

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	The Criminal Justice (Scotland) Act 2016 (Modification of Part 1 and Ancillary Provision) Regulations 2017
Summary of aims and desired outcomes of Policy	To ensure that enhanced rights brought in through the Criminal Justice (Scotland) Act 2016 apply to people arrested other than on suspicion of an offence with appropriate modification
Directorate: Division: team	Safer Communities Directorate: Police Division: Police Powers and Finance Unit

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. It is a legislative requirement. Equality legislation covers the characteristics of: age, disability, gender reassignment, gender including pregnancy and maternity, race, religion and belief, and sexual orientation.

An equality impact assessment (EQIA) aims to consider how a policy (a policy can cover: activities, functions, strategies, programmes, and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways. This EQIA has been undertaken to consider the impacts on equality of The Criminal Justice (Scotland) Act 2016 (Modification of Part 1 and Ancillary Provision) Regulations 2017

Background

The Scottish Government consulted to seek feedback on how Part 1 of the Criminal Justice (Scotland) Act 2016 (the Act) should apply to arrests not relating to criminal offences, including certain warrant arrests. The feedback received during the consultation will be used to shape the final regulations under section 60 of the Act. A draft set of regulations was included in the consultation paper which enabled the reader to see what amendments were proposed and why they were seen as necessary.

The Criminal Justice (Scotland) Act 2016 contains procedures and protections which will apply to all arrests. While the majority of arrests in Scotland are of people suspected of a criminal offence, there are arrests for other reasons allowed in various statutes. For example an arrest for a breach of a protective court order or a witness arrested under warrant to ensure they attend court. For these arrests, not all the procedures and protections set out in the Act are appropriate. Section 60 of the Act allows Scottish Ministers to make regulations to modify or dis apply the Act to arrests that do not relate to criminal arrests. These regulations will ensure that arrests which do not relate to criminal offences and certain warrant arrests can be catered for within the new arrest and custody procedures brought in by the Act.

Although the regulations are of a very technical nature a full public consultation was considered appropriate to ensure that proper consideration was given to views regarding the rights which people arrested in these circumstances should be given.

Regulations are required to ensure the enhanced rights brought in through Part 1 of the Act also apply to people arrested other than on suspicion of an offence, but with appropriate modifications. Minor modifications are required to ensure these arrests work within the new arrest and custody system introduced by the Act, but otherwise the draft regulations propose no change to the way these arrests are dealt with currently by the police and courts.

The Scope of the EQIA

The regulations have a clear impact on people who are arrested other than for criminal offences. This could affect people from all equality characteristics. The regulations are intended to make sure that the procedure followed for these arrests is fair and appropriate. However, as we have not identified any significant impacts for people of various equality characteristics and assess that the regulations are not discriminatory, a high level EQIA is required.

The Scottish Government has identified some data sources which help to provide context for the EQIA process. These include;

- Reforming Scots Criminal Law and Practice: The Carloway Report
- Responses to the 'Reforming Scots Criminal Law and Practice: The Carloway Report' Consultation
- Statistics regarding convictions from Criminal Proceedings In Scotland 2014-15
- EQIA for the Criminal Justice (Scotland) Act 2015

Key Findings

Our EQIA has shown that the regulations will not have any significant impacts for people of different equality characteristics and are not discriminatory. Provisions relating to arrest and custody in Part 1 of the Act are generally intended to modernise the system of arrest and custody ensuring compliance with ECHR in a fair and transparent way.

Recommendations and Conclusion

The EQIA process has provided reassurance that the Scottish Government's proposals are not discriminatory against any particular equalities group. In fact they will bring benefits to anyone arrested other than on suspicion of having committed an offence by ensuring that the procedure suits those circumstances.

While the amount of information about the characteristics of people who are arrested is currently quite limited the new National Custody System being implemented by Police Scotland will allow provide further information and allow further consideration of the equality characteristics of people arrested under Part 1 of the CJ(S)A.

We assess that it will not be necessary to make any specific amendments to the regulations resulting from our assessment, however, it will be important to ensure that implementation is monitored so that the processes deliver the anticipated outcomes. The implementation of Part 1 of the CJ(S)A rests mainly with Police Scotland and other bodies. We expect that further impact assessment will be carried out by Police Scotland as they develop implementation plans. We will share information gathered through this exercise to inform those processes.