

# Proposed Scottish Employment Injuries Advisory Council Bill

## Introduction

A proposal for a Bill to establish a Scottish Employment Injuries Advisory Council to shape, inform and scrutinise the social security available to people injured in the course of their employment. The consultation runs from 10 November 2020 to 1 February 2021. All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document. Questions marked with an asterisk (\*) require an answer. All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response. Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded. Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here: [Consultation Document Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice attached to this consultation which explains how my personal data will be used

## About you

Please choose whether you are responding as an individual or on behalf of an organisation. Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

*No Response*

Please select the category which best describes your organisation

Representative organisation (trade union, professional association)

**Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).**

Community represents workers across Scotland, including in the justice sector and leather sectors, two

Please select the category which best describes your organisation

sectors where injuries at work are relatively more prevalent.

Unfortunately, because of the nature of their workplaces, a number of Community members in the justice sector have suffered criminal injuries such as assaults in their workplaces. Across our membership soft tissue injuries and road traffic accidents are the most common industrial injuries we are involved with. Disease cases are relatively uncommon, although cases in recent years have included "vibration white finger" from the use of pneumatic tools, and asbestos related conditions.

This submission has been compiled with the support of Community officials to represent the views of members.

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Community Union

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

[REDACTED]

## Aim and approach

Q1. Which of the following best expresses your view of establishing in law a new, independent Scottish Employment Injuries Advisory Council (SEIAC)?

Fully agree

**Please explain the reasons for your response.**

A new industrial injuries advisory council is needed in Scotland, as reliance on the UK council is no longer permitted as Scotland takes over the IIDB system. This is an opportunity to expand and develop the capabilities of the system: the UK council is not set up to commission research in ways that would allow it to overcome the shortcomings of the current IIDB system.

The current IIDB benefit system has systemic biases, emphasising work in male dominated fields, disadvantaging women and ignoring entire sectors and the risks that they face. A new council would have the authority to address these issues and shape an industrial injuries system that supports the workers of today's Scotland.

Furthermore, bringing ownership of the system within Scotland makes the system more locally relevant, and more accessible and comprehensible to workers.

Importantly, this proposal gives workers and their trade union representatives a seat at the table when it comes to designing Scotland's new employment injuries benefit system. The proposed bill protects in law

Q1. Which of the following best expresses your view of establishing in law a new, independent Scottish Employment Injuries Advisory Council (SEIAC)?

this membership requirement which should ensure continued focus on the experiences of workers in Scotland today.

Q2. 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
<b>Scrutinise legislative proposals on the overarching design of the employment injuries assistance (EIA) system and its entitlement policy.</b>	X					
<b>Continually advise and recommend changes to EIA (including on policy design and entitlement)</b>	X					
<b>Investigate and review emerging industrial and employment hazards</b>	X					
<b>Commission its own research and make recommendations</b>	X					

**Please explain the reasons for your response.**

Widening the responsibilities of the SEIAC compared to the UK IIAC means that the council will be able to do more to benefit the people of Scotland. It will be able to commission research, investigate and review new diseases and workplace hazards and recommend changes to the design of industrial injuries policy. This will allow the industrial injuries system to remain up to date and take account of the hazards that are affecting workers in contemporary Scottish workplaces, rather than focus on the conditions and diseases of the past.

Importantly the current system is complicated and understanding about entitlement and scope can be a challenge for workers. This is just one of the areas in which giving the Scottish council the powers to recommend modifications to the system overall could lead to significant improvements in outcomes for workers, by increasing their understanding of the protections they are entitled to.

Q3. What (if any) do you think would be the main advantages of the proposed Bill?

The main advantages of the proposed bill are that it would:

- Enshrine in law the role of workers and their representatives in the research and decision-making processes that affect them.
- Renew and restate the role of a no-faults compensation scheme. Currently, the changing world of work means that many of the risks that workers face are not covered and the scheme risks falling into irrelevance. But a no-faults compensation scheme is a critical part of a social safety net and is something that should be available to workers in the 21st century.
- In particular this might include the symptoms of long covid being included in the list of prescribed diseases, or criminal injuries sustained through assaults at work being explicitly covered by the workplace accidents provisions.
- Workers who are injured or contract a disease through their work would significantly benefit from a modified scheme, which this bill facilitates.

Q4. What (if any) do you think would be the main disadvantages of the proposed Bill?

Some employers might view the bill as an enhancement for workers but not for employers, encouraging positive claims against an employer. However, we believe that improved awareness of the hazards of modern workplaces, and the injuries and diseases likely to occur will help employers to improve the quality of their health and safety provisions. And what is most significant about IIDB is that it is a no-faults benefit, providing a safety net to workers including in cases where the employer is not liable.

In our experience, advisory councils have sometimes not been taken seriously enough. There is a risk that if this council is not sufficiently empowered, this may happen again. However, we hope this is a disadvantage which can be avoided.

Q5. 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

**Please explain the reasons for your response.**

Scottish social security legislation does not currently include provision to secure the role of workers, particularly those workers with experiences of workplace injuries, or their workplace representatives through trade unions. This legal requirement would bridge this gap.

Trade unions, like Community, help workers secure justice in the workplace every day – including when there is a failure in health and safety. Their involvement must be a vital part of the research commissioning and advice. This ensures that the council has on the ground information as well as the latest scientific research to make its decisions.

Q6. Which of the following best expresses your experience of the current Industrial Injuries Disablement Benefit (IIDB) scheme (personally and/or professionally)?

Mixed experience

**Please explain the reasons for your response. Please do not provide personal information or highly specific information which might identify you (if you wish to remain anonymous) or any third parties in your answer.**

There are several obstacles which affect Community members in relation to IIDB.

The first is that the threshold for receiving IIDB is set at 14% disablement. The thresholds were modified in the previous decade, reducing the number of claims, purportedly to increase the compensation awarded to those with more significant disablement. In some cases, our members do not suffer significant enough disablement to qualify. People with lower degrees of disablement miss out on support despite the impacts that industrial injuries often have on them, including psychological impact.

The length of time which workers have to wait before they can apply for IIDB is also an issue- the rules require at least 15 weeks after an accident before it can be applied for. However, we believe that IIDB should be available sooner after an injury or disease is sustained to support workers in the immediate aftermath of their injuries/illness.

A further issue with the current scheme is its lack of transparency. Because of the current percentage system, it's difficult for workers to understand exactly how much they will receive; the previous tariff system was more transparent and accessible.

Another point of concern is that if employer's liability is found the amount received for lost earnings are discounted at the point of settlement by the amount received of industrial injuries disablement benefit received. The IIDB received before the claim is accounted for and remove from the sum owed, whilst any IIDB received after settlement can continue for as long as the worker's disablement continues. This means the compensation that a worker receives is affected by the timing of a settlement which appears to be somewhat arbitrary.

Q6. Which of the following best expresses your experience of the current Industrial Injuries Disablement Benefit (IIDB) scheme (personally and/or professionally)?

There is a particular challenge related to criminal injuries. Workers who have been assaulted at work often wrongly believe that they are entitled to compensation from their employer but are not, either because the employer's negligence (if there is any) hasn't directly contributed to the assault; or because the employer isn't currently considered responsible for the actions of a third party (such as a criminal).

Depending on the severity of their injuries, such workers may be labelled "not disabled enough" to receive IIDB. Modifications to the IIDB thresholds might help workers affected by criminal injuries at the lower end of the scale of disablement.

Assaulted workers may also be ineligible for IIDB if they are told that what has happened to them is not classed as workplace accident.

In both of these circumstances they are forced to rely on the criminal injuries compensation scheme (CICA) which provides very low levels of compensation.

Although CICA is not related to IIDB in its current form, there is widespread confusion about the differences which a more transparent industrial injuries scheme could help to clarify.

In particular, clarification is needed about the circumstances under which IIDB may be granted in cases of criminal injuries. Currently the UK government's guidance does not clearly state whether workers will be entitled to claim IIDB in the case of a serious assault. It is not clear whether criminal injuries count as industrial accidents.

## Financial Implications

Q7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
<b>(a) Government and the public sector</b>		X				
<b>(b) Businesses</b>				X		
<b>(c) Individuals</b>					X	

**Please explain the reasons for your response**

Government will have to fund the Council. however, this is to be expected as it has taken on new powers. The Scottish government would be required to finance any widening of entitlement, but it would do so once it had passed the relevant legislation.

The renewal of the industrial injuries system will benefit businesses in the long term, as new data research and policy can help to identify hazards in the workplace, and in the long run will enable businesses to put in place preventative action. This will allow them to reduce the cost of injury or disease, or related litigation.

For individuals the benefit is clear, as they will benefit from the entitlement should the worst happen in their workplaces and they experience injury or disease. Individuals also benefit from the impacts of better preventative actions in their workplaces.

Q8. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

There may be a cost associated with the processing of vociferous or invalid claims. If the bill achieves its goals then it is likely to make it clearer what claims will be likely to succeed, and this might reduce administration costs.

## Equalities

Q9. 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 re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

Positive

**Please explain the reasons for your response.**

Disabled people likely to gain in entitlement to the benefit as new hazards and occupations are recognised, clearly an improvement to equality for this group.

In addition to this, the new council will begin to reduce the current situation of gender disparities. It will be able to consider why the IIDB system receives fewer applications from women, as well as propose new hazards and diseases and occupations where women are more predominant.

Were a simple lift and shift of the UK benefit put in place, there would be a risk of embedding a system that promotes inequalities.

Q10. In what ways could any negative impact of the Bill on equality be minimised or avoided?

*No Response*

## Sustainability

Q11. 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

**Please explain the reasons for your response.**

Social security systems are a vital part component to the incomes of some workers in Scotland. It is therefore likely to have a positive social and economic impact. An increased focus on Scotland-specific industries could lead to more relevant research and advice for Scotland. This could lead to policies more tailored to the Scottish context.

The scheme could support people who have been injured or contract a disease, prevent this occurring in the first place, and in turn could help to reduce inequality.

## General

Q12. Do you have any other comments or suggestions on the proposal?

*No Response*