

Coronavirus (Compensation for Self-isolation) Consultation Paper

August 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

Contents

Ministerial foreword	Page 1
Responding to this consultation	Page 2
Scottish Government consultation process	Page 3
Introduction and policy background	Page 3
The Consultation	Page 5

Ministerial foreword

A public consultation on the Coronavirus (Compensation for Self-isolation) Bill 2022 has been launched today. This consultation invites views on a specific legislative proposal that is designed to support the wider Covid recovery, provide greater public health resilience and support public services, and ensure Health Boards can remain focused on their critical role in fighting this pandemic.

This consultation concerns a legal liability that arises as a result of the temporary modifications made to the Public Health Etc (Scotland) Act 2008 (“the 2008 Act”) by the UK Coronavirus Act 2020 (“The UK Act”) expiring or ceasing to have effect. The 2008 Act includes a duty on Health Boards to provide compensation to a person who receives a written request from the Board to be quarantined, be excluded from entering or remaining in a specified place or refrain from carrying on any activity or type of activity. This duty was changed to be discretionary during the pandemic by the Coronavirus Act 2020.

If this modification to the 2008 Act is no longer in force, Health Boards will be liable to pay compensation to all people they ask in writing to self-isolate in the manner set out above and to carers of such people. This would place a substantial financial and administrative burden on Health Boards.

The consultation will close on 24 September 2021. Responses will be carefully considered and a full analysis will be published accordingly. Subject to the outcome of this consultation exercise, and finalisation of the government's legislative programme, it remains my intention to legislate in this area in the current parliamentary session.



John Swinney MSP

Deputy First Minister and Cabinet Secretary for Covid Recovery

Responding to this Consultation

This consultation was launched on 27 August 2021 and will run until 24 September 2021. You can submit a response at any time before the closing date. To give us your views, please click here <https://consult.gov.scot/covid-public-health/compensation-for-self-isolation> There are no restrictions on who can respond to the consultation.

If you are unable to respond using our consultation hub, please complete the

Respondent Information Form to:
COVID-19 SELF-ISOLATION BILL TEAM
Scottish Government
1R
St Andrews House
Edinburgh
EH1 3DG

Respondent Information Form

The Respondent Information Form can be found within the supporting documents section.

Handling your response

If you respond using the <https://consult.gov.scot/>, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. (see supporting files)

To find out how we handle your personal data, please see our [privacy policy](#).

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at [Citizen Space](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to COVIDselfisolationbillconsultation@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. You can find all our consultations [online](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Introduction and policy background

This Bill seeks to remedy a legal liability that arises as a result of the temporary modifications made to the Public Health Etc (Scotland) Act 2008 (“the 2008 Act”) by the UK Coronavirus Act 2020 (“the UK Act”) expiring or ceasing to have effect. The 2008 Act includes a duty on Health Boards to pay compensation to a person who receives a written request from the Board to be quarantined, be excluded from entering or remaining in a specified place or refrain from carrying on any activity or type of activity. This duty was changed to be discretionary during the pandemic by the UK Act.

Had the modification not been put in place, Health Boards would have been liable to pay compensation to anybody who received a written request from them to be quarantined, be excluded from entering or remaining in a specified place or refrain from carrying on any activity or type of activity. As self-isolation has been one of the key tools in the Scottish Government’s response to the pandemic, this modification is thought to have protected each Health Board in Scotland from a very significant financial and administrative burden.

The Scottish Government has ensured that alternative financial and practical support has been in place during the pandemic for those in need. For example, the Self-Isolation Support Grant provides £500 to workers who lose income as a result of self-

isolating and earn the Real Living Wage or less. For those isolating for a 48 hour period before receiving a PCR test, a loss of income must be demonstrated. The Grant is also available to those who are in receipt of Universal Credit (UC) or other low income benefits or whose family income is within 25 per cent of UC rates.

In addition, the Scottish Government continues to fund the National Assistance Helpline and the Local Self-Isolation Assistance Service, ensuring pro-active and reactive phone calls to people self-isolating to ensure they can access practical and financial support they require whilst self-isolating. Through the Local Self-Isolation Assistance Service, practical support is also available, including support with access to food, essential medication or other local and voluntary services provided locally

Current Situation

This modifications to the 2008 Act only have effect while schedule 21 of the UK Act remains in force and the statutory declaration made under that schedule remains in place. The declaration is to the effect that Scottish Ministers are of the view that:

- a. the powers in schedule 21 of the UK Act remain a suitable means to reduce transmission of Covid; and
- b. Covid is a serious and imminent threat to public health.

The declaration must be revoked if the Scottish Ministers consider that one or both of these conditions cease to be met.

If this modification to the 2008 Act is no longer in force, a Health Board would be liable to pay compensation to a person who receives a written request from the Board to be quarantined, be excluded from entering or remaining in a specified place or refrain from carrying on any activity or type of activity. Health Boards would also be liable to compensate the carers of people who receive such a written request.

The Scottish Government wants to continue to protect Health Boards from financial or administrative liabilities that arise from the ongoing self-isolation policy, while ensuring that financial assistance is available to those most in need.

Our proposal is therefore to maintain the modifications made to the 2008 Act, so that a Health Board may pay compensation to a person who receives a written request from the Board to be quarantined, be excluded from entering or remaining in a specified place or refrain from carrying on any activity or type of activity, and the carers of such a person, but the Board is not under an obligation to do so.

This will enable us to focus on continuing to provide financial and practical assistance to people who self-isolate due to Covid, without increasing the financial and administrative burden on Health Boards, which are playing a critical role in our pandemic response.

The Consultation

This consultation relates to the proposal to prolong the modification of sections 56 and 58 of the 2008 Act, so that Health Boards are not under an obligation to pay compensation to people who the Boards requests to be quarantined, be excluded from entering or remaining in a specified place or refrain from carrying on any activity or type of activity, or carers of such people, for Covid-related reasons. The proposed modification will be similar to the one contained in paragraph 46 of schedule 21 of the UK Act but will modify sections 56 and 58 of the 2008 Act as regards Covid only, and not any other infectious diseases.

The modification created by paragraph 46 has the effect of changing the duty on Health Boards under section 56 of the 2008 Act to pay compensation to a person who receives a written request from the Board to be quarantined, be excluded from entering or remaining in a specified place or refrain from carrying on any activity or type of activity, to a discretionary power to pay compensation.

Paragraph 46 also modifies section 58 of the 2008 Act, so that the duty on Health Boards to pay compensation to the carers of people who receive a request under section 56 of the 2008 Act also becomes a discretionary power to pay compensation.

Should schedule 21 of the UK Act expire, or the statutory declaration under that schedule that 'switches on' the modification to sections 56 and 58 be revoked, whilst people are still self-isolating from COVID-19, there is a risk that Health Boards could face significant financial and administrative burdens.

The Scottish Government has already put in place significant levels of support to help people who are self-isolating, both financially and practically. The Self-Isolation Support Grant, a one-off payment of £500 to those who are isolating, is available to anyone who is required to do so whilst earning less than the real living wage, is in receipt of UC or other low-income benefits, or families who are within 25 per cent of the UC threshold. and, for those who lose income in the initial 48 hours before a PCR test, can evidence a loss of income.

In addition, the Local Self-Isolation Assistance Service has provided practical support for those who need it, arranging essential medicine or food deliveries or providing critical social or mental health support.

COVID-19 has been a once-in-a-generation challenge that has required both government and support services to operate at significant pace. By ensuring that Health Boards are not liable for further compensation claims, we can keep their focus fixed firmly on exiting this pandemic, and that current support remains in place. The original compensation duty in the 2008 Act was intended to apply to smaller outbreaks such as E-Coli, and not to mass pandemics such as COVID-19. The sheer scale of the COVID-19 pandemic necessitated emergency and wide-reaching support, which is why the Scottish Government put in place expansive measures such as the Self-Isolation Support Grant and the Local Self-Isolation Assistance Service.

It is therefore proposed that sections 56 and 58 of the 2008 Act should be modified until schedule 21 of the UK Act expires, or the declaration under that schedule is revoked. However, we acknowledge that sections 56 and 58 are currently modified to make the duty to pay compensation a discretionary power in relation to all infectious diseases.

The proposal is for the longer-term modification to make the compensation duty discretionary with respect to Covid-related requests from Health Boards only and for a limited period of time only.

It is proposed that the provisional expiry date of the modification to the power would be Autumn 2022. This date of expiry could then be extended or brought forward, if necessary, through regulation-making powers.

It is proposed that the conditions which will require an extension of the expiry for the modification would relate to the following considerations:

- that some people were still asked, under public health guidance, to isolate in certain circumstances;
- that alternative financial support for people self-isolating remained available either through the existing Self-Isolation Support Grant (SISG) or another mechanism;
- that expiry of the provisions would present a significant resource burden on territorial Health Boards.

Ministers will keep these factors under review and whether the expiry date should remain as proposed, brought forward or extended.

Financial Assistance for those needing to isolate due to COVID, including the Self-Isolation Support Grant and Local Self-Isolation support, will continue to be provided.

The Consultation Questions

Question 1:

Do you agree with proposals to modify the duty on Health Boards to make the payment of compensation related to self-isolation for Covid-19 discretionary?

Yes

No

If you have any comments on the proposal or your response please write them below:

It is proposed to extend the effect of the existing provision in the UK Coronavirus Act 2020 to make the compensation duty within the 2008 Act discretionary for Health Boards with respect to COVID-19-related self-isolation only and for a specified period.

Given the uncertainty around how COVID-19 will continue to affect Scotland in the longer term, the Scottish Government may need to expire these provisions early, or to extend the expiry date. Without such a power, it is possible that the provisions could be extended for longer than necessary, or expired earlier than is appropriate.

Question 2:

Do you agree that the Scottish Government should be able to vary the expiry date of these provisions?

- Yes
- No

If you have any comments on the proposal or your response please write them below:

It is proposed that circumstances that might give rise to a need to change the expiry date of the temporary provisions proposed would relate to three principal considerations:

- that some people were still asked, under public health guidance, to isolate in certain circumstances;
- that alternative financial support for people self-isolating remained available either through the existing Self-Isolation Support Grant (SISG) or another mechanism;

- that expiry of the provisions would present a significant resource burden on territorial Health Boards.

Question 3:

Do you agree that these are the most appropriate considerations for the Scottish Government to take into account when considering extending or bringing forward the expiry date for these provisions?

Yes

No

If you have any comments on the proposal or your response please write them below:



RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



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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: 978-1-80201-310-8 (web only)

Published by The Scottish Government, August 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS918766 (08/21)

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