

YOUR VIEWS ON THE PROPOSAL

Note: All answers to the questions in this section may be published (unless your response is "not for publication").

Aim and approach

1. Which of the following best expresses your view of establishing in law a new, independent Scottish Employment Injuries Advisory Council (SEIAC)?

- Fully agree
- Partially agree
- Neutral
- Partially disagree
- Fully disagree
- Unsure

Please explain the reasons for your response:

We would agree that an independent SEIAC would be desirable going forward and believe this should closely mirror the current structure of IAC.

2. Which of the following best expresses your view of giving a statutory Scottish Employment Injuries Advisory Council the following functions?

	Fully Agree	Partially Agree	Neutral	Partially Disagree	Fully Disagree	Unsure
Scrutinise legislative proposals on the overarching design of the employment injuries assistance (EIA) system and its entitlement	✓					
Continually advise and recommend changes to EIA (including on policy design and entitlement)	✓					
Investigate and review emerging industrial and	✓					

environmental hazards						
Commission its own research and make recommendations	✓					

Please explain the reasons for your responses.

The Industrial Injuries Advisory Council (IIAC) is broadly seen as a very capable body and well respected. However, concerns have been raised in the past that IIAC's standards of proof relied on scientific data being available, and that there was therefore an impediment caused by the inability to conduct its own research.

A SEIAC would benefit from the ability to conduct its own research which would allow it to respond to emerging patterns of occupational disease, as the current IIAC is somewhat constrained as it must satisfy the criteria in section 108 2) of the Contributions and Benefits Act 1992 where "the risk to workers in occupation is substantially greater than the risk to the general population, and the link between the disease and the occupation can be established in each individual case or presumed with reasonable certainty". This leads in some instances to a 'doubling of the risk' criteria being applied in some cases. This can lead to a disease failing to be prescribed due to a strict narrowing of the employment prescription, limiting the numbers of those who may well be suffering from the disease but are unable to meet the prescription for employment and therefore not qualify.

3. What (if any) do you think would be the main advantages of the proposed Bill?

The ability to conduct and initiate research into specific areas regarding factors such as gender and ethnicity in the workplace would certainly be one possible advantage of a SEIAC. For example, there are an estimated 2,000 people in the UK who are thought to develop lung cancer from exposure to asbestos. (<https://www.hse.gov.uk/statistics/causdis/asbestos-related-disease.pdf>). The current criteria to qualify for IIDB (see below) for lung cancer and asbestosis (Prescribed Disease D8) primarily benefits those who were exposed to asbestos in heavy industry (predominantly men) and go on to develop asbestosis and lung cancer. The total number in the UK who qualified, in the last 10 years, was 980 with only 15 of that number being women. In Scotland, the figure for the last 10 years was 135 men and 5 women with lung cancer and asbestosis who qualified for IIDB.

Lung cancer in the absence of asbestosis (Prescribed Disease D8(A, first prescribed in 2006 as an attempt by IIAC to address the lack of awards for lung cancer under the IIDB scheme given there are over 2,000 estimated cases per year. Only 1300 people in the United Kingdom in the last 10 years have been awarded IIDB for lung cancer due to asbestos exposure, only 20 of whom were women. This is despite over 20,000 people in the UK during this 10-year period who are thought to have developed asbestos related cancer. In Scotland 180 people have been awarded IIDB for lung cancer caused by exposure to asbestos in the last 10 years. None of whom were women. There is clearly scope therefore for a future review of lung cancer due to asbestos exposure, particularly as women in Scotland have seen no benefit at all since the introduction of this prescribed disease.

<https://www.hse.gov.uk/statistics/tables/index.htm>

The UK Government currently only accepts lung cancer as asbestos-related for the purposes of claiming Industrial Injuries Disablement Benefit (IIDB) if you are suffering from primary carcinoma of the lung where there is accompanying evidence of asbestosis or primary lung cancer with significant occupational exposure to asbestos within a very narrow range of occupations.

The narrow range of occupations are:

- a) The manufacture of asbestos textiles; or
- b) Spraying asbestos; or
- c) Asbestos insulation work; or
- d) Applying or removing materials containing asbestos in the course of shipbuilding.

The minimum specified periods of exposure for these occupations is either:

- a) 5 years pre 1975 (in aggregate); or
- b) 10 years post 1975 (in aggregate).

4. What (if any) do you think would be the main disadvantages of the proposed Bill?

In Scotland, it will need to be determined which prescribed diseases are amended or added to in the future. If there is to be deviation from the current status quo, it will have to take place in an environment where there is no scientific consensus on those diseases that may be caused by occupational exposure to asbestos.

What is clear however is that any future body cannot, in the context of devolved IIDB, do so in a fully autonomous way. For example, if the Scottish government decided to address the inherent problem with the occupational prescription for asbestos-related lung cancer as discussed (many fewer claims than evidence suggests exist) and subsequently felt convinced by the weight of other scientific evidence to deviate from IAC'S current recommendation, it would not be free to do so as any changes may risk entitlement to UK government lump sum payments attached to the IIDB scheme which have not been devolved and rely on UK IAC criteria for IIDB to determine eligibility.

The current UK government lump sum payment, The Pneumoconiosis etc. (Workers' Compensation) Act 1979, (only briefly mentioned by the Smith Commission report) is intrinsically linked to the IIDB prescription for all asbestos-related conditions and it has not been devolved. The failure to devolve this scheme or to recognise the intrinsic way that IIDB is linked to The Pneumoconiosis etc. (Workers' Compensation) Act 1979) has the consequential effect of ensuring that any future deviation from any of the current IIDB prescribed disease list for asbestos-related conditions in Scotland could in fact disentitle a Scottish claimant to a lump sum payment under that scheme.

Policy changes involving the prescription for lung cancer and all other current prescribed asbestos-related diseases will, by necessity, be driven by the UK IAC due to the intrinsic link between ARD's and lump sum payments which have not been devolved. There will be a continuing need for a mechanism to allow the closest working relationship with IAC and the DWP. This does raise the possibility that a memorandum of understanding or some other mechanism will be required to address these concerns until a solution is found.

5. Which of the following best expresses your view of making it a legal requirement that the SEIAC's membership includes workers with experience of being exposed to the risk of workplace injury, and their representatives, including trade unions?

- Fully agree ✓
- Partially agree
- Neutral

- Partially disagree
- Fully disagree
- Unsure

Please explain the reasons for your response.

Currently IIAC has 17 members and draws its membership from experts in the field and from those with experience of the scheme, including workers with experience of workplace risk, solicitors, trade unions, and a representative from the HSE and DWP. We would like to see this replicated as closely as possible.

6. Which of the following best expresses your experience of the current Industrial Injuries Disablement Benefit (IIDB) scheme (personally and/or professionally)?

- Positive experience
- Mixed experience ✓
- Negative experience
- No experience of the scheme

Please explain the reasons for your response.

Please see: [Clydeside Action on Asbestos: Devolution of Industrial Injuries Disablement Benefit \(IIDB\) 2015 \(pdf\)](#)

Financial implications

7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

Government and the public sector

- Significant increase in cost
- Some increase in cost ✓
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Businesses

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral ✓
- Some reduction in cost
- Significant reduction in cost
- Unsure

- Individuals
- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

Please see: Clydeside Action on Asbestos: Devolution of Industrial Injuries Disablement Benefit (IIDB) 2015 (pdf)

8. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

Equalities

9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure ✓

Please explain the reasons for your response.

10. In what ways could any negative impact of the Bill on equality be minimised or avoided?

Sustainability

11. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

- Yes
- No
- Unsure ✓

Please explain the reasons for your response.

General

12. Do you have any other comments or suggestions on the proposal?