

# **Equality Impact Assessment - Results**

## **Coronavirus (Scotland)(No. 2) Bill**

**May 2020**

## EQUALITY IMPACT ASSESSMENT – RESULTS

<b>Title of Policy</b>	Coronavirus (Scotland)(No. 2) Bill
<b>Summary of aims and desired outcomes of Policy</b>	The purpose of the Coronavirus (Scotland)(No. 2) Bill (“the Bill”) is to respond to the emergency situation caused by the coronavirus outbreak. The Bill complements and supplements the Coronavirus (Scotland) Act 2020, passed by the Scottish Parliament on 1 April 2020, and the Coronavirus Act 2020, passed by the UK Parliament on 25 March 2020, which the Scottish Parliament gave its consent to on 24 March 2020. The Bill will put in place necessary and urgent measures in order to address the continued threats posed by the outbreak in Scotland.
<b>Directorate: Division: team</b>	Constitution and Cabinet Directorate

### Executive Summary

In deciding to progress further emergency legislation in response to the coronavirus outbreak, the Scottish Government has taken into account its responsibility first and foremost to protect the lives and health of people living in Scotland. It has also borne in mind the unprecedented pressures on all sectors including Scottish business, the Third sector and the public sector in Scotland, and the effect of the substantial adjustment to the way people are being asked to live by public health guidance, and required to live by the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. The Bill contains necessary measures required to respond to an emergency situation. The Scottish Government is satisfied that all of the measures contained in the Bill are appropriate and proportionate.

### Background

The coronavirus outbreak is a severe and sustained threat to human life in Scotland. The Scottish Government is committed to taking all steps necessary to address that threat. A severe pandemic could infect a large proportion of the population, and the public health measures required to control and limit the spread of the outbreak require a significant adjustment to the lives of those living in Scotland, to business in Scotland, and to the way public services are delivered and regulated.

Current public health guidance<sup>1</sup> continues to require business and public authorities to operate very differently to the way they have done until now by implementing, for example, physical distancing policies, or by requiring their workforce to work from home, where possible. In addition the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020<sup>2</sup> (S.S.I. 2020/103) (“the 2020 Regulations”) require the closure of businesses selling food or drink for consumption on the premises, and of a

<sup>1</sup> <https://www.gov.scot/collections/coronavirus-covid-19-guidance/>

<sup>2</sup> <http://www.legislation.gov.uk/ssi/2020/103/contents/made>

wide range of other businesses set out in the regulations to protect against risks to public health. The 2020 Regulations also prohibit those living in Scotland from leaving the place where they live without reasonable excuse, and ban public gatherings of more than two people.

Public health guidance is likely to require some adjustment to normal life for some time, as the effort to limit and control the coronavirus outbreak continues. The requirements and restrictions in the 2020 Regulations will continue until they are terminated by the Scottish Ministers by direction, or until they expire under regulation 11 of the 2020 Regulations.

The Scottish Government considers that in order for essential public services to continue to be able to discharge their functions in the way they were intended to, some changes need to be made to the way they operate and the way that they are regulated.

Even beyond the new restrictions on living and working in Scotland, the coronavirus outbreak continues to have an effect on essential public services and other activities which demands a response. The continuing shift in resourcing and prioritisation for central and local government, and those involved in health and social care, will require a number of the obligations and duties on public services in Scotland to be adjusted temporarily, to reflect the importance which the Scottish Government places on responding to the coronavirus outbreak, and protecting the health of people living in Scotland.

The Bill therefore takes the following measures:

- it makes adjustments to laws which protect individuals to ensure their effective operation during the coronavirus outbreak;
- it makes adjustments to criminal procedure, and to other aspects of the justice system, to ensure that essential justice business can continue to be disposed of throughout the coronavirus outbreak;
- it makes a range of provision designed to ensure that business and public services can continue to operate effectively during a period where controls on movements have been imposed, and when pressures on public services are acute.

The Scottish Government is satisfied that all of the measures contained in the Bill are appropriate and proportionate. In line with requirements set out in the Coronavirus (Scotland) Act 2020, the Bill contains the following safeguards:

- Part 1 of the Bill will automatically expire less than six months after it comes into force. The Scottish Parliament may extend this for two further periods of six months, giving Part 1 of the Bill a maximum duration of 18 months;
- where a provision in Part 1 of the Bill is no longer considered necessary, Scottish Ministers may bring it to an end earlier than on this six-monthly schedule;
- the Scottish Ministers are required by the Bill to report on the continued need for the measures, and on the use of powers in the Bill, every two months.

The Scottish Government is committed to keeping the provisions of this Bill under review at all times, under the scheme set out above.

## **The Scope of the EQIA**

As the measures within the Bill cover a broad range of topics, many people in Scotland with one or more of the protected characteristics, including children and young people, students, carers and those involved in the justice system might be impacted.

The Scottish Government has considered whether the provisions could constitute conduct prohibited by the Equality Act. In many cases, the provisions will apply to a wide range of people across the range of protected characteristics. These proposals will allow the existing legal protections to remain in place to safeguard people's welfare and ensuring that their access to justice is maintained.

It should be also borne in mind that these proposals will be kept under review to ensure their positive effects are kept in view and importantly to ensure that if any potential negative impact identified steps can be taken to address them.

The Scottish Government has also considered whether the provisions could constitute indirect discrimination. It is not anticipated that the provisions could give rise to more significant impacts on certain protected characteristics. Where some possible impact has been identified, the Scottish Government considers the impacts are justified and a proportionate means of achieving the legitimate aim of protecting the general public from the coronavirus outbreak by increasing the capacity of public service systems and mitigating the spread of infection.

During the EQIA process, the potential impact on each of the protected characteristics was considered (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership). The assessment identified that the Bill is likely to have a direct positive impact on women. The Scottish Government has no evidence to suggest that any person with protected characteristics would be disproportionately adversely affected by the introduction of the Bill.

Most impacts will be temporary, spanning the duration of the coronavirus outbreak and emergency situation, and many of the provisions where possible contain safeguards and mitigation measures to lessen the extent of any negative actual or perceived impacts.

## **Key findings**

### **INDIVIDUAL BILL PROVISIONS AND IMPACT ON EQUALITY**

#### **Changes to Student Tenancy Agreements in purpose built student accommodation ("PBSA") and University and College Accommodation**

Provisions in this Bill temporarily introduce:

- i. a 7 day notice to leave period for those currently tied into a student accommodation contract; and

- ii. a 28 day notice to leave period for agreements entered while the Coronavirus (Scotland) Act 2020 is in force.

These measures will ensure that students who left their accommodation, or have been unable to return to it, due to coronavirus restrictions and who wish to end their contract early, are able to do so. They also give students looking to find suitable accommodation for the next academic year reassurance that should restrictions continue and they are unable to take up the accommodation as planned, that they will not be forced to pay for accommodation they are not using for a full academic year.

This policy is intended to implement temporary measures to help protect students from being held liable to pay for accommodation they are not able to use and the significant financial impact that may have on students. It is not intended to impact, directly or indirectly, on any group of people with protected characteristics, or on the wider equality duties.

However, the majority of those in student accommodation are women. Almost half of students in halls are from outside the UK and hence, those staying in PBSA and halls of residence are potentially more likely to have a wider variety of ethnic backgrounds. The majority of students residing in PBSA and halls of residence are 21 and under. Action to protect students from being held liable to pay for accommodation they are not able to use as a result of the outbreak should have a positive impact on outcomes for these groups.

The Scottish Government considers that the temporary legislative changes are likely to positively impact across those with protected characteristics, as the legislative measures will protect them from the financial impact of being held liable to pay for accommodation they are not able to use.

### **Coronavirus Carer's Allowance Supplement**

The aim of the Coronavirus Carer's Allowance Supplement (CCAS) is to improve outcomes for carers in receipt of Carer's Allowance (CA) by providing some additional financial support to mitigate the impacts of the coronavirus outbreak. The payment is worth £230.10, and will effectively double the value of the June 2020 payment. It is intended to have a positive impact on the approximately 83,000 carers<sup>3</sup> in Scotland who are in receipt of CA, and an indirect positive impact on the people they care for. CCAS will be paid as a lump sum to carers who are eligible for the June 2020 payment Carer's Allowance Supplement (CAS) from Social Security Scotland.

The Scottish Government has considered the potential impacts of CCAS on people with one or more protected characteristics by revisiting the 2018 Equality Impact Assessment for CAS. Through this process aspects of CCAS have been identified which would negatively impact on carers who fall in to one or more of the protected groups, or to people in these groups who are cared for. In summary, it is anticipated that CCAS will have a direct positive impact on women (because the majority of

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<sup>3</sup> DWP Stat-Xplore

carers are women), and indirectly on the disabled children and adults they care for by reducing stress on carers and contributing to household finances.

There is insufficient evidence available on **gender reassignment, pregnancy and maternity**, and **religion and belief** to assess the payment's impact on these groups. Limited data is available on sexual orientation and carers. Research from Carers Trust Scotland<sup>4</sup> and LGBT Youth Scotland highlights that LGBT young carers face barriers in having both their LGBT and carer identities recognised by support services.

### Women

The Scottish Government anticipates that the Supplement would likely have a disproportionately positive impact on women, as more than two thirds of recipients (69 per cent) are female<sup>5</sup>.

Women are more likely to be carers than men until retirement age when 19% of both women and men are providing care. In the oldest age groups (75+), more men than women (12% and 9% respectively) provide care<sup>6</sup>. The vast majority of CCAS recipients would be women of working age, as most carers or pension age and above will have only underlying entitlement to CA (because the State Pension is an 'overlapping benefit') and means that CA, and so CCAS, will not be paid.

Evidence<sup>7</sup> shows that women are more likely to rely on social security payments as part of their incomes as men, and there is some evidence that women typically act as 'poverty managers', going without food and other vital resources so that other family members do not.

According to Women's Budget Group briefing<sup>8</sup>, women have been disproportionately impacted by cuts to disability benefits, both as claimants and as carers. 55% of adults with disabilities and of those claiming PIP are women and 58% of carers are women (60% among those caring for more than 50 hours per week)<sup>9</sup>.

### Disability

The Scottish Government also anticipates that it would have a disproportionately positive impact on disabled people, as person the carer looks after will be disabled. The payment can help maintain the health and well-being of the carer, which has knock on positive impacts for the looked after person, and in cases where the carer lives with the cared for person, a potentially positive impact on overall household finances.

Figures on the number of disabled people receiving CA are not available, and limited data is available on disabled carers. However, among carers caring for 35 hours or

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<sup>4</sup> Carers Trust Scotland (2016) [Young People Caring OUT There: Experiences of LGBT young adult carers in Scotland](#)

<sup>5</sup> **Source:** Summary statistics for Carer's Allowance at May 2019, Social Security Scotland

<sup>6</sup> Scottish Government (2015) [Scotland's Carers](#)

<sup>7</sup> **Sources:** CAS Business Case 2018; Close the Gap (2020) Working Paper 21: Gender Pay Gap Statistics; and Engender (2016) Securing women's futures: using Scotland's social security powers to close the gender equality gap

<sup>8</sup> <https://wbg.org.uk/wp-content/uploads/2019/11/SOCIAL-SECURITY-2019.pdf>

<sup>9</sup> Carers UK fact sheet (<http://bit.ly/2lCyN5d>)

more per week, 50% reported they had one or more long term conditions<sup>10</sup>. Receipt of CA is based on the cared for person being 'severely disabled' – defined as being eligible for a specified disability benefit, either Attendance Allowance, the highest or middle rate of Disability Living Allowance care component, either rate of the daily living component of Personal Independence Payment, Armed Forces Independence Payment, Constant Attendance Allowance at or above the normal maximum rate with an Industrial Injuries Disablement Benefit, or Constant Attendance Allowance at the basic (full day) rate with a War Disablement Pension.

### Race

Information on recipients of CA by race is not publicly available. 9 per cent of people in Scotland provide unpaid care and this varies across ethnic groups. People from older ethnic groups such as 'White: Scottish' and 'White: Other British' were the most likely to provide unpaid care<sup>11</sup>. People from ethnic groups with younger age profiles (such as the 'Arab' and 'White: Polish' groups) were least likely to provide weekly unpaid care. People from the White: Gypsy/Traveller group were most likely to be providing unpaid care and to be providing 35 hours or more of unpaid care (the threshold for CA). The next most likely to provide 35 hours or more of unpaid care were Bangladeshi and Pakistani groups.

### **Bankruptcy – more accessibility for debtors**

These measures have no significant impact. To the extent that those with protected characteristics are over-represented in that share of the population facing the burden of unsustainable debt – so for example, households with children are more likely to be in debt than households without - there will be a minor positive impact.

### **Temporary withdrawal of the requirement for a prescribed person to witness a named person agree to the role in relation to mental health law**

Scottish mental health and incapacity legislation is based on rights and principles, one of which is non-discrimination. Service users with a longer-term mental disorder are included within the protected characteristic of disability under the 2010 Equality Act.

The Bill temporarily removes the requirement for a nominated person to have their signature witnessed by a prescribed person when they agree to become a named person. As this change seeks to minimise any impact on the service user and therefore continues to focus on protecting patient safeguards there is no adverse effect to protected characteristics in relation to these regulations.

### **Amendments to statutory time limits for criminal proceedings**

The provisions remove the time limit on the length of a single adjournment in summary cases after first calling where the accused is not in custody, and in all cases where a case is adjourned prior to sentencing for a report on the offender's physical or mental condition, or pending a decision regarding an alleged breach of a court order. The measure is intended to avoid the need for additional court hearings to extend adjournments because of difficulties in obtaining reports because of the

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<sup>10</sup> Scottish Government (2017) [Scottish Health Survey 2016](#)

<sup>11</sup> Scottish Government (2014) [Analysis of Equality Results from the 2011 Census](#)

impact of the coronavirus outbreak. It is not considered to have a differential impact on people with any of the protected characteristics.

### **Allowing the Scottish Ministers to make arrangements for Prisoner Custody Officers to carry out duties within police stations**

This provision has little to no impact. It allows the Scottish Ministers to make arrangements for Prisoner Custody Officers to carry out a range of duties within police stations that are being used to enable virtual custody courts. These duties will be the same as those carried out within physical court premises.

### **Continuation of undertakings in relation to non-attendance at court as a result of the coronavirus outbreak**

This provision allows the court to modify the terms of an undertaking given under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 by changing the time at which the person is to appear at the court where certain conditions are met. Those conditions are: the person fails to appear at court as required by the terms of the undertaking, the court considers that this is attributable to a reason relating to coronavirus, and the court does not consider it appropriate to grant a warrant for the person's arrest. Where the court exercises this power, this has the effect of preventing the undertaking and any associated conditions from expiring. This legislative change is necessary to ensure that the undertaking regime continues to operate effectively and to preserve public safety, especially in domestic abuse cases where conditions attached to undertakings are of particular importance. It is not considered to have a particular impact on people with any of the protected characteristics, either directly or indirectly.

### **Proceeds of Crime Act 2002 – confiscation orders: section 99(4) “exceptional circumstances”: effect of coronavirus on proceedings**

Inclusion of the effect of coronavirus on proceedings as an exceptional circumstance in relation to the proceedings for the purposes of section 99(4) of the Proceeds of Crime Act 2002 is not expected to have any impact on persons with protected characteristics.

### **Proceeds of Crime Act 2002 – Proceeds of Crime Act 2002 – extending the time to pay and the dis-application of interest in relation to confiscation orders**

The extension of the specified period for payment of a confiscation order where payment cannot be made for reasons relating to coronavirus within 12 months of the date that the order was made and disapplication of interest where an extension is granted is not expected to have any impact on persons with protected characteristics.

### **Display of court documents**

The Bill permits documents which would otherwise have been displayed on the walls of the court to instead be displayed on the Scottish Courts and Tribunal Service (SCTS) website, thereby enabling the documents to be viewed by the public during a time when people are unable to physically access the walls of court. It is recognised that online publication may have a negative impact on some of the protected characteristic groups, in particular those who have been identified as using online technologies less than other groups such as older persons and those with physical and mental disabilities. To mitigate any negative impact to these groups the

information which would be provided on the walls of the court can be relayed to any member of the public via a phone call to the court. The SCTS has followed W3C Web Accessibility standards in the creation of their website which will ensure documents are displayed in an accessible format. There is no other adverse effect anticipated to any other protected characteristic group. Having documents online will have a positive impact on those that would find travel to court buildings a significant barrier.

### **Timing of Citizens Assembly on climate change holding and reporting to Ministers and Parliament**

Provision to allow for a delay to the deliberations and reporting of the citizens assembly on climate change will apply to all persons irrespective of protected characteristic and will therefore not constitute direct discrimination on that basis. There *may* be positive benefit for people in protected or vulnerable groups as delay *could* allow the participation of individuals that would otherwise be excluded due to coronavirus restrictions.

### **Timing of establishment of a Nitrogen Balance Sheet**

This amendment will have no impact on persons with protected characteristics.

### **Registered Social Landlords – submission of audited annual accounts**

This provision has no impact. It extends the length of time by three months for RSLs to provide their audited annual accounts to the Scottish Housing Regulator for the financial year ending 31 March 2020.

### **Amendment to the Public Finance and Accountability (Scotland) Act 2000**

This amendment will have no impact on persons with protected characteristics.

### **The deadline for publication of a Ministerial statement on local connection**

This provision extends the deadline for Scottish Ministers to publish a statement on local connection. It has no impact on any of the protected characteristics, either directly or indirectly.

### **UEFA European Championship**

These provisions amend the dates of the Championship in the UEFA European Championship (Scotland) Act 2020 (“the UEFA 2020 Act”) following postponement of the event because of the coronavirus outbreak. The provisions also amend an exception to the ticket touting offence in the UEFA 2020 Act where a ticket is auctioned and the proceeds given to charity. Neither of these changes is considered to have a particular impact on people with any of the protected characteristics, either directly or indirectly. Further details about the equality impacts of the UEFA 2020 Act as a whole are set out in the EQIA that was published previously.<sup>12</sup>

### **Listed Building and Conservation Area Consents**

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the Listed Buildings Act”) requires listed building consent for works to listed buildings and conservation area consent for the demolition of buildings within conservation areas. The provision amends section 16 of the Listed Buildings Act to extend the

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<sup>12</sup> <https://www.gov.scot/publications/uefa-european-championship-scotland-bill-results-eqia/pages/1/>

duration of a listed building consent or a conservation area consent that would otherwise lapse during the emergency period because works authorised by the consent have not begun. The emergency period is the period beginning with the coming into force of these provisions and ending on 6 October 2020. Consents to which the provision applies will instead lapse at the end of an extended period (which ends on 6 April 2021) unless works have commenced before the end of the extended period.

The provision also enables the Scottish Ministers to make regulations to amend the definition of the emergency and extended periods.

The proposed measure is not expected to have any detrimental impacts with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly.

### **Electronic submission and registration of copy deeds in the Register of Inhibitions and Register of judgments**

These measures will allow people to continue to submit applications for registration of documents in the Register of Inhibitions and the Register of judgments digitally while the Registers of Scotland are temporarily unable to receive applications by post.

These measures do not raise any issues in respect of equal opportunities. The Bill's provisions do not discriminate on the protected characteristics of age, sex, sexual orientation, disability, gender reassignment, race, religion or belief and socio economic status.

This policy has no discernible relevance to the protected characteristics: marriage and civil partnership and maternity and pregnancy.

Registers of Scotland will provide guidance on the new measures and a customer services telephone line for those seeking further support in accessing the Registers and submitting applications.

### **Extending the time period during which a previous main residence must be sold in order for house-buyers who have paid the LBTT Additional Dwelling Supplement (ADS) prior to a particular date to claim a repayment from Revenue Scotland**

The Land and Buildings Transaction Tax (LBTT) Additional Dwelling Supplement (ADS) was introduced on 1 April 2016 and is collected and managed by Revenue Scotland. It applies to most purchases of additional dwellings in Scotland over £40,000 by individuals where, at the end of the day that is the effective date of the transaction (usually the date of completion), a buyer owns two or more dwellings (in Scotland or another country) and is not, or is not solely, replacing their main residence. It also applies to most purchases of dwellings in Scotland over £40,000 by non-natural persons (e.g. companies and partnerships). The ADS is charged at 4% of the purchase price and is paid as part of any LBTT due on the relevant purchase.

The provisions in the Bill will increase by nine months the period in which relevant taxpayers can dispose of a relevant previous main residence and still be eligible for a repayment of the ADS. This would result in relevant taxpayers having 27 months rather than 18 months to dispose of their previous main residence and still be eligible for a repayment of the ADS.

In addition, the provisions provide a power for the Scottish Ministers to amend, by order, the period of 27 months or the period of transactions to which they can apply.

The provisions do not change in any other way the arrangements in place for the ADS, as provided for in the Land and Buildings Transaction Tax (Amendment) Act 2016 and Land and Buildings Transaction Tax (Relief from Additional Amount) Act 2018. As such, the proposed measure is not expected to have any detrimental impacts with respect to any of the protected characteristics, either directly or indirectly.

#### **Power to introduce non-domestic rates relief**

This amendment will have no impact on persons with protected characteristics.

#### **Recommendations and Conclusions**

The Scottish Government has assessed the potential impact of the proposed Bill on equal opportunities and has determined it does not unlawfully directly discriminate with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership). Where provision might potentially indirectly impact on equality, the Scottish Government considers the impacts are justified and a proportionate means of achieving the legitimate aim of protecting the general public from a coronavirus pandemic by increasing the capacity of public service systems and mitigating the spread of infection.

The Scottish Government is committed to keeping the provisions of this Bill under review at all times, under the scheme set out above.

#### **Declaration and Publication**

I have read the Equality Impact Assessment and I am satisfied that it represents a fair and reasonable view of the expected equality impact of the Bill.

Signed: James Hynd

Date: 6 May 2020



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