



## Close the Gap briefing for Stage 1 debate: Scottish Employment Injuries Advisory Council Bill

April 2024

Close the Gap is Scotland's policy advocacy organisation working on women's labour market participation. We have been working with policymakers, employers, and unions for more than two decades to influence and enable action that will address the causes of women's labour market inequality.

### 1. Introduction

Current approaches to workplace health and safety are gender-blind in that they ignore women's specific occupational illness and injuries. **The current Industrial Injuries Disability Benefit (IIDB) system replicates this gender-blind approach and therefore does not deliver for women in Scotland. Women are vastly underrepresented amongst those receiving IIDB**, due in part to the outdated prescribed injuries and illness list which is heavily biased towards male-dominated industries and men's injuries and illnesses. This problem is compounded by a lack of gender-sensitive, sex-disaggregated data on women's occupational injury and diseases, limited research on women's experiences of occupational health, and routine dismissal of women's ill-health being connected to their employment. **This approach takes the male worker as standard, creating a system which has neglected women's experiences,<sup>1</sup> and created gendered barriers to accessing IIDB.**

**The Scottish Employment Injuries Advisory Council (SEIAC) Bill creates a unique opportunity to create a new Employment Injuries Assistance (EIA) that recognises women's specific experiences of workplace risk and harm.** It also presents an important opportunity to modernise the prescribed list to better reflect women's specific occupational illnesses and injuries, and help dismantle gendered barriers to accessing EIA. The SEIAC Bill therefore has the potential to make a significant positive impact on women's lives, by making their experiences more visible, and reducing inequalities in the workplace and in accessing social security.

### 2. The need for a Scotland-specific injuries advisory body

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<sup>1</sup> European Agency for Safety and Health at Work (2014) *Mainstreaming gender into occupational safety and health practice*, available at: <https://osha.europa.eu/en/publications/mainstreaming-gender-occupational-safety-and-health-practice>

Although IIDB was devolved to Scottish Government in 2016, it continues to be delivered by the Department for Work and Pensions under an agency agreement until March 2026. The UK Industrial Injuries Advisory Council (IIAC) scrutinises proposed industrial injuries legislation, drafts papers on proposed legislative changes, and makes recommendations for updating the prescribed list of occupational diseases.<sup>2</sup> **Once delivery of EIA is transferred to Social Security Scotland, the IIAC will no longer be able to provide any of these activities to Scottish Ministers.**<sup>3</sup> This means **there will be no body to scrutinise EIA legislation, provide advice or conduct research in Scotland if a replacement is not created. Close the Gap are concerned this will result in EIA being implemented in Scotland without reform, therefore replicating existing gendered inequalities within the current system.** A SEIAC would mean a body with dedicated resource and expertise to deliver on its remit around employment injuries and illnesses in Scotland.

Therefore, the introduction of the Bill represents a timely and important opportunity to support the roll out of EIA in Scotland. **Establishing SEIAC before the full transfer of EIA means it will be able to scrutinise the development and implementation of EIA, enabling key interventions to be made. Updating and modernising the prescribed disease list, and mainstreaming gender in the design of EIA are necessary to prevent these systemic inequalities from being sustained.** Close the Gap therefore supports the Bill as it has strong potential to address gendered systemic inequalities within the current EIA system, and advance women’s labour market equality more broadly.<sup>4</sup>

### **3. Women are vastly underrepresented within the current IIDB system**

Women continue to be significantly underrepresented amongst those claiming IIDB. **Despite representing 49% of those employed in Scotland,<sup>5</sup> women only account for 16%<sup>6</sup> of those currently claiming IIDB, and just 5%<sup>7</sup> of new prescribed disease claim applicants.** Women’s underrepresentation amongst those claiming IIDB is driven by its

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<sup>2</sup> Industrial Injuries Advisory Council, *About us*, available at:

<https://www.gov.uk/government/organisations/industrial-injuries-advisory-council/about>

<sup>3</sup> Scottish Government (2023) *Disability and Carers Benefits Expert Advisory Group – Employment Injury Assistance: advice*, available at: <https://www.gov.scot/publications/disability-and-carers-benefits-expert-advisory-group-employment-injury-assistance-advice/>

<sup>4</sup> Close the Gap (2023) *Submission to the Social Justice and Social Security Committee Call for Views on the Scottish Employment Injuries Advisory Council Bill September 2023*, available at: <https://www.closesthegap.org.uk/content/resources/Submission-to-the-SJSS-Committee-on-Scottish-Employment-Injuries-Advisory-Council-Bill.pdf>

<sup>5</sup> Scottish Government (2022) *Scotland’s Labour Market: People, Places and Regions – Protected Characteristics. Statistics from the Annual Population Survey 2021*, available at: <https://www.gov.scot/publications/scotlands-labour-market-people-places-regions-protected-characteristics-statistics-annual-population-survey-2021/documents/>

<sup>6</sup> Close the Gap (2021) *Close the Gap Response to Scottish Employment Injuries Council Bill consultation*, available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-response-to-the-Scottish-Employment-Injuries-Advisory-Council-Bill---January-2021.pdf>

<sup>7</sup> New claims calculated from the Department of Work and Pensions Stat-Xplore website, for new claims made in the 12 months up to December 2022.

gender-blind design and delivery, which systemically fails to recognise the workplace hazards women face. The TUC have previously highlighted there is a traditional emphasis in health and safety on risks associated with male-dominated sectors, and “less attention has been given to the health and safety needs of women”.<sup>8</sup> This has led to most of the research and developments relating to health and safety regulations, policy and risk management being based on male-dominated sectors. As a result, **the occupational injuries and illnesses associated with female-dominated work, such as social care and retail, are being ignored, under-diagnosed, under-researched and under-compensated by the IIDB system.**<sup>9</sup>

The gender-blind design of IIDB has resulted in clear gender bias within the prescribed list of diseases and injuries, rendering women’s occupational injuries and illnesses invisible and leaving them unable to claim compensation. SEIAC would provide the opportunity to gather evidence and data on women’s employment injuries and diseases to ensure it is integrated into the design and delivery of EIA in Scotland, creating a fairer and more equal system for women workers.

#### **4. Modernising and updating the list of prescribed diseases**

**A key benefit of the proposed SEIAC is being able to modernise the prescribed list of diseases that determines eligibility for EIA in Scotland.** Originally created in 1948, the list has a distinct industrial bias towards diseases found within ‘traditional’ and heavy industry such as mining and shipbuilding. **Eligibility continues to be predominately based on male-dominated jobs and sectors, such as construction, which is heavily male-dominated (83%),<sup>10</sup> and is a key factor in men comprising the majority of successful IIDB claimants.** The prescribed list also ignores the occupational risks and harms associated with low-paid, female-dominated occupations such as cleaning and care, despite research showing these jobs have an increased risk of occupational injury or illness.<sup>11</sup> **The current IIDB scheme fails to recognise diseases and injuries commonly experienced by women, including musculoskeletal injuries caused by lifting, breast cancer caused by shift work, and asbestos-related ovarian cancer.**<sup>12</sup> This means women currently have no path to recourse for compensation after becoming ill due to their workplace, further exacerbating women’s higher risk of poverty. There is also no recognition of sexual harassment which is endemic in Scotland’s workplaces and is normalised to the point of invisibility. Women are far more likely to be sexually harassed

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<sup>8</sup> Trade Union Congress (2017) *Gender in occupational safety and health: A TUC guide for trade union activists (with gender checklist)*, available at: <https://www.tuc.org.uk/sites/default/files/GenderHS2017.pdf>

<sup>9</sup> Ibid.

<sup>10</sup> NOMIS Official Census and Labour Market Statistics (2023) *workforce jobs by industry (SIC 2007) and sex – unadjusted, 2023*

<sup>11</sup> European Agency for Safety and Health at Work (2013) *New risks and trends in the safety and health of women at work*, available at: <https://osha.europa.eu/sites/default/files/new-risks-safety-health-women-work.pdf>

<sup>12</sup> Hazards (2015) *Double trouble on relative risk for occupational diseases*, available at: <https://www.hazards.org/compensation/meantest.htm>

and experience sexist bullying in the workplace, which can have long-term impacts on their mental health, their safety, and future career progression.<sup>13</sup>

Women and men often experience different demands, exposure and effects from the same workplaces and conducting the same jobs and tasks.<sup>14</sup> Previous research has found musculoskeletal disorders (MSD) are the most common workplace health conditions. However, where men are more likely to suffer from lower back pain, women are more likely to experience pain in their upper limbs, shoulders, and neck.<sup>15</sup> **Unlike men, however, the occupational origin of women’s illnesses and diseases, such as MSD,<sup>16</sup> tends not to be dismissed as ‘wear and tear’ and is less frequently recognised than men’s.** This negatively affects the success of women’s employment injuries claims, limiting their options for financial support.

**Women’s unpaid work burden, their propensity to work multiple low-paid jobs, and to have interrupted work histories due to caring commitments also creates barriers to eligibility for EIA.** A new SEIAC could address the failings of the current system, including those relating to women being less able to access support. Using its research function, SEIAC could commission research into injuries and illnesses commonly found in female-dominated sectors, and work with academics in this area to gather new evidence on women’s experiences. This is necessary to ensure that prescribed list reflects the experiences of all workers in Scotland including women.

#### *Recognising Covid-19 as both an occupational and gendered illness*

Covid-19 created unprecedented challenges in Scotland’s labour market, with many workers contracting Covid-19 at work. Women are more likely to have Long Covid, with many still unable to return to work. The Bill importantly recognises Long Covid as an industrial disease. **This is particularly important for women, as they were the vast majority (79%) of key workers during the pandemic, which has put them at particular risk of being exposed to the virus at work.**<sup>17</sup> Data from early in the pandemic shows that **between April and September 2020, three-quarters of employer Covid-19 disease reports related to female employees, with 489 of the reports being for female workers, compared to 161 for male workers.**<sup>18</sup> Older women, racially minoritised women, migrant women and women in low-paid roles were at particular risk of being exposed to the virus.

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<sup>13</sup> Trade Union Congress (2018) *Violence against women in the workplace – time for employers to wake up*, available at: <https://www.tuc.org.uk/blogs/violence-against-women-workplace-time-employers-wake>

<sup>14</sup> Trade Union Congress (2017) *Gender in occupational safety and health: A TUC guide for trade union activists (with gender checklist)*, available at: <https://www.tuc.org.uk/sites/default/files/GenderHS2017.pdf>

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Close the Gap (2020) *Disproportionate Disruption: the impact of Covid-19 on women’s labour market equality*, available at: <https://www.closesthegap.org.uk/content/resources/Disproportionate-Disruption---The-impact-of-COVID-19-on-womens-labour-market-equality.pdf>

<sup>18</sup> Ibid.

In its inquiry into Long Covid, the Scottish Parliament Covid-19 Recovery Committee highlighted the detrimental impact Long Covid is having on personal finances and ability to access benefits.<sup>19</sup> A further problem for workers with Long Covid is access to sick pay. An investigation by BBC's Panorama revealed that between 5000 and 10,000 NHS staff who are off sick with Long Covid are facing pay cuts because of a change in sickness policy which means that they will no longer receive full pay.<sup>20</sup> As the vast majority of NHS staff are women, and women are over-represented among those with Long Covid, they will be particularly affected by changes to the level of sick pay, thereby worsening their financial security and longer-term wellbeing.

**Despite the damaging impact of Long Covid to many women workers, the current IIDB prescribed illness list does not recognise Covid-19 or Long Covid as industrial illnesses, meaning those affected are unable to claim EIA.** A new SEIAC presents an opportunity to recognise Long Covid as an industrial disease and add it to the prescribed illness list. This would ensure there is financial security and recourse for women workers impacted by the prolonged effects of the virus.

## **5. The value of a dedicated research function**

**There is a significant lack of research into women's experiences of occupational injuries and diseases.** This means women's needs and risks are ignored, leaving them vulnerable to workplace injuries and illnesses that could be avoided, and without a path for financial compensation if this occurs. If established, **SEIAC could commission much-needed research to expand the evidence and advance women's workplace equality.**

There is a particular lack of research on the workplace experiences of older and younger women, disabled women, and racially minoritised women. Previous research has identified a range of risks associated with female-dominated occupations such as cleaning, care, and hairdressing<sup>21</sup> and low-paid and insecure work, in which younger women, racially minoritised women and disabled women have higher rates of employment. This means they are more at risk of occupational disease and injury. **Any research must consider the intersecting inequalities women face in accessing the EIA and in their experiences of occupational injuries and illnesses.**

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<sup>19</sup> Scottish Parliament Covid Recovery Committee (2023) *Long Covid*, available at: <https://bprcdn.parliament.scot/published/CVDR/2023/4/26/3f31d972-6497-4e89-b77a-07c03ffa5c10/CVDR062023R2.pdf>

<sup>20</sup> *Thousands of NHS staff with Long Covid risk losing their pay*, BBC News, 30 January 2023, available at: <https://www.bbc.co.uk/news/health-64405899>

<sup>21</sup> European Agency for Safety and Health at Work (2013) *New risks and trends in the safety and health of women at work*, available at: <https://osha.europa.eu/sites/default/files/new-risks-safety-health-women-work.pdf>