

Coronavirus (Recovery and Reform) (Scotland) Bill

Equality Impact Assessment – Results

January 2022

Equality Impact Assessment – Results

Title of Policy	Coronavirus (Recovery and Reform) (Scotland) Bill (“the Bill”)
Summary of aims and desired outcomes of Policy	Further information about the background and the policy intention behind the Bill and also about the existing temporary Covid legislation is set out in the Policy Memorandum which accompanies the Bill. The Bill, Policy Memorandum and other accompanying documents are available from the Scottish Parliament website and are linked to from this Bill webpage .
Directorate: Division: team	Directorate for Constitution and Cabinet: Cabinet, Parliament and Governance Division: Covid Recovery Bill and Co-ordination

Executive summary

Work was carried out to assess impacts in terms of eliminating unlawful discrimination, harassment and victimisation; advancing equality of opportunity; and promoting good relations among and between different groups. The evidence base for the following [protected characteristics](#) was reviewed and assessed: age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, and marriage and civil partnership.

Background

Further information about the background and the policy intention behind the Bill and also about the existing temporary Covid legislation is set out in the Policy Memorandum which accompanies the Bill. The Bill, Policy Memorandum and other accompanying documents are available from the Scottish Parliament website and are linked to from [this Bill webpage](#).

The Scottish Government held a full 12-week public consultation on the Bill between August and November 2021. The [consultation paper](#), entitled “Covid Recovery: a consultation on public health, public services and justice system reforms”, was publicised widely and the Scottish Government has published a full consultation analysis report, linked to from [this Bill webpage](#).

Question 37 of the consultation paper referred to above concerned the Equality Impact Assessment and was as follows:

Question 37: Equality impact assessment

Yes I have comments on potential impacts

No
Unsure
I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to topics of particular interest to you with their topic codes.

354 respondents offered free text responses to this question. Multiple respondents highlighted that digital exclusion could limit participation in proposals involving remote processes. This was felt to be particularly challenging for older people, and people with disabilities, lower incomes, or from an ethnic minority background. A full analysis of the responses to question 37 is included in the full consultation analysis report.

During the parliamentary process for the Extension and Expiry Act, the Deputy First Minister made a commitment to include the voices of disabled people in the consultation for the Bill, to help ensure that their human rights would be adhered to in the Bill. As part of this commitment, the Scottish Government co-hosted an online disability consultation workshop with Disability Equality Scotland on 26 October 2021 and heard from 23 people, including people with lived experience and members/representatives of disability organisations.

The Scottish Government and Disability Equality Scotland worked together to produce an [Easy Read resource](#) to help attendees better understand the consultation proposals and participate in the workshop. The Easy Read document summarised the provisions which the Government and disability stakeholders believed would be of most relevance to disabled people. Disability Equality Scotland ensured that the workshop was as accessible as possible, with BSL interpreters and remote captioning available. The viewpoints raised during the workshop were used to support the development of this EQIA and a summary of the discussions is included in the consultation analysis report.

The Scope of the EQIA

The full EQIA process has been followed given the equality impacts of the Bill.

In developing this EQIA the Scottish Government is mindful of the three needs of the Public Sector Equality Duty – 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 negative impacts have been identified, the Scottish Government has sought to mitigate/eliminate these. Where negative impacts have been identified with regard to potential future regulations or other implementing measures, the Scottish Government will seek to mitigate/eliminate these also. The Scottish Government is also mindful that the equality duty is not just about negating or mitigating negative impacts, as the Scottish Government also has a positive duty to promote equality. The Scottish Government has therefore sought to promote equality through the provisions within the Bill and this EQIA outlines how provisions could have a positive impact on one or

more of the protected characteristics. With regard to potential future regulations or other implementing measures, the Scottish Government will seek to promote equality through provisions contained in any new measures, or by the provision of appropriate support and guidance.

The 'Key Findings' section of this EQIA is structured in the same way as the Policy Memorandum, which broadly follows the structure of the Bill. Where certain provisions have not been mentioned in the 'Key Findings' section, this is because the Scottish Government has concluded that these provisions would have no differential impact on protected characteristics.

Public Health Protection

Modifications of the Public Health etc. (Scotland) Act 2008
Arrangements for vaccination and immunisation

Education

Educational establishments etc.
School consultations

Public Service Reform

Online meetings and hearings

Bankruptcy: remote meetings of creditors
Civic licensing: how hearings may be held
Alcohol licensing: how hearings may be held
Requirements of writing: Disapplication of physical presence requirements
Custody at police stations: Custody officers' functions

Communicating by phone or online

Bankruptcy: service of documents
Registration of births
Registration of deaths
Civic licensing: how notices may be published
Land registration
Freedom of information: giving notice electronically
Care services: giving of notices by SCSWIS

Miscellaneous

Bankruptcy: meaning of "qualified creditor" and "qualified creditors"
Legal aid and advice: Claim for interim payment of fees and outlays
Mental health: removal of need for witnessing of signature of nominated person
Parole Board for Scotland: Chairperson's functions

Tenancies

Removal of mandatory eviction grounds
Pre-action protocol in respect of evictions relating to rent arrears

Temporary Justice Measures

Courts and tribunals: conduct of business by electronic means etc. (Documents)
Courts and tribunals: conduct of business by electronic means etc. (Attending a court or tribunal)

Fiscal fines
Failure to appear before court following police liberation
National jurisdiction for callings from custody etc.
Criminal procedure time limits
Proceeds of crime
Prisons and young offenders institutions

Key Findings

Public Health Protection

Modifications of the Public Health etc. (Scotland) Act 2008

As this section of the Bill contains only enabling powers, the provisions themselves have no immediate impact on people with protected characteristics (under the Equality Act 2010) and do not run the risk of discrimination; any such impact would come at the point of regulations being made under the powers contained in the Bill. Any impact on people with protected characteristics would be dependent on the nature of the intervention being considered and would therefore not be known until the regulations are being planned and drafted.

Should Scotland face a public health threat that requires regulations to be made under the provisions, it is likely that such regulations could have an impact on people with protected characteristics. Using Covid as an example, it is clear that there may be circumstances where regulations made in response to a public health threat could have the potential to be discriminatory. The Scottish Government recognises that restrictions would not impact all individuals in the same way, and that restrictions may disproportionately impact some people more than others, including disabled people or people from minority ethnic groups. In relation to Covid, the requirement to wear a face covering in certain settings provides an example of such a requirement. The wearing of face coverings, as required during the Covid pandemic, may not be possible or may be distressing for some individuals, including disabled people or younger people.

It is impossible to predict whether a future public health threat would require face coverings as a protective measure, as that would depend on the nature of the threat. At the time of introducing requirements, however, those impacts would be considered, and it would be likely that appropriate exemptions would be made in order to ensure the protection of people with protected characteristics and to balance the risks of people not wearing face coverings and the detrimental impact on individuals not able to access services if they cannot wear a face covering.

The requirements in the Bill to consider the proportionality of restrictions and requirements builds in considerations to the regulation-making process. Additionally, there is a requirement to review any regulations made. This ensures that any restrictions and requirements which are imposed are regularly considered in light of issues raised and changes to the nature or understanding of the public health threat. As outlined above, the reference to face coverings is merely an illustrative example of the considerations made when introducing regulations to respond to a public

health threat. The response required and any subsequent impact will depend on the circumstances at the time that the regulation-making power is used.

Impact assessments which will be used to inform the development of any regulations made under the enabling power will consider and assess whether the provisions of the regulations have the potential to be discriminatory and identify mitigating actions. By way of example, the [EQIA produced for the Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 21\) Regulations 2021](#) can be found on the Scottish Government website (the EQIA produced for the continuing face covering mandate begins at pg 108). These regulations continued the mandatory use of face coverings for adults, young people and children over the age of 5, unless they had a reasonable excuse or are exempt, which are detailed in the provisions.

Arrangements for vaccination and immunisation

It is considered that the impact on persons with one or more of the protected characteristics due to the policy aims of the vaccination provisions of the Bill will be limited. If, and to the extent, there is any differential impact, the public health reasons justify the approach, and there is no alternative way of dealing with the public health risks as effectively.

The policy reflected in the vaccination provisions is not based on nationality, race or religion in any way. Any healthcare professional suitable to deliver a vaccination will be able to do so depending on local requirements. If there is a risk to healthcare professionals in delivering a Covid vaccination, a larger pool of healthcare professionals will allow older healthcare professionals who may be at risk to take a less active role in delivery. Therefore there will be no direct discrimination on the grounds of any protected characteristic.

Based on the data available, the Scottish Government believes that the vaccination provisions may have a positive impact on those with the protected characteristics of age or disability, compared with not introducing the provisions. This is because it is chiefly the older and vulnerable who require vaccinations or are most protected by others being immunised.

Vaccination programmes, which may benefit from more flexible delivery by virtue of the modification, include the pertussis programme for women who are pregnant. The vaccinations provisions will ensure this can be delivered.

The Scottish Government did not identify any potential differential impact on persons of different sex, sexual orientation or gender reassignment.

The policy provided for under the vaccination powers offers little opportunity to advance equality of opportunity or foster good relations between those who shared a protected characteristic and those who do not. The emphasis is on protecting public health in the event of a serious and imminent threat to public health.

Education

Educational establishments etc.

As per Modifications of the Public Health etc. (Scotland) Act 2008, this section of the Bill contains only enabling powers, the provisions themselves have no immediate impact on people with protected characteristics (under the Equality Act 2010) and do not run the risk of discrimination; any such impact would come at the point of regulations being made under the powers contained in the Bill. While it is more challenging at this stage to identify potential impacts of regulations in relation to the public health powers (as it is impossible to predict which protective measures would be required for a future public health threat), and although it is not possible to predict the nature of a future health emergency or pandemic and what effects that would have on educational provision, it is not unreasonable to assume it could involve use of restrictions similar to those used during Covid and therefore the potential impact of future regulations can be explored further.

Future regulations will be capable of being used in relation to all educational establishments - all types of schools (i.e. public, grant-aided and independent schools), early learning and childcare settings, school age childcare settings, and, higher education and further education institutions. Therefore, regulations could affect all children and young people, anyone attending an educational establishment, their families and staff that work in these educational establishments within Scotland, and wider communities where local schools are a hub for community activities. It is likely, however, that not all types of educational establishment will be affected at the same time or in the same way and this will depend on the nature of a future health emergency. The overarching purpose of the powers is to help to prevent the spread of infection and ensure the continuity of educational provision and therefore those subject to its provisions will, along with wider society, benefit from this policy.

Any use of regulations to restrict access to, or experiences within, regulated childcare settings is likely to impact the children who usually access those settings, particularly those who are already disadvantaged, the parents/carers and wider families of those children and the regulated childcare workforce. While some positive impacts of previous use of powers to put in place restrictions due to a public health crisis have been identified (i.e. the powers exercised during the Covid pandemic), the future use of regulations is likely to have various impacts on the groups identified. These impacts may be more acute for individuals with some protected characteristics. In the Scottish Government's view, the protected characteristic groups that the future use of regulations could have a particular impact on are age, sex and disability. This is to an extent based on the experience of the Covid pandemic where there is evidence of differential impacts of the actions taken to prevent the spread of infection and to ensure the continuity of education.

Future regulations could impact (in varying degrees, depending on how they are used) on staff and students within further and higher education institutions and may also indirectly impact on their families.

It is also important to note that any use of regulations will depend on the prevailing circumstances at the time of use, and the clinical advice as to the appropriate public

health measures required in response. Future regulations would be accompanied by an EQIA which will provide a more detailed assessment of the likely impacts arising at that time.

School consultations

As outlined under the following themes of 'Online meetings and hearings' and 'Communicating by phone or online', the use of technology to hold virtual meetings and send electronic documentation may provide enhanced access opportunities for people across multiple protected characteristics. The option to communicate digitally may help people with limited mobility who are unable to travel or encounter difficulties in doing so.

Digital exclusion is a significant issue to consider in relation to the increased use of technology. Lack of access to remote technology, lack of digital skills and connectivity issues may present a barrier to certain individuals. Evidence related to these issues can be found under the following theme of 'Online meetings and hearings'.

However, the provisions here would only be applicable in the event of a public health emergency, where holding an in-person public meeting risks the transmission of infection and danger to public health or where paper copies cannot be provided because places are closed. The current statutory requirement on education providers to hold public meetings in-person and to make available paper copies remains in place, except where a direction outlined above has been given.

It will be possible to remind education authorities when approval is given for requests to hold wholly virtual public meetings of their responsibilities under the Equality Act 2010 and to take steps to ensure that disabled people are able to engage with such meetings. In addition, the statutory guidance (to which education authorities must have regard) that supports the Schools (Consultation) (Scotland) Act 2010 will be updated to reflect the legislative changes and will help ensure that education authorities are clear on their responsibilities towards disabled people in this regard.

In the event that education authorities would be relieved of the requirement to make available paper copies of relevant consultation documents at council offices or other locations, it would be the responsibility of local authorities to make alternative arrangements on request.

Public Service Reform

Online meetings and hearings

The provisions may provide enhanced access opportunities for people across multiple protected characteristics. The option to communicate digitally may help people with limited mobility who are unable to travel or encounter difficulties in doing so.

Digital exclusion is a significant issue to consider in relation to the increased use of technology for participation in meetings and hearings. Lack of access to remote

technology, lack of digital skills and connectivity issues may present a barrier to participation.

According to the [Scottish household survey 2019](#): “Nearly 9 in 10 adults (88 per cent) in Scotland use the internet either for work or personal use, a steady increase over time from 65 per cent in 2007. Notably, there has been a significant increase in internet use amongst older adults aged 60+ (from 29 per cent to 66 per cent). There are lower rates of internet use among older adults than among younger adults. In 2019, almost all (99 per cent) adults aged 16-24 reported using the internet compared to 43 per cent of those aged 75+. Seventy-one per cent of adults who have some form of limiting long-term physical or mental health condition or illness reported using the internet, lower than for those who have some form of non-limiting condition or illness (90 per cent) and those who have none (94 per cent). The percentage of adults who do not use the internet was higher for those living in the 20% most deprived areas than for those in the 20% least deprived areas in Scotland. Internet use also increased with income.”

However, it is important to note that none of the provisions make virtual meetings and hearings the only option available.

It is the responsibility of the service providers to ensure that these virtual meetings and hearings are conducted in a manner that meets the accessibility requirements of attendees. This includes making appropriate adjustments for those who may have particular needs (for example, BSL interpretation services and use of subtitles).

Communicating by phone or online

As per the provisions under the previous theme (‘Online meetings and hearings’), the provisions here relating to communication by phone or online may provide enhanced access opportunities for people across multiple protected characteristics. The option to communicate digitally may help people with limited mobility who are unable to travel or encounter difficulties in doing so.

Digital exclusion is, once again, a significant issue to consider in relation to the increased use of technology for the transfer of information. Similarly, communication by phone may create issues for people across multiple protected characteristics. For example, certain disabled people, certain older people and those who are not fluent in English may not be able to participate in a conversation by phone.

However, it is important to note that the provisions will not remove the option of traditional means of communication. Service providers will be able to adapt communication methods to users’ preferences. For example, with regard to [Freedom of information: giving notice electronically](#), authorities retain the option to issue notices by post, such as where a requester chooses to communicate by post or where electronic communications are unsuccessful.

It is the responsibility of service providers to ensure that information provided by phone or online is accessible.

With regard to Registration of births, there may be an impact on victims of domestic abuse as a perpetrator of domestic abuse may seek to force the victim to jointly register the birth of a child and therefore give them parental responsibilities and rights. Statistics show that around four out of every five incidents of domestic abuse had a female victim and a male perpetrator. This is not a straightforward issue when there is coercive control. A victim of domestic abuse may prefer to visit a registration office to register a birth in person and that option will still be available; however, an abuser may ask a victim where the victim is going. If the registration is carried out remotely, the victim may be able to provide the information when the abuser is out anyway. Remote birth registration cannot solve the problem of domestic abuse and coercive control but it may give a victim more options to carry out the registration.

With regard to Civic licensing: how notices may be published, the provision provides licensing authorities/local authorities and applicants with a degree of flexibility in terms of how they choose to give public notice of a licence application. Applicants will retain the option to publish an advertisement in a newspaper should they wish to do so. It is the responsibility of licensing authorities/local authorities to ensure their online notices are accessible.

With regard to Land registration, this provision continues the option for applications to be submitted digitally to Registers of Scotland (“RoS”). Although not within the scope of this provision, the digital submission service is likely to become the default method of submission to RoS. Processes will be put in place to support the small number of applications that still require to be submitted on paper. Such applications may be required because the applicant has no access to RoS online services (for example, because they are a citizen carrying out their own conveyancing), or where the applicant is unable to use online services for accessibility reasons.

Miscellaneous

Bankruptcy: meaning of “qualified creditor” and “qualified creditors”

The increase of the minimum debt threshold from £3,000 to £5,000 will provide increased protection for those dealing with problem debt and will allow greater scope to seek advice and solutions without bankruptcy action being pursued by creditors in the courts. In the Scottish Government’s view, the protected characteristic groups that this change could have a particularly positive impact on are age, sex and disability.

Although evidence shows that a relatively small proportion of those seeking debt advice are in the higher age grouping, the provision does provide some increased opportunity. The Wyman review highlights 40% of debt advice clients suffer from a disability or long-term health condition. 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. The measure would enhance the opportunities to receive that advice for all debtors including older people, women and disabled people.

Legal aid and advice: Claim for interim payment of fees and outlays

The provisions will help to ensure the availability of legal services for those individuals in society most affected by the pandemic, including:

- the people living in Scotland who depend on legal aid services, including individuals with protected characteristics, such as: those with particular needs due to their age (e.g. children's legal aid and older people seeking legal support), race and ethnic minorities (immigration etc.) and gender (protection orders etc.);
- the Scottish communities, improving their cohesion through a proportionate, fair and effective justice system underpinned by the right to access to justice.

A proportionate, fair and effective justice system underpinned by the right to access to justice is an essential requirement to eliminate unlawful discrimination, harassment and victimisation. It is also an essential requirement to the promotion of good relations among and between different groups. The provisions on legal aid are aimed at preserving the level and quality of Legal Aid services beyond 31 March 2022. Consequently the Scottish Government considers that it promotes the protection of the right to access to justice.

Mental health: removal of need for witnessing of signature of nominated person

Service users with a longer-term mental disorder are included within the protected characteristic of disability under the 2010 Equality Act. This provision will continue to ensure that the patient still has the ability to choose their own representation. It also provides for a named person to act for the patient, and will help reduce any delays in having the patient involved in their care and treatment decisions. This approach continues to respects their rights and allows services to be delivered effectively.

Tenancies

The Scottish Government considers that the temporary legislative changes to protect renters continue to have a positive impact across those with protected characteristics. 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 any action for eviction. These proposals should have a positive impact on outcomes for these groups.

Temporary Justice Measures

The temporary justice measures are currently due to expire on 30 November 2023, but any of the provisions may initially be extended for a further year by regulations. On 20 September 2023, the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension and Expiry of Temporary Justice Measures) Regulations 2023 were laid. These regulations, if passed, will expire those of the temporary justice measures that Scottish Ministers consider are no longer needed. The regulations will

extend the remaining temporary measures for a further year, until 30 November 2024. The Scottish Government has therefore taken this opportunity to review the material in this EQIA on the temporary measures, to ensure that it remains relevant. Alongside the regulations, Ministers have laid a Statement of Reasons (SG/2023/180) in the Scottish Parliament, which sets out how each of the temporary provisions proposed for extension is being used; the effect it is having; what the impact would be if it were not extended; and views expressed by stakeholders who were consulted on the proposed extensions.

Courts and tribunals: conduct of business by electronic means etc. (Documents)

These provisions align closely with those under the theme of ‘Communicating by phone or online’ and may provide enhanced access opportunities for people across multiple protected characteristics. The option to communicate digitally may help people with limited mobility who are unable to travel or encounter difficulties in doing so.

Digital exclusion is, once again, a significant issue to consider. However, it is important to note that the provisions will not remove the option of traditional means of communication.

The option of viewing published documents on the walls (or other parts) of court buildings remains an alternative option to viewing documents published on the Scottish Courts and Tribunals Service (“SCTS”) website. The SCTS follow W3C Web Accessibility standards in the creation of their website which will ensure documents are displayed in an accessible format.

Furthermore, the SCTS is developing an Assisted Digital Strategy which will ensure that digital services are straightforward and convenient so that all those who can use them will choose to do so, whilst those who cannot are not excluded. This strategy will apply across all SCTS systems and websites. An assisted digital user is someone who cannot use a digital service independently. This includes people who are offline with no digital skills, and people who are online but only have limited digital skills.

Courts and tribunals: conduct of business by electronic means etc. (Attending a court or tribunal)

These provisions align closely with those under the theme of ‘Online meetings and hearings’ and may provide enhanced access opportunities for people across multiple protected characteristics. The option to communicate digitally may help people with limited mobility who are unable to travel or encounter difficulties in doing so.

Digital exclusion is, once again, a significant issue to consider. 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, for example vulnerable accused, are able to participate effectively in their hearing.

Failure to appear before court following police liberation

This provision was identified as a key measure to preserve public and victim safety during the Covid 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 (including those that experience a higher rate of domestic abuse than others), will continue to be addressed. The Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension and Expiry of Temporary Justice Measures) Regulations 2023, if passed, will expire this provision from the end of 29 November 2023.

National jurisdiction for callings from custody etc.

As people may be held in a smaller number of designated police custody suites (as facilitated by these jurisdictional provisions) they may also require to travel greater distances than they ordinarily would to the centralised custody suite prior to their appearance in court. An example is where an individual is arrested in, for illustrative purposes, Stonehaven for a crime allegedly committed there and is then taken to a centralised custody facility in Dundee, for appearance the next day at Dundee Sheriff Court by live link. Conversely, as this measure supplements the approach taken in virtual court appearances more generally, it may reduce the overall time an individual spends in police custody by enabling all matters to be heard in one court, which prevents the accused having to be transported across the country to appear at different courts on different days. Any issues that may arise relating to individuals who have difficulty travelling greater distances for custody hearings, for example by virtue of their age or disability, will be taken into account on a case-by-case basis.

Criminal procedure time limits

The direct impact of the provisions extending certain time limits will be on the Crown Office and Procurator Fiscal Service, SCTS and defence agents who would otherwise require to apply for, respond to, and determine large numbers of applications to extend time limits in individual cases on a case-by-case basis and the accused people to whom these time limits relate.

Indirectly, as the provisions are intended to assist the justice system in addressing the backlog of cases that has built up during the Covid pandemic, they will affect anyone involved in the criminal justice process – most obviously complainers, accused people and witnesses.

Data indicates that younger people aged between around 18 and 40 are more likely to be involved in court cases both as victims and accused people and that men are much more likely than women both to be charged with criminal offences and to be remanded in custody prior to trial.

Measures to reduce the backlog of cases in the justice system should ensure that cases take less time to be determined in court than would be the case if the time

limits extension policy did not continue to remain in place, and in particular, should have the effect of reducing the length of time that accused people spend being remanded in custody prior to trial.

Prisons and young offenders institutions

During May-June 2020, the Scottish Government instructed the early release of a limited number of prisoners under the equivalent early release power established in the First Scottish Act. 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 May 2020 release arrangements, the criteria for early release were set around sentence length and time left to serve (rather than identifying specific demographic groups for preferential treatment). Structuring the criteria along sentence length and time left to serve also caps any potential benefit to any one individual being released (or conversely, the negative impact felt by an individual's victim, or the wider community), which may not be achieved through targeting selected groups. The criteria applied in the May 2020 process produced a cohort that was broadly proportionate to the overall population (with women comprising 9% of releases, compared to 7% of the prison population at that time). This approach also establishes a structure for potential eligibility that can be clearly communicated and understood by all involved. It does not require complex assessment of individual case circumstances, which would be both time consuming and resource intensive, at a point where urgent action is being taken specifically to release prison resources to deal with a public health emergency.

Depending on the nature of any future early release, it may mean that in a future process the cohort of prisoner specified for release may need to be adjusted to achieve the outcomes being sought. 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, or other demographic.

Future early release processes may have a disproportionate impact on female partners and family members in the community, when an individual is released and returns 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). Furthermore, secondary legislation was made in May 2020 so that the Victim Notification Service will be alerted of any early release activity under the 2020 Act, and can inform individuals signed up to the Victim Notification Service of any relevant cases. 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.

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 differentiate 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 impartial 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. 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 and the impact of those regulations would depend on the make-up of the cohort of prisoners who became eligible for release at that time.

The Scottish Government has considered whether the provisions could constitute conduct prohibited by the Equality Act 2010. 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.

Recommendations and Conclusions

The Scottish Government has assessed the potential impact of the provisions contained within the Bill on equal opportunities and has determined that they do 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). To the extent there are possible negative impacts e.g. for groups that evidence shows find it more difficult to use the internet, the Bill addresses this barrier insofar as the Bill can by not mandating the use of the internet. The exception here is the provision School consultations, which would relieve education authorities from the requirement to hold in-person public meetings and to make available paper copies of relevant consultation documents. However, as highlighted above, the provisions here would only be applicable in the event of a public health emergency, where holding an in-

person public meeting risks the transmission of infection and danger to public health or where paper copies cannot be provided because places are closed.

The provisions within the Bill which will provide the option for increased digital communication conform in particular to the digital principle “inclusive, ethical and user focussed” from the Scottish Government’s [March 2021 Digital strategy](#): “A changing nation: how Scotland will thrive in a digital world”. The analysis of equality impacts with regard to these provisions within the Bill supports the Scottish Government’s view that these provisions would have a positive impact on equal opportunities.

With regard to Modifications of the Public Health etc. (Scotland) Act 2008 and Educational establishments etc., the enabling powers themselves have no immediate impact on people with protected characteristics (under the Equality Act 2010) and do not run the risk of discrimination; any such impact would come at the point of regulations being made under the powers contained in the Bill. The Scottish Government recognises that future regulations made under these powers could have an impact on people with protected characteristics and it has been highlighted that such regulations would be accompanied by an EQIA which will provide a more detailed assessment of the likely impacts arising at that time.



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