

SCOTTISH GOVERNMENT POSITION PAPER

INDUSTRIAL INJURIES DISABLEMENT BENEFIT

Introduction

This paper is one of a series providing an update on our position on various matters relating to the development of the devolved social security benefits in Scotland.

The purpose of this paper is to set out the Scottish Government's position on the transfer of Industrial Injuries Disablement Benefit (IIDB). The Scottish Government will take responsibility for IIDB in April 2020 when Executive Competence transfers. IIDB will continue to be delivered by the Department for Work and Pensions (DWP) using an Agency Agreement. This allows DWP to carry out functions on behalf of Scottish Ministers, and specifies what DWP is being asked to do.

Background

The Industrial Injuries Benefit Scheme provides no-fault compensation for people who are disabled because of an accident at work, or who have one of certain prescribed diseases caused by their work. The main benefit in the scheme is Industrial Injuries Disablement Benefit (IIDB). Other benefits can be claimed as part of the Scheme, such as Constant Attendance Allowance for people who receive a maximum award of IIDB, and Reduced Earnings Allowance for people affected prior to 1990. Around 25,000 people received IIDB in Scotland in the first quarter of 2018. The vast majority of clients (85%) are male. The number of new cases has been on a general downward trend since 2002.

Responses to the *Consultation on Social Security in Scotland* demonstrate that there is little consensus on the Scheme. A large number of respondents supported its continuation as a separate scheme but a few of those described ways in which the system should be refined and improved. These were mainly around the list of prescribed diseases (it is argued that they reflect the more industrial age in which the scheme was introduced) and the gender impact of this. However, some respondents stated that the scheme should cease. The main reason given for this was that it should be merged with other systems, with a few suggesting that there should be a single system for all payments to disabled people. A few respondents suggested that employers should take full responsibility for compensation for injuries and diseases sustained at work. Some stakeholders would like the Scottish Government to consider extending the scheme to self-employed workers.

Constitutional issues

It will be difficult to undertake significant reform of the scheme since key policies relating to the benefit remain reserved. This prevents the Scottish Government from introducing statutory changes in areas such as:

- Employment – we are unable to change the parameters around employers taking greater responsibility for injury or disease resulting from work, such as, meeting the costs of compensation or imposing penalties.
- Insurance – similarly we do not have the power to change the responsibilities of employers or employees in meeting the cost of compensation by paying an insurance premium.
- Occupational health and safety – the ability to change how workplace injury or disease incidents are investigated and the penalties imposed remains with the UK Government and we are unable to require improvements in occupational health and safety
- Self-employed workers - the 2016 Scotland Act ties us to an existing UK provision on ‘employed earner’ and ‘relevant employment’ which limits the scheme to employed individuals or those taking part in training schemes.

Pneumoconiosis Etc. (Workers’ Compensation) Act 1979

The Scotland Act 2016 excludes from devolution the ability to make lump sum payments for certain conditions. These are currently provided for by the Pneumoconiosis Etc. (Workers’ Compensation) Act 1979 which remains reserved. However, it is intrinsically linked to IIDB. The 1979 Act allows IIDB recipients, or their spouse or dependents, to receive a lump sum, where the disease was the result of exposure to dust in the course of their employment. The claimant must be unable to claim damages from their former employer and they must be entitled to IIDB. This will require some recipients in Scotland to make a claim for IIDB to Social Security Scotland and thereafter make a claim under the 1979 Act under existing arrangements with DWP. We therefore need to ensure that the system we implement for IIDB is congruous with DWP systems, which is difficult due to the outdated systems currently supporting IIDB, as outlined below.

Clerical nature of the scheme

While the scheme has a relatively low caseload in Scotland, it is likely to be one of the most complex to transition. Detailed information about current and previous scheme recipients is almost entirely held in paper files in remote storage. Transferring these paper files and cases would require entirely new processes and an electronic system to be designed, built, tested and implemented. Whilst there are currently around 25k current cases, we understand that there is a very high number of files for potential transfer. This is because paper files are retained until 14 months after a client’s death (or after the last action was taken on the claim if this is later). There is also an embargo on the destruction of Miners’ Industrial Injuries files until the litigation on behalf of miners is complete. This means that all files that contain evidence that the claimant has worked in the mining industry are held indefinitely. This means that in addition to live paper files, there are significantly more associated with claims that are no longer in payment but would also need to be transferred. There is some information available electronically but with the majority being paper, it would be particularly complex to transfer the paper files quickly ensuring that no Scottish clients are missed.

Industrial Injuries Advisory Council (IIAC)

The IIAC has a role in scrutinising Industrial Injury benefits regulations. However; the Council spends the majority of its time in a specialist capacity providing advice to UK Ministers on whether, on the basis of evidence and established causation to an occupation, new diseases should be added to the list of prescribed diseases and the occupations which they should be prescribed for. The UK Government has decided that the role of IIAC should remain unchanged and that it should provide advice to UK Ministers only.

In advance of transferring the scheme the Scottish Government will have to decide whether, and how, to provide a Scottish equivalent of IIAC. Securing the necessary expertise could be challenging. In the UK as a whole there are relatively few research active scientists, professors and academic departments in occupational health , and numbers have trended downwards over time. There are similar recruitment shortages in occupational hygiene, occupational toxicology and ergonomics.

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

Next Steps

We are continuing to resolve the complexities associated with the largely clerical nature of IIDB. We will undertake extensive consultation in advance of the new delivery date to ensure that we identify as many opportunities to improve this benefit as possible, within the limitations of Scotland's devolution settlement.

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Social Security Directorate
February 2019

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Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78781-631-2 (web only)

Published by The Scottish Government, February 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS545567 (02/19)

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