

Proposed Scottish Employment Injuries Advisory Council

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

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

Proposal

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

“to establish a statutory Scottish Employment Injuries Advisory Council to research, shape and scrutinise the social security available to people injured in the course of their employment and to define the membership requirements of the Council”.
6. The previous draft proposal, which was lodged on 9 November 2020, was for a Bill:

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

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

Procedure

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

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

Published Material/Consultation

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

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

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

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

18. In terms of the consultation exercise, in total, 42 responses were received. Twenty-two (52%) were from individuals, including members of the public, academics, three professionals with experience in a relevant field and one politician. Twenty (48%) were from organisations including representative organisations. All but one of the respondents indicated they were supportive of the proposal.

19. Comments from respondents included:

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

- The SEIAC should scrutinise legislative proposals on the design of the Employment Injuries Assistance (EIA) system and its entitlement policy;
- That it should have an ongoing advisory/recommendation role;
- That it should be able to investigate and review emerging industrial and employment hazards;
- That it should be able to commission its own research;
- There was widespread support for a more participatory advisory body, with a strong emphasis on better representation of workers, and the importance of taking into account their lived experience.
- Respondents felt that instituting a Scottish body would be instrumental to these improvements, particularly through a more independent capability to carry out research and make recommendations, and a focus on what is needed in Scotland. In the context of devolution, a number of respondents agreed that a new independent and statutory Council could only achieve the reform needed.

Why consultation is unnecessary

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

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

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

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

Mark Griffin MSP
September 2021