

# **SCOTTISH EMPLOYMENT INJURIES ADVISORY COUNCIL (SCOTLAND) BILL**

## **MEMORANDUM FROM THE SCOTTISH GOVERNMENT TO THE SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE**

### **Introduction**

1. This memorandum has been prepared by the Scottish Government to assist consideration by the Social Justice and Social Security Committee of the Scottish Employment Injuries Advisory Council Bill (“the Bill”), which was introduced by Mark Griffin MSP on 8 June 2023.

### **Background**

2. Mr Griffin’s Bill establishes a statutory Scottish Employment Injuries Advisory Council (SEIAC) 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.”

3. Mr Griffin’s Bill would place a duty on Scottish Ministers to establish a statutory Scottish Employment Injuries Advisory Council. The proposal specifies that the Council would exist to undertake research, issue advice, and scrutinise the social security assistance available to people injured in the course of their employment. The proposed Council would replicate the role of the Industrial Injuries Advisory Council (IIAC) which advises the UK Government on the Industrial Injuries Scheme (IIS). Mr Griffin proposes that the Bill should also define the membership requirements of the Council. The Council is to consist of a member to chair the Council and at least 6 but no more than 12 other members. Members other than the chair must include an equal number of persons appointed to represent employers and employed earners respectively. Scottish Ministers will be responsible for appointing members.

### *Employment Injury Assistance*

4. The Scotland Act 2016 provided for the devolution of matters relating to employment injuries. Executive competence for the UK wide Industrial Injuries Disablement Scheme transferred to Scottish Ministers on 1 April 2020. The scheme is currently being delivered by the Department for Work and Pension (DWP) on behalf of Scottish Ministers under an Agency Agreement. The Agency Agreement requires the scheme to be delivered in Scotland on a like-for-like basis with the rest of the UK. There are currently approximately 27,000 people in receipt of one or more IIS benefits in Scotland. The main form of assistance in the scheme is Industrial Injuries Disablement Benefit (IIDB).

5. IIS provides social security assistance for people who are disabled because of an accident at work, or who have one of certain prescribed diseases caused by their work. The Scottish Government has committed to replacing IIS with Employment Injury Assistance (EIA).

6. The Scottish Government has committed to undertake a public consultation on its approach to replacing IIS in Scotland, to take place this year. The consultation will be wide ranging and cover issues relating to eligibility and delivery of the scheme. It will seek views on both short-term and long-term options for EIA. Considering some stakeholder calls to broaden the scheme, it should be noted that key related policy areas such as employment, insurance, and occupational health and safety are currently reserved.

7. There are a number of divergent views among key stakeholders over how to approach EIA in the future. For example, there is some anxiety among some organisations, and from those in receipt of an IIS benefit, around case transfer, continuity of awards, and the availability of the expertise required to deliver a new system. Another view often expressed is that the current scheme does not adequately compensate workers outside of traditional heavy industry. However, the bill is solely aimed at establishing a Scottish statutory advisory body to replicate what already exists UK wide. It does not propose changing the eligibility criteria or the current structure of the scheme.

### *IIAC*

8. IIAC scrutinises IIS regulations and advises the UK Government on the addition of new diseases and the occupations they should be prescribed for. In line with Section 33 of the Scotland Act 2016, the UK Government has decided that IIAC cannot give advice to Scottish Ministers; they can only make recommendations to UK Ministers. Scottish Ministers are therefore unable to request advice from IIAC.

9. A number of the Council's members have a scientific or medical background, many specialising in occupational health. A few members are legally trained, and, by law, the Council includes representatives of employed earners and of employers.

10. In deciding whether to establish a Scottish equivalent to IIAC, the Scottish Government needs to consider how such a body could function alongside the existing statutory body - the Scottish Commission on Social Security (SCoSS).

### *IIAC – COVID 19 and Long COVID*

11. IIAC published an interim Position Paper ([COVID-19 and occupation: IIAC position paper 48](#)) in February 2021 which recommended against prescribing Covid-19 and Long Covid as industrial diseases for Industrial Injuries Disablement Benefit (IIDB).

12. On 16 November 2022, IIAC published a further report ([COVID-19 and Occupational Impacts](#)) containing key findings and recommendations in relation to COVID-19 as an occupational disease. IIAC recommended that only workers in hospitals and other healthcare settings should be covered. The UK Government have not yet responded to the report.

### **Consultation**

13. Mr Griffin lodged a draft proposal on 20 September 2021, accompanied by a statement of reasons which set out why the Member considered that no further consultation was required. The Social Justice and Social Security Committee, at its meeting on 4 November 2021, was satisfied that sufficient consultation had already been undertaken. Mr Griffin published a summary of a consultation which sought views from stakeholders and members of the public on the focus and composition of the proposed Advisory Council, in March 2021.

14. The consultation received 42 responses. Twenty-two (52%) were from individuals including members of the public, academics and practitioners. Twenty responses (48%) were from organisations including seven unions and union branches, equalities organisations, occupational health campaigning organisations and one law firm.

15. Thirty-six respondents (85% of the total number of responses) stated that they fully agreed with the purpose of the Bill. Most of those responses made reference to the ability for decisions to be taken in Scotland, independent of the UK Government. Other respondents gave conditional support for a SEIAC on the basis of the current scheme remaining in place. For example, some respondents gave reasons why the scheme should not continue in its current form. Wider concerns about the way the scheme operates currently were also raised. Concerns were expressed over the gender disparity within the scheme (around 84% of the IIDB caseload is male) and lack of inclusion of occupational health concerns more likely to impact women.

16. Many respondents referenced Covid-19 and potential workplace implications of long Covid. Some pointed to the effects of the pandemic on those with protected characteristics and that it had highlighted the vulnerability of BAME and women workers in low paid work. However, other respondents expressed scepticism of addressing Covid-19 and long Covid through the IIDB. One specialist in occupational health for example commented that treating long Covid as an occupational disease will “create different classes of sufferer according to the provenance of the infection and exclude most of the people who experience the illness.” Instead, it was suggested that a separate scheme to compensate people for the impacts of long Covid would be more appropriate.

17. Mr Griffin concluded that his consultation confirmed that an independent, authoritative advisory council, with powers to bring the Industrial Injuries Disablement Benefit into the 21st century, was both required and supported.

18. The Social Justice and Social Security Committee invited Mr Griffin to a session on 4 November 2021 to give further detail regarding the content of his Bill and its purpose. The Convener brought to Mr Griffin’s attention that the Scottish Government intend to propose legislation to bring about EIA and suggested that his Bill was therefore not necessary. Mr Griffin speculated that the legislation proposed by the Scottish Government may not include a SEIAC.

## **Financial Implications**

19. The financial situation facing the Scottish Government is, by far, the most challenging that we have faced since devolution, requiring tough decisions about how to prioritise spending across all of our public services.

20. The Financial Memorandum to the Bill indicates that set up costs for the SEIAC would be £149,000, with annual running costs forecasted to be £372,500.

21. For comparison, DWP provide the Council with an administrative budget of £55,000 per annum. For 2020/21, IAC's expenditure was £30,396 although that was likely due to the impacts of Covid-19 on travel. In 2019/20, a more typical year, IAC's expenditure was £51,665. The budget provided by DWP is for travel and subsistence, as well as secretariat support and a scientific advisor.

22. The Financial Memorandum projects costs for commissioning research and rental accommodation for SEIAC. These costs are not within the scope of IAC functions and would therefore incur additional and new funding considerations for the Scottish Government.

23. The Bill recommends that Scottish Ministers pay members of a Scottish Council remuneration which would incur additional and new funding considerations for the Scottish Government.

24. The provisions being called for are not set out in the current Social Security funding envelope and any additional costs would need to be subject to a rigorous value for money assessment in light of the challenging fiscal position faced by the Scottish Government over the course of the Parliamentary term.

### **Scottish Government's Position**

25. Mr Griffin's Bill would introduce a Scottish Advisory Council without EIA being in place. An advisory council under these terms could carry out research and make recommendations ahead of any regulations providing for EIA being laid. However, the Scottish Government would be constrained by the operation of the Agency Agreement with DWP and their requirement for maintaining parity with the rest of the UK. Until Social Security Scotland are delivering EIA, the Scottish Government would not be able to make legislative or operational changes in response to any recommendations made by the Scottish equivalent to IAC without needing to renegotiate the Agency Agreement and potentially put clients' payment at risk. While the Scottish Government would implement changes to EIA once we begin accepting new applications, doing so while IADB clients' awards are still being delivered by the DWP risks introducing inequity in the system. Devoting financial resource to legislate for a statutory advisory body would not be an appropriate use of the resources available to us when we are still some years from delivering EIA.

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

## **Conclusion**

27. For the reasons given, the Scottish Government will not be supporting the Bill.

**Scottish Government**

11 September 2023