

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

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

2. Purpose and Intended Effect

Background

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 proportion of social care employers did not place their shielding staff on the UK Government Job Retention Scheme (JRS). Subsequently, many social care workers have experienced financial hardship due to only receiving sick pay, or no pay at all for the duration that they were shielding.

Feedback from stakeholders representing social care employers indicates that conflicting guidance on the JRS led to confusion and was ultimately the reason for them not applying to the scheme.

The Social Care Staff Support Fund will be used to ensure those eligible will receive financial assistance of a sum which is closely aligned to what they would have received from the JRS for the period that they were shielding. This would ensure that those workers receive the income that they would have been entitled to had their employers applied to the JRS.

This would include workers who:

- Have received a Scottish Government shielding letter from March onwards as part of the NHS Inform “Extremely High Risk” group.
- Workers who fall into the NHS Inform categories of “Higher risk of severe illness” or “Extremely High Risk” and have agreed with their employer, following a risk assessment or similar, that their work cannot be suitably adapted (eg. work from home).

3. Objective and Rationale for Government Intervention

A number of trade unions have raised concerns with the Scottish Government about this issue. In response, the Cabinet Secretary for Health and Sport confirmed that the Scottish Government will provide financial support for these social care workers, closely aligned to the JRS.

By ensuring workers receive the income that is closely aligned to what they were entitled to from the JRS, provided they satisfy the criteria to receive financial assistance set out in the 2020 Act and the 2020 Regulations, the Scottish Ministers would be alleviating financial hardship as a result.

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.

Due to our wider commitment to Fair Work in the social care sector, Scottish Government has intervened to alleviate financial hardship experienced by social care workers in this position.

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
Mental 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 due to not being placed on the JRS by their employer. Following consultation with key stakeholders, this policy 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
Four trades unions

5. Options

Option 1 – Make Regulations to Amend the Social Care Staff Support Fund Eligibility Criteria

This will contribute to the Scottish Government's commitment to fair work in the sector and potentially help to retain social care workers in what is generally an under-resourced sector.

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. It may also cause damage to relationships between Scottish Government and key social care stakeholders.

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 amend the eligibility criteria of the Social Care Staff Support Fund will allow Scottish Ministers to alleviate financial hardship experienced by social care workers who were eligible for the JRS but not placed on it.

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.

Benefits – Option 2

None. As stated above doing nothing would have no benefits, and would bring negative outcomes for the workforce and negative reaction from stakeholders.

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 employees affected by this issue. 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.

9. Test run of business forms

Existing payment mechanisms are to be used for employers to apply to reclaim 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 23 December 2020 and will come into force on the same date. The amendments to eligibility criteria will be in place with immediate effect.

Communications will be issued widely via our stakeholder networks, to care providers and the social care workforce to raise awareness of this support, and how it can be accessed. The Social Care Staff Support Fund guidance, published on the Scottish Government website, will be updated to reflect the additional circumstances in which the Fund is available.

The Fund can remain operational in line with the duration of the 2020 Act, currently March 2021. The need for the Fund is reviewed by Parliament every two months.

13. Summary and Recommendation

In summary, these policy amendments will alleviate financial hardship for eligible social care workers in response to the coronavirus pandemic and contribute to our overall commitment to fair work in the Social Care sector.

We therefore intend to proceed with the regulations to broaden the eligibility criteria of 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

23 December 2020

Contact

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