The proposed Scottish Employment Injuries Advisory Council

1. If the Industrial Injuries scheme retains its current form, it will be necessary for its scope, methods and regulations to be kept under review by an appropriately independent, expert body.

2. There are however reasons to question whether the scheme should be retained in its present form. The Industrial Injuries scheme predates the Welfare State; it has its origins in the Workmens Compensation scheme, introduced in 1897. It was introduced at a time when there were no other benefits for disability, and when access to the courts was largely excluded for workmen. With the addition of a range of benefits for disability, and of systems for compensation in some circumstances where harm occurs, the current pattern of compensation has become complex and difficult to defend. Current measures include benefits for 'care' or 'attendance' (actually severe disability), mobility and incapacity for work; private insurance for early retirement or road traffic accidents; war disablement pensions; compensation in the courts; criminal injuries compensation; vaccine damage compensation; and industrial injuries and disability. This offers arbitrary and inconsistent support for disability according to (amongst other things) the severity of the problems, the place where an injury happened, any fault of the parties, the age of the person affected , income, and the perceived impact on the individual's prospects.

3. The first problem with provision for Industrial Injuries and Disability relates to the (entirely reasonable) aspiration attributed to the scheme, which is to provide 'no-fault' compensation. Compensation for workplace injury, illness or disability depends on the circumstances where the harm was incurred. The effect of the current legislation is then to reinforce distinctions between people who are disabled in different circumstances. Many circumstances where there is no one person at fault – for example, people born with disabilities, those who contract them through ill health, or cases like air pollution where there is no specific perpetrator - are among those least likely to be covered.

4. The second problem relates to the identification of occupational diseases. Because the scheme relies on recognition of circumstances within the workplace, it can generally only respond to new needs as they become apparent. Until a disease is recognised, a worker has to show that there has been, not a process, but a series of accidents. This approach has in the past led to prolonged delays in the recognition of key hazards, such as occupational deafness or neurological damage related to pesticides. An expert committee can facilitate the recognition of new occupational diseases, but delay is built into the process.

5. The third problem is signalled in the Foreword to the Consultation, which refers to the dilemmas posed by Covid-19. For the purposes of the Industrial Injuries scheme, an occupational disease is one which is contracted through exposure to risk in a working environment. There are clearly some occupations where workers have a heightened risk of contracting Covid-19, but unlike most industrial diseases the working environment is not demonstrably the primary source of risk. If we want to have a scheme that compensates

people for the damage caused by 'long Covid' – there is a good case for doing so - treating it as an occupational disease will create different classes of sufferer according to the provenance of the infection, and exclude most of the people who experience the illness.

6. In New Zealand, the compensation offered by courts was combined in 1974 with benefits to make a no-fault system of compensation for accidents. This scheme was considered by the Pearson commission in 1978, as part of its review of compensation for accidents. They thought the scheme could not be applied in the UK, for two reasons. One reason was that New Zealand is a smaller country than the UK; the other that the victims of accidents wanted to have their case heard in court. The first argument is not applicable to Scotland, which has its own system of justice, but in any case the objection is not valid: it is the proportion of cases that matters, not the overall size of the operation. The second argument seems to me to be very weak: most people opt for justice in the courts not because they are litigious, but because other avenues have failed. The New Zealand scheme is now well-established and while there are arguments both for and against it in practice, it would bear examination.

7. An expert committee in this field ought to have the scope to consider major reform. This would imply expertise, not only relating to disability and employment, but also relating to disability benefits, and the law of Scotland relating to accidents and compensation.

Paul Spicker is Emeritus Professor of Public Policy at the Robert Gordon University, currently working as a writer and consultant on social policy and administration. His books on social security include Poverty and social security *(Routledge, 1993),* How social security works *(Policy Press, 2011) and* What's wrong with social security benefits? *(Policy Press, 2017). In 2007 he was a special advisor to the House of Commons Work and Pensions Committee for their report on the simplification of benefits.*