Child Rights and Wellbeing Impact Assessment (CRWIA) for the Bankruptcy and Diligence (Scotland) Bill

April 2023

Scottish Government
Riaghaltas na h-Alba

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Disclaimer

This **draft** document is an **initial assessment** of the impact of the Bankruptcy and Diligence (Scotland) Bill and Scottish Government will continue to review and update this document where required during the parliamentary/strategic decision making process. Any future iterations will reflect an increased understanding of these impacts as the amount of data and research available continues to grow.

This impact assessment should be read in conjunction with the Equality Impact Assessment and the Fairer Scotland Duty Assessment.

CRWIA Stage 1 – Screening

Brief Summary

1. The Bankruptcy and Diligence (Scotland) Bill (the "Bill") will contribute to the following National Outcomes:

- **We tackle poverty by sharing opportunities, wealth and power more equally** – ensuring the diligence mechanisms and statutory debt solutions are designed and available to help people in severe financial difficulty and give them a fresh start
- **We have thriving and innovative businesses, with quality jobs and fair work for everyone** – ensuring the diligence mechanisms and statutory debt solutions (including bankruptcy processes) are fit for purpose and able to be clearly interpreted in order to help those who need them and to assist people to get back on their feet and contribute towards the economy
- **We have a globally competitive, entrepreneurial, inclusive and sustainable economy** – providing predictability and confidence for lenders by ensuring statutory debt solutions (including bankruptcy processes) and diligence mechanisms are interpreted consistently, are sustainable and meet the needs of the people of Scotland
- **We respect, protect and fulfil human rights and live free from discrimination** – ensuring statutory debt solutions are available to everyone and that everyone is treated consistently and with dignity and respect when accessing debt solutions, subject to diligence measures or otherwise involved in the bankruptcy process
- **We are healthy and active** – ensuring specific mental health protections are put in place and are available to those with problem debt who are also experiencing serious mental health issues in order to improve mental wellbeing and reduce inequalities

2. In 2019 the Scottish Government committed to a policy review of the statutory debt solutions (moratorium protection, bankruptcy, Protected Trust Deeds and the Debt Arrangement Scheme) with the aim of further enhancing and improving our system.

3. It was agreed that the review should consist of three stages and the proposals set out in this Bill are a result of stage 2 of the review - a wider review looking at the operation of existing statutory debt solutions.

4. During this stage of the review stakeholder-led working groups considered a range of areas within the debt solutions to develop recommendations on how to make improvements. All recommendations were published and sent to the Scottish Ministers for consideration.

5. A similar policy review of Scottish diligence measures (formal debt recovery mechanisms) was conducted through a stakeholder-led working group established to consider feedback received through an earlier public consultation in 2016. The group issued recommendations which were sent to the Scottish Ministers for consideration.

6. Scottish Ministers responded to these recommendations by setting out a number of Scottish Government proposals in the consultation, Scotland's statutory debt solutions and diligence: policy review response.

7. In general, responses to the consultation showed strong support for the Scottish Government proposals – the summary of responses has been published. The majority of the proposals can be implemented via secondary legislation and there will be future action taken to develop regulations that will bring these forward.

8. The immediate priority has been to identify those measures that require primary legislation with a commitment in the Programme for Government to introduce a Bankruptcy and Diligence Bill as part of the Year 2 legislative programme. These are the proposals that are contained in the Bill.

9. The Bill will contain provisions that broadly fall into three categories (full details are set out in the accompanying Policy Memorandum):

- Enabling powers that provide the platform for the introduction of a mental health moratorium in future regulations. The general purpose of a moratorium in the bankruptcy context is to provide a person who is in difficulty with debt some 'breathing space' by preventing those to whom the debtor owes money from taking enforcement action to recover those debts for a specified period. There is currently one statutory moratorium on diligence available in Scots law, provided for in Part 15 of the Bankruptcy (Scotland) Act 2016 ("the 2016 Act") The policy intention underpinning the present proposal is to create a new form of moratorium protection for a specific group of debtors, being those who are experiencing serious difficulties with their mental health.

- Minor or technical amendments to the 2016 Act to correct errors and remove any scope for ambiguity in the interpretation and operation of current provisions in the legislation.

- Diligence measures to modernise existing debt recovery mechanisms and allow for more streamlined and improved processes. These include:

    - Arrestment and Action of Furthcoming – requirement for the arrestee to provide information when the arrestment is unsuccessful and the reason for this. This information must be provided within three weeks of the service of the arrestment schedule.

    - Diligence Against Earnings – 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 – introduce the requirement for a Debt Advice and Information Package (DAIP) to be issued to a debtor prior to the relevant hearing stage following a creditor application.

    - Exceptional Attachment – extension of the period within which a debtor may redeem an asset from 7 to 14 days where attached assets are not immediately removed from the dwelling house.

- Money Attachment – amend the hours during which a money attachment can take place to allow it outwith the stated times where premises are open.

Which aspects of the relevant proposal currently affects or will affect children and young people up to the age of 18?

10. The aim of the Bill is to introduce improvements to current insolvency solutions and debt recovery processes and help improve the lives of people who are struggling with debt, which may be exacerbated by mental health issues. More efficient debt recovery processes will assist businesses and local authorities to collect debts from those who can pay.

11. It is possible for a young person aged 16 or over to incur debt in certain circumstances, for example, rent arrears. However, in general it is difficult for a person under the age of 18 to obtain credit as many creditors have policies to not approve credit to anyone under the age of 18. Therefore, as it will be unlikely that a child or young person up to the age of 18 will be experiencing unsustainable debt and have any direct involvement with diligence or the statutory debt solutions it is considered that the policies included in the Bill will not directly affect them.

12. In the rare circumstance that a person under the age of 18 did have direct involvement with diligence due to experiencing unmanageable debt the provisions included will have no negative affect on them. The policy for Diligence on the Dependence will ensure that they are furnished with full information contained in the DAIP on options and solutions available. The policies on Diligence Against Earnings and Arrestment and Action of Furthcoming will provide creditors with information on failure of arrestment which may discourage them from future action where there are unlikely to be recoveries. The policy on Exceptional Attachment will give a further 7 days for a debtor to redeem assets. The policy on Money Attachment simplifies a procedure already in place.

13. The policy on the creation of enabling powers for a mental health moratorium could affect a child or young person if they were experiencing unsustainable debt.

However, it is more likely that the moratorium may indirectly affect a child or young person up to the age of 18, for example if a parent or carer accesses the scheme. The general purpose of a moratorium is to provide a debtor with ‘breathing space’ by preventing their creditors from taking action to recover those debts for a specified period of time (currently six months) in order for them to seek advice. The policy intention is to create a new form of moratorium protection, in addition to current provisions, for a specific group of debtors who are experiencing serious difficulties with their mental health as well as having problem debt. This will give these individuals protection from creditors taking action to recover debts for the period of time that they are experiencing serious mental health problems, with the aim of allowing them to focus on treatment and recovery. There is no existing statutory provision in this area.

14. The detail of the moratorium will be set out in regulations made under the powers in the Bill, although the policy is designed to have an overall positive impact on anyone accessing the new moratorium (i.e. on a debtor). This may in turn provide a positive impact on children or young people either individually or by giving any parent or carer additional breathing space to deal with problem debt and taking away outside pressure of creditors pursuing debts owed while they are experiencing a mental health crisis.

Which groups of children and young people are currently or will be affected by the relevant proposal?

15. It is unlikely a child or young person would be directly impacted by the policies contained in the Bill. They would only experience a direct impact if they had unsustainable debt and had involvement with diligence or the statutory debt solutions. This is unlikely as they may experience difficulties in obtaining credit in the first place if under the age of 18 and this may have to be done through an adult.

16. In the unlikely circumstance that a young person aged 16 to 18 has accrued unsustainable debt the policies on diligence measures only aim to improve and streamline the processes that already exist. The policy for Diligence on the Dependence will ensure that they are furnished with full information contained in the

DAIP on options on solutions available. The policies on Diligence Against Earnings and Arrestment and Action of Furthcoming will provide creditors with information on failure of arrestment which may discourage them from future action where there are unlikely to be recoveries. The policy on Exceptional Attachment will give a further 7 days for a debtor to redeem assets. The policy on Money Attachment simplifies a procedure already in place.

17. It could be that these policies may indirectly impact a child or young person if a parent or carer were to have involvement with these diligence measures. However as stated these will have no negative affect for that individual and in turn no negative affect on the child or young person.

18. The changes to the 2016 Act are to correct errors and remove ambiguity in the interpretation and operation of current legislation. They would cause no detrimental effect to a young person under 18 if they were to be involved with statutory debt solutions.

19. The policy to introduce enabling powers for a mental health moratorium will bring in a new process which could directly affect a young person under 18 with unsustainable debt (although, as noted, this is not likely given that under-18s do not generally have ready access to credit). This would give them protection from creditors taking action to recover debts for the period of time that they are suffering from a mental health crisis – allowing them to focus on treatment and recovery. If a person under 18 did access the moratorium, therefore, it is considered that it would only affect them in a positive manner.

20. It is more likely that a child or young person would be indirectly impacted by the introduction of enabling powers for a mental health moratorium if a parent or carer were to access the scheme. Again, this will only affect them in a positive way by giving any parent or carer additional breathing space to deal with problem debt and taking away outside pressure of creditors pursuing debts owed while they are experiencing a mental health crisis.

Declaration

Is a Stage 2 Children's Rights and Wellbeing Impact Assessment required?

CRWIA required	☐	No explanation required, please complete questions 5 and 6
CRWIA not required	☒	Please explain why below and contact the children's rights unit to discuss this decision crwia@gov.scot

Explanation why CRWIA is not required

21. For the reasons stated above we do not find it necessary to carry out a full CRWIA. The policies in the Bill are unlikely to directly impact children or young people.

22. In the unlikely circumstance that a young person aged 16 to 18 has accrued unsustainable debt the policies on diligence measures only aim to improve and streamline the processes that already exist. The policy for Diligence on the Dependence will ensure that they are furnished with full information contained in the DAIP on options on solutions available. The policies on Diligence Against Earnings and Arrestment and Action of Furthcoming will provide creditors with information on failure of arrestment which may discourage them from future action where there are unlikely to be recoveries. The policy on Exceptional Attachment will give a further 7 days for a debtor to redeem assets. The policy on Money Attachment simplifies a procedure already in place.

23. It could be that these policies may indirectly impact a child or young person if a parent or carer were to have involvement with these diligence measures. However as stated these will have no negative affect for that individual and in turn no negative affect on the child or young person.

24. The changes to the 2016 Act are to correct errors and remove ambiguity in the interpretation and operation of current legislation. They would cause no detrimental effect to a young person under 18 if they were to be involved with statutory debt solutions.

25. The policy to introduce enabling powers for a mental health moratorium will bring in a new process which could directly affect a young person under 18 with unsustainable debt or indirectly if a parent or carer were to access the new process. Either way it would only impact them in a positive way by providing them or their parent or carer protection from creditors taking action to recover debts for the period of time that they are suffering from a mental health crisis – allowing them to focus on treatment and recovery.

Sign and Date

Policy lead signature and date of sign off:

Richard Dennis
The Accountant in Bankruptcy and Agency Chief Executive
22 February 2023

Date SGLD contacted: 27 February 2023

This publication is available at **www.gov.scot**

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80525-756-1 (web only)

Published by The Scottish Government, April 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1277362 (04/23)