The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023

Equality Impact Assessment – Results

January 2023

Scottish Government
Riaghaltas na h-Alba

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023
Summary of aims and desired outcomes of Policy	To make it easier for the most financially vulnerable to access debt relief through bankrutpcy and help to prevent Debt Payment Programmes from failing because a person's expenses have risen signficiantly which may include due to the cost of living pressures.
Directorate: Division: team	Accountant in Bankruptcy

Executive summary

The public sector equality duty requires the Scottish Government to assess the impact of applying a proposed new or revised policy or practice. Equality legislation covers the protected characteristics of: age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, sex, sexual orientation and religion and belief.

This Equality Impact Assessment (EQIA) has considered the potential impacts of the Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 on each of the protected characteristics. The provisions and how they impact on people across the protected characteristics are set out under the key findings.

There have been no negative impacts identified for any of the equality groups and the measures included have not been assessed as directly or indirectly discriminatory under the Equality Act 2010. The changes introduced are primarily associated with reducing cost and improving accessibility to debt relief for the most financially vulnerable. Bankruptcy and the Debt Arrangement Scheme (DAS) are accessible to all, irrespective of their age, race, gender, disability or sexual orientation.

Background
In 2020, the Scottish Government committed to a policy review of its statutory debt solutions, including bankruptcy and DAS. This work has been taken forward using a stakeholder led approach which was agreed at a Ministerial Working Group on Statutory Debt Solutions in October 2020. Some changes have already been introduced and the proposal to remove the minimum debt threshold as set out in these regulations was put forward as part of this wider review work. This proposal was also endorsed by the Social Justice and Social Security Committee (the Committee) who heard evidence during its inquiry into low income and problem debt which supported this proposal and subsequently recommended it be taken forward. The Committee also recommended that the bankruptcy application fee should be removed for those who cannot make a financial contribution to their bankruptcy.

The cost of living crisis has emphasised the need to bring forward these proposals. Discussions with key stakeholders, with an interest in DAS, also supported the recommendation to bring forward a change to payment breaks. This change will help to ensure the resilience of DAS Debt Payment Plans (DPPs) where people experience a significant increase in living costs which may impact their ability to maintain their regular payments to their DPP. DAS is a debt solution used by thousands of people each year and it is important to maintain the reputation of the scheme to ensure it can continue to help people going forward. This change will help to maintain that reputation.

The Regulations will introduce four changes to our debt solutions:

- remove the minimum debt threshold for accessing Minimal Asset Process bankruptcy which currently stipulates a minimum debt threshold of £1,500 as part of the criteria. This will open up debt relief to those with low levels of debt which may be unsurmountable to them.
- Extend the application fee waiver for individuals who have been assessed by the Common Financial Tool as having no surplus income. This will provide improved access to debt relief for the most financially vulnerable. A fee waiver is already available for those in receipt of certain benefits.
- Extend payment breaks in DAS to allow those in a DPP to apply for a payment break where their disposable income has reduced by 50% or more and it is envisaged the disposable income will be reduced for the period of deferment. This will allow the DPP to stay active for a

period of time if the individual cannot afford to make contributions and prevent its revocation and maintain the associated protections against creditor action.

- To increase the deposit creditors must provide when making someone bankrupt from £300 to £750 where Accountant in Bankruptcy (AiB) is appointed as the trustee. Where the bankruptcy realises sufficient funds the deposit is reimbursed to the creditor.

The Scope of the EQIA

Throughout development of these policy changes, AiB has engaged with and listened to stakeholders, refining proposals to reflect their feedback. This includes discussions with a range of stakeholder groups, including money advisers, insolvency practitioners, creditors through Wider Review working groups, the Ministerial Working Group on Statutory Debt Solutions, the Committee and the DAS Review Board. No equality issues were identified and no changes were made to these Regulations as a direct result of equality impact analysis.

Key Findings

Age: Citizen Advice has highlighted that children and disabled people are more likely to be living in fuel poverty rather older people. Additionally working age households are more likely to be struggling with their energy bills than elderly people.

Disability: The Cost of Living Crisis in Scotland: analytical report published on 2 November 2022 states households with one or more disabled people are more likely to be in poverty. Disabled people often use more energy, as many need to keep heating on for medical reasons, or use electricity to charge essential equipment such as mobility aids. Recent data from Scotland shows that nearly one in four families (23%) where someone is disabled are behind on at least one bill or payment and 4% are behind on three or more bills. The Independent Review of the Funding of Debt Advice in England, Wales, Scotland and Northern Ireland by Peter Wyman (the Wyman review) highlights 40% of debt advice clients suffer from a disability or long-term health condition.

These Regulations could help to mitigate this impact. The changes do not provide any direct barrier to entry based on disability - they work towards advancing equality of opportunity.

Sex: The Cost of Living Crisis in Scotland: analytical report published on 2 November 2022 says that lone parent households, which are more likely to be headed by women, are at a much higher risk of poverty than the average household and have the highest living costs relative to their net income of all household types.

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.

These regulations could help mitigate this impact.

Pregnancy and Maternity: The full EQIA does not identify any impact on women because of pregnancy and maternity.

Gender Reassignment: The full EQIA does not identify any impact on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex.

Sexual Orientation: The full EQIA does not identify any impact on people because of their sexual orientation.

Race: The full EQIA does not identify any impact on people on the grounds of their race.

Religion or Belief: The full EQIA does not identify any impact on people because of their religion or belief.

Recommendations and Conclusion

Provisions within these Regulations will help those within the equality groups if they are struggling with unsustainable debts, either by improving access to debt relief through bankruptcy or preventing their DPP from failing. The cost crisis has the capacity to have a greater impact on older and disabled people and these provisions will help to support these equality groups.

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