

CORONAVIRUS (DISCRETIONARY COMPENSATION FOR SELF-ISOLATION) (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are 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:
 - a Financial Memorandum (SP Bill 6–FM);
 - a Policy Memorandum (SP Bill 6–PM);
 - a Delegated Powers Memorandum (SP Bill 6–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 6–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL: OVERVIEW

5. The Bill makes temporary modifications of the Public Health etc. (Scotland) Act 2008 so that health boards have discretion as to whether to pay compensation for self-isolation in connection with coronavirus.
6. The Public Health etc. (Scotland) Act 2008 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 Coronavirus Act 2020 which was a response to the situation caused by the coronavirus (COVID-19) pandemic.

7. The modification made by the Coronavirus Act 2020 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. 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 Coronavirus Act 2020 remain a suitable means to reduce transmission. If the statutory declaration is revoked, and accordingly the modifications made by paragraph 46 of schedule 21 of the Coronavirus Act 2020 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.

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.

THE BILL: SECTION BY SECTION

Section 1: Discretionary compensation for self-isolation

9. Section 1 modifies sections 56 and section 58 of the Public Health etc. (Scotland) Act 2008 (“the 2008 Act”).

10. Section 1(2)(a) of the Bill has the effect of making section 56(1) of the 2008 Act subject to section 56(1A). Section 1(2)(b) of the Bill provides that section 56 is to have effect as if a subsection (1A) were inserted after subsection (1). Subsection (1A) applies when a request is made to a person under section 56(1) to quarantine, be excluded from entering or remaining in a place, or refrain from certain activities, for a reason relating to coronavirus. Subsection (1A) ensures that in those cases the health board is not under an obligation to pay compensation to the person to whom the request is made. The health board may however choose to pay compensation.

11. Section 1(3)(a) of the Bill has the effect of making section 58(2) of the 2008 Act subject to section 58(2A). Section 1(3)(b) of the Bill provides that section 58 is to have effect as if a subsection (2A) were inserted after subsection (2). Subsection (2A) applies when a request is made to a person under section 56(1), or a person is subject to any of the types of orders specified in section 58(1)(a), for a reason relating to coronavirus. Subsection (2A) ensures that in those cases the health board is not under an obligation to pay compensation to a carer of the person subject to the order or to whom the request is made. The health board may however choose to pay compensation.

Section 2: Expiry of section 1

12. Section 2(1) provides that section 1 will expire on 31 October 2022. When section 1 expires, the provisions of sections 56 and 58 of the Public Health etc. (Scotland) Act 2008 will apply without modification.

13. Section 2(2) provides a power for the Scottish Ministers to make regulations making transitional, transitory or saving provision in connection with the expiry of section 1.

Section 3: Power to alter expiry date

14. Section 3 gives the Scottish Ministers the power to change the date of expiry of section 1 by regulations.

15. Section 3(1) allows the Scottish Ministers to move expiry to an earlier date. Section 3(2) allows the Scottish Ministers to move expiry to a later date. Section 3(3) provides that the later date cannot be later than 6 months after the expiry date which applies at the time the regulations are made – whether that is the date set out in the Bill, or a date which has been set by a previous set of regulations made under the Bill.

Section 4: Procedure for regulations under section 3

16. Section 4 sets out the relevant Parliamentary procedures for regulations made under section 3.

17. Section 4(1) provides that regulations moving expiry to an earlier date are subject to the negative procedure in the Scottish Parliament. Subsection (2) provides that regulations moving expiry to a later date are subject to the affirmative procedure in the Scottish Parliament.

18. Subsection (2) provides that regulations moving expiry to a later date are subject to the affirmative procedure in the Scottish Parliament. Subsection (2A) places an obligation on the Scottish Ministers to consult each health board in Scotland, and any other parties that the Scottish Ministers think it is appropriate to consult, before they make regulations under section 3(1), or lay draft regulations under section 3(2).

19. When a draft of regulations to move expiry to a later date is laid before the Scottish Parliament, there is also a duty on the Scottish Ministers, under subsection (3), to lay before the Parliament a statement of their reasons why the regulations should be made.

20. Subsection (4) gives the Scottish Ministers the power to make urgent regulations moving expiry to a later date. If the Scottish Ministers consider that such regulations are required then they are not obliged to consult with health boards or other parties before making them, the affirmative procedure will not apply, and when the regulations are made they will be effective immediately. The regulations must be laid before the Scottish Parliament, along with a statement of the Scottish Ministers' reasons for making the regulations and for doing so urgently, without using the

affirmative procedure. The regulations will cease to have effect 28 days after they are made, unless the Parliament approves them by resolution within that period.

Section 5: Coronavirus Act 2020: Expiry of paragraph 46 of schedule 21

21. By the time the Bill comes into force, paragraph 46 of schedule 21 of the Coronavirus Act 2020 (which modifies sections 56 and 58 of the 2008 Act) may have expired. Section 5 provides that if and in so far as it has not already expired, it expires on the day on which the Bill comes into force.

22. Section 5(2) provides a power for the Scottish Ministers to make regulations making transitional, transitory or saving provision in connection with the expiry of that paragraph.

Section 6: Commencement

23. Section 6 sets out that the Bill will come into force on the day after Royal Assent.

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