

CVDR/S6/21/13/2

COVID-19 Recovery Committee

**13th Meeting, 2021 (Session 6), Thursday,
2 December 2021**

Panel on the Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill

The committee will be taking evidence on the Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill on 2 December, from the following people:

- Sandra MacLeod, Chief Officer, Aberdeen City Health and Social Care Partnership;
- Michael Clancy, Director of Law Reform, Law Society of Scotland;
- Mike Brewer, Deputy Chief Executive, Resolution Foundation;
- Susan McKellar, Operations Manager, The Scottish Women's Convention.

[SPICe has produced a briefing on the Bill](#), (which also looks at the Scottish Self Isolation Support Grant), and the committee heard from the bill team on 25 November.

The Law Society of Scotland provided a written submission which is attached to the cover paper for the meeting.

Overview

The [Coronavirus \(Discretionary Compensation for Self-isolation\) \(Scotland\) Bill](#), seeks to continue the effects of a temporary modification made to the Public Health etc. (Scotland) Act 2008 by the Coronavirus Act 2020). This temporary modification suspended the duty on health boards to provide compensation to those asked to isolate as a result of an infectious disease, replacing it with a discretionary power.

This Bill will continue these effects for a further six months, once the UK Act expires (in March 2022).

Before the COVID-19 pandemic, the 2008 Act conferred a duty on health boards to pay compensation to people they requested (in writing) to isolate in relation to an infectious disease.

The UK Act changed this by modifying the 2008 Act. The 2008 Act, as modified by the UK Act, now leaves the decision to provide compensation to those who are self-isolating to health boards. That modification will expire in March 2022.

This Bill will continue the modification to the 2008 Act so that health boards will still have the **option** to provide compensation. However, they will not be **required** to do so, for anyone they ask to self-isolate due to COVID-19. The modification in this Bill will apply only to self-isolation for reasons relating to coronavirus. Health boards will return to being under a duty to pay compensation to people who self-isolate in relation to other infectious diseases following a written request from the health board to do so.

The modification in this Bill will apply until 31 October 2022, and the Bill provides enabling powers to the Scottish Government to reduce or extend that period (subject to the [negative or affirmative procedures](#) respectively).

Financial support is widely considered to play an important role in preventing hardship, and encouraging compliance, when people are asked to isolate.

In the year to September 2021, the government made 43,000 awards of Self Isolation Support Grants (SISG), costing nearly £22 million.

The government estimates that, without the Bill, the resulting expansion of a compensation scheme to cover everyone who is required to self-isolate, could result in a twenty-fold increase in the costs to the public sector, potentially amounting to over £360 million in one year.

Changes to the eligibility of the SISG grant scheme are set out below:

October 2020

Low income workers.

Targeted at those in receipt of Universal Credit or legacy benefits who are employed.

November 2020

The scheme was extended to workers subject to No Recourse to Public Funds restriction.

December 2020

Scheme extended to include:

- 1) parents or primary carers of children required to isolate; and
- 2) applicants who would ordinarily have an underlying eligibility for Universal Credit (based on earnings prior to the self-isolation request period), who experience a reduction in earnings as a result of being asked to self-isolate.

February 2021

Scheme extended further to include:

- 1) applicants who are in receipt of means-tested Council Tax Reduction;
- 2) applicants who earn the Real Living Wage or less or whose household income is less than Universal Credit + 25% for their circumstances;
- 3) carers of adults required to isolate; and
- 4) a widening of the application period to 28 calendar days from being told to self-isolate.

May 2021

Scheme extended to include secondary contacts who had been formally asked to isolate by their health board.

October 2021

Scheme extended further to align with health policy and restrict eligibility for double vaccinated contacts to those who themselves test positive.

Views on the Bill

The [Scottish Government consulted](#) on its proposals for this Bill between 23 August and 27 September 2021. The consultation asked participants whether they agreed with the proposal to extend the modification to the 2008 Act and whether respondents agreed that the Scottish Government should have powers to extend or expire them early, and on the conditions that should apply to using those powers.

The Scottish Government received 14 responses to the consultation, with 11 in favour of the proposals and three against. Nine responses were from individual members of the public and five from individuals representing organisations. The Scottish Government [produced an analysis](#) of the responses on 21 October 2021.

The analysis highlighted that a number of written responses related to the levels of isolation support provided, the need to provide sufficient financial support and on some of the differential impacts of COVID-19 on some groups with protected characteristics. The analysis report stated:

“The importance of the Scottish Government providing financial support to individuals who were isolating was highlighted by some respondents, along with the need to prioritise health and social care support for families struggling due to the self-isolation rules. Whilst levels of support, whether financial or practical, are outwith the scope of the proposed Bill this feedback has been noted by the Scottish Government.”

The [consultation response from the Scottish Women’s Convention](#), said that in summary

“While we agree that compensation from Health Boards should remain discretionary, we believe that the Scottish Government should be doing more to support people through self-isolation.”

Amongst the other points made the Convention was that following consultation with women

- self-isolating had a negative effect for them financially
- none of them had successfully accessed the Self-Isolation Support Grant or the Local Self-Isolation Assistance Service, despite all having had to isolate at some point during the pandemic
- the application process can be daunting and confusing.
- They would like information about these schemes to be made more widely available and in more accessible formats so that more people can get what they are entitled to
- Consideration also needs to be given to how the Scottish Government can better support people who are shielding.
- Fundamentally, people experiencing hardship need to be treated with dignity, and the Scottish Government has a responsibility to protect everyone through this pandemic.

[Aberdeen City Health and Social Care Partnership](#) made a brief response to the government consultation, and said the following

“As long as Covid cases remain significant and we are at level 0 on the route map the potential for the number of people being asked to self isolate is high. This modification to the duty protects the NHS Boards from exposure to significant cost from claims.”

“The provisions should be in place as long as Covid remains a threat. The Scottish Government should have control over the decisions as to when the conditions are appropriate to review the expiry date.”

The [Resolution Foundation](#) has previously published a briefing note on the case for better financial support to self-isolate (May 2021) across the UK.

“Self-isolation remains vital for curbing the transmission of Covid-19, but evidence suggests that rates of compliance are low. A key factor driving low compliance is that many people face financial barriers and lose income for self-isolating.”

In their briefing the Foundation explored how the Government could further expand financial support for self-isolation so as not to risk undermining the vaccine rollout and exit from lockdown.

“Although the Government has expanded financial and practical assistance to those isolating, the restrictive eligibility criteria, administrative complexity, and low levels of compensation involved in existing benefits mean that many people still lose earnings for staying home if sick with or exposed to the virus. The £500 Test and Trace Support Payments only cover about 1 in 8 workers, and Statutory Sick Pay only covers a quarter of the average worker’s earnings – and misses out 2 million of the lowest paid workers altogether”.

The Law Society of Scotland explained the difference between introducing this Bill rather than using the powers under the 2020 Act to extend the modifications to the 2008 Act.

“This bill differs from what could be done under the 2020 Act:

1. It makes the initial extension until 31 October 2022.
2. It changes the procedures for extension. Under the 2020 Act regulations are subject to the made affirmative procedure. Here the initial extension is by primary legislation, and subsequent extensions are subject to the affirmative procedure (unless they are emergency regulations) and must be accompanied by a statement of reasons.
3. Whereas Schedule 21, para 46 of the 2020 Act made a blanket modification of the compensation provision in the 2008 Act from a duty to a discretion, this Bill makes compensation discretionary only in respect of quarantine for Covid-19.

We welcome the change to the 2008 Act because it is both more narrowly targeted and subject to better procedural control.”

Issues to consider with the panel

Members may wish to discuss some of the following issues with different Members of the panel:

On the bill itself:

- The rationale for the bill, and whether the bill as proposed is the most appropriate route for achieving its objectives
- Whether the proposals for regulations to be able to extend, or curtail, the timescale for the bill are appropriate, and any commentary on the potential for future use of the made affirmative procedures

- The financial implications for health boards, and knock on effects on health services, of not proceeding with the bill, and therefore giving health boards a duty to provide compensation for all those asked to self-isolate
- Whether the existing provisions in the 2008 Act are too widely drawn- health boards are required to pay compensation to all people who self-isolate in relation to other infectious diseases following a written request from the health board to do so. This is not subject to any eligibility criteria for example, compensation is not targeted at low earners
- Any other concerns regarding the bill itself

On the wider issues of support for self isolation

- The operation of the government's existing self-isolation scheme, including accessibility and awareness of the scheme, eligibility for support, and the level of support (a one-off payment of £500)
- The case for changes to the SISG, and potential costs and benefits of doing so, for example in promoting compliance with self-isolation, and preventing hardship

Simon Wakefield, SPICe Research,

26 November 2021

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