

Trusts and Succession (Scotland) Bill

Equality impact assessment record

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Minister

Minister for Community Safety

Lead official

Michael Paparakis

Officials involved in the EQIA

Michael Paparakis, Private Law Unit

Directorate: Division: Team

Justice; Civil Law and Legal System; Private Law Unit

Is this new policy or revision to an existing policy?

New

Screening

Policy Aim

The Bill implements the recommendations of the Scottish Law Commission's Report on Trust Law, published in 2014, and one substantive provision on the Scots law of intestate succession. In general, it covers the powers and duties of trustees, the powers of the courts in trust matters, and miscellaneous other issues in trust law.

The one substantive provision on the Scots law of intestate succession implements a recommendation from the SLC's Report on Succession (2009) and was consulted on by the Scottish Government in 2015. The law on intestate succession provides a default position in cases where an individual dies without leaving a will. A statutory scheme for intestacy provides a default set of rules about what should happen to someone's estate when they die without a will. The substantive provision of succession law in this Bill will amend the order of intestate succession so that a surviving spouse/civil partner's entitlement to the whole of the net intestate estate will rank second in line behind any surviving children of the deceased; this change reflects the contemporary perception of a spouse or civil partner as a key member of the deceased's family.

A significant number of the recommendations deal with the powers and duties of trustees. The Trusts (Scotland) Act 1921 ("the 1921 Act") sets out a number of statutory powers and duties of trustees that form part of every trust unless the contrary is provided for in the trust deed.

Most of the current statutory law relating to trusts is found in the 1921 Act. Not only is its structure and wording old-fashioned, it has been heavily amended so that it is not easy for trusters, trustees or beneficiaries to understand what their legal rights and duties are. In modern trust practice, the powers and duties of trustees are markedly different from those in the 1921 Act. The Bill, therefore, will bring the powers and duties laid out in statute more into line with modern practice.

The overall policy aim of the Bill is to ensure that the Scots law of trusts is clear and coherent and able to respond appropriately to modern conditions. This will be achieved by bringing together existing trusts legislation into a single statute, reforming and updating it into modern statutory language.

The opportunity is used to clarify a number of trust issues, making clear that certain trust structures are permitted under Scots law. For instance, that a trust can be set up which serves a purpose (for example, the maintenance of a bench in the public space) rather than a specified person. Other examples include the appointment of a supervisor or protector.

Many of the provisions found in the Bill are default provisions; that is, they apply in the absence of any contrary provision in the trust deed. Legislation governing trusts invariably contains a large number of such provisions; that is true of the 1921 Act, and also of legislation found in other jurisdictions. In selecting default rules, a policy of adopting current best practice has been pursued.

The proposals in the Bill are in line with two of the Scottish Government's National Outcomes,¹ which form part of the Scottish Government's National Performance Framework.² They are:

- “We recognise that a strong, competitive economy is essential to supporting jobs, incomes and our quality of life”:³ As outlined above, the Bill will modernise the law of trusts in Scotland. The benefits of the Bill will be shared throughout Scotland, providing clarity for both traditional family trusts and complex commercial trusts.
- “Investing in the skills and creativity of our workforce, protecting workers rights and providing decent working conditions is the right thing to do. It also makes our economy more stable, productive and efficient”:⁴ Implementation of the Bill will secure and develop the already thriving trust industry which exists in Scotland. This is likely to create an increased demand for trust-related professionals.

¹ These are available at <https://nationalperformance.gov.scot/national-outcomes>

² This can be accessed at <https://nationalperformance.gov.scot>

³ This can be accessed at <https://nationalperformance.gov.scot/national-outcomes/economy>

⁴ This can be accessed at <https://nationalperformance.gov.scot/national-outcomes/fair-work-and-business>

Who will it affect?

The Bill will affect those who choose to set up or administer a trust, or are the beneficiaries under a trust. A trust can provide a number of benefits that can be of help in protecting vulnerable individuals. For example, a parent may wish to place their family home in trust for the benefit of a disabled child, with the home eventually passing to their other children. For those not wishing to be involved with a trust, there are a range of other legal devices which may be considered and which remain unaffected by this Bill.

The legal profession and their clients will be directly affected as the majority of trusts are drafted by solicitors. It is important to appreciate, though, that the proposed reforms will benefit not only business or legal sectors. The reforms will also help anyone in the running of private trusts and they will assist executors in winding up the estates of deceased persons. Charities and other public trusts will also benefit from the modernisation of the law.

The Scots law of trusts is badly outdated. As well as reforming the law, the Bill will bring together trust legislation into a single, coherent statute drafted in modern form to meet modern conditions in Scotland.

As regards the succession provision in the Bill, those affected will be those who die intestate, their surviving spouses (who would inherit the net intestate estate) and siblings (who would no longer inherit the net intestate estate).

What might prevent the desired outcomes being achieved?

The desired outcomes would not be achieved if the Scottish Parliament did not pass the Bill or if it was amended in a way that would not achieve the intended modernisation of the law.

Stage 1: Framing

Results of framing exercise

The Bill affects those who choose to set up or administer a trust or those who are beneficiaries under a trust. The proposals in the Bill apply equally to any person who sets up or administers a trust or who is a beneficiary under a trust; they will not adversely impact any person by virtue of their particular religion, belief, age, sexual orientation, gender, race, or ethnicity. There is no compulsion to use a trust, and for those not wishing to do so there is a range of other legal devices which may be considered and which remain unaffected by this Bill.

Extent/Level of EQIA required

As the degree of impact on the protected characteristics is expected to be minimal, it is our opinion that the level of EQIA needed is low.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic⁵	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
Age	No evidence.	N/A	N/A
Disability	No evidence.	N/A	N/A
Sex	No evidence.	N/A	N/A
Pregnancy and maternity	No evidence.	N/A	N/A
Gender reassignment	No evidence.	N/A	N/A
Sexual orientation	No evidence.	N/A	N/A
Race	No evidence.	N/A	N/A
Religion or belief	No evidence.	N/A	N/A
Marriage and civil partnership (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)	No evidence.	N/A	N/A

⁵ Refer to Definitions of Protected Characteristics document for information on the characteristics

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	By reforming Scots law, bringing together existing trusts legislation into a single statute and updating it into modern statutory language, the policy aim is to ensure that the Scots law of trusts is clear and coherent and able to respond appropriately to modern conditions and commercial requirements. It does not directly or indirectly address discrimination, harassment or victimisation.
Advancing equality of opportunity			X	The policy intention of the Bill does not make any direct or indirect impact on advancing equality of opportunity.
Promoting good relations among and between different age groups			X	The policy intention of the Bill does not directly or indirectly promote good relations within different age groups, however, trusts are widely used to hold property for children, as beneficiaries. The Bill will clarify and in certain instances strengthen the rights of child beneficiaries, for example, by placing a duty on the Court of Session to have regard to the views of 16 and 17 years olds in deciding whether or not to approve a trust variation or termination on their behalf and by setting out how the views of persons under 16 must be taken into account.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	By reforming Scots law, bringing together existing trusts legislation into a single statute and updating it into modern statutory language, the policy aim is to ensure that the Scots law of trusts is clear and coherent and able to respond appropriately to modern conditions and commercial requirements. It does not directly or indirectly address discrimination, harassment or victimisation of disabled people.
Advancing equality of opportunity			X	The policy intention of the Bill does not make any direct or indirect impact on advancing equality of opportunity for disabled people however, trusts are widely used to hold property for adults with disabilities, as beneficiaries. The Bill will clarify and in certain instances strengthen the rights of such beneficiaries, for example, by setting out duties on trustees to provide information to beneficiaries .
Promoting good relations among and between disabled and non-disabled people			X	The policy intention of the Bill does not directly or indirectly promote good relations between disabled and non-disabled people.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	By reforming Scots law, bringing together existing trusts legislation into a single statute and updating it into modern statutory language, the policy aim is to ensure that the Scots law of trusts is clear and coherent and able to respond appropriately to modern conditions and commercial requirements. It does not directly or indirectly address this form of discrimination.
Advancing equality of opportunity			X	The policy intention of the Bill does not make any direct or indirect impact on advancing equality of opportunity.
Promoting good relations between men and women			X	The policy intention of the Bill does not directly or indirectly address relations between men and women.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	By reforming Scots law, bringing together existing trusts legislation into a single statute and updating it into modern statutory language, the policy aim is to ensure that the Scots law of trusts is clear and coherent and able to respond appropriately to modern conditions and commercial requirements. It does not directly or indirectly address discrimination against women because of pregnancy and maternity.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly address equality of opportunity in terms of pregnancy and maternity.
Promoting good relations			X	There is no evidence that the Bill would directly or indirectly promote good relations.

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	By reforming Scots law, bringing together existing trusts legislation into a single statute and updating it into modern statutory language, the policy aim is to ensure that the Scots law of trusts is clear and coherent and able to respond appropriately to modern conditions and commercial requirements. It does not directly or indirectly address discrimination against transsexual people.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly address equality of opportunity for transsexual individuals.
Promoting good relations			X	The Bill does not make any direct or indirect impact in promoting good relations.

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	By reforming Scots law, bringing together existing trusts legislation into a single statute and updating it into modern statutory language, the policy aim is to ensure that the Scots law of trusts is clear and coherent and able to respond appropriately to modern conditions and commercial requirements. It does not directly or indirectly address discrimination on grounds of sexual orientation.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly advance equality of opportunity in terms of sexual orientation.
Promoting good relations			X	The policy intention of the Bill does not directly or indirectly impact on sexual orientation. It does not directly or indirectly promote good relations.

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	By reforming Scots law, bringing together existing trusts legislation into a single statute and updating it into modern statutory language, the policy aim is to ensure that the Scots law of trusts is clear and coherent and able to respond appropriately to modern conditions and commercial requirements. It does not make any direct or indirect impact on this protected characteristic.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly advance equality of opportunity in terms of race.
Promoting good race relations			X	The policy intention of the Bill does not promote good race relations.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	By bringing together existing trusts legislation into a single statute and updating it into modern statutory language, the policy aim is to ensure that the Scots law of trusts is clear and coherent and able to respond appropriately to modern conditions and commercial requirements. There is no indirect impact of this protected characteristic.
Advancing equality of opportunity			X	The policy intention of the Bill does not directly or indirectly address equality of opportunity in relation to religion or belief.
Promoting good relations			X	By bringing together existing trusts legislation into a single statute and updating it into modern statutory language, the policy aim is to ensure that the Scots law of trusts is clear and coherent and able to respond appropriately to modern conditions and commercial requirements. There is no indirect impact on this protected characteristic.

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership⁶	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	The policy intention of the Bill does not make any direct or indirect impact on marriage or civil partnership.

⁶ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	<p>The Bill will clarify and in certain instances strengthen the rights of child beneficiaries, for example, by placing a duty on the Court of Session to have regard to the views of 16 and 17 years olds in deciding whether or not to approve a trust variation or termination on their behalf and by setting out how the views of persons under 16 must be taken into account.</p> <p>It will also clarify, and in certain instances, strengthen, the rights of disabled beneficiaries, for example, by setting out duties on trustees to provide information to beneficiaries.</p>
Is the policy directly or indirectly discriminatory under the Equality Act 2010?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	Not applicable
If not justified, what mitigating action will be undertaken?	Not applicable

Describing how Equality Impact analysis has shaped the policy making process

The EQIA process has confirmed that the proposed Bill has no impact on any of the protected characteristics.

Given that some positive and no negative impacts have been identified, no direct changes have been made to the policy as a result of this EQIA.

There are no direct implications for finance as a result of this EQIA.

Monitoring and Review

If the Bill is passed by Parliament, the Scottish Government will monitor its impact in practice.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:
 - Yes

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:
 - Eliminating unlawful discrimination, harassment, victimisation;
 - Removing or minimising any barriers and/or disadvantages;
 - Taking steps which assist with promoting equality and meeting people's different needs;
 - Encouraging participation (e.g. in public life)
 - Fostering good relations, tackling prejudice and promoting understanding.

- Yes

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:
 - Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for the Trusts and Succession (Scotland) Bill and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Denise Swanson

Position: Interim Deputy Director, Civil Law and Legal Systems

Authorisation date: 07 November 2022



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