

# Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill

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## Policy Memorandum

### Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill introduced in the Scottish Parliament on 15 November 2021.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 6-EN);
  - a Financial Memorandum Explanatory Notes (SP Bill 6-FM);
  - a Delegated Powers Memorandum (SP Bill 6–DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 6-LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### Background

4. The Bill makes temporary modifications to the Public Health etc. (Scotland) Act 2008 (“the 2008 Act”) so that health boards have discretion as to whether to pay compensation for self-isolation in connection with COVID-19, rather than a duty.
5. The 2008 Act contains, at section 56, a duty on health boards to compensate people who are asked in writing by the health board to

voluntarily quarantine, or to limit their movements or activities. Section 58 of the same Act sets out a further duty on health boards to compensate carers of those people and carers of people subject to an exclusion order, restriction order or quarantine order. A temporary modification of these duties was contained in paragraph 46 of schedule 21 of the UK Coronavirus Act 2020 (“the UK Act”), which was a response to the situation caused by the COVID-19 pandemic.

6. The modification made by the UK Act changed the duty on health boards to pay compensation to a discretionary power to do so, during times that Scotland is in a “transmission control period” by virtue of a statutory declaration made under paragraph 25 of schedule 21 of that Act.

7. The statutory declaration must be revoked by the Scottish Ministers when they are no longer of the view that COVID-19 is a serious and imminent threat to public health, and that the powers in schedule 21 of the UK Act remain a suitable means to reduce transmission. In addition the current measures in place, which are contained in the UK Act, will expire on March 24 2022.<sup>1</sup>

8. The Bill has the effect that the duty on health boards to pay compensation is reinstated in respect of requests to self-isolate, for reasons other than COVID-19. Where the request is made for COVID-19 related reasons, the Bill provides that payment of compensation is discretionary. This modification has effect for an initial period of approximately 6 months from commencement of the Bill. This period is subject to amendment by the Scottish Ministers under the regulation-making powers set out in the Bill. The period may be reduced, or it may be extended by no more than 6 months at a time.

## Policy Objectives of the Bill

9. The 2008 Act puts in place a duty for health boards to provide compensation to those who are isolating as a result of an infectious disease, or for carers of those who have to isolate. The UK Act modifies

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<sup>1</sup> Section 89 of the 2020 Act provides that (other than those provisions specified in section 89(2)) the 2020 Act expires at the end of the period of 2 years beginning with the day on which it is passed, subject to the use of powers under section 90 to alter the expiry date.

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this duty to be a discretionary power rather than obligatory. This Bill seeks to continue this modification, for the purposes of COVID-19 only, until the end of October 2022, with regulation-making powers to extend that period or expire it early as required.

10. Section 56 of the 2008 Act imposes a duty on health boards to pay compensation to a person who receives a written request from the health board to be quarantined, to be excluded from entering or remaining in a specified place or to refrain from carrying on any activity or type of activity as a result of an infectious disease. Section 58 contains additional provision requiring health boards to pay compensation to carers of people who are requested or ordered to quarantine, etc., for example, parents of children who are requested to self-isolate (perhaps following a positive COVID-19 test).

11. The 2008 Act was not drafted with a global pandemic, such as COVID-19, in mind. The types of outbreaks referenced by the Policy Memorandum in that Bill refer to diseases such as E-Coli.<sup>2</sup> When the WHO declared a global pandemic, the UK Act was brought in to provide powers in a number of areas of pandemic management. The UK Act included the provision modifying the compensation duty in sections 56 and 58 of the 2008 Act to be a discretionary power.

12. This modification through the UK Act has remained in place since March 2020, and will expire in March 2022. Should transmission of COVID-19 continue at significant levels, then health boards would face a significant financial and administrative burden. This Bill seeks to avoid that burden by continuing to keep the modification in place until October 2022, with regulation making powers to extend or expire early, with respect to instances of COVID-19 infection only. Should an extension to this initial period be sought, then the affirmative Parliamentary procedure would apply. Regulations to the extend the period could be brought into force only if approved by a vote of the Scottish Parliament.

## Support for Isolation and Contact Tracing

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<sup>2</sup> [Policy Memorandum - Public Health Etc \(Scotland\) Act 2008](#)

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13. While the modification remains in force, alternative financial assistance for those people self-isolating due to COVID-19, who are most likely to require it due to their income level, has been and is being provided through the Self-Isolation Support Grant<sup>3</sup> (“the SISG”). Parents and carers of those who are under 16 and are notified to self-isolate are also currently eligible to claim the SISG. The SISG is funded by the Scottish Government through the Scottish Welfare Fund and delivered through local authorities, with their agreement.

14. Currently, around half of people who are notified to self-isolate are contacted by Health Boards, with national bodies such as Public Health Scotland (a Special Health Board) accounting for further notifications. If the Bill does not pass, compensation would be payable under the 2008 Act. As a result, and to ensure that all those requested to self-isolate are treated fairly, steps would need to be taken to ensure that compensation is available to all, regardless of whether it is a health board or other body that issues the request to self-isolate.

15. As outlined above, the 2008 Act contains a duty to provide compensation to those who are isolating as a result of an infectious disease and carers of those notified to do so. This is the duty which is modified by the UK Act and which the proposed Bill seeks to continue in place, with respect to COVID-19. Operationally, the current testing regime is run by Test and Protect, with people notified through Health Boards and Special Health Board, depending on how they are contact traced, to self-isolate. Health Boards operate locally and are in place to support health and care on a regional basis, with Special Health Boards bodies designated by the Scottish Ministers to support health and care at a national level. This duty (to provide compensation under the 2008 Act) does not apply to those who are notified to self-isolate by a special health board (for example, Public Health Scotland under the “Test and Protect” regime) rather than those notified by their local health boards.

16. Those who earn the equivalent of the real living wage or less, who will lose income as a result of self-isolating, and have been notified to self-isolate, are currently eligible to claim the Self-Isolation Support Grant. Eligibility for the SISG depends upon an individual being notified to self-

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<sup>3</sup> <https://www.gov.scot/publications/coronavirus-covid-19-scottish-welfare-fund-statutory-guidance/>

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isolate by the Test, Trace, Isolate and Support system, which incorporates both special health boards and health boards. If the Bill were to fail to pass, and the 2008 Act's duty to provide compensation was restored, then steps would need to be taken to ensure that compensation is available to all, regardless whether it is a health board or other body that issues the request to self-isolate.

## Procedure

17. The Bill, while restricting the modification to COVID-19, extends the effective time period for the modification until the end of 31 October 2022. The 31 October expiry date is approximately six months from the anticipated date that the Bill may receive Royal Assent, which is considered an appropriate amount of time to suspend the compensation duty on health boards in the first instance. A regulation-making power is included in the Bill to bring that expiry date forward to earlier than 31 October if it was appropriate. The date of expiry could also be delayed if necessary as a result of the ongoing COVID-19 situation, through the regulation-making powers contained in the Bill.

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

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

19. Ministers will keep these factors under review and if they change, will consider whether the expiry date should be brought forward or delayed. This Bill includes regulation-making powers to amend the expiry date with any proposed change to extend the expiry date being subject to Parliamentary scrutiny.

## Compensation

20. This Bill seeks to limit the financial impacts on health boards of COVID-19 compensation claims. A far greater number of people would be eligible for compensation than are currently eligible for the SISG. Furthermore, it is anticipated that the average payment would be higher than the £500 currently provided through the SISG – both because people with higher incomes would be eligible, resulting in higher losses, and because compensation would include all losses, not just income – although for some claimants the payment would be lower. If the Bill were to fail to pass, then the original 2008 Act’s duty to provide full compensation to people who are isolating as a result of an infectious disease would come into force again, meaning that health boards would face significant financial burdens. If the Bill does not pass, compensation would be payable under the 2008 Act. As a result, and so that all those requested to self-isolate are treated fairly, steps would need to be taken to ensure that compensation is available to all, regardless of whether it is a health board or other body that issues the request to self-isolate. The estimated cost of compensation from April 2022 for the next financial year, if this Bill does not pass, is approximately £380 million per annum,<sup>4</sup> based on the Scottish Fiscal Commission’s forecast for expenditure on the SISG of £18.8 million over 2021/22 and our estimate that the cost of compensation would be up to twenty times this amount. The methodology of this is set out in more detail in the Financial Memorandum which accompanies this Bill.

21. This projection multiplies the numbers of people who are employed, unable to work from home, are notified to self-isolate and eligible for the grant and assesses these numbers in relation to the numbers of people accessing the SISG.

22. The costs of providing coronavirus compensation, should the suspension of the duty be lifted, extend beyond 2022 and would be directly proportionate to the level of COVID-19 transmission, which is relatively volatile. The provisions in the 2008 Act were not intended to provide a scheme that would be administered at this scale.

23. The effect of this Bill on individuals would be to continue the effects of the modification, so that they would not be able to claim compensation under the 2008 Act’s mandatory duty and that the choice to provide such

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<sup>4</sup> This is the cost of universal compensation for losses resulting from self-isolation, regardless which public authority made the request to self-isolate.

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compensation would remain with the health board. This effect is mitigated for those earning the equivalent of the real living wage or less, as these individuals are eligible to claim the SISG if they are notified to isolate, subject to other eligibility criteria.

24. The effect of the Bill passing and the current modification remaining in place would be that health boards would not need to fulfil the financial and administrative burdens of providing compensation in full, and would be able to make a choice as to whether or not to provide said compensation on a case-by-case basis. This could be considered alongside available support for self-isolation, including the SISG, which is established. Scottish Government analysts estimate that this cost would be approximately £380 million in compensation payments. The current SISG budget, as outlined by the Scottish Fiscal Commission, sits at £18.8 million, meaning a that approximately £361 million would not require to be spent.

25. Should the Bill fail to pass and the modification not be replaced by 24 March 2022, then the financial and administrative burdens outlined above would be encountered.

26. Suspending this duty and introducing Covid-specific support through the SISG has been essential to ensuring an appropriate response to supporting people through the pandemic. Similarly, the financial impacts of self-isolation fall most heavily on those who are unable to work from home, which is often those in industries with low pay and where the incentive to break isolation will be strong because it may be unaffordable to comply with the request. It is therefore crucial that support for those on lower incomes, such as the SISG, which is targeted to those earning the equivalent of the real living wage or less, is in place.

27. These proposals have been subject to a public consultation<sup>5</sup> to understand the impact of continuing the modification of the compensation power on the general public and stakeholders; especially those with a responsibility for public health. An initial analysis is presented later in this memorandum.

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<sup>5</sup> [Coronavirus \(Compensation for Self-isolation\) Bill - Scottish Government - Citizen Space \(consult.gov.scot\)](https://consult.gov.scot/coronavirus-compensation-for-self-isolation-bill-scottish-government-citizen-space)

## Alternative Approaches

28. The Scottish Government has considered alternative options to the measures proposed in the Bill:

- **Allow the mandatory compensation power in the 2008 Act to resume including with respect to COVID-19.**
- The compensation power under the 2008 Act could be left to resume in full once the statutory declaration is revoked or schedule 21 is expired. Health boards would be under a duty to pay compensation to all people they notify in writing to self-isolate which would have a significant administrative and financial impact, and incur the costs outlined above, which would come at a detriment to other components of the COVID-19 response. Steps would require to be taken to ensure that compensation was universal, so that eligibility did not depend on which public authority issued the request to self-isolate. If the money came directly from health board budgets, there would be less to spend on the delivery of health services for either the response to the pandemic or essential care services. If this were to come from Scottish Government budgets then money would need to be found from existing SG budgets to provide essential services and inhibit future policy choices through cost. For these reasons this is not considered to be a sustainable option.
- **Make regulations under sections 56 and 58 of the 2008 Act to establish a compensation scheme with some limitations.**
- The Scottish Ministers have powers 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 appoint a third party to 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. These powers are intended to be used to set out administrative and procedural aspects of a compensation scheme, and could not be used to limit eligibility for compensation. Compensation could not, for example, be restricted to those on low incomes using these powers, so ensuring a targeted use of public resources to maintain optimal public health outcomes would be unlikely to be achieved under

this option. Steps would also need to be taken to ensure that eligibility for compensation did not depend on which public authority issued the request to self-isolate, otherwise there would also 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).

- **Use Primary Legislation to continue the modification once the UK Act expires.**
- The above routes were explored to consider whether there was any route to ensure the modification could remain in place without the need for primary legislation and the use of valuable Parliamentary time. On balance, primary legislation was the only route, owing to the need to limit the costs of the financial and administrative burdens the 2008 Act's compensation duty would incur on health boards, and there is no other way to limit these costs other than to continue the existing arrangements for the purposes of COVID-19, which requires primary legislation to do so.

## Consultation

29. This Bill has been informed by the outcome of a public consultation on draft policy proposals. The consultation ran between 23 August and 27 September 2021. In addition, the consultation was proactively circulated to equalities stakeholders including BEMIS, Interfaith, Age Scotland, Disability Equality Scotland, COSLA and other groups, including the Scottish Women's Convention, who responded. We also engaged with the Child Poverty Action Group proactively. The consultation was promoted on Social Media and via the Law Society of Scotland amongst stakeholders too and was available on the Scottish Government's consultation website throughout the four week period.

30. The Scottish Government received 14 responses to the consultation, with 11 in favour of the proposals and 3 against. 9 responses were from individual members of the public, with 5 coming from individuals representing organisations.

31. Some responses pointed to the socio-economic impact on people from lower-income backgrounds, in which minority communities are disproportionately represented, or on those at greater risk of experiencing poverty. The Scottish Government acknowledges this concern, and is continuing to work with stakeholders to ensure that those from a less affluent socio-economic background are supported to self-isolate through the current measures in place, including the Self-Isolation Support Grant. Some stakeholders also responded by saying the Bill does not impinge on their interests. An analysis of consultation responses has been published<sup>6</sup> on the Scottish Government website.

32. Most respondents left only limited comments in their response, with the exception of the Scottish Women's Convention, who argued that, whilst they were content with the proposals outlined, they felt support for people who are self-isolating should be expanded further. They outlined the experience of several women they had discussed the proposals with, explaining they felt that it was crucial that support was more expansive and visible – suggesting a helpline and information being available online as possible avenues to raise the profile of support.

33. The Coronavirus National Helpline already exists to support people with COVID-19 queries, and the Local Self-Isolation Assistance Service proactively contacts people who are isolating and have given their consent to be contacted, to ensure they have the support they need. This support can include social or practical support such as help with food or essential medicine delivery. In any event, the compensation provisions within this Bill relate purely to the modification of the 2008 Act duty, and do not relate to the wider provision of self-isolation support. The majority of respondents were in favour of the measures detailed within this Bill, which has been drafted in consideration of those responses.

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<sup>6</sup> [Coronavirus \(Compensation for Self-isolation\) Bill - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.scotland.gov.uk/consult/20210113/coronavirus-compensation-for-self-isolation-bill)

## Effects on Equal Opportunities, Human Rights, Island Communities, Local Government, Sustainable Development etc.

### Equal opportunities

34. A full Equalities Impact Assessment will be published alongside this Bill and will be published on the Scottish Government website at <http://www.gov.scot/Publications/Recent>.

35. The Bill affects people who self-isolate, following a written request from a health board asking them to do so, and suffer losses as a result with regards to COVID-19. It also affects carers who suffer losses as a result of people they care for being asked by a health board to self-isolate or being subject to an exclusion order, restriction order or quarantine order with regards to COVID-19.

36. While COVID-19 affects all parts of society, not everyone who self-isolates will suffer loss as a result. In most cases, lost income will be the most significant loss for households affected. People who are able to work from home may be able to maintain an income through a period of isolation. Some people will be entitled to contractual sick pay if they are unable to work due to self-isolation and others will be entitled to statutory sick pay (“SSP”). SSP has been adapted to apply from day one of an absence during this pandemic and is available to people who self-isolate as a result of being a close contact of someone who has COVID-19, as well as to those who have tested positive themselves. While SSP may not cover 100% of a person’s lost income, it reduces the amount lost due to being absent from work.

37. The people who are most likely to lose all of their income are those who cannot work from home, are not entitled to contractual sick pay and are not eligible for SSP. This is more likely to be people who work in transient or zero hours contracts, those who are self-employed, or those earning below a certain income. In addition, those on lower incomes are more likely to work in jobs which, by necessity, will see people interacting with people directly and therefore face an increased risk of contracting COVID-19 and having to self-isolate.

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38. It follows that while the modifications in this Bill could impact on people in all parts of society, the people most impacted by the Bill are those who are on lower incomes and those who work in transient employment, on zero hour contracts or are self-employed. During the pandemic, low earners are 7 times more likely than high earners to have worked in a sector that shut down as a result of the lockdown, and those with customer facing roles are likely to have seen reductions in earnings or face job losses as they are less able to work from home.<sup>7</sup> In particular, there is some evidence that women are more likely to be unpaid carers than men, and women who are unpaid carers are more likely to be in less secure, lower paid work or to be unemployed. Further detail on the impacts of this on women and carers is detailed in the Equalities Impact Assessment accompanying this Bill.

39. There are also large numbers of people living with a disability in Scotland. The Scottish Health Survey<sup>8</sup> indicates that disabled adults are likely to fall into the lowest household incomes - in 2018, 51% of adults with household incomes in the bottom quintile (less than £14,300) were disabled, compared with 23% of adults with household incomes in the top quintile (£49,400 and above). More details are included in the Equalities Impact Assessment.

40. In addition, there are significant socio-economic inequalities that are faced by people from ethnic minority backgrounds. 39% of people from an Asian or Asian British background face relative poverty after housing costs are removed in Scotland, with 38% of people from a mixed, black or black British or other related background in the same situation. More details are included in the Equalities Impact Assessment.<sup>9</sup>

41. For these reasons, 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 (“SISG”) provides £500 to workers who lose income as a result of self-isolating (or caring for someone who is self-isolating) and earn the Real Living Wage or less. The Grant is also available to those who are in receipt

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<sup>7</sup> [Sector shutdowns during the coronavirus crisis: which workers are most exposed? - Institute For Fiscal Studies - IFS](#)

<sup>8</sup> [Scottish Health Survey - gov.scot \(www.gov.scot\)](#)

<sup>9</sup> [Inequalities by ethnicity in the context of Covid-19 \(slide-pack\) - gov.scot \(www.gov.scot\)](#)

of Universal Credit (“UC”) or other low income benefits or whose family income is within 25% of UC rates. This more targeted approach to financial support was considered a more proportionate response given the scale of the pandemic.

42. The Scottish Government has assessed the potential impact of extending this measure on equal opportunities and, the above concerns notwithstanding, has determined it does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly.

## **Human rights**

43. This Bill will impact people who suffer financial loss in connection with self-isolation due to COVID-19. The most significant loss for most households will be lost income. We have assessed the equality impacts and impacts on children’s rights and have given due consideration to the European Convention on Human Rights, in particular Article 1 of Protocol 1, in formulating our approach.

44. An equalities impact assessment has been carried out and we are satisfied that there is no unlawful discrimination created by the Bill’s provisions.

45. Human Rights impacts have been considered throughout the various Impact Assessments which are attached to this Bill, most notably in the Equalities Impact Assessment and the Child Rights Wellbeing Impact Assessment. These Assessments will be published on the Scottish Government website at <http://www.gov.scot/Publications/Recent>.

46. With regards to an assessment of the rights of children and young people. If young people are in employment, they may lose income as a result of self-isolation, or potentially incur other financial losses. Secondly, children and young people may be affected by others in their household having to self-isolate, for example, their parents or carers. If those other persons required to self-isolate lose income as a result, that could impact on the children and young people in a number of ways but could

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particularly impact upon their wellbeing and welfare especially in low income households.<sup>10</sup>

47. These challenges are mitigated by the support available in place for self-isolation has been expanded to include both parents and carers of those isolating and those earning the real living wage or less, providing a significant mitigation to the human rights challenges thrown up for those groups.

48. The Scottish Government has assessed the potential impact of extending the measure on human rights and considers that ECHR issues do not arise.

## **Island communities**

49. A full Island Communities Impact Assessment will be published alongside this Bill on the Scottish Government website at <http://www.gov.scot/Publications/Recent>.

50. The Scottish Government has assessed the potential impact of this Bill on island communities, and in doing so has considered the impact of the modifications which have been in place since March 2020 (which would effectively be continued by this Bill).

51. The Scottish Government routinely collects data on compliance across Scotland with Self-Isolation, along with the awarding of Self-Isolation Support Grants and other support. The proportion of index and contact cases who were surveyed as part of this compliance data, who had applied for a SISG was 8% nationally, with no variation by case type.<sup>11</sup> In island communities, claim rates for the SISG were low, with the award rate of the SISG across island communities not reaching more than 0.2 per community in the SISG award rate per 1000 people in the population.<sup>12</sup> However, reported awareness of self-isolation requirements has been high nationally, including in island communities, with 74% of index and contact

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<sup>10</sup> [COVID-19 CEYRIS Report 3 \(publichealthscotland.scot\)](https://publichealthscotland.scot)

<sup>11</sup> [Covid-19 Support Study: experiences of and compliance with self-isolation \(www.gov.scot\)](http://www.gov.scot)

<sup>12</sup> The Island Communities Impact Assessment contains the tables outlining these awards and will be published shortly after the Bill.

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cases who were surveyed as part of the regular compliance surveys classified on their behaviour as fully complying with self-isolation requirements.<sup>13</sup>

52. Taking into consideration the comparatively low uptake of the SISG in island communities compared to the rest of Scotland and the high level of self-isolation compliance and self-isolation knowledge nationally, the Scottish Ministers are not aware of any evidence to suggest that the effects of this Bill will be felt any differently by island communities compared to its effect on other communities in Scotland.

## **Local Government**

53. The Scottish Government has assessed the potential impact of this Bill on local authorities. No detrimental impacts on the business of local authorities are anticipated through the continuation of this modification. However, whilst administrative and grant costs for delivery of SISG are provided to LAs by the Scottish Government, it is recognised that ongoing delivery of that scheme will continue to require local authority resource.

## **Sustainable development**

54. The Scottish Government has assessed the potential impact of extending the measure on sustainable development and no detrimental effects are anticipated.

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<sup>13</sup> [Covid-19 Support Study: experiences of and compliance with self-isolation \(www.gov.scot\)](http://www.gov.scot)

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