

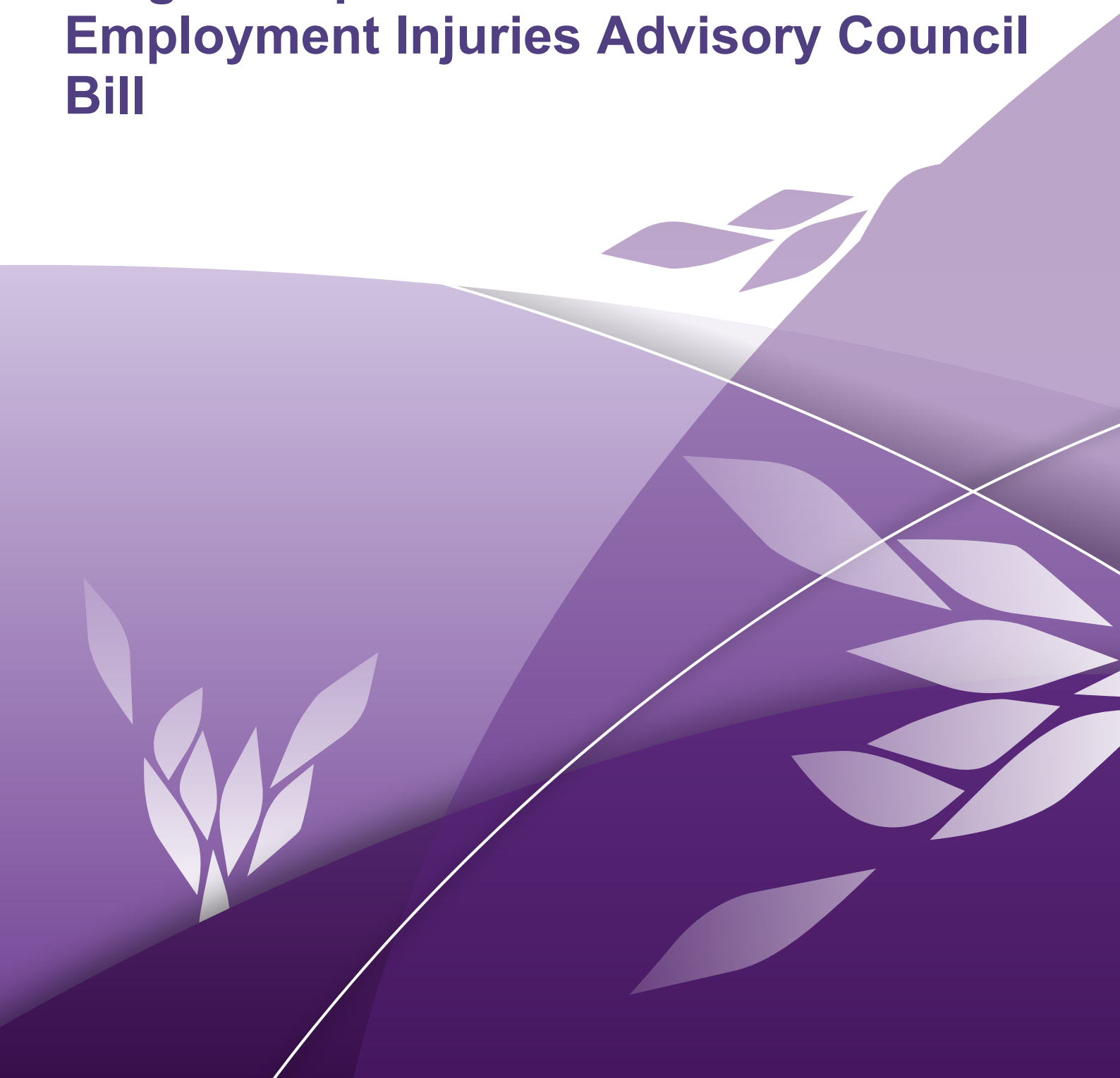


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Social Justice and Social Security Committee

Stage 1 Report on the Scottish Employment Injuries Advisory Council Bill



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Social Justice and Social Security Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Social Justice excluding matters relating to housing and tenants' rights.



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Membership changes

1. The following changes to Committee membership occurred during the Committee's scrutiny:
 - On 29 June 2023, Bob Doris MSP replaced Gordon MacDonald MSP and Roz McCall MSP replaced Miles Briggs MSP.
 - On 31 October 2023, John Mason MSP replaced James Dornan MSP.

Introduction

2. The [Scottish Employment Injuries Advisory Council Bill](#) (the Bill) was introduced by Mark Griffin MSP (the Member in Charge), on 8 June 2023.
3. Accompanying the Bill are [Explanatory Notes](#), a [Policy Memorandum](#), [Financial Memorandum](#), and a [Delegated Powers Memorandum](#).
4. The Social Justice and Social Security Committee was designated as the lead committee to undertake scrutiny of the Bill on 28 June 2023.
5. Mark Griffin's Bill is a Member's Bill. Having undertaken a consultation on his draft proposal for a Bill in Session 5, Mark Griffin lodged a Statement of Reasons as to why there was no need to consult further in Session 6. The Committee considered the Statement of Reasons and agreed that it was satisfied on 4 November 2021. Mark Griffin secured the right to introduce a bill by gaining the necessary cross-party support for his final proposal.¹

Purpose of the Bill

6. The Bill would create an independent Scottish Employment Injuries Advisory Council (the Advisory Council) with three functions, namely to:
 - scrutinise regulations on Employment Injury Assistance (EIA).
 - report on any matter relevant to EIA.
 - carry out, commission or support research into any matter relevant to EIA.
7. The Bill also mandates the membership and membership balance of the Advisory Council, including the representation of workers on the Council.
8. The Bill's Policy Memorandum states the intention of the Advisory Council is to play a similar role (with the addition of a research function), in Scotland, to that carried out by the Industrial Injuries Advisory Council (IIAC) for the rest of the UK. IIAC's role cannot extend to benefits administered by Social Security Scotland.²
9. The Policy Memorandum argues that not having a body such as IIAC leaves a gap in Scotland, and that the Advisory Council is needed to provide this advice and that it should be established in advance of EIA to help shape the benefit's detailed policy.³

Background to the Bill and policy context

10. The Scotland Act 2016 provided for the devolution of several benefits, including industrial injuries benefits.
11. Industrial Injuries benefits are paid by the Department for Work and Pensions (DWP) to people disabled because of an accident at work or for certain diseases

linked to particular occupations. The injury or disease must be work-related but the rules do not require the employer to be at fault. It is not available to self-employed people.

12. Legal and financial responsibility for industrial injuries benefits was devolved in April 2020. Since then, the DWP has continued to deliver these benefits on behalf of the Scottish Government under an agency agreement. The current agency agreement runs until the end of March 2026. Twelve months' notice would be needed to extend it further.
13. The Scottish Government plans to introduce its replacement benefit, EIA, to be administered by Social Security Scotland, although no start date has been announced.
14. The UK Government is advised on industrial injuries benefits by IIAC. It is an independent scientific advisory body that provides advice on whether, based on evidence and established links to an occupation, new diseases should be added to the list of prescribed diseases for which benefits are payable and the occupations for which they should be prescribed. Under [section 33 of the Scotland Act 2016](#) the IIAC cannot advise Scottish Ministers.
15. In 2016, the Scottish Government set up an Industrial Injuries Disablement Advisory Group. The Group was comprised of key stakeholders, including the STUC, COSLA, advocacy groups and health experts. Its role was to provide advice to Scottish Ministers developing policy on social security benefits for people affected by industrial injuries and ill health. The Group concluded its work in December 2017.⁴
16. The Disability and Carers Benefits Expert Advisory Group (DACBEAG) was asked in August 2021 by Government officials to provide advice to Ministers on EIA. The Group provided its advice to Scottish Ministers on 20 December 2022. In relation to the IIAC, the Group considered different options, including agreeing with the UK Government to extend the scope of IIAC.

The Group recommended that—

” the Scottish Government should continue to explore short term arrangements that would enable Employment Injury Assistance to be updated in line with the advice of the IIAC, for as long as Industrial Injuries Disablement Benefit remains a comparable benefit. (Recommendation 15).

And—

” longer-term arrangements should be designed to reflect the longer-term direction of Employment Injury Assistance and the Scheme in Scotland. (Recommendation 16).

In their report, DACBEAG also advised the then Minister that—

” Our view is that there should be a Scottish equivalent of the IAC established, with a short-term arrangement with IAC agreed. It will remain important that organised workers are represented on the future body, however it is formed, as well as those with direct experience of claiming IIDB [Industrial Injuries Disablement Benefit] and, in time, EIA. ⁵

17. More background on the Bill, the devolution of social security and industrial injuries benefits is available in the [SPICe Bill briefing](#) and in the [Policy Memorandum](#) accompanying the Bill.

Approach to scrutiny

18. The Committee ran a consultation on the Bill from 3 July 2023 to 11 September 2023. ⁶ The consultation received 34 written responses. ⁷ Responses were from:
- 11 trade unions
 - 6 campaign groups
 - 4 third sector/charity
 - 2 professional organisations
 - 2 solicitor and legal organisations
 - 9 individuals
19. The Committee also received a late submission ⁸ from the Scottish Trades Union Congress (STUC) on 29 September 2023 that was published as correspondence.
20. Five evidence sessions were held on 9 ⁹, 16 ¹⁰, 23 ¹¹ and 30 ¹² November, and 7 December ¹³. Evidence was taken from the IAC, the Scottish Commission on Social Security (SCoSS), trades unions and other organisations supporting benefit reform (e.g. Close the Gap, PFA Scotland), representatives of occupational health practice and research, the Cabinet Secretary for Social Justice (Shirley-Anne Somerville) and the Member in Charge of the Bill (Mark Griffin).
21. The Committee expresses its thanks to those who provided written and oral evidence on the Bill.
22. In addition, the Committee wrote to the Scottish Government seeking clarification of the detailed timetable it is working towards for the introduction of EIA. The Committee also wrote to the UK Government asking whether there is any scope for the Scotland Act 2016 to be amended to allow the Industrial Injuries Advisory Council (IAC) to provide advice to Scottish Ministers on relevant devolved benefits.

Other scrutiny

23. It is for the lead committee to report to the Parliament on the general principles of the Bill. In doing so, under the Parliament's Standing Orders Rule 9.6.3, it must take

account of views submitted to it by any other committee. The lead committee is also required to report on the Financial Memorandum ¹⁴ and Policy Memorandum ¹⁵ which accompany the Bill.

Finance and Public Administration Committee

24. The Finance and Public Administration (FPA) Committee's main role is to consider whether the estimates in the Memorandum appear to be robust.
25. The Financial Memorandum estimates it will cost £149,000 to set up the Advisory Council and £372,500 in annual running costs.
26. The FPA Committee ran a consultation on the Financial Memorandum from 5 July 2023 to 11 September 2023 which received no submissions. The FPA Committee therefore agreed to take no further action.
27. The Committee considers the Bill's financial implications later in the report.

Delegated Powers and Law Reform Committee

28. The Bill contains four delegated powers. At its meeting on 3 October, the Delegated Powers and Law Reform (DPLR) Committee indicated it was content with the powers at section 7(1), which is an ancillary provision that allows the Scottish Ministers, by regulations, to make incidental, supplementary, consequential, transitional, transitory or saving provision in connection with the Act or any regulations made under it. Also at that meeting, DPLR Committee noted it was content with the delegated powers at schedule 1, paragraph 13(2) which provides that the Scottish Ministers may by regulations amend the maximum number of members of the Advisory Council Committee and specify the time for which this change would apply.
29. Following consideration of correspondence with the Member in Charge, the DPLR Committee agreed that it was content with the remaining delegated powers at section 2(5) which enables the Scottish Ministers to confer additional functions on the Council by regulations, and at schedule 1, paragraph 4(2)) which enable Ministers to make further additions to the right to obtain 'relevant information' held by prescribed bodies and by Scottish public authorities listed under section 3 of the Freedom of Information (Scotland) Act 2002. The DPLR Committee reported on 30 November. ¹⁶

Policy memorandum

30. The Committee welcomed the thoroughness of the Policy Memorandum and found it helpful in understanding the purpose of the Bill, the policy background, and the alternative approaches that were considered. These were:
 - Scottish Commission on Social Security takes on the role with its existing powers
 - Amend the functions of the Scottish Commission on Social Security

- Change the law to enable the IIAC to have this role (would need UK Government agreement)
- a non-statutory advisory council.

Section 1: establishment of an Advisory Council

31. Section 1 of the Bill would establish the Scottish Employment Injuries Advisory Council.
32. The question as to whether the Advisory Council should be established is fundamental to the general principles of the Bill.

Reform and modernisation

33. Support for the establishment of an Advisory Council came across strongly in written submissions, especially from trades unions, as well as from associated representatives who gave oral evidence. Many saw the creation of an Advisory Council as an opportunity for reform of the way the Industrial Injuries Scheme (IIS) operates in Scotland, especially with regards to who is eligible for EIA. Unite the Union, in particular, emphasised the historical nature of the scheme and the need for a new system that is fit for the modern Scottish workplace and emerging industries—

” The current system is out-dated, laborious and does not cover the myriad of new and existing diseases experienced by workers in the 21st century workplace in Scotland. When the original system was instigated it provided limited protections for workers within an economy which was male dominated and focused mainly in traditional heavy industries. That model of work has changed significantly over the past 50 years.¹⁷

34. The need for modernisation was echoed by other trades unions. During oral evidence the Royal College of Nursing (RCN) commented that Industrial Injuries Disablement Benefit is "significantly outdated" and what is needed is "something more appropriate in place for workers in the modern workplace".¹⁸ Similarly, the Fire Brigades Union (FBU) Scotland noted the important role the Advisory Council could play in such modernisation, saying having the Advisory Council in place is essential to reform the benefit.¹⁹
35. The Member in Charge stressed that, while the Bill alone cannot reform the benefit, the effect of the Bill in creating an Advisory Council would give people with the right experience the opportunity to influence the Scottish Government's decision-making as the policy for EIA is worked up—

” This Bill, in and of itself, would not deliver a reformed benefit; it would be up to the Government to do that. However, if the Scottish Government were to consider the devolution of an inherently unfair and discriminatory system, in creating a new benefit, which you would hope would be in line with the Parliament's progressive ambitions on devolution, it would surely want the people who were sitting round the table advising it on the new benefit to have lived experience... The best thing to do would be to set up the council, have it exist independently of the Government and get those people round the table to advise the Government on the set-up of the new benefit.²⁰

36. On the importance of those with lived experience feeding into decision-making for EIA, the Member highlighted several examples of professions he said had been "ignored" but were of significance in terms of links to particular illnesses—
- ” The Fire Brigades Union has presented really strong evidence of firefighters suffering from cancers at much earlier ages than the rest of the population because they are being exposed to contaminants. There is clear evidence that shift workers, particularly female shift workers, have a higher incidence of breast cancer and other cancers. There is a strong campaign, which is supported across the parties, on footballers with head injuries.²¹

Pace of progress

37. A further aspect of the current process that witnesses thought could be improved upon in a devolved system was the time taken to add new diseases to the list of prescribed industrial diseases.
38. The RCN raised the perceived lack of urgency from the UK Government to act on recommendations. It suggested the creation of an Advisory Council could improve the pace at which progress happens—
- ” You are certainly inheriting a slow system—there is no question about that.
- [...]the process itself appears to be quite slow. For example, a year ago, the UK body, the Industrial Injuries Advisory Council, made a recommendation about four particular illnesses that are related to COVID-19. To date, the UK Government has not acted on that information. We wrote to the DWP about that last week.
- Our view is that setting up the Scottish council in advance of the Scottish Government taking responsibility for the benefit will give you the opportunity not only to do this but to do it well, by reforming the way that it is done in order not to have such a clunky, slow and unresponsive system.²²

Inclusiveness

39. Evidence highlighted the current system's unequal treatment of particular groups of people and suggested that the Advisory Council could address this in how it is set up and how it operates.
40. The Scottish Trades Union Congress (STUC) said that the system is "inherently unequal and inaccessible and has a hugely disproportionate impact on women" stating—
- ” Everything is gendered—the lens that it is seen through, the industrial injuries that it covers and the accessibility to women of its processes. We need to think about how we can modernise and change that.²³
41. The NASUWT also agreed the current benefit is unequal and considered it "discriminatory" commenting that "in the 10 years up to December 2019, only 13.5 per cent of all new claims were made by women".²⁴

42. Other witnesses, such as Unite the Union, believed the figure to be lower, citing 7%, and said this may indicate further inequality "as members of our black, Asian and minority ethnic communities are not well represented".²⁵

The reasonable certainty test

43. Witnesses argued that the stringency of the test used to identify new industrial diseases for which industrial injury benefits would be payable has created a barrier to workers receiving compensation.
44. Dr Lesley Rushton, IIAC Chair, explained the parameters of the legislation in which the IIAC must work. The IIAC must be reasonably certain that the connection between work and the disease is real because it is a no-fault compensation system. She said—
- ” In comparison with a lot of international systems, that is an advantage—very much so—for the claimant, so that is something to bear in mind with regard to the current system. However, we are often hidebound in the decisions that we make because of the need for reasonable certainty.²⁶
45. She added that where there are no human studies "we look for a high relative risk, such as a doubling of the risk". Dr Rushton further noted "we often do not have that data, or the risk does not quite reach that level".²⁷
46. PFA Scotland (trade union for professional footballers), in relation to brain injury in football players, stated it was keen to have a group looking at criteria for compensation specifically—
- ” One of the issues is that, if you are successful, you have to work out a process and establish a criterion. For instance, would a professional footballer have to have been employed for a minimum of six, eight or 10 years? A variety of problems have to be dealt with bureaucratically. That is why we are keen on there being a working party to look at that and to establish what the criteria would be to supplement the medical evidence that we present.
47. The Cabinet Secretary acknowledged the calls for modernisation of the existing system. She, however, argued that this Bill would not deliver the reforms sought by stakeholders.
- ” They have, quite rightly, raised specific concerns about the current council and the current benefit. In my mind, they will not be resolved by the setting up of another council alongside the current council, because much of what has been discussed is around the eligibility criteria, which do not change, and how an individual is assessed, which does not change either.²⁸

Timescales

48. The Scottish Government has committed to consulting with the public on its approach to IIS in Scotland. In its Memorandum of 11 September 2023, the

Government said consultation would take place "this year" and that it would consider the question of whether to create a "statutory advisory body" as part of this.²⁹ In response to the Committee's letter, the Cabinet Secretary stated on 6 November 2023 that the consultation would be launched "shortly"³⁰ and when giving evidence to Committee on 30 November the Cabinet Secretary said "I am keen to move forward with the consultation early in the new year".³¹

49. Commencement provisions at section 10 provide that the Bill would come into force at the end of the period of 6 months beginning with the day of Royal Assent. The Committee received no evidence specifically on the time period set out in the Bill, though timing was raised in relation to when an Advisory Council should be established more generally.

50. Witnesses representing trade unions and occupational health and medicine favoured early establishment of an Advisory Council to influence the development of EIA. For example FBU Scotland said—

” It is not a case of putting the cart before the horse; it is quite the opposite. Having SEIAC [the Advisory Council] in place is essential to reform the benefit so that it is properly devolved and fit for purpose in the modern day. SEIAC could play an important role in that.³²

51. Scottish Hazards (an organisation that provides health and safety advice and support to workers) suggested there were advantages to setting up an Advisory Council early, so it could inform consultation and recommend reforms.³³ It pointed out that the first expert group on devolution of IIDB was set up in 2016 and stated—

” Seven years down the line, we are still having discussions. We must move with speed, if that is possible, to address some of the inequalities in the system.

52. The Advisory Council is intended to influence the reform and modernisation of industrial injuries benefits in Scotland. In terms of current benefits, the Scottish Government told the Committee that it is not possible to make changes to IIDB in Scotland due to the Agency Agreement.

53. The Cabinet Secretary expressed this view when she wrote to the Committee on 11 September 2023 stating the Scottish Government "will not be supporting the Bill" because it is restricted by the Agency Agreement it has with the DWP and the requirement "for maintaining parity" with the rest of the UK.³⁴ The letter further explained it would not be able to make changes without renegotiation with the DWP and this could potentially put clients' payments at risk.

54. Even once EIA is introduced, the Scottish Government has stated that the opportunity for reform will be limited until case transfer from IIDB is completed—

” While the Scottish Government would implement changes to EIA once we begin accepting new applications, doing so while IIDB clients' awards are still being delivered by the DWP risks introducing inequity in the system.³⁵

55. The Cabinet Secretary said—

” When it comes to the changes that can be made, the committee will have heard me and my predecessors always talk about safe and secure transition. That is important, because our first responsibility is to those who are already on the benefit.³⁶

56. She added that the case transfer process is complex and drew the Committee's attention to the particular complexities associated with replacing an almost fully paper-based scheme that was introduced in 1948—

” More than 100,000 paper files relating to Scottish awards are held in a number of warehouses, contrasting starkly with the largely digital systems associated with the benefits that have been devolved to date.³⁷

57. The Committee intends to write to the Scottish Government asking whether the practical process of transferring these files onto a digital format has started.

58. The Cabinet Secretary could not give a ‘lead-in’ time from consultation to benefit introduction as this would depend on the degree of change that was being introduced. She did note that making substantial changes would take longer than making changes round the margins.³⁸

59. In the most recent minutes of the Joint Ministerial Working Group on Welfare, in September 2023, Tom Pursglove MP, the then UK Minister for Disabled People, Health and Work, noted that “for broader planning reasons, DWP needed to understand SG's [Scottish Government's] plans and timescales for the replacement of IIDB by early 2024 given the long lead in times likely to be required because of the complexity of the benefit.”³⁹

60. The Cabinet Secretary assured the Committee the Scottish Government would continue to work closely with the UK Government to address those challenges in a way that protects the interests of current clients. However, she noted that this “considerably constrains our ability to make fundamental changes in the short term”.⁴⁰

61. The Member in Charge spoke extensively on the issue of timescales when he appeared before Committee. On the timing of the consultation promised by the Scottish Government, the Member said the Committee and the Parliament had been “told on an almost annual basis that the consultation will come this year” and that waiting for it has therefore become “frustrating”.⁴¹

62. With regards to the timing of the Bill, the Member in Charge was asked why it should be supported despite the lack of a timetable or policy detail from the Scottish Government for the introduction of EIA. In response, the Member said the establishment of an Advisory Council before policy work for EIA is carried out is “crucial”⁴² so that the experience of Advisory Council Members can influence the development of the benefit—

” We would want to have the medical expertise, the trade union expertise and, more important, the lived experience of those who have been injured or have become ill because of their work and are not being supported by the current system. We want the council to be in place to advise on the development of the policy and the new entitlement in advance of the Government taking over full responsibility for the benefit.⁴³

63. The Member was also keen to emphasise the timeframe the Scottish Government is working to, stressing there is "less than a year and a half" until the end of March 2025, when the agency agreement requires a "business transition plan" to be in place. He claimed the DWP has said this will not be extended, referring to—

” the DWP’s assertion that it would not countenance a further delay, which the Government was looking for. In essence, the 2026 deadline is a hard deadline, which the DWP does not have the capacity to go beyond.⁴⁴

64. **The Committee notes that the agency agreementⁱ would need to continue, not just until EIA is introduced but until case transfer from Industrial Injuries Disablement Benefit is complete. Given the Cabinet Secretary’s description of the complexities of case transfer, the Committee asks the Scottish Government to clarify whether it views the end of the current agency agreement as a ‘hard deadline’ for this process.**

65. Given the timeframe, the Member said the Scottish Government should build on the work that has already been undertaken in this area—

” Let us not reinvent the wheel. As I said in my opening statement, and as the cabinet secretary has said, a lot of work has been done on the proposal. We could end up in a situation in which the Government replicates that at pace right up to the deadline, spending a lot more money in the process, rather than our just working together on the bill when it comes to stage 2 to get something that we can all agree on.⁴⁵

Alternative policy options

66. A number of policy options other than establishing a statutory advisory council have been considered by the Member in Charge. Some of these were explored further in evidence.

67. One option would be to extend the remit of the Scottish Commission on Social Security (SCoSS) to include the functions proposed for the Advisory Council.

68. The Policy Memorandum comments that SCoSS “has a wider remit and a fairly small membership, so it would be challenging for it to be able to scrutinise in detail the range of issues that the Council, with a dedicated remit, specific expertise and

ⁱ Industrial Injuries Scheme Benefits in Scotland: [Agency Agreement](#), 3. Duration, paragraph 3.2, 4 May 2023

larger membership, can scrutinise.”⁴⁶

69. A recent independent review of SCoSS stated that—

” It could not take on a wider role in relation to advice on the industrial injuries scheme, such as whether prescribed diseases for which benefit can be paid should be added to or amended. As far as we are aware no such role is envisaged for SCoSS, and it appears very clear that it would not be appropriate.”⁴⁷

70. Dr Mark Simpson, Interim Co-Chair of SCoSS, said the proactive role of adding to a list of diseases and occupations in industrial injuries benefits would require a different kind of expertise than the SCoSS board is set up to provide—

” Although we look at disability benefits, for example, the various forms of disability assistance are concerned with the impact of an impairment on a person’s daily living, mobility and care needs, and scrutinising that kind of thing does not necessarily require specific expertise on specific conditions, but scrutinising employment injuries presumably would.

71. Another alternative is to create a non-statutory advisory group for initial policy development and consider the question of a statutory body after EIA has been introduced. This was the option preferred by the Cabinet Secretary who told the Committee that the working group would advise on how a new benefit might look, until the benefit ‘goes live’. She said—

” We could put in place that stakeholder group as a way for experts and people with experience of the current system to feed into policy development, as we have done previously. It would play that role until the new benefit is in place, at which point we would move on to permanent bodies whose role and scope, as I have said before, would be determined by what the benefit looked like.”⁴⁸

72. The Cabinet Secretary did not want to pre-empt the outcome of the Scottish Government’s consultation, but she stated the advisory group would be able to consider the kinds of questions that have been raised—

” For example, it could consider questions of long COVID-19 and the gender disparity in the current scheme, and it could also consider the current provision of scrutiny and advice in the context of the existing UK Industrial Injuries Advisory Council and the Scottish Commission on Social Security.”⁴⁹

73. She further explained a stakeholder group approach had worked successfully for every other benefit—

” For every other benefit that we have had, very successful stakeholder groups have been established to take forward points raised in consultations. I presume that the people who have been suggested for membership of the council are exactly the type of people who would be on that stakeholder group. Importantly, though, others would be involved, too.

74. Another alternative set out in the Policy Memorandum for the Bill suggested seeking agreement with the UK Government to amend section 33 of the Scotland Act 2016 to permit IAC to “have remit, agency and authority in relation to devolved benefits”.

75. The Committee wrote to the then Minister of State for Disabled People, Health and Work, Tom Pursglove MP, on 7 November 2023 enquiring about this option. In response, the Minister set out why it was decided IIAC's remit would not be extended—
- ” In 2015, as part of the transfer of powers being made to the Scottish Parliament through the Bill which became the Scotland Act 2016, the UK Government considered whether IIAC should become a cross-border public authority advising both the UK and Scottish Parliaments. It was decided, for the sake of clarity, that IIAC's remit should remain unchanged, and that it should continue to advise only the UK Parliament on relevant matters. This remains the UK Government's position.⁵⁰
76. When discussing alternative policy options, the Member in Charge commented on the Cabinet Secretary's suggestion that a non-statutory advisory group could help shape the initial policy for EIA. He said that, while an advisory group would be a "step in the right direction", a non-statutory body would lack protections in terms of its independence and whether it could be easily disbanded. He gave the Disability and Carers Benefits Expert Advisory Group (DACBEAG) as an example—
- ” DACBEAG was a working group that was set up to advise on employment injury assistance, among other benefits. It recommended that the council be set up, but that recommendation was never accepted or advanced before the group was disbanded.⁵¹
77. He also said that without membership criteria dictated by primary legislation, it may not be clear enough and "would potentially not be gender balanced" referring to Schedule 3 of the Bill which would mean it must comply with the requirements of the Gender Representation on Public Boards (Scotland) Act 2018.⁵²
78. DACBEAG's recommendations were made in December 2022 and are highlighted earlier in this report. In February 2023 the Scottish Government's response did not comment in detail on the recommendations, saying that consultation on EIA, at that point expected 'in the next few months', would act as a fuller response.⁵³
79. The Member in Charge was also asked about whether a sub-group of SCoSS could be set up rather than the Advisory Council. In response, the Member explained he did not think this was a good option as it could too easily be disbanded. When asked whether putting a sub-group of SCoSS into statute could therefore work instead, the Member stated this could still require primary legislation, in which case the Advisory Council Bill should just be passed instead—
- ” That would require primary legislation like the bill, so it would take a lot longer and would push a lot closer up to the deadline that the Government has for taking over responsibility for the benefit. We would need to mirror the provisions in the bill on membership, the balance of employers and employees, and ensuring that the body included lived experience, so I guess that we would still need primary legislation to implement that. I am not sure how much financial saving there would be from creating a sub-group of SCoSS with essentially the same purpose and function, and it would probably take longer to get to the same point as we would reach by passing the bill.

Corporate body status

80. Section 1(2) of the Bill gives the Advisory Council corporate body status. Further provision in this regard is set out under paragraph 12(1) of schedule 1, which requires the Advisory Council to produce audited accounts.

81. The status and structure of the Advisory Council appears largely to be based on SCoSS as provided for under [Schedule 1 of the Social Security \(Scotland\) Act 2018](#).

82. A recent review of SCoSS noted that this was an unusual arrangement for an advisory NDPB saying—

” The accounting and audit requirements place a heavy burden on a very small body with expenditure in 2020-21 of only £172.4k. We believe that SCoSS is the only advisory NDPB in Scotland which is currently required to produce its own accounts. There was a clear consensus from interviews that the effort involved in the production of SCoSS accounts is disproportionate and does not contribute to meaningful scrutiny.⁵⁴

83. On this point, the Member in Charge explained that when the Bill was drafted it was designed to mirror a lot of SCoSS's provisions, but that new evidence from SCoSS means this could be revised—

” Again, that relates to how the bill was drafted. The closest comparator that we had when we were drafting it was the creation of SCoSS. We mirrored a lot of its provisions, but I appreciate that, since the bill was introduced, legislation has been proposed to change SCoSS's status and it has given evidence that the current system is overly burdensome. I am open to amendments at stage 2—if we get that far—to change reporting requirements, given the new body of evidence that we have received from SCoSS.⁵⁵

Schedule 1: Operation and composition of the Advisory Council

84. Schedule 1 to the Bill is introduced by section 1(3). It makes detailed provision for the status, powers, procedure, financing and membership of the Council.

Membership and expertise

85. Paragraph 13(1) of schedule 1, provides for the membership of the Advisory Council. The Council is to consist of a member appointed as chair and at least 6 but no more than 12 other members.

86. When appointing members under paragraph 14(5), Ministers must have regard to the desirability of:

- securing that the council, taken as a whole, has knowledge and experience of:
 - formulation, implementation and evaluation of employment-injury assistance policies in Scotland and elsewhere in the UK
 - research in connection with employment related injury or disease
 - Scots law on employment and personal injury
 - relevant medical practice, including occupational medicine, epidemiology and/or toxicology
 - the effect of disability on daily life, and
 - disability as a result of employment related injury or disease
- having a member with personal experience of disability from employment related injury or disease
- having equal number of representatives of employers and employees
- having as members people who haven't previously been members.

87. The number of other members required can be adjusted by Ministers, under subparagraph (2), but the minimum number of other members cannot be reduced below 6.

88. Dr Rushton explained the the IIAC currently has 10 to 12 members with independent varied scientific expertise, such as respiratory, musculoskeletal and epidemiologists. The IIAC has equal representation from members who represent employer organisations and members who represent unions and worker organisations.⁵⁶ Additionally, she said the Health and Safety Executive has an observer at every meeting.⁵⁷

89. Many witnesses, primarily from trades unions, favoured an advisory council that had greater emphasis on the worker's voice, while all witnesses were supportive of lived

experience representation.

90. Linda Somerville, STUC, argued that half the membership should be from trades unions because unions "have decades of experience and understanding of what the occupational risks are, what the factors are and what happens in the workplace. That is why we would argue for the 50 per cent representation".⁵⁸
91. Others emphasised the need for the worker's voice to be included in addition to scientific evidence. FBU Scotland, said that—
- ” In no way, shape or form is the proposal looking to marginalise the scientific role. [although] Trade unions have a key role in flagging up early trends of workplace injury and disease.⁵⁹
92. Those working in occupational health felt their multidisciplinary profession should be represented on the Advisory Council or have observer status, as they are involved with early detection through delivering occupational health on the ground. Lucy Kenyon, Non-executive Director and Past-President at iOH (The Association of Occupational Health and Wellbeing Professionals), said the Advisory Council "must have the voice or the ear of the people who are doing the work".⁶⁰
93. Close the Gap, although broadly supportive of the proposed breakdown of the membership, considered it particularly important for there be a gender balance on the Advisory Council, specifically among those with lived experience because of the "invisibility of women's work-related injuries and illnesses in the system".⁶¹ The Policy Memorandum states the "Bill requires the Council to comply with the gender representation objective set out in section 1 of the Gender Representation on Public Boards (Scotland) Act 2018."⁶²
94. There was discussion about the availability of scientific expertise for the Advisory Council, particularly given that those on the IIAC were national or international experts in their field. Dr Mark Simpson highlighted that finding expertise has been an issue for SCoSS when it has had vacancies.⁶³ He also explained that the DWP does not allow dual membership of SCoSS and its UK equivalent (the Social Security Advisory Committee) and considered it might well take the same position when it comes to the IIAC and the Advisory Council.⁶⁴
95. In relation to scientific expertise, Professor Ewan Macdonald, Society of Occupational Medicine, expressed that—
- ” I think that we have enough people, but we would not replicate. If the IIAC does useful research and comes up with good evidence—it has top scientists as well—we would not repeat that. In Scotland, between the various institutes and research areas, there is a nucleus. However, the expertise is thin on the ground. It would have to be properly organised and funded, and there would have to be a background of research and people processing data to pick up things early.⁶⁵
96. The Cabinet Secretary stressed that it would be difficult to know exactly the type of knowledge needed for any future council until its role and remit are decided when the shape of employment injury assistance is known. She pointed to the IIAC's membership which reflects the medicalised eligibility criteria for IIDB and said "if

employment injury assistance were to depart from IIDB at any point in the future, the kind of knowledge and expertise that might be required could be very different".

66

97. In terms of finding the right balance of expertise amongst Advisory Council members, as well as ensuring members can cover a breadth of issues, the Member in Charge talked about the flexibility regarding membership that has been written into the Bill—

” We have said that there should be a range—between six and 12—to give the council the flexibility that it needs to recruit a range of members while maintaining the balance on gender and between employers and employed members, with the membership criteria that we have set out. That gives the flexibility to recruit people with the level of expertise that we need. ⁶⁷

Section 2: Functions of the Advisory Council

98. Section 2 of the Bill sets out the Council’s core functions. These include:
- scrutiny of proposals for legislation;
 - to report on any matter relevant to employment injury assistance that the Council is asked to report on by the Scottish Ministers or the Scottish Parliament, in respect of any research or any other matter the Council considers appropriate; and
 - carrying out, commissioning, or supporting research into any matter relevant to employment-injury assistance.

Scrutiny of regulations

99. SCoSS considers social security regulations referred to it. It also considers the implementation of the Social Security Charter, and reports on matters related to social security as requested by the Parliament and Ministers. Its functions are set out in Schedule 1 of the [Social Security \(Scotland\) Act 2018](#).
100. The Bill would prevent SCoSS from considering regulations on EIA.
101. In its response to the Call for Views, the Child Poverty Action Group proposed that—
- ” Separating the function of independent advice on policy options before the law is drafted (from the Advisory Council) from scrutiny of draft regulations (by SCoSS) would be an option which would utilise expertise appropriately and avoid any conflict that might arise from the same body scrutinising policy choices that have already been informed by its advice. ⁶⁸
102. Dr Sally Witcher, previously Chair of SCoSS, was clear that if EIA was introduced with similar rules to IIDB then SCoSS would not be able to advise on it. She noted that—
- ” Part of the challenge is that I do not know what that benefit will be. Until we know what it is, we will not know what expertise we will need to scrutinise it and ensure that it is designed and delivered as effectively as possible. ⁶⁹
103. Dr Mark Simpson of SCoSS emphasised that knowledge of social security and knowledge of industrial injuries are very different things. If, in future, new diseases were being added or considered for EIA, then he believed additional advice would be needed beyond what SCoSS could provide. ⁷⁰

Research

104. The Committee heard about the IIAC's research function and how resource intensive the work is. Dr Rushton explained that the research is all undertaken by the members except for commissioned research. She added that, when the IIAC is recruiting, the research obligation puts people off, stating "the time commitment is one of the first questions that is asked about".⁷¹
105. Professor Ewan Macdonald said that he had been asked to consider joining "but I did not, because it has no infrastructure of support for research—they all do their research in their own time in the evenings".⁷²
106. IIAC's regular annual research budget has recently been increased to £100,000 from £25,000. Dr Rushton explained that this was similar in scale to comparable committees such as the Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment and is "for getting people to help with the work, including writing reports".⁷³
107. The IIAC also commission reviews and have recently commissioned a £50,000 review of respiratory disease and cancer, and a smaller scoping review on women and occupational health.
108. Those arguing for a more proactive role for the Advisory Council emphasised the importance of research. The Financial Memorandum includes £30,000 for research. Witnesses commented that £30,000 is a low budget for research. Professor Macdonald said—
- ” You can do very little research for £30,000 a year, because research involves employing staff, surveying, methodology, statistical analysis and all that sort of thing. It is grossly inadequate. The fact that there is some money is positive; at least someone is thinking about it.⁷⁴
109. The Cabinet Secretary thought the Bill makes several assumptions about what the Advisory Council would do and how it will operate before EIA is place and so she was unclear whether the figures are realistic. When pressed for a view, the Cabinet Secretary queried whether a sum of £30,000 would be sufficient, saying—
- ” I would query whether a sum of £30,000 would be sufficient and would genuinely question—if that sum was given to the proposed new council—what the Government or anybody else would be able to get out of that process.
110. The Member in Charge first set out that the budget of £30,000 was arrived at by looking at research work carried out by similar bodies and said three examples, provided in the Financial Memorandumⁱⁱ, were given to illustrate this. However, he also stated the Financial Memorandum notes—
- ” The nature and length of research commissioned would be a matter for the Council, so it could vary significantly.⁷⁵

ii The Financial Memorandum states: "The estimated figure of £30,000 is based on a rough average of three public sector-commissioned research projects that cost approximately £17,000 for a three-month project, £23,000 (five months) and £42,000 (six months)."

111. The Member in Charge added he was pleased to hear the Cabinet Secretary commenting on the research budget perhaps being too low because he said it indicated the Scottish Government seems to be open to negotiation on this point.⁷⁶
112. When pushed on how much research could be done for £30,000, the Member said it would depend on what was being researched, and that research has already been undertaken in some areas, providing the example of cancers in firefighters. He explained that in such instances the budget would "more than cover" the costs of interrogating such research, but that ultimately the Advisory Council could negotiate research costs with the Scottish Government for any particular year.⁷⁷

Role of the Advisory Council

113. Under sections 2(b) and (c) the functions of the Advisory Council include reporting on any matter relevant to employment injury assistance as requested by Ministers, or the Parliament, or on its own initiative.
114. Some witnesses questioned whether the Advisory Council would duplicate the work of the existing UK body, while others thought the Council could complement the IIAC's role and could perhaps add value in areas such as prevention.

Duplication or added value

115. Dr Rushton considered the impact on the IIAC if a Scottish Advisory Council was set up—
- ” If a Scottish body was set up, I think that we would certainly want to ensure that we did not duplicate anything—I can see that there might be duplication. I think that it would depend very much on how you set up your legislation. At the moment, we are working to the Social Security Act 1998, and the “reasonably certain” issue. That makes us very different from other countries, and that is why our so-called lists are different from those of other countries. [...] I think that we would want to work together—partly, anyway—and perhaps have representatives on both bodies.⁷⁸
116. In relation to whether it is possible that the Advisory Council could come to different conclusions than the IIAC about whether there is a reasonable certainty of a link between particular occupations and particular diseases, Professor Macdonald, believed it is possible "but not desirable".⁷⁹
117. Professor Macdonald also commented that if the Advisory Council looks at the same issues as the IIAC—
- ” There will be duplication of the research, which is wasteful, because the same diseases are occurring internationally. Why do we have to do everything ourselves?
118. Lucy Kenyon, iOH, commented that IIAC's reports are published and the data is robust, "However, that does not seem to translate into a review. Last night, I did a last-minute review of what is on the IIAC list of prescribed diseases, and it does not

reflect the reports that have been raised since 2017". Therefore she thought duplication is unlikely "because there is a needs gap in converting the evidence".⁸⁰

119. Similarly, Professor Andrew Watterson, University of Stirling, considered the Advisory Council is an opportunity to fill this gap and influence the UK as—

” The system in the UK is not efficient, so we are looking for something that complements other work and acts as a catalyst. It could do that certainly by picking up various sectors but also by finding out why we have failures on, for example, silica, welding and women’s health and by examining the workplaces that operate.⁸¹

120. The Cabinet Secretary argued that the bill does not make changes to the criteria, nor would it automatically mean that new conditions, such as long COVID, would be considered as industrial diseases. Instead, the bill largely replicates, in Scotland, the functions of the IAC, of which the Committee has heard extensive criticism.⁸²

A wider role

121. Witnesses suggested that an Advisory Council could avoid duplication with the IAC by having a wider role.

122. Occupational health and medical related witnesses emphasised the need for a more preventative approach. Lucy Kenyon described a preventative approach preferable to paying a benefit once someone is injured, however she noted there is a lack of occupational health provision.

123. Professor Macdonald agreed and said—

” We need a much more proactive system in Scotland, with an observatory looking at what is happening and at any changing trends.⁸³

124. Moving forward with this Professor Macdonald believed there is a need for better data collection—

” What I am talking about will be not duplication but expansion. If we are to do something different, we have to get better data [...] we need early detection systems. [...] We need to have the research function to pick up on work-related ill health much earlier, when it is at its most subtle.⁸⁴

125. It was noted that many areas where stakeholders would like to see reform, such as occupational health and safety and employment law, are reserved to the UK Government.

126. In response to stakeholders who wish to see the Advisory Council have a wider prevention role, the Cabinet Secretary stated that—

” ... because occupational health and safety is not devolved to the Scottish Government, it would be difficult to replicate that prevention role, which raises a question about how a Scottish body would engage on the important subject of prevention. A discussion definitely needs to be had, but it is complicated by the nature of the devolved/reserved settlement.⁸⁵

127. The Member in Charge was asked about whether an Advisory Council could play a preventative role in terms of health and safety at work. At this point, the Member sought to emphasise the Bill had been drafted in such a way as to not go beyond the Scottish Government's devolved responsibilities.⁸⁶ He clarified this would constrain the Advisory Council's ability to play an explicitly preventative role—

” As the bill stands, and as it is set up, the council would not have the power to interfere on preventative work because of the reservations.⁸⁷

128. However, the Member explained that an Advisory Council could still have an impact in terms of prevention—

” ...the work that the council would do would have a preventative role in itself. The research that it would commission would fill the current data gaps in Scotland, and filling data and knowledge gaps and improving awareness and education would have a preventative role. The council would be mandated to have at least one public meeting every year, at which it would publicise its work and improve education on the issues, which would improve prevention.⁸⁸

129. He added that because the budget for EIA will be demand-led, the Scottish Government may be inspired to act in a preventative way if that budget starts to increase as a result of accepted recommendations from the Advisory Council that boost eligibility for the benefit.⁸⁹

Section 3: Further procedure for considering draft regulations

130. Section 3 of the Bill sets out a procedure for considering draft regulations that is largely based on SCoSS. That is, Ministers publish draft regulations, which the Advisory Council reports on. Ministers publish their response to SCoSS's reports when the regulations are laid in the Parliament.
131. There are some differences:
- Except in urgent cases, the Advisory Council must be given one month's notice that it will get draft regulations, and at least three months to consider those regulations. The legislation for SCoSS does not include minimum timescales but instead requires that the Commission has such time to prepare the report as the Commission deems appropriate.
 - The Advisory Council is required to consult certain people, specifically workers with lived experience and their representatives. In contrast, SCoSS may consult any persons it considers appropriate but does not have to.
132. These differences are notable because it has often been the case that SCoSS has not had much time to consider regulations or consult as fully as it might have liked. Its annual report 2021-22 noted—
- ” a risk identified regarding ensuring that the Scottish Government provides information to SCoSS timeously in order that SCoSS can undertake scrutiny and corporate functions effectively.
133. On these stipulations, the Member in Charge made the case that the timescales drafted in the Bill were based on feedback they had heard from SCoSS in similar circumstances and that the Commission had felt more time was needed—
- ” That reflects evidence that SCoSS has given to committees, in which it has— I do not know whether “complained” is the right word—raised concerns about the notice periods that it gets from Government and the time that it has to report on regulations. The provisions reflect some of SCoSS's early work that suggests that a greater lead-in time is needed.⁹⁰
134. Having said that, the Member did however add that if regulations are made by the Scottish Government that are thought to be urgent, timescales and the need to consult would be waived. He stressed that this caveat is written into the Bill.⁹¹

Section 5: Power to work with others

135. Under section 5 of the Bill, the Advisory Council would have powers to consult, assist or work jointly with prescribed bodies, such as the Parliament, the Scottish Ministers, SCoSS, a health board and other persons as the Council considers appropriate. This power is subject to the Council's functions, so that work could only be undertaken if it would further the performance of the Council's functions.

136. The Committee requested oral evidence from the Health and Safety Executive (HSE) and we were disappointed they declined to do so. That said, their written evidence was of some use but we would note the committee was unable to scrutinise it further. HSE stated in its letter to the Committee—

” The membership of IAC includes an HSE observer. This allows HSE to be kept aware of aspects of the IAC's work which are also informative in relation to HSE's regulatory role, for example, through IAC's work to review scientific evidence about when diseases should be considered occupational.

It also provides a mechanism to seek and obtain from HSE any relevant operational or scientific information that may help IAC in their role to advise on matters relating to the list of diseases which bring entitlement to Industrial Injuries Disablement Benefit. This includes, for example, contributing to IAC's work on how to define occupational circumstances for diseases being considered by providing any information HSE may have available about workplace exposures relevant to those diseases. HSE may also be able to advise on how changes in legislation or workplace controls in the past may have impacted on those circumstances.

HSE also advises the Council on the appropriate wording for sections in their reports on actions duty holders need to take to prevent disease among today's workers.

137. The Cabinet Secretary discussed the complexities arising from the interaction of reserved and devolved policy areas—

” One of the complicating factors is that much of what has been talked about, including health and safety at work, is reserved. That creates a number of challenges. For example, the IAC has an observer from the Health and Safety Executive at every meeting [...] I am very keen to explore the issue in depth [...] It is important that we look at the issue in the round and at the wider challenges that we have with regard to, for example, how to work with the Health and Safety Executive and other reserved agencies on ensuring that the body is fit for purpose.⁹²

138. Paragraph 4 of schedule 1 gives the Advisory Council the right to access information from a large number of organisations including:

- The Scottish Government, local authorities and health boards
- Universities and colleges
- Fire and rescue service

- More than 100 [Scottish public authorities](#) covered by section 3 of the Freedom of Information (Scotland) Act 2002.
139. The Policy Memorandum states this power might be used, for example, when preparing a report under section 3 of the Bill on draft regulations. The Advisory Council would have the right to access any underlying statistical data, information or analysis that informed the provision in the regulations. ⁹³
140. In comparison, SCoSS can access information from the Scottish Government and local authorities. Ministers could add to this list via regulations. ⁹⁴
141. During oral evidence the Member in Charge affirmed that the provision in the Bill allowing the Advisory Council to work with other bodies could be applied to the HSE. However, he added that it would be up to Members to put forward an amendment at Stage 2 if they wanted the HSE to have observer status, as it does on IIAC. He said—
- ” The HSE has observer status on IIAC. It would be open to members to propose an amendment at stage 2 that would mean that HSE would have observer status on SEIAC, too. We could look at that, but the bill already includes a power for the new council to work with others, including the HSE. ⁹⁵
142. The Member was also asked why the Bill proposes to give the Advisory Council power to request information from an extensive range of bodies. Responding to this, the Member explained—
- ” We modelled the information-requiring powers on those in the Freedom of Information (Scotland) Act 2002. We felt that it was a good place to start. We also listed other organisations.
- It is important to give the council teeth so that it can go after information and fill the data gaps that currently exist, to support its work. That said, I hope that it would have good working relationships with the organisations that are covered by the Freedom of Information (Scotland) Act 2002, so that it is able to get information voluntarily and does not have to require it. ⁹⁶

Financial Implications of the Bill

143. Members discussed with stakeholders whether the creation of the Advisory Council would result in budgetary pressures if it recommended a widening of eligibility for the Employment Injury Assistance benefit.
144. Professor Andrew Watterson made the point that, while in the short term costs associated with the benefit could go up, longer term there would be an expected reduction—
- ” If the system is working, you would expect that, gradually, the benefits paid out will go down, because the system will feed into what the regulators are doing and into the knowledge of the employers, which will enable them to control the problems. Therefore, in the medium term, you would expect it to greatly reduce the costs. But, yes, in the short term it may be that the costs will go up.⁹⁷
145. Close the Gap stressed that, despite higher costs, the consequences of not taking action needed to be considered—
- ” I agree that the fact that there is going to be a higher cost under the proposals does not mean that they should not be pursued. The consequences of not doing so are vast. Indeed, not doing so would undermine the Scottish Government’s ambitions on tackling child poverty, which is interlinked with women’s poverty. There are women now who cannot work and cannot access benefits who are inactive in the labour market because of a work-related injury or illness, but they cannot access the benefits. Those things are at odds with each other.⁹⁸
146. When asked about budgetary concerns and eligibility for the benefit, the Cabinet Secretary emphasised that if the Scottish Government made changes to the benefit in Scotland that widened eligibility, the cost of this would need to come out of the Scottish Government's block grant as the DWP would not cover the changes made.⁹⁹
147. In addition, reflecting the discussion of timing earlier in this report, the Scottish Government considers that financing the creation of an advisory body would now not be an appropriate use of funds when it is "still some years from delivering EIA".¹⁰⁰
148. The Cabinet Secretary was asked whether the figures in the Financial Memorandum are realistic. In response, the Cabinet Secretary said it is not possible to know the answer to this as she does not yet know what EIA will look like. She added it is only possible to consider this in the context of the DWP managing the benefit on behalf of the Scottish Government via the agency agreement. However, she pointed out that in this scenario, the DWP would not actually be obliged to act on any potential conclusions an Advisory Council could come to, and therefore questioned whether it would provide value for money.¹⁰¹
149. The Member in Charge was also asked for his thoughts on budget constraints. In response, he said the Advisory Council would only make recommendations and it

would ultimately be for the Scottish Government to decide whether to accept these in terms of affordability.¹⁰² He added that SCoSS has in the past made recommendations that the Scottish Government has rejected on the basis of affordability.¹⁰³

150. The Member also stated there is headroom in the budget due to decreasing entitlement—

” The Scottish Fiscal Commission has said that the budget is likely to fall from £78 million to £74 million, if I remember rightly. That is because of the current system and the way in which it is set up. As I said, in essence, the industrial injuries disablement scheme supports men who worked in heavy industry in the 1960s and 1970s. As those men are, sadly, passing away, entitlement is dropping off, and the budget is falling, year on year, because of that. As we have not updated the list of prescription or entitlement, that will not change and the budget will continue to fall.¹⁰⁴

Overall conclusions

151. In examining the Bill, the Committee has kept an open mind. The Committee found it useful to hear the breadth and depth of support for the Bill. It has been difficult weighing up the arguments presented to the Committee. There are some strong arguments as to why Scotland should grasp the opportunity to reform and modernise an industrial benefits scheme which has been in place since 1948.
152. Unions and other stakeholders presented a powerful case for change, as the current system fails to deliver for women and workers from ethnic minorities or to take account of modern occupations and diseases, such as those working with silica, experiencing illnesses resulting from COVID-19 through working in frontline services and firefighters suffering from work-related cancers. The Committee appreciates that this Bill is not just the efforts of the Member in Charge but also all the campaigning groups that have supported him in his endeavour. The Committee also acknowledges the assistance he has received from the Parliament's Non-Government Bills Unit.
153. We heard that the current system is slow to effect change, as some of the recommendations made by the UK Industrial Injuries Advisory Council have yet to result in changes to the prescribed list of diseases. This means people are missing out on assistance which could positively impact on their lives and circumstances.
154. The Committee is in no doubt that change is needed, but there is a question about how we secure that change that is crucial.
155. The crux of the opposing arguments lie in whether the model of a statutory Advisory Council the Bill presents is the right option for when Employment Injuries Assistance (EIA) is introduced. Associated with this is whether the timing of the Bill is appropriate given the current, and consistent, approach taken by the Scottish Government to delivery of new devolved benefits, which focuses on their safe and secure transfer. This involves the use of a Department for Work and Pensions (DWP) Agency agreement, which enables the DWP to continue to deliver the benefit in Scotland. These Agency Agreements are based on the Scottish Government keeping to DWP policy for as long as DWP delivers that benefit. As the Scottish Government pointed out, even once it introduces a 'Scottish version' of a benefit, it does so with minimal change until case transfer is complete because the Scottish Government would not want to introduce inequality to those not transferred. As a recent relevant example of this, there were changes to the application process for Adult Disability Payment but, significantly, not to the benefit criteria.
156. Furthermore, we heard that the task of transferring 100,000 claimants, whose details are currently held on paper files is going to be a time consuming and complex task and note that previous benefits transferred were supported by electronic files.
157. The Committee recognises that more significant changes could be made in the future, and this would require expert advice, but the Committee considers the aspirations of stakeholders would not be met by the Bill at this time. As such, the Committee is concerned that the Bill may raise expectations among stakeholders

that it will not be able to fulfil.

158. The Committee notes the Cabinet Secretary stated that an advisory group supporting the establishment of the new Scottish benefit could consider matters, such as long-covid, gender inequality and other issues highlighted in evidence. Given the understandable interest generated by the Member's Bill, the Committee believes it is important the advisory group looks at these. The Committee has also noted deficiencies in the current UK industrial injuries system and that any extended eligibility criteria in Scotland would generate additional financial pressures.
159. Our evidence did show that other models could be used. Although we heard about the advantages and disadvantages of a non-statutory body, we did not get sufficient evidence on other models, for instance creating a sub-group of the Scottish Commission on Social Security with the requisite expertise. The Committee believes that the creation of an Advisory Council could just add to an already cluttered landscape.
160. Holding a government-led consultation, covering how advice would be provided on industrial injuries and what the new EIA benefit should look like, would gather the necessary information to look at all the issues in the round. The Scottish Government could also use the responses to support a conversation with the UK Government as to how the devolved process might interact with reserved matters such as working with the Health and Safety Executive and to gain clarity on how prevention work could be factored into Scotland's approach. Notwithstanding this, the Committee does share the Member in Charge's frustration that this consultation has not happened sooner and indeed wrote to the Cabinet Secretary in advance of oral evidence seeking further clarity on timing.

161. The Committee notes that during evidence taking it still did not get a definitive timescale for the consultation. This Bill and the work of the Member in Charge has made it clear that quicker progress is needed and therefore again the Committee asks the Scottish Government to advise on the detailed timings for the Scottish Government's consultation as a matter of urgency.

162. Beyond these arguments there is still uncertainty about whether the Bill would address the gap in data collection, particularly given the limited research budget and whether there is sufficient expertise to sustain a statutory Advisory Council, as we have heard recruitment is an issue with both the UK Industrial Injuries Advisory Council and the Scottish Commission on Social Security.
163. Before it could recommend establishing a new statutory body, with its associated costs, the Committee would need to be certain that that body was going to deliver on its aims. Major reform of industrial injury benefits is needed but we are not convinced that this Bill would secure this, particularly as the scope to deliver the scale of change required is years away. In coming to our decision, the Committee did fully consider the benefits of having a statutory and independent advisory council, but unfortunately the timing is wrong, and the Committee cannot in good conscience support a Bill where there is doubt it will achieve its aims, particularly in times of fiscal constraint.

164. **The Committee acknowledges the good and genuine intentions of the Member in Charge in bringing forward this Bill, as well as the support he has received. It appreciates a case has been made for giving an effective voice to workers, trades unions, employers and lived experience, including the lived experience of disabled people in the design and delivery of this new benefit. However, on balance, the Committee is not able to support the general principles of the Bill. Accordingly, the Committee recommends to the Parliament that the general principles of the Bill not be agreed to.ⁱⁱⁱ**

ⁱⁱⁱ Paul O'Kane MSP dissented from paragraph 164.

Annexe A: written and oral evidence

165. Submissions received

Les Sharp

Lynda Wilson

Heather Cuthbert

Michael Boyd

David Evans

Caroline Buchan

Institution of Occupational Safety and Health

Fair Work Convention

Association of Personal Injury Lawyers (APIL)

Scottish Hazards

Action on Asbestos

Robert Atkinson

Unite the union Scotland

Musicians Union

Zahra Hussain

PFA Scotland

GMB Scotland

Keyworker Petition Campaign U.K.

Thompsons Solicitors Scotland

UNISON Scotland

Scottish Healthcare Workers Coalition

British Occupational Hygiene Society

USDAW

Professor Andrew Watterson

NASUWT

Close the Gap

The Royal College of Nursing (RCN) Scotland

Child Poverty Action Group in Scotland

Asbestos Action (Tayside), Clydebank Asbestos Group, Meso UK and Asbestos Victims Support Groups ForumF

Long Covid Scotland

UNISON Glasgow City Branch

Michael Marra MSP

Community

Fire Brigades Union

166. Correspondence

Scottish Employment Injuries Advisory Council Bill Equality Impact Assessment

Scottish Government Memorandum, Scottish Employment Injuries Advisory Council Bill, 11 September 2023

STUC Submission - Scottish Employment Injuries Advisory Council Bill, 29 September 2023

Correspondence to Cabinet Secretary for Social Justice from Committee, 25 October 2023

Correspondence from Cabinet Secretary for Social Justice to Committee, 6 November 2023

Correspondence to the Minister of State for Disabled People, Health and Work, 7 November 2023

Correspondence to Member in Charge from Convener of the DPLR Committee, 8 November 2023

Industrial Injuries Advisory Council Presentation - submission ahead of appearance at Committee on 9 November

Scottish Commission on Social Security (SCoSS) - written submission ahead of appearance at Committee on 9 November

Correspondence from the Member in Charge to the Convener of the DPLR Committee, 15 November 2023

Society of Occupational Medicine - written Submission ahead of appearance at Committee on 16 November 2023

iOH, The Association of Occupational Health and Wellbeing Professionals - Scottish Employment Injuries Advisory Council Bill - written Submission ahead of appearance at Committee on 16 November 2023

Confederation of Shipbuilding and Engineering Unions Submission - written Submission, 20 November 2023

Correspondence from the then Minister of State for Disabled People, Health and Work, November 2023

Correspondence from the Cabinet Secretary for Social Justice following evidence session on 30 November 2023, 18 December 2023

167. **Official Report**

Official Report 09 November 2023

Official Report 16 November 2023

Official Report 23 November 2023

Official Report 30 November 2023

Official Report 7 December 2023

Annexe B: extracts of minutes of meetings

168. [17th Meeting of 2023 \(Session 6\) Thursday, June 22, 2023](#)

4 Scottish Employment Injuries Advisory Council (Scotland) Bill (In Private):

The Committee considered and agreed an initial approach to the scrutiny of the Bill at Stage 1. The Committee also agreed—

- To issue a call for written evidence;
- That the call for written evidence should be accompanied by a news release, and that sign-off of the news release is to be delegated to the Convener;
- That any further approach to consideration of the Bill, consideration of evidence received, and any draft reports or letters should be considered in private at future meetings;
- Agreed its approach to late, anonymous and confidential responses;
- To delegate to the Convener and the Clerks responsibility for agreeing any witness expenses.

169. [24th Meeting of 2023 \(Session 6\) Thursday, October 5, 2023](#)

4 Scottish Employment Injuries Advisory Council Bill (In Private):

The Committee considered and agreed its approach to oral evidence; to write to the UK Government about the Scotland Act 2016 and the Scottish Government about timescales for the introduction of Employment Injury Assistance. Also, the Committee agree to consider any further approach to consideration of the Bill, consideration of evidence received, and any draft reports or letters, in private at future meetings, as well as to delegate to the Convener and the Clerks responsibility for agreeing any witness expenses.

170. [28th Meeting of 2023 \(Session 6\) Thursday, November 9, 2023](#)

5 Scottish Employment Injuries Advisory Council Bill:

The Committee took evidence on the Bill at Stage 1 from—Dr Lesley Rushton, Chair, Industrial Injuries Advisory Council; Dr Mark Simpson, Interim Co-Chair, Scottish Commission on Social Security.

6 Consideration of evidence:

The Committee considered the evidence heard earlier in the meeting.

171. [29th Meeting of 2023 \(Session 6\) Thursday, November 16, 2023](#)

2 Scottish Employment Injuries Advisory Council Bill:

The Committee took evidence on the Bill at Stage 1 from—Lucy Kenyon, Non-executive Director and Past-President, iOH, The Association of Occupational Health and Wellbeing Professionals; Professor Ewan Macdonald, Chair of the Academic Forum for work and health, which the Society of Occupational Medicine hosts.

3 Scottish Employment Injuries Advisory Council Bill (In Private):

The Committees considered the evidence heard earlier under agenda item 2.

172. [30th Meeting of 2023 \(Session 6\) Thursday, November 23, 2023](#)

2 Scottish Employment Injuries Advisory Council Bill:

The Committee took evidence on the Bill at Stage 1 from—John McKenzie, Regional Secretary, Fire Brigade Union (Scotland); Mike Corbett, National Official (Scotland), NASUWT; Norman Provan, RCN Scotland's Associate Director, Employment Relations, Royal College of Nursing; Linda Somerville, Deputy General Secretary, Scottish Trades Union Congress; Lorna Glen, Unite Regional Officer, Scotland, Unite the Union;

and then from—Anna Ritchie Allan, Executive Director, Close the Gap; Professor Andrew Watterson, Occupational and Environmental Health Researcher, University of Stirling; Ian Tasker, Chief Executive, Scottish Hazards; Tony Higgins, President, PFA Scotland.

3 Scottish Employment Injuries Advisory Council Bill:

The Committee considered the evidence heard earlier under agenda item 2.

173. [31st Meeting of 2023 \(Session 6\) Thursday, November 30th, 2023](#)

2 Scottish Employment Injuries Advisory Council Bill:

The Committee took evidence on the Bill at Stage 1 from—Shirley-Anne Somerville, Cabinet Secretary for Social Justice, Risga Summers, Policy Manager and Kirsten Simonnet-Lefevre, Solicitor, Scottish Government.

4 Consideration of evidence (In Private):

The Committee considered the evidence heard earlier in the meeting.

174. [32nd Meeting of 2023 \(Session 6\) Thursday, December 7th, 2023](#)

2 Scottish Employment Injuries Advisory Council Bill:

The Committee took evidence on the Bill at Stage 1 from—Mark Griffin MSP, Member in Charge; Neil Stewart, Senior Clerk, Non-Government Bills Unit and Ailidh Callander, Senior Solicitor, Legal Services Office, Scottish Parliament.

5 Consideration of evidence (In Private):

The Committee considered the evidence heard earlier in the meeting.

175. [33rd Meeting of 2023 \(Session 6\) Thursday, December 21st, 2023](#)

3 Scottish Employment Injuries Advisory Council Bill (In Private):

The Committee considered a draft Stage 1 report. Various changes were agreed to, and the report was agreed for publication.

- 1 [Proposed Scottish Employment Injuries Advisory Council Bill](#)
- 2 Scottish Employment Injuries Advisory Council Bill, [Policy Memorandum](#), (SP Bill 30) as introduced in the Scottish Parliament on 8 June 2023, paragraph 5.
- 3 Scottish Employment Injuries Advisory Council Bill, [Policy Memorandum](#), (SP Bill 30) as introduced in the Scottish Parliament on 8 June 2023, paragraphs 34-37.
- 4 Industrial Injuries Disablement Benefit Advisory Group, [Industrial Injuries Disablement Benefit Advisory Group - gov.scot \(www.gov.scot\)](#)
- 5 [Disability and Carers Benefits Expert Advisory Group - Employment Injury Assistance: advice - gov.scot \(www.gov.scot\)](#)
- 6 [Scottish Employment Injuries Advisory Council Bill - call for views](#)
- 7 [Published responses](#)
- 8 [STUC Submission - Scottish Employment Injuries Advisory Council Bill](#)
- 9 [The Social Justice and Social Security Committee. Official Report, 9 November 2023.](#)
- 10 [The Social Justice and Social Security Committee. Official Report, 16 November 2023](#)
- 11 [The Social Justice and Social Security Committee. Official Report, 23 November 2023](#)
- 12 [The Social Justice and Social Security Committee. Official Report, 30 November 2023](#)
- 13 [The Social Justice and Social Security Committee. Official Report, 7 December 2023](#)
- 14 [Financial Memorandum](#)
- 15 [Policy Memorandum](#)
- 16 Delegated Powers and Law Reform Committee, report on [Delegated powers in the Scottish Employment Injury Advisory Council Bill at Stage 1](#), 72nd Report, 2023 (Session 6), 30 November 2023.
- 17 [Unite the Union Scotland, written submission](#)
- 18 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 6.
- 19 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 6.
- 20 The Social Security and Social Justice Committee. Official Report, 7 December 2023, Col 15.
- 21 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 15.
- 22 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 5.

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- 23 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 14.
- 24 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Cols7-8.
- 25 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 17.
- 26 The Social Justice and Social Security Committee. Official Report, 9 November 2023, Col 32
- 27 The Social Justice and Social Security Committee, Official Report, 9 November 2023, Col 31.
- 28 The Social Justice and Social Security Committee, Official Report, 30 November 2023, Col 7.
- 29 [Scottish Government Memorandum, Scottish Employment Injuries Advisory Council Bill](#)
- 30 [Employment Injury Assistance \(Industrial Injuries Disablement Benefit\)](#)
- 31 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 11.
- 32 The Social Justice and Social Security Committee, Official Report, 23 November 2023, Col 6.
- 33 The Social Justice and Social Security Committee, Official Report, 23 November 2023, Col 29.
- 34 [Scottish Government Memorandum, Scottish Employment Injuries Advisory Council Bill](#)
- 35 [Scottish Government Memorandum, Scottish Employment Injuries Advisory Council Bill](#)
- 36 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 8.
- 37 Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 2.
- 38 Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 13.
- 39 [Joint ministerial working group on welfare, minutes, 19 September 2023](#)
- 40 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Cols 3-4.
- 41 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 4.

- 42 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 4.
- 43 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 4.
- 44 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 8.
- 45 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 17.
- 46 Policy Memorandum, paragraph 60.
- 47 Letter from the Cabinet Secretary for Social Justice, Independent Review into the Scottish Commission on Social Security, 18 August 2023.
- 48 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 8.
- 49 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 4.
- 50 Letter from the then Minister of State for Disabled People, Health and Work, November 2023
- 51 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 6.
- 52 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 6.
- 53 [Disability and Carers Benefits Expert Advisory Group - Employment Injury Assistance: response from ministers](#)
- 54 Letter from the Cabinet Secretary for Social Justice, Independent Review into the Scottish Commission on Social Security, paragraph 35, 18 August 2023
- 55 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 21.
- 56 The Social Justice and Social Security Committee. Official Report, 9 November 2023, Col 23.
- 57 The Social Justice and Social Security Committee. Official Report, 9 November 2023, Col 27.
- 58 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 4.
- 59 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 10.
- 60 The Social Justice and Social Security Committee. Official Report, 16 November 2023, Col 21.

- 61 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 25.
- 62 [Policy Memorandum](#)
- 63 The Social Justice and Social Security Committee. Official Report, 9 November 2023, Col 35.
- 64 The Social Justice and Social Security Committee. Official Report, 9 November 2023, Cols 35 and 36.
- 65 The Social Justice and Social Security Committee. Official Report, 16 November 2023, Col 22.
- 66 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 5.
- 67 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 10
- 68 Child Poverty Action Group, written evidence.
- 69 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 32.
- 70 The Social Justice and Social Security Committee. Official Report, 9 November 2023, Col 30.
- 71 The Social Justice and Social Security Committee. Official Report, 9 November 2023, Col 30.
- 72 The Social Justice and Social Security Committee. Official Report, 16 November 2023, Col 3.
- 73 The Social Justice and Social Security Committee. Official Report, 9 November 2023, Col 26.
- 74 The Social Justice and Social Security Committee. Official Report, 16 November 2023, Col 10.
- 75 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 17.
- 76 SThe Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 18.
- 77 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 18.
- 78 The Social Justice and Social Security Committee. Official Report, 9 November 2023, Col 26.
- 79 The Social Justice and Social Security Committee. Official Report, 16 November 2023, Col 19.

- 80 The Social Justice and Social Security Committee. Official Report, 16 November 2023, Col 7.
- 81 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 32.
- 82 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 3.
- 83 The Social Justice and Social Security Committee. Official Report, 16 November 2023, Col 6.
- 84 The Social Justice and Social Security Committee. Official Report, 16 November 2023, Cols 11-12.
- 85 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 6.
- 86 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 10.
- 87 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 14.
- 88 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 11.
- 89 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 11.
- 90 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 21.
- 91 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 21-22.
- 92 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 6.
- 93 [Policy Memorandum](#), paragraph 53, The Scottish Employment Injuries Advisory Council Bill (SP Bill 30).
- 94 [Schedule 1, paragraph 4, The Social Security \(Scotland\) Act 2018](#).
- 95 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 13.
- 96 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 20.
- 97 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 41.
- 98 The Social Justice and Social Security Committee. Official Report, 23 November 2023, Col 42.

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- 99 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 17.
- 100 [Scottish Government Memorandum, Scottish Employment Injuries Advisory Council Bill](#)
- 101 The Social Justice and Social Security Committee. Official Report, 30 November 2023, Col 15-16.
- 102 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 18.
- 103 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 19.
- 104 The Social Justice and Social Security Committee. Official Report, 7 December 2023, Col 19.

