

Scottish Parliament: Social Justice and Social Security Committee

Scottish Employment Injuries Advisory Council Bill

Submission from the Health and Safety Executive

1. Introduction

1.1. The Scottish Parliament's Social Justice and Social Security Committee has requested a written evidence submission from the Health and Safety Executive (HSE) on the proposed Scottish Employment Injuries Advisory Council Bill.

1.2. It is HSE's understanding that the Bill seeks to create the Scottish Employment Injuries Advisory Council to advise Scottish Ministers on Employment Injuries Assistance (EIA). EIA is the proposed Scottish replacement for the industrial injuries benefits currently administered through an agency agreement by the Department for Work and Pensions (DWP), who are in turn advised by the Industrial Injuries Advisory Council (IIAC) on the list of diseases which should bring entitlement to these benefits. Under the Scotland Act 2016, the IIAC cannot advise Scottish Ministers.

1.3. The Committee has requested specific information from HSE, including:

1.3.1. The role and remit of HSE. This is addressed under Section 2.

1.3.2. What involvement (if any) does HSE have with the Industrial Injuries Advisory Council or matters related to Industrial Injuries Disablement Benefit? This is addressed under Section 3.

1.3.3. Does the proposed role of the Scottish Employment Injuries Advisory Council Bill to "investigate and review emerging employment hazards which result in disease or injury" duplicate the activities of other organisations? This is addressed under Section 4.

1.3.4. Several additional prompts were also provided; these are addressed under Section 5.

2. Role and Remit of the Health and Safety Executive

2.1. HSE is responsible for the encouragement, regulation and enforcement of workplace health and safety across Great Britain. It is a non-departmental public body, sponsored by the UK Government's Department for Work and Pensions (DWP).

- 2.2. HSE's Science Division employs scientists, engineers and occupational health and hygiene specialists to provide the research and evidence that underpins its enforcement activities and policy interventions. This science and research is primarily carried out at its Science and Research Centre in Buxton, a facility dedicated to the investigation and research of health and safety science.
- 2.3. HSE's powers and remit are derived from the Health and Safety at Work etc. Act 1974 (HSWA). The Act places duties on employers and those who create risks to health and safety that arise from work activities.
- 2.4. The purpose of the regulatory framework for which HSE is responsible is to set sensible, achievable standards and to require proportionate control measures. Employers (duty holders) are responsible for managing the risks to their employees and others arising from work activity. HSE has no powers to address contractual employment matters such as pay.

Working with Others

- 2.5. Alongside HSE, Scottish Local Authorities are also responsible for enforcing health and safety regulations, undertaking both inspection and investigation work. This is largely in lower-risk work sectors, such as retail, wholesale distribution and warehousing, hotel and catering premises, offices and the consumer and leisure industries.
- 2.6. HSE also has formal working agreements with other Scottish regulators and authorities, such as the Scottish Environmental Protection Agency and Public Health Scotland.
- 2.7. HSE works with the Scottish Government, business, trade unions and other organisations through the Partnership on Health and Safety in Scotland (PHASS). It also has in place a number of collaboration agreements with Scottish and UK authorities.

Enforcement

- 2.8. While HSE's emphasis is on prevention, enforcement action will be undertaken where it is appropriate to do so. Examples of this include ensuring that duty holders deal with serious risks immediately, thereby preventing harm; comply with the law; and are held to account if they fail in their responsibilities.

2.9. HSE inspectors have a variety of enforcement tools to secure immediate and sustained compliance with the law, ranging from the provision of advice to the serving of enforcement notices and the reporting of offences to the Crown Office and Procurator Fiscal Service (COPFS).

2.10. Both criminal and civil law apply to workplace health and safety:

2.10.1. **Civil Law:** Under civil law, if someone has been injured or made ill through employer negligence, they may be able to make a compensation claim. However, in most circumstances, there is no right of action in civil proceedings conferred by the HSWA, or regulations made under the Act, in respect to a failure to comply with any duty they impose. Neither HSE nor LAs have responsibility for application of civil law or setting the rules for the conduct of civil cases.

2.10.2. **Criminal Law:** If a dutyholder does not comply with a regulation relevant to their workplace, this will usually be a criminal offence.

Reporting of Injuries, Diseases and Dangerous Occurrences Regulations

2.11. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulation 2013 (RIDDOR) is the law that requires employers, and others in control of work premises, to report and keep records of work related accidents which cause death; work-related accidents which cause certain serious injuries (reportable injuries); diagnosed cases of certain industrial diseases; and certain dangerous occurrences (incidents with the potential to cause harm). There are also certain requirements for gas incidents.

2.12. HSE is not the only regulator to use reports under these regulations. Reports are also used by Local Authorities and the Office for Rail Regulation (ORR).

2.13. These reports are used to support regulatory work. They help to identify where and how risks arise, and whether they need to be investigated. This allows enforcing authorities to target their work and to provide advice about how to avoid work-related deaths, injuries, ill health and accidental loss. Reports are not intended for use in civil action or in industrial injuries compensation.

2.14. HSE does not investigate all reports made under RIDDOR. Only the most serious work-related incidents, injuries or cases of ill health are investigated; these are selected in line with HSE's [Incident Selection Criteria](#).

3. What involvement (if any) does HSE have with the Industrial Injuries Advisory Council or matters related to Industrial Injuries Disablement Benefit?

3.1. The membership of IIAC includes an HSE observer. This allows HSE to be kept aware of aspects of the IIAC's work which are also informative in relation to HSE's regulatory role, for example, through IIAC's work to review scientific evidence about when diseases should be considered occupational.

3.2. It also provides a mechanism to seek and obtain from HSE any relevant operational or scientific information that may help IIAC in their role to advise on matters relating to the list of diseases which bring entitlement to Industrial Injuries Disablement Benefit. This includes, for example, contributing to IIAC's work on how to define occupational circumstances for diseases being considered by providing any information HSE may have available about workplace exposures relevant to those diseases. HSE may also be able to advise on how changes in legislation or workplace controls in the past may have impacted on those circumstances.

3.3. HSE also advises the Council on the appropriate wording for sections in their reports on actions duty holders need to take to prevent disease among today's workers.

4. Does the proposed role of the Scottish Employment Injuries Advisory Council Bill to "investigate and review emerging employment hazards which result in disease or injury" duplicate the activities of other organisations?

4.1. HSE's own role regarding the investigating and reviewing of emerging hazards has been outlined in the previous sections.

4.2. Comment on the activities of other organisations is not provided within this submission as this sits outside HSE's remit as outlined in Sections Two and Three.

5. Other matters

5.1. HSE has noted the additional questions posed by the Committee:

- 5.1.1. The Industrial Injuries Advisory Council recommends which conditions and occupations are included in the prescribed lists for industrial injuries social security benefits. In your experience, does this have any wider influence on the extent to which employees are supported or preventative measures put in place in the workplace?*
- 5.1.2. The Bill documents estimate a research budget of £30,000 per year. Does HSE have any views on whether that is adequate for the work proposed?*
- 5.1.3. What are HSE's views on the value of SEIAC undertaking investigation of the same issues as IIAC?*
- 5.1.4. What are HSE's views on the extent to which there are Scotland specific issues in the type and incidence of industrial disease?*
- 5.1.5. Does HSE have any comments on the mix of knowledge and expertise proposed for SEIAC's membership?*
- 5.1.6. Is there enough technical and scientific expertise available to advise both a Scottish and UK body?*
- 5.1.7. In what ways could SEIAC access expertise beyond its membership – either by collaboration or by certain bodies having observer status?*

5.2. These questions sit outside HSE's remit as outlined in Section Two; therefore, comment on these matters is not provided in this submission.