

**Kennedys LLP**

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

Fully Oppose

We are not confident that the Scottish Parliament has the power to legislate on this Bill. Our reason is that the ability to legislate in relation to insurance has not been devolved. Whilst the bill refers to the 'negligent party', it is clear to us that this Bill is intending to legislate in relation to insurance. There is clear reference to the role of insurers as ultimately paying any negligent parties costs. In addition there is mention of the requirement for a new class of insurance.

The latest cases of asbestos that we are seeing date back to the 1990s, with some in the early 2000s. Future cases are highly unlikely since the 1999 ban. With that in mind this Bill is completely irrelevant to those suffering mesothelioma. Whilst we appreciate that this is about all Industrial diseases, it is difficult to see what diseases this is likely to impact upon, and therefore what impact the Bill will have on the NHS. Further to this point, treatment for such things as mesothelioma are generally not provided for by the NHS. It is therefore difficult to see any benefits to individuals who have suffered as a result of an industrial disease or any benefit to the NHS. The question then remains what is the benefit of the Bill?

NHS charges – it is difficult to see how this will work in practice and further clarity is required. Presumably it will only relate to charges already incurred at the time the claim is settled. What will happen in relation to future costs? How will this be split in civil proceeding to avoid double recovery?

The purpose or form of the new class of insurance is unclear, and clarity is needed, specifically in relation to the following:

- Why is a new class of insurance needed?
- Why can it not be an 'add on' to EL insurance?
- If a new class is needed, how will it and an EL policies interact with one another? To our mind this would seem to be making an already complicated area more complicated.

We believe that this Bill is targeted at asbestos matters and as mentioned they will not be captured by this Bill, and yet the Bill will force businesses to take out separate insurance unlikely to be used, or to be in a defensible matter (due to the retrospection element).

There is clearly an increased financial burden to businesses; employers and insurers. Employers will need to ensure they have this additional class of insurance, and insurers will need to provide cover not the 'negligent party'

It is not clear as to what NHS treatment costs will be included, and again clarity will be needed. The Bill suggests it is to be used to bring industrial disease claims in line with

other injury claims. If so this would cover the cost of days in hospital/ambulance costs at a fixed fee, and with a cap.

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

Advantages of the bill

- Potential to generate revenue for the NHS (however see disadvantages).

Disadvantages of the bill

- Limited initial impact – due to the points already raised around asbestos claims now being unlikely. Future impact is unknown at this stage.
- It is unlikely to actually raise any or much revenue for the NHS in reality.
- Increased burden to CRU who are already struggling with the current claims. Our own experience is that they are unable to turn around certificates in time now, so we do not see how they will be able to cope with the additional work.
- Industrial disease claims are notoriously complicated. There are invariably several factors/parties involved and so it is going to be very difficult to pin down and attribute to one factor or one party.

**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 Oppose

We oppose for the following reasons:

- CRU are already overcapacity and stretched with a huge backlog leading Scottish claims to wait far too long for certificates.
- If CRU is going to receive funding and additional resource then this is a partial opposition. If no additional funding or resource (and there is no mention of any), then we are fully opposed.
- Further clarity is needed. Is there any data in relation to projected numbers of claims this is likely to be, thus helping understand the impact to CRU?

**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:** Significant increase
- (b) **Businesses:** Significant increase
- (c) **Individuals:** Cost neutral

- We believe that there will be a significant increase in costs to government (funding for extra resource for CRU or to set up a separate body)

- We also believe that there will be significant cost to businesses – employers and insurance companies
- We cannot see any cost or saving to individuals

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

None to add at this stage - would need more clarity on points raised.

**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?**

Negative

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

N/A

**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?**

No

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

No response.