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An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**28th Meeting, 2023 (Session 6), Thursday,
09 November**

Scottish Employment Injuries Assistance Advisory Council Bill

Introduction

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

The Committee will hear from:

- Dr Lesley Rushton, Chair, Industrial Injuries Advisory Council (IIAC)
- Dr Mark Simpson, interim Co-Chair, Scottish Commission on Social Security (SCoSS)

Today's witnesses advise government on social security. While IIAC and SCoSS would not comment on the merits of the Bill, their experience will provide useful context for Members' deliberations.

The Bill

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

- To report on draft regulations for Employment Injuries Assistance (EIA), 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 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.

Legal and financial responsibility for industrial injuries benefits was devolved in 2020. Since then, the Department for Work and Pensions (DWP) has continued to deliver these benefits on behalf of the Scottish Government under an agency agreement. The Scottish Government plans to introduce its replacement benefit, Employment Injuries Assistance (EIA) to be administered by Social Security Scotland. The Committee wrote to the Scottish Government on 25 October asking when it plans to introduce EIA. The letter is available [here](#).

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

Themes for discussion

Theme 1: Advising government on social security

Both of today’s witnesses advise government on social security – albeit in different capacities.

The [Industrial Injuries Advisory Council](#) advises UK Ministers on industrial injuries benefits. As the rules have changed little in many years, the focus is on the prescribed lists of diseases and occupations.

The Scottish Commission on Social Security (SCoSS) scrutinises draft regulations on Scottish social security. It also has a [role to consider the Charter and to report on matters relevant to social security](#) as requested by Scottish Ministers or Parliament. To date, the volume of legislation has left little time for these additional functions. The Bill would remove SCoSS’ remit for scrutinising draft regulations on Employment Injuries Assistance. In their submission SCoSS explains:

“The roles of IIAC and SCoSS are very different. Advice from IIAC is proactive so that government policy on benefits for occupational disease is based on scientific evidence. SCoSS’s role is a reactive scrutiny of policy in draft regulations, including not just eligibility conditions but also ‘cross-cutting’ provisions on social security matters such as administration, residency and links across the UK and Scottish systems.”

Two other advisory bodies are:

- The Disability and Carer Benefit Expert Advisory Group, and
- The Social Security Advisory Council

The [Disability and Carer Benefits Expert Advisory Group](#) (DACBEAG) was a non-statutory working group which provided advice to ministers on a wide range of issues between 2017 and 2023. Membership was drawn mainly from third sector stakeholder groups. It was wound up in February 2023. It provided advice on employment injuries assistance in [2017](#) and [2022](#).

The [Social Security Advisory Committee is the UK's](#) 'version' of the Scottish Commission on Social Security. It considers regulations on reserved social security benefits, except industrial injuries benefits which are considered by IIAC.

All these bodies have different roles, but all provide technical expertise on social security.

Members may wish to discuss:

- 1. How do the functions of the Industrial Injuries Advisory Council, Scottish Commission on Social Security and the Disability and Carer Benefits Expert Advisory Group differ from those proposed for Scottish Employment Injuries Advisory Council?**
- 2. In the UK context, why is IIAC needed in addition to the Social Security Advisory Committee?**

Theme 2: Research function

The [Financial Memorandum](#) estimates a £30,000 annual budget for research. 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.”

In making proposals for SEIAC, the Member has considered the current arrangements for IIAC.

[DACBEAG's 2022 report](#) described the challenges created for IIAC due to lack of research:

“Currently, the IIAC has a very small research budget. This coupled with a small number of members means the advisory council is very resource intensive for these individuals.

[...]

A major challenge for the IIAC is a lack of relevant, good quality epidemiological studies carried out in Britain that identify the associated occupations.”

A presentation by IIAC (provided to the Committee) explains how:

- IIAC has a sub-committee, the Research Working Group (RWG), which meets separately from the full Council to consider the scientific evidence in detail. The Chair will also determine the need for other sub-groups as required by the Council’s work programme.
- The Council does not have its own research budget to fund medical and scientific studies (other than limited funding from DWP for the occasional commissioning of reviews).

Members may wish to discuss:

- 3. IIAC can commission literature reviews. Very roughly what does IIAC spend on these?**
- 4. In what other ways does IIAC get the information it needs to advise ministers?**
- 5. In what ways does the work of IIAC impact on consideration of wider issues around workplace health and safety beyond the specific eligibility for industrial injuries benefits?**
- 6. What is IIAC’s current programme of work? Particularly in relation to long-COVID, neuro-degenerative disease in footballers and cancers in Firefighters.**

Theme 3: Membership and expertise

SEIAC would have between 6 and 12 members, in addition to the Chair. When appointing members, 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 to 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”.

IIAC has 17 members comprising the Chair and:

- 11 independent members (scientists, occupational health consultants and legal expertise)
- 2 employers
- 2 employees.

SCoSS has a [small board of four](#), with expertise in social security law and practice, human rights, policy and strategy development and social work.

Members may wish to discuss:

- 7. What kinds of knowledge and expertise are necessary to advise on social security for industrial disease and injury?**
- 8. How does IIAC's membership and expertise differ from that of the Social Security Advisory Committee?**
- 9. What level of time commitment is required of IIAC board members and secretariat?**
- 10. How are employees and employers represented on IIAC?**
- 11. In what ways do IIAC and SCoSS consider the views of those with relevant 'lived experience'?**

Theme 4: Timing

The member, and many of those responding to the Call for Views, have emphasised the importance of creating SEIAC in advance of EIA starting – so that it can influence it from the start.

The Scottish Government hasn't given a view on whether an advisory body is necessary. Rather it has objected to creating one now, before the policy detail of EIA has been decided. In a [memorandum dated September 2023](#) the Scottish Government said;

“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.”

The Scottish Government hasn't provided a date for its planned launch of Employment Injuries Assistance, but the current agency agreement with the DWP runs out in March 2026.

It takes time to for an organisation to be established. In a [letter to the Finance and Public Administration Committee](#), the Member in charge has suggested that, if the Bill were to pass, SEIAC would most likely be established during 2025-26.

Members may wish to discuss:

12. How long did it take SCoSS to get established and be in a position to start scrutinising regulations? Might this be a useful comparison for thinking about the ‘lead-in’ time if SEIAC were to be established?

Theme 5: Alternative policy options

In the Policy Memorandum the member considers alternative options including leaving it to SCoSS, IIAC or a non-statutory advisory group.

On SCoSS, the Policy Memorandum comments:

“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.”

[The 2022 independent review of SCoSS](#) stated that:

“It could not take on a wider role in relation to advice on the industrial injuries scheme, such as whether prescribed diseases for which benefit can be paid should be added to or amended. As far as we are aware no such role is envisaged for SCoSS, and it appears very clear that it would not be appropriate.”

On IIAC, the member refers to the need to amend the Scotland Act in order to allow IIAC to provide advice directly to Scottish Ministers. The Policy Memorandum also comments that:

“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.”

On establishing a non-statutory advisory similar to DACBEAG, the Policy Memorandum argues that:

“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.”

Members may wish to discuss:

- 13. In the absence of this Bill SCoSS would consider EIA regulations. Would SCoSS require additional resources or expertise in order to consider regulations creating EIA?**
- 14. Whether or not this Bill passes, IIAC would continue to publish its reports containing advice for UK Ministers. To what extent does IIAC consider a wider audience when publishing its reports?**
- 15. DACBEAG has already provided advice to Ministers on EIA. If a similar, non-statutory group was created, could it provide the required advice on detailed policy development for EIA?**

Camilla Kidner
SPICe,
02 November 2023