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An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**30th Meeting, 2023 (Session 6), Thursday,
23 November**

Scottish Employment Injuries Advisory Council Bill

Introduction

The Scottish Employment Injuries Advisory Council Bill is a Member's Bill, introduced by Mark Griffin MSP, on 8 June 2023.

The Committee will hear from two panels:

Panel 1:

- Lorna Glen, Unite Regional Officer, Unite the Union, Scotland
- Mike Corbett, National Official, NASUWT
- John McKenzie, Regional Secretary (Scotland), Fire Brigades Union
- Norman Provan, RCN Scotland's Associate Director, Employment Relations, Royal College of Nursing
- Linda Somerville, Deputy General Secretary, STUC

Panel 2:

- Michael Marra, MSP and Founder of The Injury Time Campaign, joined by Tony Higgins, President, PFA Scotland.
- Anna Ritchie Allan, Executive Director, Close the Gap
- Professor Andrew Watterson, Occupational and Environmental Health Researcher, University of Stirling
- Ian Tasker, Chief Executive, Scottish Hazards

The Bill

The Bill would create the Scottish Employment Injury Advisory Council with three functions:

- To report on draft regulations for Employment Injuries Assistance (replacing SCoSS's role in this)
- To report to the Parliament and Ministers on any matter relevant to Employment Injuries Assistance
- To carry out, commission or support research into any matter relevant to Employment Injuries Assistance

The Policy Memorandum states that:

“It is the Member’s intention that SEIAC will help to shape the implementation and operation of the EIA scheme due to be introduced in Scotland.”

The Scottish Government opposes the Bill and intends to consult this year on policy for Employment Injuries Assistance, including on whether there needs to be an advisory council. To date, other devolved benefits have transferred to Social Security Scotland with only minor eligibility changes compared to their DWP equivalent, although rules may diverge further in future.

Further detail is available in the [SPICe Bill Briefing](#).

Previous Consideration

On 9 November, the Committee heard about the work of the Industrial Injuries Advisory Council and the Scottish Commission on Social Security.

- The work of **IIAC is resource intensive** for committee members, many of whom are national or international experts in their field. IIAC’s ‘research budget’ (for getting people to help with the work, including writing reports) has recently been increased to £100,000 per year. They have recently commissioned a £50,000 review of respiratory disease and cancer, and a smaller scoping review on women and occupational health.
- UK social security legislation requires that IIAC must base its recommendation on the **reasonable certainty** that particular occupations have a causal link to particular diseases/conditions.
- IIAC would be **keen not to duplicate** the work of a Scottish body.
- **IIAC’s work programme** includes consideration of: long-Covid, Covid, neuro-degenerative disease in sport, women’s occupational health, respiratory disease and cancers – eg cleaners and lung cancer.
- Expertise in social security and industrial injuries are two quite different things. Giving advice on whether to add to the lists of diseases and occupations in industrial injuries benefits would be **beyond the scope and current expertise of SCoSS**.

- Based on previous experience, it's **likely that EIA would be introduced with minimal changes** to the diseases and injuries that confer entitlement. But changes could be made in future, which would require expert advice.

On 16 November the Committee heard from those working and researching occupational health. Key themes included that:

- **Preventative approaches are better** than providing funds once someone is disabled (9.25am) There is a lack of occupational health provision that would create a preventative approach (9.12, 9.31)
- HSE role was described as 'a policeman' (Professor Ewan Macdonald, 9.23),
- "You can do **very little research with £30,000** a year if it involves employing staff, surveying methodology, statistical analysis" (9.28).
- If SEIAC looks at the same issues as IAC, that would be **duplication** of research "and that's wasteful. But if we're going to move to a more proactive approach, then we do need to have the research function." (Professor Ewan Macdonald, 9.36]
- It would **not be desirable for SEIAC to come to different conclusions** than IAC about whether there is a reasonable certainty of a link between particular occupations and particular diseases. (9.57)
- There are **enough experts in Scotland** to advise SEIAC – although they are thin on the ground. "If IAC's done some useful research and come up with good evidence because they've got top scientists then we wouldn't repeat that." (10.07)
- SEIAC needs to include the voice and/or ear of **occupational health** (10.07).

Themes for discussion

In their responses to the Call for Views witnesses for both Panel 1 and 2 made similar arguments in favour of the Bill. In summary:

- SEIAC should be established ahead of EIA in order to influence its design
- SEIAC can ensure that gaps and failings in the design of industrial injuries benefits are remedied
- SEIAC can contribute to the prevention of work-place accident and disease

In addition, trades unions strongly advocate for trades union representation on SEIAC.

The same themes are suggested for both panels.

Theme 1: Membership

SEIAC would advise Scottish Ministers and have between 6 and 12 members, in addition to the Chair. When appointing members, the Minister "must have regard to the desirability of:

- Securing that the council, taken as a whole, has knowledge and experience of:
 - Formulation, implementation and evaluation of employment-injury assistance policies in Scotland and elsewhere in the UK
 - Research in connection with employment related injury or disease
 - Scots law on employment and personal injury
 - Relevant medical practice, including occupational medicine, epidemiology and/or toxicology
 - The effect of disability on daily life, and
 - Disability as a result of employment related injury or disease
- A member with personal experience of disability from employment related injury or disease
- Equal number of representatives of employers and employees

As members heard on 9 November, the council that advises UK ministers, IIAC, has up to 17 members, comprising the Chair and:

- 11 or 12 independent members (scientists, occupational health consultants and legal expertise)
- 2 members representing employers
- 2 members representing employees

Chair of IIAC, Dr Lesley Rushton, told members that: “A lot of our members are nationally and internationally known experts in their own field.” She also commented that:

“We might end up with the same scientists on each of the committees – IIAC and the proposed Committee – because there is a very small group of people in the UK with the necessary expertise.” (SJSS Committee Official Report, 9 November, col 35).

Last week, Members heard Professor Ewan MacDonald’s view that there is adequate expertise in Scotland, although it is “thin on the ground”, and there needs to be more of it, both in occupational health and academia. (10.07). Lucy Kenyon, (iOH, The Association of Occupational Health and Wellbeing Professionals) argued for representation of occupational health on SEIAC.

Submissions from Panel 1:

All witnesses for Panel 1 were clear that trades union representation should form a crucial part of SEIAC. For example, Unite stated in their submission that it is:

“Imperative that worker voices are at the heart of the new council.”(Unite)

NASUWT consider that:

“Workers know their workplaces and the risk to their health best.”

STUC went further saying:

“The STUC are firm that the Advisory Council must have permanent seats reserved for trade union representation with at least 50% being allocated to trade unions.”

The Fire Brigade Union state that on IIAC:

“Scottish trade unionists currently don’t have a seat at the table.”

Submissions from Panel 2:

In Panel 2, Professor Andrew Watterson’s submission states that:

“the size and balance of the SEIAC membership looks about right.”

Ian Tasker considers that:

“a new industrial injury scheme for Scotland should be designed by those with expert knowledge of the industrial injury in our country, representatives from trades unions, employer’s bodies, medical specialists and the legal profession.”

Close the Gap consider that:

“Overall, the size and balance of SEIAC’s membership seems appropriate for delivering its objectives. [...] it is imperative that there is gender balance within the lived experience representation.”

Members may wish to discuss:

- 1. Does the Bill give SEIAC the right balance of scientific expertise and other interests? If not, what changes are needed and why?**
- 2. (for STUC) STUC argue that 50% of seats should be allocated to trade unionists. Can they explain why this should be the case and whether this leaves enough room for other knowledge and experience?**

Theme 2: Timing

Today’s witnesses argue that SEIAC needs to be established before EIA starts so that it can influence the rules for the benefit from the start.

The Scottish Government has, to date, focused on ‘safe and secure transfer’ of social security benefits. This has meant that, at the start, benefits are introduced with minimal change compared to their DWP equivalent. This is despite many stakeholders arguing for change. For example, there have been [calls for many years to change the ‘20 metre rule’ in Personal Independence Payment](#). Its

replacement, Adult Disability Payment was introduced without this change, although this issue will be [considered as part of an independent review](#). Similarly, there have been [calls for many years to increase the earnings threshold in Carer's Allowance](#), but it is being introduced without this change. The Scottish Government has said it will consider making this change in future.

The Scottish Government has not announced a start date for EIA. Full legal and financial responsibility for industrial injuries benefits were devolved in April 2020. The DWP currently delivers them on the Scottish Government's behalf under an agency agreement and will continue to do so until EIA is established and all clients transferred to Social Security Scotland. The current agency agreement runs until end of March 2026. Extending it further would require 12 months' notice to the DWP.

Submissions from Panel 1

Submissions from trades unions were clear that the Scottish Government should not wait to establish SEIAC. For example, Unite argue that:

“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.”

NASUWT state:

“Having an Advisory council in place ahead of the benefit will be essential to fully understand and define the industrial diseases to be awarded benefit. It also provides the time for the Advisory Council to explore and seek to avoid entrenching the inherent inequalities within the existing UK IIDB scheme.”

The “swift establishment of an Advisory Council” will:

“ensure the transition of IIDB results in a modern, fit-for-purpose benefit rather than one which continues to entrench disadvantage and inequality.”

The FBU note that the Scottish Government consultation on EIA: “has been repeatedly delayed.”

Submissions from Panel 2

Similarly to Panel 1, witnesses on Panel 2 support establishing SEIAC through this Bill so that it can influence EIA from the start.

Michael Marra said:

“It is vital that the Advisory Council is established in advance of the Scottish Government legislating for EIA. Failure to do so will see the benefit launch already hamstrung, unable to respond to new and developing claims of industrial injury.”

Professor Andrew Watterson said:

“The Bill is needed before mid-2026 initially to ensure prescribed industrial diseases are agreed and listed prior to the devolution of the industrial injuries disablement benefit.”

Close the Gap consider that:

“The current timing of the Bill [is] important for ensuring the new system is effective and fully considers the gendered dimensions of EIA.”

Ian Tasker addressed the issue of safe and secure transfer, saying:

“No-one would dispute the primary objective of a safe and secure transition of any benefit being devolved but the different 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.”

The Cabinet Secretary [wrote to the Committee on 6 November](#) saying:

“Employment Injuries Assistance must be affordable within the resources transferred from the UK Government; the process for its establishment must provide value for money in light of the complexities noted above; payments to current clients must be protected; and, more broadly, there are limitations to our ability to deliver a fully modernised system of employment protection given the continued reservation of relevant powers, for example, in relation to employment law and health and safety.

The Scottish Government will shortly undertake a public consultation covering all of these matters.”

Members may wish to discuss:

3. The Scottish Government has said they will consult on EIA. **Why not consider the need for an advisory council as part of that consultation?**
4. Under a policy of ‘safe and secure transfer’, benefits have been introduced with minimal change compared to their DWP equivalent. **Should a different approach be taken for EIA? If so, why?**
5. **If the Scottish Government continues its policy of making minimal changes when a benefit first starts, does that delay the need for SEIAC?**
6. The Scottish Government has written to the Committee setting out some of the constraints it faces in reforming industrial injuries benefits. These include: affordability, protecting payments to current clients and that key policy areas

are reserved. **Would establishing SEIAC assist the Scottish Government to address these constraints? If so, how?**

Theme 3: Work Programme for SEIAC

Witnesses have set out their views on where IIDB rules fail to recognise the modern workplace and suggested that SEIAC should consider:

- Long Covid, particularly amongst key workers
- Fire-fighter cancers
- Neuro-degenerative disease in ex-footballers
- Equalities issues in the current types of conditions and occupations listed

The Committee has heard that IAC has or is considering these issues. Dr Lesley Rushton explained that their approach is led by the legislation:

“We answer to the legislation, which says that we have to be reasonably certain that the connection between work and the disease is real. [...] Where we have good human data [...] we look for a high relative risk, such as a doubling of the risk. [...] Up to now, IAC has been very strict in what it does. We are starting to think about ways of getting round the problem when we do not have the data or when we have good data but we are faced with the fact that, while there is a link, it is not sufficient under the legislation.” SJSS Committee, Official Report, 9 November, col 32.

Submissions from Panel 1

Unite state:

“Long covid should be considered a workplace transmissible disease in the first year of the council.”

The STUC consider that SEIAC should have:

“statutory research powers to ensure that the benefit is linked to a driving mission to close the Gender, Disability and Ethnicity pay gaps and that equalities remains at the forefront.”

Although much of the work proposed for SEIAC is already included in IAC’s work programme, the NASUWT comment that:

“IAC process for approving new diseases for IIDB is extremely slow. [...]Any Scottish IAC approach must ensure that the assessment process is expedited.”

The Royal College of Nursing consider that SEIAC has a preventative role:

“it can be more than just an after-the-event “no-fault’ compensation scheme for injury, but to identify and recommend improvements to the system so as to encourage the prevention of and progression on work-related injury.”

Submissions from Panel 2

Similarly to Panel 1, witness submissions from Panel 2 also set out failings of the current approach.

For example, Michael Marra MSP states:

“it is essentially impossible to make a claim that falls outside the current list of accepted injuries and diseases” [...] “it is clear to us that new processes are required to allow new claims.”

Prof Andrew Watterson would like to see SEIAC:

“redress a number of serious and long standing UK IIDB/IIAC limitations and constraints”.

Ian Tasker (Scottish Hazards), states that:

“lessons need to be learned from the inherent inadequacies and inequalities existing in the UK IIDB scheme.”

On research he states that:

“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.”

Close the Gap state that:

“the establishment of SEIAC presents a unique opportunity to create a system that recognises women’s occupational injuries and illnesses and address the systematic gendered inequalities within the current system.”

Close the Gap also comment on research, saying that:

“By being able to Commission its’ own research, the proposed SEIAC is not limited to reviewing existing texts that ignore women’s experiences of occupational injuries and illness, and can take action to address the gaps and under-research in this area”

Last week Professor Ewan MacDonald explained that £30,000 is not a lot of money for research and that if SEIAC looks at the same issues as IIAC, that would be duplication:

“and that’s wasteful. But if we’re going to move to a more proactive approach, then we do need to have the research function.” (09.36)

He considered though, that there are enough experts in Scotland to advise SEIAC – although they are thin on the ground.

“If IAC’s done some useful research and come up with good evidence because they’ve got top scientists then we wouldn’t repeat that. (10.07)

Members may wish to discuss:

7. IAC is already considering issues such as long-Covid, firefighter cancers and women’s occupational health. **What would be the added value of SEIAC considering the same issues?**
8. NASUWT comment on how long it takes IAC to make recommendations. **What would help SEIAC work faster?**
9. Witnesses refer in their submissions to SEIAC having a role in creating a preventative approach to occupational ill-health. **How does this wider role fit with SEIAC’s primary function of advising on eligibility for a social security payment?**
10. The Financial Memorandum estimates a research budget of £30,000 per year. **Do witnesses have any views about what could be achieved for this?**

Camilla Kidner
SPICe,
16 November 2023