

Changes to the Composition of Children's Hearings and Pre-Hearing Panels

Equality Impact Assessment - Results

September 2022

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Title of Policy

Changes to the Composition of Children's Hearings and Pre-Hearing Panels

Summary of Aims and Desired Outcomes

The aim of the policy is to introduce operational flexibility to a currently absolute requirement that children's hearings must include male and female members of the Children's Panel.

Section 6(3)(a) of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act") currently prescribes that children's hearings must include male and female members of the Children's Panel. Part 2, Rule 3(2) of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ("the Rules") contains the same provision in relation to Pre-Hearing Panels.

Due to the impact of the Covid 19 pandemic on the retention and recruitment of volunteers, particularly male volunteers, Children's Hearings Scotland (CHS) believe there is a significant risk that the National Convener will be unable to convene hearings which meet this legal requirement.

Emergency legislation enabled temporary suspension of this requirement during the Covid 19 pandemic, and was monitored in accordance with the requirements of that legislation.

Section 42 of the Coronavirus (Recovery and Reform)(Scotland) Act 2022 inserts the words "so far as practicable" into the requirement in relation to hearings as outlined in the 2011 Act, and this will come into force on 1 November 2022.

An SSI to delete Rule 3(2) from the Rules to ensure clarity and consistency of approach has been drafted, and it is intended that this will also come into force on 1 November 2022 to align with implementation of the Bill.

Directorate: Division: Team

DCAF: CRPJ: YJCH

Executive Summary

The public sector equality duty requires the Scottish Government to assess the impact of applying a proposed new or revised policy or practice. Equality legislation covers the protected characteristics of: age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, sex, sexual orientation and religion and belief. The Equality Act 2010 harmonised existing equality legislation and includes a public sector duty ('the Duty') which requires public authorities to pay due regard to the need to:

- Eliminate discrimination, harassment, victimisation or any other prohibited conduct;

- Advance equality of opportunity; and
- Foster good relations between different groups - by tackling prejudice and promoting understanding

This Equality Impact Assessment (EQIA) has considered the potential impacts of a proposed amendment to the Children's Hearings (Scotland) Act 2011 on each of the protected characteristics. As the impact of this amendment is anticipated to be limited to only those circumstances where it is not operationally viable to convene a mixed gender panel, the EQIA has not identified any adverse impact on any protected groups.

Background

At the outset of the COVID-19 pandemic, the Coronavirus (Scotland) Act 2020 emergency legislation relaxed certain requirements in the 2011 Act, including in relation to section 6(3);

“(3)The National Convener must ensure that the children's hearing—
(a)includes both male and female members of the Children's Panel, and
(b)so far as practicable, consists only of members of the Children's Panel who live or work in the area of the local authority which is the relevant local authority for the child to whom the hearing relates.”

The relaxation was to insert “so far as practicable” in sub-section (3)(a). This meant where hearings with both male and female members could not practicably be arranged, because of the pandemic restricting volunteers' availability, sometimes at very short notice, the hearing could still be lawfully convened and make decisions in relation to children to support them and keep them safe. This allowed hearings and pre-hearing panels which otherwise could not have been lawfully convened to go ahead, taking legal measures to keep children safe and protect their rights.

The flexibilities of the emergency legislation were expired on 30 September 2021. At that time, the temporary measures were considered no longer appropriate or proportionate. The decision to expire children's hearings provisions, rather than to extend or suspend them, was taken following discussion with core system partners including the Children's Hearings Scotland and the Scottish Children's Reporter Administration.

When the emergency flexibilities were first adopted in April 2020, it was agreed that they should only be used where justifiable, and only remain in place for as long as they were demonstrably necessary.

The use of the flexibility was limited to where that was necessary. It was used 415 times between May 2020 and September 2021 (a relatively small proportion of hearings - over 16,000 hearings were held during 2020-21, and thousands more held April to September 2021). Normally, outwith the COVID-19 pandemic, around 30,000 hearings are held per year.

Current Position

CHS have identified that the ongoing pressures associated with COVID-19 on the availability of male panel members, as well as their ability to recruit suitable new male volunteers, have posed significant issues with their ability to comply with strict and inflexible gender balance requirements. Despite a focused effort to recruit more males able to satisfy the requirements of the role, these problems are likely to persist.

Projecting forward into later 2022, CHS forecast being unable to satisfy their gender balance requirements on some occasions. Prior to their latest recruitment campaign in early 2022, CHS established that 452 male panel members needed to be brought into service this year. While the campaign specifically targeted males, CHS received only 268 suitable applications from males. Of that 268 figure, 106 males are anticipated to complete in-service training.

While CHS will continue to look at measures to increase the recruitment of men, these low numbers, coupled with an anticipated increase in current panel members choosing not to accept reappointment at the end of their 3-year terms this year, have combined to introduce fragility into the sustainability of the volunteer tribunal element of the hearings service.

Area Support Teams (local volunteer managers) report an over-reliance on small clusters of males - with some male panel members bearing an unhealthy burden of service on multiple hearings – well beyond the usual expectation of 1-2 sessions per month.

As well as concentrating expectations and practice experience in this small group, there is a consequential further risk that these overworked volunteers will either leave the service due to burn-out, or stay on due to their outstanding individual dedication to their role, but become less effective in discharging it due to tiredness and overwork. Critically, this is assessed as posing potential risk to the quality of discussion and decision-making for children and families supported by the system.

If there remains no flexibility in the gender balance requirements, CHS advise that hearings will not be able to be lawfully convened in some cases from late 2022. This puts the resilience of the hearing system at risk and could lead to delayed or deferred hearings for vulnerable children, contrary to their interests and may put some children at risk.

Alternatively, if a hearing were to be convened, in exceptional circumstances due to the risk to a child, with a 'single gender hearing' in breach of the legal requirement for mixed gender, that hearing's decision – however sound otherwise - would be open to challenge. Again, this would not be in the best interests of the children affected.

The National Convener remains committed to diversity in the recruitment of panel members and in relation to the composition of individual hearings. If this flexibility were introduced, it would only be where, after efforts had been made to ensure a

mixed gender hearing, if that could not be achieved, a hearing could still be lawfully convened.

The Scottish Government therefore considers change is necessary to allow hearings to be lawfully convened where, due to a combination of current circumstances including recovery from the pandemic, it is not practicable to convene a children's hearing with a mixed gender panel. While this proposed change amends provisions that have been in place in the same or similar form for many years, in practice it is introducing a flexibility only where a mixed gender panel cannot practicably be arranged. We anticipate that this flexibility will be utilised on a limited basis.

Scope of EQIA

This EQIA has been informed by evidence drawn from CHS data on retention and recruitment of panel members and the operational impact of current levels, surveys undertaken in the panel member community, as well as data collected through the monitoring of emergency Covid legislation. It also draws upon initial assessments undertaken by CHS which reflect the extremely limited nature of the impact of the proposed amendment.

Key Findings

There is no evidence to suggest a discernible impact on any protected characteristic other than Sex.

There are no indications that the current prescriptive legislation leads to unlawful discrimination, rather an over-reliance on a small number of male panel members.

CHS believe that the change will reduce pressure on overburdened Panel Members who identify as male.

Recommendations and Conclusions

The evidence base from Children's Hearings Scotland indicates that the proposed amendment is unlikely to have any adverse impacts on those with protected characteristics. Although the impact is likely to be broadly neutral, there will be some positive impacts for Panel Members who identify as male. The implementation of the change, including the number of times the flexibility is used and the impact this has on those immediately affected, will be appropriately monitored by Children's Hearings Scotland. National Convener Guidance will be issued to Area Support Teams on how the flexibility should be employed, and the impact of the change in law will be carefully monitored and a process for data collection has been identified. This will enable monthly internal reporting for an initial period, with Senior Management of Children's Hearings Scotland oversight and review. Significant or unexpected use, should it arise, will be addressed with the rota managers within Children's Hearings Scotland through the existing management and reporting structures.



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Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80435-892-4 (web only)

Published by The Scottish Government, September 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1149202 (09/22)

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