

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)

Please select the category which best describes your organisation

as a whole).
Unite Scotland

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).

Unite 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.

The current devolution settlement in relation to Employment-Injury Assistance (EIA) represents responsibility without authority.

It is a position which, in the opinion of Unite, is untenable. The current situation needs to change and the Members Bill proposal by Mark Griffin, MSP, represents the best solution to the problem. It also represents a path towards a fairer, more democratically accountable system that does not discriminate against female workers and which will be fit for the 21st century and beyond.

Section 22 of the Scotland Act 2016 passed the responsibility to the Scottish Parliament to make provision for the payment of benefits to workers who suffer Employment Injury or disease. However, section 33 of the 2016 has denied the Scottish Government the immediate authority to make meaningful use of that responsibility. The transfer of power could be described as a 'hospital pass'. It provides the Scottish Government only the blandest of responsible to do no more than administer the benefit based on decisions made in England by the Industrial Injuries Advisory Council (IIAC) over which the Scottish Government have absolutely no influence. The situation plays into the worst stereotypes of the Scottish Parliament being a mere 'Parish Council'.

The current situation is, in the submission of Unite, neither in the spirit nor the letter of the Smith Commission.

It is unclear if the problem highlighted in Mark Griffin's Consultation document came about by design –

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

Westminster seeking to disempower the Scottish Government from any real authority in this important area lest they develop progressive policies and practices that highlight failings on the part of Westminster. It is unclear if the Scottish Government recognise the problems and have failed to act for political expediency or for fiscal reasons. Whatever the case, as stated above the only solution that Unite can see is the one proposed by Mark Griffin. The Scottish Parliament must take control of the situation by passing primary legislation to create a Scottish Employment Inquiries Advisory Council (SEIAC).

The key to success of any EIA benefit system is the Advisory Council, to use a deliberately vague term, that guides the Government on the conditions that should fall within system and attract EIA benefit payments. To be specific, the following issues are of vital importance:

- The make up of the committee – does it include trade union representatives;
- The level of funding for the committee to undertake research;
- Who and how the Committee are directed or encouraged to undertake research; and
- How the general policies of the Committee are set and reviewed in relation to their work load priorities given that their funding will be capped – for example will they focus their work on old/heavy industries, modern industries, cancers, conditions that have a higher instance in gender specific and ethnic groups

The Scottish Government have none of these powers over the IIAC. That is why it necessary and essential that a SEIAC is created by primary legislation to provide the Scottish Government with both responsibility and real authority EIA benefits.

To only scratch the surface of these very important issues Unite believe:

- The SEIAC must have trade union representative members
- Along side the Scottish Government obviously having the primary role in directing the work and research of the SEIAC, the process should also be 'democratised' such that trade unions have the right to make direct representation to the SEIAC about conditions it should investigate for the purpose of adding to the list of prescribed EIA benefit conditions
- Where a civil court has heard evidence that a condition is work related and awards compensation in a personal injury claim that should create a prima facie basis for the SEIAC to quickly determine that the condition should become a prescribed condition for the purpose of EIA benefit payments
- The SEIAC must not forget traditional industries (and we must never forget Scotland's shameful legacy of asbestos) but there is a strong case for it's initial work to focus on gender and ethnic issues and focus on conditions in relation to which there are higher instances or exclusively effect female and BAME workers

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					

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

Please explain the reasons for your response.

Reference is made to our comments under question 1

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

As set out in our answer to question 1 it will fully and properly devolve the EIA benefit system to Scotland which is not currently the case.

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

Unite do not see any disadvantages

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.

Workers who are exposed to risk of injury and disease and the trade unions who represent them are best placed to recognise industrial risk factors and ought therefore to have a key role on the SEIAC.

Unite believes that the SEIAC would be fully informed of work related issues through direct input by trade unions. Trade unions are best placed to provide practical experience of workers exposed to risk of injury and disease. Indeed two case studies reported to our union from members highlight the effect of Long Covid on their ability to continue working at the same level. These stories highlight the debilitating effect this virus has had on workers and there will be many, many more going through a similar experience. Unite believes that trade unions must play a key role in highlighting real life events to the SEIAC.

COVID CASE STUDIES

Local Government – care worker

I caught covid whilst working in a care home in May 2020. Went back to work after 16 days. Sense of taste and smell has never returned. Went under GP late September as breathing was still not right, wake up breathless and tight chest, anything strenuous, going up stairs, walking uphill now leaves me breathless. At the start and a few times since, I have had to use a walking stick just to help bear weight, so to help take some of the pressure off my lungs, just so I could get about outside. I still keep it handy when I'm going out, just in case, as its one of the folding ones. Had a chest x-ray to rule out anything more serious and GP has put me on medication to protect heart along with referring me to a respiratory clinic. Limbs are always feeling tired and I get fatigued to point I often need a doze in early evening, often by end of working day I feel I need to get home as concentration is slipping. Mentally it's tough when having a bad day with breathing, wondering if it's ever going to improve.

NHS worker

I've just had the Physio on the phone, don't think I'll be back before Christmas.

So far I'm not able to:

1- attend work

2- accept any bank nurse shifts

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?

3- can't accept any agency work either until I get back on the wards work full time.
So now financially I'm losing about £1000 per month at the moment.

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.

Table 1 on page 21 of the Consultation Document shows that there appears objectively to be a significant issue with the IIDB system taking account of the realities of modern working. The IIDB system additionally has no procedure for taking into account civil court rulings in respect of work related conditions; nor is there any process by which trade unions can meaningfully input into the process are request that conditions are investigated by the IIAC for the purpose of designing new prescribed conditions.

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

The important point for Unite is that the Scottish Government will have direct control and will be able to ensure that their budget is put to best use as set out in previous sections of this report.

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

No

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 set out fully in our answer to question 1 Unite believe that the SEIAC should initially focus on gender and ethnic issues and focus on conditions in relation to which there is, on the face of it, higher instances or exclusively effect female and BAME workers. This will redress the apparent gender imbalance in the current IIDB system highlighted on page 21 of the Consultation Document.

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

For the reasons set out in our answer to question 9 we do not believe that the Bill will have any negative impact equality. The Bill should improve issues of equality.

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 Bill will provide the Scottish Government with both responsibility and authority in relation to all aspects of EIA benefits. The Scottish Government will therefore hold all of the levers of powers to ensure that the Bill can and will be delivered sustainably. That is in stark constants to the current position where the Scottish Government have no such authority.

General

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

As stated above, Unite fully support the pith and substance of the proposal and commend the member for taking this important issue forward.