

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.

an individual

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".)

Professional with experience in a relevant subject

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

Researcher on occupational health and safety, environmental and public health and health and safety professional. Worked as a consultant to WHO and FAO on occupational diseases, occupational health and safety and economic costs. Worked as an expert witness on occupational disease and injury cases

Please select the category which best describes your organisation

No Response

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).

Professor Andrew Watterson, Stirling University

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.

As a researcher on occupational health and safety, particularly on occupational diseases, and public health, I fully agree with establishing such an innovative and progressive law for the following reasons

- (1) It fills an important gap in Scotland that is not presently met by the constrained UK IIDB and IIAC set-up.
- (2) Its aims do not conflict with, duplicate, or detract from reserved matters relating to UK health and safety law.
- (3) It provides the opportunity to ensure Scottish workers made ill or injured by work may benefit from the recognition of a wider range of occupational diseases and injuries than the UK IIDB, advised by IIAC, has hitherto produced. This would also help to bring Scotland into line with best international practice and reflect more closely the occupational disease lists that exist for example in Canada and the USA and the ILO. The process would not entail wheel re-invention but could draw on that international evidence base as well as examine new areas of concern.
- (4) The bill links findings of a SEIAC directly and closely to prevention of occupational disease and injury. This will bring potentially major public health, economic and social benefits. We need look no further than Covid to illustrate what those benefits could be. This approach may be implicit in IIAC's terms of reference but it has been neither highlighted nor well evidenced in its work.
- (5) The research function of the bill provides a means for the examination not only of existing and neglected workplace injuries and diseases but also new and likely future Scottish workplace injury and exposure risks. IIAC does not conduct original research. Research by a body such as the proposed SEIAC would be able to explore existing and established diseases that IIDB through IIAC has not yet recognised such as asbestos-related ovarian cancer and several cancers in firefighters listed in the US, Canada, and Europe (see <https://www.hazards.org/compensation/meantest.htm>). Lack of a research function inhibits

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and constrains the work that bodies such as IAC can do on investigating possible occupational health threats for example from nanotechnology and endocrine disruptors.

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.

The bill, in my view proposes an innovative, and integrated approach to and means for the effective management of industrial injuries diseases in Scotland. It makes full use of the advisory nature of a SEIAC. This means it should be able to provide broad but informed and evidence-based advice from a range of key stakeholders – employers, workers, and their trade unions with expertise in this field, researchers, and NGOs – across all the functions listed under 2. This would cover advising on appropriate parts of legislative proposals affecting the EIA system. It would have an even greater and more valuable role advising on policy design and entitlement ; on focussing in on important emerging industrial and employment hazards to examine based on knowledge of international developments; and identifying major and pressing issues for research and recommendations. Time and funding constraints would of course make the advisory body a significant source of information for prioritising use of funds and concentrating on the pressing problems in the 'industrial' disease and injury landscape that would most affect worker and public health.

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

These advantages have been identified in answer to point 1 and I will not repeat them verbatim here. The major functions needed to help to address the long-standing UK problems of limited occupational disease and injury recognition in a whole tranche of areas are contained within the bill. SEIAC would provide critical and coherent evidence-based input to the Scottish Government to help to redress some of the IAC limitations and constraints. It will help to avoid some of the fragmented, often piecemeal, and reactive advice and information generated by the IAC. More importantly it will provide support for the Scottish Government, if it so wishes, to bring prescribed occupational diseases and injury lists more in line with the best examples in Europe, USA, and Canada. That will address serious deficits in social justice in Scotland relating to hazards and risks in certain types of occupations, the neglect of occupational diseases affecting women, BAME and precarious workers. It should also contribute to cutting the substantial economic burden that Scotland bears from the direct and indirect impacts of occupational diseases and injuries by helping to support more effective and targeted disease and injury prevention programmes. In many respects the SEIAC fits into the Fair Work Agenda and ILO Decent Work approach. It would help to protect vulnerable communities better. It would contribute to preventing bad employers externalising costs of workplace diseases and injuries, and reward good employers who

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provide high workplace health and safety standards based partly on the sort of outputs SEIAC would produce. This all flows from a bill that would ensure greater disease and injury recognition, relevant research, and support for prevention programmes. SEIAC could also contribute to reducing legal costs by helping the Scottish Government to produce a more accurate, up to date and comprehensive list of occupational diseases and injuries that all sides could use. This would also curtail the vested economic interests of those who benefit from a delayed, denied, or protracted legal and insurance process that flourishes where there is incomplete recognition of workplace diseases and injuries affecting Scottish workers. Asbestos-related diseases, many still not fully recognised in the UK, illustrate historically how badly the UK IIDB/IIAC/civil compensation process has operated.

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

The only possible disadvantages would come if the bill's introduction proved, bureaucratic, expensive, and ineffective. These outcomes not only seem unlikely but indeed impossible with regard to how the bill is drafted. I cannot therefore identify any major disadvantages of the bill as it aims to address an already flawed and in several places a quite cumbersome process that has not generated the best outcomes for both those suffering workplace disease and injury and their communities, and those working to improve health and safety. The bill offers a co-ordinated, cautious, considered approach to the subject and so should improve further on the UK IIAC model. It has a prevention component that should mean it is outcome focussed. Nor does it look either overly bureaucratic or expensive to operate. The bill's modest research function should ensure it addresses the most pressing and most serious diseases and injuries. These prevention and research functions along with the advice and information roles, if they work well, should mean SEIAC will steadily cut the numbers of diseases and injuries that occur and reduce the related economic and human costs paid by Scottish workers and their communities.

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.

I think the proposed membership of the SEIAC should contain workers and their representatives, with experience of workplaces diseases and injuries and the IIAC and the IIDB schemes, as well as other stakeholders. This would include trade unions whose representatives sit on the UK IIAC and who historically sat on HSC and then the HSE board. In addition to employers and employer bodies there is also an argument for including NGOs that may offer advice, information and carry out research on occupational diseases and injuries. These NGOs would be able to contribute to all the functions of the SEIAC described in the consultative document.

Q6. Which of the following best expresses your experience of the current Industrial Injuries Disablement Benefit (IIDB) scheme (personally and/or professionally)?

Negative 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.

My professional experiences of the IIDB scheme and the associated work of IIAC in advising the IIDB has often been negative. The scheme has frequently proved very slow and cumbersome in keeping up with research on 'old' occupational injuries and diseases as well as new disease and injury threats, in prescribing occupational diseases and injuries and in ensuring those affected can claim their entitlements as quickly as possible. So the UK IIDB scheme fails: on disease recognition, government action to approve IIAC recommendations, and problems with operating the system in terms of disability thresholds,

Q6. Which of the following best expresses your experience of the current Industrial Injuries Disablement Benefit (IIDB) scheme (personally and/or professionally)?

clawbacks, flawed assessment processes, rehabilitation and return to work mechanisms, on transparency and responding to public and other enquiries

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

7a The Scottish Government and the public sector should gain significant savings in the middle and long run because those with occupational diseases and injuries will be much more fairly and quickly treated. It should be the aim of government and the public sector to ensure social justice and act in an ethical manner as well as to function efficiently and use public monies prudently. This bill will contribute to all those objectives. Externalising costs on the part of bad employers, be they government, the public sector, or the private sector, will mean individuals, their families, and communities as well as the NHS pay the economic and human costs of disease and injury. This bill, through diseases recognition, prevention and research will ensure such externalisation is greatly reduced. See for example the international figures on asbestos www.euro.who.int/__data/.../RB-Asbestos-Mtg-Report-Bonn-2012.pdf & <https://pubmed.ncbi.nlm.nih.gov/17119263/>

7 b For businesses, the bill should contribute to a significant reduction in costs. HSE for several decades has demonstrated the very high economic costs incurred in the UK by workplace injuries and diseases. It is cost effective for businesses, and all employers, to work towards reducing this burden and it should be able to draw on the SEIAC policy, prevention, and research work to do so. Good employers will benefit and only bad employers will be penalised for poor health and safety practices that create injury and disease, damage economic output and public health.

7c. Individuals will have no increased costs and should see economic benefits from better, quicker and more extensive recognition and compensation of workplace injuries and diseases. Indirectly they will benefit further because of the contribution SEIAC will make to preventing disease and injury improving workplace health and safety in Scotland through the bill.

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

The bill looks likely to have relatively modest administrative and salary costs attached to it. As the work of a SEIAC and related regulatory and other bodies gathers pace, it should lead to a reduction of workplace injury and disease listings and so incur even lower administrative and financial costs. If occupational injury and disease cases and costs remain high, in some respects this would indicate the need to strengthen not weaken such structures and bodies.

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.

The effects of the bill should be positive on social justice and equity. Research to date has indicated that often those experiencing higher rates of injury and illness in the workplace may include disproportionate numbers of low paid workers (the precariat), women workers and workers from ethnic minorities. The Covid pandemic too has graphically highlighted the vulnerability of BAME, women workers, low paid workers in unskilled, semi-skilled and manufacturing jobs, and older workers to an occupational disease like Covid19 but many other occupational diseases too. The UK IAC has had limited or no success in getting IIDB to prescribe several workplace diseases that affect women such as nightwork-related breast cancer, diseases in women cleaners and service workers, and asbestos-related ovarian cancer. Exposure to workplace carcinogens also often adversely affects lower paid workers and precarious workers. HSE estimate significant occupational cancer mortality each year in the UK but IIDB advised by IAC has failed to either recognise or compensate for the vast majority of these cancers. Information about these issues has also been included in answers to earlier questions. See examples of additional information here:-

<https://pubmed.ncbi.nlm.nih.gov/32487547/>

<https://pubmed.ncbi.nlm.nih.gov/24155646/>

<https://pubmed.ncbi.nlm.nih.gov/23164221/>

<https://pubmed.ncbi.nlm.nih.gov/23207955/>

<https://pubmed.ncbi.nlm.nih.gov/18085056/>

<https://pubmed.ncbi.nlm.nih.gov/17427346/>

<https://pubmed.ncbi.nlm.nih.gov/17119253/>

<https://pubmed.ncbi.nlm.nih.gov/15281377/>

<https://www.hazards.org/compensation/meantest.htm>; http://www.wsibstatistics.ca/S1/Workers%20_%20WSIB%20By%20The%20Numbers_P.php

[http://www.canoshweb.org/odp/#:~:text=The%20Occupational%20Disease%20Panel%20\(ODP,occupational%20diseases%20and%20their%20compensation.](http://www.canoshweb.org/odp/#:~:text=The%20Occupational%20Disease%20Panel%20(ODP,occupational%20diseases%20and%20their%20compensation.)

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

I do not see any negative impacts on equality likely to occur from the bill.

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.

I cannot identify any significant or disproportionate impacts of the bill on sustainability. With a coherent and co-ordinated approach, the bill will bring economic benefits and have very positive social and economic impacts. The type of approach should also help to provide data to evidence and support the development of much more positive aspects of the Scottish Government's Fair Work strategy and the work of the Just Transition Commission than currently exist.

General

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

The bill provides the ideal opportunity to develop a transparent, inclusive, participative, evidence-based, and up to date approach (with all key stakeholders and not simply a select few) to occupational injury and disease listing. So the bill would help to bring Scotland in line with the European and Canadian occupational disease lists that go beyond the somewhat limited and outdated DHSC IIDB schedules based on UK IIAC information.