

British Occupational Hygiene Society (BOHS) response to the consultation on proposed Scottish Employment Injuries Advisory Council “*Towards a 21st Century employment injuries system for today’s workers*”

1. Which of the following best expresses your view of establishing in law a new, independent Scottish Employment Injuries Advisory Council (SEIAC)?

The British Occupational Hygiene Society has been supporting workplace health prevention since 1953. Over that period, it has become more and more apparent that we all need to take a long-term view of workplace health. This is because causes of worker ill-health and the manifestation of occupational diseases often only become obvious sometime after exposure.

For this reason, it thoroughly endorses the sentiment in the introductory letter:

Prioritising the prevention of injury and disease of workers will always be preferential, but a strong compensation system must be in place should the worst occur. To renew that strength, and to know what harms we seek to prevent, our broader knowledge must also be renewed and assessed.

As the Chartered Society for worker health protection, we believe that everyone should be able to:

- Work healthily and in environments that are better for our physical and mental health;
- Work productively and for longer;
- Age well;
- Require less social care and state support through benefits and healthcare.

In practice this means that the Society’s professionals look beyond the management of hazards to the long-term control of risks. By working in partnership, we believe we are beginning to set a blue-print for sustainable workplace health.

BOHS, as a scientific charity, has characterised the key facets of supporting sustainable workplace health as:

A Anticipating and designing out health risks at work (in materials selection, process design and industrial practices);

B Focusing on understanding and managing prevention, as well as the monitoring and treatment of illness;

C Using the full range of options to control risk, including consideration of human factors, and the responsibility of everyone in the workplace in managing behaviours, attitudes, processes and systems;

D Targeting enhanced occupational health services to those who need it most, taking an individual risk-based approach;

E Making occupational hygiene and health core to mainstream STEM and Health Curricula;

F Working towards a whole life strategy for managing the impact of workplace health exposures.

There is a virtuous circle in linking knowledge of prevention and where prevention has systematically failed to the financial support for those affected. The proposal provides a vehicle to achieve this. However, there is an important link that needs to be maintained with occupational hygiene practices. Data from occupational medicine can provide information about established epidemiological links between disease and the workplace. However, this is dependent on data, drawn largely from the health service on occupational exposure and diagnosis. Data from the health service can provide information on the links between diagnosis and reported exposure. However, GPs do not routinely enquire about exposure and, aside from relatively uncommon illnesses, the link with occupational exposures is not explored by clinical staff.

Occupational health physicians will address known exposures and acute issues, but the majority of the illnesses that are likely to be the focus of this new organisation are ones which have latency and therefore may not be reported to occupational physicians at the time. We do not routinely monitor exposure data in workplaces in the UK, taking a risk-based, rather than compliance-based approach. All this amounts to huge terrains of uncertainty about the scale of exposures that have happened in the past and continue to persist.

This is where the occupational hygiene profession may be critical in ensuring that the proposed body is able to properly discharge its functions. The nature and extent of controls, the levels of exposure prevalent in an industry or sector and the effectiveness of these are likely only to be well understood by occupational hygienists, where they are present in the workplace.

IIAC currently benefits from the input of experts closely involved with Occupational Hygiene and is therefore equipped with the capability to address the large-scale issues of risk and sectoral practice which would otherwise be almost impossible to successfully address given the historic and continuing gaps in data.

In the ideal world, the Bill would include the requirement of more systematic questioning by GPs, clinicians, advice bodies and benefits staff of the work history of those presenting with illnesses which may have an occupational link. Without this data, it will continue to be difficult to formulate both the epidemiological links and the factual causation relating to occupational illnesses and therefore store up a problem for the future. However, it is recognised that this goes beyond the powers devolved to Scotland.

2. Which of the following best expresses your view of giving a statutory Scottish Employment Injuries Advisory Council the following functions?

There is an inextricable link between how employment injuries assistance is best structured and the nature of illnesses. In this context, implementation, legislation and policy needs to be aligned. This does not mean that the fundamental architecture of assistance needs to be steered by the proposed body, but the input of the body in the understanding of issues such as acute need, longevity, gender disparity and issues relating to the equitable and effective disposition of assistance may be significantly enhanced by ensuring feedback from the body. It is highly unlikely that without expert input into how assistance is framed for some specific illnesses, the Scottish Government will be able to meet its equality and public law duties efficiently and effectively.

The need to investigate and review trends in relation to emerging hazards is of critical importance to maintaining a relevant and informed devolved function. There are crucial

differences in the shape and structure of the Scottish economy. The proposed body could benefit from MOUs with IIAC and other bodies across Europe which could engender efficiencies. However, in relation to a rationale for the devolved authority and the appropriate targeting of resources in the country, the ability to investigate and review is vital. In addition, there are three main reasons why research needs to be something the body can initiate:

1) research into these areas by academic institutions is severely hampered by the limited quality of evidence available which means that the academic value in pursuing it is limited, thereby also limiting access to sustained funding;

2) the methodologies required to undertake effective research in this area cuts across a swathe of complex data-sharing, privacy, commercial and liability issues which could be resolved on a statutory basis as part of the draft Bill but would create intractable problems for independent researchers;

3) research into these areas tends to open up the spectre of fault-based liability which acts as a further constraint on research participation by industry employers.

BOHS endorses as essential to effective functioning the power to investigate, review and research and to set in statute the ability to enable data-sharing and the confidential sharing of information for the purpose of determining the links with occupational exposure.

In the formulation of such enquiries, an understanding of the nature, effectiveness and application of control measures in the workplace is required and therefore there is an essential link to understanding occupational hygiene practices, ranging from PPE use, through ventilation to administrative and engineering controls.

We believe that the right strategy can drive down costs to industry and the public purse, because of early intervention and targeted solutions.

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

It is certain that such a body is required as it would otherwise place the determination of scientific questions into Ministerial hands. This is a challenge because the Ministerial decision-making process has to combine judgments across the range of policy considerations and, with the best will in the world, is apt to be challenged occasionally in the court of public opinion, but also by way of judicial review. An independent and clearly constituted body with clear lines of accountability can engage with a consideration of current and future challenges in a systematic evidence-based way. This relieves the Executive of determining an evidence-base in an area which is fraught with complexity and gaps.

Experience of bodies such as the Health Service Investigation Branch reveal that early and proper establishment on a statutory basis secures resources, independence and public confidence and is less likely to result in challenges, constrained working and limitations that prevent the sort of long view that is necessary for the work of a body which is looking at latencies and questions that transcend the electoral cycle. The fundamentals of the organisation, its powers (including powers in relation to accessing data for the purposes of research) need to be embodied in primary legislation in order to be effective vis a vis other statutory provisions. Details of its operation can exist and should be maintained by means of secondary legislation.

The merits of the proposal as it stands are discussed at length above.

4. What (if any) do you think would be the main disadvantages of the proposed Bill?

The Bill proposed is limited by the scope of the devolved power, but probably represents the best rational approach to the challenge it seeks to address. However, there are areas which can be strengthened or clarified.

The importance of gender disparity has been highlighted, but there are clear indications from COVID-19 most recently, but by other data sets that there is potential for race disparity in the impact of occupational exposures. This is something that should be specifically part of the mandate of the proposed body to investigate and review.

Membership of many scientific and advisory bodies has tended to be based on personal expertise. This has many advantages in ensuring continuity and careful recruitment can maintain a balance of expertise and representation. However, this also provides a problem in relation to the resilience and sustainability of groups, the tendency to be seen to revert to the same sort of person and loses the ability to link out to the power of organisations and networks. The constitution of the body should balance representative and expert groups, with expert individuals and this may be something that is specified.

The Bill outlines a number of important professions and skills to be included in the body. However, it excludes occupational hygienists. Scotland's occupational hygienists probably have a legacy of a greater understanding of industrial and workplace exposure as it has happened and as it happens than any other group. It is the role of occupational hygienists to understand and manage occupational hygiene risks. In this context, we know that the input of occupational hygiene knowledge into the body provides a uniquely informed perspective of the contexts for exposures that lead to disease. We would therefore be keen to see occupational hygiene represented in its constitution.

5. Which of the following best expresses your view of making it a legal requirement that the SEIAC's membership includes workers with experience of being exposed to the risk of workplace injury, and their representatives, including trade unions?

The determination of how financial measures can relieve the impact of disease is conditional on a proper representation of lived experience. Health-based benefits require a detailed analysis of the physical, psychological and social impacts of illness. This routinely requires an enquiry into the lived experience of sufferers including matters such as the ability of those affected to go out in public, undertake basic tasks unassisted and a range of other matters which may not be determinable from other sources. There is an understandable distrust of the benefits agencies in reporting back the actual impact, which in any case is a matter of self-report and assessment. As well as any issues of credibility it is unlikely that the body can accurately assess the non-clinical impact of occupational disease otherwise.

6. Which of the following best expresses your experience of the current Industrial Injuries Disablement Benefit (IIDB) scheme (personally and/or professionally)?

No experience

7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

It is hard to determine the extent to which we have underestimated the cost of latent occupational exposures. In every likelihood, this approach may increase the range of persons eligible to claim benefits which are otherwise inaccessible to them. There may be some areas where the current assessment of disability and illness-based benefits unfairly excludes claimants because of a lack of understanding of the occupational links that cause them. It is

conjectured that these are likely to be those that relate to those with protected characteristics, particularly among women.

<https://unionsafety.eu/ELibrary/media/elibrarymedia/WomenAndOccupationalDiseasesInTheEuropeanUnion.pdf>

Conversely, the cost of public assessment of individuals with unattributable illnesses is likely to be greater than the cost of verification of occupational exposures which may lead to a marginal efficiency in benefits assessment and reduction in the number of appeals required.

In addition, early financial support of people with illnesses may enable better regimes of care, reducing the long-term cost of acute care and the need for better social care in later life.

Businesses are likely, in the long term, to benefit from the research, review and investigation of exposures. Businesses benefit from certainty and a clear understanding of effective compliance measures. In the long-term uncertainty and exposures lead to higher insurance costs, occupational health costs and potentially lost worker days (although this is less likely to be affected given the latency of many occupational exposures). Clearer understanding of the links between occupational exposure and disease will also benefit the health service if new ground is broken as a result of research.

The real savings will be felt by individuals. The cost in time and personal inconvenience and suffering is likely to be considerable. The process of claiming benefits is not only costly to the public purse, but detrimental to health and well-being for individuals. Appeals cost time and money to the third sector, government and individuals.

In the greater scheme of things, the early identification of occupational links to exposure with definitive investigation and research keeps disputes out of the courts which can often simply delay and exacerbate costs and problems.

8. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

Ensuring that there is a clear link between cause (and feeding back to industry evidence of that link), proper identification of the clinical, practical, personal and social impacts, as well as the mechanisms to most effectively support through benefits and associated social care packages is important. The principles of sustainable workplace health mean that this provides one important element of an overall policy and economic approach to a chronic problem. The more connected the approach we believe, the more effective it will be.

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

Drawing up the terms of reference for the prioritisation of work will be a challenge. There will continue to be a need to keep in review the science relating to high impact illnesses which affect large populations. Lower impact illnesses or those which affect smaller groups may appear to have less priority. It is difficult to determine in advance whether commissioning research into such areas will then result in evidence that proves that these disproportionately affect groups with protected characteristics. In such circumstances, it may be appropriate to build in a bias to actively seek evidence and understanding of occupational illness exposure and impact within groups with protected characteristics.

11. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

There is no necessity for the Bill to be delivered in a way that adversely affects the environment. Any actual costs of the Bill represent a redistribution of social costs in any case.

12. Do you have any other comments or suggestions on the proposal?

BOHS would like to reaffirm its support for this initiative. It will, if properly implemented, improve the public administration, health and equity of Scotland and remedy a defect in the current arrangements in a way which would set Scotland ahead of many nations in the proper management of occupational illnesses.

We feel the Bill should recognise in its title that by far the biggest occupational risk is ill-health, rather than injury and would once again reaffirm the central role that Occupational Hygiene science will have in ensuring this body is effective and informed.