [General measures of implementation on the Convention on the Rights of the Child \(2003\)](#)
6. [Treatment of unaccompanied and separated children outside their country of origin \(2005\)](#)
7. [Implementing child rights in early childhood \(2005\)](#)
8. [The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment \(2006\)](#)
9. [The rights of children with disabilities \(2006\)](#)
10. [Children's rights in juvenile justice \(2007\)](#)
11. [Indigenous children and their rights under the Convention \(2009\)](#)
12. [The right of the child to be heard \(2009\)](#)
13. [The right of the child to freedom from all forms of violence \(2011\)](#)
14. [On the right of the child to have his or her best interests taken as a primary consideration \(2013\)](#)
15. [On the right of the child to enjoyment of the highest attainable standard of health \(2013\)](#)
16. [State obligations regarding the impact of the business sector on children's rights \(2013\)](#)
17. [On the right of the child to rest, leisure, play, recreational activities, cultural life and the arts \(2013\)](#)
18. [On harmful practices \(Joint General Comment with the Committee on the Elimination of Discrimination against Women\) \(2019\)](#)

19. [Public budgeting for the realisation of children's rights \(2016\)](#)
20. [Implementation of the rights of the child during adolescence \(2016\)](#)
21. [Children in street situations \(2017\)](#)
22. General principles regarding the human rights of children in the context of international migration ([Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families \(2017\)](#))
23. State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return ([Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families \(2017\)](#))
24. [General comment No. 24 \(2019\)](#) on children's rights in the child justice system
25. [General comment 25 \(2021\)](#) Children's Rights in relation to the digital environment.

Annex 3 – Child-friendly information

Introduction

Any new laws proposed need to be compliant with children's rights. These are set out in the United Nations Convention on the Rights of the Child (UNCRC). The Scottish Government also checks whether we can improve rights in new laws or ideas.

Regulations and orders are types of law that edit existing laws or make them clearer. An 'enhanced disclosure' is a type of criminal record check. 'Suitability check' means the disclosure will say if the person is banned from working with children or vulnerable adults.

These regulations and Order introduce a new situation where employers can ask 16 and 17 year olds for an enhanced disclosure with suitability checks.

What impact will your policy/measure have on children's rights?

There will be a new situation where someone aged 16 and over can be asked to provide an enhanced disclosure with suitability check. This will happen when they live in the same house as an adult who has offered a room in their home to Ukrainians who have had to leave their country due to the war. We use the term "displaced Ukrainians" to refer to this group of people.

An enhanced disclosure is needed because some people have convictions or other behaviour that means it may not be safe to house people fleeing the war, including children, with them. The Scottish Government thought about the balance between the right to privacy and preventing harm. They also thought about the fact that there are already similar situations where an organisation can ask a 16 or 17 year old for an enhanced disclosure. One example is if an adult in the same house is applying to become a childminder. A 16 or 17 year old might be asked to apply for an enhanced disclosure to help make sure that the house is safe for another child to be in.

Will there be different impacts on different groups of children and young people?

Two groups of children are impacted by this change:

1. 16 and 17 year olds living with an adult offering a room to displaced Ukrainians.

2. Ukrainian children being placed with their parent or guardian in a Scottish home.

If a negative impact is assessed for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?

An enhanced disclosure is needed because some people have convictions or other behaviour that means it may not be safe to house people fleeing the war, including children, with them.

Disclosure Scotland manage the “disclosure system” in Scotland. They provide disclosure certificates in situations allowed by the law. They only provide enhanced disclosures to organisations that have registered with them. This means they can make sure an organisation is allowed to ask for certain types of disclosure certificate before they provide it. Disclosure Scotland only provide a certificate if the person it is about also asks for it. The organisation cannot get an enhanced disclosure without the person's consent.

The law also says that organisations have to protect the information in an enhanced disclosure. They can only use it for the reason they asked for it. They cannot share it with people who aren't allowed by law to see it. They would be breaking the law if they did.

How will the impact of the policy/measure be monitored?

Disclosure Scotland will monitor applications and feedback on applications made by 16 and 17 year olds applying under these regulations and Order.

How will you communicate to children and young people the impact of the policy/measure on their rights?

Disclosure Scotland's website has a simple explanation of [enhanced disclosures](#). There is also guidance on [applying for a disclosure as part of the Homes for Ukraine Sponsorship Scheme](#). Disclosure Scotland's guidance is written at a reading level of 9 years old. Disclosure Scotland's phone helpline is also available to help people who might need additional support.



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