

## Scottish Hazards

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

Partially Supportive

Scottish Hazards are, more or less, fully supportive of these proposals that seek to address an anomaly in the current system of cost recovery in respect of NHS treatment of illness, disease and injury related to work. Our main concern is that it is proposed only prescribed diseases are covered and we believe this introduces an element of inequality into the proposed Bill as well as failing to reflect the modern world of work and developing working practices and their known, and as yet possibly unknown links to un-prescribed diseases.

There is something peculiarly perverse about asbestos victims and others developing debilitating conditions and diseases because of work having to contribute to their NHS care through taxation while their employers who exposed them to disease do not.

The introduction of the potential to recover costs under the Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006 made provision for costs to be recovered in almost all personal injury cases, a move welcomed by the STUC and its trade union affiliates, a position now shared by Scottish Hazards.

However, an opportunity was missed at that time to include costs involved in treating occupational disease following extensive lobbying by the insurance industry, presumably due to the significant increase in claims they faced for treatments relating to mesothelioma as well as other occupational cancers and diseases.

The fact that insurers are not going to be liable for any costs under the provisions of the Bill may help to ensure a smoother passage for the proposals although Scottish Hazards believes the insurance industry could still play an important role in reducing incidences of occupational disease as explained later in this submission.

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

We believe the main advantage of these proposals would undoubtedly be the opportunity to ensure costs involved in treating industrial disease are met by those who cause the disease and not the tax payer. The prospect of having to repay costs out of their own pockets would hopefully encourage employers to review health and safety management practices, proactively ensuring they are compliant with their obligations under the Health and Safety at Work Act (1974) and subsequent regulations aiming to reduce exposure to the risk of occupational disease such as the Control of Substances Hazardous to Health (2002) and the Control of Asbestos Regulations (2012).

If the implications of not doing so are effectively communicated to duty holders Scottish Hazards believes most employers would take adequate measures to ensure they were protected as far as practicable against the eventuality of having to compensate the

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NHS for costs incurred in treating their workers who have contracted occupational disease.

Our concern would be how other employers react to these proposals if enacted, including the criminal and clueless who ignore or do not understand their legal duties.

In reality, the criminal can be discounted as there is little chance of changing their behaviour, this group are likely to take all necessary action to avoid paying such costs, including winding up companies and setting up other under new names in order to escape liability.

However, the latter may want to do the right thing but leave themselves open to risk because they are clueless regarding their legal duties and obligations. Given that health and safety enforcement is at an all-time low and we have no independent occupational health service to provide support and advice to employers we believe these proposals may be quite challenging, but not insurmountable, for this group.

Scottish Hazards believes it would be important for all employers to have support in the early stages if this proposed Bill becomes law to develop adequate health and safety management systems to reduce the risk of them being liable for treatment costs.

It would be important that employers who avoid their obligations face robust action to recover sums due including sanctions that act as a strong deterrent to others.

**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?**

Neutral

Scottish Hazards would support the scheme being administered by the Compensation Recovery Unit in the short to medium term and we would only suggest otherwise if a more cost-effective delivery method could be identified. It may be that on-going devolution of social security powers, including IIDB, not only provide opportunity to expand the list of prescribed diseases but also to investigate a more effective method of administration.

**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:** Unsure
- (b) Businesses:** Some increase
- (c) Individuals:** Significant reduction

Scottish Hazards is aware that there will be potential adverse cost implications for public and private sector employers, but we feel they are outweighed by benefits to individuals, most of which it is impossible to attach an economic value as this will mainly be through societal benefit.

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In order to avoid civil claims for damages in respect of occupational disease and the costs of treatment all employers will have to review their health and safety management systems, particularly in relation to hazards potentially exposing workers to occupational disease.

It is our view that the public sector is likely to have both positive and negative economic impacts, most noticeably for our health service where there will be positive benefits through costs being recovered via the Compensation Recovery Unit. However, as employers NHS Boards who do not manage health and safety adequately and expose workers to risk of disease may well have a negative financial consequence due to civil claims against them for occupational disease and the costs of treatment.

We would see these proposals as an opportunity for all public-sector employers to work with their trade unions to improve and develop health and safety systems that ensure workers are not exposed to occupational disease and public bodies do not suffer such negative financial consequences.

In relation to private sector business we believe there could be both positive and negative consequences and it is entirely within the control of those in charge to decide what the impact will be for their organisation.

For employers who engage with trade unions positively, who carry out regular risk assessments on hazards with the potential to cause occupational disease and act accordingly we envisage little or no adverse impact. For those who do not recognise trade unions or provide any effective employee voice we envisage there will be cost implications, not only through compensation claims for occupational disease and possible reputational damage resulting from their negligence but also through being exposed to the cost recovery envisaged in these proposals.

Scottish Hazards recognise the proposals have been drafted to ensure compliance with the ECHR in respect of the rights of insurers and compensators under Article 1, Protocol 1 of the ECHR not to have to retrospectively compensate health services for costs incurred in treating occupational disease.

We are deeply disappointed at the approach taken by the Supreme Court in reaching the view that retrospection is not compatible with that article, this approach appears to put the "human rights" of employers and insurers ahead of an individual's rights under Article 2, the right to life and Article 8, the right to a private and family life. Victims who die of industrial disease and those with such serious health conditions they can no longer work have, in the view of Scottish Hazards been denied their human rights under the convention, a fact that sadly has not been tested in court.

However, we believe the insurance industry can play an important role in delivering safer, healthier and fairer workplaces where workers are less likely to be exposed to disease by setting premiums based on health and safety audits, where good employers who can evidence high standards of health and safety, well developed health and safety management systems and effective workplace democracy will benefit from lower premiums.

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Those who create greater risk and are more likely to expose workers to hazardous substances at levels likely to be harmful to health would face increased policy costs, we believe this would be strong driver to change employer behaviour.

However, the biggest potential benefit for individuals arising from these proposals is not monetary, it is through workers being less likely to be exposed to occupational disease and having the right to enjoy their family and the right to life. We should not forget the asbestos scandal has denied too many workers and their families these rights.

Many thousands of others have been denied these rights, either having succumbed to other forms of work-related life limiting disease or having their lives ruined or severely impacted by debilitating long term work related health conditions such as occupational deafness, asthma, dermatitis or other work-related conditions, many of which are not prescribed.

There will potentially be substantial financial benefits for individuals through increased financial security through increased working lives in healthier, safer and fairer workplaces. Higher standards of health and safety will ensure greater economic activity leading to increased taxation being paid by workers who may have been otherwise forced into economic inactivity through industrial disease and resultant incapacity.

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

No 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?**

Slightly Negative

Scottish Hazards believes that only using the list of prescribed diseases to establish costs that can be recovered may have unintended consequences for the equality impact of these proposals.

Research has shown that most sufferers of prescribed diseases are men reflecting earlier comments that the prescription system is outdated and based on work and work environments that are no longer relevant, although the tragic consequences remain.

Hazards Magazine in their article Mean Test published in March 2015 highlight that UK workers miss out on IIDB payments for seven out of ten occupational cancers because their cancers are not prescribed. If we looked beyond prescribed diseases and sought to recover all costs where a clear link to the workplace or work history can be established to the condition this would result in a massive increase in costs recovered.

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This article also highlighted the discriminatory nature of the IIDB system stressing women almost entirely miss out, with a government equality impact assessment from 2011 finding almost four out of five claims (78 per cent) to the state industrial injuries and diseases benefit scheme were from men. And of 1,150 occupational deafness claimants in the years from 2006 to 2011, none were women.

Many countries have far fairer systems that include, for example the inclusion of breast cancer as a prescribed disease considering growing evidence from abroad, ignored in the United Kingdom, regarding increased risk of breast cancer in shift workers. Scottish Hazards is concerned that the current list of prescribed diseases and out dated IIDB system fails to take into account emerging evidence on the risks of “new” occupational cancers and this may adversely impact on women.

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

Scottish Hazards is aware that powers over IIDB is being devolved to Scotland and we believe the list of prescribed diseases should be reviewed considering evidence from overseas countries. This would not only lead to a fairer and more equitable IIDB system but would increase the amount of occupational diseases where NHS costs can be recovered from negligent employers and lead to the system being more sustainable.

However, as stated earlier in this submission we would prefer that costs were recovered in all cases where links are established that workplace exposures led to the disease.

### **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?**

Scottish Hazards welcomes these proposals but would hope that an innovative approach to the use of the increased funding for the NHS could be considered. The consultation suggests that funds generated could be used to fund other areas of the health system but consideration should be given to using these proposals to develop state funded occupational services, research into occupational disease and active occupational hygiene interventions in Scottish workplaces. The proposals alone will not deliver safer, healthier and fairer workplaces. We need to start to develop a strategy for developing NHS delivered occupational health services and research that places Scotland alongside Denmark and, to a lesser extent, other Scandinavian countries as world leaders in occupational health and the essential role this forgotten and often mistrusted health discipline can have on a country's economic sustainability.

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

No further comment.