



## **Consultation – Recovery of Medical Costs for Asbestos Diseases (Wales) Bill**

### **Joint response from Unite Wales and GMB Wales & South West trade unions**

#### **General**

#### **1. Is there a need for a Bill to allow recovery of costs of NHS treatment for asbestos related diseases in Wales? Please explain your answer.**

Yes. We believe that there is a compelling case for a Bill to allow recovery of costs of NHS treatment of asbestos related diseases in Wales. Hundreds of Welsh workers die every year from asbestos related disease and exposure to asbestos at work has caused suffering and hardship for thousands of others over the past decades. Many of Unite and GMB's current membership have been exposed to asbestos. Our members who have worked in the insulation industry, ship building, power stations, manufacturing and construction are among the occupational groups most at risk of developing asbestos related disease.

What must not be overlooked here is the incalculable human suffering asbestos disease inflicts on Welsh workers and the devastating effect on their families. Those who suffer most are the estimated 100 people who will die each year in Wales from mesothelioma, the fatal asbestos cancer. There is no known cure for mesothelioma. The average life expectancy of a mesothelioma patient is 12 -18 months from the onset of symptoms with many dying in less than a year from diagnosis. HSE reports that most people who develop mesothelioma were exposed to asbestos at work.

We note from the Regulatory Impact Assessment that the treatment of patients diagnosed with asbestos related diseases has cost and continues to cost the Welsh NHS an average of £23,000 per patient, placing a considerable financial burden on the already financially hard pressed NHS in Wales. At diagnosis of the disease, there will be attendances to GPs, referral to consultants for radiology, biopsies, radiotherapy, and chemotherapy and in many cases, palliative care.

We believe that in cases where there is a clearly identifiable negligent employer and a civil compensation settlement is due it is only right that the negligent party (or their insurer) should reimburse the NHS for the cost of medical treatment paid for by NHS Wales. We believe that the 'polluter pays' principle should apply. The Bill will achieve this socially desirable outcome by requiring the negligent employer, or the insurer of the negligent employer, to contribute towards the

costs to society of providing medical treatment and support to Welsh workers who develop asbestos disease.

The Bill will displace the financial burden from the Wales NHS, which currently bears the cost of providing medical care and treatment, and transfer it to the negligent employer which caused the disease, or their insurer. The view of our members and, we believe, of Welsh working people generally, is that the aim of the Bill is entirely consistent with progressive social policy.

**2. Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.**

Yes. The Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum. It makes clear the intended purpose of the Bill and the mechanism for recovery of NHS costs.

**3. Are the sections of the Bill appropriate in terms of introducing a regime to allow the recovery of costs of NHS treatment for asbestos related diseases in Wales? If not, what changes need to be made to the Bill?**

We believe the sections of the Bill are appropriate, internally consistent and proportionate to the aims of the Bill. The Bill is clear in terms of introducing a regime to allow the recovery of costs of NHS treatment for asbestos related diseases in Wales. This is further expanded and illustrated in the Explanatory Memorandum. We therefore do not consider that any changes need to be made to the Bill.

**4. How will the Bill change what organisations do currently and what impact will such changes have, if any?**

Clearly the Bill will have a positive impact on the NHS in Wales in that it will reimburse the NHS in Wales for the significant costs for treatment of patients diagnosed with asbestos related diseases. In addition, as outlined by the Bill, the costs recovered will be of benefit to both the services provision of the NHS in Wales and the future treatment of victims of asbestos related diseases.

The establishment of an administrative process for the recovery of costs of the treatment of patients diagnosed with asbestos related diseases to the NHS in Wales will, of course, involve some initial change. However, we believe that the Explanatory Memorandum clearly outlines the available options. We support the proposed use of the existing injury compensation scheme coordinated by the CRU at the Department of Work and Pensions. We believe this would achieve the most cost effective balance by using established CRU structures and procedures, automated systems, data links to compensators and NHS bodies with the advantages of a single point of contact for data collection and administration of recovery of NHS treatment costs from compensators.

Moreover, the positive impact of these changes and the cost to society in the long term significantly outweigh any potential organisational adjustment at the outset.

**5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

We believe the Bill and the related Explanatory Memorandum make clear the provisions of the Bill and the mechanism of implementation.

We are aware that the Association of British Insurers (ABI) have indicated in their initial consultation response that they object to the Bill. We believe that the commercial interests of insurers should not take precedence over the principle of social justice which the Bill aims to deliver. Insurers who may claim that the impact of the Bill will result in the increased cost of insurance to employers in the current marketplace should be reminded that those insurers have already received, invested, reserved and profited from the premiums they were paid by employers in the past whose negligence is the cause of Welsh workers currently developing asbestos disease.

We also reject the specious objection from ABI that the NHS in Wales has already received the cost of treatment in the form of National Insurance Charges paid by workers – and that the Bill would result in duplication of payment. This ignores the obvious fact that if the insured employer had not negligently exposed Welsh workers to asbestos those workers who develop asbestos disease would not have done so and the substantial cost to the NHS in Wales of treating those patients would never have arisen. The ABI objection to the Bill offends the ‘polluter pays’ principle.

**6. Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?**

We believe the Bill falls within the legislative competence of the National Assembly for Wales, under subject heading 9 of Part 1 of Schedule 7 to the Government of Wales Act 2006. This specifically includes the prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder; and the organisation and funding of National Health Service. The purpose of this Bill is relevant to the ‘treatment of disease, illnesses under this subject heading and the proposal of the Bill fits within ‘organisation and funding of National Health Service.’

**Powers to make subordinate legislation**

**7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?**

In answering this question, you may wish to consider Section 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

The Bill strikes an effective balance between provision outlined in the Bill itself and the provision that will be made by subordinate legislation. This is similar to the

Health and Social Care (Community Health and Standards) Act 2003. Much of the procedure of the Bill in practice will be administrative, technical and incredibly detailed. Parts of provision of the Bill will also necessitate flexibility. This is therefore more suitable to subordinate legislation rather than the Bill itself.

### **Financial implications**

#### **8. What are your views on the financial implications of the Bill?**

In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

It is estimated that the cost of care of victims of asbestos related diseases to the NHS in Wales is £2 million a year. The recovery of the costs of the treatment of asbestos related diseases in Wales would be significant to the NHS in Wales at a time when it is financially hard pressed.

The scale of the costs associated with the administration of the scheme are dependent on the administrative system used, the level of charges agreed within the tariff system and the amount of cases processed. However, the Explanatory Memorandum clearly outlines a number of options at varying initial and recurrent costs per annum. We refer to our response to Q4 outlining support for making the most effective use of existing CRU procedures for recovery of NHS treatment costs in order to minimise the administrative and business costs and maximise the net return.

We believe it is necessary and desirable to keep the administrative and business costs of the recoupment process to a minimum. We support the introduction of a tariff system for the calculation and recovery of NHS treatment costs. We note from the Explanatory Memorandum that there is a close correlation between the average cost in the proposed standard tariff (£25,361) with the average figure for the actual cost of treatment (£23,299) although we appreciate that there is potential for wider variation due to the relatively small sample of cases that formed the basis of the treatment cost analysis. In principle we consider that a form of capped tariff system is a reasonable and proportionate means of delivering the objectives of the Bill whilst minimising the operational costs.

We also believe that the combination of a capped standard tariff system with a CRU based recovery mechanism will provide an efficient means of dealing with any appeals and challenges by compensators or other parties and should minimise the scope for challenges due to the simplicity and clarity of a tariff based approach.

In addition, in relation to the costs for organisations liable for paying NHS charges the Bill does not create any new entitlement to compensation where a claim would not already exist. Successful claims arise when it is proven that a party such as the employer has been negligent. The status quo means that the NHS in Wales and therefore the public purse and the taxpayer must pick up the tab for the negligent party. We believe that this Bill is necessary, just and would ensure that the right party, or their insurer, is held responsible for their wrongdoing.

## **Other comments**

### **9. Are there any other comments you wish to make about specific sections of the Bill?**

It is important to GMB and Unite that the Bill binds the Crown so as to achieve parity of treatment between the recovery of NHS costs from commercial sector employers and insurers as well as government departments and former nationalised industries where many of our members worked and were negligently exposed to asbestos. It would be inequitable that a Crown employer who would also have made provision for risk, and who was as negligent as any private sector employer, should not bear the same responsibility to pay the same dues to society.

We reiterate our full support for the Bill which we believe is representative of Wales leading the way on matters of political substance and principle and delivering on the practicalities of implementing social justice. GMB and Unite in Wales commend this Bill for the benefits it confers on the NHS in Wales and the improved level of support and treatment it will generate for the people of Wales who will suffer the devastating effects of asbestos disease due to the legacy of employer negligence.

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