



Scottish Hazards

***Proposed
Scottish Employment
Injuries Advisory Council
Bill***

January 2021

Towards a 21st Century Employment Injuries System for today's workers.

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

Scottish Hazards supports establishment of a Scottish Employment Injuries Advisory Council (SEIAC). The formation of an independent body of this type is crucial in the development of a new modern industrial injury benefit system if lessons are to be learned from the inherent inadequacies and inequalities existing in the UK Scheme being devolved to Scotland.

In order for these and other concerns we have about the existing Industrial Injury Disability Scheme to be addressed Scottish Hazards believes any SEIAC should have the functions outlined in the consultation.

The Scottish Government apparent position is different

“Our primary objective in transferring the benefits is safe and secure transition. If we largely replicate the current rules and list of prescribed diseases, setting up a similar Council could result in the same professions, considering the same evidence. It may therefore be prudent not to establish a similar Council until the scheme has been sufficiently changed to avoid duplication”.

No one would dispute the primary objective of safe and secure transition of any benefits being devolved but the difference in the Industrial Injury Disability Benefit is that the benefit being transferred is no longer fit for purpose. Devolution of IIDB provides an opportunity to redesign the benefit and ensure that those in most need get the help they need to live with the consequences of work-related disease and injury, often debilitating and sometimes life limiting.

For Scottish Hazards, the functions of the current IIAC and SSAC are completely different and this was a point recognised by the UK Government in the recent triennial review of the IIAC ***“...they differ in their main function: IIAC largely provides advice to contribute to the formation of policy, while SSAC’s main role of scrutinising social security legislation occurs after policy is made.”*** If the

UK Government recognises this we believe the Scottish Government should do so also but provide the SEIAC with a wider remit as proposed in this consultation.

It is clear following devolution of the benefit Scottish Ministers will no longer be able to seek advice from the IIAC, so where will Ministers get such advice.

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As stated earlier the Scottish Government's priority is for safe and secure transition of benefits. We are of the view that not having an SEIAC in place with statutory powers to carry out the functions suggested in the following question is contradictory to the Scottish Government's stated priority of a safe and secure transition for Employment Injury Assistance Benefit.

The evidence given to the Social Security Committee by Hugh Robertson, a former member of the IAC, perhaps highlights the dangers of not establishing an SEIAC. If the Scottish Government were to rely on evidence based academic reports coming from the IAC and come to a different conclusion then problems may well arise. However, if the SEIAC reached a different conclusion on any proposed prescription of a condition having considered IAC reports, commissioned its own research and looked at other available evidence then that decision to prescribe a disease will be taken by the Scottish Government based on advice provided by their own experts.

Scottish Hazards believes the latter is the only suitable option. If the Scottish Government were to follow the former path we would question why the benefit is being devolved at all.

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

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

The existing IAC, as an advisory Non-Departmental Public Body (NDPB), has very narrow terms of reference offering advice to Government on prescriptions of new diseases and revisions of previous decisions. It does not inform public decision on IADB nor have any say on how IADB is implemented or improved. The IAC does not appear to attract the same level of scrutiny from UK Government Ministers that regulatory NDPB's such as the HSE have done and we believe this may be why IADB has not moved with the times.

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We disagree that it would be prudent to wait until the scheme is sufficiently changed before establishing a Council, this needs to be established now and fully support the statutory functions proposed in the consultation. The SEIAC should be involved in scrutiny of the legislation underpinning the design of the new system to ensure the transition of IIDB results in a modern benefit that is fit for purpose unlike the one it replaces. The capacity and power to investigate and review emerging work hazards should include review of existing occupational diseases where evidence already exists linking the condition to work but where the existing IAC has seen fit not to prescribe the disease. Continual oversight of EI benefit by an independent body would be essential to not only ensure a smooth transition but also that the scheme evolves into one that delivers for those who need and deserve it and leaves behind the unfairness and inequality of the predecessor benefit.

Scottish Hazards would also envisage a role for the SEIAC in a wider stakeholder group tasked with creating a benefits system that provides social security to those made ill and injured by work when required but also has a role in developing a long-term strategy to make our workplaces safer and healthier. We believe Scotland should have an occupational health service free at the point of delivery for those who require treatment following exposure to workplace injury, ill-health, or disease and to work with others to prevent such injury and ill health. Occupational health was never integrated into the NHS on its formation and Scotland needs to rectify this position. Having a state delivered occupational health service would help build a better understanding of occupational ill-health and injury across Scotland's health boards and allow for mapping of local data to inform the work of the SEIAC. Other areas likely to influence the work of the SEIAC in investigating industrial and employment hazards would be ensuring effective recovery of NHS costs for both industrial injury and disease. Scottish Hazards believes more needs done to ensure the burden of treating occupational injury and ill health is not the responsibility of the public purse. There is something perverse about an injured person contributing to their own treatment through taxation while negligent employers do not.

The Scottish Parliament may not have the powers presently to deliver a preventative regulatory enforcement system to drive down occupational injury and disease but this Bill, with the powers envisaged in the consultation, would be an indication that we can use the powers we have to create an SEIAC equipped to tackle inequalities inherent in the system being devolved and best placed to inform public policy on hazards at work. Any research created should not just be

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used to justify payment of benefit but also to guide decision makers on how to prevent harm occurring in the first instance.

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

We believe the proposed Bill allows for independent oversight of the scheme from day one of the benefits being transferred to the Scottish Government. For reasons we will go into later IIDB is a benefit that is no longer fit for purpose and has not been for many decades. The conditions prescribed in the scheme reflect mainly occupational exposures from a bygone industrial age and the failure by successive UK Governments to address the ingrained anomalies in IIDB require to be addressed as part of devolution of the benefit. Another fault, although not related to the inequity in the system is the benefit, we understand, is largely paper based regarding administration, another terrible indictment of a failure to move with the times and a lack of political will to acknowledge those who are exposed to disease or injury should be entitled to benefits to help them live with their occupational disability. Creating a devolved benefit tackling the substantial faults of the existing one cannot, and should not, be left to politicians and civil servants. This Bill if passed would ensure openness and transparency in the development, implementation, and delivery of industrial injury benefits in Scotland.

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

Scottish Hazards cannot identify any disadvantages arising from the proposed Bill. The Bill aims to provide a framework for a fair and equitable IIDB, and we do not believe that framework should be developed by politicians and Scottish Government Officials in isolation. An SEIAC with similar representation to the IIAC is vitally important in embedding fairness and equality in the foundations of our employment injuries benefit.

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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?

There is general agreement that the IIAC works well and the benefit not so much. A body with equal representation of workers and employer's representatives, working alongside medical experts and scientists would ensure EI policy can be informed drawing on a wide range of specialist including trade union representatives with extensive knowledge of occupational injury, ill health, and disease. Membership of the SEIAC and its composition should be established in law to ensure the body does not develop into some form of ad-hoc advisory group. This would not serve any useful purpose.

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

Scottish Hazards along with our colleagues across the United Kingdom and trade unions have longstanding concerns about IIDB and its failure to move with the times, or rather to be allowed to move with the times. Social Security at every level should provide help for those who need it most and, in the case of IIDB, that should include an expectation for Scottish workers that if they are exposed to injury, ill health or disease related to work impacting on their capacity to lead a normal life then they will receive support in the same way others with disability or some level of incapacity do.

The IIDB scheme has become discredited by the failure of the IIAC to abolish the principle of double risk when considering new disease for prescription, meaning that for a disease to be prescribed you must prove workers are twice as likely to have contracted the cancer through exposure at work than not. The US epidemiologist and statistician Sander Greenland said as far back as 1999¹ this was an issue that had moved from being an error in methodology to being a social problem, it is hard to disagree with this conclusion as two decades later so many worker related cancers are not recognised as being so for the purposes of accessing IIDB.

¹ Relation of Probability of Causation to Relative Risk and Doubling Dose: A Methodologic Error That Has Become a Social Problem: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1508676/pdf/amjph00008-0022.pdf>

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The failure of IIDB to move with the times is clear in the list of prescribed diseases leading to much of the inequality in the scheme, prescription of new conditions is rare despite bodies of evidence relating disease to occupational exposure (e.g. breast, ovarian and welding related lung cancer).

Double risk as a qualifying measure for prescription results in very few diseases being prescribed. This bar to accessing IIDB has no foundation, it is self-imposed but defended rigorously when calls for change are made. Scottish Hazards believes there is no place in modern society where access to social security benefits relies on a measure of eligibility that is discriminatory, without foundation and totally inflexible. Scottish Hazards would like to see an SEIAC where prescription is based on a presumption that any harm was caused by a person's work and the occupational exposure was a material contribution to the person suffering that condition,

Another method of improving accessibility would be to consider previous recommendations for a mixed system. In 1978 the Pearson Commission recommended a mixed system of IIDB, the existing prescribed system operating alongside another where a claim could be made in respect of a non-prescribed disease where the individual could prove the cause of the disease was related to occupation. This type of system could be important in providing access to any new Scottish Employment Injuries benefit for modern day industrial ill-health conditions such as mental ill health.

Many workers suffering occupational injury or disease face reduced earnings as a result, current benefit levels may compensate for some of the loss but in most cases there will be a shortfall compared to previous earnings capacity. An SEIAC could investigate reintroduction of some form of Reduced Earning Allowance (abolished in 1990), perhaps linked to reskilling and retraining where possible to help claimants reach previous earnings levels.

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

1. Government and the public sector

The Bill may well have a substantial financial impact in the short to medium term, initially with establishment costs and then potentially with increased

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benefits in payment if the new SEIAC delivers a fairer scheme and ends the serious inequality in the current benefit.

2. Businesses

Scottish Hazards cannot identify any additional costs on business at this current in time. However, we believe the Scottish Government needs to consider a long-term occupational health and safety strategy and investigate every opportunity to ensure employers who cause injury or disease carry part of the cost. This could include review of current recovery of NHS costs and compensation recovery legislation to ensure a more equitable share of the burden is met by those who cause the damage.

3. Individuals

These proposals can only have a positive impact on individuals, particularly women, as hopefully the SEIAC would investigate how all those exposed to disease or injury at work receive the social security benefit they require.

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

Scottish Hazards believes the Bill could achieve long term cost savings by being one part of a wider Scottish system that looks at occupational ill-health and disease, seeking to reduce the costs to individuals, business and Government while ensuring those who require social security receive the benefit. HSE figures estimate these costs to be in the region of £16.2 billion² annually across the United Kingdom. We would estimate Scotland to be somewhere around £1.6 billion. Scottish Hazards believes significant savings could be made in this area with the advantage of reducing the pain and suffering resulting from work injury but also having fewer people requiring social security.

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

Scottish Hazards believes this Bill will only have a positive impact on equality as the SEIAC could look at addressing some of the inequalities in the system being devolved. We also believe that many workers injured made ill or injured by work

² <https://www.hse.gov.uk/statistics/cost.htm>

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could have a disability within the definition of disability under the Equality Act 2010 yet are not entitled to the benefit designed to recognise that disability as work related. Again, the work of the SEIAC could tackle this inequality that would undoubtedly make more women eligible particularly, if they were to recognise the link between work and breast and gynaecological cancers for example.

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

Scottish Hazards has no response to this question.

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?

The Bill can be delivered sustainability if it is approached in the way we suggest on our response to Q8, what is not sustainable is having annual costs associated with ill-health and injury somewhere around £1.6billion and rising.

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

Scottish Hazards has no additional comments or suggestions.

**Scottish Hazards
January 2021**