

Note by the Clerk

Proposed Scottish Employment Injuries Advisory Council Bill consideration of statement of reasons

Introduction

1. Mark Griffin MSP lodged on 20 September 2021 a [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 in the course of their employment and to define the membership requirements of the Council.
2. Before introducing a Member's Bill, the MSP must first lodge a draft proposal which must be accompanied by a consultation document or by a statement of reasons setting out why the Member does not consider a consultation to be necessary.
3. Mark Griffin MSP has provided a [statement of reasons](#) (contained for Members reference at Annex A) to accompany his draft proposal.

Consideration

4. The Bureau has referred the Bill proposal and statement of reasons to the Committee for consideration. The Committee is required to decide whether it is satisfied with the reasons given by the member for not consulting on the draft proposal. The Committee is not required at this stage to give its view on the contents of the proposed Bill. Under Standing Orders once the statement has been laid the Committee has one month to consider it. The Committee's deadline for a decision on the statement of reasons is 12 November 2021.
5. If the Committee is content with the statement of reasons the Member can lodge the final proposal seeking to introduce their Bill. If the Committee is not content, the proposal will fall unless the Members decides to consult.
6. Mark Griffin will appear before the Committee at today's meeting to answer any questions.

7. The Committee wrote to the Ben Macpherson MSP, Minister for Social Justice Security and Local Government to seek the Scottish Government's views on the draft proposal for the Bill. The Scottish Government's response is attached at Annex B.

Decision

The Committee is invited to consider and agree whether

- **It is satisfied by the statement of reasons or**
- **It is not satisfied.**

Committee Clerks

29 October 2021

Proposed Scottish Employment Injuries Advisory Council

Statement of reasons by Mark Griffin MSP on why consultation is unnecessary

1. My draft proposal is for a Bill to establish a Scottish Employment Injuries Advisory Council and was lodged on 20 September 2021.
2. My proposal is broadly similar to my previous draft proposal for a member's bill lodged on 9 November 2020, in Session 5.
3. My previous proposal was consulted on and a summary of responses was published, but there was not time before the end of the session to progress to final proposal stage.

Proposal

4. In line with Rule 9.14.3 of Standing Orders, this statement of reasons is lodged in conjunction with my draft proposal for the Scottish Employment Injuries Advisory Council Bill.
5. The draft proposal is for a Bill:

“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”.
6. The previous draft proposal, which was lodged on 9 November 2020, was for a Bill:

“to establish a Scottish Employment Injuries Advisory Council to shape, inform and scrutinise the social security available to people injured in the course of their employment”.
7. The expansion of the wording from the original draft proposal includes reference to research being commissioned by the Council and membership requirements to be set by the Council (see paragraph 11).
8. My proposed Bill would:
 - Establish a Scottish Employment Injuries Advisory Council (SEIAC) as an independent advisory non-departmental public body.
 - Give the SEIAC duties to:

- scrutinise legislative proposals for the overarching design of the employment injuries assistance (EIA) system and entitlement policy; and
 - continually advise and recommend changes to the EIA entitlement policy and its design.
- Mandate the membership and membership balance of the Council, including the representation of workers and their trade union representatives on the Council.
 - Ensure the Council has legal freedom, so long as it can meet its duties, 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 in order to make recommendations for ongoing evolution of the EIA design and entitlement policy.
9. The proposal therefore seeks to establish a new, independent advisory council in law, for the purposes of shaping the reform of the employment injuries assistance scheme due to be introduced in Scotland. Delivery of the benefit in its current form (Industrial Injuries Disablement Benefit (IIDB)) is handled by the UK Department for Work and Pensions (DWP), acting on behalf of Scottish Ministers under agency arrangements. It is expected that Social Security Scotland will assume delivery of the new benefit and adjudication of applications.
10. No such Council has been established in Scotland to advise on the new benefit and Scottish Ministers do not have access to the Industrial Injuries Advisory Council (IIAC), the existing UK body. This is because Section 33 of the Scotland Act 2016 reserves ministerial powers with UK Ministers in relation to industrial injuries advisory bodies and, as a result, Scottish Ministers have no power to refer their draft regulations to IIAC for consideration.
11. The expansion of the terms of the previous draft proposal include specific reference to the SEIAC's ability to commission research and in relation to the power to define the Council's membership. These are both issues which were included in the consultation, and specific questions were asked in relation to each.
12. The proposal would therefore mandate membership of the SEIAC of workers with experience of being exposed to the risk of workplace injury, and their representatives, including trade unions. It would also grant the Scottish Council an enhanced role compared to the existing UK body, the Industrial Advisory Council (IIAC) by affording the Scottish Council a research function to support its work; IIAC does not commission or conduct its own research.

Procedure

13. Under Rule 9.14.3 of the Parliament's Standing Orders, a draft proposal should be lodged with either:

- a consultation document; or
- a written statement of reasons why, in the member's opinion, a case for the proposed Bill has already been established by reference to specified published material and that consultation on the draft proposal is therefore unnecessary.

Published Material/Consultation

14. The previous draft proposal was accompanied by a consultation document, and the consultation ran from 10 November 2020 until 1 February 2021. A summary of the consultation responses was published on 24 March 2021.

15. Details of the previous draft proposal, the consultation document and summary are still available [online](#) and the published responses can be found [here](#).

16. Media work and events to promote awareness of the proposal and consultation took place during the consultation period. This included comment pieces in the Daily Record (online), the Herald and on the Reform Scotland "melting pot" blog, in press releases reporting Covid-19 incidences in the workplace, and links to the consultation were shared on social media platforms.

17. The GMB union also organised a virtual meeting of its Women's Health and Safety Group, that was broadcast on Facebook and which I attended. The union also set up a focus group with women members who shared their experiences of health and safety in the workplace.

18. In terms of the consultation exercise, in total, 42 responses were received. 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. All but one of the respondents indicated they were supportive of the proposal.

19. Comments from respondents included:

- It was accepted by a significant majority that there was a need for an independent advisory body as part of the architecture of the devolved benefit that would focus on Scotland;

- The SEIAC should scrutinise legislative proposals on the design of the Employment Injuries Assistance (EIA) system and its entitlement policy;
- That it should have an ongoing advisory/recommendation role;
- That it should be able to investigate and review emerging industrial and employment hazards;
- That it should be able to commission its own research;
- There was widespread support 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.
- Respondents felt 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. In the context of devolution, a number of respondents agreed that a new independent and statutory Council could only achieve the reform needed.

Why consultation is unnecessary

20. In relation to my draft proposal for this Bill, I consider that consultation is not required for the following reasons:

- Consultation on the previous draft proposal has taken place in the 12 months preceding this statement of reasons being lodged. In accordance with Standing Orders, the draft proposal was accompanied by a consultation document, prepared with the assistance of NGBU, and consulted on from 10 November 2020 until 1 February 2021. A summary of the consultation, prepared by NGBU within the last six months, was published on the Parliament's website on 24 March 2021.
- The only reason it did not progress to final proposal stage at that time was because it ran out of time at the end of the parliamentary session.
- Re-consulting so soon after the initial consultation could involve duplication of effort and impose unnecessary cost burdens on the Parliamentary clerks who support this work, as well as the individuals and organisations who committed their time to respond, as well as the media outlets which facilitated public debate of the proposal.
- I am not aware of any developments which alter any of the conclusions reached as a result of the previous consultation.
- Responses to the consultation were submitted via an online questionnaire. The consultation was publicised on a dedicated webpage, on my own and the Parliament's websites, on social media, and by trade unions supporting the proposal. I also published a number of comment pieces explaining the proposal and promoted news releases relating to industrial incidences of Covid-19 being contracted

in the workplace to ensure that the consultation reached as many interested parties as possible.

21. For these reasons, I believe that undertaking a further consultation would represent a time-consuming and unnecessary duplication of effort and simply delay my proposed Bill reaching the next stage in the parliamentary process.

Mark Griffin MSP
September 2021

T: 0300 244 4000
E: scottish.ministers@gov.scotNeil Gray MSP
Convener
Social Justice and Social Security Committee
The Scottish Parliament
Edinburgh
EH99 1SPBy email to: sjss.committee@parliament.scot

15 October 2021

Dear Neil/Convener,

Proposed Scottish Employment Injuries Advisory Council Bill

Thank you for your letter of 8 October in which you requested the Scottish Government's view of the [draft proposal for a Scottish Employment Injuries Advisory Council \(Scotland\) Bill](#).

Background

Executive competence for the Industrial Injuries Disablement Scheme transferred to Scottish Ministers on 1 April 2020. The main form of assistance in the scheme is Industrial Injuries Disablement Benefit (IIDB). The scheme is currently being delivered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers under an Agency Agreement. The Agency Agreement is reliant on maintaining parity between the benefits as delivered across the UK.

Industrial Injuries Advisory Council

The Industrial Injuries Advisory Council (IIAC) is an independent scientific advisory body which scrutinises Industrial Injury benefits regulations. It spends the majority of its time in a specialist capacity providing advice on whether, on the basis of evidence and established causation to an occupation, new diseases should be added to the list of prescribed diseases and the occupations which they should be prescribed for.

The UK Government has decided that the role of IIAC should remain unchanged by devolution of IIDB and that it should provide advice to UK Ministers only, meaning that Scottish Ministers will not be able to request advice or commission research from IIAC once EIA is being delivered.

Scottish Employment Injury Assistance

When the Scottish Government begins delivering industrial injuries benefits, our intention is to replace the current scheme with a new benefit, Employment Injury Assistance (EIA). EIA will provide assistance for people who are disabled because of an accident at work, or who have one of certain prescribed diseases caused by their work.



Following the disruption to our delivery timetable caused by COVID-19, we will work with DWP and our delivery partners to determine an appropriate date to launch EIA. In doing so, we will take into account how long we need to design and deliver the new benefit safely and securely, bearing in mind the complexities associated with the largely clerical nature of IIDB and the nature and age of the IT infrastructure that currently supports elements of the benefit. For context, the scheme was established in 1948 and has undergone limited reform since its introduction.

We recognise that there is a range of views on IIDB and its relevance to the modern world of work. 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.

An IIDB Advisory Group comprising key stakeholders was established in May 2016. The group agreed to suspend meetings in December 2017 due to changes to delivery timetables and a number of members retiring or relocating. The Scottish Government also intends to re-establish a stakeholder advisory group on industrial injuries in order to fully engage with questions around policy development, including on a Scottish equivalent to IIAC, ahead of the planned consultation.

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). Further, key related policy areas such as employment, insurance, and occupational health and safety which are currently reserved, also need to be carefully considered.

We firmly believe that the connection between an advisory body and the benefit itself is fundamental to their interaction and how the body would be established and its remit.

Member's Bill

We note that responses to Mr Griffin's consultation emphasised that support for an advisory body was contingent on how the scheme is delivered and other factors relating to how EIA is delivered in the future. We agree with this and believe the role of an advisory body needs to be considered as part of the overall establishment of the benefit and not in isolation.

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, we would be constrained by the operation of the agency agreements with DWP and their requirement for maintaining parity with the rest of the UK. Until we are delivering EIA in full, we would not be able to make legislative or operational changes in response to any recommendations made by the Scottish equivalent to IIAC without needing to renegotiate the Agency Agreement and potentially put clients' payment at risk.

For the reasons set out above, 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. I hope this information is helpful to the Committee in its consideration of the Bill.

Best regards,



BEN MACPHERSON