

# **Bankruptcy and Diligence (Scotland) Bill**

## **Equality Impact Assessment – Results**

**Title of Policy:** The Bankruptcy and Diligence (Scotland) Bill

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**Directorate: Division: team:** Accountant in Bankruptcy

## Summary of aims and desired outcomes of policy

1. The Bankruptcy and Diligence (Scotland) Bill (the “Bill”) will bring forward stakeholder-led recommendations to introduce improvements to current insolvency solutions and debt recovery processes. Its aim is to help and improve the lives of people who are struggling with debt, which may be exacerbated by mental health issues, bringing increased protection for those who need it. More efficient recovery processes will assist businesses and local authorities to collect debts from those who can pay.

2. The Bill will contain provisions that broadly fall into three categories:

- Enabling powers that provide the platform for the introduction of regulations to introduce a mental health moratorium - a new form of moratorium protection for a specific group of debtors, being those who are experiencing serious difficulties with their mental health as well as having problem debt
- Minor for technical amendments to existing bankruptcy legislation that would serve to correct errors and remove ambiguity by providing clarity on the operation of bankruptcy processes as set out in the legislation
- Diligence measures that modernise existing debt recovery mechanisms and allow for more streamlined and improved processes

## Executive Summary

3. 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.

4. This Equality Impact Assessment (EQIA) has considered the potential impacts of the 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.

5. 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 creating the power to introduce protection for those experiencing serious mental health issues and problem debt, streamlining diligence processes and reducing associated costs, and correcting minor errors and ambiguity in the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”).

6. The Bill brings forward an enabling power to introduce a mental health moratorium. The parameters of the new protection are to be determined in consultation with the Scottish Government, professionals in the mental health sector and other stakeholders before regulations are brought forward in exercise of the power. The development of the regulations will be informed by the duty to give due regard to eliminating discrimination, promoting equality of opportunity and fostering good relations, as required by the Equality Act. Statutory debt solutions and diligence measures are generally accessible to all, irrespective of their age, race, gender, disability or sexual orientation.

## **Background**

7. The Scottish Ministers committed to undertake a wide-ranging policy review of Scotland’s statutory debt solutions, specifically moratorium protection, bankruptcy, Protected Trust Deeds and the Debt Arrangement Scheme, with the aim of further enhancing and improving our system.

8. The policy review was organised into three stages. The first stage concluded with immediate changes being introduced through the [Bankruptcy \(Miscellaneous](#)

[Amendments\) \(Scotland\) Regulations 2021](#). These included important measures to improve access to bankruptcy by reducing or removing application fees for those in need of debt relief. The second stage was undertaken by stakeholder-led working groups. Their remit was to look at the operation of existing statutory debt solutions, aimed at providing recommendations and options for improvement.

9. In addition to this review the Scottish Parliament's Social Justice and Social Security Committee produced a report: [Robbing Peter to pay Paul: Low income and the debt trap](#) following an inquiry into low income and debt problems. The report urged the Scottish Government to implement a mental health moratorium.

10. A similar policy review of Scottish diligence measures was conducted through a stakeholder-led working group established to consider feedback received through an earlier public consultation in 2016. This working group consisted of stakeholders with a wide range of experience in diligence and the debt landscape.

11. The Scottish Government proposals in response to the working group's recommendations were included in the public consultation published in August 2022.

12. This Bill largely brings together the areas requiring primary legislation from Stage 2 of the review of statutory debt solutions and the review of diligence. Other areas can be taken forward in secondary legislation or through guidance.

13. In brief, the Bill includes provisions on the following:

- Mental Health Moratorium - introduction of an enabling power to permit the development of a new form of moratorium protection for a specific group of individuals, being those who are experiencing serious difficulties with their mental health as well as having problem debt
- Clarification of Bankruptcy Recall Legislation - minor amendments to these sections to clear current ambiguity for the recall of bankruptcy where Accountant in Bankruptcy (AiB) is the trustee

- Award of Bankruptcy – technical amendment which will correct a cross referencing error and make it clear that, under section 22(1)(b), all bankruptcies which meet the required criteria under the relevant subsection of section 2 of the 2016 Act, are to be awarded
- Gratuitous Alienations - technical amendment which will correct a cross referencing error in section 98(7) of the 2016 Act
- Time periods for appeal against decision by the AiB – minor amendments to insert into section 69 and 134 of the 2016 Act that the time period for an appeal to the sheriff against a determination by AiB must be made within 14 days
- Arrestment and Action of Furthcoming – introduce a new requirement for an arrestee to provide information if the arrestment was unsuccessful and the reason why, for example, whether this was due to insufficient funds
- Diligence Against Earnings - introduce a new requirement for an employer to notify the relevant party if an arrestment is unsuccessful within 21 days after the arrestment schedule is served
- Diligence on the Dependence - requirement for a Debt Advice and Information Package (“DAIP”) to be issued to a debtor in advance of the relevant court hearing stage
- Exceptional Attachment - extend the redemption period where attached assets are left in the dwellinghouse and removed at a later date prior to the auction
- Money Attachment - amend the hours during which money attachment may take place

14. Full details of the provisions can be found in the accompanying Policy Memorandum.

## The Scope of the EQIA

15. 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 and the Ministerial Working Group on Statutory Debt Solutions. Discussions also took place with stakeholders with a wide range of experience in diligence and the debt landscape. No equality issues were identified and no changes were made to the Bill as a direct result of equality impact analysis.

## Key Findings

### Age

16. AiB statistics show that the majority of people who apply for their own bankruptcy are of working age. In addition, Citizens Advice has highlighted that it is working age households that are more likely to be struggling with their energy bills than elderly people. If it is the case that people of working age are more likely to be affected by diligence measures, extending the redemption period in exceptional attachment for items not immediately removed from the dwellinghouse would give these people a longer period of time to find the money to pay the redemption fee. Further, the new requirement for a debtor to be issued with a DAIP prior to the court hearing stage in diligence on the dependence is intended to encourage the debtor to seek help or advice with problem debt. It is therefore assessed that these measures could have a positive impact on people with this protected characteristic.

### Disability

17. The Office of National Statistics conducted analysis between March 2020 and December 2021 of [Coronavirus and the social impacts on disabled people in Great Britain](#). They report that disabled people continued to have poorer well-being ratings than non-disabled people across all four well-being measures, with 50% of respondents reporting that it had made their mental health worse, compared to 31%

of non-disabled respondents. The introduction of the Bill's mental health moratorium could help to mitigate these issues by introducing a new breathing space protection which could help disabled people with problem debt who are experiencing serious mental health issues. The changes do not directly or indirectly discriminate based on disability – they work towards advancing equality of opportunity.

## **Sex**

18. The full EQIA does not identify any impact on people because of their sex.

## **Pregnancy and Maternity**

19. According to the [Royal College of Psychiatrists](#), as many as one in five women have mental health problems in pregnancy or after birth. The introduction of a mental health moratorium could provide additional protection and support to women who require breathing space to deal with problem debt and who are experiencing serious mental health issues as a result of pregnancy or maternity. The Bill does not directly or indirectly discriminate based on pregnancy or maternity – it works towards advancing equality of opportunity.

## **Gender Reassignment**

20. 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**

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

## **Race**

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

## **Religion or Belief**

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

## **Recommendations and Conclusion**

24. Provisions within this Bill will help those within the equality groups if they are struggling with unsustainable debt and are experiencing serious mental health issues by bringing forward an enabling power to introduce a mental health moratorium. Individuals will also benefit from the extension of the redemption period in exceptional attachment as they will have longer to find the money to pay the redemption fee.

25. The amendments to diligence will have a positive impact on creditors through the streamlining of the execution of money attachment outwith 8am and 8pm.

26. Further, creditors will benefit from being given information where an arrestment is unsuccessful as they will be able to make decisions based on facts, rather than assumptions.

27. The technical amendments to the 2016 Act are not assessed to impact on any of the equality groups but are necessary to clarify a small number of provisions in the existing legislation where ambiguity / cross-referencing errors have been identified.





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