



Close the Gap response to Scottish Employment Injuries Council Bill consultation

January 2021

1. INTRODUCTION

Close the Gap is Scotland's policy advocacy organisation working on women's labour market participation. We have been working with policymakers, employers and employees since 2001 to influence and enable action that will address the causes of women's labour market inequality.

COVID-19 has brought new emphasis to the danger of occupational exposure to disease and injury, leading to increased focus on health and safety concerns within the context of fair work.¹ However, the current system of employment injuries assistance (EIA) is not fit for purpose and does not deliver for women in the labour market. Women are currently under-represented among those accessing Industrial Injuries Disablement Benefit (IIDB), and this is partly a result of the prescribed injuries list which creates a clear and persistent barrier to women's access. In addition, there is a lack of gender-sensitive, sex-disaggregated data on women's occupational injury and disease; women's experiences of occupational health and disease is an under-researched area; women's experience of injury and disease are routinely ignored in PPE and equipment design; and women's reports of ill-health are routinely dismissed as not being part of their employment. Problems with current gender-neutral approach to IIDB, which takes the male worker as standard, has led to a system which has neglected women's requirements.²

The Members Bill proposed by Mark Griffin MSP is therefore a timely intervention. This Bill presents an important opportunity to establish a framework to advise government on how to change the scheme. As emphasised in the consultation document, a key priority for change should be research into women's experiences of industrial injury and the development of new mechanisms and definitions which improve women's access to EIA. This Bill will, of course, not close the overall gender gap in industrial injuries benefits instantly. However, the Bill is an important pre-requisite to securing change. As Close the Gap's area of expertise is gender and the labour market, our submission focuses on those questions relating to the equalities implications of the proposed Bill.

¹ Carnegie UK Trust (2020) *Good work for wellbeing in the Coronavirus economy*

² European Agency for Safety and Health at Work (2014) *Mainstreaming gender into occupational safety and health practice*

2. ANSWERS TO CONSULTATION QUESTIONS

- 1. Which of the following best expresses your view of establishing in law a new, independent Scottish Employment Injuries Advisory Council (SEIAC)? Please explain the reasons for your response.**

Fully agree.

As highlighted in more detail below, the current system of EIA is not delivering for women. The establishment of an independent SEIAC presents an important opportunity to develop research into women's experiences and design an alternative system which meets women's requirements. This Bill therefore provides an opportunity to address long-term systemic issues with the current system of EIA.

- 2. What (if any) do you think would be the main advantages of the proposed Bill?**

At present, only 16% of those claiming IIDB are women. Analysis of IIDB statistics, published by the Department for Work and Pensions (DWP), also highlights that women are less likely to make claims than men. Women account for just 13.5% of all new claims in the ten years up to December 2019. This means women are grossly under-represented in both successful claimants and claims, as women account for around 48.7% of those employed in Scotland.³ These statistics point to structural issues with the current system. Indeed, the Scottish Government have acknowledged that the current scheme does not recognise the injury and disease women face in the workplace.

The TUC have concluded that "less attention has been given to the health and safety needs of women", with research and developments in health and safety regulation, policy and risk management primarily based on work traditionally done by men.⁴ By contrast, women's occupational injuries and illnesses, such as work-related stress, musculoskeletal disorders and dermatitis have been largely ignored, under-diagnosed, under-reported and under-compensated. The Bill therefore presents an opportunity to address women's under-representation in industrial injury benefit and tackle structural issues within the current system. The proposed Bill has a number of advantages across a range of areas covered in more detail below.

Modernising and updating the prescribed disease list

A key advantage of the proposed Bill is the opportunity to make changes to the list-based system which determines eligibility for EIA in Scotland, thus improving women's access to the scheme.

³ Annual Population Survey – Regional – Employment by occupation April 2019 – March 2020 available at <https://www.nomisweb.co.uk/datasets/aps168>

⁴ TUC (2017) *Gender in occupational safety and health: A TUC guide from trade union activists* available at <https://www.tuc.org.uk/sites/default/files/GenderHS2017.pdf>

Under the current system, conditions that are eligible for compensation are determined by a prescribed list of diseases and illnesses. At present, these lists have an industrial bias, meaning that they are primarily constructed of the so-called “classic” industrial diseases. This means that the relevance of these systems to modern forms of work-related ill-health is somewhat limited, particularly for women in the labour market. Eligible conditions tend to be associated with male-dominated jobs and sectors such as construction (85% male⁵). Occupational segregation, which describes where men and women do different types of work and different levels of work, is therefore a cause of women’s under-representation in IIDB. These lists are partly responsible for the fact successful claimants under these systems are predominantly male.⁶ At present, the IIDB neglects the risks and harms associated with low-paid, female-dominated sectors such as cleaning and care. Examples of diseases and injuries commonly experienced by women which are not considered by the current scheme include musculoskeletal injuries through lifting, breast cancer caused by shift work, and asbestos related ovarian cancer.⁷

Women and men can also experience different demands, exposures and effects from the same workplaces, jobs, and tasks.⁸ For example, musculoskeletal disorders (MSDs) are the most common health conditions in the workplace, making up around 41% of the total. However, men are more likely to suffer from lower back pain and women are more likely to experience pain in the upper limbs or shoulders and neck.⁹ Research from North America also shows that the occupational origin of MSD in women tends not to be believed, and that men’s MSD compensation claims have been accepted almost twice as often as those from women.¹⁰

Women’s lower levels of success in receiving benefits under compensation systems is also a reflection of particular difficulties in demonstrating occupational causation in the conditions such as stress and MSD, especially prevalent in occupations in which women are most significantly represented.¹¹ Women still typically have the dual burden of household work and caring responsibilities which exposes women to the same hazards at home they experience at work, increasing the likelihood of injury. However, the mechanisms for accounting for this unpaid work are insufficient in the current scheme which ultimately does not recognise the realities of women’s lives. The factors which complicate the process of establishing eligibility, including women’s propensity to work multiple jobs and to have career breaks in order to care for children, create a further barrier to women’s access to support.

⁵ NOMIS Official Labour Market Statistics, 2020, Workforce jobs by industry (June 2020)

⁶ Walters, David (2007) *International Comparison of Occupational Disease and Injury Compensation Schemes* available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/330347/InternationalComparisonsReport.pdf

⁷ <https://www.hazards.org/compensation/meantest.htm>.

⁸ TUC (2017) *Gender in occupational safety and health: A TUC guide from trade union activists* available at <https://www.tuc.org.uk/sites/default/files/GenderHS2017.pdf>

⁹ TUC (2017) *Gender in occupational safety and health: A TUC guide from trade union activists* available at <https://www.tuc.org.uk/sites/default/files/GenderHS2017.pdf>

¹⁰ Ibid.

¹¹ Ibid.

Addressing the lack of research and data on women’s experience of occupational injury and disease

The World Health Organisation has previously called for increased research on women’s health at work¹² and the Scottish Government have also committed to researching the causes of women’s under-representation among claimants.¹³ The ability of the Council to commission more relevant research is particularly important as there is a lack of gender-sensitive, sex-disaggregated data on occupational exposures, diseases and injuries. At present, the IAAC does not have the power to commission research, as it can only review existing texts which cements gender inequality as a result of women’s experiences of occupational injury and disease being largely absent from existing research. The proposed Bill would enable the current scheme to be reviewed from a gender equality perspective. This would enable a better understanding of why the rate of approval of compensation claims differs between women and men for the same type of work-related injury or disease and to identify which female-dominated occupations and types of work are exempt from compensation coverage.¹⁴

Increased research on women’s experiences of occupational health and safety issues will also provide an opportunity to consider the implications of violence against women (VAW) and harassment at work in the context of compensation schemes. The WHO have previously called for VAW to be regarded as work related.¹⁵ There are significant risks to women’s health and safety if there are perpetrators in the workplace, particularly if they are being stalked or harassed in the workplace, or if perpetrators know where they work. VAW has so far been ignored within current research, advice, and benefit criteria.

The proposed Bill provides the opportunity to commission more relevant research on the hazards, injuries and diseases that women encounter in the workplace, as well as providing guidance on how EIA might evolve to better support women and meet women’s needs. Improved research and evidence is a vital starting point for addressing women’s under-representation among applications and successful claimants.

Addressing the potential workplace implications of long-COVID

Another advantage of the proposed Bill, as highlighted by the consultation document, is the ability of the SEIAC to commission research on the impacts of long-COVID and whether this should be added to the list of prescribed diseases. Many workers have caught Coronavirus at work, and many workers struggling to return due to the effects of Long-COVID. The modernisation of the industrial injuries system is therefore vital to ensure that workers can secure vital support and compensation. This is particularly important for women who account for the majority of key workers, meaning they have greater exposure to the virus in the workplace.¹⁶ Figures from the HSE covering the period of April to September 2020 found

¹² World Health Organisation (2006) *Gender Equality, Work and Health: A Review of the Evidence*

¹³ Social Security (Scotland) Bill: equality impact assessment, <https://www.gov.scot/publications/social-security-scotland-bill-equality-impact-assessment>

¹⁴ World Health Organisation (2006) *Gender Equality, Work and Health: A Review of the Evidence*

¹⁵ World Health Organisation (2006) *Gender Equality, Work and Health: A Review of the Evidence*

¹⁶ Close the Gap (2020) *Disproportionate Disruption: The impact of COVID-19 on women’s labour market equality*

that women accounted for the vast majority of worker COVID-19 disease reports made by employers in Scotland. Over this period, 75% of employer disease reports related to a female employee, with 489 COVID-19 notifications for female workers, compared to 161 notifications for male workers.¹⁷

In addition, evidence shows that women aged 50-60 are at greatest risk of long-COVID and, in general, women were twice as likely as men to suffer from COVID symptoms that lasted longer than a month.¹⁸ This research aligns with research from Spain which found that middle-aged women with no previous health conditions are most likely to experience long-COVID.¹⁹ Research by the Women's Budget Group concluded that women account for 98% of key workers earning "poverty wages",²⁰ meaning that many women with greater exposure to COVID in the workplace and a greater risk of long-COVID are less likely to have savings to fall back on. It is therefore pivotal that these women are able to access industrial injury benefit to prevent women falling into further and deeper poverty.

Personal Protective Equipment (PPE)

A TUC survey found that 57% of women found that their PPE sometimes or significantly hampered their work, and only 5% of women said that their PPE never hampered their work.²¹ PPE is often poorly fitting for women, as it has been designed to fit the sizes and needs of men. Only 29% of women said that the PPE they use is specifically designed for women, meaning that it is not fit for purpose. Women also find that it is very difficult to get suitable PPE during pregnancy.

This is a significant health and safety issue, as the wrong PPE can increase risk from injury or disease.²² For instance, ill-fitting gloves can lead to problems gripping, while the wrong shoes or overalls can increase the chances of tripping. This is also true of workplace equipment, with desks, chairs and machinery being designed for the average-sized male worker and taking less account of the ergonomic needs of women. This can increase women's work injury rates as this equipment can, for example, lead to poor working posture, leading to an increased risk of musculoskeletal disorders. Ultimately, inappropriate PPE and equipment increases women's risk of occupational injury or disease, making it increasingly important that the industrial injuries system is responsive to women's needs. Despite this heightened risk of injury and disease, the EIA does not respond to women's needs.

¹⁷ HSE RIDDOR disease reporting – 'Worker COVID-19 disease reports made by employers to HSE and local authorities' available at <https://www.hse.gov.uk/statistics/coronavirus/april-to-july-2020-technical-summary-of-data.htm>

¹⁸ Geddes, Linda "Women aged 50-60 at greatest risk of 'long Covid' experts suggest", *The Guardian*, 21ST October 2020, available at <https://www.theguardian.com/world/2020/oct/21/women-aged-50-60-at-greatest-risk-of-long-covid-experts-suggest>

¹⁹ El Pais (2020) 'Long Covid: Young, female and feeling sick six months after recovery' available at https://english.elpais.com/spanish_news/2020-11-13/long-covid-young-female-and-feeling-sick-six-months-after-recovery.html

²⁰ Women's Budget Group (2020) 'It is women, especially low-paid, BAME & migrant women putting their lives on the line to deliver vital care' available at <https://wbg.org.uk/blog/it-is-women-especially-low-paid-bame-migrant-women-putting-their-lives-on-the-line-to-deliver-vital-care/>

²¹ TUC (2017) *Personal protective equipment and women: Guidance for workplace representatives on ensuring it is a safe fit*

²² Ibid.

Issues with a lack of appropriate PPE have been highlighted and emphasised over the course of the pandemic. The Royal College of Nursing have raised particular concerns around access to PPE for staff working outside of a hospital environment, including care home staff and district nurses.²³ Social care staff, the vast majority of whom are women, have not being afforded sufficient focus in the provision of protective equipment with 80% of social care providers noting that they did not have enough PPE to be able to support older and vulnerable people.²⁴ There have been widely reported concerns around PPE for social care staff, the vast majority of whom are women. Inappropriate PPE can leave woman further exposed to COVID-19, posing a severe risk to the safety of women workers and their families.

9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

Positive

This response has highlighted the pre-existing issues with the current system of industrial injuries support. The proposed Bill can have a positive impact on equalities through a focus on commissioning research relating to women’s experiences of industrial injury; the development of new mechanisms and definitions which improve women’s access to EIA; and changes to the list of prescribed illness and diseases.

This will have a positive impact for women, including pregnant women and women returning from maternity leave who have additional and specific health and safety requirements. Research by the TUC found that, over the course of the pandemic, pregnant women’s health and safety rights are being routinely breached, leaving women feeling unsafe at work or without pay when they are unable to attend their workplaces. Two in five pregnant women have not had a health and safety risk assessment and, of those pregnant women who did have a health and safety assessment, over a quarter said the risk assessment did not include the additional risks posed by COVID-19.²⁵

10. In what ways could any negative impact of the Bill on equality be minimised or avoided?

It is imperative that the governance structure of the Council reflects its wider policy aspirations around reducing inequality, and to achieve this it is necessary that there is both

²³ Royal College of Nursing (2020) ‘Nurse leader calls on First Minister to intervene on protective equipment supply’ available at <https://www.rcn.org.uk/news-and-events/news/rcn-writes-to-fm-re-ppe-23-mar-2020>

²⁴ BBC (2020) ‘Coronavirus: Nearly 400 care groups “face protection shortages”’ available at <https://www.bbc.co.uk/news/health-52174520>

²⁵ TUC (2020) *Pregnant and precarious: new and expectant mums’ experiences of work during COVID-19*

gender competence²⁶ and gender balance in the governance structures. Where consideration of women's lived experiences is not included in governance structures, it sustains gender inequality. It is important that the Council has expertise on women's occupational hazards and wider gender equality. We believe that the Council should be subject to the Gender Representation on Public Boards (Scotland) Act 2018. There is strong evidence that diverse boards results in better decision making.²⁷ It is also critical that the Council is covered by the public sector equality body, which requires public authorities to proactively advance equality. Under the duty, public bodies are also required to mainstream equality in their functions which will help to ensure that advancing equality is a key consideration in the reform of EIA.

Equalities considerations should be prioritised within key strategic documents relating to the work of the Council. It is our experience that when aspirations around equalities are not well elaborated, or where they are not set out in full, they become lost in implementation. Without such focus being afforded to equalities, the proposed Bill could have a negative impact on women's equality by continuing to replicate existing barriers to women's access.

3. CONCLUSION

Close the Gap is supportive of the proposed Bill, recognising that it can have a positive impact on women's experience of the industrial injuries support scheme. Improvements to the system are long overdue and reform is now a matter of urgency due to the workplace implications of COVID-19. Female workers face significant challenges in receiving support through the current system which is ultimately unfit for purpose. This adds to the undervaluation of "women's work", with a lack of recognition afforded to the risks and skills associated with women's work. This proposed Bill is an important opportunity to adopt a gender-sensitive approach to disability and industrial injuries benefit and support.

²⁶ 'Gender competence' refers to the skills, knowledge, and analytical capability to develop policy that is well-gendered; that takes account of the socially constructed differences between men's and women's lives and experiences.

²⁷ Close the Gap (2016) *Gender Equality Pays: The economic case for addressing women's labour market equality*