

Zurich Insurance Plc

Question 1: Which of the following best expresses your view of the proposed Bill?

Unsure

In the absence of the type of detail which we envisage will be contained in the draft Bill, we are unable to express a detailed view.

We do however, support the proposal outlined in the consultation document confirming that all retrospective elements will be removed by ensuring the Bill only applies to those industrial diseases which are developed as a consequence of exposure after the commencement date of the Bill.

We have a number of concerns on a practical level where we believe matters will need to be clarified and/or resolved for the Bill to work in practice and achieve its' stated aims. We recognise that in terms of road traffic accidents and accidents at work, those found responsible for causing individuals to require NHS treatment are already held liable for at least some of the cost of that treatment and we note the proposed Bill seeks to treat victims of industrial disease in exactly the same way.

From a practical perspective, we believe that this aim, whilst understandable, is not simple and therefore we are unable to state a final position on the proposed Bill until the wording of the Bill itself is available for consideration.

Question 2: What do you think would be the main practical advantages and disadvantages of the proposed Bill?

Advantages:

- If clearly and appropriately framed, the Bill will provide clarity and certainty in relation to which conditions are in-scope, what sums may require to be repaid and by whom. Clarity and certainty are to be welcomed.
- If enacted, the Bill will introduce consistency of approach and alignment with the existing recovery schemes for road traffic accidents and accidents at work.
- If correctly framed and introduced, it may relieve an element of financial pressure on the NHS although the extent and effectiveness of that is difficult to assess for the initial period.

Disadvantages:

There will be complexity and potentially contention:

- in resolving issues where a person is suffering from a co-morbid condition such as a lung condition and a noted history of smoking and determining what costs aspects should be recoverable;
- over how a retrospective period of exposure (pre-enactment) can practically and correctly be identified and thereafter excluded bearing in mind the law as it stands regards a condition as indivisible;

- in considering how treatment costs could be split between pre and post enactment exposure; and
- where (on the basis the Bill applies solely to Scotland) a person has medical treatment in Scotland associated with exposure either fully or partially occurring elsewhere in the UK or indeed further afield.

These are medical and legal complexities which will arise where there is exposure with a single employer, but will be even more complicated and create numerous legal and medical challenges where there are multiple employers before and after enactment of the Bill.

The numerous complexities in this area, mean that any scheme would certainly have to incorporate a robust appeal and review process to be fit for purpose. Whilst there is a stated preference for the scheme to be administered by the UK DWP it has to be recognised that this is not in any way certain and there could be a situation where a separate body would require to be set up by the Scottish Government. A separate recovery scheme operated by the Scottish Government would be more expensive, complex and less efficient.

The costs involved in setting up a separate scheme would require to be analysed alongside the benefit to the NHS of the proposed Bill. Given the significant improvements in health and safety over the last decades, it is anticipated that the number of claims covered by the proposed Bill will be relatively minimal. A detailed cost benefit analysis should be carried out.

At a time when the overall aim of the justice system is speed of access to justice for victims of industrial disease, (as can be evidenced by the Scottish Civil Justice Council considering a mandatory pre-action protocol for industrial disease claims right now) the legal complexities of the proposed Bill may result in areas of division and legal uncertainty which in turn could lead to unnecessary delay in resolving the cases which would not be a satisfactory outcome.

Question 3: What is your view of my preference for the recovery of medical costs for the treatment of industrial disease in Scotland to be incorporated into the Injury Costs Recovery scheme and administered by the Compensation Recovery Unit, part of the UK Department for Work and Pensions?

Fully Supportive

It will provide consistency with existing processes currently operated by the DWP which appear to work effectively and efficiently. This is stated mindful of our comments in Answer 2 above in relation where the scheme is administered and other complexities.

Question 4: Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

- (a) **Government and the public sector:** Some increase
- (b) **Businesses:** Some increase
- (c) **Individuals:** Some increase

There will be a cost connected with administering the scheme which will presumably attach to central government and furthermore the Government and various Public Sector bodies are frequent compensators so will be responsible for meeting the reimbursement costs from available public funds. Even if the recoveries are to be dealt with by the DWP there will be an increased cost in setting that up. The administration of the scheme will also involve significant cost as matters are not as straightforward as road traffic accident claims or accidents at work.

In addition, there will be an element of simply moving funds around between Government departments and public bodies. This is certainly the position as one of the largest payers of industrial disease claims historically has been Government and Local Authorities. We are likely to be in a position where Government and public bodies require to reimburse treatment costs to the DWP who will then require to distribute that to the NHS. Under the terms of the Bill as framed, businesses will be responsible for the costs to be recovered which will effectively increase their operating costs. If insurance meets the cost then this is an additional cost over what is currently indemnified so could feasibly result in increased premiums.

The individuals most likely to be affected are those who operate as small businesses or sole traders where the increased cost may arguably be disproportionate to other categories due to the restricted nature of such business enterprises. The cost of insurance may be similarly affected as above.

Question 5: Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

We are not in a position to comment.

Question 6: What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, race, religion and belief, sex, sexual orientation?

Unsure

We are not in a position to comment.

Question 7: In what ways could any negative impact of the Bill on equality be minimised or avoided?

We are not in a position to comment.

Question 8: Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Unsure

We believe that delivery of a sustainable and proportionate process will in part be determined by whether the DWP does indeed undertake the administration of the scheme. If the process has to be created as a standalone scheme for Scotland then it is feasible that the administration costs may outweigh the financial benefits accruing from recovered monies.

Question 9: Do you have any other comments or suggestions on the proposal?

It is extremely difficult to comment further without seeing detailed proposals in relation to the rules for operation of the scheme and indeed how that administration will take place.

The Bill should be absolutely clear regarding expectations on who is expected to meet the costs of such reimbursement.

We support the proposal that this process cannot either be introduced or subsequently adapted to require retrospective application.

The scheme should provide consistency and clarity in line with the processes in other areas by setting comparable caps in relation to the period for which reimbursement can be required.

It should also be noted that there is a considerable degree of uncertainty in relation to research, future medical developments and the potential cost implications of such and it is not possible to predict how this may affect the operation of the proposed scheme.