

Coronavirus (Discretionary Compensation for Self-isolation) Bill

Business and Regulatory Impact Assessment (BRIA)

November 2021



Scottish Government
Riaghaltas na h-Alba
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Introduction and policy background

At the start of the COVID-19 pandemic, it was recognised that aspects of the Public Health etc. (Scotland) Act 2008 (“the 2008 Act”) required temporary modification given the scale of the pandemic. 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 type of place or refrain from carrying on any activity or type of activity. The 2008 Act also includes a duty to pay compensation to the carer of a person who receives such a request and carers of people subject to an exclusion order, restriction order or quarantine order. Both these duties were changed to be discretionary during the pandemic by the Coronavirus Act 2020 (“the UK Act”).

Had the modification to these duties 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 type of place, or refrain from carrying out any activity or type of activity, as well as the carers of anyone who received such a request. As self-isolation has been one of the key tools in the Scottish Government’s response to the pandemic, this modification has ensured that financial support provided to people has been a proportionate use of public resource and reduced the substantial impact on Health Board resource that would have occurred if the modification was not in place.

The Scottish Government has ensured that alternative financial and practical support has been available throughout the pandemic. For example, the Self-Isolation Support Grant (“SISG”) provides £500 to workers who lose income as a result of self-isolating and earn the equivalent of the Real Living Wage or less. 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. The Grant is also available to parents or primary carers of children asked to isolate and to carers of adults asked to isolate.

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.

The 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-19; and
- b. COVID-19 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 the modifications made by paragraph 46 of schedule 21 of the UK Act cease to be of effect, at a time when people are still being asked by Health Boards to voluntarily self-isolate as a result of the COVID-19 pandemic, Health Boards will be under an obligation to pay compensation to those people and to their carers.

The Scottish Government considers it appropriate that the duty on Health Boards to pay compensation is reinstated in respect of requests to self-isolate for reasons other than COVID-19, and that where the request is made for COVID-19 related reasons, the payment of compensation continues to be discretionary for a further limited period of time.

Policy proposal

The policy proposal is 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.

The modifications would be put in place for a limited time only. The modifications would apply to requests made by Health Boards in respect of COVID-19 only, and not any other infectious diseases. It is proposed that the provisional expiry date of the modification to the power would be 31 October 2022. This date of expiry could then be extended or brought forward, if necessary, through regulation-making powers.

The Scottish Government's view is that the modifications should remain in place where:

- some people were still being asked, under public health guidance, to self-isolate in certain circumstances due to COVID-19;
- alternative financial support for people self-isolating remains available either through the existing SISG or another mechanism;
- the expiry of the provisions would present a significant resource burden on Health Boards at a scale not envisaged by the 2008 Act.

Ministers will keep these factors under review and if they change, will consider whether the expiry date ought to be changed.

There is uncertainty, given the contingency of the current measures on the conditions above, as to when they will end. There is also a need to maintain the modifications for the same reasons they were originally put in place – to protect Health Boards from a financial liability and enable them to focus on pandemic response. As a result, it is the intention of the Scottish Government to legislate to maintain these modifications for the purposes of COVID-19 only.

Legislative Options and Analysis

Option 1

Allow the duty to pay compensation to resume but subject to limitations

The Scottish Ministers have a power to make regulations under sections 56 and 58 of the 2008 Act to make further provision about compensation payable under those sections. We considered whether this power could be used to provide compensation on a level similar to the SISG and whether the power could be used to identify a third party that could administer the compensation. We reached the view that the power in sections 56 and 58 was not broad or flexible enough to achieve this policy aim.

Benefit

Compensation would be universal and could not be restricted to those on low incomes. There would, however, be a disparity in the compensation available to a person depending on whether they were asked to self-isolate by a Health Board (which issue around half of self-isolation requests) or a Special Health Board (such as a Public Health Scotland and NHS National Services Scotland, who operate Test and Protect). Steps would need to be taken to ensure that compensation was universally available, so that eligibility did not depend on which public authority issued a request to self-isolate. In addition, the Equality Impact Assessment highlights the equalities impact of a lack of financial support especially on those on low incomes, so modifying the compensatory power and ensuring the continued provision of existing support, which is targeted at those earning the real living wage or less, is a more equitable approach.

Cost

The Scottish Government estimates that the cost of full compensation through this proposal would be up to twenty times the cost of the current Self-Isolation Support Grant (SISG) - some £380 million in 2021/22¹, based on the Scottish Fiscal Commission's ("SFC") forecast expenditure on SISG of £19m². While some limitations imposed by regulations would reduce the cost slightly, the overall cost would be significantly higher than the SISG . The SISG limited to £500 and is only available to those people on low incomes, whereas this proposal would make the payment universal i.e. payable to anyone who is asked to self-isolate regardless of

¹ This is the cost of universal compensation for losses resulting from self-isolation, regardless which public authority made the request to self-isolate.

² [Scotland's Economic and Fiscal Forecasts - January 2021 \(fiscalcommission.scot\)](https://fiscalcommission.scot)

their income. Setting up a structure in a third party, or establishing a new body, to administer the compensation would also be costly.

Option 2

Enable the mandatory compensation power in the 2008 Act to resume.

The compensation requirement under the 2008 Act could be left to resume when the modifications under the UK Act come to an end. If people are still being asked to self-isolate by Health Boards at that time, Boards would incur a significant financial and administrative liability, as outlined above. This would come at a detriment to other components of the COVID-19 response and inhibit future policy choices through cost.

Benefit

Anyone who receives a written request from the Board to be quarantined, be excluded from entering or remaining in a specified place or type of place or refrain from carrying on any activity or type of activity would be entitled to full compensation for any losses incurred due to complying with this request. To avoid a significant disparity in entitlement to compensation depending on whether a Health Board or a Special Health Board issued the request to self-isolate, steps would need to be taken to ensure that eligibility for compensation was not dependent on whether a Health Board or other public authority issued the request to self-isolate.

Cost

The Scottish Government estimates that the cost of full compensation through the 2008 Act would be up to twenty times the cost of the current SISG - some £380 million in 2021/22³, based on the SFC's forecast expenditure on SISG of £18.8m⁴. This estimate assumes that compensation would apply to all losses incurred, including for those on high incomes, and would as a result be much more costly than the means-tested SISG. The estimate also depends on the number of people asked to self-isolate. While the cost of SISG would increase if the number of people asked to self-isolate turns out to be higher than assumed by SFC, the estimated cost of full compensation would increase by a higher amount.

Option 3

Maintaining modifications to 2008 Act

This is the policy proposal outlined above.

Benefit

This will not affect the continuing provision of financial and practical assistance to people who self-isolate due to COVID-19, but will ensure that Health Boards are not

³ This is the cost of universal compensation for losses resulting from self-isolation, regardless which public authority made the request to self-isolate.

⁴ [Scotland's Economic and Fiscal Forecasts - January 2021 \(fiscalcommission.scot\)](https://fiscalcommission.scot)

subject to a duty that would have a significant financial and administrative resource impact on them.

Cost

Anyone asked to self-isolate for COVID-19 would be able to apply for the SISG and subject to eligibility be entitled to a payment of £500. Estimated yearly cost is approximately £19 million based on figures for 2021-22.

Consultation

Within Government

The Bill was developed with input from a wide range of policy areas. The following areas of government have been consulted in the preparation of this BRIA:

- Social Security SISG and Income Support Division
- Social Security Finance Division
- COVID-19 Public Health Directorate
- Contact Tracing, Testing and Support for Isolation Division
- Financial Management Directorate

In particular, we have engaged with Social Security colleagues to determine future demand for the SISG, examine current expenditure and determine the economic impacts of the current support for isolation. The Bill team has also engaged closely with colleagues with both public health and economic policy responsibilities within the Scottish Government for the delivery of support for self-isolation, examining the latest compliance data with support for isolation and considering what policy intervention would be most appropriate.

The consultation across government departments has helped shape the policy making process by confirming that there would be limited impact on businesses as the Bill does not impose new duties on businesses. However, the importance of obtaining the views of businesses and the need for ongoing engagement during the process of development of the Bill was emphasised and this was taken into account during the drafting of this BRIA.

External Stakeholders and Public Consultation

Officials engaged with relevant public sector stakeholders including COSLA, and representatives from NHS Health Boards, public health officials, such as Directors of Public Health and colleagues in Public Health Scotland, as well as Social Security Scotland.

In addition, a full public consultation was carried out between 27 August and 24 September on the detailed policy proposals.

The key findings from the public consultation analysis report were:

- Overall, responses to the consultation were in favour of the proposed changes.

- 78.5% of respondents agreed with the proposal to extend the effects of the modification of the duty on Health Boards to make the payment of compensation related to self-isolation for COVID-19.
- 78.5% of respondents were also in favour of the Scottish Government having the ability to vary the expiry date of these provisions.
- 92.8% of respondents agreed that the considerations listed in the consultation were the most appropriate considerations for the Scottish Government to take into account when considering extending or bringing forward the expiry date for these provisions. Those considerations were whether people were still being asked to isolate, whether alternative financial support was available and whether expiring these provisions would present a resource burden for Health Boards.

The Bill does not impose any duties on businesses and no major concerns were raised by businesses in response to the consultation.

Sectors Affected

The policy proposals set out in this BRIA are unlikely to have a significant effect on most private or third sector businesses.

Sole traders and the self-employed may be impacted as if they were required to self-isolate, depending on their profession, they may not be able to work from home and may lose income as a result.

The SISG is available to anyone who earns the equivalent of the real living wage or less, so would be available to sole traders who earn less than this amount. Since the start of the pandemic, businesses have benefitted from more than £4.4bn⁵ in support. This includes grants, loans and non-domestic rates relief for all retail, leisure, aviation and hospitality premises. The UK Government's Furlough scheme provided a vital lifeline for businesses and employees with the latest provisional HMRC data showing at 31 August, 93,900 jobs (4% of eligible jobs in Scotland) were supported by furlough.

This support will have been of benefit to sole traders and the self-employed who have lost income as a result of self-isolation. While people continue to self-isolate as a result of COVID-19, this support will be kept under continual review by the Scottish Government and further measures, should they be required, will be considered.

Isolation Support

The continued provision of support for self-isolation, including the £500 SISG, will encourage individuals who are notified to isolate to do so and follow the relevant guidance. This in turn will limit the risk of people who have been notified to isolate attending the workplace whilst potentially carrying COVID-19. This will avoid a negative impact on business and workplaces, by limiting outbreaks.

⁵ [Coronavirus \(COVID-19\): summary of Scottish business support funding - gov.scot \(www.gov.scot\)](https://www.gov.scot/coronavirus-covid-19/summary-scottish-business-support-funding/)

Scottish Firms Impact Test

In developing these proposals, the Scottish Government has considered the impact on Scottish firms. These proposals relate to compensation to individuals who suffer a financial loss as a result of being asked to self-isolate. It is envisaged that the policy proposals set out in this BRIA are unlikely to have a significant effect on most private or third sector businesses. Sole traders and the self-employed may be impacted as highlighted in the *Sectors Affected* section.

This modifications to the 2008 Act have been in place since March 2020, there is no known evidence of any negative impacts on businesses of the policy.

Competition Assessment

In developing these proposals, the Scottish Government has considered whether any aspect of the proposals may affect or distort competition. It is the view of the Scottish Government that these proposals will not have an effect of competition because:

- the proposals will have no effect on the number or range of suppliers within any market;
- the proposals will have no effect on the ability of suppliers or businesses to compete;
- the proposals will have no effect on suppliers or businesses incentives to compete vigorously; and
- the proposals will have no effect on choices or information available to any consumers.

Consumer Assessment

The Scottish Government has not carried out a detailed consumer assessment because these proposals:

- do not affect the quality, availability or price of any goods or services;
- does not affect the essential services market e.g. energy or water;
- does not increase opportunities for unscrupulous suppliers to target consumers;
- does not impact on the information available to consumers on either goods or services or consumer rights; and
- does not affect routes for consumers to seek advice or raise complaints on consumer issues.

Test Run of Business Forms

The Scottish Government is not proposing to create any new business forms as part of these proposals.

Legal Aid Test

The Scottish Government does not consider that these proposals will have a significant impact on legal aid, access to justice and does not introduce anything likely to increase the use of legal processes.

Enforcement, Sanctions and Monitoring

The proposals do not create any new offences and do not require enforcement or sanctions.

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