

Coronavirus (Extension and Expiry) (Scotland) Bill

Equality Impact Assessment – Results

June 2021

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Title of Policy	Coronavirus (Extension and Expiry) (Scotland) Bill
Summary of aims and desired outcomes of Policy	<p>The purpose of the Coronavirus (Extension and Expiry) (Scotland) Bill (“the Bill”) is to update a range of existing legislative measures which support various aspects of the ongoing response to the public health emergency caused by the coronavirus (COVID-19) pandemic. The Bill amends the Coronavirus (Scotland) Act 2020, passed by the Scottish Parliament on 1 April 2020, and the Coronavirus (Scotland) (No.2) Act 2020, passed by the Scottish Parliament on 20 May 2020 (“the Scottish Acts”).</p> <p>The Bill amends the expiry dates in Parts 1 of the Scottish Acts while at the same time it also expires a number of provisions which are no longer considered necessary. The effect of this is to extend only those provisions which the Scottish Government considers remain essential in order for public services to be able to continue to discharge their functions in the way they were intended to. Many of the provisions contained in the two Scottish Acts have already been expired in line with the Government’s commitment to remove provisions that are no longer required to respond to the public health emergency.</p>
Directorate: Division: team	Constitution and Cabinet Directorate

Executive Summary

In deciding to progress further emergency legislation in response to the coronavirus pandemic, 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 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 current public health guidance¹, and required to live by the Health Protection (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021² which implement the revised Protection Levels that were published in April 2021³. All restrictions will be kept under review in the event of new developments, such as the emergence of a new variant of concern, to ensure that they remain proportionate and necessary to support the ongoing public health response. The Scottish Government is satisfied that all of the measures contained in the Bill are appropriate and proportionate.

¹ [Coronavirus \(COVID-19\): guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance/pages/1-1-introduction.aspx)

² [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 21\) Regulations 2021](https://www.gov.scot/publications/health-protection-restrictions-requirements-local-levels-scotland-amendment-no-21-regulations-2021/pages/1-1-introduction.aspx)

³ [Coronavirus \(COVID-19\) protection levels: what you can do - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-protection-levels-what-you-can-do/pages/1-1-introduction.aspx)

Background

COVID-19 is first and foremost a public health crisis, and the measures to combat it have been necessary to save lives. The restrictions put in place using powers under the Coronavirus Act 2020 that have been in place since March 2020⁴ have been extensive but necessary in order to limit transmission of the virus as far as possible. Public health measures needed to control and limit the spread of the virus continue to 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.

After taking firm action to stop the spread of the virus by implementing a nationwide lockdown, the Scottish Government published Coronavirus (COVID-19): Framework for Decision Making⁵ in April 2020, setting out the principles and approach for responding to the epidemic based around managing four key harms: direct health impacts of COVID-19; non-COVID-19 health harms; societal impacts; and economic impacts. These harms are deeply inter-related: health harms impact on society and the economy, just as the societal and economic effects impact on physical and mental health and wellbeing.

The Scottish Government published COVID-19: Scotland's Strategic Framework in October 2020.⁶ A strategic approach to outbreak management based on graduated levels of protection was introduced in Scotland on 2 November 2020, with five packages of measures to apply different degrees of downward pressure on the Reproduction Rate (R) of the virus, according to different epidemiological conditions in the areas in which they are applied. The levels were designed to be applied locally, regionally or nationally, depending on the course of the pandemic.

An update to COVID-19: Scotland's Strategic Framework was published in February 2021,⁷ in which the Scottish Government re-confirmed its strategic intent to "suppress the virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible." It described six key tools for achieving this:

- The quickest practical roll-out of vaccinations, in line with advice from the Joint Committee on Vaccination and Immunisation (JCVI);
- The most effective use of testing and contact tracing;
- Applying proportionate protective measures (rules and guidance) to suppress transmission of the virus;
- Effective measures to manage the risk of importation of the virus;
- Supporting individuals, businesses and organisations to adhere to protective measures; and

⁴ [Coronavirus Act 2020 - Schedule 19 - Health Protection Regulations: Scotland](#)

⁵ [Coronavirus \(COVID-19\): framework for decision making - gov.scot \(www.gov.scot\)](#)

⁶ [Coronavirus \(COVID-19\): Scotland's Strategic Framework - gov.scot \(webarchive.org.uk\)](#)

⁷ [Coronavirus \(COVID-19\): Strategic Framework update - February 2021 - gov.scot \(www.gov.scot\)](#)

- Providing care and support to mitigate the harms of the crisis.

The emergence of the Variants of Concern B.1.1.7 and B.1.617.2 have increased the transmissibility of the virus, making it more challenging to effectively suppress. This is one reason why public health measures continue to be required.

Current public health guidance⁸ continues to mean that businesses and public authorities operate very differently to the way they have done previously. In addition, revised Protection Levels were published in April 2021⁹ which set out updated packages of measures in the levels-based approach, taking into account the higher transmissibility of the B.1617.2 variant and the impact of the progress made in the vaccination roll-out. The Health Protection (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021¹⁰ implement the approach. All restrictions will be kept under review in the event of new developments, such as the emergence of a new variant of concern, to ensure that they remain proportionate and necessary to support the ongoing public health response.

The Scottish Acts contained measures which were required to respond to an emergency situation. The Acts contained a number of safeguards. These included: the relevant provisions in the Acts automatically expired less than six months after they came into force, although this could be extended by the Scottish Parliament for two further periods of six months; where a provision was no longer considered necessary, Scottish Ministers may bring it to an end earlier; Scottish Ministers are required to report on the continued need for the measures, and on the use of powers in the Scottish Acts, every two months.

These safeguards will continue to be in place for the duration of the extension period, with the expiry dates of Parts 1 of the Scottish Acts being extended by this Bill for a six month period to 31 March 2022, with the Scottish Parliament given the power to extend the Acts for a further period of six months to 30 September 2022. Any such regulations would be made only if deemed necessary at that time. The Bill contains no provision to extend the Acts beyond 30 September 2022.

A number of provisions are expired in this Bill which, following engagement with stakeholders, are no longer deemed necessary to have in place beyond 30 September 2021. The Scottish Government remains committed to keeping the provisions of the Scottish Acts, as extended by this Bill, under review at all times, under the now established review scheme.

The Scope of the EQIA

As the temporary measures to be either expired by the Bill or extended beyond 30 September 2021 as a result of the extension of Parts 1 of the Scottish Acts cover a broad range of topics, many people in Scotland with one or more of the protected

⁸ [Coronavirus \(COVID-19\): guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance/pages/1-10.aspx)

⁹ [Coronavirus \(COVID-19\) protection levels: what you can do - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-protection-levels/pages/1-10.aspx)

¹⁰ [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 21\) Regulations 2021](https://www.gov.scot/publications/health-protection-restrictions-requirements-local-levels-scotland-amendment-no-21-regulations-2021/pages/1-10.aspx)

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, and their expiry or extension, will apply to a wide range of people across the range of protected characteristics. These proposals allow the existing legal protections to remain in place to safeguard people's welfare and ensure that their access to justice is maintained.

It should be also borne in mind that the temporary measures being expired will result in a return to pre-COVID legislative arrangements, while the temporary measures being extended for an additional temporary period will be kept under review to ensure their positive effects are kept in view and importantly to ensure that if any potential negative impact is identified, steps can be taken to address them.

The Scottish Government has also considered whether the provisions could constitute direct or 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 pandemic 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.

In developing this EQIA the Scottish Government is mindful throughout of the three needs of the Public Sector Equality Duty (PSED), which are to: eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. Where any negative impacts have been identified, the Scottish Government has sought to mitigate/eliminate these. The Scottish Government is also mindful that the equality duty is not just about negating or mitigating negative impacts, as the Government also has a positive duty to promote equality. The Scottish Government has sought to do this through guidance.

As already noted, the Bill continues safeguard put in place by the Scottish Acts, with mitigation measures continuing to lessen the extent of any negative actual or perceived impacts.

Key findings

Individual Bill provisions and impact on equality

Measures to be expired

Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020)

Section 3 and Schedule 2, paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020 remove the prohibition against benefitting from more than one moratorium on diligence in any 12 month period. The intention behind this amendment was to ensure that those who had recently had a moratorium prior to the on-set of the pandemic were not excluded from the effect of the changes. This provision has now been in place since 7 April 2020 and the policy rationale to protect those who had utilised a pre-pandemic 6 week moratorium no longer exists. However, the extended 6 month period of moratorium protection remains and the impact on equality is assessed as follows:

Age: The Money Advice Service estimates¹¹ that 1% of the over-indebted population is aged over 65. The Wyman Review¹² suggests that 7% of debt advice clients are aged over 65. Income shocks arising from COVID-19, and thus the undermining of people's ability to meet their debts as they fall due, are more likely to affect the working age population. Consequently, the impact of the expiry of provisions that enable more than one moratorium application to be submitted in a 12 month period is unlikely to have significant impact on those aged over 65.

Gender: the Money Advice Service estimates that 64% of over-indebted people are female, whilst the Wyman Review suggests that 59% of debt advice clients are female. This suggests that extending the moratorium is more likely to benefit females than males, both because females are more likely to be over-indebted but also because they are more likely to take-up debt advice. Although the extended moratorium period provides greater scope to seek advice and establish the appropriate solution for problem debt, the expiry of provisions that enable more than one moratorium application to be submitted in a 12 month period is unlikely to have significant impact.

Disability: the Wyman Review estimates that 40% of debt advice clients suffer from a disability or long-term health condition. Disability may restrict the channels through which debtors may seek advice. For example, the Money and Mental Health Policy Institute suggests¹³ that those with mental health problems are 22 percentage points more likely than the population in general to have serious difficulty carrying out essential administration over the phone. Likewise, difficulties of physical access may make seeking face-to-face debt advice problematic for those with physical health problems. Scotland's debt advice sector is very used to ensuring these concerns can be addressed. Although the extended moratorium period provides greater scope to seek advice and establish the appropriate solution for problem debt, the

¹¹ [Money Advice Service: Indebted lives: The complexities of life in debt \(November 2013\)](#)

¹² [Peter Wyman: Review of debt advice funding \(2018\)](#)

¹³ [Money-and-Mental-Health-Annual-Review-2018-19.pdf](#)

expiry of provisions that enable more than one moratorium application to be submitted in a 12 month period is unlikely to have significant impact.

The Scottish Government has not identified any positive or negative impact on people with any of the other protected characteristics that may arise as a result of this policy.

Children and vulnerable adults: children's hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020)

Expiry of the Coronavirus (Scotland) Act 2020 children's provisions will mean that Children's Hearings will revert back to normal pre-COVID procedure with a strengthening of rights from the current emergency extensions to original timescales resulting in quicker decisions and outcomes. The Bill makes necessary temporary transitional provision to promote transparency for families and to prevent any risk of unplanned expiry of compulsory supervision orders. This will support orderly expiry and ensure rights, child protection and children's hearing administration work effectively and as intended post 30 September – this will be extremely short-term transitional provision in relation to orders already issued and appeal timescales already applied.

However, it is clear from the operation of the children's hearings system since April 2020 that the use of virtual or blended hearings will be a necessary longer term option and permitting the use of electronic signatures does represent a time and cost saving with no discernible adverse impacts for children, families or system participants. Electronic signatures are permissible in current court practice in Scotland. Therefore, permanent changes have been made to allow electronic hearings. These changes are made in [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Amendment Rules 2021](#) which will come into force from 26 July 2021, and are accompanied by relevant impact assessments¹⁴.

Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020)

Any intervention under the Adults with Incapacity Act has to comply with the section 1 principles which apply equally to anyone coming under the provisions of this legislation. The Scottish Government considers there may be a positive impact for elderly or disabled people who may be more disproportionately affected by the amendments to the provisions in relation to adults with incapacity. The amendments to ensure guardianship appointments remain in place during the pandemic period; and that the authorisation of medical treatment by a section 47 certificate continues, benefitted incapacitated adults with the protected characteristics of age and disability. The expiry of these temporary provisions will not have any particular impact on individuals on the basis of gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

¹⁴ [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Amendment Rules 2021 - Impact assessments](#)

Community orders (Section 5 and schedule 4 paragraphs 12; 14; 15(1) reference to “and drug treatment and testing orders.”; 15(6) reference to “or drug treatment and testing order” to expire; 16 definition of “drug treatment and testing order”; definition of “relevant local authority” 16(b) and definition of “specified period” of the Coronavirus (Scotland) Act 2020)

Taking into account the progress of the pandemic and recovery work, as well as use of powers to date (or not), the Scottish Government does not consider it proportionate or necessary to extend these provisions. They will therefore be expired by the Bill on 30 September 2021.

Age: It is not anticipated that the expiry of these provisions will involve a significant impact for this category.

Sex/Gender: The expiry of these temporary provisions will not have any particular impact on individuals on the basis of sex/gender.

Disability: The expiry of these temporary provisions will not have any particular impact on individuals on the basis of disability.

Race, Religion or Belief, Sexual Orientation, Gender Reassignment, and Pregnancy/Maternity: The expiry of these provisions would have no specific impacts on people with these protected characteristics.

Freedom of information (Section 7 and schedule 6 paragraph 6 of the Coronavirus (Scotland) Act 2020)

Where a Scottish public authority fails to comply with the timescales for responding to requests and requirements for review under the Freedom of Information (Scotland) Act 2002 (FOISA), this provision enables the Scottish Information Commissioner to decide that, notwithstanding the delay, the authority has complied with Part 1 of FOISA if certain conditions are met. The expiry of this provision restores the pre-existing position in FOISA where the Commissioner had no such discretion.

The impact of expiring this provision solely affects Scottish public authorities. Accordingly, the Scottish Government has not identified any positive or negative impact on any of the protected characteristics that may arise as a result of this policy.

Duties under the Public Finance and Accountability (Scotland) Act (Section 7 and schedule 6, paragraph 15 of the Coronavirus (Scotland) Act 2020)

The impact of expiring this provision solely affects Scottish public bodies. Accordingly, the Scottish Government has not identified any positive or negative impact on any of the protected characteristics that may arise as a result of this policy.

Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020)

The aim of these temporary provisions was to support, during the escalating coronavirus pandemic, Social Security Scotland in being able to maintain their services at 'pre-covid-19' levels, and to recognise that individuals might need a longer period of time to provide information to inform a re-determination if they were impacted by coronavirus.

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the coronavirus pandemic, such that redeterminations will be required to once again be made within the original timescale. There is no anticipated detrimental impact on any individual's rights.

The Bill will expire the provision in September 2021. The Scottish Government is content a redetermination process already commenced can continue beyond expiry of the provision on the basis that the Interpretation and Legislative Reform (Scotland) Act 2010 will protect individual rights acquired while the provision was in force.

The provisions applied equally to anyone requesting a redetermination, and any use of the provisions is based only on the need to mitigate the impact of delays in processing redeterminations as a result of disruption caused by coronavirus. The Scottish Government has therefore concluded that the expiry of the provisions will have no impact on people with protected characteristics.

Irritancy clauses in commercial leases: non-payment of rent or other sums due (Section 8 and schedule 7 paragraph 6 and 7 of the Coronavirus (Scotland) Act 2020)

It is not anticipated that the expiry of this measure will have a significant impact on any person within the protected characteristics.

Student residential tenancy: termination by tenant (Schedule 1: paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020)

It is not anticipated that the expiry of this measure will have a significant impact on any person within the protected characteristics.

Coronavirus Carer's Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

The aim of this provision was to improve outcomes for carers in receipt of Carer's Allowance by providing some additional financial support to mitigate the impacts of the coronavirus pandemic. Payment was made successfully to over 80,000 unpaid carers at the end of June 2020. Around 83,000 carers are expected to benefit once all backdated payments are made.

As of August 2020, there were 83,000 carers in receipt of Carer's Allowance.¹⁵ This includes around 500 carers under 18, and around 3,200 carers over the age of 65.¹⁶

The Supplement has had a disproportionately positive impact on women, as more than two thirds of recipients (69 per cent) are female¹⁷.

Figures on the number of disabled people receiving Carer's Allowance are not publicly available, though benefit combination information suggests that in August around 13,600 working age carers meeting the eligibility criteria for Carer's Allowance were also in receipt of Disability Living Allowance or Personal Independence Payment. A further 15,000 state pension age carers meet the entitling conditions for Carer's Allowance and are in receipt of one of Personal Independence Payment, Disability Living Allowance or Attendance Allowance. Among the broader group of unpaid carers caring for 35 hours or more per week, 50% of unpaid carers reported they had one or more long term conditions¹⁸.

The Bill will expire the provision in September 2021. The Scottish Government is content that backdating can continue beyond expiry of the provision on the basis that the Interpretation and Legislative Reform (Scotland) Act 2010 will protect individual rights acquired while the provision was in force. The Scottish Government has not identified any differential impacts on people with protected characteristics as a result of the expiry of this provision.

Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020)

The fortnightly reports on inspections have been helpful in getting information into the public domain more quickly to provide assurance at a time where levels of anxiety about the safety and wellbeing of care home residents and staff was understandably high.

However, a near normal pre-pandemic process is now in place meaning full inspection reports are being published around the same time as the associated and less detailed parliamentary report. The official statistics published by National Records of Scotland are now well established, meaning that there is no necessity for the weekly reporting of deaths in care homes through the use of temporary provisions.

The Scottish Government has not identified any differential impact on people with protected characteristics as a result of expiring these provisions, as they have established what is primarily an enhanced reporting and inspecting mechanism, which will revert to the reporting and inspecting processes that were in place before the coronavirus pandemic.

Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020)

¹⁵ DWP Stat-Xplore

¹⁶ Ibid.

¹⁷ [Social Security Scotland statistics \(23 February 2021\)](#)

¹⁸ Scottish Government (2017) Scottish Health Survey 2016

The Scottish Government has not identified any differential impact on people with protected characteristic(s) as the policy underpinning the provision can continue to be delivered after the provision has expired. Article 12 of the ECHR already protects the right of men and women of marriageable age to marry. The expiry of the provision will not affect either the existence of the ECHR protection or the Scottish Government's policy to ensure the continued availability of marriage and civil partnership.

National Records of Scotland (NRS) publishes quarterly statistics on vital events, including on the number of marriages and civil partnerships. Based on the provisional data for 2020,¹⁹ there has been a reduction in the number of marriages in 2020 compared to the position in 2019 (26,007 in 2019 and 11,986 in 2020). For civil partnerships, the provisional data for 2020 indicates that 72 civil partnerships were registered in 2020. This also represents a reduction compared to the 83 civil partnerships registered in 2019.²⁰

NRS provisional data is not yet available broken down by sex. In 2019, there were 26,007 marriages and 83 civil partnerships,²¹ and slightly more women married (26,225) compared to men (25,789). Ensuring people of both sexes are still able to marry protects their Article 12 ECHR right, marriage and civil partnership is also a way in which fathers and second female parents can obtain parental responsibilities and rights ("PRRs").

In 2019, there were 13,372 marriage carried out by religious and belief bodies.²² The continued availability of marriage has been of particular importance to persons of faith. For couples for whom cohabitation before marriage is incompatible with their faith, they are able to marry and to begin their married life together. The Scottish Government has engaged with religious and belief bodies on the impact of the pandemic on marriage and civil partnership.

NRS provisional data for 2020 indicates that of the 11,986 marriages, 424 were same sex marriages. In 2020, 33 civil partnerships involved parties who were both male and 39 involved parties who were both female.²³ This can be compared to the position in 2019. In 2019, 912 of the overall number of marriages (26,007) were same sex marriages. There were 83 civil partnerships, 50 involving male couples and 33 involving female couples.²⁴

In considering the expiry of the provision, the Scottish Government considered that the right of men and women of marriageable age to marry is already protected by Article 12 of the ECHR. While the right of same sex couples to marry or enter into civil partnerships is not similarly protected, any restriction that applied only to, or

¹⁹ [Births, Deaths and Other Vital Events - Quarterly Figures | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/births-deaths-and-other-vital-events-quarterly-figures)

²⁰ [List of Data Tables | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/list-of-data-tables)

²¹ [List of Data Tables | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/list-of-data-tables)

²² [List of Data Tables | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/list-of-data-tables)

²³ [Births, Deaths and Other Vital Events - Quarterly Figures | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/births-deaths-and-other-vital-events-quarterly-figures)

²⁴ [List of Data Tables | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/list-of-data-tables)

disproportionately to, such relationships would likely constitute a violation of Article 14 of the ECHR (protection from discrimination) in conjunction with Article 8 (respect for private and family life). In any event, there is no likelihood of restrictions being imposed in a way that treats those relationships less favourably.

Measures to be extended

Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

Tenants in both the private and social rented sectors are finding themselves in financial difficulty due to the pandemic and finding themselves unable to meet their obligations under their tenancy agreement. Under current housing legislation, this places them at risk of having their home repossessed by their landlord at a time when housing, health and other public services are under acute and ongoing pressure. These provisions continue to be necessary to support renters who may only now be experiencing the negative effects of the pandemic, for example by being made redundant at the end of the furlough scheme. The provisions allows renters additional time to apply for and receive available support.

To protect tenants from being evicted from their homes during the pandemic, it is the Scottish Government's intention to extend the provisions within the Coronavirus (Scotland) Act 2020 to:

- temporarily extend (beyond September 2021) the notice to leave period for private rented sector landlords and the notice for recovery of possession for social landlords that must apply for up to 6 months when beginning the process for ending a tenancy across all grounds –other than anti-social behaviour, criminality, abandonment and vacant property grounds;
- temporarily make all grounds for repossession discretionary so that the Tribunal can consider the full facts of the case when deciding whether to grant an eviction.

The aim is to protect tenants from being evicted from their homes during the current Covid-19 crisis. The provisions relating to this will temporarily extend the notice periods for all evictions, except where a landlord is looking to regain possession of a property where it has been abandoned by a tenant or where there is suitable alternative accommodation (in relation to an assured tenancy).

The extended notice periods are either for 6 months (in most cases) or 3 months for certain tenant conduct grounds relating to antisocial or criminal behaviour and where a landlord or their family member need to move into the property. These extended notice periods will apply to notices which are issued after the commencement of the Bill and will apply across the board, for all statutory tenancies currently in existence in the private and social rented sectors beyond 30 September 2021.

Furthermore changes will continue to enable all private rented cases going before the First-Tier Tribunal (Housing and Property Chamber) to be considered on a discretionary basis. This ensures the Tribunal is able to take all circumstances of a case into account when determining whether to grant an eviction order.

This policy is purely concerned with implementing temporary measures to help protect tenants from eviction during the Covid-19 crisis, reflecting the significant impact it is likely to have on a large number of tenants' financial circumstances. It is not intended to impact, directly or indirectly, on any group of people with protected characteristics, or on the wider equality duties.

However, women are the majority of renters in the social rented sector. People from non-white backgrounds are more likely than people from white backgrounds to live in the private rented sector. Women and people with disabilities are more likely to rely on social security as part or all of their income, and to live on low incomes. Women are more likely to have caring responsibilities and therefore be impacted more significantly – socially and financially - by the consequences of the pandemic. Action to protect people who rent from eviction during the pandemic 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 ensure renters have time to apply for, and benefit from, the interventions available to support them to pay their bills before a landlord can take eviction action.

Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

Age: The Money Advice Service estimates²⁵ that 1% of the over-indebted population is aged over 65. The Wyman Review suggests²⁶ that 7% of debt advice clients are aged over 65. Income shocks arising from COVID-19, and thus undermining people's ability to meet their debts as they fall due, are more likely to affect the working age population. The extension of the longer moratorium protection period will have a positive impact for those faced with unsustainable debt, including those aged over 65.

Gender: the Money Advice Service estimates that 64% of over-indebted people are female, whilst the Wyman Review suggests that 59% of debt advice clients are female. This suggests that extending the moratorium is more likely to benefit females than males, both because females are more likely to be over-indebted but also because they are more likely to take-up debt advice.

Disability: the Wyman Review estimates that 40% of debt advice clients suffer from a disability or long-term health condition. Disability may restrict the channels through which debtors may seek advice. For example, the Money and Mental Health Policy Institute suggests²⁷ that those with mental health problems are 22 percentage points more likely than the population in general to have serious difficulty carrying out essential administration over the phone. Likewise, difficulties of physical access may make seeking face-to-face debt advice problematic for those with physical health problems. Scotland's debt advice sector is very used to ensuring these concerns can be addressed.

²⁵ [Money Advice Service: Indebted lives: The complexities of life in debt \(November 2013\)](#)

²⁶ [Peter Wyman: Review of Debt Advice Funding \(2018\)](#)

²⁷ [Money-and-Mental-Health-Annual-Review-2018-19.pdf](#)

As noted above, although the longer moratorium period will provide benefit to all those dealing with problem debt, the Scottish Government has not identified any specific positive or negative impact on people with any of the other protected characteristics that may arise as a result of this policy.

Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020)

As the provisions form part of emergency legislation and are on a temporary basis it has not been possible to undertake an extensive EQIA, but the impact on the protected characteristic groups has been taken into consideration for all of the measures. An independent Advisory Group supports the work of COVID-19 recovery and renewal across the justice system. Its membership of third sector organisations provide regular feedback and a mechanism for consultation on human rights issues, equalities and overall impact on system users.

The Scottish Government anticipates that the legislative measures will have minimal impact in respect of the protected characteristics. The measures are necessary to support the high volume and wide range of individuals who come into contact with the justice system and to respond appropriately to the impact of coronavirus, divert resources to high priority areas and mitigate against an unmanageable accumulation of cases which would put the justice system at risk of breaking down.

The EQIA process did not identify any direct discrimination through the policy intention for any of the provisions. The EQIA analysis will, however, be kept under regular review, with any new data or evidence analysed as it becomes available to monitor the ongoing impact of the legislation on the protected characteristic groups.

It is also acknowledged that the provisions expanding remote attendance for court and tribunal procedures may have more of an impact on some of the protected characteristic groups, in particular older persons and those with physical and mental disabilities. However, the court and tribunal in every case retains the power to make directions which take account of the specific circumstances affecting parties to the proceedings and the ability to adjourn where representations are made on this. This includes the power to direct that persons attend court where remote attendance would prejudice the fairness of proceedings or otherwise be contrary to the interests of justice. Courts must also ensure that proceedings are fair in terms of the article 6 ECHR right to a fair hearing, which includes ensuring that parties are able to participate effectively in their hearing. Conversely, whilst they are not designed for this purpose, provisions relating to attendance by electronic means may be particularly beneficial to those with physical disabilities.

Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020)

This legislative change increased the maximum level of a fiscal fine from £300 to £500 allowing alternative action to prosecution to be taken in a wider range of summary cases thereby mitigating the impact of coronavirus on the justice system.

It is not anticipated that this measure will have an adverse impact on any person

within the protected characteristics.

Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020)

This provision provides for a Scotland-wide jurisdiction for sheriffs dealing with first appearances from police custody and any continuation of the case up until a not guilty plea is tendered (or full committal in petition proceedings). As this legislative measure is not targeted at a specific group, it is anticipated that it will have minimal impact in respect of the protected characteristics.

The provision enables the effective continued operation of custody court business and allows custody courts to be conducted in a way which minimises unnecessary travel and congregation of people in accordance with public health guidance, and allows Police Scotland and the SCTS to continue to operate a smaller number of centralised police custody suites and court hubs in response to coronavirus. It also enables more efficient prioritisation of court resources and is likely to be of assistance to SCTS in managing the significant backlog of court business arising from the coronavirus pandemic.

As people are held in a smaller number of designated police custody suites by virtue of the provision, they may require to travel greater distances than they ordinarily would prior to their appearance in court by remote link or in person.

Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020)

The provisions extend certain time limits contained in the Criminal Procedure (Scotland) Act 1995 so that, from the coming into force date of these provisions, there is a period during which a 6 month extension will be made to all time limits in effect on the date of commencement or taking effect during the period in which this provision has effect, with the exception of those limits relating to summary cases where the accused is held in remand, where the extension has effect for a 3 month period.

The measure is intended to avoid the need for additional court hearings to extend time limits on a case-by-case basis because the backlog of criminal cases caused by the restriction on court business due to coronavirus measures mean it is not possible for criminal cases to be heard within the prescribed time limits.

While the extension of time limits is primarily an administrative measure intended to avoid the need for court time to be used to extend these time limits on a case-by-case basis, the backlog of cases resulting from the coronavirus pandemic, which has driven the introduction of this provision, does mean that some accused people are spending longer on remand than would otherwise be the case. People prosecuted in the courts for criminal offences are more likely to be male and younger and as such, the provision, though general in nature, could have an indirect differential impact²⁸ on

²⁸ Though this impact is likely to be limited in practice as the principal purpose of the provision is as an administrative measure to avoid the need for applications to be made by COPFS to the courts to

people with those particular characteristics due to the underlying characteristics of those more likely to commit criminal offences.

Exceptions to the rule that hearsay evidence is inadmissible (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020)

The provision under schedule 4, paragraph 11 allows evidence by statement where there would be a particular risk to the person's wellbeing attributable to coronavirus or a particular risk of transmitting coronavirus to others if they were to physically attend the trial and where it is not reasonably practicable for the person to give evidence in any other competent manner.

In the event that people with certain health conditions that mean that they are at increased risk from coronavirus are advised to 'shield', it means that a court can allow evidence of their statement to be admitted where it is not reasonably practicable for them to give evidence in another way. This means that they will not have to attend court in person. It is understood that older people and people with disabilities are more likely to require to shield to reduce the risk of coronavirus infection and as such there is a possible indirect positive differential impact on people who are older or have a disability by enabling them to give evidence by statement where appropriate.

Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020)

The EQIA process has concluded that retaining these community order provisions in the Coronavirus (Scotland) Act 2020 will not have any significant adverse or inequitable impact on any particular group of people. The EQIA process did not identify any direct or indirect discrimination through the policy, which provides a limited but proportionate extension of provisions relating to timescales for completion of unpaid work or other activity requirements and a power to vary community payback orders (CPOs) if the justice system is at risk of being overwhelmed due to the ongoing impact of coronavirus.

The first aspect of the proposal relates specifically to timescales for completion of unpaid work (UPW) or other activity requirements. For individuals in respect of each protected characteristic, it is important that there is sufficient time to complete unpaid work or other activity requirements while also ensuring they are not subject to an order for longer than necessary. The approach planned is proportionate and does not impact negatively.

The second aspect of the proposal allows for the variation in bulk of community orders and an SSI would be required for this power to be invoked. Should this power be invoked again in the future an EQIA would be carried out to assess the impact of the specific proposals on equalities groups.

extend time limits on a case-by-case basis. As such, in many cases, it is not expected that the provisions will directly affect the length of time it takes for a person's case to be determined.

Overall, the Scottish Government expects retaining the proposed provisions will positively contribute to aiding the recovery of the justice system.

In regard to specific protected characteristics, key findings are:

Age: As this policy is not targeted at a specific age group, rather all those subject to eligible CPOs, it is not expected to impact those individuals adversely in terms of the protected characteristic of age.

It is acknowledged that young people under the age of 18 are least likely to be affected by these provisions, however this is a result of the composition of the offending population - young people are proportionately less likely to receive a CPO with evidence showing that 16-17 year olds made up only 2% of individuals who received a CPO in the 2019/20 period.

Consideration was given regarding the impact of the provisions on the risk to children posed by individuals subject to UPW requirements – particularly around the growing body of information indicating the increase in domestic abuse during and post-lockdown.

However, UPW has no risk management element, and ensuring that orders last for at least 12 months or reducing the amount of hours on an UPW requirement does not increase risk of harm to children, young people, or the wider community. All aspects of CPOs which are relevant to keeping victims and communities safe will remain in place.

Justice social work (JSW) has continued to prioritise cases throughout the period affected by COVID-19 where any risk to children is present, and it is expected that social work will continue to maintain close contact with those individuals who present a high risk, whilst also working in close collaboration with children and families services and other relevant agencies to ensure the safety and wellbeing of children.

Overall, the Scottish Government does not consider there to be any increased risk to children as a result of these provisions, nor any differential effect based on age other than that which reflects the composition of the population affected by the legislation.

Sex/Gender: While the percentage of men and women receiving a community sentence after having been convicted of a crime are broadly similar (20% and 18% respectively), according to JSW statistics for 2019/20, the proportion of community orders issued to males was 85%, reflecting the fact that overall, men are much more likely to be convicted of an offence.

Men are also more likely than women to receive a custodial sentence. Data from the Criminal Proceedings in Scotland 2019/20 statistics shows that men are twice as likely to receive a custodial sentence than women (16% and 7% respectively). This is mainly due to the fact that women are less likely to be convicted of sexual and violent offences and more likely to be convicted of less serious offences such as crimes of dishonesty. For total crimes and offences, the gender split was 83% male, 17% female based on convictions in 2018/19. For non-sexual crimes of violence, the gender split was 89% male and 11% female and for sexual crimes the split was 98%

male and 2% female, compared to 75% male and 25% female for crimes of dishonesty.

It is acknowledged that women involved in the justice system have specific needs, which may be different to that of men, and any specific welfare needs facing women will be taken into account if considering any changes to CPOs as allowed by the powers in the second aspect of the proposal (to vary in bulk the requirements of CPOs).

Disability: Retaining the provisions may have a small positive impact on individuals subject to CPOs with an UPW or other activity requirement who have certain disabilities or underlying health conditions

Ensuring that individuals have sufficient time to complete their UPW or other activity requirements as part of a CPO, by retaining the powers to ensure a 12-month timescale and to reduce UPW hours, may serve to mitigate the risk of exacerbating existing mental health conditions for people who may be experiencing stress and anxiety in relation to any potential uncertainties around completion of UPW and the potential for breach of orders through no fault of their own.

Race, Religion or Belief, Sexual Orientation, Gender Reassignment, and Pregnancy/Maternity: The provisions outlined would have no specific impacts on people with these protected characteristics. Criminal Justice Social Work statistics include data on Community Payback Orders by ethnicity (where known). In 2019-20, 96.1% of people with a CPOs commenced were white, 1.6% Asian, 0.9% African, Caribbean or Black and 1.1% Other.

Conclusion: Overall, the Scottish Government anticipates that retaining these community order legislative measures will have minimal impact in respect of the protected characteristics. The EQIA process did not identify any direct or indirect discrimination through the position on expiry or extension of provisions. The measures being extended are necessary to ensure that orders are not unnecessarily at risk of timing out or inadvertent breach while capacity to start and deliver orders efficiently remains uncertain or limited; and to ensure that if CPOs cannot be delivered effectively and the community justice system is at risk of becoming overwhelmed as a result of the pandemic, action can be taken – subject to approval by the Scottish Parliament - to mitigate risks to the justice system.

Associated with this the Scottish Government expects that retaining the provision that requires UPW or other activity requirements to be of 12 months duration may have a small positive impact on individuals subject to such CPOs who have certain disabilities or underlying health conditions, in particular those with mental health conditions.

Should the powers to vary orders in bulk be invoked again in the future, an EQIA will be carried out on the specific proposals.

Parole Board (Section 5 and schedule 4: paragraphs 17 and 18(1) and (3) of the Coronavirus (Scotland) Act 2020)

It is not anticipated that this will have a significant impact on any person within the protected characteristics. Issues relating to individuals who may have difficulty communicating via video or phone links for parole hearings will be taken into account on a case-by-case basis. Hearings have continued to be held by video/tele conferencing and since 23 March 2020 till 5 March 2021 only 3 of 1196 have failed due to technical difficulties, not involving anyone with protected characteristics.

Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020)

The release arrangements under the Coronavirus (Scotland) Act 2020 and associated regulations allow the Scottish Ministers to specify a class of persons for release. The Coronavirus (Scotland) Act 2020 sets exclusions for certain types of persons and allows that a prison Governor can veto the release of those who would present an immediate risk of harm to an identified person. The Scottish Government and Scottish Prison Service held detailed discussions over the scale of, and criteria for, the planned release process to ensure that it would achieve the necessary and proportionate effect on the operation of prisons. Specifically consideration was given to the need to protect the security and good order of the prison as well as the health, safety or welfare of prisoners or those working in prison. Public protection was also a key consideration in how the arrangements were put into effect.

During May-June 2020, the Scottish Government instructed the early release of a limited number of prisoners under the powers. The specific criteria for the process were set out in [The Release of Prisoners \(Coronavirus\) \(Scotland\) Regulations 2020](#) for the approval of the Scottish Parliament, leading to the release of 348 prisoners in the 28 days starting on 4 May 2020. All these prisoners had been serving sentences of 18 months or less, and all were within 90 days of their scheduled date of release. Individuals who were subject to long sentences, or post-release supervision orders were excluded and a number of further exclusions were set out in the Regulations.

The scope and parameters of any future release process would have to be devised in response to the circumstances at that time, to provide the necessary effect on conditions within prisons. As a result, a potential future release process may replicate some of the regulations and arrangements applied in May 2020, but that would be very much dependent on the specific circumstances that were being faced in prisons at that time.

The nature of emergency release is such that the detailed individualised assessment which are a feature of some other forms of release is not compatible with the need to give effect to the measure quickly. Under the previous release arrangements, the criteria for early release were set around sentence length and time left to serve (rather than specific demographic groups). The expected cohort of individuals eligible for early release was deemed likely to be broadly proportionate to the current make-up of the short sentence prison population overall. The vast majority of the prison population is male, so most of those released were likely to be male. Indeed, in the previous early release, 36 female prisoners were released and 312 male prisoners. This means that female prisoners constituted 9% of the total early release cohort, compared with 7.3% of the total prison population (as per 2019-20 statistics).

The prison estate itself is configured to hold men and women separately so depending on the nature of any release (should the operational conditions require targeted action to affect conditions in specific prisons), it may mean that in a future early release process the cohort of prisoner specified for release may need to be adjusted to achieve the outcomes being sought. This might therefore have a disproportionate effect on either group in terms of being released in higher numbers, depending on which establishment(s) require to be targeted. These decisions would be led by wider considerations around the need to maintain safe operation of prisons across the estate and it may not be easy initially to mitigate any disproportionate impact on either sex.

Future release may have a disproportionate impact on female partners and family members in the community who are affected by the release and return to the household. The regulations applied to the May 2020 process specifically excluded prisoners sentenced for domestic abuse and harassment offences, and the Governors' veto could prevent the release of specific prisoners where their release presents a risk to an identified person (which could further reduce the risk of domestic violence or risk to previous victims). However, for some households the early release may provide a benefit in terms of family support or assistance with childcare and caring responsibilities, which can often fall disproportionately on women and which may be increasingly challenging while social distancing / lockdown measures are in place.

During the previous early release, the time available to prepare prisoners for release was necessarily constrained. However arrangements were made to mitigate this by expediting the pre-release consideration of prisoners' circumstances through improved sharing of information with community based services (i.e. housing, healthcare, benefits). Dedicated liaison arrangements were set up between prisons and local authorities with underpinning information sharing agreements. Additional information was provided to all prisoners scheduled for early release, to advise where and how they could access support services during the lockdown period. It is likely that similar arrangements would be put in place should another early release of prisoners be considered necessary and proportionate by Scottish Ministers.

In relation to disability, individuals were considered for early release if they satisfied the overall criteria. Information was not compiled on the number of disabled prisoners who were released under the early release provisions although the information would be available on individual prisoner records. Details of an individual's health and social care needs were co-ordinated between prison-based and community services in the same manner as a standard release.

The focus on aspects of sentence length and time until release as selection criteria meant the release process did not select based upon protected characteristics such as gender reassignment, marriage/civil partnership, race religion or belief and sexual orientation. As such, the eligibility for release was blind to those characteristics, reducing the potential for any bias in selection having a disproportionate impact on people with these characteristics. The same approach could be part of future release arrangements.

Overall, the Scottish Government anticipates that the legislative measure itself will

have no differential impact in respect of those prisoners with the listed protected characteristics. If release is done in a similar way again then the characteristics of those directly affected are likely to mirror the characteristics of the current short-sentence prisoner population.

The Scottish Government has considered whether the provisions could constitute conduct prohibited by the Equality Act. The provisions will apply to all prisoners satisfying the eligibility criteria irrespective of protected characteristic and will therefore not constitute direct discrimination on that basis. 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 groups. Where any possible impact may arise, the Scottish Government considers the impacts are justified and a proportionate means of achieving the legitimate aim of increasing the capacity of the Scottish Prison Service and mitigating the possible spread of infection.

Legal Aid (Section 5 and schedule 4: paragraphs 21 – 23 of the Coronavirus (Scotland) Act 2020)

With regard to the specific provision relating to legal aid, a slowdown in income for those who deliver legal aid services could have a significant impact on their ability to continue practising. This will directly impact on the criminal justice system with implications on an accused person's right to a fair trial and available legal counsel, with vulnerable individuals, such as accused persons with learning difficulties, more likely to be at risk in this regard. Similarly, in civil law a reduction in legal aid practitioners will impact on a person's ability to protect and defend their rights including areas of discrimination, housing and employment. It is expected once the emergency period has ended there may be an increase in those seeking advice in these areas.

Alcohol licensing (Section 6 and schedule 5 of the Coronavirus (Scotland) Act 2020) and Licensing other than alcohol licensing (Section 7 and schedule 6: paragraph 1 of the Coronavirus (Scotland) Act 2020)

The Licensing (Scotland) Act 2005 ("the 2005 Act") and the Civic Government (Scotland) Act 1982 ("the 1982 Act") contain provision for the licensing of different activities such as the sale and supply of alcohol (under the 2005 Act) or taxi and private hire car licensing (under the 1982 Act). Prior to the enactment of the Coronavirus (Scotland) Act 2020, these licensing regimes contained a considerable number of strict timescales and deadlines with little or no discretion available to the relevant authorities if they are not adhered to.

The Coronavirus (Scotland) Act 2020 Act provided necessary discretion and flexibility for Licensing Boards, licensing authorities, licence holders, applicants and others who engage with the licensing systems under the 2005 and 1982 Acts. For example, Licensing Boards/licensing authorities are able to exercise discretion so as not to hold in person hearings and to instead provide alternative means for persons to be heard by telephone, video-conferencing or by written communication (including electronic communication).

Extending the discretion and flexibility, provided by the Coronavirus (Scotland) Act 2020, beyond September 2021 will assist all users of the licensing systems as they begin to recover from the adverse impact (e.g. backlogs of licensing casework, difficulties meeting deadlines for accessing training etc.) of the coronavirus pandemic. In addition, extending the licensing provisions will also assist all users of the licensing systems to be able to react quickly to any further coronavirus related restrictions, whether at an individual local authority level or at a national level, thus enabling the licensing systems to continue functioning.

The Scottish Government has continued to engage with a range of key licensing stakeholders throughout the coronavirus pandemic and whilst this has been on an informal basis there has been no suggestion that any of the licensing provisions within the Coronavirus (Scotland) Act 2020 have had an adverse impact on the protected characteristics. Looking forward, in terms of the Public Sector Equality Duty, which Licensing Boards must have due regard to in the exercise of its functions, the Scottish Government's view is that extending the licensing provisions beyond 30 September 2021 does not unlawfully discriminate in any way and there will be no adverse impact on any of the protected characteristics listed in legislation due to race, disability, gender/gender reassignment, age, marriage and civil partnership, pregnancy and maternity, sex and sexual orientation, race, religion or belief arising from the licensing provisions, either directly or indirectly.

Freedom of Information (Section 7 and schedule 6: paragraphs 2 and 7 of the Coronavirus (Scotland) Act 2020) and Freedom of Information (Section 5 and schedule 4: paragraph 12 of the Coronavirus (Scotland) (No.2) Act 2020)

Paragraph 7 of schedule 6 to the Coronavirus (Scotland) Act 2020 enables the Scottish Information Commissioner and Scottish public authorities to issue formal notices under the Freedom of Information (Scotland) Act 2002 (FOISA) electronically. Prior to the Coronavirus (Scotland) Act 2020, FOISA provided that these notices required to be delivered or posted to the recipient (section 74(1)(a) of FOISA). It is the Scottish Government's intention that this should be extended beyond 30 September 2021 to allow for this continued flexibility.

Paragraph 12 of schedule 4 to the Coronavirus (Scotland) (No.2) Act 2020 requires the Scottish Ministers to report on their FOI performance to the Parliament every two months while Part 2 of schedule 6 of the Coronavirus (Scotland) Act 2020 is in force. It is the Scottish Government's intention that while Part 2 of schedule 6 of the Coronavirus (Scotland) Act 2020 remains in force, so should this provision.

The Scottish Government has not identified any positive or negative impact on any of the protected characteristics that may arise as a result of either of these policies.

Duties in respect of reports and other documents (Section 7 and schedule 6: paragraphs 8 – 10 of the Coronavirus (Scotland) Act 2020)

The removal of requirements for certain documents to be made available for physical inspection, allowing local authorities and public bodies instead to make them available online, may have an impact on those who have less access to online technologies. Older people, disabled people and those with long-term health

conditions have been identified particularly as using these technologies less than other groups. However, older people and those with long-term health conditions are also identified as being at greater risk from the virus. The aim of the policy is to allow local authority business and other public services to continue at any time while offices and libraries are closed to prevent spread of the virus; without such a change authorities and public bodies would be unable to comply with statutory duties.

Local Authority meetings (Section 7 and schedule 6: paragraphs 11-14 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has assessed the potential impact of extending the measure on equal opportunities and has determined it does not unlawfully discriminate in any way 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.

Enabling local authorities to assess their local circumstances and decide whether it is appropriate to exclude the public from their committee meetings on the basis that the presence of the public constitutes a real and substantial risk to public health relating to coronavirus could, however, have an impact on some particular groupings of the public. All 32 local authorities are currently holding the vast majority of their committee meetings remotely using technology and not in person. This could have a disproportionate impact on older people, people with disabilities or members of the public who do not have the infrastructure or skillset to access public meetings remotely. However, some of these groups are also identified as being at greater risk from the virus. The aim of the policy is to allow council committee business to continue while action is taken to reduce spread of the virus, and the Scottish Government considers this to be an appropriate measure.

Duration of planning permission (Section 8 and schedule 7: paragraphs 8 – 10 of the Coronavirus (Scotland) Act 2020) and Listed buildings and conservation areas: consents (Section 5 and schedule 4: paragraph 2 of the Coronavirus (Scotland) (No.2) Act 2020)

No impacts are expected from extending duration of planning permission on equality groups and no impacts have been highlighted or identified since their original introduction.

The Bill would have the effect of extending provisions which provide that where a full planning permission or planning permission in principle would expire during the relevant period – the “emergency period” which currently ends on 30 September 2021 - then that permission would not lapse until after expiry of the “extended period” which currently ends on 31 March 2022, irrespective of that development having not been commenced. The permission would only lapse if development has not commenced before the end of the extended period.

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 Bill would extend provisions which allow amendments to section 16 of the Listed Buildings Act to extend the 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 ends on 30 September 2021. Consents to which the provision applies will instead lapse at the end of an extended period (which ends on 31 March 2022) 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.

Land registration: electronic delivery of copies to Registers of Scotland (Section 8 and schedule 7: paragraphs 11-14 of the Coronavirus (Scotland) Act 2020 and Section 5 and schedule 4: paragraph 3 and 4 of the Coronavirus (Scotland) (No.2) Act 2020)

These measures allow people, in practice through their solicitors, to continue to submit applications for registration in the Land Register, Register of Sasines, Register of Inhibitions and Register of Judgements to the Registers of Scotland digitally while the Registers of Scotland are unable to receive applications by post.

These measures do not raise any issues in respect of equal opportunities. These provisions extended by the Bill 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 provide guidance on the measures and a customer services telephone line is available to those seeking further support in accessing the registers and submitting applications.

Scrutiny of subordinate legislation in urgent cases (Section 8 and schedule 7: paragraphs 23-30 of the Coronavirus (Scotland) Act 2020)

These provisions enable accelerated timetabling of regulations that would normally be made under the affirmative procedure where this is necessary by reason of urgency. They do so by providing for regulations to be progressed under the made affirmative procedure (which is the process that has been needed to be used for urgent Covid-related health protection regulations), which enables regulations to be brought into force immediately but only remain in force if parliamentary approval is secured. The impact of extending this provision solely affects the Scottish Government. Accordingly, the Scottish Government has not identified any positive or

negative impact on any of the protected characteristics that may arise as a result of this policy.

Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020, except paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) which are being expired)

Provisions in the Coronavirus (Scotland) (No. 2) Act 2020 temporarily introduced a 28 day notice to leave period for student residential tenancies entered into prior to 27 May 2020 and occupied after that date and for tenancies entered into after 27 May 2020.

It is proposed that the 28 day notice period be extended after 30 September 2021 and that it will apply to all student residential tenancies regardless of when they were entered. The 7-day notice period applicable to student residential tenancies entered prior to 27 May 2020 and occupied prior to that date is being expired and those tenancies will, after 30 September 2021, be subject to the 28-day notice period instead.

Typically, the majority of those who have resided in student accommodation are women. Almost half of students in halls are from outside the UK and hence, PBSA and Halls of Residence are more likely to be ethnically diverse. The majority of students residing in PBSA and halls of residence are 21 and under. Accordingly, if these provisions are not extended, the impact would be felt disproportionately by those with protected characteristics.

These measures 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.

The measures continue to align the rights of students in PBSA and university and college halls of residence with regard to tenancy termination notification periods with those in the private rented sector (PRS).

The measures would advance equality of opportunity as their continuation gives economic stability to students in PBSA and Halls of Residence who are more likely to have protected characteristics. Those students looking to find suitable accommodation for the next academic year can be reassured that, should restrictions continue and they are unable to take up the accommodation as planned, they will not be forced to pay for accommodation they are not using for a full academic year.

This policy is intended to continue the 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.

The Scottish Government considers that the extension of temporary legislative changes are likely to continue positively impacting 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.

Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020)

During the pandemic it has been essential that tenants have been made aware of their rights and have had access to support and advice where income has been reduced or employment has been lost. Requiring landlords to work with tenants in rent arrears, sign-posting them to support and advice, has helped ensure that tenants can access any help available to them and that they are aware of their rights within housing legislation, especially where these rights have temporarily strengthened.

It remains the policy intention to implement temporary measures to help support renters who are having difficulty paying rent and to support landlords who have tenants with rent arrears. It is not intended to impact, directly or indirectly, on any group of people with protected characteristics, or on the wider equality duties.

However, people from non-white backgrounds are more likely than people from white backgrounds to live in the private rented sector. Women and people with disabilities are more likely to rely on social security as part or all of their income, and to live on low incomes. Women are more likely to have caring responsibilities and therefore be impacted more significantly – socially and financially - by the consequences of the pandemic. Action to support people who rent from eviction during the ongoing crisis and subsequent recovery should have a positive impact on outcomes for these groups.

The Scottish Government considers that the temporary legislative changes are likely to continue positively impacting across those with protected characteristics, as the legislative measures will help them access suitable support and to know their enhanced rights from being evicted during the ongoing crisis and subsequent recovery.

Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020)

The policy intent is one of ensuring equality of social care workers across the sector. The policy ensures that those whose terms and conditions are as such that they would only receive Statutory Sick Pay, or another rate of sick pay which is significantly less than their normal expected income, do not suffer financial hardship when off sick or self-isolating due to coronavirus.

There is evidence that the social care sector employs more women, which means there is potential for the protected characteristic of sex to be engaged. The Fund operates so that any social care workers who are eligible for payment, regardless of the relevant characteristics that apply to them, are provided with access in response

to financial hardship. In light of that, the Fund provisions do not discriminate between protected characteristics.

The Fund will also assist with retention of staff, who may have been likely to leave the sector due to a lack of financial security in the event of becoming ill with coronavirus, therefore creating a positive effect. Should the provision not be extended and staff were to leave the sector, there could be a negative effect on people such as the elderly or disabled, who rely on this care to maintain their quality of life.

Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020)

These measures have no significant impact. There is some evidence that those within some of the protected characteristic groups are over-represented in that share of the population facing the burden of unsustainable debt. For example, households with children are more likely to be in debt than households without. The Money Advice Service estimates²⁹ that 1% of the over-indebted population is aged over 65. The Wyman Review³⁰ suggests that 7% of debt advice clients are aged over 65. The Money Advice Service estimates that 64% of over-indebted people are female, whilst the Wyman Review suggests that 59% of debt advice clients are female. While there is a limited impact on protected characteristics, it is considered that any impact will be positive, particularly in relation to the increase in the minimum debt threshold that gives rise to creditor petition bankruptcy through the courts. This provides additional protection while individuals and families seek advice and the appropriate solution to issues of problem debt.

Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020)

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.

These provisions temporarily remove 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.

Care Homes - Emergency directions and emergency intervention orders (Section 2 and schedule 1: paragraphs 16 – 17 of the Coronavirus (Scotland) (No.2) Act 2020)

Emergency directions enable Health Boards to take immediate action where they consider there is a material risk to the health of those within a specific care home due to coronavirus. Emergency Intervention Orders enable Scottish Ministers to

²⁹ [Money Advice Service: Indebted lives: The complexities of life in debt \(November 2013\)](#)

³⁰ [Peter Wyman Review of Debt Advice Funding 2018 \(1\).pdf](#)

intervene in a care home, before going to court, where for a reason relating to coronavirus, they consider urgent action is essential to prevent an imminent threat to the life or health to any person in a home (but an application must be made to a court within 24 hours) or to seek an order from the court before intervening where there is a serious risk to the life, health or wellbeing of any person in a home.

The provisions in themselves are not considered to have a differential impact on people with any of the protected characteristics. If the powers were to be used the impact of any intervention on any residents of a care home would be considered. The majority of people living in adult care homes are older people or have a disability and so include persons of a variety of protected characteristics, in particular disabled persons and persons of varied age. The aim of both sets of provisions is to protect the life, health and wellbeing of these particular groups who are more vulnerable to the serious risks of coronavirus. The availability of these powers ensures that immediate action can be taken if the life, health and wellbeing of persons at the accommodation is at risk. Having these powers in place also means that the residents of a care home may not need to move to different accommodation which may be more difficult to arrange during a pandemic.

Powers to purchase care home services and care at home providers (Section 2 and schedule 1: paragraphs 18 to 21 of the Coronavirus (Scotland) (No.2) Act 2020)

These provisions enable a local authority, or where applicable, relevant health bodies, to acquire a care home service or a care at home service if a social care provider is unable to provide that service due to service failure or serious financial difficulty, as well as if there is a threat to the wellbeing of person receiving care.

The provisions in themselves are not considered to have a differential impact on people with any of the protected characteristics. If the powers were to be used the impact of any intervention on any residents of a care home would be considered. The majority of people living in adult care homes are older people or have a disability and so include persons of a variety of protected characteristics, in particular disabled persons and persons of varied age. The aim of the provisions is to protect the life health and wellbeing of these persons at the accommodation who are also particularly vulnerable to the adverse effect of coronavirus. The availability of the powers ensures that immediate action can be taken if continuity of care is jeopardised. Having these powers in place also means that the residents of a care home may not need to move to different accommodation which may be more difficult to arrange during a pandemic.

Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020)

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 where an offence punishable with imprisonment has been committed, 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 impact of the coronavirus pandemic. Younger people and men are more likely to be charged with

criminal offences. However, this provision is not considered to be likely to have a differential impact on people with any of the protected characteristics in practice, as its purpose is essentially administrative, in seeking to need to hold multiple hearings to adjourn a case while further information is obtained.

Criminal Justice - Arrangements for the custody of persons detained at police stations (Section 3 and schedule 2: paragraphs 2 – 5 of the Coronavirus (Scotland) (No.2) Act 2020)

It is not anticipated that the extension of these measures will have an adverse impact on any person within the protected characteristics.

The provisions allow 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.

Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

It is not anticipated that this measure will have an adverse impact on any person within the protected characteristics.

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 court where certain conditions are met. Where the court exercises the power provided by these provisions, it has the effect of preventing the undertaking and any associated conditions from expiring and ensures that where, for example, protective conditions have been put in place to protect a complainer, they continue to have effect until a court is able to consider whether to impose bail conditions or remand the accused in custody. This has been identified as a key measure to preserve public and victim safety during the coronavirus pandemic, particularly in sensitive cases of domestic abuse. It may therefore help to ensure that the particular impacts of gender based violence, which includes women and girls across all protected characteristics, will continue to be addressed. Data gathered on the impacts of domestic abuse across the protected characteristics as part of the Scottish Government's delivery plan of the Equally Safe Strategy can be found at: [Equally Safe strategy: draft EQIA - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2020/06/Equally_Safe_strategy_draft_EQIA_-_gov.scot.pdf)

Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020)

Inclusion of the effect (direct or indirect) 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.

The extension of the specified period for payment of a confiscation order where payment cannot be made for reasons relating directly or indirectly 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.

Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020)

This provision 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 may be 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.

Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has not identified any differential impact on people with protected characteristics as a result of extending this provision. The scope of the provision is primarily to enable the Care Inspectorate to communicate quickly and safely by electronic means with care service providers.

Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020)

The provisions dis-apply the requirement for the physical presence of certain parties in some circumstances such as the signing of certain documents or the administering of oaths, affirmations and declarations. They create the opportunity for Scottish notaries public, solicitors and advocates, guided by their professional bodies, to adopt alternative appropriate means of executing documents and oaths etc. which have a “physical presence” requirement, for example notaries may now execute remotely, by electronic means such as live video connection.

In terms of the Public Sector Equality Duty it is not anticipated the provisions will discriminate unlawfully, or prevent the fostering of good relations between those who share protected characteristics and those who do not, as they allow for alternative means to access such services whilst ensuring the relevant safeguards are in place. Therefore it is anticipated the provisions will be positive with regard to the advancement of equality of opportunity. The provisions would not prohibit in and of themselves physical presence in providing such legal services should the parties wish to do so, subject to any Covid-19 related restrictions, and would place no

obligation on Scottish notaries public, solicitors or advocates to facilitate such services by remote means. Therefore no negative impact is anticipated to any of the protected characteristic groups.

Council tax: exempt dwellings (Section 5 and schedule 4 paragraph 15 of Coronavirus (Scotland) (No.2) Act 2020)

This provision creates an exemption from council tax liability for a property that was exempt from paying council tax due to being occupied by students; a student's spouse or dependant(s); school leavers; or people under the age of 18; and which then became unoccupied on or after 17 March 2020 for a reason relating to coronavirus. From (and including) 27 May 2020 such a property is exempt from paying council tax until it is occupied or the provisions in the Act come to an end.

It is the Scottish Government's intention that this measure should be extended beyond 30 September 2021 to continue the council tax exemption for properties in this situation. This will ensure that landlords of such properties are not required to pay council tax due to the impact of the pandemic, when in normal times they would not be doing so due to the property being occupied by one of the specified groups.

As this measure reflects the arrangements that would be in place in normal times, and have been in place due to the pandemic since May 2020, it is not anticipated that the extension of this provision will involve a significant impact on individuals on the basis of any of the protected characteristics.

Restriction on giving grant to businesses connected to tax havens (Section 5 and schedule 4: paragraph 16 of the Coronavirus (Scotland) (No.2) Act 2020)

This measure ensures that businesses with certain connections to tax havens may not receive coronavirus-related grants from Scottish Ministers. This has applied to all grants for which applications were made since 27 May 2020. The Scottish Government has not identified any positive or negative impact on any of the protected characteristics that may arise as a result of this policy.

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 updating the Government's continued response to the public health emergency caused by the coronavirus pandemic.

The Scottish Government remains committed to keeping the provisions of the Scottish Acts, as extended by this Bill, under review at all times, under the now established review scheme.

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: 4 June 2021



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