

Association of British Insurers (ABI)

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

Partially Supportive

Those responsible for causing individuals to require NHS treatment as a consequence of road traffic accidents or accidents at work are already held liable for at least some of the cost of that treatment. The proposed Bill seeks to treat victims of industrial disease in the same way. However, this is not always straightforward for a number of reasons. Therefore, we are partially supportive and reserve the right to change our opinion if and when a Bill is laid before the Scottish Parliament and we have full sight of the details of the Bill.

We support the proposed Bill in principle. Insurers are fully committed to ensuring 100% compensation for people who have sustained injuries where there is a party at fault, and once liability has been established insurers want to settle claims as soon as it is practical.

We agree that where negligence has occurred and liability has been established that the financial burden should fall on those who were negligent.

We support the aim to incentivise improved health and safety practices amongst employers to reduce the incidence of industrial disease.

We agree that the proposed Bill should apply to those injuries and illnesses classified as industrial diseases by the Department for Work and Pensions (DWP).

We also agree that the proposed Bill should only apply to those industrial diseases which are developed as a consequence of negligent acts occurring after the commencement date of the Bill if passed into law by the Scottish Parliament.

We welcome the confirmation that under the proposed Bill any liability would lie with the negligent party and not with their insurer.

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, what sums may be required to be repaid and by whom. The proposed Bill also seeks to ensure that there is a consistent approach with claims arising from industrial disease, road traffic accidents and other injuries.

As a consequence of the liability to meet the costs being placed upon the negligent party, there is potential for improved health and safety due to the financial implications if the common law/statutory regime is not adhered to. The clarification that any liability under the proposed Bill lying with the negligent party as opposed to their insurer addresses one of the problems previously identified given that insurance is a reserved matter under the Scotland Act 1998.

10 (Non-Smart Survey)

The other key benefit of the proposed Bill is that it clearly states that it will only apply to industrial diseases caused by exposure which takes place after the commencement of the Bill. This clarifies the question of retrospectivity which was a fundamental problem in the previous proposed Bill in relation to compatibility with the European Convention on Human Rights.

The statement that the proposed Bill will not create any new class of person liable for paying compensation is an advantage as it helps to provide clarity on the scope of the intended effects of the legislation.

One disadvantage is that the proposed Bill does not make clear how the situation would be dealt with where there is exposure both before and after the commencement of the Bill. In such circumstances there would clearly be an issue in seeking to deal with the extent of the two different periods of exposure, also the extent to which the exposure has caused the injury and what level of injury was caused by each period of exposure. This would be relevant in respect of exposures with single employers, but also where there are multiple employers before and after the commencement of the Bill.

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 personal injury 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 as well as the opportunity to comment further on this issue.

The proposed Bill relates to Scotland but there is potential for the situation where an individual is treated for industrial disease in Scotland as a consequence of exposure that may have taken place elsewhere in the UK or any other jurisdiction. The proposed Bill will have to address this potential situation.

Many of the points highlighted make it clear that the introduction of the proposed Bill for Industrial Disease will be complex. We would seek clarification on whether the administration of such a scheme is going to be handled by the DWP, or by a separate body that would need to be established 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. The costs involved in setting up a separate scheme would need 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 small in terms of overall damages. A detailed cost benefit analysis will need to be carried out and understood in terms of the impact for the taxpayer and wider society.

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

The aim of the proposed Bill is to have consistency between industrial disease claims, road traffic accidents and accidents at work. The most effective way to seek to implement that is to have industrial disease claims in Scotland incorporated into the current scheme operated by the DWP.

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 are several aspects of the proposed Bill that would result in an increase in cost to the Government and the public sector. The cost would be significantly greater if the Scottish Government is required to administer the recoveries.

If the recoveries are to be dealt with by the DWP there would be costs incurred in setting up such a system. These costs would presumably be met by the Scottish Government. The administration of the scheme would also involve some cost as industrial disease claims are not as straightforward to deal with as road traffic accident claims and accidents at work.

At present, it is our understanding that the NHS Scotland systems for capturing the appropriate costs may not exist or may be need to be significantly developed for the costs of treating industrial diseases, including the facilities necessary to deal with conditions that have multiple possible causes.

There would be an issue of liability against other Government departments and public bodies. Two of the largest payers of industrial disease claims historically have been Governments and Local Authorities. We can envisage a situation where Government and other public bodies would be required to pay treatment costs to the DWP which would then be required to distribute that public funding to the NHS.

For business and for individuals who operate as sole traders, there would also be an increase in overheads. There is an element of inconsistency with the consultation paper in relation to whether the cost of repayment lies with the negligent party, or the insurance industry. Either way we expect there could be an increase in cost to employers. They would either have to meet these costs directly themselves if they were subject to a claim for NHS treatment costs in addition to any compensation award against them, or if insurance companies were to meet these costs, then it is highly likely that they would seek to recover that additional outlay by way of increased premiums as the consultation paper recognises. That would have an effect on all employers' liability policyholders 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)?

We are unable to comment on this.

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

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

We are unable to comment on this.

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?

The sustainability of the proposed Bill is obviously dependent upon the final terms of the Bill and the level of treatment costs that are required to be repaid. This must be balanced against the cost of either the DWP administering the scheme, or the Scottish Government setting up a new body to administer the scheme.

As the proposed Bill is not retrospective it is unlikely to result in significant recoveries for the NHS in the early years, and therefore there are questions in respect of the scheme's sustainability in terms of the quantum of costs likely to be recovered relative to the costs of establishing and administering the scheme.

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 would apply to industrial disease claims. That would certainly ensure a consistent approach.

There has been significant 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.

We would offer a more detailed response as and when the proposed Bill is published.