

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

***Mark Griffin MSP***

***Scottish Hazards Consultation Response***



SCOTTISH HAZARDS



***August 2023***

## **Introduction**

Scottish Hazards is an occupational health and safety charity, registered with and regulated by the Office of the Scottish Charity Regulator, SC044785.

Our organisation provides advice and support to Scottish workers who, for whatever reason, are not in trade unions.

We also have an interest in ensuring all workers, made ill or injured at work, receive appropriate compensation as a result, and are able to access appropriate social security where they have entitlement to such support.

Scottish Hazards welcomes the opportunity to respond to the consultation on the proposed Scottish Employment Injuries Advisory Council Bill.

Our responses to your questions are as follows.

### ***1) The Bill would create a separate body for Scotland to advise on industrial to injuries benefits.***

#### ***Do you agree with the creation of this body?***

#### ***Does the Bill require any further powers or functions to be effective?***

The formation of an independent body of this type is crucial in the development of a new modern industrial injury benefit system and lessons need to be learned from the inherent inadequacies and inequalities existing in the UK IIDB scheme.

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 position appears to be 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 a safe and secure transition of any benefits being devolved but the difference in devolution of Industrial Injury

Disability Benefit is that the benefit being transferred is no longer fit for purpose, so the safe and secure transfer IIDB into Scottish Employment Injuries Assistance should go alongside change in administration of the benefit.

Devolution of IIDB provides an opportunity to redesign the benefit and ensure those in most need get the help they need to live with the consequences of work-related conditions, often debilitating and sometimes life limiting physical injury and occupational disease.

Scottish Hazards believes a new industrial injury scheme for Scotland should be designed by those with expert knowledge of industrial injury in our country, representatives from trade unions, employer's bodies, medical specialists and the legal profession. It is worth remembering many significant changes in compensation arrangements for asbestos victims had their roots in Scotland, legislative changes developed and proposed by the late Frank Maguire, Thompsons Senior Partner, and subsequently brought into law. These changes resulted in many mesothelioma and other victims of asbestos disease, receiving compensation during their lifetime, a great comfort to those in the final stages of their lives.

If our distinct Scottish legal jurisdiction can accommodate fairer, more equitable compensation for victims of occupational disease then we must ensure our new industrial injury benefit does the same for those whose capacity to work is impacted by injury and disease connected to work.

Transferring a broken and outdated benefit serves no useful purpose and will perpetuates the inequality faced by many injured or made ill by work.

The response by the GMB Scotland Women's and Campaign Unit and Unionline<sup>1</sup> highlights the longstanding inequality faced by women in accessing IIDB.

***“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”.***

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<sup>1</sup> Proposed Scottish Employment Injuries Advisory Council Bill, GMB Scotland Women's and Campaign Unit and Unionline Response, [Response Data \(markgriffinmsp.org.uk\)](https://markgriffinmsp.org.uk)

Scottish Hazards totally supports this view and the transfer of the benefit provides us with the opportunity to right the wrongs of the past and end discrimination in workplace injury and disease benefits in Scotland. This change should not solely be in the hands of politicians and civil servants, it requires the formation of a body of the type proposed in the Bill to be constituted as a matter of urgency and involved in designing Scottish Employment Injuries Assistance benefit.

More information on deficiencies in the current system including the IIAC's unsustainable position on the arbitrary double risk qualification and an inconsistent approach to prescription of occupational cancers can be found on a special online report published by Hazards Magazine in March 2015<sup>2</sup>

***In advance of the Scottish Government legislating for employment injury assistance. The Scottish Government has yet to consult on the benefit and the need for an Advisory Council what are your views on the timing of the bill?***

The existing IIAC, 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 making on IIDB nor have any say on how IIDB is implemented or improved.

The IIAC 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 IIDB has not moved with the times.

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.

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.

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<sup>2</sup> Hazards Magazine "Mean Test" March 2015 [Mean test - Hazards magazine](#)

Another fault, although not related to the inequity in the system, is that it is largely paper based and therefore cumbersome in administration, another failure to move with the times. This shows 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.

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 ensure a smooth transition, and 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 used to justify payment of benefit but also to guide decision makers on how to prevent harm occurring in the first instance.

**3) The Scottish Commission on Social Security already has powers to scrutinise Scottish Social Security regulations and to provide reports to the Scottish Government when asked to do so. What are the benefits or drawbacks of creating a new Advisory Council and how would this body operate along side the Commission?**

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

In addition, the members of the Scottish Commission on Social Security are not industrial disability specialists and its causes and we would not anticipate members of an SEIAC to have a knowledge of general disability and what is required to scrutinise social security legislation in that area. Any attempts to undermine the specialism of industrial injury, or to place an increased workload on the existing commission is fraught with danger and not in the best interest of those who need social security.

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 proposed in this Bill 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 IIAC, perhaps highlights the dangers of not establishing an SEIAC. “**If the Scottish Government were to rely on evidence based academic reports coming from the IIAC 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 IIAC 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.

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 in the absence of a specialist SEIAC.

***4) The Financial Memorandum sets out the anticipated start up and running costs for the Advisory Council, will the Bill have any significant resource implications for the Scottish Government, the public sector, business and individuals?***

The devolution of each and every benefit coming to Scotland will incur costs, the difference with Scottish Employment Injury Assistance is that there is a necessity to constitute and operate a Scottish Employment Injuries Assistance Council to carry out the function proposed in the Bill and develop and oversee industrial injury in Scotland moving forward.

Scottish Hazards believe the costs of establishment of the Council and its continued operation are not excessive and, as the financial memorandum outlines, are based on the establishment and ongoing running costs of comparable bodies.

There is nothing in the Financial Memorandum suggesting to us that a Scottish Employment Injuries Advisory Council would not provide value for the public purse. In the long term we would anticipate that potential preventative measures driven by research commissioned by the body could reduce occupational ill health and disease, as well as creating a more equitable and less discriminatory social security benefit.

Scottish Hazards also believes other opportunities might exist to offset the cost of benefit in payment by adopting the principle of “polluter pays”. It is not the taxpayer, the Scottish Government or Social Security Scotland who create the risk, do not manage it effectively and cause the injury and disease, it is business.

We supported the proposal by Stuart McMillan MSP to recover costs incurred in treatment of industrial injury and disease and returned to the NHS<sup>3</sup>. Although the proposals were subsequently withdrawn it is our understanding there was a degree of sympathy from the Scottish Government and there has been some discussion about how this could be applied in practice.

Scottish Hazards believes a similar method of cost recovery should be investigated for Scottish Employment Injuries Assistance.

***5) What is your view on whether the size and balance of the Council's membership is correct to deliver the Bill's purpose? If you think there should be changes to the membership set out in the Bill, please tell us why and what changes need to be made.***

Scottish Hazards agrees with the proposals on the size and membership of the Council. However, we believe that for the body to be effective it will require the upper limit of 12 in addition to the Chair, rather than 6 and the Chair. There would be little sense in setting up the Council to fail due to lack of resources at the outset.

***6) Do you have any other comments about the Bill?***

Our organisation has always supported the devolution of existing IIDB benefit with a caveat this should include the formation the kind of independent body being proposed in this Bill.

It is concerning that the discussion on devolution of IIDB has been going on for nearly 10 years and it has taken a Private Members Bill from Mark Griffin MSP to propose the formation of a Scottish Employment Injuries Advisory Council, a body that should be the cornerstone of this benefit.

Scottish Hazards will also respond to any future consultation on the devolution of IIDB but reinforce our opinion that having a Council in place, prior to any Scottish Government consultation on the Scottish Employment Injuries Assistance.

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<sup>3</sup> Proposed Recovery of Medical Costs for Industrial Disease (Scotland) Bill [Proposed Recovery of Medical Costs for Industrial Disease \(Scotland\) Bill - Parliamentary Business : Scottish Parliament](#)



We would hope that following this consultation the Scottish Government concludes that it is right to support these proposals and move forward in building a just and equitable benefit for Scottish workers injured or made ill by work.

Scottish Hazards would be happy to provide evidence to the Committee in its further consideration of these proposals.

Scottish Hazards  
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