

Introduction

The Mesothelioma Bill, announced in the Queen's Speech on 8 May, received its first reading in the House of Lords on 9 May and is due to be debated at its second reading on 20 May.

The Bill establishes a scheme of last resort for untraced employers' liability insurance claims which:

- 1. Limits support to mesothelioma only**
- 2. Imposes an arbitrary cut-off date**
- 3. Pays only 70% damages.**

Background to the Bill

The last Labour government consulted in February 2010 on ways to assist industrial disease sufferers negligently exposed in the course of their work who were unable to trace their employers' liability insurers and therefore were unable to bring a claim for compensation.

The 2010 consultation proposed establishing an Employers' Liability Insurance Bureau (ELIB) - an insurance fund of last resort modelled on the Motor Insurers Bureau for those injured by untraced or uninsured motorists. An ELIB would have compensated *all* industrial disease victims where the employer has gone out of business and the employer's liability insurer is untraced – the scheme in the Mesothelioma Bill will *only* compensate mesothelioma claims.

Delay

Aside from the thousands of people who have been deprived of compensation over the years due to the insurance industry's incompetence in losing or destroying the policies it sold for decades in a compulsory market, hundreds more people will lose out due to government delay of over two years between the end of the consultation on 5 May 2010 and the announcement of a (limited) scheme effective from the date of that announcement on 25 July 2012.

An act of benevolence?

The Bill will be presented as an act of benevolence when in fact:

- It is the result of a deal struck between the government and the insurance industry without consultation with claimants, support groups or trade unions
- The scheme will not provide full protection
- The scheme will not pay full compensation.

Portal & Pre Action Protocol

Alongside the Bill – but from another department and not put before Parliament - the government is planning changes to the civil litigation system which are being presented as “streamlining” the mesothelioma compensation claim process but in fact represent a straight-jacket for claimant's cases that will potentially increase delay, reduce funding and will impact on the levels of damages recovered.

The civil litigation reforms include an online “portal” for all mesothelioma claims, to apply whether the employer's insurance is traced or untraced, and a Pre Action Protocol requiring victims to provide information to insurers backed up by the threat of costs sanctions for failure to comply. The portal is based on a model for straightforward, low value, road traffic accident (RTA) claims which is not yet working satisfactorily.

The Bill

The Bill establishes a scheme of last resort in England and Wales, Scotland and Northern Ireland funded by the insurance industry to provide compensation in mesothelioma claims where the employer no longer exists and the employer's liability (EL) insurer is untraced.

Eligibility

Mesothelioma sufferers and the dependants of sufferers who have died from the disease are only eligible for payment under the scheme if:

- They have proof of liability due to asbestos exposure during employment in the UK
- The claim is against a "relevant employer" with no traced EL insurance
- Diagnosis of mesothelioma was on or after 25 July 2012
- They have not and cannot bring a compensation claim against a solvent employer or traced insurer
- They have not received any damages or payments (such as from an employer's trust fund) and are not eligible to do so.

Scheme payments

- Actual amounts and periodic up-ratings will be set under the regulations
- Payments are expected to be about 70% of the average value based on a survey of previous claims.

Applications and procedure

- There are unspecified time limits for applications or taking other steps and to provisions about enabling the scheme administrator to require claimants to produce documents and evidence.

Reviews and appeals

- Decisions about eligibility and payments are challenged by first requesting a review by the administrator. The outcome of that review is subject to a right of appeal.

Scheme administration

- The Department for Work and Pensions will either administer the scheme or will contract it out to another body. The DWP may allow that body to arrange for the scheme or part of it to be sub-contracted out.

Insurer funding

- Scheme compensation and running costs will be funded by UK current market EL insurers by a compulsory levy based on their relative market share in a given period.

Third party recovery

- The scheme administrator will have the power to recover compensation payments from a culpable employer or traced insurer and deal with the Compensation Recovery Unit.

Technical Committee

- A Technical Committee will determine disputes about the existence of EL cover.
- It will operate outside the scheme and is separate to the appeals and review process which deals with decisions within the scheme once it is established that insurance cannot be traced.

Data Protection

- Criminal sanctions for unauthorised disclosure of information about claimants, living or deceased.