

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).

GMB Scotland is a general trade union representing over 60,000 Scottish workers. GMB Scotland's

Please select the category which best describes your organisation

Women's Campaign Unit is a department specialising women's work; women's health and safety and campaigning for pay justice.

Unionline Scotland provides legal services in Scotland, giving specialised, local support to trade union members on a range of legal issues, including personal injury and employment law claims.

Since this consultation launched in November, GMB Scotland's Women's Campaign Unit has been running events and surveys to engage members on the issue of their health and safety and especially in regard to the Industrial Injury Disablement Benefit.

We have run panel events, focus groups and a survey of workers across retail, care, catering, cleaning and education support. We have reached over 5000 members with this piece of work.

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).

GMB Scotland's Women's Campaign Unit and Unionline Scotland

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.

GMB Scotland's Women's Campaign Unit and Unionline Scotland welcome the opportunity to comment on the important issues raised in the Bill.

There is a recognition that the statistics show that the percentage of women claiming IIDB is a tiny fraction of the total claimed. Indeed, the percentage of women claiming is even lower in Scotland. As an example if you look at the quarter to December 2019 of 2430 cases, 2300 were male and 140 female. If we look at Scottish claims, 190 were male and 10 female. Surely, these figures demonstrate the gender imbalance.

The IIDB was introduced in 1948 with a focus purely on male dominated workforces, especially agriculture and heavy industry. In reality, even in 1948 there were women working in related or comparable manufacturing industries with significant health and safety concerns, so in reality the IIDB has been out of date since it was created. The world of work has changed considerably since 1948, as had the makeup of

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

the workforce, and now the women who are not able to access the IIDB are working in industries associated with domestic labour and hence have new reason to be ignored by the patriarchal system. In order to qualify for IIDB the claimant must

1. Have one of the 'prescribed diseases' as per Appendix 1 of the Acts
2. Have worked in the qualifying work for that disease.

There are over 90 such listed with a list of qualifying jobs. The list is out of date and has never seriously considered female dominated industries. The proposed Bill recognises the huge gender bias in the list of prescribed diseases.

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

Please explain the reasons for your response.

Employment demographics have radically altered over the last few decades. The types of work have changed. The ETUC in 2005 recorded that "domestic work is the fastest growing economic sector in Europe" this is as a result of aging populations amongst other factors.

The sector is made up substantially of women. Other sectors which are female dominated include social care generally, catering, cleaning, retail and factory work. The types of conditions and diseases suffered by women in these sectors is mainly or entirely overlooked.

GMB Scotland women members employed in cleaning work use buffers and suffer from Carpal Tunnel Syndrome (CTS), however do not qualify for benefits as the vibration from the machines are considered to be too low to be causative. Many women in the care sector suffer from musculoskeletal disorders in the neck and upper limbs. However, they are often older with preexisting degenerative changes which are not factored in. Often these conditions have a considerable impact on their life resulting in women retiring early. Despite this the benefits system fails them.

Despite the prevalence in workplace injury, illness and disease in the care sector, only those who care for animals, not for people, might be in receipt of the IIDB. Put simply, the IIDB, like many employers, does not recognise the heavy and repetitive nature of work that has been typically associated with domestic labour.

If we look at the HSE statistics published on 2nd November 2020 of the male/female split of new HAVS and CTS cases in the UK 2010 to 2019; out of 5620 cases of HAVS, only 15 were women and out of 2615 cases of CTS only 185 were women. It is stated that this is likely as a result of:

1. Women's cases arising from circumstances other than those covered by the terms of the prescription

Q2. Which of the following best expresses your view of giving a statutory Scottish Employment Injuries Advisory Council the following functions?

2. Individuals being unaware of the possible occupational origin of the diseases
3. Lack of knowledge regarding the availability of compensation
4. The scheme not including self-employed workers.

There are also gender differences in lower limb disorders. Osteoarthritis of the knee as a result of cumulative use is more common in women than men. This affects those who do cleaning work. Again this is an area where many women are employed. The HSE publication in 2009 "Scoping Work to Help Inform and Research Planning" explored gender differences in the incidence of OA finding that more women than men suffered OA of the knee.

Injuries that are cumulative in nature and not caused by a single occurrence of injury or exposure are complicated to quantify and prove but we have seen in incidences of prolonged exposure to harmful chemicals in male dominated industries, that we can create a way to compensate workers for this cumulative harm, and recognise the harm as being industrial. But in terms of 'wear and tear' caused by work done in industries done by women, no such recognition exists and the 'it's just wear and tear' argument is undermining women's ability to access compensation.

Physical and verbal assault is far too common an occurrence in care, education and retail settings and physical and mental injury suffered as a result is not featured on the Appendix 1 list.

In fact, the settings in which long term damage is done to women workers is likely very relevant to their continued exclusion from the male dominated IIDB. Women are often injured not in factories or ship yards, but in classrooms, care homes, individuals' homes and on the street. Lone working is not only a cause of injury but also a barrier to reporting. Lack of reporting of workplace injuries as just that, has been expressed as being commonplace by GMB Scotland members in female dominated sectors.

The injuries suffered are not classed as industrial by their employer, either because of the nature of the injury or its location, and therefore not reported as such. Women then struggle to access compensation, including the IIDB.

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

Apart from the changing workforce and the types of work done by women, there needs to be an appreciation of women's responses to their work environment. In an article published by the Institute for Work in Health in June 2016 (Toronto, Ontario) it found that women who do the same tasks as men often face a higher risk of musculoskeletal disorders in the neck and upper limbs.

The Scandinavian Journal of Work, Environment and Health published an article in 2009 concluding that gender must be taken into account when trying to understand the associations between exposure and musculoskeletal disorders (MSDs).

There have been many international studies into gender differences in responses to work environment. In an article in Clinical Journal of Pain entitled "Prevalence of MSDs systemically higher in women than men" published in 2006 this issue was studied. The conclusion was that the level of epidemiological evidence into women's work related conditions is low and more research is required.

If it is the case that women make up large part of the workforce in the care and domestic sectors and jobs involving repetitive work, then why does the list of prescribed diseases not reflect this? Despite women in these parts of the economy suffering from MSDs and CTS why do the rates of benefits not reflect this?

An effort to change this must be congratulated.

The Bill seeks to set up a new body for Scotland, the Scottish Employment Injuries Advisory Council (SEIAC). This is an opportunity to overhaul a much outdated and gender biased benefits scheme. The SEIAC is to:

1. Investigate and review emerging industrial and employment hazards
2. Conduct its own research and be independent of Parliament
3. Focus more on Scottish industries

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

At page 13 of the document under "Why a Scottish EIAC" It is proposed that the Council should be independent and carry out its own research. That the membership should come from:

1. Occupational medicine
2. Epidemiology
3. Toxicology
4. Law
5. Workers both trade union and industry

The independent status is to be supported, however an opportunity for more to be made of the lack of gender based research must not be missed. There needs to be an appreciation of the physiological and anatomical differences between men and women and the musculoskeletal conditions that commonly affect women. The historical context has been that males are engaged in heavy industry and prescribed diseases reflect this. However, women are at an increased risk of MSDs in the care sector. It has for long been thought that women are engaged in light work and are therefore little attention has been paid to any conditions they might suffer.

At page 20 the Bill deals specifically with women:

"Women, Workplace, Injury and Disease"

In particular, at page 22 "would be anticipated that the SEIAC would be able to exercise its powers to commission research into the hazards, injuries, diseases etc"

This language doesn't go far enough. Surely, if the SEIAC is going to recognize the long forgotten emphasis on diseases of women, the language must reflect that. Instead should it not read "It will exercise its powers to conduct research into the hazards, injuries, diseases etc."

Membership of the Council is vitally important, in that it must reflect expertise relevant to women. There is no point in more research to recognise diseases suffered by women, if the research does not specifically reflect women. To do so, research must be based on women. It is known that due to biological and anthropological differences, women respond differently to hazards and work environments, yet research does not take account of that. It is not enough to have a token number of women in a research study. There needs to be women only studies. There is an immediate opportunity to conduct all women studies into the COVID response. This should not be difficult as the Care sector workforce, hard hit by COVID, is 83% women.

But this is not simply an issue of creating a new list of prescribed diseases, there must be work done to understand the context in which injury, illness and disease happens initially, and how it goes on to cause long term harm. For instance, it is well documented that rest and being cared for (rather than caring for others) is critical for recovery from any illness. Statistically, women do not get that opportunity to recover in the same way as men, either because of their own caring responsibilities outside of work or because of the Occupational Sick Pay policies, or lack of, and in many cases, it is both. Therefore, women take longer to recover or develop complications. This impacts on job security and earning capacity and can lead to development of chronic illness and potential early retirement.

None of the foregoing factors are considered when looking at the impact of negligent practices at work on women's bodies and development of illness and this is an area that should be considered for urgent research so that action and consequence can be quantified and taken into account when considering long term harm.

As mentioned above, much work must also be done to better understand the nature of women's work. Where it happens, how it can go wrong and why risk factors are being ignored. Women are being hurt by their employers' negligence but that is going unchallenged either because of the complexity of the work, the unseen nature of the work or the lack of recognition of the risks involved. Put simply, we do not adequately recognise or value the labour of women and that plays out not only in their pay and terms and conditions, but in their safety too.

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

No Response

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.

The Bill seeks to investigate and review emerging industrial and employment hazards, conduct its own research, be independent of Parliament and focus more on Scottish industries. All of which are to be supported. However, the Council will only properly represent women if they are properly represented and their voices heard. The importance of appropriate experts cannot be overstated. Experts must be identified who have suitable and substantial expertise. Further, it is important that there is suitable representation from groups that specifically represent women workers, such as GMB Scotland's Women's Campaign Unit.

There is an immediate and ongoing need for gender based research otherwise women will continue to be left behind.

In an article published 20th February 2018 in the European Journal of Epidemiology, it reported that the results of their study supported the hypothesis that night shift work increases the risk of breast cancer in pre-menopausal women, particularly those with high intensity and long duration of exposure. Data was pooled of five population based case control studies from Australia, Canada, France, Germany and Spain. The risk differences of pre and post-menopausal women wasn't studied.

Given the number of women who work in the health and care sector which of its nature involves night shift work, this is an area where more research is required. It needs to be properly funded, results published and consideration given to addition to the list of prescribed diseases if the findings are supportive.

In summary, it is clear that more gender focused analysis, proactive identification of emerging issues and research and greater knowledge of how women's health is affected in the workplace is required. It is also clear that in order for change to happen, women workers must be continually involved in the shaping of the benefit and this must be a priority issue for the newly established Scottish Employment Injuries Advisory Council.

The Bill goes some way to addressing these issues, but the case for much more emphasis on the steps to be taken to really move things forward must be made. Women make up a substantial part of the economy in the care sector, cleaning and factories yet the system of industrial benefits does not reflect this. The language in the Bill must be more definite.

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.

As explained in previous answers, the IIDB is a very important benefit that many, many workers have benefitted from. However, as noted earlier, reform is necessary.

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
(a) Government and the public sector		X				
(b) Businesses				X		
(c) Individuals					X	

Please explain the reasons for your response

If SEIAC is created and IIDB reformed as we see necessary, there will be additional cost with more people, especially women, being able to access the benefit. However, cost saving when done at the expense of women, is not acceptable. A reform of the IIDB via SEIC would be powerful in changing the conversation around industrial injuries suffered by women. We predict that this would prompt more pro active engagement in women's health and safety by employers, saving them money in the long term through compensation being sought through tribunals because of injury, illness or disease.

Industrial injury, illness and disease have devastating financial impacts of those affected with long and short term loss of income, early retirement etc. A benefit will mitigate this but also inspire prevention of harm.

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

This Bill will require investment if SEIAC is to deliver the necessary reform that has been a long time coming. Underinvestment in women's health and women's health and safety have a significant and negative impact on the economy at large and money saved by an inability to claim IIDB, only puts a burden on other social security benefits and has other socio-economic effects which cost more long term.

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.

As explained in other answers.

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

As noted in other answers, the constitution of SEIAC is vital. A poorly constituted SEIC without worker representation and ensuring those with protected characteristics under the Equality Act 2010 are represented, would likely not deliver on the stated aims of SEIAC.

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.

The current set up is unsustainable. SEIAC will make investments that ensure a sustainable and equality proofed approach to IIDB and more widely, health and safety in the workplace. Failing to invest now only differs the problem, puts the burden on individuals and increases the likelihood that safety at work for women is allowed to cause long term harm and loss to women for decades to come.

General

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

No Response