

CVDR/S6/21/13/1

COVID-19 Recovery Committee

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

The Coronavirus (Discretionary Compensation for Self-Isolation) (Scotland) Bill

Introduction

1. At this meeting, the Committee will take evidence on The Coronavirus (Discretionary Compensation for Self-Isolation) (Scotland) Bill at Stage 1 from the following witnesses—

- 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.

2. A written submission has been provided the Law Society for Scotland and is attached at the **Annexe**.

The Bill

3. [The Coronavirus \(Discretionary Compensation for Self-Isolation\) \(Scotland\) Bill](#) was introduced on 15 November 2021 by John Swinney, Deputy First Minister and Cabinet Secretary for COVID Recovery. The Bill was accompanied by a [Policy Memorandum](#) (PM), [Explanatory Notes](#) (EN), and a [Financial Memorandum](#) (FM). The Scottish Government also published the following impact assessments—

- [The Island Communities Impact Assessment for the Coronavirus \(Discretionary Compensation for Self-Isolation\) \(Scotland\) Bill](#);
- [The Business and Regulatory Impacts Assessment for the Coronavirus \(Discretionary Compensation for Self-Isolation\) Bill](#);

- [The Equalities Impact Assessment for the Coronavirus \(Discretionary Compensation for Self-Isolation\) \(Scotland\) Bill](#); and
- [The Child Rights and Wellbeing Impact Assessment for the Coronavirus \(Discretionary Compensation for Self-Isolation\) Bill](#).

4. The Bill is a technical Bill, which relates to a legal liability arising 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. These modifications are due to expire in March 2022.

5. The UK Act modified the 2008 Act to temporarily remove this duty on Health Boards and to instead make the payment of compensation discretionary. The PM said of the 2008 Act¹—

“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 when only limited numbers of people might be asked to quarantine.”

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

7. The Bill is being introduced to prolong the modifications made to the 2008 Act until October 2022, and so effectively maintains the “status quo” until that date.

8. In setting out the policy objectives, the PM² explained—

“This modification through the UK Act has remained in place since March 2020, and will expire in March 2022. Should transmission of COVID19 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.”

9. The Bill contains the following sections—

- Section 1 modifies sections 56 and 58 of the 2008 Act;

¹ Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill Policy Memorandum, paragraph 11. (2021). Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/coronavirus-discretionary-compensation-for-self-isolation-scotland-bill/introduced/policy-memorandum-accessible.pdf>

² Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill Policy Memorandum, paragraph 12. (2021). Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/coronavirus-discretionary-compensation-for-self-isolation-scotland-bill/introduced/policy-memorandum-accessible.pdf>

- Section 2 provides that section 1 will expire on 31 October 2022 and 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 gives the Scottish Ministers the power to change the date of expiry of section 1 by regulations;
- Section 4 sets out the relevant Parliamentary procedures for regulations made under section 3;
- Section 5 provides for the expiry of paragraph 46 of schedule 21 of the Coronavirus Act 2020 if it has not expired before the Bill comes into force;
- Section 6 sets out that the Bill will come into force on the day after Royal Assent;
- Section 7 contains the short title of the Bill.

Committee scrutiny

10. The COVID-19 Recovery Committee is the lead committee and, as such, is responsible for reporting on the Bill at Stage 1.³ Both the Finance and Public Administration Committee (in relation to the FM) and the Delegated Powers and Law Reform Committee will consider aspects of the Bill and report to this Committee.

11. The Committee has issued a [call for views](#) which closes on 10 December 2021.

12. SPICe have published a [briefing on the Bill](#).

Next steps

13. The Committee will take evidence from the Deputy First Minister and Cabinet Secretary for Covid Recovery at its meeting on 16 December 2021.

Committee Clerks November 2021

³ [S6M-02260](#) George Adam: Designation of Lead Committee.



Law Society
of Scotland

Annexe

Law Society Scotland Response

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

November 2021



Introduction

The Law Society of Scotland is the professional body for over 12,500 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Constitutional Law and Human Rights Sub-committee welcomes the opportunity to consider and comment upon the Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) bill. The sub-committee has the following comments to put forward for consideration.

General Comments

Introduction

The bill makes temporary modifications of 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 coronavirus.

The 2008 Act section 56 imposes a duty on health boards to compensate people who are asked to voluntarily quarantine.

The amendment made by the Coronavirus Act 2020 (“the 2020 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 schedule 21(25) of the 2020 Act. This change will expire in March 2022.

The bill reinstates the *duty* on health boards to pay compensation for 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 6 months from the bill’s commencement. The 6 month period can be amended by the Scottish Ministers under the regulation making powers in the bill by being reduced or increased by no more than 6 months at a time.

We note that if the 2008 Act it is not amended Health Boards would be put into challenging financial circumstances and this would have a direct impact on patient care.

The Scottish Government could have used powers under the Coronavirus Act 2020 section 90(2) to extend the modification of the Public Health etc. (Scotland) Act 2008. That extension could only have been made until 25 September 2022 initially but could have been subject to further six month extensions (indefinitely).

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.

Specific Comments on the Bill

1. Discretionary compensation for self-isolation

This section will give effect to the policy intention behind the bill.

2. Expiry of section 1

This section ensures that section 1 of the bill is extended to 31st October 2022

3. Power to alter expiry date

This section empowers Scottish Ministers to make regulations to provide that section 1 does not expiry on 31st October 2022 (or such other date when it would otherwise expire) but on an earlier date or on an later date. However the later date cannot be not being more than 6 months after 31st October 2022 (or such other date when it would otherwise expire).

4. Procedure for regulations under section 3

This section provides that regulations to make the expiry date earlier than the date when they would otherwise expire are subject to the negative procedure, whilst regulations to make the expiry date later would, unless the regulations were emergency regulations, be subject to the affirmative procedure (in which case, at the same time as laying the draft regulations for approval, Scottish Ministers must also lay before Parliament a statement of their reasons as to why the regulations should be made).

However, in the case where the regulations would otherwise be subject to the affirmative procedure, the bill includes provision to allow the Scottish Ministers, where they consider the regulations need to be made urgently, to make emergency regulations – in which case, regulations can be made, and become effective immediately, before being approved. However, these emergency regulations would cease to have effect unless they are approved by Parliament within 28 days. Scottish Ministers are also required a statement of their reasons for making the regulations.

The provision for emergency regulations may undermine the procedural improvements in future, but even so that provision is an improvement over the 2020 Act, as regulations will expire after 28 days rather than 40 days, unless approved by the Parliament, and a statement of reasons is still required.

We suggest it should be made clear that the statement of reasons should also explain why it is necessary to make the regulations urgently before they were approved by the Parliament.

5. Coronavirus Act 2020: expiry of paragraph 46 of schedule 21

6. Commencement

7. Short title

We have no comments on sections 5, 6 or 7.