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

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A briefing on a Scottish Government Bill. The Bill seeks to continue the effects of a temporary modification made to the Public Health etc. (Scotland) Act 2008 by the Coronavirus Act 2020. That modification suspended the duty on health boards to provide compensation to those asked to isolate as a result of contracting an infectious disease, replacing it with a discretionary power.



COVID-19  
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# Summary

The [Coronavirus \(Discretionary Compensation for Self-isolation\) \(Scotland\) Bill](#) <sup>1</sup>, seeks to continue the effects of a temporary modification made to the Public Health etc. (Scotland) Act 2008 by the Coronavirus Act 2020 (referred to as the 2008 Act and the UK Act respectively in this briefing). 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](#) <sup>2</sup> 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.

# What does the bill do, and why is it needed?

## What does the bill do?

The Bill makes temporary modifications to the Public Health etc. (Scotland) Act 2008 so that health boards continue to have discretion as to whether they should pay compensation to people self-isolating as a result of coronavirus. The Bill would, in effect, enable the current arrangements to be extended another six months, to 31 October 2022. There would also be the option to extend this for further periods of up to six months by regulations, subject to the affirmative procedure.

## Why is it needed?

Before the pandemic, under the Public Health etc. (Scotland) Act 2008 (the 2008 Act), health boards had a duty to compensate people they required to quarantine (as well as their carers if necessary). This duty was intended to provide compensation during a small-scale outbreak, rather than a pandemic like COVID-19. The [Policy Memorandum for the Bill](#)<sup>3</sup> says that the 2008 Act:

“ 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.”

The scale of the pandemic changed things, and as part of the response, the Coronavirus Act 2020 (the UK Act) changed the duty on health boards to a discretionary power. However, this modification applies only during times when Scotland is deemed to be in a “transmission control period” according to a statutory declaration by Scottish Ministers, under the terms of the UK Act. The UK Act is due to expire on 24 March 2022 (two years after it was passed).

If, however, the Scottish Ministers are of the view that the powers in Schedule 21 of the UK Act are no longer an effective means of preventing transmission of COVID-19, or clinicians provide Scottish Ministers with the view that COVID-19 is no longer deemed “a serious and imminent threat to public health”, then the modifications made by the UK Act would also no longer apply. If this were to happen at a time when people were still being asked by health boards to voluntarily self-isolate as a result of the COVID-19 pandemic, then health boards would be put under an obligation to pay compensation to all those people asked, in writing, to isolate and (where appropriate) to their carers.

At the moment, people on low incomes are supported through the Scottish Government’s [Self Isolation Support Grant \(SISG\)](#)<sup>4</sup>. Without this Bill, the Scottish Government considers that this would result in a huge expansion in the eligibility for compensation, combined with an increase in the amounts that some people (including those on higher incomes) would be paid.

The current self-isolation scheme is costed in the [Financial Memorandum](#)<sup>5</sup> (based on

forecasts from the [Scottish Fiscal Commission](#) <sup>6</sup> in August 2021) at £18.8 million per annum, whilst an expanded scheme (without the Bill in place) could potentially leave health boards being asked to pay out twenty times that amount, with the Scottish Government estimating this could cost approximately £380m. This would imply a net additional cost to the public purse of around £360m.

## “Must” or “May” - A closer look at the legislation

The Explanatory notes and Policy Memorandum to the Bill set out the details of the legislation. Some of the key points are set out below.

[The Public Health etc. \(Scotland\) Act 2008](#) <sup>7</sup> 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](#) <sup>8</sup> which was a response to the situation caused by the pandemic. This section reads as follows:

“ **Modifications of Public Health etc. (Scotland) Act 2008** 46. During a transmission control period, sections 56(1) and 58(2) of the Public Health etc. (Scotland) Act 2008 (asp 5) (which relate to compensation) have effect as if for “must” there were substituted “ may ”.”

This modification made by the Coronavirus Act 2020 therefore 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](#) <sup>9</sup> .

This statutory declaration must be revoked by the Scottish Ministers when they no longer consider 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. ([Schedule 21 includes the powers relating to infectious persons](#)).

If the modifications made by paragraph 46 of schedule 21 of the Coronavirus Act 2020 no longer apply, 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.

## How long would the provision last for?

The government say that payment of compensation will continue to be discretionary for an initial six month period from commencement of the Bill. This period is subject to amendment by the Scottish Ministers. Specifically, under section 2(1) of the bill, that runs up to 31 October 2022.

Section 3 in the bill gives the Scottish Ministers the power to change the date of expiry of section 1 by regulations, either earlier or later. However, the later date cannot be more than 6 months after the expiry date which applies at the time the regulations are made.

Regulations to make the expiry date earlier would be subject to the negative procedure, whilst regulations to make the expiry date later, would be subject to the affirmative procedure (in which case Scottish Ministers must also explain their reasons to parliament). However, the Bill also includes provision to allow the Scottish Ministers to use the “made affirmative” procedure, where they consider the regulations need to be made urgently – in which case, regulations can be made, and become effective immediately. These would be subject to parliamentary approval within 28 days, and must also include a statement of reasons.

## **What happens when isolation is required for non COVID-19 reasons?**

The Scottish Government considers it appropriate that the **duty** on health boards to pay compensation is reinstated in respect of requests to self-isolate for reasons other than COVID-19, and the bill has the effect of reinstating this duty.

## Views on the bill

The [Scottish Government consulted](#) <sup>10</sup> 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](#) <sup>11</sup> 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.”

# Support for Self-isolation

The Scottish Government conducted a [detailed literature review](#)<sup>12</sup> of the evidence on compliance with self-isolation and quarantine measures (October 2021). Amongst the findings are that:

“ Adherence to isolation regimes in the UK has varied over the course of the pandemic, ranging from very low reported rates of compliance at the very beginning to rather high reported levels in recent months. Low rates of compliance have been associated with men, younger age groups, key-workers, lower socio-economic status, greater hardship during the pandemic, incorrect identification of symptoms, lack of knowledge of the regulations if one develops symptoms, and the presence of a dependent child in the household.”

Some of the conclusions include the following:

- Data on knowledge about COVID-19, and self-isolation/quarantine rules and guidelines, suggest a need for better communication.
- Rates of compliance are heavily influenced by financial constraints and depend on income support, job protection and support with accommodation. The economic risks of self-isolating are often perceived as more significant than risks to health, particularly for people from more disadvantaged backgrounds.
- The ability to self-isolate tends to be lower in certain minority ethnic groups, possibly due to a combination of socio-economic, linguistic and cultural factors.
- Adherence to self-isolation/quarantine regulations can be influenced by interpersonal interactions and perception of others within the community, with research showing that people feel encouraged to comply if they see others doing so.
- Research shows how compliance with rules improves when this is perceived as a contribution to the wellbeing of the community as a whole.
- The belief that COVID-19 does not pose a serious risk (especially in the case of asymptomatic disease) and the inability to see self-isolation as beneficial are associated with lower adherence.
- A link between poorer mental health and non-compliance with self-isolation and quarantine has been observed, with feeling depressed, anxious, lonely or bored indicated as reasons for breaking the rules. [The research also identifies] a disproportionate prevalence of mental health difficulties in BAME groups
- With an increase in case numbers and the emergence of new strains of the virus over the course of the pandemic, stricter measures have been implemented internationally to reduce transmission.
- [However stricter approaches could cause some problems and] for example discourage testing uptake and honest reporting during contact tracing, or impact more on low-income individuals when it comes to fines. Furthermore, these measures risk focusing on the wrong solutions to low rates of compliance.



Advice from the Scientific Advisory Group for Emergencies (SAGE) has been drawn on by the Scottish Government in developing their response. Amongst that advice, for example [SAGE said \(in September 2020\)](#) <sup>13</sup> :

“ Self-isolation rates would likely be improved with the addition of different forms of support. These include: a. Financial support: Ensuring that those required to self-isolate would not experience financial hardship in doing so. b. Tangible, non-financial support: Proactive outreach is needed, to identify and resolve any practical needs that people have (e.g. access to food, care for elderly relatives). c. Information: Improved communication to the general public explaining how and when to self-isolate, and why it helps, would be useful, in addition to more detailed advice for those self-isolating (e.g. a help-line or SMS service). d. Emotional support: For those who need it, access to social support or more formal clinical interventions delivered remotely if possible.”

[Independent SAGE](#) describe themselves as "a group of scientists who are working together to provide independent scientific advice to the UK", who are "independent of the government" and are led by Sir David King, the former chief Scientific Adviser to the UK government. [Independent SAGE has argued for](#) <sup>14</sup> (June 2021) the continuing need for support measures, as restrictions are lifted. In relation to testing and isolation, it was suggested this should include:

- Fully paid time off to get tested if symptomatic.
- Full pay and comprehensive support packages for those asked to self-isolate.
- Full pay for parents of children who have to self-isolate if they are unable to work from home.
- Funding for local mutual aid groups who play a key role in helping those who need to self-isolate as well as other forms of support.

Dr Muge Cevik of St Andrews University (and others) noted in the [British Medical Journal \(January 2021\)](#) <sup>15</sup> that support for self-isolation is critical and that:

“ Ultimately, people need to be able to isolate without fear of a substantial damage to their work, income, family, or caring responsibilities.”

## Do people in Scotland comply with self-isolation?

Overall, the [government says that](#):

“ Adherence to isolation regimes in the UK has varied over the course of the pandemic. At the very beginning, rates of compliance were rather low.”

Detailed survey work from the [Scottish Government \(published August 2021\)](#) <sup>16</sup> indicated that overall, compliance with self-isolation was high among survey participants and that people complied with self-isolation requirements in order to protect the wider population by reducing the transmission of COVID-19. However, the analysis found that there was a difference between how compliant people *thought* they had been, compared to an objective measure of compliance suggesting, says the analysis, that some participants may have lacked the knowledge, willingness and/or capability to self-isolate successfully.

Ninety four percent of survey participants said they fully complied with the self-isolation

requirements all the time. When looking, more objectively at their actual behaviour however, the survey put this proportion at 74%.

The above percentages describe the numbers of people **fully complying** with rules. Adding in those who partly complied brings the perceived and objectively measured levels of participation up to 99% and 100% respectively. The analysis also shows that adherence to some specific self-isolation requirements was high. For example:

- Compliance was highest on the requirement to avoid letting people into your home/ accommodation during self-isolation (97%).
- More than nine in ten (93%) of participants reported beginning isolation either immediately or before being advised to do so.
- The same proportion (93%) either managed to isolate for the correct number of days or were still isolating at the time of taking part in the survey

One example of an issue of "contention" highlighted by participants related to dog walking. The report says that although solutions could be found for this, for example, by asking family members, friends or official dog walkers to walk the pet, participants were not convinced this was any more safe given that the dog had to be handed over, along with the lead and other items, to the walker. As a result, some participants who took the decision to continue walking their dogs, usually at times of the day when they thought the chances of having contact with anyone else were minimal.

## About the Scottish Self-Isolation Support Grant

To help support people who are asked to self-isolate, award of £500 is made to eligible applicants to the Scottish Government's [Self-Isolation Support Grant \(SISG\)](#) <sup>17</sup> each distinct time they are asked to self-isolate.

Broadly speaking, [eligibility for a SISG](#) <sup>18</sup> is restricted to people who have been told by health boards to self-isolate, because they have tested positive/are not fully vaccinated and have recently been in close contact with someone who has tested positive/are caring for someone who has been told to self-isolate.

In addition, before the self-isolation period, they must also be:

- employed or self-employed, and unable to work from home, and will lose income as a result of self-isolation
- and are assessed as having low income, which means that either
  - they are entitled to certain benefits, including Universal Credit (UC)
  - they earn, individually, less than the Real Living wage threshold, or as a household are defined as "low income" (25% above the established UC rate for their household type in their local authority area).

The SISG is delivered through the legislation used for the Scottish Welfare Fund, in the form of Crisis Grants, as the government says they are designed to provide occasional support to people facing immediate financial need which poses a risk to their health and

well-being.

Other elements of support include the Local Self-Isolation Assistance Service, which proactively contacts people who are isolating (and who wish to be contacted).

## A short history of the SISG

The Scottish Government announced that the SISG had opened on **28 September 2020**, and expected local authorities to have administrative arrangements in place by 12 October. On 13 October 2020, the government [reported that the SISG was open](#) <sup>19</sup> for applications. The scheme was extended to workers subject to [No Recourse to Public Funds](#) <sup>20</sup> restriction in 6 November 2020.

Eligibility for the SISG was [expanded on 7 December 2020](#) <sup>21</sup> 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.

Eligibility was [expanded further on 16 February 2021](#) <sup>22</sup> backdated to 2 February 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.

Eligibility was expanded further in 16 May 2021 to include secondary contacts who had been formally asked to isolate by their health board.

Eligibility was changed on 13 October 2021 to align with health policy and restrict eligibility for double vaccinated contacts to those who themselves test positive.

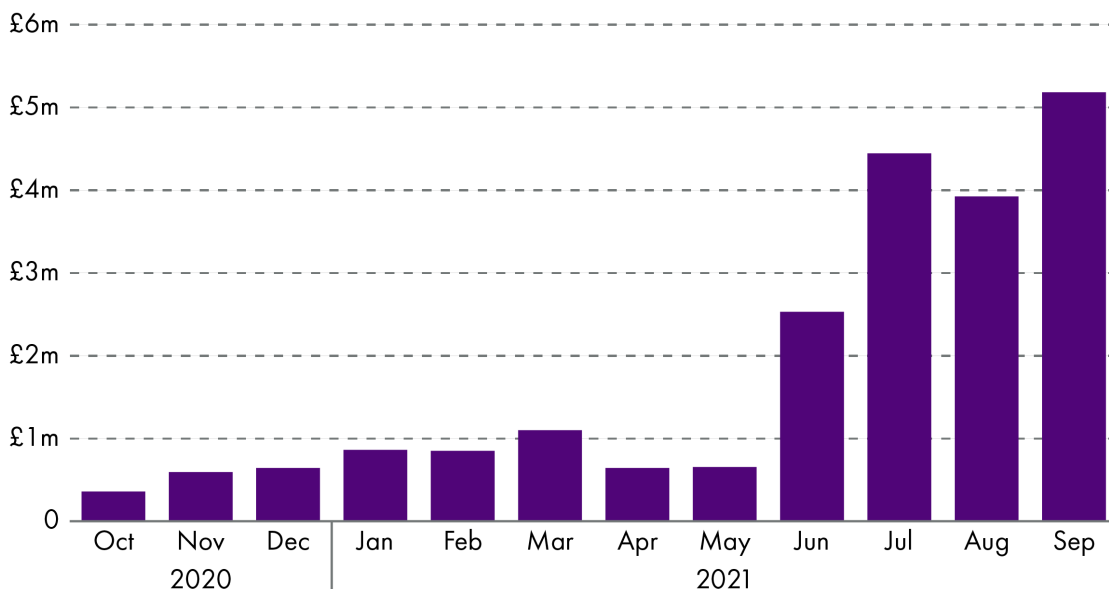
# A closer look at the Financial Memorandum

## Spending on the Self Isolation Support Grant

As indicated in the chart below, [spending on SISG](#) <sup>23</sup> was generally at between £0.5 million and £1 million per month up to May 2021. As the numbers of people being asked to isolate has increased, as restrictions have been lifted, so has the spending on the scheme. In September 2021, the scheme paid out just over £5m. In total, in the year to September 2021, the scheme has cost £21.7m, involving just over 43,000 payments.

### Spending on the Self Isolation Support Grant 2020/21

(£ millions)



Scottish Government (October 2021): Scottish Welfare Fund, Self-Isolation Support Grant and Discretionary Housing Payments: [monthly data](#)

The [Scottish Government's management information](#) ("experimental" statistics running from March to June 2021) also suggest that the value of award has been split with 42% going to males, and 58% going to females. Those in younger age groups have received the most, with 60% of all funds being awarded to those between 16 and 34. Around half of all applications to the scheme have resulted in awards being made. Some [survey work from the Scottish Government](#) <sup>24</sup>, (conducted between March and June 2021), showed that lack of information was a barrier in preventing people from applying.

## How were the costs in the Financial Memorandum calculated?

Unusually for a [Financial Memorandum](#) (FM) of a Bill, this FM calculates the potential

“savings” arising, or more accurately, the costs of the Bill not proceeding.

The top line is that the government calculates that, with no bill, the cost to the public purse could be £380 million in one year. They offset this against a forecast cost of the current SISG scheme of £18.8 million. The balance, of £361 million, they suggest, would need to be found from elsewhere in the Scottish Government budget if the Bill were not to proceed. The Scottish Government has relied upon the public estimates provided by the Scottish Fiscal Commission when calculating its estimates of costs, both for the SISG and the costs of compensation were the 2008 power to resume.

The calculation is to some extent a theoretical one, in that it applies figures for the period November 2020 to June 2021 as the baseline, and then broadly follows the following steps.

How many people could be asked to isolate?	The government uses a figure of 931,099 “unique isolators between those dates (sourced from Public Health Scotland data)
What proportion of those might be eligible for payment?	The government estimates that (taking account of furlough and childcare) that 44% of those are in employment, and of those, 56% would be unable to work from home
How much would each person (who is asked to isolate) cost?	The government estimates an average cost of £653 for ten days
What would this all cost?	For the period of the calculation (Nov 20 to June 21) the government estimates a cost of between £150 million and £168 million
How does this compare to the costs of the SISG?	The government estimates this means a widened scheme would costs twenty times the amount of the SISG
So, what would be the total cost for a whole year?	This implies a cost of £380 million for a whole year, versus a forecast of £18.8 million for 2021/22 from the Scottish Fiscal Commission for the existing SISG

The FM acknowledges that the calculations are based on a number of assumptions, including the rates of transmission, and the approach taken to self-isolation. The costs associated with the existing scheme may also be subject to change, for example, with a rise in the rate of the Living Wage and knock on effects on the eligibility of the scheme. It is worth noting for example that in the year to September 2021, as indicated above SISG payments have been made to the value of £21.7 million. Overall, the government includes a single point estimate, as opposed to a range of estimates, but say that the FM provides the most accurate estimate possible, based on available data.

## What can £360 million buy in health and social care?

The government suggests that without this relatively small parliamentary Bill, health boards will be left with a large financial bill. As above their calculations indicate a potential liability of around £360m. To put this into context, some of other costs on health and social care are set out below:

- The government’s “[winter funding package](#)”<sup>25</sup> to help increase NHS and Social Care capacity involves “substantial new investment of **over £300 million** in hospital and community care” (announced 5 October 2021).
- The government’s [Infrastructure Investment Plan](#)<sup>26</sup> sets out numerous capital investment projects and programmes. For example, in health and social care one of these is for “New Diagnostic and Treatment Centres (capital)”, with an estimated cost

of **£320m**.

- The [Independent Review of Adult Social Care](#) (February 2021) <sup>27</sup> included some tentative costings of different proposals. For example, the review estimated the costs of providing access to social care support for 36,000 people “who do not currently have access to social care support and for whom it would be beneficial” at **£436 million** (subject to a number of caveats and assumptions in the calculations).

# Impact Assessments

The Scottish Government has conducted a number of impact assessments on the bill. Most of these identify only limited impacts arising from the Bill. Though these are detailed documents, some key conclusions are highlighted below.

## Island Communities

In its assessment of the impact on Island communities<sup>28</sup>, the Scottish Government says

“ the provisions in this Bill are not deemed likely to have effects on island communities that are significantly different from their effects on other island communities or mainland communities in Scotland.”

## Business and Regulatory Impact Assessment (BRIA)

The Business and Regulatory Impact Assessment (BRIA)<sup>29</sup> contains a number of elements:

- Under the **Scottish firms Impact Test**, it is envisaged that the policy proposals are "unlikely to have a significant effect on most private or third sector businesses".
- However the BRIA does say that "Sole traders and the self-employed may be impacted as if they were required to self isolate, depending on their profession, they may not be able to work from home and may lose income as a result"
- Under its **competition assessment** - the government says "these proposals will not have an effect of competition."
- The Scottish Government has not carried out a detailed **consumer assessment**
- Finally, on **legal aid**, the government says the proposals will not "have a significant impact on legal aid, access to justice and does not introduce anything likely to increase the use of legal processes."

## Equality Impact Assessment

The Equality impact Assessment<sup>30</sup> - discusses in detail the equalities impacts, and identifies a potentially negative effect some cases as below:

“ Some potential negative impacts as a result of suspending the compensatory duty, but these are mitigated by the provision of the Self Isolation Support Grant and other support.”

## Child Rights and Wellbeing

The [Child Rights and Wellbeing Impact Assessment](#)<sup>31</sup> says that:

“ Alternative support arrangements through the current support for isolation offer remains focused on ensuring those on low incomes and who lose money as a result of isolation are able to access financial support. Any person who loses income as a result of a period of isolation is likely to be impacted through this modification. This includes children and young people who will either be impacted as they are in employment themselves and may suffer a loss of income as a result of self-isolation or because their parents or carers suffer a 1 loss of income as a result of self-isolation. This in turn could have impacts on children who are members of the household.”



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