



The Scottish Parliament
Pàrlamaid na h-Alba

Reimbursement of Members' Expenses Scheme - Staff Redundancy Payments

18 February 2021

Reference: SPCB(2021)Paper 14

Executive summary

1. The SPCB is committed to ensuring the Election Guidance continues to be updated in line with developments. We are seeking a decision on issues raised by some MSPs in relation to the existing arrangements under the Winding Up Provision of the Members' Expenses Scheme.
2. The decision to dissolve Parliament on the 5 May instead of 25 March, and the potential delay of the election, has had an impact on MSPs not seeking re-election to follow the normal redundancy arrangements applicable at the end of a session.
3. In turn, this has led to some MSPs raising concerns about the potential detrimental impact on their staff and their ability to make redundancy payments. This situation does not apply to staff employed by MSPs seeking re-election.
4. To date, 32 Members are standing down, with approximately 110 staff employed by these Members.

Issues and options

Background

5. Redundancy situations at any time are stressful, but during a pandemic these feelings are heightened. We know that this is a particularly challenging time for many people across Scotland. MSPs' staff leaving their employment for reason of redundancy also face these challenges and difficulties. For example, securing alternative employment, moving into further education or retraining for a new career.

Winding up provision of the Expenses Scheme

6. The winding up provision is constructed in a way that MSPs who are standing down have no means of making redundancy payments under this provision until they cease to be a Member. In previous elections,

MSPs not seeking re-election were able to make staff redundant from the date of dissolution. Staff in these circumstances would leave their employment with their full redundancy entitlements from the end of March onwards. This arrangement applied to staff leaving during their notice period to take up employment elsewhere. This is because staff would be seeking alternative employment in these circumstances directly for the reason that their employment is coming to an end. Ordinarily they would not be seeking new opportunities as they would have ongoing employment. Such arrangements are in line with the ACAS guidance on redundancy and normal employment practice. Indeed, these arrangements are reflected in the Scottish Parliamentary Service (SPS) redundancy policy.

Potential detrimental impact to staff

7. Due to the way the winding up provision is constructed, staff employed by MSPs who are standing down at this election will need to:
 - remain in employment for a longer or extended period to receive redundancy payments; or
 - waive their entitlements to secure employment elsewhere; or
 - decide not to take up opportunities for fear of not receiving entitlements they have accrued.

This has led to some MSPs raising concerns that their staff are being treated unfairly. For example, the changes to dissolution and/or the potential delay to the election places their staff at a disadvantage compared with others who left in previous elections. This at a time when they have most likely made plans and life decisions based on precedent.

No detriment

8. Our principles of no detriment and the values that underlie them applies to SPS staff and MSPs' staff. We have taken a universal approach during the pandemic, ensuring equity of policy treatment between staff. For example, we introduced Covid-19 paid special leave arrangements allowing all staff with caring responsibilities to take time off to balance their personal and work commitments. The Covid-19 bereavement arrangements also support staff to take paid time off on compassionate grounds. To support these arrangements, the SPCB made temporary changes to the Members' Expenses Scheme to allow MSPs to request reimbursement from the first day of absence. Further, the SPCB introduced a comprehensive wellbeing programme to support staff. Demonstrating its commitment to putting health, safety and wellbeing at heart of all its decisions. This universal approach has been well received by MSPs and staff.
9. It is recommended that the SPCB continues to apply this principle in the context of redundancy. This would only apply to staff whose MSP is not

seeking re-election. In taking this decision, the SPCB is invited to consider the following:

- the winding up provision under the Members' Expenses Scheme is predicated on the idea that there will be a lengthy dissolution period leading up to the election. At which time, MSPs who stand down can access provision to pay staff redundancy costs from the date of dissolution;
- the changes to dissolution in the 2021 election mean that those MSPs can only make redundancies from 5 May (or later in the event the election is postponed) using these provisions;
- SPS redundancy policy includes provision to allow staff to leave before the expiry of their period of notice with redundancy pay. Without a similar provision for MSPs' staff in this situation, this presents inequity and does not fit with our principle of no detriment and the values underpinning this;
- The small number of staff leaving during the extended notice period will not receive a payment in lieu of the notice they would have otherwise been entitled to. This is because formal notice has not been issued. See paragraphs 11-14 for further information; and
- the ACAS guide on redundancy recommends that staff who are under notice of redundancy who go on to secure employment elsewhere leave with their full redundancy entitlements.

10. There will be no automatic right for staff to receive redundancy payments during notice periods. This is a matter for the MSP, as the employer. In making their decision, the HR Office will encourage MSPs to consider the impact of allowing staff to leave early and the effect of this on the running of their office and remaining staff.

Staff notice periods

11. Under their contracts of employment MSPs' staff are entitled to receive 1 month's notice, rising to 5 weeks after 5 years' service and increasing by a further week for each year's continuous service up to a maximum of 12 weeks.
12. At this time, standing down MSPs have been advised not to issue this notice to their staff. SPCB is invited to note that should MSPs issue notice this could not be rescinded, for example, should there be a decision to postpone the election. The effect of this would mean that MSPs would be operating their office based on the good will of their staff to work beyond the expiry of their formal notice periods, if achievable. This would place MSPs in a vulnerable position and impact their ability to perform their duties.
13. Instead, following the period of 'at risk' consultation with their staff, where staff are advised that their contracts will come to an end for reason of

redundancy, MSPs will be advised to extend the period of notice to allow staff to find alternative employment. Notice in line with staff contracts will be issued when there is more certainty. This is prudent given the significant pressures on MSPs' offices at this time.

14. Whilst this arrangement affords MSPs not seeking re-election the ability to stabilize the running of their offices, it may have a detrimental impact on staff to make plans and secure employment elsewhere. Therefore, during this time, we also recommend staff should be entitled to take reasonable time off for training, look for alternative employment and attend interviews. These legal rights would ordinarily only apply to staff during the contractual or statutory notice periods.

Recommendations

15. It is recommended that the SPCB continues to apply the 'no detriment' principle in the context of redundancy. That is, for the limited circumstances as set out above, where MSPs can access provision from the Members' Expenses Scheme to pay redundancy costs to their staff during their notice periods. This recommendation seeks to balance stability for MSPs in running their offices whilst being fair and supportive to their staff during a period of uncertainty.
16. It is also recommended that HR is delegated to deal with and approve such claims.

Governance

17. Provision is made in the Members' Expenses Scheme, under Section 3.6.2, to meet these staff redundancy costs.

Resource Implications

18. There will be no additional financial implications to the Expenses Scheme. Staff redundancy payments have been costed and accounted for in the SPCB's budget proposals for 2021/22. If staff leave at the end of this current financial year, there are sufficient funds in the overall expenses provision budget to meet these costs.

Publication Scheme

19. This paper can be published in line with the SPCB's Publication Scheme.

Next steps

20. Subject to SPCB approval, HR will update the Election Guidance and support MSPs not seeking re-election to respond to requests from staff

who are seeking approval to leave with their full entitlements during their notice periods.

Decision

21. The SPCB is invited to agree that the costs of redundancy for MSPs' staff set out above should be met from the Members' Expenses Scheme.

Human Resources and Allowances Office

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