

SPICe**The Information Centre**
An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

29th Meeting, 2023 (Session 6), Thursday, 16 November

Scottish Employment Injuries Advisory Council Bill

Introduction

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

The Committee will hear from:

- Lucy Kenyon, Non-executive Director and Past-President, [iOH, The Association of Occupational Health and Wellbeing Professionals](#)
- Professor Ewan Macdonald, Chair of the Academic Forum for work and health, which the [Society of Occupational Medicine](#) hosts.

Today's witnesses work in occupational health, providing an opportunity for members to explore how social security benefits for industrial injuries and disease fit into the wider context of preventing and responding to occupational ill health.

[Association of Occupational Health and Wellbeing Professionals](#) is a network of a diverse group of health professionals working with employers to improve health and safety by preventing and reducing occupational disease and accidents.

The [Society of Occupational Medicine](#) is the UK organisation for all healthcare professionals working in or with an interest in occupational health. They work with government on national policy, provide continued professional development and provide a forum of exchange of ideas, best practice and networking. They have recently been instrumental in founding the International Occupational Medicine Collaborative which is a medical and scientific organisation providing an assembly for representatives of occupational and environmental medicine societies worldwide.

Professor Ewan MacDonald is head of the Healthy Working Lives Group at the University of Glasgow, and provides clinical occupational health and safety services through his company, MacOH Ltd.

Employment Injuries Assistance (EIA)

The Scottish Government plan to introduce EIA to be administered by Social Security Scotland. This will replace industrial injuries benefits administered by the Department of Work and Pensions (DWP). The Scottish Government plans to consult later on the policy detail. To date, other devolved benefits have transferred to Social Security Scotland with only minor eligibility changes compared to their DWP equivalent, although rules may diverge further in future.

Health and safety

Health and safety legislation is reserved. This includes, for example, notification of diseases and accidents through RIDDOR. As a devolved public body, SEIAC could not have any 'reserved' functions related to health and safety at work. The [Health and Safety Executive](#) is the UK regulator for workplace health and safety. HSE works to reduce work-related deaths, injury and ill-health.

The Bill

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

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

The Bill does not set out eligibility for benefits – this will be considered later. The Bill only seeks to establish an advisory council.

The Policy Memorandum states that:

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

The Scottish Government opposes the Bill and intends to consult this year on policy for EIA, including on whether there needs to be an advisory council.

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

Previous Consideration

Last week the Committee heard from the Scottish Commission on Social Security and the Industrial Injuries Advisory Council. The two organisations described their role and how they work. Points made included:

IIAC

- IIAC advise UK ministers on industrial injuries benefits, considering a very wide range of types of diseases. Examples given included consideration of covid, long-Covid, respiratory diseases, fire-fighter cancers, the under-representation of women and neuro-degenerative diseases in sport.
- The work is resource intensive. “It’s an enormous amount of work, it does put people off” Their regular annual ‘research’ budget has recently been increased to £100,000. They also commission reviews – for example a current 18 month review has a £50,000 budget (SJSS Committee 9 November at 10.13am).
- Members have varied expertise and often take advice from experts not on the Committee (10.15am) They work with Health and Safety Executive, who observe meetings (10.19am).
- It can take a long time from recommendation to passing legislation. (10.34am)
- Under their legislation they have to be reasonably certain of the connection between work and the disease (10.35). “We are set up to do one job, which is to advise on that legislation.” (10.37)
- “If a Scottish body was set up we would want to certainly make sure that we didn’t duplicate. I can see that there might be duplications. I think it would depend very much on how you set your legislation up. At the moment we’re working to the social security act and the reasonably certain issue and that makes us very different from other countries. [...] I think we would want to work together and perhaps have representative on both. You might end up with the same scientists on each of the committees.” (10.46am)

SCoSS

- SCoSS consider social security regulations referred to it, it also considers the implementation of the Social Security Charter, and report on matters related to social security as requested by Parliament and Ministers. Its functions are set out in the Social Security (Scotland) Act 2018.
- If, in future, new diseases were being added or considered for EIA, then additional advice would be needed beyond what SCoSS could provide. (10.29am)
- SCoSS was able to go from a ‘standing start’ in 2018 to producing their first report very quickly, in 2019, but they were also trying to juggle some of the business of setting up a new body which brought its own challenges (10.44).
- Finding expertise has been an issue for SCoSS when they’ve had vacancies.
- DWP does not allow dual membership of SCoSS and its UK equivalent and it might well take the same position when it comes to IIAC and SEIAC (10.50am)

Themes for discussion

Theme 1: Work of IIAC

The Industrial Injuries Advisory Council advises the UK Government on industrial injuries benefits, the main one being Industrial Injuries Disablement Benefit (IIDB). As the rules have changed little in recent years, their work has focused on considering whether particular diseases or occupations should be added to the eligibility criteria. These are lists for which, for the purpose of awarding these particular social security benefits, it can be assumed that exposure at work caused the condition. Dr Lesley Rushton (IIAC) explained that their legislation requires them to find reasonable certainty, and this guides the level of evidence they look for. She explained how they draw on expertise outwith their Committee and are working to increase visibility of their work.

The Scotland Act 2016 prevents IIAC from being able to advise Scottish Ministers although all IIAC's minutes and reports are publicly available.

Members may wish to discuss:

1. **What involvement (if any) do witnesses have with the Industrial Injuries Advisory Council or matters related to Industrial Injuries Disablement Benefit?**
2. **The Industrial Injuries Advisory Council recommends which conditions and occupations are included in the prescribed lists for industrial injuries social security benefits. In your experience, does this have any wider influence on the extent to which employees are supported or preventative measures put in place in the workplace?**

Theme 2: SEIAC: Scope for a wider role

The Bill gives SEIAC a research role which can include carrying out, commissioning or supporting research into any matter relevant to Employment Injuries Assistance, including research into:

“emerging employment hazards which result in disease or injury” (Section 2(d)(i))

This will enable them to develop recommendations for listing particular diseases and occupations for eligibility for Employment Injuries Assistance. (Discussed further under Theme 3: Work Programme). However, for some respondents to the Committee's call for views, that raised the possibility of contributing to a wider agenda on occupational health.

For example, Action on Asbestos said:

“If SEIAC has a role to educate and promote health and safety in the workplace by sharing their findings widely, this could serve to educate employers, particularly in relation to new and emerging issues.”

Other references to broader activity included:

- link more directly to a national preventative and public health strategy on work-place ill-health. (*British Occupational Hygiene Society*)
- opportunity to enhance and expand functions compared to IIAC, ensuring this new body will put the voices of workers front and centre ([Community](#), a trade union representing a wide range of employment sectors)
- a more proactive role in helping and supporting occupational injury and disease victims to return to work and in improving job design and work environment to prevent the recurrence of injuries. ([Institution for Occupational Safety and Health](#))
- role in developing a long-term strategy to make our workplaces safer and healthier ([Scottish Hazards](#), an occupational health and safety charity providing advice, support and representation to workers who are not in trade unions).

However, it is not at all clear that the scope of the Council would be any wider than considering matters relevant to Employment Injury Assistance. Health and safety legislation is reserved and the extent of any research will also be limited by the available budget – estimated in the Financial Memorandum at £30,000 per year.

The Policy Memorandum states that:

“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.”

Last week members heard that the work of IIAC is resource intensive. They have recently had their regular research budget increased to £100,000 per annum. (SJSS Committee 9 November 2023, 10.13 am).

In her submission, Lucy Kenyon states that the Association of Occupational Health and Wellbeing Professionals:

“supports the principle of a new advice and research council to modernise industrial injuries benefits and to strengthen protections for injured workers in Scotland.”

Members may wish to discuss:

- 3. Does the proposed role of SEIAC to “investigate and review emerging employment hazards which result in disease or injury” duplicate the activities of other organisations?**

4. The Bill documents estimate a research budget of £30,000 per year. **Do witnesses have any views on whether that is adequate for the work proposed?**

Theme 3: Work Programme

Respondents to the call for views made suggestions for SEIAC's 'work programme', including consideration of:

- Long Covid
- Neuro-degenerative disease in ex-footballers
- Cancers in firefighters
- Equalities issues raised by the current dominance of traditional, male, heavy industry occupations and conditions in the current lists

Last week members heard about IAC's on-going work on these issues and their legislative requirement to find 'reasonable certainty' of causation.

In the Policy Memorandum the member suggests that incidence of long COVID supports his argument for establishing SEIAC.

"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. 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." (PM para 33)

In the Call for Views a number of respondents said that investigation of long Covid should be a priority within the first year of the Council (eg NASUWT, SHWC, Unite, FBU). For example, the Scottish Healthcare Worker Coalition (a grassroots movement of healthcare workers who are living with Long Covid, or other post-Covid illness, sustained as a result of their employment) [said in their submission to the Call for Views](#) that:

"SHWC particularly endorses the scope to engage in research into novel harms, which must include Covid-19 and Long Covid. [...] Our group comprises a significant number of health and social care workers in Scotland who have developed Long Covid as a direct result of catching Covid-19 in their workplace.[...] ideally in the first year, the council should be required to consider the issue of Long Covid as an industrial disease."

The [British Occupational Hygiene Society](#) (BOHS) is "a science-based, charitable body that provides information, expertise and guidance in the recognition, control and management of workplace health risks." In the Call for Views they argued that Scotland is different, therefore requiring a separate body:

“Scotland has a differing workplace demographic and industrial heritage from the rest of the countries in the UK. Some of the processes and methods, exposure and hazards that exist in Scotland are either not present, or are not experienced in the same way as in Scotland. At present, Scotland has practically no oversight of the extent and nature of workplace disease.”

In his submission Professor Macdonald said that:

“A repeat of the IAC in Scotland would duplicate resources and experts”

Members may wish to discuss:

- 5. What are witnesses views on the value of SEIAC undertaking investigation of the same issues as IAC?**
- 6. Do witnesses expect SEIAC would take a different approach to IAC?**
- 7. What are witnesses’ views on the extent to which there are Scotland specific issues in the type and incidence of industrial disease?**

Theme 4: Membership

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

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

Many submissions to the Committee gave suggestions for the type of knowledge and expertise required. This included:

- Lived experience (with gender balance ([Close the Gap](#)) including lived experience of long covid, patient groups ([Key Worker Petition](#)), keyworkers, women, black workers, (NASUWT), firefighters ([Fire Brigades Union](#)))
- Trade union representation should be explicit in the Bill) (eg [GMB](#), [NASUWT](#), Fair Work Convention and others)
- Expert knowledge of industrial injury in Scotland (Fair Work Convention)

- Someone qualified in occupational hygiene to chartered status, and representative from HSE's Workplace Health Expert Committee (British Occupational Hygiene Society)
- Employers, medical and legal professionals ([Fair Work Convention](#))
- involvement from the Society of Occupational Medicine along with a range of experts on disability, employment law, disability benefits and Scots law relating to accidents and injuries compensation ([Scottish Healthcare Workers Coalition](#))

The Key Worker Petition Campaign explained their view of the required balance:

“We need a dedicated expert council along the lines of the IIAC, but with representation from workers and those representing patient groups affected by diseases like long Covid or mesothelioma.”

In her submission Lucy Kenyon asks:

“Why does membership not extend to the wider multi-disciplinary team of ergonomists, nurses, occupational therapists, physiotherapists and vocation rehabilitation specialists, none of whom are directly referenced in the experience and knowledge?”

Last week Dr Lesley Rushton expressed a hope that SEIAC, if it was established, and IIAC could collaborate, pointing out that:

“I think we would want to work together and perhaps have representative on both. You might end up with the same scientists on each of the committees.”
(SJSS Committee 9 November 2023, 10.46am)

Dr Mark Simpson (SCoSS) pointed out DWP does not allow dual membership of SCoSS and its UK equivalent and it might well take the same position when it comes to IIAC and SEIAC (SJSS Committee, 9 November 2023, 10.50am)

Members may wish to discuss:

- 8. Do witnesses have any comments on the mix of knowledge and expertise proposed for SEIAC's membership?**
- 9. Is there enough technical and scientific expertise available to advise both a Scottish and UK body?**
- 10. In what ways could SEIAC access expertise beyond its membership – either by collaboration or by certain bodies having observer status?**

Camilla Kidner
SPICe,
13 November 2023