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An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**31st Meeting, 2023 (Session 6), Thursday,
30 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:

- Shirley-Anne Somerville, Cabinet Secretary for Social Justice
- Risga Summers, Policy Manager, Scottish Government.

The Bill

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

- To report on draft regulations for Employment Injuries Assistance (replacing SCoSS 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 (EIA)

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 EIA, including on whether there needs to be an advisory council.

Legal and financial responsibility for industrial injuries benefits was devolved in April 2020. Since then, the Department for Work and Pensions (DWP) has continued to deliver these benefits on behalf of the Scottish Government under an agency agreement. The current agency agreement runs until end of March 2026 and would need 12 months’ notice to extend it further.

The Scottish Government plans to introduce its replacement benefit, Employment Injuries Assistance (EIA) to be administered by Social Security Scotland, although no start date has been announced.

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

Previous Consideration

Some key themes in oral evidence so far are summarised below.

Comparison with IIAC

- The work of **IIAC is resource intensive** for its members, many of whom are national or international experts in their field. (Dr Lesley Rushton, IIAC, 9th November)
- Witnesses on 23rd November said **IIAC takes too long** to make recommendations, and those recommendations take too long to be acted upon.
- Lucy Kenyon (Institute of Occupational Health, 16th November) queried the **purpose of SEIAC** asking: “do you need an equivalent of IIAC or do you want something else?”

Standard of proof

- 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 normally looks for double the risk. (Dr Lesley Rushton, 9th November).
- It would **not be desirable for SEIAC to come to a different conclusion** than IIAC about whether there is a reasonable certainty of a link between particular occupations and particular diseases. (Professor Ewan Macdonald, 16th November)
- Witnesses on 23rd November thought that reasonable certainty **shouldn’t require showing double the risk**, but just ‘more likely than not’. That would speed things up.

Membership

- Witnesses on 23rd November favoured a council that had **greater emphasis on worker voice** and lived experience than IAC has, while still including the academic and scientific community.
- Trades unions favour **trades union** representation. Those working in **occupational health** feel their profession should be represented. Close the Gap said it's important to have **gender balance** and all witnesses on 16th and 23rd November emphasised the importance of **lived experience**.
- In relation to scientific expertise, Professor Ewan Macdonald (16th November) thought there are **enough experts in Scotland** to advise SEIAC – although they are thin on the ground.

Duplication/Added Value

- IAC would be **keen not to duplicate** the work of a Scottish body (Dr Lesley Rushton, 9th November)
- “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.” (Professor Ewan Macdonald, 16th November)
- SEIAC is “**an opportunity to move on from IAC**” and is “ideally placed to **complement** what IAC does” in terms of finding out why we have these failings in silica, women’s health etc (Professor Andrew Watterson, 23 November)
- Witnesses on 16th and 23rd suggested that SEIAC could have a **preventative role**, which Lucy Kenyon (16 November) described as preferable to paying a benefit once someone is injured.

Timing

- Underpinning witnesses’ support for SEIAC was the desire to reform industrial injuries benefits.
- Witnesses on 16th and 23rd November favoured **early establishment of SEIAC**. For example: “Implementing SEIAC now, isn’t a case of putting the cart before the horse it’s quite the opposite. Having SEIAC in place in order to reform the benefits so we end up with a benefit that’s fit for purpose.” (John McKenzie, FBU, 23rd November)
- Ian Tasker suggested that SEIAC should be set up early, so it could recommend reforms – for example, it could consider what the standard of proof should be. He pointed out that the first expert group on devolution of IIDB was set up in 2016. “We have to move with some speed.”

Research function

- IAC’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. (Dr Lesley Rushton, 9th November)
- Many witnesses said the £30,000 **research budget for SEIAC was too low**.
- Linda Somerville (STUC) suggested that a wider council membership would mean that lot of the scientific and academic work could come from commissioning research (23rd November). In comparison, SEIAC’s members do a lot of the research themselves.

- IIAC and occupational health workers referred to a **lack of studies and lack of early detection in occupational health**. Witnesses on 23rd November said that **research existed**, it just wasn't being used. Eg. Professor Andrew Watterson said there was a lot of science out there that hasn't been acted upon.
- Those arguing for a more proactive role for SEIAC emphasised the importance of research. Professor Ewan Macdonald (16th November) said that if SEIAC looks at the same issues as IIAC, 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."

Scottish Government Position

The Scottish Government's position appears to be much the same as it was in 2019, when a series of policy position papers set out the broad approach to social security devolution. The [policy position paper on EIA](#) said:

"In advance of transferring the scheme the Scottish Government **will have to decide whether, and how, to provide a Scottish equivalent of IIAC**. Securing the necessary expertise could be challenging. In the UK as a whole there are relatively few research active scientists, professors and academic departments in occupational health, and numbers have trended downwards over time. There are similar recruitment shortages in occupational hygiene, occupational toxicology and ergonomics. 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.**" (Scottish Government, 2019)

In a [memorandum to the Committee on 11 September 2023](#), the Scottish Government argued that:

- If changes were introduced for new claimants of EIA while some Scottish clients were still receiving IIDB under the old rules then that would "introduce **inequity** in the system."
- "Devoting financial resource to legislate for a statutory advisory body would not be an appropriate use of the resources available to use when we are still some **years away from delivering EIA.**"
- A public **consultation is due 'this year'** which will consider eligibility for EIA as well as the issue of an advisory body. "It would be more appropriate to consider these issues in the round, rather than in isolation."

Similar points were made in their [letter dated 6 November](#):

- "Protecting **continuity of payments** is our first priority"
- Current clients are largely satisfied with the scheme, but the Scottish Government **recognises calls for reform**

- **Constraints to reform** include; affordability, protecting client’s payments and that relevant powers are reserved – eg employment law and health and safety.
- “The Scottish Government will shortly undertake a public **consultation**”

Themes for discussion

Theme 1: Advice to Ministers

The UK Government is advised by the Industrial Injuries Advisory Council (IIAC), but the Scotland Act 2016 prevents them advising Scottish Ministers.

In the Policy Memorandum the member considers alternative options including the Scottish Commission on Social Security, IIAC or a non-statutory advisory group.

Scottish Commission on Social Security

If this Bill does not pass, SCoSS will retain its existing remit for scrutinising draft regulations on Employment Injuries Assistance. While SCoSS has expertise in social security matters, it does not have the expertise to advise on whether certain conditions and injury are linked to particular occupations.

[The 2022 independent review of SCoSS](#) stated that:

“it could not take on a wider role in relation to advice on the industrial injuries scheme, such as whether prescribed diseases for which benefit can be paid should be added to or amended. As far as we are aware no such role is envisaged for SCoSS, and it appears very clear that it would not be appropriate.”

On 9 November, Dr Mark Simpson, acting co-chair of SCoSS noted that expertise in social security and expertise in industrial injuries are quite different things. He explained that the reactive scrutiny of social security regulations is in their remit but:

“if that role were to be widened to incorporate additional areas of responsibility in the future the membership would have to be widened accordingly, or we would need to make more use of sub-committees.” (OR 9 November, col 36)

Industrial Injuries Advisory Council

The Policy Memorandum to the SEIAC Bill noted that the Scotland Act would need to be amended before IIAC could provide advice directly to Scottish Ministers. It also comments that:

“the UK-wide remit of the IIAC may mean that it lacks the resource, time and necessary expertise to carry out the functions envisaged for the SEIAC in Scotland, particularly if the nature of devolved benefits diverge from rest of UK equivalents over time. Additionally, it would lack the research power that this Bill confers on the SEIAC.”

On 9 November, Dr Lesley Rushton said that detailed minutes and all their reports are publicly available. She also described how members do their own research, although they have received £100,000 budget to assist with this. They also commission literature reviews via the DWP.

The [Disability and Carer Benefits Advisory Group \(DACBEAG\) made two recommendations in December 2022](#), which the Scottish Government has said it will respond to in the forthcoming consultation.

- Recommendation 15: the Scottish Government should continue to explore short term arrangements that would enable Employment Injury Assistance to be **updated in line with the advice of the IIAC, for as long as Industrial Injuries Disablement Benefit remains a comparable benefit.**
- Recommendation 16: longer term arrangements should be designed to reflect the longer-term direction of Employment Injury Assistance and the Scheme in Scotland.

Last week, witnesses criticised the length of time it takes IIAC to investigate issues and make recommendations, suggesting that the need to show ‘double the risk’ was too high a bar.

Non-statutory advisory group

The policy memorandum argues that:

“any non-statutory council would lack the permanence of a statutory council. Furthermore, there would be no formal requirement for the Scottish Ministers to consult it when making regulations, and there would be a lack of clarity as to the role of the body.”

The Scottish Government has used advisory groups in the past. An [Industrial Injuries Disablement Benefit advisory group](#) was active between May 2016 and December 2017. In 2017, in response to their consultation on ‘[a new future for social security](#)’, the Scottish Government said that its Industrial Injuries Advisory Group would:

“look carefully at the responses to the consultation, and will consider opportunities for engaging with the Experience Panels and others with direct experience as we develop our support for people affected by industrial injuries and ill health.”

In October 2021 the then [Minister wrote to the Committee](#) giving the Scottish Government’s view on the Bill. This stated that:

“The Scottish Government also intends to re-establish a stakeholder advisory group on industrial injuries ahead of the planned consultation.

The [Disability and Carer Expert Advisory Group](#) was active between 2017 and February 2023. As mentioned above, it provided advice on EIA in [2022](#). It also provided advice on independent scrutiny – covering both SCoSS and IIAC in 2017.

Members may wish to discuss:

1. **What kinds of knowledge and expertise are necessary to advise Ministers on social security for industrial disease and injury?**
2. **Previous witnesses have discussed the need for scientific advice and the importance of ‘lived experience’ and ‘worker voice’. Do these different types of knowledge require different structures for engagement in government policy development?**
3. **What policy options are being considered for getting advice on industrial injuries benefits? Does the Scottish Government have a preferred option?**
4. **Is the Scottish Government still planning to re-establish a stakeholder advisory group on industrial injuries as mentioned in the letter to the Committee in October 2021?**

Theme 2: Timescale for EIA

The member, and many of those responding to the call for views, have emphasised the importance of creating SEIAC before EIA is introduced, so that it can influence it from the start.

The Scottish Government argues that establishing an advisory body should be considered as part of the planned consultation on EIA.

“The Scottish Government has committed to undertake a public consultation on its approach to replacing IIS in Scotland, to take place this year, in which the issue of a statutory advisory body would be considered alongside other fundamental questions related to the scheme. Due to complexity and range of views on the scheme, it would be more appropriate to consider these issues in the round, rather than in isolation.” ([Memorandum, September 2023](#))

No date for consultation

On 7th February this year, the then Minister for Social Security and Local Government, Ben Macpherson told the Scottish Parliament that:

“I intend to consult on the subject of employment injuries assistance and on the replacement of the current UK Government industrial injuries disablement benefit in the next few months” ([Chamber Official Report 7 February 2023](#))

In the memorandum to this Committee dated 11th September the Scottish Government said that the consultation was due ‘this year’. On [14th September](#), the

Cabinet Secretary for Social Justice, Shirley-Anne Somerville MSP, told this Committee that: “I am unable to provide the committee with a date when any consultation would go live.” A further letter to the Committee on [6th November](#) said the Scottish Government would consult shortly on EIA.

In a BBC News report on 22nd November a Scottish Government spokesperson said they intend to consult: “in the next few months.”

Time between consultation and launch

Many stakeholders have suggested that SEIAC should advise on changes that could be made to EIA before it starts. To do so, SEIAC would need to be established far enough in advance to investigate potential changes and make recommendations.

The Financial Memorandum suggests that SEIAC might be established in 2025-26. The Scottish Government hasn't said when EIA will start. The current agency agreement runs out in March 2026. These can be extended, but *if* EIA were to be introduced in March 2026, that would not be long after the member proposes that SEIAC is established. However, as mentioned, the September memorandum to the Committee referred to still being “some years away” from introducing EIA.

Timing example Carer Support Payment (CSP)

There will be a ‘lead-in’ time from consultation to launch of a new benefit, and then for case transfer of existing clients from DWP to Social Security Scotland.

For comparison, Carer Support Payment was introduced with some relatively minor changes to replace Carer's Allowance. It will have taken around three years from public consultation in Spring 2022 to the planned completion of case transfer in March 2025.

- February to May 2022: [Public consultation](#) on Carer Support Payment
- 3 March 2023 Draft regulations provided to [Scottish Commission on Social Security](#) (SCOSS)
- 8 June 2023 SCoSS reports
- 4 September 2023 Scottish Government replies and draft regulations laid
- 30 November 2023 pilot starts in three local authority areas
- From [spring 2024 additional local authority areas phased in, with full roll-out across Scotland for new claims by autumn 2024](#).
- March 2025 [Completion of transfer of current clients](#) from DWP to Social Security Scotland

This suggests that even minimal change would require a substantial ‘lead-in’ time.

Carer Support Payment is not Employment Injuries Assistance, and there will be different issues that need to be addressed in creating it. Not least that investigating and reporting on potential reforms would take time.

Members may wish to discuss:

- 5. What is the Scottish Government’s view on setting up SEIAC well in advance so that potential changes are ready for implementation once Ministers are ready to proceed?**
- 6. Is the Scottish Government still planning to publish its consultation on EIA this year?**
- 7. How much ‘lead-in’ time is the Scottish Government planning between consultation and introduction of EIA? What is the current thinking on when it will be able to introduce EIA?**

Theme 3: Safe and secure transfer

The Scottish Government’s 2019 [policy position paper](#) set out that

“Our primary objective in transferring the benefits is safe and secure transition.”

The Scottish Government has argued that having different rules in place for current recipients compared to new clients would create ‘inequity’. In their [memorandum dated September 2023 they argue that implementing changes](#)

“while IIDB clients’ awards are still being delivered by the DWP risks introducing inequity in the system.”

Elsewhere, the Scottish Government has emphasised how complex case transfer will be. For example in the letter to Committee of 6th November the Cabinet Secretary said:

“The Committee will no doubt be aware of the particular complexities of the Scheme, which was introduced in 1948 and is delivered almost entirely using paper-based systems; around 150,000 files for Scottish clients are currently held in warehouses.”

[...]

“the process for its establishment must provide value for money in light of the complexities noted above.”

The argument appears to be that it would be inequitable to introduce changes before case transfer is complete, and case transfer is particularly complex for this benefit.

For other benefits, prioritisation of ‘safe and secure transfer’ has meant minimal change to the legal rules when a ‘Scottish version’ of a DWP benefit first starts. In his submission to this Committee, Ian Tasker (Scottish Hazards) argued that safe and secure transfer considerations were different for IIDB compared to other benefits. He said:

“No one would dispute the primary objective of a safe and secure transition of any benefit 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.”

Whether or not changes might be made prior to completion of case transfer impacts on the timing for setting up an advisory body.

Members may wish to discuss:

- 8. This Committee has heard significant criticisms of IIDB. For example, Ian Tasker has described it as ‘no longer fit for purpose’. Given these criticisms is it still an option to introduce EIA in a largely ‘unreformed’ state?**
- 9. Is the Scottish Government ruling out substantial changes until after case transfer? Can the Cabinet Secretary expand on the particular complexities of case transfer for this benefit, and how this affects how long it might take?**

Theme 4: Financial memorandum

The Scottish Government has argued that creating SEIAC would not be a “good use of resources” as we are “some years away from introducing EIA”. (Memorandum, September 2023).

The [Financial Memorandum](#) estimates implementation costs of £149,000 and running costs of £372,500. These are not large in comparison to forecast spend of around £84 million on IIDB this year falling to £81 million by 2027-28 ([Scottish Fiscal Commission, May 2023 forecasts](#)).

If SEIAC were established ahead of introduction of EIA, it might consider potential for future reform. If those reforms expanded eligibility and *if* Scottish Ministers chose to implement them, then benefit spend may increase.

Members may wish to discuss:

- 10. The proposed running costs of SEIAC would be less than 1% of benefit spend on EIA. Why does the Cabinet Secretary consider that this would not be a good use of resources?**

Camilla Kidner
SPICe,
23 November 2023