



Department for
**Social
Development**
www.dsdni.gov.uk

Mesothelioma Bill

Completed
Equality Impact Assessment

April 2008



INVESTOR IN PEOPLE

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1. Section 75 of the Northern Ireland Act 1998

- 1.1 Section 75 of the Northern Ireland Act 1998 (“the 1998 Act”) requires public authorities, in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between—
- persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - men and women generally;
 - persons with a disability and persons without; and
 - persons with dependants and persons without.
- 1.2 Section 75 also requires public authorities to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
- 1.3 The primary function of an Equality Impact Assessment is to assess the extent of differential impact of policy on section 75 categories, and groups within those categories, and to determine whether that impact is adverse, i.e. whether the policy negatively affects people within one or more of the equality groups.
- 1.4 In accordance with Schedule 9 to the 1998 Act the Department for Social Development (“the Department”) has produced an Equality Scheme which explains how it will implement its obligations under section 75. A copy of the Scheme, which was approved by the Equality Commission on 15 March 2001, is available on the Department’s website at www.dsdni.gov.uk. Copies are also available in printed form and, on request, in alternative formats such as Braille, large print, disc, audio cassette and in minority languages to meet the needs of those who are not fluent in English from Departmental headquarters through a request to—

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2. Executive Summary

- 2.1 On 20 July 2006, the Secretary of State for Work and Pensions announced a number of interim measures to speed up claims handling for people with mesothelioma. He also confirmed that long-term measures would be introduced to improve support for sufferers to ensure that, where possible, they could receive compensation and benefit from it while knowing that their families will be secure in the future. On 1 September 2006, as part of the UK-wide consultation, the Department consulted interested parties for their views on improving support to those with mesothelioma.
- 2.2 Following this, at a mesothelioma summit held in London on 13 March 2007, proposals for a statutory scheme to make payments to all people with mesothelioma or their dependants and to recover amounts paid from subsequent civil compensation settlements were announced. The proposals will mean that, once diagnosed, every sufferer should receive a substantial payment within six weeks of making a claim.
- 2.3 The Westminster Child Maintenance and Other Payments Bill includes provision to enable a lump-sum payment to be made to those suffering from mesothelioma who—
- have been exposed to asbestos from a relative (for example, from their clothing);
 - have been exposed to asbestos environmentally (for example, have lived near a factory using asbestos);
 - are self-employed; or
 - cannot trace their specific exposure to asbestos but there is nothing to suggest that they were exposed elsewhere other than in the United Kingdom.
- 2.4 In accordance with the long-standing principle of parity between Northern Ireland and Great Britain in social security matters, it is anticipated that a Mesothelioma Bill will make corresponding provision for Northern Ireland. It is expected that the Bill will be introduced in the Assembly later in the year.

3. Consultation

- 3.1 Following the announcement by the Secretary of State for Work and Pensions in July 2006 the Department sought the views of interested parties in Northern Ireland. Responses to the consultation paper were shared with the Department for Work and Pensions where they were considered along with responses from Great Britain and used to inform policy development.
- 3.2 Consultation on the equality impact of the proposals was conducted during the period 1 February 2008 to 28 March 2008. The outcome of the consultation and the Department's conclusion is as set out in Chapters 9 and 10.
- 3.3 A copy of the Completed Equality Impact Assessment is available on the Department's website: www.dsdni.gov.uk
- 3.4 A list of those consulted is included at the end of this document.

4. Aims of the Policy

- 4.1 The overall aim of the policy is to provide faster compensation to all those diagnosed with mesothelioma, providing up-front financial support within six weeks to those who were exposed to asbestos in, or outside of, the workplace.
- 4.2 Mesothelioma is an asbestos-related cancer of the lung or abdominal linings. It has a long latency (20+ years), is rapidly progressive and invariably fatal, with death occurring within 18 months of the onset of illness. It is caused by exposure to asbestos fibres above the level commonly found in the environment at large. Mesothelioma causes up to 50 deaths each year in Northern Ireland¹.
- 4.3 Asbestos was widely used in industry in the 20th century – in shipbuilding, power stations and in the construction industry where asbestos cement products, thermal insulation and fire-proofing were widely employed. In addition, it was also used as an additive in paints and sealants, in textiles such as felt and theatre curtains, in gaskets and in friction products such as brake linings and clutches².
- 4.4 The link between asbestos and respiratory disease was recognised early in the 20th century and by the 1960's was widely known. The majority of asbestos-related illnesses occurring today, including mesothelioma, will be as a result of exposures in these industries.
- 4.5 Today those people currently considered to be most at risk of exposure to asbestos dust are those working in the construction sector where employees may inadvertently disturb asbestos.
- 4.6 At present a mesothelioma sufferer may be able to get compensation from one or more sources—
- a civil claim for damages against one or more of the companies responsible for exposing them to asbestos negligently and/or in breach of a statutory duty;
 - the Industrial Injuries Disablement Benefit (“IIDB”) scheme administered by the Department; or
 - for those unable to pursue a civil claim against an employer, a lump-sum payment under the scheme set up by the Pneumoconiosis etc. (Workers’ Compensation) (Northern Ireland) Order 1979 (“the 1979 Order”), which is also administered by the Department.
- 4.7 Making a civil claim can be difficult, for example, the employer may have ceased to exist and its insurer may be difficult to trace. Eligibility for IIDB or a payment under the 1979 Order is dependent on asbestos exposure having

¹ Source – Employment Medical Advisory Service NI

² Source – Asbestos Advisory Service NI

occurred during the course of employment. Those who contract mesothelioma from any other type of exposure are therefore ineligible for such payments.

- 4.8 Where a person can make a claim, it can often take time to be processed, particularly when it involves tracing relevant employment records. Poor life expectancy associated with mesothelioma often means that the sufferers die before compensation is paid. Receiving compensation while they can still benefit from it is therefore important to them and their dependants.

5. Mesothelioma Lump-Sum Payments

- 5.1 The Mesothelioma Bill will establish a scheme to make a lump-sum payment to a person with mesothelioma (or a payment to their dependant if the person with mesothelioma is deceased).
- 5.2 It will also amend the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (“the 1997 Order”) to provide the Department with a power to recover payments made under the 1979 Order or the new scheme, where a person then goes on to receive compensation from a civil claim. Payments recovered under the 1997 Order will be used to fund future compensation payments made under the proposed scheme.
- 5.3 The 1979 Order provides compensation to sufferers of certain dust-related diseases, or their dependants, who are unable to pursue a civil claim because their former employers have ceased to carry on business. Mesothelioma is one of the diseases covered by the 1979 Order. However, only people who receive IIDB, i.e. employees (or their dependants), are eligible to receive a payment under it. Under provisions enacted under the Welfare Reform Act (Northern Ireland) 2007 the rules regarding former employers were relaxed making it easier for sufferers or their dependants to make a claim.
- 5.4 The 1997 Order currently provides for the recovery of social security benefits which have been paid in respect of any accident, injury or disease to claimants who go on to receive compensation in respect of the accident, injury or disease, following a civil action claim. The intention of the 1997 Order is to ensure that a person does not receive double compensation, and that the Department can recover the listed social security benefit payments it had made, from the person deemed liable for the accident, injury or disease following a civil claim.
- 5.5 In effect, the proposed new scheme will mean that all sufferers of mesothelioma, as a result of exposure to asbestos, will be eligible for a payment regardless of their employment status, provided they have not already received a compensation payment through either a civil claim or a payment under the 1979 Order or the proposed scheme.

6. Responsibility for Developing and Delivering Policy

- 6.1 Provision of social security in Northern Ireland is governed by the long-established policy of the maintenance of parity with Great Britain, as provided for under section 87 of the 1998 Act. In line with that section, there are, in effect, single systems of social security across the United Kingdom: social security policy is therefore developed on this basis. The Department, in conjunction with the Department for Work and Pensions, is responsible for the delivery of policy.
- 6.2 The Social Security Agency is responsible for the administration of the 1979 scheme and will also administer the proposed new scheme.

7. Consideration of Available Data and Research

- 7.1 There are now around 1800 cases of mesothelioma a year in the United Kingdom. Asbestos has for many years been strictly controlled, but symptoms of mesothelioma may not appear until 20 to 50 years after exposure and it is expected that the number of deaths each year will continue to increase, reaching a peak between 2011 and 2015³.
- 7.2 Robust data on the section 75 categories on which the policy will have an impact are not available. Statisticians have advised that, because the numbers involved are so low, statistically valid forecasts from which to draw inferences could not be produced.
- 7.3 Figures from the Employment Medical Advisory Service show that there are up to 50 deaths from mesothelioma in Northern Ireland each year. In the 12 months up to December 2007 claims were made under the IIDB scheme by 19 persons suffering from mesothelioma. The number of successful claims made under the 1979 Order is less than 5 per year as payment under that Order can only be considered where the former employer has ceased to carry on business. Most claims for compensation will be made against the former employer.
- 7.4 It is likely that, because of the types of industries where exposure to asbestos was prevalent, the vast majority of mesothelioma sufferers who contracted the disease through their occupation, either as an employee or in self-employment, will be older males. It therefore follows that, in many of these cases, the dependant will be their female partner.
- 7.5 Similarly, it is likely that many of those who contracted the disease through para-occupational exposure, for example, from washing their partner's clothing, will be female. Without these proposals this group would be unlikely to get any compensation unless they could successfully sue the former employer.
- 7.6 All those diagnosed with mesothelioma will very quickly, if not already at the time of diagnosis, become disabled to some degree. Their average life expectancy from diagnosis is about nine months. This proposal would enable sufferers themselves to benefit from the payment.
- 7.7 The industries mainly associated with exposure to asbestos were heavy industries, for example, shipbuilding or construction. Because of the long latency of mesothelioma, people being diagnosed now will mainly have been exposed to asbestos in the 1950s, 1960s or 1970's. The numbers of people from ethnic minorities who worked in these industries in these decades is not available but in Northern Ireland would be expected to be very low.

³ Source – House of Commons Research Paper 07/57 29 June 2007

- 7.8 Overall, the purpose of the policy will be to make payments to all sufferers of mesothelioma or their dependants (where the sufferer has died) regardless of the section 75 group to which they belong.
- 7.9 In assessing the impacts of the policy under section 75 of the 1998 Act, the Department has concluded that there is evidence of some differential impact in respect of religious belief, age and gender. Those impacts have been considered in light of available data and policy intention to determine whether their effect is adverse.
- 7.10 The data relied on derive from a number of sources: the Employment Medical Advisory Service NI; Asbestos Advisory Service NI; the House of Commons Research Paper 07/57 29 June 2007; the Northern Ireland Census 2001; and statistics collected by the Department.
- 7.11 Northern Ireland specific figures have been used where available. Other figures reflect the position across the United Kingdom. Data in relation to some section 75 groups, such as marital status and sexual orientation are not available.

8. Assessment of Impacts

8.1 Religious Belief and Political Opinion

8.1.1 The Bill does not make any direct provision in relation to religious belief or political opinion. Data from the Northern Ireland Census 2001 show that a higher proportion of the population over the age of 30 is protestant. The data also show that the differential between the protestant and catholic communities decreases over time⁴.

8.1.2 Data to permit assessment of religion is not available. The new scheme will break the occupational link and extend payment to all people suffering from mesothelioma including those who have been environmentally exposed to asbestos. However, given the employment history in the relevant industries, for example, shipbuilding, it would be expected that most of the beneficiaries will be from the protestant community.

8.2 Racial Group

8.2.1 Data to permit assessment of race is not available. However because of the long latency of mesothelioma, people being diagnosed now will mainly have been exposed to asbestos in the 1950s, 1960s or 1970s. The numbers of people from ethnic minorities who worked in these industries in Northern Ireland in these decades would be expected to be very low.

8.3 Age

8.3.1 Because of the long latency of mesothelioma, people being diagnosed now will mainly be in the 50+ age group.

8.4 Marital Status

8.4.1 There is no information available on the marital status of persons with mesothelioma.

8.5 Sexual Orientation

8.5.1 There is no information available on the sexual orientation of persons with mesothelioma.

8.6 Men and Women

8.6.1 Over the years cases diagnosed as mesothelioma show that more men are affected than women. This may reflect that historically the relevant industries, for example, shipbuilding and construction primarily employed men rather than women. However, without this proposal to extend payment to anyone suffering

⁴ Source – Northern Ireland Census 2001 – Table EXT 20051117B: Community Background by Age

from mesothelioma a significant number of women would be unlikely to get any form of compensation unless they successfully sued a former employer.

8.7 Persons with a disability and persons without

8.7.1 All persons diagnosed with mesothelioma will either be or become disabled to a certain degree as a result of the disease. The average life expectancy from diagnosis is about 9 months. The proposals will enable these people to have greater financial security in the final months of their lives. There is no information available to assess differential impact on persons with additional disabilities.

8.8 Persons with dependants and persons without

8.8.1 There is no information available on the number of persons with dependants. If the person with mesothelioma is deceased the scheme provides for a payment to be made to their dependant.

8.9 Mitigation

8.9.1 The provisions of the Bill have been considered in the context of their impact on the groups set out in section 75 of the 1998 Act. The Department has concluded that, whilst the proposals are positive, they may have a differential impact on some section 75 groups as set out above. However, these impacts are entirely unintentional and simply reflect the fact that the incidence of mesothelioma tends to be highest amongst those who worked in certain industries and who fall into older age cohorts.

8.9.2 Every social security policy or benefit by its very nature has a differential impact in that each policy or benefit is designed to meet a specific need. The proposed scheme will break the occupational link and cover those sufferers and their dependants who fall outside the scope of the scheme provided by the 1979 Order, including persons exposed to asbestos fibres while self-employed, from their partner's working clothes, or where the source is unknown.

9. Outcome of consultation

- 9.1 No responses were received from any of the consultees to whom the assessment was issued.

10. Conclusion

- 10.1 Three of the fundamental principles of the social security system are that it is comprehensive in its coverage; consistent in its treatment of equal circumstance and non-discriminatory in its application. Deciding the circumstances and needs that should be entitled to state assistance is difficult; but once made these decisions are applied consistently to every potential claimant.
- 10.2 The proposals make provision corresponding to provision contained in Part 4 of the Westminster Child Maintenance and Other Payments Bill and are in line with the long-standing principle of parity between Great Britain and Northern Ireland in social security matters. The Department has concluded that the proposals for the Mesothelioma Bill do not have significant implications for equality of opportunity.

11. Monitoring for adverse impacts in the future

- 11.1 While the parity principle is designed to ensure uniformity of provision across the United Kingdom, in line with the Department's commitment under the Equality Scheme, any adverse differential impacts on equality of opportunity or good relations identified will be shared with the Department for Work and Pensions and taken into account in its ongoing monitoring of the effects of the policy. Such findings will be used to inform further development of, or modification to, existing policies.

Consultees

Action Cancer

Advice NI

Age Concern (NI)

Cardinal Sean Brady, Archbishop of Armagh & Primate of all Ireland

Most Rev. Alan Harper, Archbishop of Armagh & Primate of all Ireland

Rev. Roy Cooper, Methodist President

Rt. Rev. Dr. John Finlay, Presbyterian Moderator

Asbestos Support - Northern Ireland

Association of Independent Advice Centres

Belfast Islamic Centre

Bryson House

Carers Northern Ireland

Citizens Advice Regional Office

Community Foundation for Northern Ireland

Community Relations Council

Construction Employers Federation

Cruse Bereavement Care (NI) Regional HQ

Disability Action

Engineering Employers Federation

Equality Coalition Committee on the Administration of Justice

Equality Commission

Gingerbread

Help the Aged (NI)

Irish Congress of Trade Unions

Justice for Asbestos Victims

Law Society

Members of the Legislative Assembly

Multi-Cultural Resource Centre

National Association of Pension Funds

NICVA

NIGRA (NI Gay Rights Association)

Northern Ireland Committee, Irish Congress of Trade Unions

Northern Ireland Council for Ethnic Minorities

NI Human Rights Commission (NIHRC)

Relate

RNIB (Northern Ireland Services Bureau)

Simon Community (NI)

Ulster Cancer Foundation

UNISON

Women's Information Group

Women's Support Network