

Allianz Insurance Plc

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

Allianz remains committed to pay compensation to those people who have sustained a workplace injury or suffered an industrial disease where caused as a direct result of their employer's negligence.

We work closely with our customers to improve health and safety practices in the workplace with the aim of minimising the risk of personal injury. We agree that the financial liability to pay NHS treatment costs in Scotland should rest with the negligent party as this will serve to further improve the focus on health and safety practices at work.

We agree that the proposed Bill should only apply to those injuries and illnesses classified as industrial diseases by the Department for Work and Pensions. Furthermore, we agree that the Bill must only apply to those industrial diseases where the first exposure occurred after the commencement date of the Bill thus excluding all retrospective exposures occurring before this date.

However, industrial disease claims are somewhat different to road traffic and workplace accident claims in particular; they often involve multiple periods of exposure, multiple defendants and co-morbid conditions which will serve to complicate the proposal. Until the proposed Bill has been laid before the Scottish Parliament and we have full sight of the details of the Bill, we can only partially support the proposal and must reserve the right to change our opinion.

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

If the Bill is framed appropriately, then it will provide clarity as to which conditions are covered, in what circumstances these must be repaid, the amount payable and by whom.

The proposed Bill also seeks to ensure that there is a consistent approach with claims arising from Industrial disease, road traffic and workplace accident claims.

As a consequence of the additional liability placed upon a negligent employer to repay these costs should further improvement the focus on health and safety practices in the workplace.

The clarification that any liability under the proposed Bill is the responsibility of the negligent employer as opposed to their insurer, addresses one of the problems previously identified, as insurance is a reserved matter under the Scotland Act 1998.

The clarification that the Bill will only apply to industrial diseases caused by exposure which takes place after the Bill comes into force clarifies the question of retrospectivity. This was a fundamental problem in the previous proposed Bill in relation to compatibility with the European Convention on Human Rights.

One disadvantage is that the proposal does not clarify how recovery will operate where there is negligent exposure commencing before but continuing after the Bill comes into force. In such circumstances there would be an issue in seeking to deal with the extent of the two different periods of exposure, and also the extent to which the exposure has caused the condition. This would be relevant in respect of exposures with single employers, but also where there are multiple employers before and after the coming into force of the Bill.

Another disadvantage is that the proposal fails to clarify the position in terms of recovery where there has been non negligent exposure before commencement date of the Bill but further negligent exposure after the Bill comes into force further complicating the points raised above.

Another disadvantage is in respect of individuals who have an industrial disease, but who also have other co-morbid conditions. For example an individual may have some respiratory or lung condition alongside a significant past smoking history. It is unclear at this stage how any proposed Bill will deal with such situations. The treatment of individuals with industrial disease is not always as straightforward as it can be for accident victims. We welcome the recognition of this in the proposed Bill but we would need to see more detail on how this would be addressed to ensure clarity.

The proposed Bill only relates to Scotland. One issue which may well arise is the situation where an individual is treated for industrial disease in Scotland as a consequence of negligent exposure that may have taken place in England or Wales. The proposed Bill will have to deal with this scenario.

Many of the points highlighted make it clear that the introduction of the proposed Bill for Industrial Disease is going to be complex. We would seek clarification on whether the administration of such a scheme is going to be handled by the DWP or a separate body that will require to be set up by the Scottish Government. It is recognised that a separate recovery scheme operated by the Scottish Government would be more expensive, complex and less efficient to administer.

The costs involved in setting up a separate scheme would require to be analysed alongside the benefit to the NHS of the proposed Bill, especially given the additional liability placed on Scottish Government and public bodies to themselves meet these additional costs where they have acted as the negligent employer. In addition 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 and therefore a detailed cost benefit analysis will need to be carried out and understood in terms of the cost to the taxpayer over the net benefit being delivered.

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

We agree that if the proposed Bill was to proceed, delivering a consistency of approach in terms of how the scheme is administered will be of critical importance in order to maximise any net benefit. In doing so the administration of the scheme will need to be incorporated into the process currently operated by the DWP for both road traffic and workplace accident claims. Anything other than this will complicate the process, delay implementation and increase the costs of administering recovery which, may well cancel out any financial benefit delivered by the Bill.

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:** Some increase
- (c) Individuals:** Some increase

Implementation of the proposed Bill will result in additional financial cost to the Government and the public sector. This cost would be significantly greater if the Scottish Government has to administer the recovery process rather than, incorporating this into the current scheme administered by the DWP.

Even if the scheme is administered by the DWP there will be some additional costs arising out of its initial set up and these costs will need to be met by the Scottish Government. In addition Scottish Government will need to meet any additional expenses which are specific to the administration of industrial disease claims as these are often more complex and raise additional challenges over and above that experienced when administering recovery for road traffic and workplace accident claims.

In addition there would be a significant element of financial liability against other Government departments and public bodies two of the largest payers of industrial disease claims historically. We foresee a situation where Government and public bodies would be required to pay treatment costs to the DWP, who would then be required to distribute these funds, less any administration costs back into the public sector to the NHS.

There will be a direct increase in cost for business and individuals who operate as sole traders either paying directly the costs of NHS treatment or by way on increased premiums if these costs were to be met by their insurers.

As the consultation paper recognises, if the costs were to be met by the insurers there would be a knock on effect to all employer liability premiums across the market.

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

Incorporating Scottish industrial disease claims into the current scheme operated by the DWP will deliver efficiency benefits and ensure a consistency of approach with the recovery of NHS costs in road traffic and workplace accident claims.

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?

Unable to comment.

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

Unable 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

The Bill is not likely to recover significant sums for NHS Scotland as it only applies to industrial diseases developed as a direct consequence of exposure after commencement date of the Bill. As a result close consideration will need to be given as to the sustainability of the Bill in particular, the set up costs and the on-going administration expenses which will be incurred in recovering treatment costs.

Furthermore the additional liability which would be placed upon Scottish Government and public bodies to repay NHS treatment costs, where they are the employer and have negligently exposed their employee to an industrial disease, will significantly reduce any financial benefit of the Bill. This must be fully costed in advance of any formal Bill being laid down before Scottish Government in order to establish the likely net benefit.

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

The removal of any retrospective element of the proposal is welcome, but we would still seek clarification in respect of who will actually be repaying the treatment costs.

NHS charges are currently subject to a cap in respect of other types of claim. It is anticipated that a similar cap will apply to industrial disease claims. That would certainly ensure a consistent approach, further clarification as to the extent of this cap will be required.

One other comment is that there have been huge drives and progress made in relation to various treatments for numerous conditions over the years. It is anticipated that this progress will continue going forward. Many of these are unforeseeable at the present time. It is unclear how these may impact upon any proposed Bill.

Clearly a more detailed response can be made once the proposed Bill is published.