

# Scottish Employment Injuries Advisory Council Bill

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## Policy Memorandum

### Introduction

1. As required under Rule 9.3.3A of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Scottish Employment Injuries Advisory Council Bill introduced in the Scottish Parliament on 8 June 2023.
2. The following other accompanying documents are published separately:
  - statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 30–LC);
  - a Financial Memorandum (SP Bill 30–FM);
  - Explanatory Notes (SP Bill 30–EN);
  - a Delegated Powers Memorandum (SP Bill 30–DPM).
3. This Policy Memorandum has been prepared by the Parliament's Non-Government Bills Unit on behalf of Mark Griffin MSP, the Member who introduced the Bill, to set out the policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### Policy objectives of the Bill

4. The Bill's policy objectives are to:
  - establish a statutory Scottish Employment Injuries Advisory Council ("SEIAC") as an independent advisory non-departmental public body;
  - give the SEIAC functions to:
    - scrutinise legislative proposals relating to employment injuries assistance ("EIA");
    - investigate and review emerging employment hazards which result in disease or injury;

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- commission its own research in order to make recommendations for ongoing evolution of EIA;
- continually advise and recommend changes to EIA;
- mandate the membership and membership balance of SEIAC, including the representation of workers and their trade union representatives on SEIAC;
- ensure SEIAC has the independence that it requires to enable it to carry out its functions.

5. The SEIAC will play a similar role (with the addition of a research function), in Scotland, to that carried out by the Industrial Injuries Advisory Council (“IIAC”) for the rest of the UK. Prior to the devolution of the system of benefits in relation to employment injuries, the IIAC’s role would have covered Scotland.

6. The functions of the IIAC are to:

- make recommendations to update the list of diseases and the occupations that cause them for which Industrial Injuries Disablement Benefit can be paid,
- draft papers for the Secretary of State for Work and Pensions to present in Parliament, where legislative changes to the Industrial Injuries Scheme are proposed, and
- scrutinise proposed regulations relating to industrial injuries benefit or its administration.

7. The functions and expertise of the SEIAC will compliment and in the case of legislative scrutiny and reporting replace the role of the Scottish Commission for Social Security under the Social Security (Scotland) Act 2018 in relation to EIA.

## Background and current practice

### Transfer of social security powers to the Scottish Parliament

#### Background

8. Following the transfer of new social security powers to the Scottish Parliament under the Scotland Act 2016<sup>1</sup>, the Scottish Ministers have the power to develop new policies on benefits that will help tackle inequality and poverty in Scotland. This includes industrial injuries benefits for people who have suffered an injury caused by an accident in the course of their employment or have developed a disease due to their employment. The Scottish Parliament passed the Social Security (Scotland) Act 2018, which established a framework for the delivery of the newly devolved benefits, including EIA where an individual has suffered an injury or contracted a disease, in the course of employment.<sup>2</sup>

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<sup>1</sup> [Scotland Act 2016 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2016/54)

<sup>2</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2018/15)

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## Scottish Commission on Social Security

9. Section 21 of the Social Security (Scotland) Act 2018 establishes the Scottish Commission for Social Security<sup>3</sup> and section 22 sets out its functions<sup>4</sup>. The Commission is an independent body set up to provide scrutiny of the Scottish social security system (including benefit regulations).<sup>5</sup>

10. The Commission has the power to scrutinise legislative proposals prior to them being made. In doing so, under section 97 of that Act<sup>6</sup>, it must have regard to the Scottish Social Security Principles<sup>7</sup> and any relevant human rights instruments.

11. The Commission also has powers to report to the Scottish Ministers on any matter relevant to social security on request from the Scottish Ministers. The Commission also has the power to report where it receives evidence that expectations set out in the Social Security Charter<sup>8</sup>, provided for under section 15 of the Act<sup>9</sup>, are not being fulfilled.

## Delivery of Industrial Injuries Benefit Scheme

12. As part of the overall devolution of social security powers, the Scottish Ministers now have responsibility for delivery of the Industrial Injuries Benefit Scheme (IIBS)<sup>10</sup>. This scheme provides no-fault compensation for people who are disabled because of an accident at work, or who have one of certain prescribed diseases caused by their work. The main benefit contained within that scheme is the Industrial Injuries Disablement Benefit (IIDB)<sup>11</sup>. Across the United Kingdom as a whole in 2021 250,000 people claimed IIBS.<sup>12</sup>

13. Benefits other than IIDB can be claimed as part of the IIBS scheme, such as Constant Attendance Allowance<sup>13</sup> for people who receive a maximum award of IIDB, and Reduced Earnings Allowance<sup>14</sup> for people affected prior to 1990. According to Department for Work and Pensions (DWP) statistics, 24,895 people received IIDB in Scotland in the second quarter of 2022<sup>15</sup>. The number of new cases had been on a

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<sup>3</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>4</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>5</sup> [Home - Scottish Commission on Social Security \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot)

<sup>6</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>7</sup> the Social Security Principles are set out in section 1 of the Social Security (Scotland) Act 2018.

Available at: [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>8</sup> [Social Security Scotland: our charter - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>9</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>10</sup> Information on the background to the IIBS (and the IIDB specifically) is available in this Scottish Government policy position paper: [Industrial Injuries Disabled Benefit: policy position paper - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>11</sup> [Industrial Injuries Disablement Benefit: Overview - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>12</sup> [DWP benefits statistics: August 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>13</sup> [Constant Attendance Allowance: Overview - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>14</sup> [Reduced Earnings Allowance: Overview - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>15</sup> Source: Department for Work and Pensions, Stat-Xplore: "IIDB Assessments in payment (I): National - Regional - LA - OAs by Quarter and Type of assessment: Counting: IIDB Assessments in payment", Quarter: June 2022. Available at: [Stat-Xplore - Log in \(dwp.gov.uk\)](https://dwp.gov.uk)

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general downward trend between 2002 and 2018 and the vast majority of clients (85%) in 2018 were male.<sup>16</sup>

14. Delivery of IIDB in its current form in Scotland is handled by the UK Government's Department for Work and Pensions (DWP), acting on behalf of the Scottish Ministers under an agency agreement.<sup>17</sup> Executive competence for the IIDB transferred to Scottish Ministers on 1 April 2020. Once the arrangements under the agency agreement end, Social Security Scotland, the executive agency of the Scottish Government that delivers devolved social security benefits, will assume delivery of the new benefit – EIA - and decide on all applications.<sup>18</sup> It has been reported that the Department for Work and Pensions has indicated that the IIDB must be delivered by the Scottish Ministers by March 2026<sup>19,20</sup>.

## Background to the Industrial Injuries Benefit Scheme (IIBS)

15. As highlighted in paragraphs 12 and 13 the IIBS is made up of numerous benefits, with the main one being the Industrial Injuries Disablement Benefit (IIDB)<sup>21</sup> (as mentioned in paragraph 13 the IIBS includes other benefits such as the reduced earnings allowance and the constant attendance allowance). The statutory basis for these benefits is contained in the Social Security Act 1998<sup>22</sup>, the Social Security Contributions and Benefits Act 1992<sup>23</sup> and the Social Security Administration Act 1992<sup>24</sup>.

16. The IIDB is a non-means-tested, tax-free, non-contributory benefit payable to people who have become disabled as a result of an accident at work, or because of one of over 70 prescribed diseases known to be a risk from certain jobs. IIDB is payable on a “no-fault” basis – the claimant does not have to prove any negligence on the part of the employer to be eligible for benefit. The scheme only covers employees or those who were on an approved employment training scheme or course when the accident or event happened. The self-employed are excluded.

17. While UK regulations have repeatedly updated the list of prescribed diseases for which the IIDB is payable<sup>25</sup>, there has not been substantial change to the IIDB itself

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<sup>16</sup> [Industrial Injuries Disabled Benefit: policy position paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/policy-position-papers/pages/industrial-injuries-disabled-benefit-policy-position-paper-2023-05-16.aspx)

<sup>17</sup> Agency agreement between the Secretary of State for Work and Pensions and the Scottish Ministers in respect of benefits under the Industrial Injuries Scheme for people resident in Scotland. Available at: [FOI-202000053135+-+Information+released.pdf \(www.gov.scot\)](https://www.gov.scot/publications/foi-202000053135+-+Information+released.pdf)

<sup>18</sup> [Industrial Injuries Disabled Benefit: policy position paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/policy-position-papers/pages/industrial-injuries-disabled-benefit-policy-position-papers-2023-05-16.aspx)

<sup>19</sup> Source: BBC - <https://www.bbc.com/news/uk-scotland-scotland-politics-64549044>

<sup>20</sup> Source: Daily Record - [Scottish benefits system delayed again as DWP agrees to handle some payments until 2026 - Daily Record](https://www.dailyrecord.co.uk/news/scotland/scottish-benefits-system-delayed-again-as-dwp-agrees-to-handle-some-payments-until-2026-12345678)

<sup>21</sup> [Industrial Injuries Disablement Benefit: Overview - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/industrial-injuries-disablement-benefit-overview)

<sup>22</sup> [Social Security Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1998/30)

<sup>23</sup> [Social Security Contributions and Benefits Act 1992 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1992/18)

<sup>24</sup> [Social Security Administration Act 1992 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1992/52)

<sup>25</sup> [https://www.gov.scot/binaries/content/documents/govscot/publications/agreement/2023/05/agency-agreement-between-secretary-state-work-pensions-scottish-ministers-respect-benefits-under-industrial-injuries-scheme-people-resident-scotland/documents/agency-agreement-between-secretary-state-work-pensions-scottish-ministers-respect-benefits-under-industrial-injuries-scheme-people-resident-](https://www.gov.scot/binaries/content/documents/govscot/publications/agreement/2023/05/agency-agreement-between-secretary-state-work-pensions-scottish-ministers-respect-benefits-under-industrial-injuries-scheme-people-resident-scotland/documents/agency-agreement-between-secretary-state-work-pensions-scottish-ministers-respect-benefits-under-industrial-injuries-scheme-people-resident-2023-05-16)

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since the 1990s. The scheme remains in operation across the UK, including in Scotland, until a new devolved EIA scheme is introduced.

18. As mentioned in paragraph 14, applications under the IIBS are currently handled by the DWP acting on behalf of Scottish Ministers under an agency agreement<sup>26</sup>. Under Paragraph 2.1 of the agreement, the Scottish Ministers asked, and the Secretary of State for Work and Pensions agreed, to perform the functions specified in the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018 – Statutory Instrument (S.I.) 626/2018<sup>27</sup> in accordance with the Agreement, insofar as they relate to the delivery of benefits under the scheme to people resident in Scotland.

19. The agreement has been effective since 1 April 2020 (when the transfer of competence for these benefits took place). The Scottish Government indicated in its Social Security Programme: Business Case February 2023 that it would begin consulting on the replacement benefit, EIA, in 2023.<sup>28</sup>

20. Under Article 3 of the agency agreement, the DWP and the Scottish Ministers are required to agree an exit plan for the orderly transition of the delivery of benefits under the scheme to the Scottish Ministers (in practice Social Security Scotland) not less than 12 months prior to the end of the term of the agreement (or any extension to the term).<sup>29</sup> Under the Agreement, the term was originally due to end on 31 March 2023. However, section 1.2 of the Business Case, published in February 2023, indicated that the short-term implementation and transition phase of activity was now expected to run to 2025.<sup>30</sup> Under the Agreement, the DWP must inform Scottish Ministers of any changes to the IIBS and it would be for both parties to agree whether revision of the Agreement is requirement.

## Industrial Injuries Advisory Council (IIAC)

21. The IIAC<sup>31</sup> was set up in 1946 as a non-departmental public body, to give advice to the UK Government on the link between particular occupations and diseases. Its remit includes:

- drafting reports to lay before Parliament on proposed changes to the IIBS;

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[scotland/agency-agreement-between-secretary-state-work-pensions-scottish-ministers-respect-benefits-under-industrial-injuries-scheme-people-resident-scotland/govscot%3Adocument/agency-agreement-between-secretary-state-work-pensions-scottish-ministers-respect-benefits-under-industrial-injuries-scheme-people-resident-scotland.pdf](https://www.gov.scot/document/agency-agreement-between-secretary-state-work-pensions-scottish-ministers-respect-benefits-under-industrial-injuries-scheme-people-resident-scotland)

<sup>26</sup> Agency agreement between the Secretary of State for Work and Pensions and the Scottish Ministers in respect of benefits under the Industrial Injuries Scheme for people resident in Scotland. Available at: [Agency Agreement Between The Secretary of State For Work and Pensions and \(www.gov.scot\)](https://www.gov.scot/document/agency-agreement-between-secretary-state-work-pensions-scottish-ministers-respect-benefits-under-industrial-injuries-scheme-people-resident-scotland.pdf)

<sup>27</sup> [The Scotland Act 1998 \(Agency Arrangements\) \(Specification\) Order 2018 \(legislation.gov.uk\)](https://www.gov.uk/legislation/the-scotland-act-1998-agency-arrangements-specification-order-2018)

<sup>28</sup> [Social Security Scotland Programme Business Case - February 2023 \(www.gov.scot\)](https://www.gov.scot/document/social-security-scotland-programme-business-case-february-2023)

<sup>29</sup> Agency agreement Between The Secretary of State For Work and Pensions and The Scottish Ministers in respect of benefits under the Industrial Injuries Scheme for people resident in Scotland, Available at: [Agency Agreement Between The Secretary of State For Work and Pensions and \(www.gov.scot\)](https://www.gov.scot/document/agency-agreement-between-secretary-state-work-pensions-scottish-ministers-respect-benefits-under-industrial-injuries-scheme-people-resident-scotland.pdf)

<sup>30</sup> [Social Security Scotland Programme Business Case - February 2023 \(www.gov.scot\)](https://www.gov.scot/document/social-security-scotland-programme-business-case-february-2023)

<sup>31</sup> [Industrial Injuries Advisory Council - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/organisations/industrial-injuries-advisory-council)

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- making recommendations about additions to the list of prescribed industrial diseases relating to certain occupations; and
- scrutinising regulations relating to industrial injuries benefits.

22. The IIAC is an independent scientific advisory body that looks at the IIDB and how it is administered. The IIAC provides advice on whether, on the basis of evidence and established links to an occupation, new diseases should be added to the list of prescribed diseases for which benefits are payable and the occupations for which they should be prescribed.

23. No such equivalent Council has been established in Scotland to advise on the new benefit (EIA) and, the Scottish Ministers do not have access to the services of IIAC (in other words there is no scope for the IIAC to advise on devolved benefits in Scotland). Section 33 of the Scotland Act 2016 (read with section 53 of the Scotland Act 1998) reserves ministerial powers with UK Ministers in relation to industrial injuries advisory bodies and, as a result, the Scottish Ministers have no power to refer draft regulations to the IIAC for consideration.

24. The Member therefore seeks to establish a new, independent advisory council in law, to be known as the Scottish Employment Injuries Advisory Council (SEIAC). This body will have similar functions for Scotland as the IIAC with the addition of a specific research function. 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.

## Scottish Government advisory groups

25. When it begins delivering industrial injuries benefits, the Scottish Government will, under section 33 of the Social Security (Scotland) Act 2018, replace the current scheme with a new benefit, EIA.

26. An Industrial Injuries Disablement Advisory Group<sup>32</sup>, comprising key stakeholders, including the STUC, COSLA, advocacy groups and health experts, was established by the Scottish Government in 2016, to provide advice to Scottish Ministers developing policy on social security benefits for people affected by industrial injuries and ill health. The group advised on: the fit with the Scottish Government and UK Government policy landscapes, user and stakeholder engagement, the evidence base to support policy decisions, and interaction with wider Scottish and UK social security benefits. The Group concluded its work in December 2017<sup>33</sup>.

27. A Disability and Carers Benefits Expert Advisory Group<sup>34</sup> was set up in 2017 to provide recommendations and advice to the Scottish Ministers, by request and proactively, on the policy and practice options being developed on disability and carers benefits. The Advisory Group was asked in August 2021 by Government officials to provide advice to Ministers on EIA. The Group provided that advice on 20 December

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<sup>32</sup> [Industrial Injuries Disablement Benefit Advisory Group - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>33</sup> [Industrial Injuries Disablement Benefit Advisory Group - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>34</sup> [Disability and Carers Benefits Expert Advisory Group - Employment Injury Assistance: advice - gov.scot \(www.gov.scot\)](http://www.gov.scot)

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2022<sup>35</sup>. In relation to the Industrial Injuries Advisory Council, the Group considered different options, including agreeing with the UK Government to extend the scope of IIAC. The Group advised the then Minister that:

“Our view is that there should be a Scottish equivalent of the IIAC established, with a short-term arrangement with IIAC agreed. It will remain important that organised workers are represented on the future body, however it is formed, as well as those with direct experience of claiming IIDB and, in time, EIA. A collaborative approach with cross-sector advice is a necessity. Current legislation sets out that IIAC membership should include four members representing employers, four representatives representing employees and a number of independent members with specialism in occupational medicine, epidemiology, toxicology and the law. We believe this should be at least replicated on any future body”.<sup>36</sup>

28. The then Minister responded to that advice on 27 February 2023.<sup>37</sup> The response did not address the specific recommendation in relation to a Scottish equivalent of the IIAC, but indicated that the Scottish Government would be consulting on the EIA and replacement of industrial injuries disablement scheme benefits more generally.

## Scottish Government position

29. The then Minister for Social Security and Local Government (Ben Macpherson MSP) set out the Scottish Government’s position in relation to this Bill in a letter to the Social Justice and Social Security Committee dated 15 October 2021.<sup>38</sup>

30. The Minister stated in this letter:

“We have committed to undertaking a public consultation on EIA which will be carried out in advance of delivery in order for any feedback from it to inform proposals for EIA at an early stage...The public consultation will consider a range of issues relating to the delivery and administration of EIA including what role a Scottish Advisory Council should play and how this would interact with EIA. The Scottish Government will also consider how such a body would function in the current landscape in which there is an existing statutory advisory body in the Scottish Commission on Social Security (SCoSS)”.

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<sup>35</sup> [Disability and Carers Benefits Expert Advisory Group - Employment Injury Assistance: advice - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/disability-and-carers-benefits-expert-advisory-group-employment-injury-assistance-advice-2022-06-08/pages/12-13.aspx)

<sup>36</sup> [Disability and Carers Benefits Expert Advisory Group - Employment Injury Assistance: advice - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/disability-and-carers-benefits-expert-advisory-group-employment-injury-assistance-advice-2022-06-08/pages/12-13.aspx)

<sup>37</sup> [Disability and Carers Benefits Expert Advisory Group - Employment Injury Assistance: response from ministers - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/disability-and-carers-benefits-expert-advisory-group-employment-injury-assistance-response-from-ministers-2023-02-27/pages/1.aspx)

<sup>38</sup> Letter from the Minister for Social Security and Local Government to the Convener of the Social Justice and Social Security Committee on the Proposed Scottish Employment Advisory Council Bill, 15 October 2021. Available at: <https://www.parliament.scot/~media/committ/1361>

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31. The Minister concluded, “the Scottish Government therefore could not support this Bill and believe it is unnecessary when its basic principles will be part of the overall work this government carries out as part of the delivery of EIA”.

32. Over the course of policy development for this Bill, Mark Griffin MSP held a number of discussions with the Minister but, as of March 2023, the Scottish Government’s position on the specific policy intention of this Bill (namely the establishment of SEIAC) remained unchanged from that set out in the letter to the committee in September 2021.

33. In relation to delivery of the benefit more generally, as highlighted above, in February 2023 the Scottish Government published its *Social Security Programme Business Case*.<sup>39</sup> The Business Case stated that the Scottish Government would begin consulting on EIA and on options in 2023. This position was re-stated in its response to the Disability and Carers Benefits Expert Advisory Group on 27 February 2023, in which the then Minister stated:

“...it is our intention to undertake a public consultation in the next few months on Employment Injury Assistance and the Scottish Government replacement for Industrial Injuries Disablement Scheme (IIDS) benefits. Importantly, the engagement which has already been undertaken with stakeholders will closely inform the content of the consultation and influence the policy development which follows. I acknowledge the work to date of organisations that have an interest in this matter. Employment Injury Assistance is a very complex area, and it is important that we work with stakeholders to decide the right approach, recognising the limits on our devolved powers in relation to issues such as health and safety and employment law. We need to recognise the substantial costs and operational requirements of providing a new benefit and the challenges of moving from what is an antiquated and entirely paper-based UK benefit”.<sup>40</sup>

## The Member’s position

34. Mark Griffin MSP has a similar view to that of the Disability and Carers Benefits Expert Advisory Group in that he considers that a Scottish equivalent of the IIAC should be created.

35. On 4 November 2021, the Member gave evidence to the Social Justice and Social Security Committee on a statement of reasons<sup>41</sup> under Rule 9.14.3(b) of Standing Orders setting out why he considered he did not need to consult on the proposal. At that session, the Member stated:

“The minister has set out that he intends to introduce legislation to establish employment injury assistance. That is obviously something that the

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<sup>39</sup> [Social Security Scotland Programme Business Case - February 2023 \(www.gov.scot\)](https://www.gov.scot)

<sup>40</sup> [Disability and Carers Benefits Expert Advisory Group - Employment Injury Assistance: response from ministers - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>41</sup> Proposed Scottish Employment Injuries Advisory Council Statement of reasons by Mark Griffin MSP on why consultation is unnecessary. Available at: [Statement of Reasons \(parliament.scot\)](https://parliament.scot)



Government has to do as a result of the Scotland Act 2016 and the Social Security (Scotland) Act 2018. What the minister has not mentioned, and what the Government has not committed to, is establishing an advisory council to scrutinise the regulations on the new entitlement that the minister would lay. I believe that it is crucial that research is carried out in advance of that entitlement being established.

We can either lift and replicate what I feel is a failed and completely out-of-date UK system or we can get the expertise on board early, set up the council, advise the Government and scrutinise the regulations. All the parties in the Parliament and the Government have accepted that it is right to have an independent statutory body to scrutinise social security legislation—indeed, that is why we have the Scottish Commission on Social Security. I am just asking us to go a step further and create another body that has the expertise to look in depth at the range of injuries and illnesses in Scottish workplaces, with the aim of updating the benefit in question to ensure that it best serves the people of Scotland”<sup>12</sup>

36. The Member also considers that the need for such a body is prescient, in light of the COVID-19 pandemic and the number of cases of COVID-19 contracted via occupational exposure<sup>42</sup>. The member considers that this case is strengthened by the growth in the number of self-reported cases of long COVID in Scotland, estimated to be in the region of 175,000 people (3.3% of the population) in February 2023<sup>43</sup>. It is the Member’s position that the establishment of a Scottish Council, made up of people with knowledge and experience of employment injuries and the law in this area, and including representatives of employers and employees, with powers to scrutinise social security regulations in this area and to report on existing or emerging employment hazards, is a necessary step following the devolution of industrial injuries benefits and in anticipation of EIA’s roll-out by Social Security Scotland.

37. It is for the reasons given above that the member is introducing this Bill at this point in time.

## Detail of the Bill

### Establishment of SEIAC

38. The Bill establishes a new, independent advisory council, the Scottish Employment Injuries Assistance Council (“SEIAC”) in law, for the purposes of researching, shaping and scrutinising the EIA scheme due to be introduced in Scotland and delivered by Social Security Scotland.

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<sup>42</sup> Source: [Which occupations have the highest potential exposure to the coronavirus \(COVID-19\)? - Office for National Statistics](#)

<sup>43</sup> Source: [Long COVID: where are we now? – SPICe Spotlight | Solas air SPICe \(spice-spotlight.scot\)](#)

## Status of SEIAC

39. SEIAC is established under section 1 of the Bill as a body corporate. Schedule 1(1) provides that it is not subject to Ministerial direction or control. Neither does the body have Crown status.

40. The Bill provides for SEIAC to be independent of Government and comprising a range of experts, including relevant medical experts, trade unions and representatives who best understand workers' lived experience and views of workplace injury and disease.

41. The member's view is that establishing an independent SEIAC in statute will create an authoritative body to rigorously consider, and seek, new information to ensure EIA evolves and improves on the IIDB scheme. Doing so will assemble the expertise required to inform EIA policy and decision making so that it responds to modern-day workplace disease and injury in Scotland. The SEIAC should be a permanent and consistent source of expertise, available to scrutinise relevant legislation and evidence, commission research and provide expert advice.

42. The member is of the view that legislation is necessary to ensure the independence and permanence of the body. The member also believes that, to ensure a tripartite council<sup>44</sup>, including representation of workers and trade unions, membership requirements for SEIAC need to be set out in legislation. This is in line with the recommendations of the Disability and Carers Benefits Expert Advisory Group.

## Membership of SEIAC

43. The Member considers that SEIAC should include representation of a broad range of backgrounds and experience, including specialist skills and lived experience. The provisions in the Bill relating to membership are consistent with that approach. For example, providing for there to be up to 12 members in addition to the chair gives space for a range of people to be members of SEIAC. Furthermore, remunerating and reimbursing members will also help to ensure there is broad representation on SEIAC. Specifically:

- Paragraphs 13 to 17 of Schedule 1 of the Bill set out procedures for membership of the Council. Namely that SEIAC is to have a chair and at least six but no more than 12 other members, who should serve a term of three years, and who may be reappointed. The Bill also provides that SEIAC members will be entitled to be remunerated and reimbursed for expenses.
- Furthermore, the Bill provides that, when appointing members, Ministers should ensure that, taken as a whole, the Council has experience or knowledge of (i) employment injury assistance policies in Scotland and the rest of the UK; (ii) research in connection with injuries or diseases experienced in the course of employment; (iii) Scots law in respect of employment and personal injury; (iv) relevant medical practice, including occupational medicine, epidemiology and/or

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<sup>44</sup> Including equal representation from representatives of employers and employees, along with independent members

toxicology; (v) the effect of disability arising from a physical or mental impairment on daily life, and (vi) disability as a result of injuries or diseases experienced at work. Ministers must also have regard to the desirability of 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 and having members who represent employers and employees, for example, trade unions. Other than the chair, employers and employees must be represented equally.

## Functions of SEIAC

44. The Bill provides for SEIAC to have a number of functions conferred on it in respect of scrutiny of legislative proposals, reporting to the Scottish Ministers and the Parliament, and carrying out, commissioning or supporting research. The Bill also confers on the Council a right to access information that it may reasonably require for carrying out its functions.

45. These functions can be summarised as follows:

### Scrutiny function

46. The Bill gives SEIAC will have the power to scrutinise and report on legislative proposals for eligibility rules for EIA and EIA entitlement. These proposals are draft regulations made by the Scottish Ministers under section 33(2) of the Social Security (Scotland) Act 2018. The Scottish Social Security principles underpin the social security system established by the 2018 Act, and are reflected in the Scottish social security charter and taken into account by the Scottish Commission on Social Security when preparing a report as part of its scrutiny of regulations. Therefore, likewise, in scrutinising the EIA proposals and preparing a report on them, the Bill provides that SEIAC must have regard to those principles. The principles are:

- social security is an investment in the people of Scotland;
- social security is itself a human right and essential to the realisation of other human rights;
- the delivery of social security is a public service;
- respect for the dignity of individuals is to be at the heart of the Scottish social security system;
- the Scottish social security system is to contribute to reducing poverty in Scotland;
- the Scottish social security system is to be designed with the people of Scotland on the basis of evidence;
- opportunities are to be sought to continuously improve the Scottish social security system in ways which:
  - put the needs of those who require assistance first, and
  - advance equality and non-discrimination;

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- the Scottish social security system is to be efficient and deliver value for money.<sup>45</sup>

47. SEIAC must also have regard to any relevant international human rights instrument, and must consult former or current employees with experience of being exposed to the risk of suffering an injury or contracting a disease in the course of employment and their representatives, which must include, where they exist, trade unions and relevant charities. The SEIAC may consult any other people it considers appropriate. To ensure that SEIAC has a strong evidence base and takes account of the views of people who have direct experience of employment injury or disease (and their representatives) the Member considers it important that SEIAC carry out full consultation and have regard to relevant human rights instruments when making recommendations.

48. The SEIAC's report must set out its observations and recommendations on the proposed regulations. The report must be submitted to Scottish Ministers and, separately, laid before the Scottish Parliament, as well as being made publicly available.

49. The Bill requires that, apart from for reasons of urgency, Ministers must give the SEIAC advance notice of one month before providing them with the draft regulations and not lay draft regulations before the Parliament until either SEIAC has reported on them, or three months has elapsed. This is in order to give SEIAC sufficient notice to allow it to prepare its members, as well as stakeholders such as trade unions and other representative bodies as appropriate, for scrutinising draft regulations. This month affords SEIAC time to plan its workload, and set up meetings, as well as setting internal deadlines for consulting stakeholders on the draft regulations. It also means that if draft regulations are likely to be laid immediately after a parliamentary recess (particularly in September or January after periods where SEIAC members may be more likely to be unavailable) that SEIAC has sufficient time to prepare to enable it to fully scrutinise the draft regulations.

50. This scrutiny function replaces the role of the Scottish Commission on Social Security in relation to EIA regulations and Schedule 3 of the Bill makes the necessary amendments to the Social Security (Scotland) Act 2018.

## Reporting function

51. In addition to reporting on draft regulations, the SEIAC may also report to the Scottish Ministers and/or the Scottish Parliament on any matter relevant to EIA in response to a request by Ministers or the Parliament (by resolution) or at their own initiative in respect of any research carried out, commissioned or supported by the SEIAC or matter the SEIAC considers appropriate. Providing Scottish Ministers and the Parliament with a specific power to request SEIAC to report on a matter relevant to EIA provides a mechanism should a situation arise where there is political will for SEIAC to independently consider and report on a specific issue relating to EIA. Similarly,

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<sup>45</sup> the Social Security Principles are set out in section 1 of the Social Security (Scotland) Act 2018. Available at: [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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providing a power for SEIAC to consider any matter related to EIA on its own initiative provides a mechanism for SEIAC to look into any issue which it, as a Council, considers to be important and worthwhile reporting on and which does not directly relate to its formal scrutiny role in relation to draft regulations.

## Research function

52. The Member made clear in the consultation document on a draft proposal<sup>46</sup> that, in his view, SEIAC should have the freedom to: a) investigate and review emerging industrial and employment hazards which result in disablement through disease or injury (in Scotland and in other advanced economies); and, b) commission its own research and make recommendations for ongoing evolution of the devolved EIA.

53. In the Member's view that SEIAC having a research function would enable SEIAC to rigorously consider, and seek, new information to ensure EIA evolves and improves on the IIDB scheme. The Member considers that doing so will allow the SEIAC to assemble the expertise required to inform EIA policy and decision making so that it responds to modern-day workplace disease and injury. The Member considers that SEIAC should be a permanent and consistent source of expertise with a research base that supports it being available to scrutinise relevant legislation and evidence, and provide expert advice through its reports.

54. To enable this to happen, the Bill provides SEIAC with the power to carry out research into any matter relevant to EIA it considers appropriate, which may include research into existing or emerging employment hazards which may result in disease or personal injury (this may include, for example, long Covid), and the scope and extent of employment-injuries assistance (past and current). SEIAC may alternatively commission or support such research from other bodies.

## Access to information powers conferred upon SEIAC

55. For the purpose of performing its functions effectively, the Bill gives SEIAC a right of access at reasonable times to any relevant information that it may require. This means relevant information that is held by any Scottish devolved public authority<sup>47</sup>. This right is subject to any rule of law that prohibits or restricts the disclosure of such information or the provision of assistance or explanation. An example of this might be the protection of personal data under the Data Protection Act 2018.<sup>48</sup> The Member considers that the access to information provision is a key power for SEIAC to have, as it means that it has the power, if needed, to gain sufficient information to allow it to make evidence-based effective recommendations. It also makes clear to public

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<sup>46</sup>Consultation Document on the draft proposal for a Members' Bill. Available at:

[20201109\\_SEIAC\\_Consultation\\_Document\\_FINAL\\_ForPublication.pdf \(parliament.scot\)](#)

<sup>47</sup> any Scottish public authority within the definition of section 3(1) of the Freedom of Information (Scotland) Act 2002. This is a broader definition of a public authority than the definition in Schedule 1 of that Act. Section 3(1) is available here: [Freedom of Information \(Scotland\) Act 2002 \(legislation.gov.uk\)](#); Schedule 1 is available here: [Freedom of Information \(Scotland\) Act 2002 \(legislation.gov.uk\)](#)

<sup>48</sup> [Data Protection Act 2018 \(legislation.gov.uk\)](#)

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authorities that there is a legal basis for them to provide information to SEIAC upon exercise of this power.

56. The power to access information mirrors a power conferred on the Scottish Commission for Social Security under Paragraph 4 of Schedule 1 of the Social Security (Scotland) Act 2018, although the power being conferred by this Bill is more extensive, as it covers all devolved public authorities within the definition of section 3(1) of the Freedom of Information (Scotland) Act 2002 (“FOISA”). The 2018 Act power was limited to access to information held by a member of the Scottish Government, a local authority and any other body specified by Ministers in regulations.

57. In practical terms, the right to access information means that SEIAC has the power to require any Scottish devolved public authority<sup>49</sup> to provide them with information that may assist SEIAC in its work. For example, when preparing a report under section 3 of the Bill on draft regulations, SEIAC would have the right to access any underlying statistical data, information or analysis that informed the provision in the regulations. SEIAC could require this from the Government itself, or from any other devolved public body, such as an NHS board, the Scottish Fire and Rescue Service or a local authority. The more extensive nature of the power in this Bill means that SEIAC can access information from a wider range of bodies, including arms-length external organisations (ALEOs) and publicly owned companies, provided they are subject to FOISA. In practice this means that information can be accessed from a wider range of bodies, which are more likely to include practices that include use of machinery and chemicals and would have employees carrying out manual labour.

## Alternative Approaches

58. There are a number of alternative approaches to this Bill, which can broadly be categorised under the following headings:

### Leave it to the Scottish Social Security Commission under its existing functions

59. The first alternative would be to leave the functions that the Bill provides the Council with to be carried out by the Scottish Social Security Commission, under the Commission’s existing functions. However, the Member considers that the Commission does not have the in-depth experience and expertise to scrutinise the range of injuries and illnesses in Scottish workplaces. Furthermore, the Member does not consider that the Commission will be able to give trade unions permanent and independent representation on it. The legislative requirements in terms of the qualifications of Commission members do not stipulate specialist knowledge of industry or personal injury in the workplace.<sup>50</sup> In order to ensure a more specific and specialised

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<sup>49</sup> As above. This includes any Scottish public authority within the definition of section 3(1) of the Freedom of Information (Scotland) Act 2002. This is a broader definition than the definition in Schedule 1 of that Act. Section 3(1) is available here: [Freedom of Information \(Scotland\) Act 2002 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2002/36/section/3); Schedule 1 is available here: [Freedom of Information \(Scotland\) Act 2002 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2002/36/schedule/1)

<sup>50</sup> Consultation Document on the draft proposal for a Members’ Bill. Available at: [20201109 SEIAC Consultation Document FINAL ForPublication.pdf \(parliament.scot\)](https://www.parliament.scot/20201109_SEIAC_Consultation_Document_FINAL_ForPublication.pdf)

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membership relative to EIA, the Member therefore believes there is a strong policy argument for establishing a Council.

## Amend the functions of the Scottish Social Security Commission

60. A variation on the previous heading point would be to actively amend the constitution of the Scottish Social Security Commission to ensure that its membership had the necessary in-depth experience and expertise to scrutinise the range of injuries and illnesses in Scottish workplaces, through, for example, requiring members with knowledge of relevant medical practice, including occupational medicine, epidemiology and/or toxicology as well as trade union representation on the Commission. However, this would require primary legislation in any event. Furthermore, in practical terms the process of reform would be disruptive for that Commission, which already has a significant amount of work to in relation to social security more generally. The Commission has a wider remit and a fairly small membership, so it would be challenging for it to be able to scrutinise in detail the range of issues that the Council, with a dedicated remit, specific expertise and larger membership, can scrutinise.

## Leave it to the IIAC

61. A further alternative approach would be to change the law to enable the IIAC to have remit, agency and authority in relation to devolved benefits. However, this would require agreement with the UK Government and potentially further primary legislation. Legislation to amend the position in section 33 of the Scotland Act 2016, that disapplied section 53 and 117 of the Scotland Act 1998 that Scottish Ministers cannot seek advice from the IIAC would likely raise issues of competence for the Scottish Parliament. Furthermore, 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.

## Non-statutory advisory council

62. Another alternative would be to have a non-statutory advisory council with similar functions to SEIAC. Such a body could report to the Scottish Ministers, in a similar way as the advisory groups referred to in paragraphs 25 to 28 reported to the Scottish Ministers.

63. However, 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. Therefore, the Member considers that this approach would be sub-optimal, as a non-statutory Council would lack the teeth that a statutory Council will have.

## Scottish Government to legislate

64. Another alternative to the Member introducing this Bill would be for the Member to leave it to the Scottish Government to legislate to give effect to the policy intention in this Bill. At the final proposal stage for this Bill in November 2021, the Scottish Government did not exercise its power under Rule 9.14.13 of Standing Orders to make a statement indicating that it would legislate to give effect to the final proposal.<sup>51</sup> It is the Member's understanding that this position remains unchanged.

## Alternative approaches raised by Disability and Carers Benefits Expert Advisory Group

65. In its emailed report<sup>52</sup> to the then Minister for Social Security and Local Government of 20 December 2022, the Disability and Carers Benefits Expert Advisory Group outlined the different options available to the Scottish Government in respect of replicating the work of the IIAC in Scotland:

- “1. Agree with the UK Government an extension to the scope of the IIAC so that it could formally provide advice to the Scottish Government, resourced by the Scottish Government. This should include expert Scottish participation on the IIAC. Although beyond the scope of this advice, we note here our view that the IIAC is under-resourced for the evidence it has to sift before recommending prescription. There is also a long-term under-resourcing of investment in occupational epidemiology research in the UK in general as well as in Scotland.
2. Leave the role of the IIAC unchanged, but seek to implement the recommendations the IIAC provides to the UK Government in the Scottish system, or
3. Set up a Scottish equivalent to the IIAC”.

66. The first two of those options are ways in which the functions proposed in this Bill could be carried out by the IIAC. As rehearsed on paragraph 27 of this document, the Disability and Carers Benefits Expert Advisory Group's report reached the view that the most appropriate option was to set up a Scottish equivalent to the IIAC. In relation to options 1 and 2, the Group stated:

“We understand that the current indication from the UK Government is that the IIAC will not be able to provide advice to Scottish Ministers in the future. Nonetheless, given the shared interest both governments have in acting upon high-quality scientific evidence and expert deliberation, we believe there are strong grounds for the UK and Scottish Governments to negotiate a shared service arrangement for the interim period at least. The Group believe it is essential that there are processes in place to ensure Scottish Ministers are provided with independent advice and scrutiny on the development of disability benefits in Scotland, including Employment Injury Assistance. Until the longer-

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<sup>51</sup> [Chapter 9 Public Bill Procedures | Scottish Parliament Website](#)

<sup>52</sup> [Disability and Carers Benefits Expert Advisory Group - Employment Injury Assistance: advice - gov.scot \(www.gov.scot\)](#)



term direction of Employment Injury Assistance and the Scheme in Scotland are known, it is hard to know what longer-term advice and scrutiny needs will arise for this particular benefit.

There are a number of practical and legal difficulties that would arise should the Scottish Government look to be updated in line with the independent advice from the IIAC for as long as IIDB and Employment Injury Assistance remain comparable benefits. These same challenges would apply should the advice of the IIAC regarding the Scheme in the rest of the UK be used in the short term to update the Scottish Scheme:

1. The Scottish Government would be unable to refer regulations directly to the IIAC for scrutiny.
2. The Scottish Government would be unable to proactively drive forward policy development.

There may be lessons to be learned from the current arrangements for both the UK Government's Social Security Advisory Committee (SSAC) and the Joint Committee of Vaccination and Immunisation. Our understanding is that the latter has no statutory basis for providing advice to Ministers in Scotland or Northern Ireland and that there is no specific Scottish equivalent. However, it is clearly agreed between the UK administrations that health departments from Scotland and Northern Ireland are provided with and may choose to accept the Committee's advice or recommendations".

67. As such, the Group reached the view that "there should be a Scottish equivalent of the IIAC established". Furthermore, the Group stated that "The tripartite nature of the IIAC and their regular public consultations and annual meetings are notable features we believe should be replicated. This supports further stakeholder engagement and should continue for whatever form a future advisory council takes". The Member agrees that the establishment of a Scottish equivalent of the IIAC, with its tripartite<sup>53</sup> nature retained, as provided for in this Bill, is the most appropriate policy approach to this issue.

## Consultation and Bill proposal

### Draft proposal and consultation in Session 5

68. On 9 November 2020 (in Session 5 of the Parliament) Mark Griffin MSP lodged a draft proposal for a member's bill:

"to establish a statutory Scottish Employment Injuries Advisory Council to research, shape and scrutinise the social security available to people injured

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<sup>53</sup> Membership of the IIAC includes equal representation from representatives of employers and employees, along with independent members. IIAC's terms of reference are available at: [Industrial Injuries Advisory Council \(IIAC\): terms of reference \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90122/Industrial-Injuries-Advisory-Council-IIAC-terms-of-reference.pdf)

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in the course of their employment and to define the membership requirements of the Council”.

69. A consultation document accompanied the draft proposal<sup>54</sup>. The consultation exercise on the original draft proposal ran from 10 November 2020 to 1 February 2021.

70. A summary<sup>55</sup> of the responses to the consultation was produced, but the proposal did not proceed further, due to the lack of time at the end of Session 5 of the Parliament in March 2021.

71. In total, 42 responses were received to this consultation. Twenty-two (52%) were from individuals, including members of the public, academics, three professionals with experience in a relevant field and one politician. Twenty (48%) were from organisations including representative organisations. Eighty-five percent of respondents were fully supportive of the proposal. Of the remaining six responses, four indicated in the text of their response that they were supportive of the creation of SEIAC, whilst the remaining two did not explicitly state a view.

72. Responses to the consultation highlighted the following points:

- It was accepted by a significant majority of respondents (95%) that there was a need for an independent advisory body as part of the architecture of the devolved benefit that would focus on Scotland;
- A common theme emerging from responses to the consultation was that SEIAC should have the power to:
  - scrutinise legislative proposals on the design of the Employment Injuries Assistance (EIA) system and its entitlement policy;
  - have an ongoing advisory/recommendation role;
  - investigate and review emerging industrial and employment hazards; and
  - commission its own research.
- There was widespread support from respondents for a more participatory advisory body, with a strong emphasis on better representation of workers, and the importance of taking into account their lived experience;
- A significant majority of respondents agreed with the view that instituting a Scottish body would be instrumental to these improvements, particularly through a more independent capability to carry out research and make recommendations, and a focus on what is needed in Scotland. , Those respondents agreed that, in the context of devolution, only a new independent and statutory Council could achieve the reform needed.<sup>56</sup>

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<sup>54</sup> [20201109\\_SEIAC\\_Consultation\\_Document\\_FINAL\\_ForPublication.pdf \(parliament.scot\)](#)

<sup>55</sup> [Consultation\\_summary\\_MG\\_FINAL.pdf \(parliament.scot\)](#)

<sup>56</sup> [Consultation\\_summary\\_MG\\_FINAL.pdf \(parliament.scot\)](#)

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73. A full list of responses to the consultation were published by the Member<sup>57</sup> and a summary of responses to the consultation was published on 24 March 2021.<sup>58</sup>

74. The Member promoted the consultation in a number of different ways. For example, the Member conducted media work and held events during the consultation period. The media work included comment pieces in the Daily Record (online), the Herald and on the Reform Scotland “melting pot” blog, press releases reporting Covid-19 incidences in the workplace, and links to the consultation were shared on social media platforms. The GMB union also organised a virtual meeting of its Women’s Health and Safety Group, that was broadcast on Facebook. That union set up a focus group with women members who shared their experiences of health and safety in the workplace.

## Draft proposal and statement of reasons in Session 6

75. A further draft proposal was lodged on 20 September 2021 in the same terms as the previous draft proposal:

“to establish a statutory Scottish Employment Injuries Advisory Council to research, shape and scrutinise the social security available to people injured in the course of their employment and to define the membership requirements of the Council”.

76. The draft proposal was accompanied by a Statement of Reasons<sup>59</sup> which explained the member’s reasons why a further consultation was not necessary.

77. The Social Justice and Social Security Committee considered the Statement of Reasons at its meeting on 4 November 2021. After taking oral evidence from the Member, the Committee decided that it was satisfied with the reasons given by the member for not consulting on the draft proposal.<sup>60</sup> This meant that the Member could lodge a final proposal without having to consult again on his draft proposal.

## Final proposal

78. Therefore, a final proposal in the same terms as the draft proposal was lodged on 18 November 2021, and the required support was provided by the necessary number of MSPs.<sup>61</sup> This meant that the Member gained the right to introduce a Bill.

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<sup>57</sup> [Mark Griffin MSP | Scottish Employment Injuries Advisory Council Bill](#)

<sup>58</sup> [Consultation summary MG\\_FINAL.pdf \(parliament.scot\)](#)

<sup>59</sup> [Statement of Reasons \(parliament.scot\)](#)

<sup>60</sup> Social Justice and Social Security Committee meeting 4 November 2021. Minutes of meeting available at: [Minutes for Social Justice and Social Security Committee 9th Meeting, 2021 Thursday, November 4, 2021 | Scottish Parliament Website](#). Official Report available at: [Meeting of the Parliament: SJSS/04/11/2021 | Scottish Parliament Website](#)

<sup>61</sup> The Final Proposal was supported by 24 members from 3 parties, 2 of which are represented on the Bureau. Full information on supporters is available at: [Proposed Scottish Employment Injuries Compensation Bill | Scottish Parliament Website](#)

## Effects on Equal Opportunities, Human Rights, Island Communities, Local Government, Sustainable Development etc.

### Equal opportunities

79. The Member has been supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) throughout the process of developing this bill. NGBU has carried out an Equality Impact Assessment (EQIA) for potential impacts of the proposed Bill on people who have a protected characteristic, as defined by the Equality Act 2010. This will be sent to the lead committee to inform its Stage 1 scrutiny of the Bill.

80. The Bill might widen access to equality by supporting people with certain characteristics who are more at risk in particular occupations, or more vulnerable to exposure to harmful substances<sup>62</sup> or other physiological or psychological stressors, as these could be investigated at the discretion of the members of the proposed Council. This could apply to race, sex and certain disabilities.

81. Similarly, if there are people with protected characteristics that are more commonly connected to particular industries and occupations in Scotland where there is a higher risk of employment-related injuries (eg sex, race, age) then the proposed Council would have the freedom to commission specific research and, if appropriate, make recommendations that are specific to those groups and occupations.

82. In response to the consultation on the original Bill draft proposal, the Community Trade union stated that, "The current IIDB benefit system has systemic biases, emphasising work in male dominated fields, disadvantaging women and ignoring entire sectors and the risks that they face..."<sup>63</sup> and GMB Scotland's Women's Campaign Unit and Unionline Scotland commented that "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. The world of work has changed considerably since 1948, as has the makeup of the workforce, and now the women who are not able to access the IIDB are working in industries associated with domestic labour and hence have new reason to be ignored by the patriarchal system."<sup>64</sup>

83. In its 2017 Social Security (Scotland) Bill Equality Impact Assessment (EQIA), the Scottish Government indicated that only 16% of people claiming IIDB are

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<sup>62</sup> According to the UN Special Rapporteur on Toxics and Human Rights people living in poverty, workers, children, minority groups, indigenous peoples and migrants are more susceptible to toxic exposure. Further information is available at: [Vulnerable groups and toxic exposures | OHCHR](#).

<sup>63</sup> Community Union response to consultation. Available at: [Response Data \(markgriffinmsp.org.uk\)](#)

<sup>64</sup> GMB Scotland's Women's Campaign Unit and Unionline Scotland response to the consultation. Available at: [Response Data \(markgriffinmsp.org.uk\)](#)

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women.<sup>65</sup> That EQIA indicated that stakeholders had observed that this may be due to the nature of the list of prescribed diseases<sup>66</sup> and a historical consequence of men occupying roles in heavy industry.

84. It is anticipated that the SEIAC would be able to exercise its powers to commission research into the hazards, injuries and diseases that women encounter in the workplace, as well as setting out how EIA might evolve to better support women to make greater applications under the scheme.

85. More generally, a council with the powers set out in the Bill, that could focus on a more Scotland-specific context, could result in more relevant research and advice. If this led to policies that were more tailored to the Scottish context, it could lead to diseases being added to the list of prescribed diseases that determine eligibility for EIA in Scotland. This could in turn lead to support for a greater number of people, who have been disabled as a result of employment related injury or disease.

86. The Bill encourages a diversity of representation in the composition of the Council itself. Specifically, the Bill requires the Scottish Ministers, when appointing members to the Council, to have regard to the desirability of having a member with personal experience of having an employment related injury or disease, as well as having as members persons who represent employers or employed earners. Furthermore, the Bill requires the Council to comply with the gender representation objective set out in section 1 of the Gender Representation on Public Boards (Scotland) Act 2018.<sup>67</sup>

87. Finally, section 2(4) of the Bill requires SEIAC, when publishing a document, to have regard to the importance of communicating in an inclusive way, to ensure that individuals who have difficulty communicating, whether in speech, language or otherwise, can receive information and express themselves in a way that best suits their needs. This seeks to ensure the accessibility of SEIAC's work to as many people as possible.

## Human rights

88. It is the Member's view that all of the Bill's provisions are fully compatible with the rights in the European Convention on Human Rights ("ECHR"). In particular he believes that the Bill's provisions will potentially have a positive effect on individual rights, as it establishes a Council which will be able to scrutinise, research and report on issues that will impact on people who have experienced injury or contracted a disease at work. Social security provision may engage with the Article 1 Protocol 1 of ECHR as a possession and must not violate the prohibition on discrimination in Article 14 ECHR. However, this Bill does not determine the eligibility for or entitlement to EIA, rather it

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<sup>65</sup> Scottish Government's Equality Impact Assessment on the Social Security (Scotland) Bill (2017). Available at: [Social+security+EQIA.pdf \(www.gov.scot\)](https://www.gov.scot/resources/documents/2017/06/Social+security+EQIA.pdf)

<sup>66</sup> the list of prescribed diseases is available at: [Industrial Injuries Disablement Benefits: technical guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/industrial-injuries-disablement-benefits-technical-guidance)

<sup>67</sup> [Gender Representation on Public Boards \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/12/section/1)

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sets up a Council to scrutinise EIA proposals, report on related matters and carry out and support research. The Bill includes specific provision that the Council have regard to relevant international human rights instruments, in particular, the International Covenant on Economic, Social and Cultural Rights, in carrying out its functions. The role of the Council will therefore support a human rights-based approach to policy making.

## Island communities

89. It is not anticipated that the Bill will have any disproportionate effect on island communities. Although not explicitly provided for in the Bill, upon establishment SEIAC would be able to make use of online platforms such as Zoom or MS Teams for meetings, and it would be the Member's preference that consideration is given to their use. Use of technology in this way would encourage representation on the board from a wide geographical spread of members, so living on an island ought not to be a barrier to being a member of SEIAC.

## Local government

90. It is not anticipated that the Bill will have any disproportionate effect on local government and there are no additional responsibilities or duties for local authorities as a result of the Bill which would result in additional costs to local government.

## Sustainable development

91. NGBU carried out an initial assessment of the proposal, based on the key principles of sustainable development (SD) using the Scottish Parliament's SD impact assessment tool.

92. The Member considers that the Bill can be delivered sustainably as it requires no unsustainable financial or other resource input to implement and maintain, will make a positive social contribution, and has no negative environmental impacts. The member considers that the Bill may improve some of the factors related to sustainable development, insofar as it could contribute to Sustainable Development Goals on poverty, wellbeing, lifelong learning, decent work, sustainable industrialisation, inequality, resilient settlements, sustainable consumption and production, and effective, accountable and inclusive institutions.

93. As a "public body" under section 44 of the Climate Change (Scotland) Act 2009 the Council must act in a way calculated to contribute to the delivery of climate change targets and any climate change adaptation programme and in the way that the Council considers is most sustainable. The Council can also be made subject to further climate change duties, including reporting duties. Under the Scottish Government National

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Performance Framework, it would also be expected to have regard to the United Nations' Sustainable Development Goals<sup>6869</sup>.

94. Depending on what model SEIAC adopts in respect of office space and arrangements for meetings, there may be some environmental impact. Ultimately, decisions around office space and meeting arrangements are for SEIAC to decide upon establishment. Greater use of online platforms such as Zoom and MS Teams may lessen the environmental impact of the establishment and operation of SEIAC.

95. If the work that SEIAC carries out leads to a more equitable welfare system, this may lead to wider benefit to society, particularly in respect of Sustainable Development Goals relating to poverty, wellbeing, decent work, sustainable industrialisation and equality.

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<sup>68</sup> [National Performance Framework | National Performance Framework](#)

<sup>69</sup> [Sustainable Development Goals | National Performance Framework](#)

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# Scottish Employment Injuries Advisory Council Bill

## Policy Memorandum

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