

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Contract (Third Party Rights) (Scotland) Bill
Summary of aims and desired outcomes of Policy	The Bill will replace the current common law which enables parties to a contract to create an enforceable right in favour of a non-party i.e. a third party with a clearer and more usable statutory version of the rule.
Directorate: Division: team	Justice Directorate: Civil Law and Legal System: Civil Law Reform Unit

Executive summary

The Contract (Third Party Rights) Bill implements the recommendations contained in the Scottish Law Commission Report on Third Party Rights in Contract.

The Bill will replace the current common law which enables parties to a contract to create an enforceable right in favour of a non-party with a clearer and more usable statutory version of the rule.

In broad outline, the Bill sets out how a third party right is created; specifies how contracting parties lose any power to modify or cancel a third party right; provides the remedies which a third party has for enforcement of the right; and the defences available against a third party in such enforcement and provides for situations in which the third party right is affected by an arbitration clause in the principal contract.

The Bill will bring some much needed modernisation to the law in this area which is currently very old and unclear. It will ensure that Scots Law in this area remains comprehensive and attractive for Scotland's citizens and business people.

Background

The existing law on third party rights in Scotland does not provide the necessary flexibility for parties dealing with the uncertainty of future events and runs counter to commercial flexibility and the facilitation of business transactions.

The Bill is to reform the third party rights in Scotland by simplifying and clarifying the existing common law, which is limited in certain circumstances and means it is no longer suitable for modern commercial practice. It will make the law up-to-date and more flexible, addressing the criticisms that it is not currently fit for purpose.

The Bill will:

- set out the circumstances in which a person who is not a party to a contract acquires a third party right. The 'right' provided is to enforce or otherwise invoke the undertaking;
- provide contracting parties with the right to modify or cancel the third party right. The Bill also sets out the exceptions to the general modification and cancellation rule;
- provide the circumstances in which an undertaking becomes irrevocable;
- provide a third party with the same remedies that would be available to a contracting party unless there is express provision contained in the contract to the contrary;
- provide contracting parties with the same defences that they would have had against any other contracting party where it is relevant to the undertaking being enforced, unless there is express provision contained in the contract to the contrary;
- provide a mechanism whereby any arbitration agreement between the contracting parties can operate in respect of third party rights;

- provide that a third party right is an obligation arising from the contract for the purposes of the Prescription and Limitation (Scotland) Act 1973 and that the right prescribes after the short negative prescriptive period of 5 years.

The Scope of the EQIA

Equality issues and the potential effects on users were considered by policy officials when carrying out the EQIA. The Scottish Government took account of existing evidence available from Scotland's 2011 Census and the Scottish Surveys Core Questions 2014.

There will be on-going consultation with key stakeholders to ensure equality issues are taken into account.

Key Findings

The EQIA confirmed that the proposals in the Bill are unlikely to have any significant differential effect on the basis of the protected characteristics.

With regard to eliminating unlawful discrimination, harassment and victimisation, there is no evidence to show that any individual is currently treated less favourably due to their protected characteristics. The proposals in the Bill will not change this.

In respect of those with a disability there is no evidence to suggest that the reforms will have either a positive or negative impact on anyone due to their protected characteristics.

Recommendations and Conclusion

The Scottish Government has concluded that no changes to the policy are necessary as a result of the EQIA, as the proposals in the Bill are intended to apply equally to all affected and appear to have no detrimental effect on the basis of the protected characteristics.

In recognition that the EQIA is an iterative process, the Scottish Government will continue to ensure that full account of equality issues is taken into consideration as the legislation progresses and through the implementation stage.