



## **Damages Claims (EU Directive on Safety & Health at Work) (Scotland) Bill**

On behalf of the Forum of Scottish Claims Managers

### **Summary**

The Forum of Scottish Claims Managers welcomes the opportunity to engage and contribute to the discussion and debate around health and safety in the workplace and the practical application of effective regulatory principles. Our members have considerable experience of workplace based claims based both on negligence and breach of statutory duty.

We believe that the proposals are not based on any established and widely held legal opinion and are premature on the basis that much of what is being examined is currently the subject of consideration by the European Commission and lengthy consideration at this stage may prove to be an unnecessary drain on Parliamentary time and resource.

### **QUESTIONS**

**1. Do you agree that Scottish workers should be entitled to benefit from the European laws that are aimed at protecting workers? YES/NO – give reasons for your answer**

We believe that Scottish workers, just like those across the EU, should be entitled to benefit from European laws on health and safety. That assessment does not equate to agreeing that the proposed legislation is well-founded.

**2. Do you agree that Scottish workers should have the same level of protection under the law irrespective of whether they are employed by an extension (emanation) of the State or a private employer? YES/NO – given reasons for your answer**

There appears to be an assumption in the consultation that, following the introduction of Section 69, employers of the State have a different level of protection than those in the private sector. This seems to rely upon an interpretation of EU law that under the Directives an employee is entitled to bring a claim for compensation based solely on a breach of a Directive. This is undecided law and as such is subject to ongoing legal challenge.

**3. Do you agree that the Scottish Government should do everything that it can to avoid being exposed to Francovich damages claims? YES/NO – give reasons for your answer**

We believe that the appropriate action of the Scottish Government would be to await a decision on the issue of Section 69 from the European Commission. We understand that APIL have raised this specific matter with the European Commission and it would seem counter-productive, premature and a waste of valuable Parliamentary time to legislate on this before that outcome is known.

**4. Do you support, in general terms, the Member's Bill that is proposed in this consultation paper? YES/NO – give reasons for your answer**

**No** – the proposed Bill is premised on a single legal opinion in a disputed area which is subject to ongoing legal challenge.

**5. Do you agree with the opinion of Aidan O'Neill QC (annexed) that the proposed Bill would be within the legislative competence of the Scottish Parliament?**

**No** - at point 7.10 in the consultation document it states, " As we have seen, under the Scotland Act 1998, issues concerning conditions of liability and appropriate remedies for civil

wrongs/breaches of individual rights are devolved to the Scottish Parliament, while the “the subject-matter of Part I of the Health & Safety at Work etc. Act 1974” is reserved to the UK Parliament.” As such this subject matter is reserved to the UK Government.”

**6. What do consider would be the financial implications of the proposed Bill, either for you or your organisation, or more generally?**

If the Bill is passed we believe that the financial impact of meeting the cost of claims which would otherwise have failed will be minimal. We are, however, concerned at the costs and drain on resources which would inevitably be incurred as a result of a Bill based on unclear legislative competence, to achieve an aim based on such an uncertain premise.

**7. Do you think the proposed Bill would have any positive or negative implications for equalities?**

We have no comment to make.

**About the Forum of Scottish Claims Managers (FSCM)**

The Forum exists as a lobbying organisation on behalf of its members and to represent their interests in the handling of insurance claims.

1. The Forum aims to promote improvements to the law to enable consumers easier and quicker access to justice.
2. The forum membership covers a number of major insurers, financial institutions together with claims handling companies and Local Authorities.
3. The individual members of FSCM are all senior professionals being Claims Managers or equivalent within their respective organisations with a wealth of experience in Insurance claims and associated matters.
4. To provide some context of the size and scale of our membership:
  - We directly employ approximately 5,550 people in Scotland, solely in insurance
  - We generate over £1.9 billion annually in respect of insurance premiums collected in Scotland (Personal and Commercial business premiums)
  - Solely on claims, we spend £1.257 billion annually in Scotland
  - Glasgow is the largest insurance centre in the UK, outside London and is seen as core pool of talented resources
5. Insurance companies exist to provide financial protection and assistance for consumers and businesses in the event that the unforeseen happens.

It is the Forum's desire to be actively engaged, with all interested parties, in discussions and debate relating to Third Party claims\*\* in Scotland including Pre and Post-litigation.

Calum McPhail  
Chairman of the Forum of Scottish Claims Managers

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**\*\* Third Party Claims definition:**

Personal Injury or damage to Property arising out of a party's negligence – be it a personal (Consumer) matter or a Commercial (Business) matter, Road Traffic Accidents and accidents in the Workplace

Membership:

ACE European Group Ltd AIG Europe Ltd Allianz Aviva Direct Aviva Insurance AXA Churchill Direct Line Esure General Accident Halifax Liverpool Victoria More Than NFU Mutual NIG Pearl Privilege Prudential	PSV Claims Bureau Ltd QBE Quotemehappy Royal & Sun Alliance Travelers Insurance UKI Insurance Zurich Municipal Zurich Insurance Plc  Glasgow City Council North Lanarkshire Council Motor Insurers Bureau
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