

## Towards a 21st Century employment injuries system for today's workers

### 1. 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 policy.	Y					
Continually advise and recommend changes to EIA (including on policy design and entitlement)	Y					
Investigate and review emerging industrial and employment hazards	Y					
Commission its own research and make recommendations	Y					

#### Please explain the reasons for your responses.

The establishment of a Scottish Employment Injuries Advisory Council (SEIAC) will help ensure that employment injuries assistance reflects the modern workplace and the modern workforce. Giving the SEIAC these functions would bring relevant expertise to inform proposals when assistance is introduced, and as the work place and work force evolve over time.

**"...overarching design..."**- The history of industrial injuries disablement benefits (IIDs) in the UK suggests that removing the gendered impact of the current scheme, and addressing its persistent failure to compensate workers in a broader range of occupations needs different methods from those used at present to prescribe employment related illness and assess entitlement.

The current rules for prescribing diseases restrict entitlement in ways that can seem puzzling to potential claimants although in effect they limit access to benefit for diseases<sup>1</sup> arising from employment. The Industrial Injuries Advisory Council's (IIAC) stated rationale for adding a disease to

<sup>1</sup> The rate of reported *accidents* arising from employment has been falling for some time, though the rate may now be flattening. Table 1.8 [Industrial Injuries Disablement Benefit Quarterly Statistics: data to March 2020](#)

the prescribed list (doubling of the risk) is not set out in the legislation. This approach has been questioned by trade unions, [health and safety practitioners](#)<sup>2</sup>, academics and very recently, from within the IAC itself (see [para 4.9 of the Committee's July 2020 minutes](#)).

The rationale behind compensating workers in certain occupations and not others for the same or similar conditions is difficult to comprehend. For example: the current system compensates workers for industrial deafness ([prescribed disease A10](#)) and primarily reaches men working in traditionally male occupations such as quarrying and steel production. The wording in the regulations referring to work "in the immediate vicinity of" the relevant machinery means that someone working in an extremely noisy factory (for example, a canteen or admin worker) might be exposed to very high levels of noise but would not be entitled to benefit for deafness arising from this. S/he would not have been working in near enough proximity to the plant.

A high proportion of women working in occupations where they are not exposed to steady state loud noise, but rather, occasional exposure to sudden unexpected very loud noise – health, education, hospitality, catering, call centres – report tinnitus<sup>3</sup>. But no IIDB is payable for this.

Similarly, the basis for the qualifying criteria for some industrial diseases is unclear. Disease [A1](#) is prescribed for "Any condition involving: Exposure to ionising radiation where the dose is sufficient to *double the risk of the occurrence of the condition*". As the conditions cited are leukaemia and various cancers, it's hard to see how claimants and decision makers are supposed to assess this. The DWP's Decision Maker's Guide deals with this by conceding:

*"From 10.7.00 the prescription has been restricted to leukaemia or cancer of specified parts of the body where the electro-magnetic radiation is "sufficient to **double the risk** of the occurrence of the condition". **This phrase has not been defined in legislation therefore prescription should continue to be accepted based on the person's occupation.**"* ([para 67191](#))

In other words, for this disease, if your work involves exposure to ionising radiation, and you develop leukaemia or one of the prescribed cancers, that is sufficient – a decision maker won't look for "doubling of the risk".

If a new SEIAC has the necessary statistical, epidemiological and other relevant expertise, they would be well placed to advise on the type of system most likely to address some of the problems identified – eg the gender gap and the failure to address work-related conditions in specific occupations. Some European systems are already more representative of the modern work place.<sup>4</sup>

The other three functions are key to an effective committee and are inter-related. At present, a very wide variety of groups nationally and internationally continually research occupational health and industrial diseases<sup>5</sup>. Only one body currently pulls all of this information together to extract what is relevant for the second, third and fourth tasks in the table, however – the IAC. As the IAC cannot play a role in the devolved benefit, establishing a non-departmental body in Scotland would support policy development within the principles of the Scottish social security system.

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<sup>2</sup> See also [Mean test - Hazards magazine](#).

<sup>3</sup> "New risks and trends in the safety and health of women at work" European Risk Observatory Literature review 2013.

<sup>4</sup> [https://oshwiki.eu/wiki/International\\_comparison\\_of\\_occupational\\_accident\\_insurance\\_system](https://oshwiki.eu/wiki/International_comparison_of_occupational_accident_insurance_system)

<sup>5</sup> These include :THOR and its UK-based and European partners; the Office for National Statistics, EUROGIP and the European Agency for Health and Safety at Work

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

- The opportunity to more accurately reflect the true impact that work- especially low paid, temporary, shift and part time work has on Scottish workers, including migrants, and to redress the gender balance.
- The opportunity to create a system which is fairer, more accessible, more consistent and less complex for users.
- Increased eligibility for IIDB or its replacement, would increase the number of people exempt from the benefit cap. Currently, a small weekly award of IIDB can make a significant difference. For example, a lone parent with three children getting housing benefit in the private rented sector and subject to the benefit cap would be £103 a week better off as a result of a £36 a week award of IIDB.

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

If, as hoped, the creation of SEIAC, leads to the development of an employment injuries assistance that better reflects the modern workplace and work force, this would likely lead to increased eligibility and therefore increased cost to the Scottish Government's social security budget. However, this must be balanced against alleviating poverty and the many positive outcomes that this has.

There are obvious cost implications for the Scottish Government as a result, depending on the system chosen. *One* of the potential ways of partly mitigating the costs of employment injuries assistance is already being considered. The [Liability for NHS Charges \(Treatment of Industrial Disease\) Scotland Bill](#), which would allow NHS Scotland to recover costs of treating in hospital people with industrial diseases is currently passing through the Scottish Parliament. Responses to the proposal are mixed.

It would be important to ensure that changes to the scheme do not risk safe and secure transfer as employment injuries assistance replaces IIDB in Scotland.

### 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.

It is important that membership includes lived experience and goes beyond academic and clinical expertise.

The IIAC has committee meetings and smaller working group meetings to concentrate on specific topics – eg a proposal that cancers most commonly suffered by firefighters should be presumed to be industrial diseases.

There would be value in workers in a particular field being in SEIAC meetings examining evidence of a condition relevant to their work.

**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 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.**

Experience from CPAG in Scotland's advice line for frontline advisers suggests that the IIDB scheme is not commonly known and that eligibility is weighted in favour of men. Reflecting the national low and falling incidence of claims for IIDB<sup>6</sup>, our advice line only received 23 queries involving IIDB between March and December 2020. Only three of these concern women and in two of these, IIDB was indicated because we suggested potential entitlement to the caller. In the third, the client already had an award and wanted to know if it could be paid abroad.

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

Depends on the system adopted

**(b) Businesses**

Significant increase in cost

Some increase in cost

Broadly cost-neutral

Some reduction in cost

Significant reduction in cost

**Unsure**

Depends on the system adopted

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

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<sup>6</sup> See table 1.6 in [Industrial Injuries Disablement Benefit Quarterly Statistics: data to March 2020](#)

**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.**

This would depend on the remit, composition and oversight of the Committee. There is potential for the Committee to oversee a fairer system, particularly to the benefit of women.

Precarious employment, provided by employers less concerned about the impact on employees, may have a disproportionate effect on certain groups when it comes to particular conditions such as musculoskeletal disorders: women, migrants, LGBTI workers for example<sup>7</sup>. If the Committee actively seeks the participation of relevant stakeholder groups to comment on Scottish Government proposals unintended bias is less likely to arise.

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

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**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.**

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

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<sup>7</sup> [Workforce diversity and musculoskeletal disorders: review of facts and figures and examples European Risk Observatory Executive Summary. EU-OSHA 2020](#)

## ANNEX: WHAT IF CALCULATION (Q3)

### **“What if” demonstrating impact of award of £36 IIDB on lone parent with three children.**

#### Claimant's Details

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As at 9 December 2020: The Claimant, age 35, does not work. The claimant has three dependent children aged fifteen (born 9/12/5), thirteen and twelve. Child Benefit is 48.95. The claimant is liable to pay 170.00 per week rent. Claimant's local housing allowance amount is 172.50.

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#### Universal Credit

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Universal Credit calculated on a monthly basis.

Rent	738.69
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Rent for housing element	738.69
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Universal Credit:-	
Standard Allowance	409.89
Child Responsibility Element	752.91
Housing Element (rent)	738.69
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Universal Credit (Before Cap)	1901.49
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Benefits Cap (Not London):-	
Child Benefit	212.12
Universal Credit	1901.49
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Benefits subject to cap:	2113.61
Total Benefits (for cap)	2113.61
Benefits Cap (Not London)	1666.67
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Excess	446.94
Universal Credit before cap	1901.49
Less excess	446.94

Universal Credit after cap 1454.55

**Change in circumstances**

The Claimant now claims Industrial Injuries Disablement Benefit of 36.40.

**Universal Credit**

Universal Credit calculated on a monthly basis.

Rent 738.69

Rent for housing element 738.69

Unearned Income:-

Benefits 157.73

Total Unearned Income 157.73

Universal Credit:-

Standard Allowance 409.89

Child Responsibility Element 752.91

Housing Element (rent) 738.69

Maximum Credit 1901.49

Less unearned income 157.73

Universal Credit Payable 1743.76

Benefits Cap does not apply as Claimant receives industrial injuries benefit.

### Summary (benefits, weekly)

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	Before	After
Universal Credit	335.67	402.41
Non Means Tested Benefits	(Ch Ben) 48.95	(Ch Ben + IIDB) 85.35
Total	<u>384.62</u>	<u>487.76</u>
	<u>                    </u>	<u>                    </u>

Total is 103.14 a week higher after award of IIDB

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Whilst every effort has been made to ensure the accuracy of the calculation it is not an authoritative statement of law and no responsibility is accepted by the author from any losses arising from actions or advice consequent upon its use.