



Royal College
of Nursing
Scotland

**RCN Scotland's response to the
Scottish Parliament's Social Justice and Social Security
Committee's call for views on the**

Scottish Employment Injuries Advisory Council Bill

**This response was originally submitted
using a Scottish Parliament online form**

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Background

This Member's Bill seeks to establish a new body, the Scottish Employment Injuries Advisory Council (SEIAC) to provide expertise about support for people who can no longer work because of workplace injury or disease.

Call for views questions and RCN Scotland responses

Question 1A - The Bill would create a separate body for Scotland to advise on industrial injuries benefits. Do you agree with the creation of this body?

RCN Scotland response:

RCN Scotland supports the Bill and the creation of a Scottish Employment Injuries Advisory Council (SEIAC).

Every RCN member has the right to go to work without fear of injury or illness. However, when the worst does happen the RCN provides assistance and, where necessary, arranges legal representation for its members to secure compensation, benefits and support, such as rehabilitation. Because of the need to establish fault in a civil action of damages for personal injuries, not every RCN member who is injured or becomes ill through work, is entitled to civil damages from their employer, but they might still qualify for the new employment injuries assistance (EIA) once it has been introduced. For such members, a functioning welfare system is important to provide the necessary financial support to meet commitments and improve their quality of life. There must, therefore, be proper oversight of the relevant benefit to ensure not only that it is fit for purpose for those eligible, but that it evolves in response to new workplace hazards and diseases.

The COVID pandemic, and prevalence of long Covid, has tragically highlighted the need for the industrial injuries benefits system to evolve to reflect modern workplace hazards. The Bill offers an opportunity to get the new EIA system right and put workers and trade unions at the heart of decision making on this vital system.

If it remains the intention of the Scottish Government to replace industrial injuries disablement benefit (IIDB) in Scotland with EIA, it would be prudent to establish the SEIAC to provide oversight of the benefit.

The present UK Industrial Injuries Advisory Council (IIAC) is well respected because of its tripartite nature and quality of its recommendations. The SEIAC should be established to provide the Scottish government with independent and expert scientific advice, grounded in independent research, about industrial injuries and disease. The establishment of such a body is essential because the industrial injuries scheme involves complex and -

- specialised medical and epidemiological evidence to assess occupational causation of disease, particularly to provide advice about the list of prescribed diseases, and thus ensure the industrial injuries scheme keeps pace with the ever-changing world of work. It should be established as an advisory non-departmental public body, on a statutory basis with its remit set out in primary legislation, principally to declare its independence from government but also to ensure its functions are clearly defined and its deliberations are transparent.

Question 1B - Does the Bill require any further powers or functions to be effective?

RCN Scotland response:

The establishment of the SEIAC must not mean that Scotland works in isolation from the rest of the UK in support for injured workers. A close working relationship must exist between the SEIAC and the IIAC to take advantage of experience and expertise from across the UK. If the two councils do not work together, there is a risk that injured members in different parts of the UK could fail to receive support while improvements to the benefit are made in one jurisdiction, such as an expansion to the criteria for eligibility. A situation could arise, for example, in which the IIAC becomes aware of a new workplace disease in England, but which is not yet apparent in Scotland. After a review of medical and scientific research, the IIAC may recommend to the Department for Work and Pensions a change to eligibility for IIDB. The IIAC would no longer have a statutory role in Scotland, and could not, therefore, make a similar recommendation to the Scottish government. Working together would facilitate sharing the IIAC's research with the SEIAC, which otherwise may be unaware of the full effects of the disease. A recommendation could then be made by the SEIAC to the Scottish government to amend eligibility for EIA if the new disease affects Scottish workers.

There could also be the situation where the SEIAC becomes aware of a particular problem, and its work could encourage the IIAC to consider its own response. The ability of the SEIAC to conduct research and review industrial and employment hazards would ensure that EIA is available for those who need it, but it would also contribute to the improvement of workplace safety. If the Scottish government, regulators, workers, trade unions and employers were made aware of new hazards identified by the SEIAC, it would be expected that action would be taken to reduce those hazards, and keep workers, including RCN members, safe.

Question 2 - The Policy Memorandum explains that the Advisory Council is to be established in advance of the Scottish Government legislating for Employment Injury Assistance. The Scottish Government has yet to consult on the benefit and the need for an Advisory Council. What are your views on the timing of the Bill?

RCN Scotland response:

There must be proper oversight of Employment Injury Assistance to ensure, not only that it is fit for purpose for those eligible, but that it evolves in response to new workplace hazards and diseases. The Bill will establish the SEIAC as an expert independent body with the requisite skills, knowledge and experience of occupational risks to health to drive progress towards a modern industrial injuries benefit scheme. The SEIAC would assist the Scottish Government to implement improvements to an inherited UK industrial injuries benefit scheme.

For example, the issue of the low proportion, at 16%, of women making worker injury benefits applications requires to be addressed.

If it remains the intention of the Scottish government to replace IIDB in Scotland with EIA, the SEIAC should be established to provide oversight of the benefit. We believe that there are risks to workers in Scotland if this Bill is not passed, unless the Scottish Government introduces another Bill which incorporates the terms of this Bill with a Council having the same functions and governance arrangements.

Question 3 - The Scottish Commission on Social Security already has powers to scrutinise Scottish social security regulations and to provide reports to the Scottish Government when asked to do so. What are the benefits or drawbacks of creating a new Advisory Council and how would this body operate alongside the Commission?

RCN Scotland response:

A strength of the present UK arrangement is the separate functions of the Social Security Advisory Council (SSAC) and the Industrial Injuries Advisory Council (IIAC). Two independent bodies are needed for the devolved benefit: a Scottish Commission on Social Security to advise the Scottish Government on all social security matters; and an independent Scottish Employment Injuries Advisory Council (“SEIAC”) to act as independent expert body advising on work-related injury and disease.

A new, dedicated Advisory Council would have the expertise and focus to look at these issues in-depth and ensure Scotland’s EIA system best serves the people of Scotland. The Scottish Commission on Social Security has a much wider remit and we would be concerned that it wouldn’t have the capacity or specialist expertise to give these issues the attention -

- they deserve on an ongoing basis. The Commission already has a significant amount of work in relation to wider social security issues so it would be challenging for it to scrutinise in detail the range of issues that a dedicated Council would be able to.

We note that the Bill requires the SEIAC to have regard to the Scottish Social Security principles which underpin the social security system established by the 2018 Act. As these principles also underpin the work of the Scottish Commission on Social Security, this would ensure the work of both bodies is underpinned by the same set of fundamental principles.

Question 4 - The Financial Memorandum sets out the anticipated start up and running costs for the Advisory Council. Will the Bill have any significant resource implications for the Scottish Government, the public sector, business, and individuals?

RCN Scotland response:

If a worker were injured or made ill by a hazard identified previously by the SEIAC, and the Scottish government had accepted a recommendation to make EIA available for the illness or injury, it could increase the chances of obtaining compensation through the courts. It would be much harder for employers who had failed properly to address the hazard to claim they were unaware of a potential illness, or practice which could cause injury. This could ensure injured people receive much-needed compensation from the wrongdoer who had been negligent, and thereby reduce the burden on the state to which the injured worker would otherwise turn for help and support.

The SEIAC would be the expert body to act as an early warning system identifying emerging risks, diseases and injuries and to recommend necessary changes to the industrial injuries benefit scheme so that it can be more than just an after-the-event “no-fault’ compensation scheme for injury, but to identify and recommend improvements to the system so as to encourage the prevention of and progression on work-related injury.

As highlighted above, the ability of the SEIAC to conduct research and review industrial and employment hazards would ensure that EIA is available for those who need it, but it would also contribute to the improvement of workplace safety. If the Scottish government, regulators, workers, trade unions and employers were made aware of new hazards identified by the SEIAC, it would be expected that action would be taken to reduce those hazards, and keep workers, including RCN members, safe.

Question 5 - What is your view on whether the size and balance of Advisory Council's membership is correct to deliver the Bill's purpose? If you think there should be changes to the membership set out in the Bill, please tell us why and what changes need to be made.

RCN Scotland response:

The Bill will give workers, including RCN members, an effective voice in respect of the functions the SEIAC will perform. An effective employment injury advisory council requires effective trade union representation on it. The Bill could be improved if paragraph 14(5)(c) and 14(6) of schedule 1 to the Bill were amended to make explicit that it should be trade unions who should represent employed earners on the SEIAC giving workers an effective voice and there should be parity between the number of trade union members on the SEIAC and the number of employer representatives.

Question 6 - Do you have any other comments about the Bill?

RCN Scotland response:

None



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