



Department for

**Social
Development**

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Mesothelioma, etc., Bill

Regulatory Impact Assessment

2008

MESOTHELIOMA, ETC., BILL
REGULATORY IMPACT ASSESSMENT

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MESOTHELIOMA, ETC., BILL

Purpose and intended effect

Objective

To make provision corresponding to provision in Great Britain to break the occupational link and extend payment of compensation to all people suffering from diffuse mesothelioma. To do this the Department proposes to introduce a new scheme and to provide for the recovery of lump sum payments (including extra-statutory payments) paid pursuant to the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979 ("the 1979 Order") and the new scheme from any later awards of civil compensation paid in respect of the same diseases. This would mean that people who develop diffuse mesothelioma through no fault of their own, and who currently cannot claim compensation under the 1979 Order, would be able to receive compensation. These changes would ensure that sufferers of diffuse mesothelioma receive compensation whilst they themselves can still benefit from it. It would also provide for a payment to a dependant if the sufferer of diffuse mesothelioma died without claiming.

Background

The 1979 Order and the corresponding Great Britain legislation provide for lump sum compensation payments to be made to workers, whose former employers have gone out of business, if they suffer from certain dust-related diseases including diffuse mesothelioma. The Bill would provide for payments to be made available to all those, including those not covered by the 1979 Order, who have been diagnosed with diffuse mesothelioma. The intention is to fund this change by making these payments, and those under the 1979 Order, subject to compensation recovery as described below.

Under the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 ("the Recovery of Benefits Order") and the corresponding Great Britain legislation, the Department and the Department for Work and Pensions can recover most social security benefits from compensation that is awarded in the civil courts or from settlements made out of court where the benefits and the compensation are paid for the same accident, injury or disease. This was introduced on the principle that, since a person should not be doubly compensated for the same occurrence, the state, not the person liable for damages, should benefit from the amount paid by way of benefits. The compensation recovery scheme in Northern Ireland is administered by the Compensation Recovery Unit of the Social Security Agency.

The current legislation does not allow for payments made under the 1979 Order to be recovered from later awards of compensation made under civil law. The proposal is to introduce a scheme, so that the Department can recover from any payments made through civil compensation, and use this to pay compensation to all people suffering from diffuse mesothelioma. Therefore, changes need to be made to the Recovery of Benefits Order to allow any payments made under the 1979 Order, including extra-statutory payments made following the rejection of a claim made under that Order,

and payments made under the new scheme to be recovered from later awards of civil compensation.

The Department and the Department for Work and Pensions would meet the additional costs of extending payments to people not covered under the 1979 legislation by recycling compensation recovery payments to those who currently do not receive a payment under the 1979 legislation, but at a rate based on the compensation recovered and increasing over time to equal other 1979 scheme payments. As compensation payments under the 1979 legislation are not currently recovered from later civil compensation payments, the defendants' insurers benefit because the civil compensation award is often adjusted downwards to reflect the payment to defendants under the 1979 scheme.

The annual number of mesothelioma deaths in the UK has increased steadily over the last 40 years and is predicted to peak during the period 2011 to 2015¹ at a level of up to 2450 deaths per annum. In Northern Ireland mesothelioma causes up to 50 deaths each year².

Mesothelioma has a very strong association with exposure to asbestos and, in adults the malignant form probably does not occur in its absence. It is believed that nearly all adult deaths in the UK caused by mesothelioma are linked to asbestos exposure. It is estimated that around 1 per cent of all males born between 1940 and 1950 will die of the disease due to asbestos exposure³.

Rationale for intervention

The Department proposes to put in place a long term solution to ensure that, wherever possible, people with diffuse mesothelioma can receive compensation in life.

The Department is proposing to treat diffuse mesothelioma differently to other asbestos-related diseases because diffuse mesothelioma is a special case with a particularly poor life expectancy compared with other cancers. The other diseases for which payment is made under the 1979 Order are not always terminal. Diffuse mesothelioma is almost always fatal. Median survival from diagnosis varies from study to study, but is mostly within the range of 6 to 9 months although some studies show a range up to 14 months. Unlike diffuse mesothelioma, there is no evidence that the other diseases to which the 1979 Order applies can be acquired through contact with an exposed person who has the noxious substance on their body or clothing.

Once sufferers and relatives have absorbed the initial impact of the diagnosis financial security becomes a key concern. The Department believes that a lump sum payment is the quickest way to allay that concern at a time when sufferers themselves can still benefit from a payment. It would also give them a measure of confidence that their families would be helped in the future. This reflects the

¹ *Source* – House of Commons Research Paper 07/57 29 June 2007

² *Source* – Employment Medical Advisory Service NI

³ Peto, J., Hodgson, J.T., Matthews, F.E., Jones, J.R. Continuing increase in mesothelioma mortality in Britain. *Lancet* 1995; **345** (i): 535-539

particularly poor life expectancy compared with other cancers and illnesses and the need for a simple and quick payment.

The proposal is that payment would be made whether or not there is a claim for damages under the civil law of negligence. Where there is such a claim, the payment would be recovered from any damages which are subsequently awarded.

Consultation

Internal

The Department participated in a working group set up by the Department for Work and Pensions and which included representatives from HM Treasury, the Ministry of Justice, the Department for Business Enterprise and Regulatory Reform, the Ministry of Defence and the Scottish Office. This group had input into the development of the proposals and full agreement was reached on the final proposals.

Public consultation

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. The consultation period ran from 4 September 2006 to 26 November 2006. 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.

In addition, meetings with stakeholders including the Association of British Insurers and other insurance companies, the Association of Personal Injury Lawyers and others from the legal profession, employer organisations, support groups for people suffering with mesothelioma, and medical experts, took place in London, Leeds and Glasgow. Following the publication of a summary of responses on 1 March 2007 a mesothelioma summit was held in London on 13 March 2007 to discuss the proposals with stakeholders.

Options

Option 1: Do nothing

After consideration it has been found that this does not meet the policy objective; therefore it was decided not to follow this option.

Option 2: To extend payments of compensation to all people suffering from diffuse mesothelioma

A scheme to pay compensation to all people suffering from diffuse mesothelioma would be funded by amending the Recovery of Benefits Order to allow for payments made under the 1979 Order and the new scheme to be recovered from later awards of civil compensation.

Costs and benefits

Impact on individuals

These changes would ensure that all people diagnosed with diffuse mesothelioma, an invariably fatal disease, would receive compensation whilst they themselves can still benefit from it. Or, in situations where a payment is not made in lifetime, a payment can be made to their dependants.

The changes would also mean that payments under the 1979 Order and the new scheme would be recovered from compensation paid under civil law. It is more usual for the compensator to ask the courts to reduce their liability on the basis that the injured person has already received a lump sum from the State so there would be no loss to the individual in these circumstances. There may be some cases where this does not happen and a person who is compensated twice would lose that double compensation, for example when the defendant's solicitor does not ask the court to deduct the amount of compensation paid under the 1979 Order from the amount of compensation awarded by the court.

Impact on the Department

The proposals would not create additional administrative costs for the Social Security Agency as this work can be subsumed within existing resources.

Payments under the new scheme will be charged to the Departmental Expenditure Limit budget. It is anticipated that the total amount for claim payments administered under the Bill would be in the region of £824k for the initial first year and increase to approximately £1,034k over the following six years. Arrangements are being taken forward with the Department for Work and Pensions in Great Britain to pool compensation payments recovered throughout the UK from which the scheme will be funded. The aim is to ensure that the same rate of payment can be paid in Great Britain and Northern Ireland. In the longer term, it is envisaged that the scheme will be cost neutral.

Impact on business

The proposals would mean that employers and their insurers would not be able to deduct the 1979 Order payments from their settlements of civil compensation.

In the UK, the total cost is about £12m per year. The present value of the cost of the proposal over 10 years at 2005 prices is around £100m. This cost can be taken in the context of the Employers' Liability Compulsory Insurance market of about £1 billion per year. The Association of British Insurers is aware of these proposals and has indicated that the legislative timetable should provide its members with the time to make any necessary adjustments to pricing.

Although 1979 Order payments would not normally apply where there is an extant employer, there may be a few cases where an employer comes to light later where, again, they would now be asked to meet their full legal liability.

Large businesses are likely to self-insure and compensation recovery would have the same impact on them as it would have on the insurance industry, but they should not have been benefiting from these payments. There are no records kept of how many firms self-insure.

There are no additional information requirements as businesses are already required to notify the Department of claims and settlements for industrial accidents/diseases for the purposes of Industrial Injuries Disablement Benefit compensation recovery.

Impact on the third sector

There is no impact on the third sector. Welfare rights groups and charities were involved in the consultation exercise. Several were represented at the mesothelioma summit and welcomed the proposals on behalf of their customers.

Effect on the wider economy

The additional money the Department is proposing to pay out would come from the Department's Expenditure Limit budget but would be recoverable from any civil compensation payments that are subsequently paid to the individual. In the longer term this would be cost neutral. In terms of the wider economy the sums of money are very small and these proposals would have no effect on the wider economy.

Small firms impact test

The main impact on business of these proposals would be on the insurance industry. As all employers must have Employers' Liability Compulsory Insurance and only large firms self-insure any liability for mesothelioma would be met by a small firm's insurers.

Competition assessment

The proposals in the Bill may affect the competitiveness of the small number of insurers who underwrite for asbestos liabilities. This relates to differential effects, i.e. about issues of competitiveness (the ability of firms to compete relative to each other) rather than the degree of competition in the market as a whole. However, the small amounts of money concerned in relation to the market as a whole means there are unlikely to be any implications for competition. Completion of the competition filter (from the guidelines for competition assessment) found that the proposals would be unlikely to affect the competitive process.

Enforcement, sanctioning and monitoring

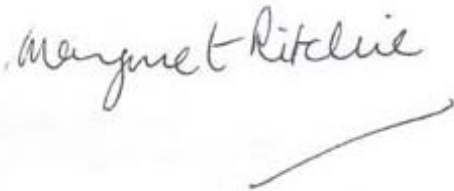
There are no penalties or sanctions requiring monitoring or enforcement.

Summary and recommendation

Option 2, to extend payments of compensation to all people suffering from diffuse mesothelioma and to finance this by introducing compensation recovery is therefore recommended. It provides early access to a lump sum payment of compensation until compensation under civil law may be paid, at which time payments made under the 1979 Order and the new scheme would be recovered. It ensures that sufferers of diffuse mesothelioma receive compensation whilst they themselves can still benefit from it during the final months of their lives.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.



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