

Scottish Employment Injuries Advisory Council Bill

[AS INTRODUCED]

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Scottish Employment Injuries Advisory Council Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to create a Scottish Employment Injuries Advisory Council, to provide for its functions in relation to employment-injury assistance, and for connected purposes.

1 Scottish Employment Injuries Advisory Council

- (1) The Scottish Employment Injuries Advisory Council is established.
- (2) The Council is a body corporate.
- (3) Schedule 1 makes further provision about the Council.

2 Council functions

- (1) The Scottish Employment Injuries Advisory Council has the following functions—
 - (a) to scrutinise legislative proposals in accordance with section 3,
 - (b) to prepare and submit to the Scottish Ministers a report on any matter, relevant to employment-injury assistance—
 - (i) that the Scottish Ministers request the Council to report on,
 - (ii) in respect of any research carried out, commissioned or supported by the Council under subsection (1)(d), or
 - (iii) that the Council considers appropriate,
 - (c) to prepare and submit to the Scottish Parliament a report on any matter, relevant to employment-injury assistance—
 - (i) that the Scottish Parliament, having resolved to do so, requests the Council to report on,
 - (ii) in respect of any research carried out, commissioned or supported by the Council under subsection (1)(d), or
 - (iii) that the Council considers appropriate,

(d) to carry out, commission or support research into any matter, relevant to employment-injury assistance, the Council considers appropriate, which may include (but not be limited to) research into—

(i) existing or emerging employment hazards which may result in disease or personal injury, or

(ii) the scope and extent of employment-injury assistance,

(e) any functions conferred on the Council by regulations made under subsection (5).

(2) In performing any of the functions mentioned in subsection (1), the Council may have regard to any relevant international human rights instrument.

(3) The Council must make publicly available by such means as it considers appropriate any report that it prepares in pursuance of a function mentioned in subsection (1) within one month of submission of the report to the Scottish Ministers or the Scottish Parliament.

(4) In publishing a document under this section or section 3, the Council must have regard to the importance of communicating in an inclusive way.

(5) The Scottish Ministers may confer additional functions on the Council by regulations.

3 Further procedure for regulations concerning employment-injury assistance

(1) This section applies (subject to subsection (12)) in relation to regulations under section 33(2) of the 2018 Act.

(2) Where the Scottish Ministers propose to make regulations to which this section applies, they must (before laying a draft Scottish statutory instrument containing such regulations before the Scottish Parliament for approval by resolution)—

(a) notify the Scottish Employment Injuries Advisory Council of the date on which they will inform the Council of proposals under paragraph (b) below,

(b) inform the Council of their proposals,

(c) notify the Scottish Parliament that they have done so, and

(d) make their proposals publicly available by such means as the Scottish Ministers consider appropriate.

(3) For the purposes of subsection (2)—

(a) notification under paragraph (a) must take place not less than one month prior to the date on which the Ministers inform the Council of their proposals under paragraph (b), unless subsection (9) applies, and

(b) proposals must take the form of draft regulations.

(4) Having been informed of the Scottish Ministers' proposals, the Council must prepare a report setting out its observations and recommendations in relation to the proposals.

(5) In preparing its report, the Council—

(a) must have regard to—

(i) the Scottish social security principles, and

(ii) any relevant international human rights instrument,

- (b) must consult—
- (i) former or current employed earners with experience of being exposed to the risk of suffering an injury or contracting a disease in the course of employment, and
 - (ii) the representatives of such former or current employed earners including, where they exist, trade unions and relevant charities,
- and
- (c) may consult any other persons it considers appropriate.
- (6) If the Council's members are unable to agree the terms of its report unanimously, the report must set out the matters in respect of which members differ.
- (7) Having prepared its report, the Council must—
- (a) submit a copy of the report to—
 - (i) the Scottish Ministers, and
 - (ii) the Scottish Parliament, and
 - (b) make the report publicly available by such means as the Council considers appropriate in accordance with section 2(3).
- (8) The Scottish Ministers must not lay before the Scottish Parliament for approval by resolution a draft Scottish statutory instrument containing regulations to which this section applies before the date which is the earlier of—
- (a) the date on which it receives the report of the Council prepared under subsection (4), or
 - (b) the date 3 months from the date on which the Scottish Ministers informed the Council of their proposals under subsection (2)(b).
- (9) Subsections (3) and (8) do not apply where the Scottish Ministers consider that for reasons of urgency they require to lay before the Scottish Parliament for approval by resolution a draft Scottish statutory instrument containing regulations to which this section applies prior to the earlier of the dates referred to in subsection (8).
- (10) When laying before the Scottish Parliament for approval by resolution a draft Scottish statutory instrument containing regulations to which this section applies, the Scottish Ministers must also lay before the Scottish Parliament either—
- (a) a response to the Council's report on the proposals for the regulations, or
 - (b) a statement explaining where the Scottish Ministers have invoked subsection (9), the reasons why they consider subsection (9) applicable and in particular, the reasons why they consider there is urgency.
- (11) The response mentioned in subsection (10)(a) must, in particular, explain—
- (a) how (if at all) the regulations differ from the proposals,
 - (b) how the Scottish Ministers have sought to address the Council's report, and
 - (c) any recommendations contained in the report that the Scottish Ministers do not accept.
- (12) This section does not apply in relation to regulations made only for the purpose of the consolidation of earlier regulations.

4 Regulation-making powers

- (1) A power to make regulations conferred by this Act includes the power to make different provision for different purposes.
- (2) The following regulations are subject to the affirmative procedure:
 - (a) regulations made under section 2(5),
 - (b) regulations made under paragraph 4(2)(i) of schedule 1, and
 - (c) regulations made under paragraph 13(2) of schedule 1.
- (3) Regulations under section 2(5) may not be made after the Council is established unless the Scottish Ministers have consulted the Council about the modification.
- (4) Regulations under section 7(1)—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act), but
 - (b) otherwise are subject to the negative procedure.
- (5) Regulations under this Act which do not fall within the scope of subsections (2), (3) or (4)(a) are subject to the negative procedure.

5 Power to work with others

The Scottish Employment Injuries Advisory Council may, in the exercise of its functions, work jointly with, assist or consult—

- (a) the Scottish Parliament,
- (b) the Scottish Ministers,
- (c) the Scottish Commission on Social Security,
- (d) a Health Board or Special Health Board, constituted under section 2 of the National Health Service (Scotland) Act 1978,
- (e) such other persons as the Council considers appropriate.

6 Amendments to the 2018 Act

Schedule 2 makes certain amendments to the 2018 Act concerning the effect on the functions of the Scottish Commission on Social Security of the establishment of the Scottish Employment Injuries Advisory Council.

7 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under subsection (1) may modify any enactment (including this Act) but may not remove functions conferred on the Scottish Employment Injuries Advisory Council by this Act.

8 Application of public authorities legislation

Schedule 3 amends other Acts so that their provisions apply to the Scottish Employment Injuries Advisory Council.

9 Interpretation

In this Act -

“the 2018 Act” means the Social Security (Scotland) Act 2018,

“communicating in an inclusive way” means communicating in a way that ensures that individuals who have difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet their needs,

“employed earner” has the meaning given to it by section 2(1)(a) of the Social Security Contributions and Benefits Act 1992,

“employment-injury assistance” has the meaning given to it by section 33(1) of the 2018 Act,

“international human rights instrument”—

(a) means any international convention, treaty or other international instrument ratified by the United Kingdom, subject to—

(i) any amendments in force in relation to the United Kingdom for the time being, and

(ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force, and

(b) includes, in particular, the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966,

“member of the Scottish Government” has the same meaning as in section 44(1) of the Scotland Act 1998,

“Scottish social security principles” means the Scottish social security principles as set out in section 1 of the 2018 Act,

“Trade union” has the meaning given to it by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

10 Commencement

The provisions of this Act come into force at the end of the period of 6 months beginning with the day of Royal Assent.

11 Short title

The short title of this Act is the Scottish Employment Injuries Advisory Council Act 2023.

SCHEDULE 1
(introduced by section 1(3))

OPERATION AND COMPOSITION OF THE SCOTTISH EMPLOYMENT INJURIES ADVISORY COUNCIL

PART 1

STATUS

Independence

- 1 (1) In performing its functions, the Scottish Employment Injuries Advisory Council is not subject to the direction or control of any member of the Scottish Government.
- (2) This paragraph is subject to any contrary provision in this or any other enactment.

Exclusion of Crown status

- 2 The Council—
- (a) is not a servant or agent of the Crown, and
- (b) does not enjoy any status, immunity or privilege of the Crown.

PART 2

POWERS

General powers

- 3 The Council may do anything which appears to it—
- (a) to be necessary or expedient for the purposes of, or in connection with, the performance of its functions, or
- (b) to be otherwise conducive to the performance of its functions.

Access to information

- 4 (1) The Council—
- (a) has a right of access at reasonable times to any relevant information that it may reasonably require for the purpose of performing its functions, and
- (b) may require any person who holds or is accountable for relevant information to provide at reasonable times any assistance or explanation that the Council may reasonably require for the purpose of—
- (i) performing its functions, or
- (ii) exercising the right conferred by sub-paragraph (1)(a).
- (2) In sub-paragraph (1), "relevant information" means information in the possession or under the control of—
- (a) any member of the Scottish Government,
- (b) a local authority,

- (c) a university in Scotland,
- (d) a college of further education within the meaning of section 36 of the Further and Higher Education (Scotland) Act 1992,
- 5 (e) an institution designated by order under section 44 of the Further and Higher Education (Scotland) Act 1992,
- (f) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978,
- (g) the Scottish Fire and Rescue Service constituted under section 1A of the Fire
10 (Scotland) Act 2005,
- (h) any Scottish public authority within the meaning of section 3(1) of the Freedom of Information (Scotland) Act 2002, insofar as is not already included within the provisions of sub-paragraph (2)(a) to (g), or
- (i) any person, or person of such description, as is specified by the Scottish Ministers in regulations.
- 15 (3) Sub-paragraph (1) is subject to any enactment or rule of law that prohibits or restricts—
 - (a) the disclosure of any information, or
 - (b) the giving of any assistance or explanation.

PART 3

PROCEDURE

20 *Committees*

- 5 (1) The Council may establish committees and sub-committees.
- (2) The membership of the Council's committees and sub-committees may include (but may not consist entirely of) persons who are not members of the Council but those persons are not entitled to vote.

25 *Regulation of procedure*

- 6 (1) The Council may regulate its own procedure (including quorum) and that of its committees and sub-committees.
- (2) The Council must hold at least one meeting of the Council each calendar year that is open to members of the public.

30 *Authority to perform functions*

- 7 (1) The Council may authorise—
 - (a) any of its members, or
 - (b) any of its committees or sub-committees,to perform such of its functions (and to such extent) as it may determine.

- (2) The giving of authority under sub-paragraph (1) does not—
- (a) affect the Council's responsibility for the performance of the function, or
 - (b) prevent the Council from performing the function itself.

Validity of things done

- 5 8 The validity of anything done by the Council, its committees or sub-committees is not affected by—
- (a) a vacancy in its membership,
 - (b) a defect in the appointment of a member,
 - (c) the disqualification of a person as a member after appointment.

10

PART 4

FINANCE

Remuneration and expenses of members

- 9 (1) The Council's members are entitled to be paid by the Scottish Ministers such—
- (a) remuneration, and
 - 15 (b) sums in respect of expenses incurred in performing their functions as members of the Council,
- as the Scottish Ministers determine.
- (2) In sub-paragraph (1)—
- 20 (a) the reference to the Council's members includes a person who is not a member of the Council but is a member of one of the Council's committees or sub-committees, and
 - (b) the reference to performing functions as a member of the Council, in the case of a person described in paragraph (a), is to be read as though it were a reference to performing the person's functions as a member of the committee or (as the case may be) sub-committee.
- 25

Expenses of non-members

- 10 (1) A person who attends a meeting of the Council, whether in person or otherwise, at its request is entitled to be paid by the Scottish Ministers such travelling and other allowances (including compensation for loss of time) and fees as the Scottish Ministers determine.
- 30
- (2) In sub-paragraph (1) the reference to the Council includes any of its committees or sub-committees.

Resources

- 11 The Scottish Ministers are to provide the Council with such staff and other resources as it requires to carry out its functions.
- 35

Accounts and audit

- 12 (1) The Council must—
- (a) keep proper accounts and accounting records,
 - (b) prepare in respect of each financial year a statement of accounts, and
 - 5 (c) send a copy of the statement to the Auditor General for Scotland for auditing.
- (2) The Council must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1)(a) and (b).

PART 5

MEMBERSHIP

10 *Number of members*

- 13 (1) The Council is to consist of—
- (a) a member to chair the Council, and
 - (b) at least 6 but no more than 12 other members.
- 15 (2) The Scottish Ministers may by regulations amend sub-paragraph (1)(b) by substituting a different number for any number for the time being specified there, subject to the minimum number of members under sub-paragraph (1)(b) being no less than 6.

Appointment of members

- 14 (1) The Scottish Ministers are to appoint the Council's members.
- 20 (2) The Scottish Ministers must appoint the Council's initial members no later than 6 months from the date of commencement of this Act.
- (3) The Scottish Ministers must consult the Council in relation to the appointment of a member prior to any such appointment, except in respect of the appointment of the Council's initial membership under sub-paragraph (2).
- 25 (4) The Scottish Ministers may not appoint a person who is disqualified from being a member (see paragraph 17).
- (5) When appointing members the Scottish Ministers must have regard to the desirability of—
- (a) securing that the Council (taken as a whole) has experience in or knowledge of—
- 30 (i) the formulation, implementation and evaluation of employment-injury assistance policies in Scotland and elsewhere in the United Kingdom,
 - (ii) research in connection with injuries or diseases suffered or contracted in the course of employment,
 - (iii) Scots law in respect of employment and personal injury,
 - 35 (iv) relevant medical practice, including occupational medicine, epidemiology and/or toxicology,

- (v) the effect of disability, arising from a physical or mental impairment, on daily life, and
- (vi) disability as a result of injuries suffered or diseases contracted in the course of employment,
- 5 (b) having a member with personal experience of having a disability arising from or as a result of injuries suffered or disease contracted in the course of employment,
- (c) having as members persons who represent employers and employed earners,
- (d) having as members people who have not previously been members.
- 10 (6) The members other than the chair must include an equal number of persons appointed by the Scottish Ministers, after consultation with such organisations as they think fit, to represent employers and employed earners respectively.

Tenure and other terms and conditions

- 15 (1) A person's membership of the Council continues until the end of the period of appointment (subject to paragraph 16(1) and (2)).
- 15 (2) In sub-paragraph (1), "the period of appointment" means the period of 3 years, beginning with the day that the appointment takes effect.
- (3) Nothing in this paragraph prevents a person from being a member of the Council for two or more consecutive periods of appointment.
- 20 (4) The Scottish Ministers may determine other terms and conditions of membership, in relation to matters not covered by this schedule, in consultation with the Council.

Early termination

- 16 (1) A member of the Council may resign by giving notice in writing to the Scottish Ministers.
- (2) A person's membership of the Council ends if—
 - 25 (a) the person resigns under sub-paragraph (1) with effect from 28 days of the date the resignation was intimated to the Scottish Ministers,
 - (b) the person becomes disqualified from being a member (see paragraph 17) with effect from the date of disqualification, or
 - (c) the Scottish Ministers give the person written notice that the person is removed from the Council with effect from the date of the notice.
- 30 (3) The Scottish Ministers may remove a member of the Council by virtue of sub-paragraph (2)(c) only if they consider that the member is—
 - (a) unfit to continue to be a member, or
 - (b) unable to perform the member's functions.

Disqualification grounds

- 35 17 (1) A person is disqualified from being a member of the Council if sub-paragraph (2) or (3) applies to the person.

- (2) This sub-paragraph applies to a person who is—
- (a) a member of the—
 - (i) Scottish Parliament,
 - (ii) House of Commons,
 - 5 (iii) House of Lords,
 - (iv) Senedd Cymru, or
 - (v) Northern Ireland Assembly,
 - (b) a councillor of any local authority,
 - (c) a member of the Scottish Government,
 - 10 (d) a Minister of the Crown,
 - (e) an office-holder of the Crown in right of His Majesty's Government in the United Kingdom,
 - (f) an office-holder in the Scottish Administration,
 - (g) a civil servant,
 - 15 (h) one of the members of the Scottish Tribunals, as defined in section 13(3) of the Tribunals (Scotland) Act 2014,
 - (i) a judge, or other member, of the Upper Tribunal or First-tier Tribunal established by section 3 of the Tribunals, Courts and Enforcement Act 2007, or
 - (j) a judge of the Court of Session.
- (3) This sub-paragraph applies to a person (subject to sub-paragraph (4)) who is or has been—
- (a) disqualified as a company director under the Company Directors Disqualification Act 1986,
 - 25 (b) disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005, or
 - (c) the subject of a disqualification under a disqualification provision analogous to either of those mentioned in paragraph (a) or (b) anywhere in the world.
- (4) Sub-paragraph (3) does not apply to a person who is or has been disqualified as mentioned in that sub-paragraph only by—
- 30 (a) section 11 of the Company Directors Disqualification Act 1986 (undischarged bankrupts),
 - (b) section 69(2)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (which disqualifies undischarged bankrupts from being charity trustees), or
 - 35 (c) a provision analogous to either of those mentioned in paragraph (a) or (b) anywhere in the world.

SCHEDULE 2
(introduced by section 6)

AMENDMENTS TO EXISTING ENACTMENTS

Social Security (Scotland) Act 2018

- 5 1 (1) In the Social Security (Scotland) Act 2018, after section 22(2), insert—
- “(2A) In respect of the functions mentioned in subsection (1)(a) to (c) and (e), the Commission's functions are not to be taken to include—
- (a) scrutinising legislative proposals concerning, or
- (b) preparing and submitting reports to the Scottish Ministers and/or Scottish Parliament concerning
- employment-injury assistance given by the Scottish Ministers in terms of section 33.”.
- 10
- (2) In the Social Security (Scotland) Act 2018, in section 97(1)(a) between "Part 2" and ", and", insert—
- 15 “except section 33”.

SCHEDULE 3
(introduced by section 8)

APPLICATION OF LEGISLATION RELATING TO PUBLIC BODIES

Ethical Standards in Public Life etc. (Scotland) Act 2000

- 20 1 In schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, after the entry relating to the Scottish Criminal Cases Review Commission insert—
- “The Scottish Employment Injuries Advisory Council”.

Freedom of Information (Scotland) Act 2002

- 25 2 In schedule 1 of the Freedom of Information (Scotland) Act 2002, after paragraph 83 insert—
- “83A The Scottish Employment Injuries Advisory Council.”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

- 3 3 In schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003, under the heading "Other Public Bodies", in the appropriate place alphabetically, insert—
- 30 “Scottish Employment Injuries Advisory Council”.

Public Services Reform (Scotland) Act 2010

- 4 4 In schedule 5 of the Public Services Reform (Scotland) Act 2010, after the entry relating to the Scottish Crop Research Institute insert—

“The Scottish Employment Injuries Advisory Council”.

Gender Representation on Public Boards (Scotland) Act 2018

5 In schedule 1, paragraph 1 of the Gender Representation on Public Boards (Scotland) Act 2018, after the entry relating to the Scottish Criminal Cases Review Commission insert—

“Scottish Employment Injuries Advisory Council”.

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[AS INTRODUCED]

An Act of the Scottish Parliament to create a Scottish Employment Injuries Advisory Council, to provide for its functions in relation to employment-injury assistance, and for connected purposes.

Introduced by: Mark Griffin
On: 8 June 2023
Bill type: Member's Bill

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