



SME TEST REPORT

Enhancing and Reforming PIAB- General Scheme of the Personal Injuries Resolution Board Bill 2021

What is the SME Test?

The SME test puts the “Think Small First” Principle of the Small Business Act of Europe at the centre of policy making. It is a component of the European Commission’s Better Regulation guidelines. The test encourages each Member State to include an appraisal of the burden on SMEs for relevant legislation and regulation.

What is its purpose?

The purpose of the SME test is to request policymakers to consider the negative impact of any new legislation or regulation which may create a burden on SMEs. The main aim of the test is to propose possible exemptions or less stringent requirements for smaller companies.

Points from an Irish SME test include exemptions, deadline variation/flexibility and simplification of the implementation of regulations.

Not only will these points reduce the burden on small business owners, but the simplification may increase compliance.

What is this SME Test focused on?

This SME test taken by the Department has been carried out on the proposal to enhance and reform the Personal Injuries Assessment Board, arising out of a commitment of the Programme for Government.

Why is the draft General Scheme being developed?

The Programme for Government outlines the importance of insurance acting as a safety net to enable our economy and our society to fully function. Addressing high claim pay outs and competitive issues will be critical in building an insurance system which is affordable and reliable and underpins a vibrant economy. Through the Action Plan for Insurance Reform the Government has prioritised reform of the insurance sector.

The General Scheme progresses commitments contained in the Programme for Government and the Action Plan for Insurance Reform to enhance and reform the Personal Injuries Assessment Board (PIAB).

The Personal Injuries Assessment Board Act was established in April 2004 to fairly, promptly, and transparently facilitate compensation to people who suffered from accidents involving personal injuries, in a cost-effective manner. Through PIAB certain classes of personal injury claim, where liability is uncontested, can be settled without the need for many of the costs associated with litigation, which can contribute to the high cost of settling such claims. PIAB is an independent statutory agency that is under the remit of the Minister for Enterprise, Trade and Employment.

PIAB has been successful in reducing both the costs associated with claims and the time taken to resolve claims at no cost to the exchequer. To date, PIAB has received over 450,000 claims, of which consent to assess was received in over 230,000 cases, and awards with a value of over €3.5 billion were made in over 150,000 cases. The PIAB process annually saves tens of millions of euros which would otherwise be paid in costs by the parties, and ultimately by policyholders.

However, the number of claims received by PIAB has decreased since 2016 across all claim types with the exception of employer's liability. The total number of claim applications received by PIAB in 2020 fell by 16% to 26,009, from 31,079 the previous year. There are several factors that may be influencing this decrease in the use of the PIAB including the impact of the pandemic, greater numbers of cases that fall outside its remit or are not appropriate for PIAB assessment, higher rejection rates of PIAB awards in anticipation of higher settlements post PIAB, and the potential for legal costs to be paid in settlements where claims are settled post PIAB.

PIAB awards can be accepted or rejected by Claimants and Respondents. Since its establishment PIAB have recorded acceptance rates of just over 50%, made up of a respondent (usual an insurer) acceptance rate of about 90% and a claimant acceptance rate over 50%. PIAB made 8,587 awards in 2020 with an acceptance rate of 50.8%. The percentage of claims being accepted has reduced overall over the years, and shows the need for the consistency and predictability of awards across the Courts and PIAB following the introduction of the new Personal Injuries Guidelines.

The policy objective of the proposal is to amend the Personal Injuries Assessment Board Acts to enhance and reform PIAB to facilitate an increase in the number of personal injury claims that can be resolved through the PIAB process without recourse to litigation. Encouraging more claimants and respondents to avail of the PIAB model through mediation and/or assessment should lead to cost savings in the claims environment and facilitate reductions in insurance premiums.

The steps carried out by the Department to apply the Test were;

- (1) Consultation of SME stakeholders;
- (2) Identification of affected businesses;
- (3) Measurement of the impact on SMEs;
- (4) Assessment of alternative mechanisms and mitigating measures.

Consultation of SME stakeholders

In March 2021 the Minister for Trade Promotion, Digital & Company Regulation launched a public consultation on new measures to enhance and reform the role of the PIAB.

240 submissions were received from a range of stakeholders including, businesses, representative bodies, legal interests, community and voluntary groups, the insurance industry, and individuals. Responses were received from all sizes of business including SMEs and SME representative

bodies. The outcome of the public consultation process has informed the General Scheme of the Personal Injuries Assessment Board (Amendment) Bill 2021.

The Minister also consulted and met regularly with SMEs and SME representative bodies to assess the role of the Board and develop proposals to enhance and reform the Agency.

Identification of affected businesses

The Personal Injuries Assessment Act 2003-2019 provides no additional regulatory requirement on SMEs. Where an SME has been identified as a respondent for the purposes of the PIAB Act, they are likely to have public/employer liability insurance in place. They are also entitled to engage legal representation if they so wish and at their own cost. The PIAB process is voluntary, and the respondent must consent to PIAB proceeding with an assessment. Where a respondent chooses not to consent, the claim is released by PIAB, and the claimant is authorised to commence legal proceedings if they so wish.

Measurement of the impact on SMEs

While the measures proposed do not convey any additional regulatory requirement on SMEs, the intent of the Bill to increase the number of cases settled through PIAB should benefit SME's. Encouraging more claimants and respondents to avail of the PIAB model through mediation and/or assessment should lead to cost savings in the claims environment and contribute to reductions in insurance premiums.

A well-functioning insurance market is a vital component of economic activity and financial stability. The pricing and availability of general insurance has been subject to considerable volatility in recent years, for some service sectors of the economy which are composed largely of SMEs. While some improvement has been seen in relation to motor insurance, issues remain in relation to businesses with high levels of footfall such as in the hospitality; retail; tourism; voluntary; and child-play sectors, in terms of public and employer liability cover. These are sectors which have a large number of SMEs operating in and which have reported issues with the cost and availability of insurance.

Costs associated with claims and litigation have been highlighted by SMEs as being a factor in the increase in the cost of insurance premiums.

Encouraging greater use of PIAB and facilitating claim resolution through PIAB should see costs in the personal injury environment reduce alongside the decrease in award levels as a result of the introduction of the Personal Injury Guidelines. This in turn should be reflected in reduced premiums resulting in cost savings for SMEs.

Assessment of alternative mechanisms and mitigating measures

Personal Injury claims arise for SME's as they do for other businesses. PIAB provides an alternative to litigation to fairly, promptly and transparently compensate the victims of accidents involving personal injuries in a cost-effective manner.

The PIAB process is voluntary, and the respondent must consent to PIAB proceeding with an assessment. Where a respondent chooses not to consent, the claim is released by PIAB, and the claimant is authorised to commence legal proceedings if they so wish.

The statutory deadlines provide under the PIAB Act set out the period of time a respondent has to consent to PIAB making an assessment following notice of an application to PIAB, the time period for PIAB to make the assessment, and the time period given to a respondent to accept an assessment. Given the nature of the personal injury environment it would not be appropriate to allow for variation or flexibility with regard to these timelines for different classes of respondent.

The provisions of the PIAB Act do not amount to the regulation of any particular business sector. They are solely concerned with the assessment of personal injury claims. The amendments proposed in the General Scheme will provide for PIAB also offer mediation in personal injury claims that come to them. This again does not amount to the regulation of a business. The introduction of mediation as a new function for the Board is intended to facilitate an increase in the number of personal injury claims settled without recourse to litigation. Over 30% of claims enter expensive and lengthy litigation, not only affecting SMEs but the overall insurance environment.

The mediation option is intended to allow parties to try to reach a settlement and facilitate a resolution of the claim. The introduction of mediation, as an option within the Board offers a further opportunity to enhance the speedy non-adversarial approach of the Board's existing model.

Summary

Overall, the amendments to the Personal Injuries Assessment Board Act proposed by the draft General Scheme, including the introduction of mediation, should see more claims settled in a more cost-effective and time-efficient manner. This benefits the claimant, but also should lead to lower cost of claims, which in turn is expected to be reflected in reduced premium levels for SMEs.

Significant economic and social concerns arise when costs of insurance premiums escalate to a point where consumers, community and voluntary groups and businesses cannot afford them. The General Scheme should not have any adverse impact on SMEs. Reform of PIAB as provided for by the General Scheme should impact positively on SMEs as savings that can be achieved in the administration of personal injury claims should facilitate price reductions to the premiums of individual insurance policy holders.