Employment Injury Assistance (EIA) delivery – Next Steps: Analysis of Consultation Responses

Final Report

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Scottish Government
Riaghaltas na h-Alba

Contents

Executive Summary

Background

Since April 2020, the Scottish Government has been responsible for the Industrial Injuries Scheme (IIS) in Scotland. The scheme consists of several benefits with the main benefit being Industrial Injuries Disablement Benefit (IIDB) which provides financial support to those who have become disabled or have developed a long-term health condition as a result of their employment. There are currently around 24,000 people in receipt of an IIS benefit in Scotland.

The Scottish Government has committed to replacing the UK Government's IIS with a new benefit called Employment Injury Assistance (EIA) to be delivered by Social Security Scotland.

Consultation Process

The Scottish Government ran a public consultation[1] to gather views on the next steps on EIA. The consultation sought feedback on options for delivering EIA and will be followed by a comprehensive consultation on more detailed proposals at a later date. The consultation ran for 8 weeks, between 30 April 2024 until 25 June 2024 and asked three questions in total.

A total of twenty-eight written consultation responses were received – ten from individuals and eighteen from organisations (including Disabled People's Organisations, Advisory Organisations, local authorities, third sector charities/groups and others). In addition to the online consultation, the Scottish Government ran three online stakeholder engagement events in order to maximise opportunities for stakeholder representatives to participate and share their views on the options outlined in the consultation. A total of 12 organisations attended these events and feedback from these events was gathered by the Scottish Government for consideration alongside written responses to the consultation.

[1] Employment Injury Assistance delivery - next steps: consultation

Key themes

The consultation's first question asked if respondents agreed or disagreed that IIS was not fit for purpose.

The second question in the consultation sought feedback on two options:

- Option 1: Like-for-like benefit delivered with full case transfer and benefit reform to follow.

- Option 2: Prioritise fundamental reform of Employment Injury Assistance.

Of the twenty-eight responses to the consultation, ten expressed a preference for Option 1, twelve expressed a preference for Option 2 and six gave no preference (don't know, neither or not stating a preference). Discussion at the accompanying events discussed criticisms of the current Scheme, concerns about continuity of payments, interactions with lump-sum payments reserved to the UK Government and priorities for reform.

Criticisms of the Industrial Injuries Scheme

A majority of the written responses expressed criticisms of IIS. Many responses stated a preference for Option 2 to prioritise longer-term reform over immediate delivery of EIA on a like-for-like basis with IIS. The most prevalent theme among those who expressed a preference for Option 1 was concern about the continuity of current payments, whereas those in favour of Option 2 prioritised modernising the benefit. It should be noted, however, that responses from individuals and those from organisations varied significantly in terms of concerns about the current scheme and priorities for reform, with the majority of individuals supporting option 1 whilst the majority of organisations expressed a preference for Option 2. There was also criticism by many respondents over the length of time it has taken to deliver EIA to date.

Many respondents shared their views on how IIS is administered currently and set out their priorities for reform. Organisations shared their experience of helping clients to apply and to successfully appeal decisions. To this end, they called for changes to be made in line with Social Security Scotland's commitment to get decisions right first time.

Case transfer

The consultation received one response from a current recipient of an IIS benefit and one from a family member of a current recipient. These individuals were most concerned about ensuring they continued to receive payments following the introduction of EIA. Many organisations additionally called for current payments to be protected. Several organisations called for greater consideration to be given to future interactions with other benefits, such as the UK Government lump-sum payment schemes for asbestos-related conditions.

Equality issues

Equality concerns were a theme throughout many responses, particularly from organisations, with gender being a particular focus. It was felt that the eligibility criteria does not adequately account for the illnesses and injuries experienced by women at work. Some respondents linked gender disparity within IIS to specific conditions not currently covered by the scheme, such as Long Covid. Some respondents also called on policy development for EIA to take an intersectional approach, including to consider the experiences of minority ethnic women.

Advice and eligibility

The Scottish Government has committed to establishing a stakeholder steering group to input into the next phase of policy development for EIA. Many responses called for groups of workers to be represented on this group, specifically women, ethnic minorities, trade unions and those with lived experience of Long Covid and asbestos-related diseases. Views about the timelines for establishing this group were mixed, with some calling for it to be established sooner while others found the proposed timelines ambitious.

Similarly, many organisations raised the issue of the UK Industrial Injuries Advisory Council (IIAC) and a potential replacement statutory advisory body in Scotland. Several respondents felt there was a need for a new Scottish advisory council and there were calls for this body to have research powers and to be sufficiently resourced. It was strongly suggested by several people that this group should also seek the input of people with experience of receiving an IIS benefit.

Many organisations considered the eligibility criteria, specifically the prescribed list of occupational diseases, to be out of date. A range of reasons and some examples were provided of why it does not reflect the modern workforce. This included specific conditions, groups of people and types of employment that are not covered at present by the UK scheme.

Consultation feedback

As part of the consultation, feedback was also sought on:

1) How satisfied respondents were with the consultation
2) How would respondents rate using Citizen Space to respond to the consultation

Responding to both questions was optional and not all respondents chose to respond. 17 responded to the first question and 16 to the second. Responses to the first question were largely neutral, with ten respondents saying they were neither satisfied or dissatisfied. Some responses were negative, with five stating they were either very disappointed or slightly disappointed and two stating that they were slightly satisfied. Two individuals criticised the Scottish Government for not publicising the consultation to IIS benefit recipients. One of these respondents criticised the consultation for not providing enough detail on proposals or how current recipients would be treated. The other individual respondent called for those with

lived experience to be on advisory panels and questioned how individuals could join. One organisation used the free text box to reiterate their disappointment at the Scottish Government for not supporting the Scottish Employment Injuries Advisory Council (SEIAC) Bill.

When asked to rate how they found using Citizen Space to respond to the consultation, the majority of responses were neutral, with nine saying they were neither satisfied or dissatisfied. Some responses leaned towards positive, with five saying they were either slightly satisfied or very satisfied, compared to two who were very dissatisfied. Only some respondents chose to provide reasons for their answers. One organisation criticised Citizen Space as it did not allow them to use the formatting that was used to upload their response on their own website.

Introduction

Background

The Industrial Injuries Scheme (IIS) was introduced in 1948 to provide social security support to workers, typically from heavy, historically state-owned, industries who became disabled or developed a long-term health condition as a result of their employment. Although some minor statutory changes have been made since, the structure and administration of the IIS has undergone little reform in 76 years. There are currently around 24,000 recipients of an IIS benefit in Scotland, of which around 21,000 are related to the IIS's main benefit: Industrial Injuries Disablement Benefit (IIDB). Since April 2020, the Scottish Government has been responsible for IIS in Scotland. IIS provides financial support to people who have become disabled or have developed a long-term health condition as a result of their employment. IIS is currently being delivered by the Department for Work and Pensions (DWP) on the Scottish Government's behalf under an agency agreement. That agreement, which currently runs to the end of March 2026, ensures people continue to receive the payments they are entitled to without any disruption.

The Scottish Government has committed to replacing the UK Government's IIS with a new benefit called EIA which is to be delivered by Social Security Scotland. There is not currently a date planned for delivery of EIA. Delivery has taken longer than initially planned due to the impacts of the Covid-19 pandemic and the prioritisation of other forms of assistance such as Scottish Child Payment and Adult Disability Payment.

The Consultation

The Scottish Government ran a public consultation to gather feedback on immediate next steps for EIA The consultation document provided an overview of the benefits that make up the IIS and the unique complexities and challenges of replacing it with EIA.

The consultation ran for 8 weeks, between 30 April 2024 and 25 June 2024, and asked 3 questions:

- 2 questions were closed (i.e. invited agree/disagree/don't know responses) but also invited a free text response on reasoning; and
- 1 question was completely open (i.e. invited only a free text response)

In addition to the online consultation, the Scottish Government invited organisations to attend three stakeholder engagement events in order to maximise opportunities for feedback about the paper. These events were attended by 7 trade unions, 2 Disabled People's Organisations, 2 asbestos organisations, an equality organisation and one personal injury Solicitors.

A total of twenty-eight consultation responses were received – ten from individuals and eighteen from organisations. Alongside the individuals who responded, there were 9 trade unions, 2 Disabled People's Organisations, 3 third sector groups/charities, 2 personal injury law organisations and 2 local authorities.

Methodology

The analysis and reporting of responses were carried out by the Scottish Government. Responses to the closed questions submitted through Citizen Space were quantified in order to illustrate the range of opinions held by respondents. Any non-Citizen Space responses sent directly to the mailbox were logged then uploaded onto Citizen Space.

Each response was manually examined to identify the range of themes and issues discussed. Recurring themes that emerged throughout the consultation were recorded, and verbatim quotes were extracted in some cases to illustrate findings. Where there was a strong consensus or where there were conflicting views, more than one quote was used to provide further illustration. Only extracts where the respondent consented for their response to be published were used. It was not possible to detail every response in the findings, however, published responses can be read on the consultation website[2].

Three of the twelve organisations who attended the consultation events did not submit a written response. As the discussions at the consultation events focused on issues with the current scheme and priorities for reform, these three organisations did not give answers to the consultation questions and are not included in the answer statistics. They did, however, share their views on a number of the issues discussed in this analysis and these views, with reference to the consultation events, have been included in the thematic analysis when considering these wider points.

Analysis

This analysis begins by looking at quantitative responses to the three consultation questions and qualitative free text answers supporting these responses. Many respondents used their consultation responses as an opportunity to discuss areas out with the consultation questions, these are part of a thematic analysis that follows the question analysis.

A number of acronyms are used throughout this analysis. This document will use IIS when referring to the Industrial Injuries Scheme as a whole and IIDB when referring to the Industrial Injuries Disablement Benefit, the main benefit within the scheme. DWP refers to the Department of Work and Pensions and EIA refers to Employment Injury Assistance, the benefit that will replace IIS in Scotland.

Qualitative analysis does not permit the quantification of results. However, to aid the interpretation of findings, the following terms have been used to convey the most to least common themes that emerged from the responses. As a guide, where reference is made in the report to 'some' respondents, this relates to five or less

[2] Scottish Government consultations - Citizen Space

respondents. The term ‘several’ refers to more than five, but less than ten. The term ‘many’ refers to more than ten but less than twenty. Any views that were expressed by large numbers of respondents (i.e. twenty or more) are highlighted throughout. Any views expressed by one respondent are similarly highlighted throughout.

Questions

Question 1

Question 1 consisted of two parts. The first, a drop-down menu, and the second a free text box for respondents to expand on their answer.

Do you agree or disagree that the IIS is not fit for purpose?

Respondent type	**Agree**	**Disagree**	**Don't know or question not answered**
Individuals	3	4	3
Organisations	14	1	3
Total	**17**	**5**	**6**

Views from individuals were mixed. One person used the free text box to stress how important the benefit had been on a personal level while some others raised concerns about the intention behind reform and what it might mean for their own payments.

> 'II[D]B has been a lifeline for me and without it I wouldn't be able to survive.' - **Individual**

Organisations largely agreed that the current IIS was not fit for purpose, with 77% answering 'agree' to question 1. They cited the scheme not reflecting the modern workplace, inequalities and not aligning with Social Security Scotland's principles of 'fairness, dignity and respect' as reasons for this view.

Question 2

Question 2 likewise consisted of two parts. The first, a drop-down menu, and the second a free text box for respondents to expand on their answer.

Of the two options, which do you think the Scottish Government should proceed with?

Respondent type	**Option 1**	**Option 2**	**Didn't give a preference (Neither, Don't know or No preference)**
Individuals	6	4	0
Organisations	4	8	6
Total	**10**	**12**	**6**

Responses to question 2 were more varied. Organisations showed a small preference for reform, with 44% in favour. Those in favour of Option 2 cited the need for reform, in line with their answers to question 1.

> ‘From the two options laid out in the paper: Next steps on delivery of Employment Injury Assistance, Option 1 will merely prolong the current system which serves the interests of traditional male-dominated industries and fails to meet the needs of a modern industrial economy or the needs of a significant proportion of the people of Scotland.’ – **Unite Scotland**

Of the organisations who stated a preference for Option 1, reasons given included concerns about the impact any reform could have on eligibility for the UK Government lump-sum payment schemes and concerns about efficiency in the short-term.

The six organisations who did not give a preference gave reasons including a need for further consultation and engagement with people with lived experience. A couple of unions rejected the idea that there were only two options to choose between.

> ‘It rather looks as if the options being given are more rapid implementation with minimal and unspecified consultation remit and demographics, or a more extended period of consultation with no clear outcomes for at least a year. This needs to be re-examined. Again, worker and trade union input can help design both and effective timeline with overlapping priorities for shorter- and longer-term implementation and reform, and effective delivery and monitoring regimes.’ – **SNP Trade Union Group**

Individuals were less likely to support reform, with 60% stating their support for Option 1. Individuals gave concerns about continuity of payments and expressed confusion around the Scottish Government’s intended aims with reform of the benefit. The Scottish Government has previously made clear that working with the UK Government to ensure the protection of current payments is its utmost priority.

Question 3

The third question sought feedback on proposed timelines for both options. Only qualitative answers were sought for this question, with respondents filling in an open text box. From the written responses sent in, 75% of respondents opted to give feedback on these timelines. Responses from individuals to question 3 continued to express a high level of concern over the continuity of current payments and eligibility for a future reformed scheme.

> ‘Please think carefully about people already on IIB, it can be a lifeline for some who no fault of their own are unable to do a job of work and need this benefit to live.’ - **Individual**

Only one individual respondent chose to provide their views on the timelines in more detail:

> ‘I think ministers need to understand this benefit is particularly complex and a push to complete to regulations and go live in a relatively tight timescale (which option 1 is) is not wise. The emphasis should be on doing it at an appropriate speed to get it wholly right operationally and legally, including re any advisory body - not get it partially right and have to fix it later legally and operationally.’ - **Individual**

Several organisations expressed frustration at the length of time it has taken to deliver EIA to date and criticised the extended timeline for Option 2.

> ‘Looking at the timeline for option 2, reformed delivery, the proposition that this benefit will not be in place until June 2025 is unacceptable. Indeed, it is an affront to key workers, including teachers, many of whom won’t see justice for many years, if at all: for some this will simply be too late.’ – **NASUWT**

On the other hand, some organisations raised concerns about the timeline for Option 2, believing that there was:

> ‘the potential for delays within this timescale given the complexity and extent of reform needed’ - **Close the Gap**.

They urged sufficient time and resource be allocated to the reform to prevent this. Furthermore, one respondent described the timeline for Option 2 as ‘improbable’.

Some organisations called for the stakeholder steering group to be established faster than the three months laid out in the timeline for Option 2. These responses stated that the group should produce its first reports in a shorter period than outlined in the consultation.

The consultation sets out that the establishment of the stakeholder group would happen later if like-for-like delivery were prioritised. The rationale for this was questioned by respondents. One respondent argued that the stakeholders are already well known and that ‘there is a pressing need’ to introduce this group before the end of 2024. The Scottish Government have outlined that Option 1 would require detailed work to determine precisely the resources required and the timetable for delivery, however, they have stated that it is likely that a like-for-like benefit could be established before May 2026.

Some respondents called for more detail on what would happen when the agency agreement between Social Security Scotland and the UK Government, through which IIS is currently delivered, ends in 2026. Some respondents considered the timeline for Option 2 incomplete, with one respondent calling for the Scottish Government to set out a further timeline for implementation of EIA ‘at the earliest possible opportunity’.

> ‘We note that the consultation states that proposals for high level options for employment injury assistance will be published 12 months after the close of this consultation. Unfortunately, that is the end of the timeline. Scottish Hazards would imagine there will be a further consultation and period of stakeholder engagement.’ – **Scottish Hazards**

Two respondents proposed approaches not listed as options in the consultation; one individual called for the consultation to be extended and promoted to current recipients, while the Association for Personal Injury Lawyers believed that the planned stakeholder group should be established prior to the Scottish Government deciding which option to proceed with.

Criticisms of the Industrial Injuries Scheme

This analysis shall now move onto a thematic analysis of responses.

Age of the scheme

> 'There is a clear need for a modernised system for employment injury assistance to better meet the needs of a modern society and workforce' – **Equality and Human Rights Commission**

Many respondents criticised the current scheme as outdated and in need of modernisation. The reasons given covered a range of views. For example, several respondents expressed their concerns that IIS does not reflect the current workforce. Some responses referenced the age of IIS and its focus on heavy, historically state-owned industry which overwhelmingly employed men.

Promotion and take-up

Another criticism of IIS by some respondents was lack of publicity of the scheme. Concerns were raised by some respondents that many who suffer from workplace injuries are not aware of the existence of the IIS. These respondents therefore felt that EIA should be better promoted.

> 'We suspect that a proportion of individuals who should be eligible for the benefit are not claiming it. There are fewer than 1,000 new applications per year under the Scheme in Scotland, according to the consultation paper. In contrast, there are an estimated 136,000 work-related ill-health cases (new or long-standing) annually.' – **Association of Personal Injury Lawyers**

In addition, several respondents cited gender inequalities as a reason for low take-up. This will be covered in more detail in the 'Equalities' section of this analysis.

Application and assessment process

> This benefit is essential to those who receive it, providing vital support where a person is injured through their employment. We suspect that a proportion of individuals who should be eligible for the benefit are not claiming it' – **Association of Personal Injury Lawyers**

The current paper-based application process for IIS was mentioned by several respondents. Some responses thought that the application process should be modernised and made more accessible.

Some respondents also noted concern about the amount of time people are having to wait for a decision on entitlement when applying for IIDB. It was implied that this issue had recently got worse and was having a negative impact on people applying.

Terminal illness

Some respondents raised the need for a fast-track application system for people with a terminal illness. One organisation noted that some people with a terminal illness have waited nine months for a decision on their IIDB application from DWP and that they were unable to speak to someone to request information about these applications.

> 'We would like to see a fast-track system in place for those with a terminal illness – as it is for other disability benefits.' **- Asbestos Victims Support Group Forum**

Assessments

Some respondents mentioned the medical assessments that are currently required for IIDB.

> 'We support our members with Industrial Injuries Disablement Benefit applications and colleagues working on this report long waiting times, largely due to there not being enough medical assessors, and also inconsistent waiting times and decision making.' – **Royal College of Nursing**

These respondents stated that the Scottish Government should reform assessments to align with some of the changes to the application and assessment processes that have been made through the introduction of Adult Disability Payment which does not use private sector assessments. The need to reform assessments was given as a reason for support for Option 2.

> 'I know that ADP etc have been done with fairness, dignity and respect at the heart and part of that has been a different approach to assessments. the core approach to that (no assessments by private companies, which I wholeheartedly agree with) can still be applicable for EIA… and to have assessments fairly undertaken by medical professionals employed by the Scottish Government.' - **Individual**

Appeals

Some respondents raised concerns about the number of appeals on entitlement decisions for IIS. These respondents stated that this can have a significant negative impact on clients, further delaying access to entitlement.

Alternatively, some other respondents referred to the changes that the Scottish Government have made through the delivery of other benefits, including the commitment to get decisions right first time. Some of the respondents said that appeals take too long because staff do not have the relevant training or specific knowledge of industrial injuries to get decisions right on the initial application.

> 'We have high levels of success with mandatory reconsiderations when applications are unsuccessful – this suggests the decision making the first-time round was flawed and inconsistent.' - **Royal College of Nursing**

‘Whatever EIA looks like, staff should be fully trained on all aspects of this complex benefit, including its interaction with other benefits and payments to ensure that the law is interpreted correctly by decision makers. It would also reduce the number of cases needing to be heard at appeal.’ – **Action on Asbestos Support Group Forum**

Case Transfer

Option 1 proposed a like-for-like delivery for EIA, with safe and secure transfer of current awards. Option 2 did not involve the transfer of current awards in the short-term and prioritises fundamental reform. Of the twenty-eight responses to the consultation, ten expressed a preference for Option 1, twelve expressed a preference for Option 2 and six gave no preference (don't know, neither or not stating a preference).

There were a mix of views on how to address the complexities related to case transfer. Although 36% of respondents stated a preference for Option 1 (i.e like-for-like delivery with case transfer), the respondents who went into detail about case transfer were divided on whether clients' awards should be moved to Social Security Scotland. Some respondents were not in favour of a case transfer, provided reasons included the high financial and operational costs involved. Some organisations referenced Value for Money, one of the key principles of the Social Security Charter, ensuring resources are allocated fairly and efficiently across the devolved system.

> 'While transferring existing files to digital databases will make the system quicker, it would not be considered a good use of public funds given the rate at which existing claimants are decreasing, and the rate at which new claimants are expected to gain access should the criteria be widened.' – **GMB Scotland**.

On the other hand, some organisations suggested that the proportion of digital files have been significantly underestimated and would present a more realistic option for the Scottish Government.

Indeed, there was support from many for IIS case files to be digitised after being transferred to Social Security Scotland in line with the approach seen to be taken with other Scottish Government benefits.

> 'Due to the large cost of delivering a like for like benefit and the time and logistical cost of physically transferring up to 150,000 paper files which would ultimately need reform in the future, we see option 2 as [a] more practical choice.' - **ASLEF**

Protection of current awards

The main priority relating to case transfer for many of the respondents was the continuation of entitlement for those with a current IIS award. This concern was raised by respondents regardless of the delivery option they preferred.

> 'It is also crucial that those who currently access the scheme continue to do so – and do not lose out – as the benefit is devolved' – **Scottish Trades Union Congress**

Several respondents raised concerns at the prospect of the IIS being reformed or altered and the potential impact on current recipients of an IIS award. This was particularly common among individual respondents.

> ‘You can’t just change something overnight, it needs to be a long term approach. Those that receive the benefit at present should not be disadvantaged by being reassessed’ - **Individual**

This was also a theme that was raised during consultation events. Some of the attendees questioned whether broadening the criteria could lead to an unintended consequence of any current recipients no longer being eligible.

The importance of the Scottish Government communicating with individuals with an IIS award to help to alleviate these concerns was noted by one written response and an organisation during the consultation events.

Respondents provided mixed views on how EIA should interact with the administration of the current IIS in Scotland in the future. Some respondents expressed concern that a new benefit could mean a ‘two-tier system’ in which clients were subject to different eligibility rules, resulting in increased complexity and confusion. For example, one individual highlighted the potential difficulty for those experiencing a change of circumstances while interacting across two different systems.

However, some respondents suggested maintaining the current rules for eligibility for those who currently have an award under the IIS while developing a reformed benefit for new applications. Another individual suggested that a reformed EIA could target those with a current award under state pension age, while maintaining the current Scheme for those over state pension age.

UK lump-sum payment schemes

People in receipt of IIDB can be entitled to a one-off payment through lump-sum payment schemes and some respondents provided details about how they helped people to apply. Five organisations highlighted the need to maintain eligibility, through the 2008 Mesothelioma Act, the DMPS, the Pneumoconiosis etc. (Workers Compensation) Act 1979, and the Coalworkers Pneumoconiosis Compensation Scheme 1974. This concern stems from the perceived risk that if significant changes are made to the eligibility criteria, individuals in Scotland in receipt of EIA may not be able to access the reserved lump-sum payment schemes in the same way as people in receipt of IIDB in the future.

> ‘If EIA is reformed, we may find a situation in Scotland where claimants of EIA will fail to meet the criteria for PWC [Pneumoconiosis Workers Compensation Act] lump sum payment. We would not want to see the development of a two-tier system with asbestos sufferers in Scotland being unable to apply for PWC’ – **Asbestos Victims Support Group Forum**

Asbestos Related Conditions

Concerns about how EIA would interact with these payments was of particular concern to Asbestos organisations.

> ‘A particular concern to AVSGF is the lump sum payment under the Pneumoconiosis Workers Compensation Act (PWC). To qualify for this payment a claimant must be in receipt of IIDB. However, given that PWC is reserved by the UK government if EIA is reformed, we may find a situation in Scotland where claimants of EIA will fail to meet the criteria for PWC lump sum payment. We would not want to see the development of a two-tier system with asbestos sufferers in Scotland being unable to apply for PWC through the application process for EIA.’ – **Asbestos Victims Support Group Forum**

> ‘We cannot and must not underestimate the financial worth of IIDB and the 79 Act for the individual receiving this. Our overriding concern is that those currently in receipt of IIDB retain their current entitlement. We are also concerned about the numbers of future claimants, who would potentially lose the only route to compensation should the link between IIDB and the 79 Act be broken. Should a new scheme be adopted we would advocate for transitional protection for existing claimants.’ – **Action on Asbestos**

Equality Issues

Equality issues were widely discussed in responses. Many organisational responses discussed equality issues and the IIS's outdated nature as reasons for why they supported reform. No individual responses mentioned inequality.

> 'The Scottish Government should explicitly commit to close the gender gap in the outdated benefit: women's health and safety cannot continue to be ignored. Just 7% of claims for industrial injuries benefit are made by women: it was a benefit designed for men's work and systematically ignores the illness and disease women experience at work such as asbestos-related ovarian cancer, Long COVID, musculoskeletal disorders and breast cancers caused by shift work.' - **NASUWT**

Alongside this, many organisations linked the underrepresentation of groups with protected characteristics within the IIS to conditions that are not on the prescribed list of conditions set out in the relevant legislation. While some of these conditions have already been discussed earlier in this analysis, it is worth specifically noting the equality issues relating to these.

Gender

According to DWP data, women only make up 19% of IIDB recipients.

> 'the Industrial Injuries Scheme (IIS) in its current form is not fit for purpose and should be reformed. It does not deliver for women, and the transfer of EIA represents a critical opportunity to create a system that recognises women's occupational injuries and illnesses and addresses the gendered inequalities that permeate the system.' **- Close the Gap**

Some of the responses which called for Long Covid to be covered by the IIS linked this to addressing the gender disparity within the current scheme. One organisation called for IIS to be modernised in order to better reflect woman in the workplace.

> 'A modernised system for injury and disablement benefits is necessary to close the gender gap by being inclusive of the injuries and disablements of women dominated roles, such as Long Covid.' – **GMB Scotland**

This was a typical view expressed by organisations, with one organisation referencing a TUC report[3] from 2023 which 'highlighted the severity of Long Covid as a workers and equalities issue, noting that disabled people and women are more likely to contract the condition'. Teaching was also identified as an occupation by some organisations which was particularly vulnerable to Covid-19 and one in which women make up a large proportion of the workforce.

[3] A report by the Trades Union Congress and Long Covid Support on Workers' Experiences of Long Covid

Additionally, some organisations noted specific occupational illnesses that are not currently covered by IIS that predominantly impact on women.

> 'low-paid, and precarious female-dominated occupations such as cleaning and care'; and 'disease and injuries commonly experience by women' including musculoskeletal injuries, breast cancer cause by shift work, and asbestos related ovarian cancer as conditions that should be covered under the scheme.' – **Close the Gap**

> 'ailments and injuries which are typical in roles predominantly carried out by women such as social care.' – **GMB Scotland**

Many respondents were in favour of changing eligibility via the prescribed list, however, some argued that if the Scottish Government tried to address the gender disparity by adding to the list of prescribed conditions, there would need to be value for money considerations as this would lead to increased costs. Both the Asbestos Victim Support Group and Action on Asbestos proposed that expanding the current eligibility criteria, via amendments to existing regulations, would be easier than delivering an entirely new benefit. The Scottish Government has previously set out that any changes to the criteria that expanded eligibility through the introduction of EIA would lead to increased costs that would have to be met from elsewhere within the Scottish Government's budget.

Intersectionality

Gender was not the only inequality discussed by respondents. For example, one organisation linked Covid-19 and Long Covid with race, noting the disproportionate impact of COVID on the black population. The Equality and Human Rights Commission pointed to their own inquiry[4] which found that Ethnic Minority workers in health and social care faced greater risk in the workplace.

Several responses noted the discussion in the consultation paper regarding age and race being factors in lower benefit uptake, with one respondent urging more consideration for the underlying reasons behind this. Close the Gap noted a link with gender and age, pointing to research from King's College London which found that women aged 50-60 are at the highest risk of developing Long Covid[5].

> 'As an example our inquiry reported that Ethnic Minority workers were asked to undertake more risky tasks and were redeployed in Covid-19 wards more than their White or White British colleagues, putting them at greater risk of Long Covid.' – **Equality and Human Rights Commission**

[4] Experiences from health and social care: the treatment of lower-paid ethnic minority workers by the Equality and Human Rights Commission
[5] A study into the attributes and predictors of long COVID published by Nature Medicine

Embedding representation

There was some discussion around how to approach equality issues in the next phase of policy development and beyond.

For example, a Scottish replacement for the IIAC was identified as a possible route to addressing disparities by several respondents. As part of the Social Justice and Social Security committee call for views on the SEIAC Bill, stakeholders specifically called for illnesses and diseases which disproportionately affect women to be considered as part of the terms of reference for a new statutory advisory council, with workers voices embedded in this. Some respondents called for women to have equal representation on this body and called for this group to have research powers to address the gender disparities that are currently present within the IIS.

> 'There is a particular lack of intersectional research, which would provide evidence on the experiences of occupational health and safety between different groups of women, such as older women, disabled women, and racially minoritised women. This lack of research around women's occupational risks, coupled with the gender-blind approach within the current IIDB, means women's needs are not being fully considered, putting them at risk of avoidable injuries and illness and without a path to financial recourse. In addition, the lack of gender-specific research means that any decisions made to add new illnesses or injuries to the prescribed list will continue to ignore women's occupational risks'. – **Close the Gap**

Similarly, some referenced gender when talking about the Scottish Government's planned stakeholder steering group. These responses called for the lived experience of women to be represented on the stakeholder group. They also called for the group to take an intersectional approach in order to consider the way different protected characteristics such as race, disability and gender intersect and how these could impact a person's ability to access EIA.

> 'An intersectional approach must also be adopted, whereby keyworkers, trade unionists, women, black workers and those with Long COVID who currently have no permanent, independent role have their voices heard. It is critical that this body should include direct representation of the lived experiences of those who should be entitled to benefit from a reformed system and this means sufficient representation of trade unions.' – **NASUWT**

Equality Impact Assessments

Under the Public Sector Equality Duty laid out in The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, the Scottish Government is required to carry out Equality Impact Assessments (EQIAs) to assess the impact of applying a proposed new or revised policy or practice against the needs of groups with protected characteristics[6].

[6] The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

The Equality and Human Rights Commission stated the importance of EQIAs being carried out at the beginning of the policy development process to embed consideration of protected characteristic groups throughout this work. The Scottish Government has previously committed to undertaking a thorough EQIA in advance of delivering EIA.[7]

Other areas for consideration

Close the Gap provided a response which covered a number of additional areas not mentioned by other respondents. These included work-related violence against women; the difficulties women can have in proving that an illness or injury was caused by work; the interaction between unpaid work and caring responsibilities with employment history and how this impacts eligibility for the IIS; and the different ways workplace injuries and illnesses can manifest for women.

Close the Gap's response additionally raised occupational health and safety concerns including the lack of appropriate, well-fitting Personal Protective Equipment (PPE) and workplace equipment for women. It should be noted, however, that while the Industrial Injuries Scheme has been devolved, many areas relating to occupational health and safety are still reserved to the UK Government.

[7] Written question and answer S5W-35729 by Mark Griffin MSP on the Scottish Parliament website

Advice and Eligibility

The consultation paper sought views on both issues with the current Industrial Injuries Scheme and on next steps for developing EIA. Respondents highlighted a number of priorities for a new system, including a statutory advisory council and changes to the eligibility criteria.

Statutory Advisory Council

Many respondents commented on the need for a statutory advisory council to be considered as part of future reform through the delivery of EIA. Several respondents also raised concerns about the IIAC lacking the resources and funding for research. They called for a new council to be representative of those with relevant expertise in industrial and workplace injury, including occupational health experts, as well as those with direct lived experience. They all said the current system is not fit for purpose and needs to be modernised and that a statutory council would help bring about meaningful reform.

> 'Having a dedicated and adequately resourced body would ensure that relevant expertise, and the necessary gender competence, was engaged at the start of the development process so that the new EIA system is fit for purpose' – **Close the Gap**

> 'One of the positive elements of the IIAC is the tripartite approach taken to their work. The problem is that the IIAC is under resourced, has no research function and the opportunity for any preventative strategies are missed.
> Scottish Hazards position is that we would support Option 2 with a strong recommendation that a council, independent from Government is constituted to advise Government on the design, implementation and ongoing review of Scottish Employment Injuries Assistance on its devolution.' – **Scottish Hazards**

> 'The FBU believes an independent, expert body should be established to provide oversight ahead of the reform of the Scheme. The need for an advisory body, independently chaired, with trade union and other stakeholder representation with the ability to make its own recommendations is a must to ensure that this scheme benefits such workers.' – **Fire Brigades Union**

Several organisations, most of whom where trade unions, criticised the consultation for duplicating the Scottish Parliament's Social Justice and Social Security Committee's call for views on the SEIAC Bill. These respondents noted they had already stated their views in response to this Bill. They criticised the Scottish Government's opposition to the SEIAC Bill, considering it a missed opportunity to create an independent body ahead of any reform. These respondents argued that the body would have been able to better inform policy development ahead of EIA being launched.

> 'We believe that passing this Bill would have put in motion opportunities to address fundamental inequalities within the present system. As Unite highlighted in our response to the SEIAC Bill consultation in June 2023, the

current industrial injuries system is not fit for purpose. It is discriminatory, inadequate and outdated and is in urgent need of change. We believe the proposals to establish a SEIAC, represented the best solution to address the problems evident in the current system.' – **Unite Scotland**

Research

Some responses highlighted the role of research in determining how eligibility for EIA should be developed.

Of the respondents that supported establishing an independent advisory council, some specifically noted the need for this body to have a research function. These responses stated this was important for EIA to respond to trends in occupational health and safety over time and to potentially provide targeted financial support to those who need it. Some respondents discussed this in relation to prevention of industrial diseases. In addition, two responses highlight how the advisory council could be a tool to address gender inequalities as a priority if it could carry out its own research.

'The lack of research around women's occupational risks, coupled with the gender-blind approach within the current IIDB, means women's needs are not being fully considered, putting them at risk of avoidable injuries and illness and without a path to financial recourse' – **Close the Gap.**

The prescribed condition list

An overarching view expressed throughout the consultation, including from many written responses, was that the IIS eligibility criteria is not fit for purpose. It was stated by many of the respondents that additional diseases should be added to the prescribed list as an industrial injury to better reflect the modern labour market.

'The prescribed disease list which determines eligibility for receiving IIB is outdated, and no longer fit for purpose.' – **Close the Gap**

Social Model of Disability

Several organisations highlighted the medical assessments carried out as part of the decision-making process for IIDB. They noted that this does not align with the Scottish Government approach and would like to see EIA adopt the social model of disability through a reformed application process and eligibility criteria.

It was suggested that by applying the social model of disability, decisions on an application could be made quicker. One asbestos support group said that individuals could provide information from a consultant which proves they have an asbestos related condition. They argued that this eliminates the need for further medical checks, and that relying on supporting information to make a decision rather than undertaking a medical assessment on every application could save time and costs.

Long Covid

Some conditions and occupations were mentioned specifically. Long Covid was the most mentioned condition, with several of the respondents calling for this be added to the list of prescribed diseases. The majority of these responses identified a link between gender and Long Covid, which has already been discussed in more detail in the 'Equality' section of this analysis.

> 'The COVID pandemic has shown that employees can become seriously ill as a result of their work, leading to long-term absence, and yet have no suitable access to support from the state.' - **NASUWT**

Head injuries in footballers

There was some mention of neurodegenerative conditions such as dementia in footballers. Some trade unions who responded to the consultation expressed support for such conditions to be covered by a reformed benefit.

> 'There is still a need for a no-fault compensation scheme for disablement arising from injuries or disease caused by work – including new and emerging workplaces injuries and disease, such as…brain injuries linked to professional football, and a range of other modern-day industrial injuries.' – **Scottish Trades Union Congress**

Other Areas for Expansion

Some responses identified other specific conditions to be considered for the introduction of EIA. These were repetitive strain injuries, muscular skeletal conditions, mental health conditions and noise induced hearing loss. The respondents called for these conditions to be added to the prescribed list to better reflect the modern workforce.

> 'The Industrial Injuries Scheme is not fit for purpose in that it does not reflect the workforce. The nature of workforce has changed significantly in 76 years as has the way in which we work.' – **The Musicians Union**

One respondent said that people who work in creative industries and the Arts are under-represented and many of the occupational hazards they are exposed to, including mental health, are not recognised as an industrial injury. Furthermore, there were calls from some of the organisations to recognise the increasing number of people who are self-employed.

> 'Due to the physical nature of the work of a musician (as well as other industry-specific elements) both in terms of managing, carrying and operating large pieces of equipment as well as the repetitive nature of the work physically, there are many occupational conditions which particularly affect musicians including a higher propensity to mental health issues.' – **Scottish Trades Union Congress**

Some stakeholders who attended the consultation events were interested in whether any forecasting had been done on specific changes to the eligibility criteria. They said that more detailed information on the extent of possible reform and costs would be helpful before expressing a definitive preference on the options presented in the consultation.

Next Steps

Findings from the analysis of consultation responses have been reviewed by the Scottish Government and have informed their formal response to the consultation in the accompanying document[8]. The Scottish Government has publicly committed to implementing the outcome of the consultation, which will include the establishment of a stakeholder steering group.

Conclusions

Most respondents agreed that the UK IIS is not fit for purpose and needs to be reformed.

Of those who expressed a preference, the majority of respondents supported Option 2, to prioritise reform to deliver an updated benefit and a modernised approach to delivery. Taking into account those who didn't express a preference for either of the two options provided, almost half of respondents stated a preference for Option 2. Just under a third of respondents stated a preference for Option 1, to prioritise a like-for-like benefit delivered with full case transfer and benefit reform to follow in the longer-term

There were calls for the Scottish Government to modernise the IIS. Some respondents specifically wanted to see the application and assessment processes modernised to be more in line with other benefits being delivered by Social Security Scotland. This included some organisations raising the need for a fast-track system for people with terminal illnesses to be introduced, in line with Child Disability Payment and Adult Disability Payment. While many respondents called for significant reform, some took the opportunity to emphasise the importance of the benefit payments to those who receive it and urged caution going forward.

There was confusion from some individual respondents about the Scottish Government's intended aims and a significant degree of concern was expressed about the transfer of current awards and continuity of payments from both individuals and organisations. Some asbestos organisations raised concerns about any future changes to eligibility for EIA and how this would interact with eligibility for lump-sum payments which are reserved to the UK Government.

Equality concerns were raised by half of respondents, with calls on the Scottish Government to address the disparities that are currently present within the client group. Gender was a focus for many of these responses, with concerns raised that current eligibility does not accurately reflect the illnesses and injuries experienced by women.

Several organisations called for a Scottish replacement for the Industrial Injuries Advisory Council and criticised the Scottish Government's recent opposition to the Scottish Employment Injuries Advisory Council Bill. Many organisations stated that

[8] Scottish Government response to the Employment Injury Assistance delivery next steps consultation

additional diseases and conditions should be added to the prescribed list to modernise the benefit.

There was some support for the Scottish Government's proposal to establish a non-statutory stakeholder steering group and many stakeholders offered to provide input in this respect. Feedback on the proposed timeline for Option 2 was mixed. Some respondents criticised this for taking too long while others felt this was too ambitious.

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