

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

Introduction of The Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020.

2. Purpose and Intended Effect

Background

As key workers, social care workers have continued to provide care and daily living support to people across Scotland. The nature of this work means that they do come into close contact with people and in many cases are caring for people who have contracted coronavirus. As part of infection prevention and control they have access to personal and protective equipment (PPE) and must also be supported to self-isolate in line with public health guidance.

Social care services in Scotland are provided by a mixture of public, independent (private) and third sector providers.

The social service workforce makes up approximately 7.7% of all Scottish employment. This equates to just over 200,000 people.

During the coronavirus pandemic, it has become clear that a large proportion of social care employers do not have occupational sick pay policies. Subsequently, many social care workers have experienced, or will experience, financial hardship due to being absent due to illness or self-isolation as a result of coronavirus.

The Social Care Staff Support Fund must be used to ensure those eligible will receive financial assistance of a sum which equates to their expected income if their ability to work is, or was, restricted for a reason relating to coronavirus, their income is or was reduced, and they are experiencing financial hardship during the period when Part 1 of the Coronavirus (Scotland) (No. 2) Act 2020 (“the 2020 Act”) is in force.

This would include workers who:

- are ill with confirmed coronavirus; or
- are self-isolating in line with the latest Scottish NHS guidance, or specific social care infection prevention control guidance issued by Scottish Ministers or Public Health Scotland.

3. Objective and Rationale for Government Intervention

A number of trades unions have raised concerns with the Scottish Government about this issue. In addition, under Part 4 of schedule 1 to the 2020 Act, these Regulations are the outcome of an accepted non-government amendment lodged by Monica Lennon MSP, which had been informed by discussions with GMB Scotland, Unison and the Royal College of Nursing.

By ensuring workers receive their expected income, provided they satisfy the criteria to receive financial assistance set out in the 2020 Act and the 2020 Regulations, the Scottish Ministers would be mitigating financial hardship as a result.

Currently, many social care workers could feel under pressure to choose between self-isolating in line with public health guidance which means missing out on substantial pay or continuing to work and potentially spreading the virus.

With the recent inception of the new Test and Protect policy, this could become an even bigger issue as social care workers could be among those identified as close contacts of someone who has tested positive for Covid-19. They could also find themselves in this situation on more than one occasion and be required to self-isolate for 14 days each time.

Providing workers who are eligible for assistance from the Fund with their expected income should they be contacted and asked to self-isolate, or fall ill with coronavirus, will remove the anxiety among the workforce about being tested. It will also in turn support infection prevention and control in care home settings, and care in the community.

This policy supports the Scottish Government's Fair Work and Business National Outcome: We have thriving and innovative businesses, with quality jobs and fair work for everyone.

Scottish Government recognises the very challenging position that many employers and workers are now facing. The health and wellbeing of individuals, communities and the economy is our priority and in these exceptional times adopting a fair work approach is more important than ever. The Scottish Government and the Scottish Trades Union Congress issued a joint statement outlining the Covid-19 Fair Work Principles that underpin their shared commitment to fair work practices in Scotland.

While some employers offer employment contracts closer to the Scottish Government's fair work principles, we are aware that some employers do not have occupational sick pay policies, and so the Scottish Government has intervened to address this.

4. Consultation

Within Government

The following Government departments have been consulted in the formulation of the policy:

Scottish Government Legal Directorate
Health Finance and Infrastructure
Office of the Chief Social Work Adviser
Looked After Children Unit
Community Health and Social Care Directorate

Public Consultation

There was no public consultation carried out due to time restraints. Since the beginning of the coronavirus pandemic, many social care workers have been suffering financial hardship. This led to an amendment lodged by Monica Lennon MSP which was required to be fulfilled as soon as practically possible. It has been progressed as emergency legislation.

Business

In developing proposals, a stakeholder group was formed to better assess the impact of the policy and to refine the proposals. A number of stakeholders were involved in discussions including:

Two umbrella organisations representing social care providers

Local authorities

Three trades unions

5. Options

Option 1 – Make Regulations to establish the Social Care Staff Support Fund

Schedule 1 Part 4 of the Coronavirus (Scotland) (No. 2) Act 2020, an accepted non-government amendment, places an obligation upon the Scottish Government for regulations to be put in place to establish, maintain and administer this Fund. This will contribute to fair work in the sector and support infection prevention and control in social care settings during the pandemic.

Option 2 - Do nothing

Doing nothing would bring no benefits to the social care sector and would allow for further detriment to the workforce. This would not support the Scottish Government's commitment to fair work in the sector. Part 4 of schedule 1 to the 2020 Act requires Scottish Ministers to establish and maintain and administer a Fund. It also requires the Scottish Ministers to bring forward regulations to make further provision about the establishment, administration and maintenance of the Fund.

Sectors and Groups Affected

The following are likely to be affected by this proposal: the social care sector (both workforce and providers) and local authorities.

Benefits – Option 1

Making regulations to establish, maintain and administer the Social Care Staff Support Fund will enable the Scottish Government to fulfil obligations under Part 4 of Schedule 1 of The 2020 Act.

For the social care workforce, it will prevent them from experiencing financial hardship if they are absent from work due to having suspected or confirmed coronavirus, or because they are self-isolating in line with Scottish NHS guidance or specific social care infection prevention and control guidance where this exists.

This will help to ensure job satisfaction among the workforce, therefore benefiting social care providers, helping them to retain workers in what is generally an under-resourced sector.

Option 1 will also support wider infection prevention and control policies by removing any anxiety about testing among the workforce due to financial detriment. This will benefit workers themselves and also the people they care for.

Benefits – Option 2

None. As stated above doing nothing would have no benefits, and would bring negative reaction from opposition as well as negative outcomes for the workforce and potentially those they care for.

Costs – Option 1

There are financial implications for the Scottish Government. These have been approved by the appropriate Cabinet Secretary.

Costs – Option 2

The benefits identified under option 1 would not materialise.

In terms of non-monetary costs, doing nothing could result in a proportion of the social care workforce leaving the sector. This will place an additional burden on providers to recruit, and place the remaining workforce under strain.

6. Scottish Firms Impact Test

The businesses stated above were consulted with via regular telephone discussions and email exchanges due to being unable to have physical meetings at this time.

The proposal was very much welcomed by these stakeholders.

These discussions helped to build our understanding of numbers of employers in the social care sector who have sick pay policies, and those who do not. This informed eligibility criteria and our costing calculations.

This consultation highlighted that this is required urgently.

7. Competition Assessment

In our view, this policy will not impact negatively on competition within the social care sector. We have applied the four Competition and Markets Authority (CMA) competition assessment questions as an initial assessment of competition, to confirm this assumption.

8. Consumer Assessment

In our view, there will be no negative impact on social care service users. This policy will have a positive impact on them, supporting infection prevention and control within social care settings.

9. Test run of business forms

Existing payment mechanisms are to be used for employers to apply to reclaim any additional costs.

10. Legal Aid Impact Test

We do not anticipate that the policy will have a foreseeable adverse effect on the legal aid fund.

11. Enforcement, Sanctions and Monitoring

The Scottish Ministers will maintain and administer the fund until Part 1 of the 2020 Act is no longer in force.

12. Implementation and Delivery Plan

The Regulations will be laid in Parliament on 25 June 2020 and will come into force on the same date. The Fund will be available with immediate effect.

Communications will be issued widely via our stakeholder networks, to care providers and the social care workforce to raise awareness of the fund, and how it can be accessed. It will also feature on the Social Care webpages of the Scottish Government website.

The fund is intended to remain operational in line with the duration of the 2020 Act, currently September 2020.

13. Summary and Recommendation

In summary, the making of these regulations to establish the Social Care Staff Support Fund will fulfil an obligation upon the Scottish Government. It will support infection prevention and control policies in response to the coronavirus pandemic and contribute to our overall commitment to fair work in the Social Care sector.

It will remove anxiety among the social care workforce about being tested for coronavirus due to experiencing financial hardship should they test positive. It also ensures that workers will not lose any income if they are contacted through the Test and Protect Scheme and asked to self-isolate for 14 days.

We therefore intend to proceed with the regulations to establish the Social Care Staff Support Fund.

14. Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

JEANE FREEMAN.....

Cabinet Secretary for Health and Sport

24 June 2020

Contact

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