



## EMPLOYEE/EMPLOYER BRIEFING EEL1 NEW SHIELDING DIRECTIONS JANUARY 2021



This document is provided by Welfare Scotland to those who are extremely clinically vulnerable and on the Scottish Government Coronavirus shielding list.

### **Scope:**

This document affirms the legal responsibility of employers in Scotland who employ a person or persons who are on the extremely clinically vulnerable list, commonly referred to as ‘the shielding list’. The document can be used by employees to advise employers of their responsibilities.

### **Extent:**

All local authority areas in Scotland which are currently within Level 4.

### **Current Directions from Government:**

The First Minister made an announcement at 2 pm on the 4th of January 2021 which advised that the local authority areas in Scotland currently within Level 4 would now move into an immediate lockdown. The First Minister further announced that said lockdown would require those who are extremely clinically vulnerable and on the shielding list, to work from home. If working from home was not possible, the First Minister confirmed that employees on the shielding list should not go to work.

The Chief Medical Officer for Scotland will now write to all persons on the shielding list and this letter will confirm the above and can be used by employees as a fit note.

An SMS message was also sent by the Scottish Government to those on the shielding list. This SMS was sent from +447860064525.

The text of this SMS is as follows:

GOV.SCOT

*The First Minister has announced additional restrictions in all parts of Scotland at level 4 to help suppress the new strain of coronavirus. You should follow the same guidance as the rest of the population. In addition, if you can't work from home you should NOT go to work. The Chief Medical Officer is sending you a letter which will act as a fit note. If you need support to access food, medicines and other services, call the National Helpline on 0800 111 4000 or visit [www.mygov.scot/shielding](http://www.mygov.scot/shielding) for more information. The additional restrictions do not apply to island areas at level 3.*

### **An Employers Responsibility:**

Employers have a legal duty for the health, safety and wellbeing of their employees under established legislation such as the Health and Safety at Work etc. Act 1974 (as amended) and directions from the Health and Safety Executive (HSE). On 26th May 2020, The Scottish Government, Health and Safety Executive (HSE), Police Scotland and all 32 local authorities signed a joint statement on safer workplaces. This statement committed all agencies to adopt a joined up approach to ensuring employees provide a safe environment for customers and staff. It further commits the Police and Health and Safety Executive to use their powers fully to ensure employees provide safe environments for work and adhere to the regularly updated Coronavirus legislation.

The main legislation covering the current Coronavirus restrictions are the The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 and the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020.

The Scottish Government and the Scottish Trade Unions Congress signed a statement which sets out employers duties and what is deemed to be right, just and fair when dealing with employees in relation to Coronavirus.

### **Joint Statement on Fair Work:**

The Scottish Government, along with public, private and third sector partners and the Scottish Trades Union Congress (STUC) issued a joint statement outlining fair work expectations in July to support the transition out of lockdown. The statement still applies now and states that:

- Workers should have effective voice channels, including through their trade unions, for maintaining constructive dialogue with their employers on workplace matters relating to COVID-19,
- No worker should be financially penalised for following medical advice,
- any absence relating to COVID-19 should not affect future sick pay entitlement or other entitlements like holiday or accrued time,
- Any absence related to COVID-19 should not result in formal attendance related warnings or be accumulated with non-COVID related absences in future absence management figures,

- This may require flexibility in standard absence/attendance management arrangements.

### **Current Government Advice:**

Employers who have a member of staff on the shielding list should follow the government guidance and directions at <https://www.mygov.scot/support-shielding/> – this website has been updated today to confirm:

You should continue to work from home if you can.

If you cannot work from home, if you live or work in an area in lockdown, you should not go to work. The letter you will receive from the Chief Medical Officer acts as a fit note for as long as lockdown restrictions are in place.

This letter is called a shielding notification and can be shown to your employer without the need for a GP fit note.

### **Shielding Letter:**

Employers must not pressurise those who are shielding into attending for work and should not insist on the employee continuing to work (except remotely) until the shielding letter is received. If the member of staff has previously provided shielding paperwork or can show their Scottish Government SMS (shown above) then this should be accepted by the employer with an agreement for the employee to send a copy or scan of this letter when it does arrive.

## **What employees should do if their employer does not follow government guidance and direction:**

Welfare Scotland have been working with partner organisations to ensure we are in a position to provide representation to employees who need to take legal action where an employee is acting outside the law. We have advised and continue to advise employees that where their employer does not follow the guidance and the regulations, they should report this to the Health and Safety Executive (HSE), to ACAS (Advisory, Conciliation and Arbitration Service) and to us. We will then report this to the local authority within which the business is located, and we will ensure this is fed back to the Scottish Government.

We understand this ever-changing situation is extremely distressing for businesses and the financial impact will be significant, however, employees have a right in law to work safely and to expect their employer will meet their obligations and minimise the risk posed to them. For many who are extremely clinically vulnerable the risks of Coronavirus are elevated significantly and an infection with Coronavirus could lead to their severe injury and or death.

### **Further Actions (Employees):**

See <https://www.welfare.scot/shielding-jan2021-1/> or scan the code below for details on who to contact if your employer does not follow their obligations in relation to COVID19 and your health and wellbeing at work.

