

Contents

FOREWORD.....	3
HOW THE CONSULTATION PROCESS WORKS	5
BACKGROUND	6
AIM OF THE PROPOSED BILL.....	7
Current law and practice	7
The Social Security Contributions and Benefits Act 1992.....	7
The Scotland Act 2016	7
The Social Security (Scotland) Act 2018	8
Current practice - the Industrial Injuries Benefit Scheme and the Industrial Injuries Disablement Benefit	9
The role of the existing Industrial Injuries Advisory Council.....	10
The planned Employment-Injury Assistance and the role of an advisory council.....	11
Why a Scottish Employment Injuries Advisory Council?	13
Scrutiny	14
Advice.....	16
Policy evolution	17
International Comparisons	18
Why is primary legislation required?	19
Potential impacts of the Bill.....	20
Women’s workplace injury and disease.....	20
Long-Covid.....	22
Equalities and Sustainable Development.....	23
Equalities.....	23
Sustainable Development.....	24
Miscellaneous matters	25
Financial implications	25
QUESTIONS.....	27
HOW TO RESPOND TO THIS CONSULTATION	34

FOREWORD

Seven months ago, disability and industrial injuries benefits became the Scottish Government's responsibility, a critical step in the long-awaited devolution of new social security powers.

Scotland, of course, was locked down. Our keyworkers, risking their own health, strived to save the ill and to shield our elderly, keep food on supermarket shelves and deliver the supplies for those fortunate to have the safety of staying at home. They faced risks no one could have imagined just a year ago.

Those risks have been tragically realised, with many contracting Covid-19 at work. While statistics show that employers believe hundreds of cases in Scotland were through occupational exposure, workers themselves report harrowing personal experiences of a disease they contracted at their place of work. Some have even lost their lives.



The most devastating disease that Scotland has seen in the workplace in a generation, Covid-19 has exposed that the dangers of work never went away. As we learn more about the disease, Long-Covid has seen people acquire debilitating conditions, threatening their life chances and the loss of their jobs. And yet the current industrial injuries benefit offers these workers no Covid-19 specific entitlement.

With the spectre of Covid-19 and the arrival of our new powers, comes a generational chance to deliver an employment injuries benefit system that is fit for the 21st century, by reflecting the modern Scottish workplace, and the harms workers can face.

We can build on the existing scheme, but we must do more than merely change the name. We need to establish a framework that gives experts and workers the space to consider the harms, build the evidence case and advise government on how to change the scheme.

Our jobs have changed as have our employment patterns. As a result, the dangers, injuries and diseases experienced have changed substantially from those seen in the 20th century. But the existing UK scheme has failed to keep pace with these changes; as a result, applications under the scheme reduce annually as the number of potential applicants reduces.

So too have our employment demographics changed, resulting in the scheme becoming more out of step with the workers of today.

Most substantially, the current benefit is highly gendered, reflecting the injury and disease of male-dominated industries, and failing to afford entitlement for diseases and conditions acquired in the valuable roles predominantly performed by women, as a result, only a small fraction of the claims made each year are made by women. Broadly maintaining the current scheme in Scotland, and actively establishing an employment injuries assistance scheme that excludes many women and the illnesses they face, would be a damning failure of Holyrood to use its powers.

The current scheme has never been perfect; workers in certain occupations and particular conditions have consistently been overlooked. A lack of scientific research and data gaps have frequently been the cause of these omissions, but it has produced perverse results for workers in Scotland. Shipworkers with osteoarthritis, careworkers with cervical or lumbar spondylosis, and local authority gardeners affected by hand arm vibration syndrome all find that their illness or condition, or their job role, doesn't qualify them for support under the scheme. Workers suffering the ongoing consequences of long COVID could also miss out on support.

It is clear these failings must be overcome if we want to provide the people of Scotland with an employment injuries benefit that is dynamic and reflects modern work. I want to ensure that workers in the 21st century who become injured or ill in the line of work can turn to a no-blame social security scheme that is retained and strengthened.

Prioritising the prevention of injury and disease of workers will always be preferential, but a strong compensation system must be in place should the worst occur. To renew that strength, and to know what harms we seek to prevent, our broader knowledge must also be renewed and assessed.

Achieving that will not be straightforward; it will require new data and analysis and a wealth of expertise and testimony to make the case for change, going well beyond the work undertaken by the Department of Work and Pensions and Industrial Injuries Advisory Council. And it will take more than a lift and shift approach, because to do so risks embedding a system that promotes inequalities and fails to reflect modern Scotland.

To secure an employment injuries system fit for purpose, we need a powerful statutory body, independent of government, to investigate and advise on the risks facing workers, and to shape the employment injuries scheme itself. It must have the authority and tools to take on this task, and expertise, including that of workers and their representatives with experience of the hazards of the modern workplaces, from the start.

Mark Griffin MSP
November 2020

HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at: <https://parliament.scot/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I will then publish a summary of the consultation responses. As the deadline for introducing a Member's Bill has passed for this parliamentary session, I expect this consultation to inform a draft proposal lodged in the next parliamentary session.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at M1.20, The Scottish Parliament, Edinburgh, EH99 1SP, or via mark.griffin.msp@parliament.scot.

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website (www.parliament.scot) under Parliamentary Business / Bills / Proposals for Members' Bills.

BACKGROUND

This proposal is for a Bill to set up a Scottish Employment Injuries Advisory Council (SEIAC) to carry out research and make recommendations about certain welfare payments to those who suffered harm as a result of their work, as outlined below. The proposed Bill will ensure that the Council includes a range of experts, including relevant medical experts, as well as workers with experience of being exposed to the risk of workplace injury, and their representatives, including trade unions.

The proposal relates to industrial injuries benefits, described in a Scottish Parliament Information Centre (SPICe) briefing as follows:

“Industrial injuries benefits act as a form of no-fault compensation for employees who have had an industrial accident, or contracted one of a list of industrial diseases due to working in a listed occupation. The list of industrial diseases is monitored by the statutory [UK] Industrial Injuries Advisory Council.”¹

The Scotland Act 2016 devolved a number of social security benefits, including industrial injuries benefits. This transition to the devolved system involved a number of stages. The Social Security (Scotland) Act 2018 (‘the 2018 Act’) provides for the replacement of industrial injuries benefits with employment-injury assistance (EIA). The 2018 Act enables Scottish Ministers to do this by regulations. This has not yet been done. In the interim, Industrial Injuries Disablement Benefit (IIDB) continues to be paid by the UK Department for Work and Pensions.

The Industrial Injuries Advisory Council (IIAC) is a UK non-departmental public body (NDPB) and has an advisory role; this includes scrutiny of regulations related to industrial injuries benefits and making recommendations about additions to the list of prescribed industrial diseases relating to certain occupations. The IIAC cannot play a role in the devolved benefit in Scotland². The Social Security (Scotland) Act 2018 does not make provision for an equivalent in Scotland of the IIAC.

In my view, there is therefore a clear need for legislation to set up a non-departmental public body in Scotland to play an equivalent role to the IIAC, in relation to the devolved industrial injuries benefits.

¹ Scotland Act 2016: industrial injuries benefit and severe disablement allowance, SPICe Briefing 17-52, August 2017, <https://sp-bpr-en-prod-cdnep.azureedge.net/published/2017/8/18/Scotland-Act-2016--industrial-injuries-benefits-and-severe-disablement-allowance/%20industrial%20injuries%20benefits%20and%20severe%20disablement%20allowance.pdf>

² Further explanation can be found on pages 7 & 11

AIM OF THE PROPOSED BILL

My proposed Bill will –

- Establish a Scottish Employment Injuries Advisory Council (SEIAC) as an independent advisory non-departmental public body – and do so in legislation (for greater permanency than if it was established administratively by Ministers)
- Give the SEIAC duties to: scrutinise legislative proposals for the overarching design of the employment injuries assistance (EIA) system and entitlement policy; and to 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.

Current law and practice

The Social Security Contributions and Benefits Act 1992

This Act sets out the framework for the existing IIDB. Part 5 of the Act deals with Benefit for Industrial Injuries and section 94 covers the right to industrial injuries benefit.

The Scotland Act 2016

Under the Scotland Act 1998, as originally enacted, social security was a reserved matter. However, following the recommendations of the Smith Commission, certain aspects of social security were devolved to the Scottish Parliament by the Scotland Act 2016. Under section 22 of the Scotland Act 2016, “industrial injuries benefits, so far as relating to relevant employment or to participation in training for relevant employment”³ were added to the list of exceptions to reserved social security schemes. The effect was to devolve power to the Scottish Parliament for those benefits that were (as of 28 May 2015) administered under the terms of section 94 of the Social Security Contributions and Benefits Act 1992. This includes IIDB.

As set out in a SPICe briefing, the process of devolving the social security powers can be seen to have three stages: legislative competence, executive competence (the power to make regulations and the transfer of legal and financial responsibility) and delivery.⁴

The Scottish Parliament assumed legislative competence for IIDB in May 2017 by way of the Scotland Act 2016 (Commencement No. 5) Regulations 2017⁵; the Scottish Government acquired executive competence for IIDB in April 2020, by way of the Scotland Act 2016 (Transitional) Regulations 2017.⁶

Section 33 of the 2016 Act relates specifically to the UK Social Security Advisory Committee and the Industrial Injuries Advisory Council. It disapplies s.53 of the Scotland Act 1998, which otherwise provides for the general transfer of functions in devolved areas from Ministers of the Crown (UK

³ Scotland Act 2016, s.22. Available at <https://www.legislation.gov.uk/ukpga/2016/11/section/22/enacted>

⁴ Devolved social security powers: progress and plans, SPICe Briefing 19-27, May 2019, p8-9. Available at <https://sp-bpr-en-prod-cdnp.azureedge.net/published/2019/5/10/Devolved-social-security-powers--progress-and-plans/SB%2019-27.pdf>

⁵ The Scotland Act 2016 (Commencement No. 5) Regulations 2017 No. 455. <http://www.legislation.gov.uk/uksi/2017/455/contents/made>

⁶ The Scotland Act 2016 (Transitional) Regulations 2017 no.444 <https://www.legislation.gov.uk/uksi/2017/444/contents/made>

Govt Ministers) to the Scottish Ministers. The effect is that in the case of the IIAC, ministerial powers remain with UK Ministers and do not transfer to Scottish Ministers (as they otherwise would under s.53). No Act of the Scottish Parliament can overturn that as it is not within the legislative competence of the Scottish Parliament to remove functions from UK Ministers.

The Social Security (Scotland) Act 2018

The Social Security (Scotland) Act 2018 (“the 2018 Act”) sets out the enabling regime for the Scottish Government’s proposed devolved benefit (to replace the existing industrial injuries benefit system), Employment-Injury Assistance (EIA).

Under s.33 of the 2018 Act, employment-injury assistance is assistance given by Scottish Ministers under s24 to an individual “on account of the individual, or another individual, having suffered an injury, or contracted a disease, in the course of employment”⁷. The eligibility rules and the assistance that is to be given are to be set out in regulations. Schedule 7 on Employment-Injury Assistance Regulations⁸ sets out how these regulation-making powers are to be exercised.

This new benefit has not yet been introduced by Scottish Ministers. Delivery of the benefit is currently being handled by the UK Department for Work and Pensions (DWP) acting on behalf of Scottish Ministers under agency arrangements.^{9 10}

The 2018 Act also provides for a Scottish Commission on Social Security (SCoSS). Under s.22(1)(a) the Commission can scrutinise legislative proposals in accordance with section 97 (which sets out the procedure to follow for regulations about assistance, including those setting up EIA). The Commission’s functions are as follows:

22 Commission functions

- (1) The Scottish Commission on Social Security has the following functions—
 - (a) to scrutinise legislative proposals in accordance with section 97,
 - (b) to prepare and submit to the Scottish Ministers a report on any matter, relevant to social security, that the Ministers request the Commission to report on,
 - (c) to prepare and submit to the Scottish Parliament a report on any matter, relevant to social security, that the Commission is requested to report on by the Parliament after the Parliament has resolved that the request should be made,
 - (d) to prepare and submit to the Ministers and the Parliament, from time to time, a report containing—
 - (i) an assessment of the extent to which any or all of the expectations set out in the Scottish social security charter are being fulfilled, and
 - (ii) recommendations for improvement where the assessment is that those expectations are not being fulfilled,
 - (e) any functions the Ministers confer on the Commission by regulations.

⁷ Social Security (Scotland) Act 2018, <https://www.legislation.gov.uk/asp/2018/9/contents/enacted>

⁸ Ibid.

⁹ Agency arrangements are agreements between the Scottish Government and UK Government for devolved benefits allow for benefits to be delivered by DWP after executive competence transfers to the Scottish Government, ensuring that there is no break in service for benefit recipients while the Scottish Government continues to design and implement its service. The Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018 Explanatory Memorandum provides further detail regarding the agreement for IIDB: https://www.legislation.gov.uk/uksi/2018/626/pdfs/uksiem_20180626_en.pdf.

¹⁰ Industrial Injuries Disablement Benefit agency agreement: FOI release, 12 Aug 2020, <https://www.gov.scot/publications/foi-202000053135/>

Schedule 1 to the 2018 Act makes further provision for the membership of the Commission, as well as its status, powers, procedure, finance and the application of legislation relating to public bodies. In terms of membership, this is set out in Chapter 5 of Schedule 1¹¹:

Chapter 5 - Membership

Number of members

- 13 (1) The Commission is to consist of—
- (a) a member to chair the Commission, and
 - (b) at least 2 but no more than 4 other members.
- (2) The Scottish Ministers may by regulations amend sub-paragraph (1)(b) by substituting a different number for any number for the time being specified there.

Appointment of members

- 14 (1) The Scottish Ministers are to appoint the Commission's members.
- (2) The Scottish Ministers may not appoint a person who is disqualified from being a member (see paragraph 17).
- (3) When appointing members the Scottish Ministers must have regard to the desirability of—
- (a) securing that the Commission (taken as a whole) has experience in or knowledge of—
 - (i) the formulation, implementation and evaluation of social security policies in Scotland and elsewhere in the United Kingdom,
 - (ii) research in connection with social security, and
 - (iii) the effect of disability, arising from a physical or mental impairment, on daily life,
 - (b) having a member with personal experience of having a disability arising from a physical or mental impairment, and
 - (c) having as members people who have not previously been members.

Current practice - the Industrial Injuries Benefit Scheme and the Industrial Injuries Disablement Benefit

The Industrial Injuries Benefit Scheme (IIBS) traces its roots back to 1948. The IIBS is made up of numerous benefits¹² with the main one being IIDB. While UK Government regulations have repeatedly updated the list of prescribed diseases, there has not been substantial change to the IIDB scheme since the 1992 Act. The scheme remains in operation across the UK, including in Scotland, until a new devolved scheme is introduced.

In Scotland 27,370¹³ people receive benefits under the Industrial Injuries Benefit Scheme; the large majority of these, 20,030, receive IIDB only, while more than 7,000 receive Reduced Earnings Allowance and Retirement Allowance alone or in combination with IIDB. IIDB is the main payment and Reduced Earnings Allowance, now closed to claims for injury since 1990, provides an allowance where injury and disease resulted in the person having reduced earnings.

¹¹ Chapter 5, Part 1, Schedule 1, Social Security (Scotland) Act 2018

<https://www.legislation.gov.uk/asp/2018/9/schedule/1/part/1/chapter/5/enacted>

¹² According to the Scotland Act 2016 Explanatory Notes (paragraph 179), the definition of industrial injuries benefit covers the following benefits which at the time were being paid by the UK government: Industrial Injuries Disablement Benefit; Constant Attendance Allowance; Exceptionally Severe Disablement Allowance; Reduced Earnings Allowance; Retirement Allowance; Unemployability Supplement; Industrial Death Benefit; Industrial Injuries Disablement Gratuity and Hospital Treatment Allowance, <https://www.legislation.gov.uk/ukpga/2016/11/notes/division/6/index.htm>

¹³ Industrial Injuries Disablement Benefit quarterly statistics: data to December 2019, Department for Work and Pensions

<https://www.gov.uk/government/statistics/industrial-injuries-disablement-benefit-quarterly-statistics-data-to-december-2019>

Applications are currently being handled under section 94 of the Social Security Contributions and Benefits Act 1992, with the DWP acting on behalf of Scottish Ministers under an agency agreement. The 3-year agreement between the Secretary of State for Work and Pensions and Scottish Ministers¹⁴ states, that the Scottish Government must maintain parity, for the duration of the agreement:

- with the DWP rates of benefit as part of the normal up-rating cycle;
- in terms of eligibility criteria to all benefits under the industrial injuries scheme;
- in terms of accepting amendments to the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985, which set out the list of prescribed diseases for which Industrial Injuries Disablement Benefit is payable.

It also states that there will be no difference in the application of debt policy. Prior to the global Coronavirus pandemic, the Scottish Government had confirmed that it would begin to accept new applications for EIA by Autumn 2022.¹⁵

The role of the existing Industrial Injuries Advisory Council

As set out in a SPICe briefing,¹⁶ the IIAC was set up in 1946 as a non-departmental public body, to give advice on the link between particular occupations and diseases. Its remit includes:

- drafting reports to lay before Parliament on proposed changes to the scheme;
- making recommendations about additions to the list of prescribed industrial diseases relating to certain occupations; and
- scrutinising regulations relating to industrial injuries benefits.

The briefing also sets out that “The remit of IIAC is set out in primary legislation”, and “provides advice to the Secretary of State about industrial injuries benefits”.

Crucially, it “does not undertake its own research” but “In the absence of sufficient research it can organise its own calls for evidence”.

The IIAC was put on a statutory footing in 1965. Its current remit is set out in the Social Security Administration Act 1992¹⁷ That Act also sets out its function in relation to regulations, and, in Schedule 6, its composition.¹⁸

Over the past decade, the UK IIAC has become subject to Cabinet Office triennial reviews as a non-departmental public body, and latterly a tailored review¹⁹. The most recent 2015 triennial review found that the IIAC should remain, on the basis that “There is a continuing need for the provision of independent, expert, scientific advice to the Secretary of State for Work and Pensions” and that it “provides valuable, high quality, well-respected scientific advice to the Government about the

¹⁴ Industrial Injuries Disablement Benefit agency agreement: FOI release, 12 Aug 2020, <https://www.gov.scot/publications/foi-202000053135/>

¹⁵ Question S5W-24018: Bob Doris, Glasgow Maryhill and Springburn, Scottish National Party, Date Lodged: 25/06/2019, <https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-24018&ResultsPerPage=10>

¹⁶ Scotland Act 2016: industrial injuries benefit and severe disablement allowance, SPICe Briefing 17-52, August 2017, <https://sp-bpr-en-prod-cdnep.azureedge.net/published/2017/8/18/Scotland-Act-2016--industrial-injuries-benefits-and-severe-disablement-allowance/%20industrial%20injuries%20benefits%20and%20severe%20disablement%20allowance.pdf>

¹⁷ s.170, Social Security Administration Act 1992, <https://www.legislation.gov.uk/ukpga/1992/5/part/XIII/crossheading/the-social-security-advisory-committee-and-the-industrial-injuries-advisory-council/enacted>

¹⁸ Social Security Administration Act 1992, Schedule 6, <https://www.legislation.gov.uk/ukpga/1992/5/schedule/6/enacted>

¹⁹ Tailored reviews aim to “provide a robust challenge to and assurance on the continuing need for individual organisations – both their functions and form”. Taken from Tailored Reviews: Guidance on Reviews of Public Bodies, Cabinet Office, May 2019. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/802961/Tailored_Review_Guidance_on_public_bodies_-May-2019.pdf

Industrial Injuries Scheme and its functions play a vital role in ensuring Scheme benefits are based on credible, up-to-date scientific evidence” as well as “offer[ing] cost-effective advice of a high calibre, in an independent and transparent way”.²⁰

In 2020, the tailored reviewer again confirmed the IIAC should remain and is “a good role model for how an Advisory Non-Departmental Public Body (ANDPB) can work well in a modern government setting” and as a result “the IIDB scheme works significantly better because of the work of the council”²¹.

The planned Employment-Injury Assistance and the role of an advisory council

As already explained, the effect of section 33 of the Scotland Act 2016 is that the IIAC cannot have a role to play in the devolved Scottish context, related to EIA.

Moving an amendment that would become section 33 of the Scotland Act 2016, Lord Dunlop said:

“The roles of the SSAC [Social Security Advisory Council] and IIAC are to remain unchanged. Scottish Ministers, however, will not be able to refer their draft regulations to these bodies for consideration. Once legislative competence has been given to the Scottish Parliament it may, if it wishes, put in place separate scrutiny bodies to consider legislative proposals made by the Scottish Government within the scope of the legislative competence and report back to Scottish Ministers.”²²

As a result, the Scottish Government is unable to seek advice from the IIAC and, under the terms of the current agency agreement with the DWP, must mirror the recommendations the UK Government accepts.

At the time of writing, specific details about the Scottish Government’s plans for the EIA are limited, but we do know that it will provide no-fault compensation²³, and per the 2018 Act it will not be means-tested and that the amounts paid will be updated annually.

In 2016, the Scottish Government Consultation on Social Security in Scotland included a section on whether there was a need for an independent body to be set up to scrutinise Scottish social security arrangements. The question was asked “does the body need to be established in law or would administrative establishment by the Scottish Government of the day be sufficient?”²⁴ Of those that responded (168; 86 individuals and 82 organisations) the vast majority said that the body should be established in law, with a minority feeling that administrative establishment would be sufficient. The summary of responses stated:

“Primarily, respondents wanted the body to be established in law so that it would have permanence and not be subject to potential change with each newly elected government”

...

²⁰ <https://www.gov.uk/government/publications/industrial-injuries-advisory-council-triennial-review-2015>

²¹ Foreword, Tailored Review of the Industrial Injuries Advisory Council, UK Government, <https://www.gov.uk/government/publications/tailored-review-of-the-industrial-injuries-advisory-council/tailored-review-of-the-industrial-injuries-advisory-council>

²² House of Lords Monday 22 Feb 2016 Volume No. 769, Part No. 111: <https://publications.parliament.uk/pa/ld201516/ldhansrd/text/160222-0003.htm#1602232000124>

²³ Social Security (Scotland) Bill Policy Position Paper: Disability Assistance and Employment Injury Assistance, October 2017, <https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2017/10/social-security-position-paper-disability-assistance-employment-injury-assistance/documents/00526562-pdf/00526562-pdf/govscot%3Adocument/00526562.pdf>

²⁴ pp. 68-69, Summary of responses to the consultation on Social Security in Scotland, February 2017, <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/02/analysis-written-responses-consultation-social-security-scotland/documents/00514351-pdf/00514351-pdf/govscot%3Adocument/00514351.pdf>

“A key point raised was that by being established in law, the body would be independent of government and in a better position to be critical and hold government accountable”

With regard to the IIAC, the analysis of consultation responses reported “A few specifically noted that, as in the current UK system, Scotland should have a separate independent body to provide scrutiny for Industrial Injuries Disablement Benefit (IIDB), like the Industrial Injuries Advisory Council (IIAC)”.

An Industrial Injuries Disablement Benefit (IIDB) Advisory Group was established in 2016. Set up to provide advice to Scottish Ministers developing policy on social security benefits for people affected by industrial injuries and ill health, the last minuted meeting available online dates from December 2017²⁵, confirmed in a recent written parliamentary question²⁶.

In December 2017, the Disability and Carers Benefits Expert Advisory Group (DCBEAG) reported to the Scottish Government on the subject of Independent Scrutiny of Social Security.²⁷ Whilst the report deals with scrutiny of social security as a whole, it contains a specific section on scrutiny of employment injury assistance regulations. The group’s conclusions listed the immediate need for scrutiny, and recognised that additional advisory arrangements would be needed for the purposes of complex, detailed scientific advice in the future:

- The role of scrutiny of regulations and that of expert advice based on scientific and medical research should be separated.
- They are not persuaded there is a need for a separate scrutiny body for employment injury assistance regulations. Indeed there is value in these regulations being scrutinised by the same body that scrutinises all other Scottish social security regulations. They recommend that one scrutiny body has a statutory duty to scrutinise all social security regulations.
- For scientific advice, in the first instance, the Scottish Government could rely on IIAC’s published reports. They recommend exploring with IIAC informal good working relationships to optimise information sharing, given there can be no formal advice-giving to Scottish Ministers.
- As policy in Scotland on employment injury assistance diverges from that in the rest of the UK, there will be a need for independent medical and scientific advice beyond that available from IIAC. Options include commissioning ad hoc reports or setting up a panel of experts.

In a 2019 position paper on Industrial Injuries Disablement Benefit, the Scottish Government appeared to suggest that a specific EIA Council may not be a planned feature of the Scottish scheme:

“Securing the necessary expertise could be challenging...”

Our primary objective in transferring the benefits is safe and secure transition. If we largely replicate the current rules and list of prescribed diseases, setting up a similar Council could result in the same professions, considering the same evidence. It may therefore be prudent not to establish a similar Council until the scheme has been sufficiently changed to avoid duplication.”²⁸.

²⁵ Industrial Injuries Disablement Benefit Advisory Group, <https://www.gov.scot/groups/industrial-injuries-disablement-benefit-advisory-group/>

²⁶ Question S5W-31835: Mark Griffin, Central Scotland, Scottish Labour, Date Lodged: 16/09/2020, <https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-31835&ResultsPerPage=10>

²⁷ Independent Scrutiny in Social Security, Report of the Disability and Carers Benefits Expert Advisory Group, December 2017. <https://www.gov.scot/publications/disability-and-carers-expert-advisory-group-independent-scrutiny-report/>

²⁸ 2019: Scottish Government Position Paper: Industrial Injuries Disablement Benefit available at <https://www.gov.scot/publications/industrial-injuries-disabled-benefit-policy-position-paper/>

This issue was also referred to in a response to a parliamentary question in March 2020:

“The Scottish Government plans to hold a full public consultation on Employment-Injury Assistance. The responses will inform detailed policy proposals, including whether there is a need for a Scottish equivalent to the Industrial Injuries Advisory Council and, if so, how it should be constituted.”²⁹

To date, no consultation has been launched. In a response to a Parliamentary Question, Ministers have been unable to confirm a start date for this process.³⁰

It is my view that the arguments presented by the advisory group and Scottish Government suggest EIA will see little or no policy change from IIDB requiring the expertise and input of a SEIAC. Though DCBEAG acknowledge the need for specific, expert advice in the future, the short-term recommendations focus on the maintenance of the status quo. This would, in my view, only partially devolve the benefit with policy changes being driven by IIAC and the DWP. If we are to make improvements to EIA in the future, so to fully devolve the benefit and take the opportunities of these powers, we will need the expertise of a SEIAC, on a statutory footing.

Why a Scottish Employment Injuries Advisory Council?

In this section, I will set out why a Scottish Employment Injuries Advisory Council is needed.

I will explain why the Bill should specify the body’s membership numbers and mix, securing the representation of workers and their trade unions in that membership. I will also explain why it is important that the Bill sets out clearly the remit of the council, which should include:

- a) scrutiny of legislative proposals for employment injuries assistance entitlement policy and design;
- b) advising on and recommending changes to EIA entitlement policy and design; and
- c) consider the design and policy evolution of the devolved scheme.

I believe the Council should also 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.

Finally, I will set out why a Bill is necessary, in order to make statutory provision for a SEIAC in keeping with the stature of the current Council.

Establishing an independent SEIAC in statute would 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. This SEIAC should be a permanent and consistent source of expertise, available to scrutinise relevant legislation and evidence, and provide expert advice.

²⁹ Question S5W-28018: Jeremy Balfour, Lothian, Scottish Conservative and Unionist Party, Date Lodged: 19/03/2020, <https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-28018&ResultsPerPage=10>

³⁰ Question S5W-31835: Mark Griffin, Central Scotland, Scottish Labour, Date Lodged: 16/09/2020, <https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-31834&ResultsPerPage=10>

Scrutiny

A SEIAC is essential to provide scrutiny and advice to the Scottish Government and Parliament on the ever-changing world of work, and the hazards and diseases employees face. The present UK IAC is recognised as an extremely capable body and is well respected because of its tripartite nature and quality of its recommendations³¹. It is a unique arrangement: it does not overlap with other bodies or scientific committees and “requires a large number of members to cover the wide field of occupational health as well as knowledge about workplaces and employees”³².

This area involves complex and highly technical epidemiological evidence, and a substantial knowledge of the workplaces where disease and injury occur, to assess whether an occupation has caused disease and/or injury and subsequent disablement.

It is important to note the substance of the legislation establishing the Scottish Commission on Social Security (SCoSS) to understand why a separate SEIAC is needed for Scotland.

The legislative requirements in terms of the qualifications of SCoSS members do not stipulate specialist knowledge of industry or personal injury in the workplace. The schedule to the 2018 Act (see p.9) creates an expectation that the membership of the SCoSS as a whole should have experience in or knowledge of: social security policy in the UK, research on the topic, and the effect of disability on daily life, and that at least one member should have their own lived experience of disability.³³

My view is that a SEIAC requires a more specific and specialised membership relative to EIA. Its independent members should consist of specialists in occupational medicine, epidemiology, toxicology and the law, as well as the workers who face the risk of disease and injury in the workplace and their representatives. There should be equal representation of workers, for instance drawn from their representatives in the trade union movement, and industry.

Were the Scottish Government, for example, to immediately lay regulations to provide EIA, it would be for SCoSS to consider the regulations, or for the Scottish Government to establish an administrative advisory council prior to the Government seeking Parliamentary approval. Neither option could secure the permanent and consistent representation of epidemiological and occupational expertise, or that of workers and their trades union representatives. This deficit cannot be overlooked, nor can such expertise be hastily assembled.

In this respect I would point to the observations that emerged from the tailored review of the IAC that considered the distinction between the IAC and the UK Social Security Advisory Committee (SSAC).

“...they differ in their main function: IAC largely provides advice to contribute to the formation of policy, while SSAC’s main role of scrutinising social security legislation occurs after policy is made.

³¹ Industrial Injuries Disablement Benefit (IIDB) Scheme, Consultation Report, June 2007, DWP, <http://webarchive.nationalarchives.gov.uk/20100407022214/http://dwp.gov.uk/docs/iidb-response.pdf>.

³² 3. Form and function, Tailored Review of the Industrial Injuries Advisory Council, February 2020, <https://www.gov.uk/government/publications/tailored-review-of-the-industrial-injuries-advisory-council/tailored-review-of-the-industrial-injuries-advisory-council>

³³ Schedule 1 of the Social Security (Scotland) Act 2018. See p.9

SSAC also requires a different set of expertise from IIAC, with a focus on knowledge of the social security system and technical understanding of legislation, rather than scientific expertise”.³⁴

The review also explains that the expert IIAC, working in collaboration with the DWP, is able to track its advice through to legislation which it then scrutinises:

“IIAC advises the department on the drafting of regulations on IIDB. Regulations on IIDB are largely additions or amendments to the list of prescribed diseases that IIAC has recommended and so IIAC’s advice ensures that the prescription is medically and scientifically accurate.”³⁵

...

“IIAC also engages with DWP Policy and Legal teams, as the policy teams handle the advice IIAC gives the department and the legal team draft the IIDB legislation that IIAC scrutinises.”³⁶

IIAC’s scrutiny differs from that offered by SSAC. Owing to the nature of IIAC’s expertise the scrutiny is two-fold: it scrutinises DWP legislation, but it also scrutinises evidence used to base its advice on and make the case for conditions to be added to the list of prescribed diseases. IIAC does not commission or conduct its own research, instead its members must interrogate it before accepting it. The scrutiny required for the industrial injuries scheme is far less reliant on proposals being initiated by government.

I do not share DCBEAG’s suggestion that the IIAC’s functions can be separated out, with SCoSS relying on IIAC reports, even in the early days, to inform its scrutiny of EIA legislation. To do so would distance the policy and decision making process from the experts who formulate the advice, which we understand to work well in IIAC. Having the expertise and knowledge embedded in a SEIAC would ensure scrutiny of Scottish Government regulations is conducted with the best advice at hand.

Logically, if regulations are based on the advice of IIAC (in the early days), to which the Scottish Government has no right of access, SCoSS and the Scottish Government may struggle to truly interrogate the advice should clarification be needed. For instance, when fuller or greater clarity is needed, or if there is a specific Scottish demographic or sectoral aspect to a proposed condition issues may occur.

Doing so risks embedding the IIDB structure and decisions made for England & Wales regarding entitlement criteria into EIA from day one, failing to fully engage the expertise of workers and their representatives in Scotland in the formative years of the new benefit.

DCBEAG suggests beyond the short term, SCoSS could work with IIAC through a Memorandum of Understanding³⁷. However, this would replicate the risks outlined above regarding delays to new policy and maintain an over-reliance on UK institutions, and might not resolve the need for SCoSS to have its own expertise to fully interrogate the EIA regulations and IIAC advice. Furthermore, there remains a clear legal prohibition on IIAC being involved in the devolved system. Though this prohibition is specifically on the Scottish Ministers, it is clear that there was to be a limited relationship with the new Scottish benefits system. Further pursuit of this suggestion might further delay the use of the new powers and the evolution of EIA.

³⁴ Tailored Review of the Industrial Injuries Advisory Council, February 2020, <https://www.gov.uk/government/publications/tailored-review-of-the-industrial-injuries-advisory-council/tailored-review-of-the-industrial-injuries-advisory-council>

³⁵ Ibid.

³⁶ Ibid.

³⁷ Scrutiny of employment injury assistance regulations, DCBEAG <https://www.gov.scot/publications/disability-and-carers-expert-advisory-group-independent-scrutiny-report/>

It is important to remember, that there are constraints on the use of enabling powers under the 2018 Act which go beyond those of the arrangements in UK legislation. The 2018 Act requires Ministers to adhere to all other legislative duties in the Act, in particular: abiding by the principles set out in section 1, including ensuring the system has dignity and respect at its heart, and abiding by the social security charter in doing so. There will remain a need to scrutinise the spirit and letter of EIA regulations to ensure features of the current scheme meet those duties as they are converted into Scotland-specific regulations.

Advice

As the DCBAEG recommendation states, if the approach of relying on IIAC reports was to be followed in the first instance, this would need to be done on the basis of information sharing given that there can be no formal advice-giving to Scottish Ministers by the IIAC. Second, the DCBEAG report also states that it was clear there was value in the Government risk assessing “whether having to wait for published material would obstruct timely policy development in Scotland”. The outcome of that risk assessment, or the suggestion to develop information sharing arrangements, is not clear. With regard to the former, no outcome is referenced in the Minister for Social Security’s response to the DCBEAG paper³⁸, or the 2019 position paper. With no progress being made to deliver the EIA scheme it is unclear if the arrangements have been considered, or if they are yet to be explored.

I do not consider such an arrangement to be satisfactory. The IIAC was set up to advise on the IIDB as it currently exists, thus improvements to its list of prescribed diseases will only ever reflect the conditions IIAC can recommend under the IIDB framework³⁹ – and scrutinise recommendations the DWP chooses to accept. It would not, for example, be possible to access IIAC’s expertise to apply it to any potentially different, Scotland-specific context. In addition, as DCBEAG itself recognised, because medical and scientific advice is needed to make change, and “without such advice, there is a constraint to changing rules in Scotland.”

At this stage it is useful to acknowledge that UK Government does not always immediately accept advice and add conditions to its prescription list. For example, Occupational Raynaud’s (Vibration White Finger) was the subject of four IIAC reports between 1954 and 1981 before being finally prescribed in 1985, 31 years after first being considered. Occupational Deafness was first considered in 1961 but wasn’t prescribed until 1975 but even then, was subject to quite stringent conditions in respect of the nature of employment and the degree of deafness required for a claim to succeed. Asbestos related lung cancer was being discussed in the medical literature of the 1930s but was not prescribed until 1985 and, even then, only where the claimant also suffered from asbestosis or bilateral pleural thickening.

If the IIAC were to advise prescription of a condition, and the Scottish Government wished to press ahead with legislation, it would not have a right to communicate with IIAC seeking further details or clarification. The absence of a Scottish advisory body to support the Government, would, in my view, lead to blockages.

Crucially DCBEAG also recognised that “the constitution of a group competent to give expert advice in this field depends on what the scheme will be”, posing a broader but pertinent question about the policy development of the EIA.

³⁸ Disability and Carers Benefits Expert Advisory Group - independent scrutiny: response from ministers, January 2018, <https://www.gov.scot/publications/disability-and-carers-benefits-expert-advisory-group---independent-scrutiny-response-from-ministers/>

³⁹ Section 6 Stakeholder Engagement, IIAC annual report: 2019 to 2020, July 2020, <https://www.gov.uk/government/publications/iiac-annual-report-2019-to-2020--2/iiac-annual-report-2019-to-2020#stakeholder-engagement-1>

There was little scrutiny of this matter at stage 1⁴⁰ of the Social Security (Scotland) Bill. Hugh Robertson, of the IIAC, said:

“The reality is that occupational diseases in Scotland will not be different from those in England. In the initial period, when Scotland will be mirroring the scheme in England and Wales, reports on issues will be coming from the IIAC in England and Wales. We cannot really advise you on whether Scotland should just accept those reports and put them into Scottish regulation, or whether it should set up its own specialist committee, either as a sub-committee of the Social Security Committee or as a separate one.

“However, we can say that, because those reports are meant to be evidence-based academic ones, problems would arise if the two committees looked at the same things and reached totally different conclusions. That should not happen. Is it a useful use of Scotland’s resources to duplicate the committee’s work? That is your decision, I am afraid.”⁴¹

Mr Robertson’s position appears logical: if there is to be little or no difference in the two schemes, the need for a separate organisation or the re-writing of the regulations would be wasteful. However, that position would beg the question why legislate for the EIA enabling powers in 2018.

Policy evolution

In reality, the IIAC will be examining epidemiological information which will likely apply to workers in Scotland as much as they do in any other part of the UK at the current time. However, the Scottish legislation and the environment in which it exists has evolved, though perhaps not yet diverged, from the UK system. The establishment of a social security system that must be rooted in the principles of the 2018 Act, is an example of this.

Although the current Scottish Government does not appear ready to embrace the opportunity of the new EIA powers in the short term, as acknowledged by DCBEAG when it said “The priority for government is a safe and secure transition meaning no radical system change at the outset”, it is reasonable to expect that there will be some divergence in the benefits offered and the conditions upon which entitlement is determined. Devolution has helped Scotland enjoy public policy that better takes account of the demographic, economic and legal variations in Scotland.

Just as DCBEAG have suggested, expertise will be required to support change to the system and the conditions prescribed. This is something the tailored review of the IIAC also recognised – that this expertise is key to policy evolution – and the same understanding will apply to Scotland in the coming years:

“The evidence base for occupational diseases is constantly growing and changing, as is the number and nature of occupations UK workers do. Scientific expertise is needed to understand and assess the evidence base, so that the Industrial Injuries scheme can continue to aid those with an occupational disease.”⁴²

The powers over EIA entitle any Scottish Government to make fundamental change to the support available to those disabled through injury or disease contracted through the course of their employment; that includes how scrutiny and advice on EIA is organised. This proposal seeks to establish a framework for determining who should be involved in that process. It is my view that an

⁴⁰ IIDB was also discussed briefly at Stage 1 in relation to the IIAC on 21 September 2017 and in the context of uprating on 28 September 2017, <https://beta.parliament.scot/bills/social-security-scotland-bill>

⁴¹ Official Report 05 October 2017, Social Security Committee, www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11138&i=101583&c=2030264#ScotParIOR

⁴² Tailored Review of the Industrial Injuries Advisory Council, February 2020, <https://www.gov.uk/government/publications/tailored-review-of-the-industrial-injuries-advisory-council/tailored-review-of-the-industrial-injuries-advisory-council>

expert body should be in place now, from the formative years of Scotland's new social security system.

The framework this bill will put in place will ensure experts can advise on and investigate changes to Scottish entitlement. The powers present opportunities to respond to a variety of public policy matters, which might include: how the benefit will better support those in modern work settings; having a greater emphasis on the injuries and conditions women encounter; and, the response to the long-term health impacts of workplace contracted Covid-19, are just a few examples that I will touch on later in this document.

To do so, a SEIAC will need to be able to consider new, relevant data to inform new policy considerations and the advice it gives to Ministers and Parliament. In pre-consultation discussions stakeholders have suggested that data and research that would be useful does not exist for many industries and workplace settings.

Hence, I propose that a Scottish Employment Injury Advisory Council should have the legal freedom to commission its own research. This would ensure the SEIAC can report and make recommendations without having to be requested to do so by Scottish Ministers, and to explore new and emerging lines of enquiry, so long as it can meet its duties to scrutinise and advise on Government proposals. It should be able to investigate and review emerging industrial and employment hazards which result in disablement through disease or injury, in order to contribute to its function to continually advise on the design of the system and the entitlement it offers.

It is noted that this is not a function that the IIAC enjoys:

“IIAC does not have its own research budget and its remit does not extend to commissioning primary research studies. Thus, IIAC must rely on published research when considering whether a disease and exposure warrant prescription. IIAC strives to identify robust evidence from the peer-reviewed scientific literature, but where such information is lacking will seek other avenues to provide information, such as approaching researchers directly to ask for additional analyses of, or further information about, their data.”⁴³

International Comparisons

A research report was prepared for the IIAC, *An International Comparison of Occupational Disease and Injury Compensation Schemes*⁴⁴, to provide a “better understanding of possible advantages and disadvantages of occupational disease and injury compensation schemes in other countries.” Though the report is now 13 years old, and much of it considers the wider IIDB scheme (besides the respective scrutiny and advisory arrangements), it does provide a useful analysis of the existence of advisory bodies across Europe at the time. It does not provide recommendations about the future of the IIAC. The report highlights advisory bodies were present in Belgium, Denmark, France, Germany and Sweden, with the position being unclear in Austria, Italy and Sweden. Specifically, it noted:

“Advisory committees that are engaged with such activities also vary in composition in different countries. In Germany the relevant committee is composed of medical experts only whereas in other countries it may include the representation of employers and labour, such as in Denmark, or representation from social insurance funds, such as in France.”

⁴³ Ibid

⁴⁴ An International Comparison of Occupational Disease and Injury Compensation Schemes, prepared for the Industrial Injuries Advisory Council, March 2007,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/330347/InternationalComparisonsReport.pdf

There is clearly variance in the make-up of the advisory bodies or commissions. Though the likes of Germany rely solely on medical experts, other occupational disease and injury systems do incorporate the key expert stakeholders in their scrutiny and advisory structures, to aid decision and recommendation making. This Bill would ensure the statutory involvement of workers and trades unions as their representatives, like the IIAC, as is seen in some instances internationally.

Why is primary legislation required?

It is my view statutory provision should be made for a SEIAC, in keeping with the stature of the current Council. It is vital that a body is established in statute, rather than administratively, so as to guarantee the membership numbers and mix, securing the representation of workers and their trades unions in the design, ongoing scrutiny and performance of the scheme or its future evolution.

The Scottish Government could argue that the Council need not be established in primary legislation. Instead, it may consider a variety of options to fulfil the scrutiny needs for an EIA scheme. These may include:

- a) establishing an administrative non-departmental body;
- b) refining and extending, through secondary legislation, the functions, membership and responsibilities of SCoSS; or
- c) on the basis of the information in its position paper, replicating current rules and the list of prescribed diseases, and postponing any decision on whether to establish a SEIAC until it is clear how the powers will be used.

I am of the view that an administrative non-departmental body would not be acceptable to benefit claimants or adequately represent workers and their trades unions on the Council. As indicated above the results of the Scottish Government's consultation on Social Security in Scotland found a scrutiny body should be established in law, be permanent, and be independent of government. Though that has been established for SCoSS, I remain unconvinced the legislative arrangements for SCoSS would secure the kind of expertise enjoyed by the IIAC and which I believe to be necessary for a SEIAC. The consultation established that the independence and permanence of a statutory body is important because it would be in "a better position to be critical and hold government accountable"⁴⁵. This was a feature of the debate in 2017 surrounding the scrutiny arrangements within the Social Security Bill, which Ministers accepted at stages 1 and 2, and the issues remain pertinent today and apply equally to a SEIAC.

Regarding the refinement and extension of the functions, membership and focus of SCoSS, it is possible the Scottish Government could argue primary legislation is not required, on the basis that the 2018 Act provides the necessary flexibility to make changes through secondary legislation. It could be argued that a SEIAC could be established as part of SCoSS based on the following assumptions:

- i. Section 22(1)(e) of the 2018 Act grants Ministers the power to confer functions on the existing Commission by regulations (which have been outlined earlier in this document [at page 8]);
- ii. Ministers may, under Schedule 1, Part 1, paragraph 13(2) of the 2018 Act modify the number of members on Committee; and,
- iii. The Commission itself has power to establish sub-committees, for which it can recruit non-voting members (see Schedule 1, Part 1, Chapter 3 of the 2018 Act).

This route is not sufficiently robust to achieve the tests of permeance and independence, however.

⁴⁵ Para 5.1.4, p68, Analysis of Written Responses to the Consultation on Social Security in Scotland <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/02/analysis-written-responses-consultation-social-security-scotland/documents/00514351-pdf/00514351-pdf/govscot%3Adocument/00514351.pdf>

In respect of ii., though membership may be increased, paragraph 14(3) of the same schedule and part does not require the commission to appoint members specifically from among workers or trades unions in respect of EIA. Crucially, Ministers do not have power to modify the *Appointment of members* paragraph by regulations. In this case primary legislation would be needed to establish this requirement, or to provide Ministers with regulation-making power.

Regarding iii., although the Commission has power to establish a sub-committee, which for the purposes of this discussion would be a SEIAC, Ministers have no means to guarantee the permanence of this sub-committee, or to ensure that its membership includes those representing workers or trades unions, without primary legislation. Ministers could of course, compel the Commission to have a SEIAC function under s22(1)(e), but again its permanence would be doubtful and there would again be no guarantee of sectoral representation in the membership.

Though such an arrangement would be established in law, it is not without its weaknesses. Primarily, Parliament cannot amend regulations. Through secondary legislation a Scottish Government could seek to remove functions, membership and responsibility, and Parliament would only have the option to accept or reject the change. It can vote down regulations it is not satisfied with, however this situation is unlikely in practice. In session 5, for example, no social security regulations have been rejected; there is a clear appreciation across the Chamber that the powers and benefits must become law and their devolution affirmed. Though the detail of regulations may be occasionally unacceptable to all or some parties, attempts to block the broader proposals, key to establishing new social security benefits, are unlikely. Primary legislation can also be changed or repealed by an incoming government, however the process attracts greater Parliamentary resource and on occasion media attention. Primary legislation does in practice provide a more solid base to secure the functions, permanence and independence a SEIAC requires, and would be in-keeping with the 2016 consultation findings.

Potential impacts of the Bill

It is not expected that this bill will have substantial immediate and direct impacts on individual groups within Scotland's workforce. An enabling bill, it sets a framework to aid the future development of the EIA scheme. It is expected that the bill will grant the Council the powers to grow into its independence and role. The proposed bill intends to define membership make-up; give it powers to advise and recommend changes to EIA; allow it to commission its own research, and make recommendations for ongoing evolution of the EIA. As indicated at page 18 it is useful to speculate that the benefit can and will evolve in the future, and how this bill will support that.

It is envisaged that its power to research the hazards of the modern Scottish workplace will enable it to make eligibility proposals which meet unmet need. A SEIAC will be critical to understand what new conditions should be eligible for entitlement, as has been established earlier in this paper. Some of those issues for the immediate "in-tray" for a new council are discussed in this section.

Women's workplace injury and disease

The Scottish Government has consistently acknowledged feedback it has received that the current IIDB scheme does not recognise the injury and disease women face in the workplace.

In its 2017 Social Security (Scotland) Bill Equality Impact Assessment (EQIA), the Scottish Government acknowledged only 16% of people claiming IIDB are women and committed to undertake work to understand this further⁴⁶. It is unclear what stage this work is at.

⁴⁶ Social Security (Scotland) Bill: equality impact assessment, <https://www.gov.scot/publications/social-security-scotland-bill-equality-impact-assessment/>

Having conducted detailed analysis of the DWP’s Industrial Injuries Disablement Benefit Statistics, it is clear that the scheme sees far fewer women in Scotland making claims than men. In the decade to December 2019⁴⁷, all new claims under the scheme from women in Scotland made up just 13.5%, or 3,030 over the decade. Under the prescribed diseases route, applications from men made up the vast majority of claims, with only a fraction being made by women: 6.8%, or 930 compared to 12,670 by men for the same time period. This underlines how disadvantageous the prescribed disease and occupation lists are for women, with the bulk coming from men. While women had greater success making an application under the accident route, applications from men were still three times higher over the period.

Detailed analysis of the dataset⁴⁸ also found that while claims from women increased in the first half of the decade, from 10% of all claims in 2010 to a high of 17% in 2014, this had fallen back to just 9% of all claims by 2019. This trend is reflected in both the prescribed disease and accident application routes. A high point of 28% of accident claims by women was achieved in 2016, but this fell to 21% in 2019, and more substantially, the prescribed disease route saw women make 9.3% of claims in 2014, just 4% of claims were made by women in 2019.

Table 1. Analysis of DWP’s Industrial Injuries Disablement Benefit Quarterly Statistics, 2010-2019, Scotland

	TOTAL 2010-2019	PERCENTAGE OF TOTAL 2010-2019	AVERAGE	MEDIAN
All new claims				
All cases	22,430	n/a	2243	2030
Men	19,470	86.8%	1947	1710
Women	3,030	13.5%	303	310
Prescribed diseases				
All cases	13,630	n/a	1363	1165
Men	12,760	93.6%	1276	1075
Women	930	6.8%	93	90
Accidents				
All cases	8,100	n/a	810	845
Men	5,990	74.0%	599	610
Women	2,020	24.9%	202	220

In its EQIA for the Social Security Bill the Scottish Government shared the view of some stakeholders who:

“observe that this may be due to the nature of the list of prescribed diseases and that it is a historical consequence of men traditionally being more likely to occupy roles in heavy industry and/or manual labour”.

In its 2019 position paper, where the Scottish Government referred to the responses to its *Consultation on Social Security in Scotland*, it made reference to the respondents’ desire for change to the prescribed list, and how the list had a gender impact.

In pre-consultation discussions I have had with stakeholders, I have received similar feedback: that the design of the scheme does not recognise the injury and diseases in women’s workplaces and

⁴⁷ The analysis considered ten years of IIDB quarterly statistics from March 2010 to December 2019, which is all data sets made available at <https://www.gov.uk/government/collections/industrial-injuries-disablement-benefit-quarterly-statistics>. The analysis focused on Table 2.3, detailing the type of claim, country, sex and age group. Discounting the Reduced Earnings Allowance and Accident Declaration claim type, the analysis considered the sex breakdown of all claims, and claims under the prescribed diseases and accident claim types.

⁴⁸ Excel spreadsheet available on request

occupations as a matter of course. In those discussions I heard how women simply lack entitlement under the current scheme: the prescribed list does not reflect injuries and disease that women acquire in the workplace; the occupation list does not reflect the workplaces women work; and the level of epidemiological evidence into women's work required to support a recommendation, does not exist. In particular, I heard how women's musculoskeletal injuries through lifting, breast cancer caused by shift work, asbestos related ovarian cancer, are examples of diseases that are excluded, while other occupations are not being prescribed. At the same time, the scheme does not take into account women's work in terms of multiple jobs, breaks in work and careers which complicate the process of establishing eligibility.

It would be 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.

Long-Covid

Eight months since the first confirmed case of Covid-19, it is clear that the disease represents the biggest workplace acquired infection for generations. While the disease is mild for many, a substantial number continue to experience long-term impacts, some of which are disabling. Profound fatigue, breathlessness, muscle and body aches, and chest heaviness or pressure, as well as ongoing symptoms of the condition, have been reported⁴⁹. The research exploring the impacts of the condition, though clearly in its infancy, is growing daily. However, it is clear that more work is required to determine whether the disease and its worst long-term, disabling impacts will be assessed as a prescribed disease for those who contracted the virus in the workplace. It would be anticipated that the SEIAC would be able to exercise its powers to commission such research.

In October, the Health and Safety Executive published statistics showing that employers in Scotland have made 780 reports where there is reasonable evidence to suggest that an employee's Covid-19 diagnosis was caused by occupational exposure⁵⁰, and in 9 cases, their death. Though the statistics also show the workplace settings where the reports are the greatest, across the UK, for instance in care homes, the data is likely to have substantial under-reporting.

In pre-consultation discussions I have had with stakeholders, issues with the collection of data by employers and accident reporting, combined with the difficulty obtaining a test, will have compounded these issues of under-reporting. In those discussions I was told it was not uncommon for employees to work without adequate PPE, and some were wary of getting a test due to the financial loss positive diagnosis and self-isolation would have incur.

In some cases, the experiences of those who have contracted the virus through their workplace disabled them and reduced their potential earnings. The Unison Scottish Welfare Committee continues to investigate instances where careworkers are unable to carry on their duties due to the disabilities acquired affecting their walking, breathing, ability to lift the people they care for.

Discussions with stakeholders have also helped explore international examples where Covid-19 has already been classified as a disease, or similar attempts have been made to do so. The examples that follow seek to illustrate the international action being taken but take no account of the way in which the occupational disease benefit system is administered, the criteria used to determine what should be a relevant disease for entitlement, or how these systems will take account of the condition long-term. However, these examples provide a useful reflection point:

⁴⁹ BMJ Webinar: Long covid: How to define it and how to manage it, September 2020, <https://www.bmj.com/content/370/bmj.m3489>

⁵⁰ Management information: Coronavirus (COVID-19) disease reports, Health & Safety Executive, <https://www.hse.gov.uk/statistics/coronavirus/index.htm>

Country	Action taken	Occupation supported
France	<ul style="list-style-type: none"> • COVID-19 was recognised as an occupational disease, increasing their protection levels to full income replacement and reimbursement of medical expenses⁵¹ 	Medical staff
Belgium	<ul style="list-style-type: none"> • Any person suffering from Covid-19, “diagnosed by a laboratory test, and clearly having a higher risk of being contaminated by the virus, may claim compensation for occupational disease⁵² 	Non tele-workers; health workers; those active crucial sectors or services during containment, (e.g. food store, police)
Ontario, Canada	<ul style="list-style-type: none"> • [Private Member’s Bill 191] creates a presumption for a worker who receives a positive test for COVID-19 • The disease is presumed to be an occupational, due to the nature of the worker’s work, unless the contrary is shown⁵³ 	Worker for an essential business
South Africa	<ul style="list-style-type: none"> • Covid-19 recognised as an occupationally acquired virus disease if it is the result of occupational exposure • A chronological sequence must exist between the work exposure and the development of COVID -19 symptoms⁵⁴ 	Workers in high-risk work environment or on approved official assignment to high risk areas or countries
Italy	<ul style="list-style-type: none"> • Causal link between the work and the infection will be automatically assumed for this group of employees⁵⁵ • Cases where it was contracted while commuting to work or back home are also covered by INAIL 	NHS only
Germany	<ul style="list-style-type: none"> • List of occupational diseases mentions virus infections (No 3101), which considers viruses as an occupational disease⁵⁶ • But it does not consider a virus an occupational disease for any other economic sector (like public transport, supermarkets, construction, office workers, etc.) 	Healthcare sector

Equalities and Sustainable Development

Equalities

NGBU has carried out an initial screening for potential impacts of the proposed Bill on people who have a protected characteristic, as defined by the Equality Act 2010.

The proposed bill may increase equality if there are any particular predispositions at play in Scotland’s population which would render people with certain characteristics more at risk in certain

⁵¹ COVID-19 – Social security measures in France, International Social Security Association <https://ww1.issa.int/news/covid-19-social-security-measures-france>

⁵² Belgium - Recognition of Covid-19 as an occupational disease extended to workers in essential services, OSH News, 23 June 2020, <https://osha.europa.eu/en/oshnews/be-recognition-covid-19-occupational-diseases-extended-critical-workers-essential>

⁵³ Bill 191, Workplace Safety and Insurance Amendment Act (Presumption Respecting COVID-19), 2020

Wayne Gates, <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-191>

⁵⁴ Can COVID-19 be considered an occupational disease?, International Social Security Association, April 2020 <https://ww1.issa.int/news/can-covid-19-be-considered-occupational-disease>

⁵⁵ Ibid.

⁵⁶ Ibid.

occupations, or more vulnerable to certain toxins 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.

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

A Council with the powers in the proposed Bill, that could focus on a more Scotland-specific context, could lead to 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 lead to support for a greater number of people, who have been disabled as a result of employment related injury or disease.

At the same time, if the devolved policy does not diverge from the current UK policy and/or there is no or little evidence of a Scotland-specific context affecting the situation differently, there may be little or no change in the eligibility for support.

Sustainable Development

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

1. Living within environment limits.
2. Ensuring a strong, healthy and just society.
3. Achieving a sustainable economy.
4. Using sound science responsibly.
5. Promoting good governance.

Following is a summary of the potential impacts of the proposed provisions:

Establishment and operational impacts: Depending on the model for implementing the SEIAC that is chosen, these might include impacts of setting up an office e.g. life cycle impacts⁵⁷ of painting and decorating, furniture, computing equipment etc. Operational impacts are likely to include resource use as well as emissions and other impacts of work and travel.

There are likely also to be some financial costs relating to set-up and operation, which will be borne by the public. However, if the Council helps to create a more equitable welfare system, there could be wider benefits to society.

Composition of the Council: This will determine the perspective of the Council, which will have a bearing on what it elects to research and on its recommendations. This could affect the ability of people who have been injured as a result of their work to receive payments, which in turn, could either help or hinder their capability to meet their needs.

The proposed broad membership of the Council could help to support workers' social needs for esteem, belonging and participation, if they are represented. It could also bring new perspectives and could promote better relations between the various interest groups such as employers and workers, and increase mutual understanding. This could help to improve relations within workplace communities.

Freedom to carry out research and make recommendations: A Scottish Council may focus more on industries that exist in Scotland, so could carry out research and/or make recommendations that

⁵⁷ A item's life cycle impact is the impact it has on environment/ecology and on people from the beginning of its production (e.g. raw material extraction), to its end (disposal, recycling, etc.).

are more relevant to the needs of workers in Scotland. The inclusion of, for example, workers, could increase fairness as their experiences and views would be taken into account directly. Recommendations that lead to significant divergence from the UK system could lead to UK-level inequity, potentially affecting current and future generations.

Social welfare systems are a component of some people's livelihoods, and an increased focus on Scotland-specific industries could lead to more relevant research and advice. If this led to policies that were more tailored to the Scottish context, there could be a positive impact on the livelihoods of those who have been injured, or who work in an occupation where this is more likely. This in turn could help to reduce inequality.

The Council's freedom to commission research may lead to a wider range of research becoming publicly accessible and increase transparency. It could also support wider participation in decision-making processes, e.g. through engagement with the Parliament or civil society organizations. Decision-makers could be held to account against it, and against the Council's recommendations. It may thus also affect public decision-making processes.

As a non-departmental public body, the Council would have statutory sustainable development duties, including a duty to exercise its functions 'in a way that it considers is most sustainable.'⁵⁸ Under the current Scottish Government National Performance Framework, it would also be expected to have regard to the United Nations' Sustainable Development Goals.^{59, 60} It may therefore research or make recommendations about systemic issues relating to the employment injuries assistance scheme that may affect social or ecological wellbeing.

Other: Welfare and taxation systems are interlinked, so Council scrutiny of legislation or provision of advice could lead to some fiscal changes.

Based on the potential impacts outlined above, the proposal could contribute to Sustainable Development Goals on poverty, wellbeing, lifelong learning, decent work, sustainable industrialization, inequality, resilient settlements, sustainable consumption and production, and effective, accountable and inclusive institutions.

The proposal does not currently include measures to monitor or evaluate its impact, although as a public body, the Council would be required to report on some aspects of its performance.

Miscellaneous matters

It is not envisaged that the Bill will create any criminal offences.

In line with provisions for all other NDPBs established in statute, including SCoSS, it would be expected that the Bill establishing SEIAC would make it subject to existing legislation relating to public bodies, as in Schedule 1, Part 2 of the 2018 Act, alongside other provisions on the operation and composition of the Council, entailing status, power, procedure, finance and membership.

Financial implications

There will be costs involved in setting up and running the SEIAC. Different models for the SEIAC may be possible and so the detailed assessment of likely costs would come at a later stage in the development of the Bill. The consultation may provide some helpful input in that respect. By way of illustration at this stage, examples of three different bodies are given below.

During the passage of the Social Security Bill, the Scottish Government indicated in its Supplementary Financial Memorandum "that the costs of the SCoSS are likely to fall between £0.4 million and £0.8 million per annum, the Scottish Government would also expect up to £0.3 million of

⁵⁸ Climate Change (Scotland) Act 2009: <https://www.legislation.gov.uk/asp/2009/12/section/44>

⁵⁹ Scottish Government 2018: <https://nationalperformance.gov.scot/>

⁶⁰ United Nations 2015: <https://sustainabledevelopment.un.org/post2015/transformingourworld/>

one-off implementation costs”. These were based on the costs of the Poverty and Inequality Commission. These costs include estimates of both staff costs and non-staff support costs. These costs can be confirmed as decisions are made on how the body will be staffed, the size of the staffing complement and necessary support arrangements. Accordingly, it would be expected that the costs of the SEIAC could be comparable; though the SEIAC would have a narrower field of scrutiny, it would be expected that much of its time and activity would focus on the advisory and research functions proposed. In its first year of operation as a statutory body, the Poverty & Inequality Commission, which has conducted research, had expenditure of £224,000⁶¹. IAC’s expenditure for 2019 was £51,665 of a £55,000 budget⁶². It is noted that unlike this proposal “IAC does not have its own research budget and its remit does not extend to commissioning primary research studies”⁶³.

⁶¹ Poverty and Inequality Commission Annual Report 2019-2020, <https://povertyinequality.scot/wp-content/uploads/2020/06/Annual-Report-Poverty-and-Inequality-Commission-2019-20.pdf>

⁶² Appendix 13: Expenditure, IAC annual report: 2019 to 2020, July 2020, <https://www.gov.uk/government/publications/iac-annual-report-2019-to-2020--2/iac-annual-report-2019-to-2020#appendix-e-expenditure>

⁶³ Section 6 Stakeholder Engagement, IAC annual report: 2019 to 2020, July 2020, <https://www.gov.uk/government/publications/iac-annual-report-2019-to-2020--2/iac-annual-report-2019-to-2020#stakeholder-engagement-1>

QUESTIONS

ABOUT YOU

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
 - on behalf of an organisation? – in which case go to Q2B
- 2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)
- Politician (MSP/MP/peer/MEP/Councillor)
 - Professional with experience in a relevant subject
 - Academic with expertise in a relevant subject
 - Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
 - Commercial organisation (company, business)
 - Representative organisation (trade union, professional association)
 - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 - Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:
- I am content for this response to be published and attributed to me or my organisation
 - I would like this response to be published anonymously
 - I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. Data protection declaration

- I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data will be used.

YOUR VIEWS ON THE PROPOSAL

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

Aim and approach

1. Which of the following best expresses your view of establishing in law a new, independent Scottish Employment Injuries Advisory Council (SEIAC)?

- Fully agree
- Partially agree
- Neutral
- Partially disagree
- Fully disagree
- Unsure

Please explain the reasons for your response

2. Which of the following best expresses your view of giving a statutory Scottish Employment Injuries Advisory Council the following functions?

	Fully agree	Partially agree	Neutral	Partially disagree	Fully disagree	Unsure
Scrutinise legislative proposals on the overarching design of the employment injuries assistance (EIA) system and its entitlement policy.						
Continually advise and recommend changes to EIA (including on policy design and entitlement)						
Investigate and review emerging industrial and employment hazards						
Commission its own research and make recommendations						

Please explain the reasons for your responses.

3. What (if any) do you think would be the main advantages of the proposed Bill?

4. What (if any) do you think would be the main disadvantages of the proposed Bill?

5. Which of the following best expresses your view of making it a legal requirement that the SEIAC's membership includes workers with experience of being exposed to the risk of workplace injury, and their representatives, including trade unions?

- Fully agree
- Partially agree
- Neutral
- Partially disagree
- Fully disagree
- Unsure

Please explain the reasons for your response.

6. Which of the following best expresses your experience of the current Industrial Injuries Disablement Benefit (IIDB) scheme (personally and/or professionally)?

- Positive experience
- Mixed experience
- Negative experience
- No experience of the scheme

Please explain the reasons for your response.

Please do not provide personal information or highly specific information which might identify you (if you wish to remain anonymous) or any third parties in your answer.

Financial implications

7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

(a) Government and the public sector

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(b) Businesses

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(c) Individuals

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

8. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

Equalities

9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

10. In what ways could any negative impact of the Bill on equality be minimised or avoided?

Sustainability

11. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

- Yes
- No
- Unsure

Please explain the reasons for your response.

General

12. Do you have any other comments or suggestions on the proposal?

HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/EmploymentInjuriesCouncil/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or at the end of this document.

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

mark.griffin.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Mark Griffin MSP
Room M1.20
Scottish Parliament
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on (0131) 348 6398.

Deadline for responses: 1 February 2021

All responses should be received no later than **1 February 2021**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website <http://www.markgriffinmsp.org.uk/content/seiac/>. Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The Privacy Notice (below) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The Privacy Notice (below) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The Privacy Notice (below) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person’s consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.

Privacy Notice

This privacy notice explains how your ***personal data** which may be included in, or is provided with, your response to a MSP's consultation on a proposal for a Member's Bill will be ****processed**. This data will include any personal data including *****special category data** that is included in responses to consultation questions, and will also include your name and your contact details provided with the response. Names and contact details fall into **normal category data**.

***Personal data** is information that relates to an identified or identifiable individual.

****Processing** of personal data refers to any operations carried out in relation to the data such as collecting, storing, sharing and deletion of the data.

*****Special category data** includes information about an individual's race; ethnic origin; political or religious views; sex life or sexual orientation; trade union membership; physical or mental health; genetic or biometric data.

Collecting and holding Personal Data

The Scottish Parliamentary Corporate Body (SPCB) processes any personal data you send to it, or that the MSP whose consultation you respond to shares with it (under a data-sharing agreement) according to the requirements of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

The SPCB will hold any personal data securely, will use it only for the purposes it was collected for and will only pass it to any third parties (other than the MSP whose consultation you respond to) with your consent or according to a legal obligation. Further information about data protection legislation and your rights is available here:

<https://ico.org.uk/for-the-public/is-my-information-being-handled-correctly/>

Purpose of the data processing

The purpose of collecting, storing and sharing personal data contained in consultation responses is to enable Members to consider the views of respondents to inform the development of the Bill, with the support of NGBU. Personal data contained in consultation responses will not be used for any other purpose without the express consent of the data subject.

The legal basis

The legal basis for collecting, holding, sharing and publishing your personal data is that the processing is necessary for the performance of a task carried out in the public interest (for normal category data), or in the substantial public interest (for special category data), in accordance with Art 6(1)(e) GDPR and section 8(d) DPA (for normal category data), or Art 9(1)(g) GDPR and section 10 of and paragraph 6 of Schedule 1 DPA (for special category data). The task is to support Members seeking to introduce Members' Bills to the Parliament. This is a core task of the SPCB and therefore a Crown function. The adequate support of the Members Bill process and the ability to seek, use and temporarily store personal data including special category data is in the substantial public interest.

If the person responding to the consultation is under the age of 12 then consent from the parent or guardian of the young person will be required to allow the young person to participate in the consultation process (however, the legal basis for the processing of the personal data submitted remains as the public interest task basis identified above).

Sharing Personal Data

The data collected and generated by Smart Survey will be held by the Non-Government Bills Unit (NGBU), a team in the Scottish Parliament which supports MSPs progressing Members' Bills, and shared with the MSP who is progressing the Bill and staff in the MSP's office. Data submitted by other means (e.g. by email or hard copy) will be held by the MSP's office and shared with NGBU for the purposes of producing a summary of responses to the consultation. The MSP and NGBU are joint data controllers of the data. Under a data-sharing agreement between the MSP and the Scottish Parliament, access to the data is normally limited to NGBU staff working on the Member's Bill/proposal, the MSP and staff in the MSP's office working on the Member's Bill/proposal; but data may also be shared by NGBU with the Scottish Parliament's solicitors in the context of obtaining legal advice.

Publishing Personal Data

"Not for publication" responses will not be published and will only be referred to in the summary of consultation responses in the context of a reference to the number of "not for publication" responses received and, in some cases, in the context of a general reference that is considered by you to be consistent with the reasons for choosing "not for publication" status for your response.

Anonymous responses will be published without your name attached, your name will not be mentioned in the summary of consultation responses, and any quote from or reference to any of your answers or comments will not be attributed to you by name.

Other responses may be published, together with your name; and quotes from or references to any of your answers or comments, together with your name, may also be published in the summary of consultation responses.

Contact details (e.g. your e-mail address) provided with your response will not be published, but may be used by either the MSP's office or by NGBU to contact you about your response or to provide you with further information about progress with the proposed Bill.

Where personal data, whether relating to you or to anyone else, is included in that part of your response that is intended for publication, the MSP's office or NGBU may edit or remove it, or invite you to do so; but in certain circumstances the response may be published with the personal data still included.

Please note, however, that references in the foregoing paragraphs to circumstances in which responses or information will not be published are subject to the Parliament's legal obligations under the Freedom of Information (Scotland) Act 2002. Under that Act, the Parliament may be obliged to release to a requester information that it holds, which may include personal data in your response (including if the response is "not for publication" or anonymous).

Use of Smart Survey software

The Scottish Parliament is licensed to use Smart Survey which is a third party online survey system enabling the Scottish Parliament to collect responses to MSP consultations, to extract and collate data from those responses, and to generate statistical information about those responses. Smart Survey is based in the UK and is subject to the requirements of data protection legislation.

Any information you send by email or in hard copy in response to a consultation on a proposal for a Member's Bill may be added manually to Smart Survey by the MSP's office or by NGBU.

The privacy policy for Smart Survey is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

While the collected data is held on Smart Survey, access to it is password protected. Where the data is transferred to our own servers at the Scottish Parliament, access will be restricted to NGBU staff through the application of security caveats to all folders holding consultation data.

Access to, retention and deletion of personal data

If a summary of consultation responses is published within six months of the consultation period ending, all of your data will be deleted from Smart Survey as soon as possible after the summary is published. If, six months after the consultation period has ended, a summary has not been published, then responses may be downloaded from Smart Survey and saved (with all the information that would normally not be published – including contact details – removed) to Scottish Parliament IT systems and retained until the end of the session of the Parliament in which the consultation took place. When that is done, all responses will normally be deleted from Smart Survey; but in exceptional circumstances, your data may be retained in Smart Survey beyond the end of the six month period if that is necessary for the purpose of preparing a summary for future publication. All data will be deleted from Smart Survey at the end of the session of the Parliament during which it was collected. If the MSP lodges a final proposal, he/she is required to provide a copy of your response (unless it was "not for publication"), together with your name (unless you requested anonymity), but not your contact details, to the Scottish Parliament Information Centre (SPICe), where it will be retained permanently in line with the collection management policy.

Your rights

Data protection legislation sets out the rights which individuals have in relation to personal data held about them by data controllers. Applicable rights are listed below, although whether you will be able to exercise data subject rights in a particular case may depend on the purpose for which the data controller is processing the data and the legal basis upon which the processing takes place.

For example, the rights allowing for deletion or erasure of personal data (right to be forgotten) and data portability do not apply in cases where personal data is processed for the purpose(s) of the performance of a task carried out in the public interest. The right to object to the processing of personal data for the purpose of a public interest task is restricted if there are legitimate grounds for the processing which override the interest of the data subject. This would be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data would pose to you.

The following rights will apply:

Access to your information – You have the right to request a copy of the personal information about you that we hold.

Correcting your information – We want to make sure that your personal information is accurate, complete and up to date and you may ask us to correct any personal information about you that you believe does not meet these standards.

Objecting to how we may use your information – Where we use your personal information to perform tasks carried out in the public interest then, if you ask us to, we will stop using that personal information unless there are overriding legitimate grounds to continue.

Restricting how we may use your information – in some cases, you may ask us to restrict how we use your personal information. This right might apply, for example, where we are checking the accuracy of personal information about you that we hold or assessing the validity of any objection you have made to our use of your information. The right might also apply where this is no longer a basis for using your personal information but you don't want us to delete the data. Where this right is validly exercised, we may only use the relevant personal information with your consent, for legal claims or where there are other public interest grounds to do so.

Please contact us in any of the ways set out in the *Contact information and further advice* section if you wish to exercise any of these rights.

Changes to our privacy notice

We keep this privacy notice under regular review and will place any updates on this website. Paper copies of the privacy notice may also be obtained using the contact information below.

This privacy statement was last updated on **24 October 2019** and will be reviewed within 12 months if not updated prior to that.

Contact information and further advice

If you have any further questions about the way in which we process personal data, or about how to exercise your rights, please contact:

The Head of Information Governance
The Scottish Parliament
Edinburgh
EH99 1SP
Telephone: 0131 348 6913 (Text Relay calls welcome)
Textphone: 0800 092 7100
Email: dataprotection@parliament.scot

Complaints

We seek to resolve directly all complaints about how we handle personal information, but you also have the right to lodge a complaint with the Information Commissioner's Office:

<https://ico.org.uk/make-a-complaint/>

By phone: 0303 123 1113

Please contact us if you require information in another language or format.