

QBE European Operations

Technical bulletin

Mesothelioma Act | February 2014





Mesothelioma Act 2014

The Act received Royal Assent on 30 January 2014 and the Diffuse Mesothelioma Payment Scheme (the Scheme) is now expected to start in July 2014, with application across all UK jurisdictions. Draft government Regulations have now been published, which provide more details regarding the administration of the Scheme, how claims will be made, the mechanism and level of payments, as well as the appeals process.

Background

Diffuse mesothelioma, which is caused by exposure to asbestos, usually materialises decades after inhalation. In the UK approximately 2,300 people die each year from mesothelioma and the number of sufferers claiming compensation continues to grow year-on-year. The Health & Safety Executive predicts the number of deaths per annum will peak at around 2,500-2,600. Increased public awareness of the possibility of compensation, and a number of court decisions unfavourable to defendants, have contributed to claim numbers increasing.

It is established law that a claimant only needs to prove one employer negligently exposed them to asbestos in order to recover compensation in full. Due to the passage of time and recessionary impact, some employees have been left without a solvent employer or traceable insurer to sue and have thus far remained uncompensated.

Whilst insurers made significant improvements by setting up the Employers' Liability Tracing Office (ELTO), the government decided to enact legislation to address the problem where an insurer cannot be traced, but an employee has been negligently exposed to asbestos.

The government consultation began in February 2010 and the Mesothelioma Bill finally progressed through parliament in January 2014. The key points concerning eligibility and payment are:

- Claimants must be diagnosed with the disease on or after 25 July 2012
- They must be unable to trace the relevant insurer or employer
- They will recover 75% of the average civil compensation claim
- Payouts will be funded by insurers paying a 2.74% levy of UK employers' liability gross written premiums (applies from 1 January 2014). The levy is applied post-Insurance Premium Tax (IPT) at 6%, so a £100,000 premium is subject to a 2.74% levy on £106,000
- The creation of a technical committee to decide insurance coverage disputes.

Implementation and impact

The Bill is now an Act of Parliament - the Mesothelioma Act 2014. So what's next?

- The government will shortly confirm the successful bidder for delivery of the Scheme

- It is anticipated that applications will start to enter the Scheme in April 2014
- The first levy will be collected from insurers in April 2014
- The first claim payments are likely to be made in July 2014.

When the Scheme starts, there will be a two-year backlog from the 2012 eligibility cut-off, with some 600 claims to be processed and paid. It is believed claim numbers will peak in 2016 and then slowly decline thereafter. The amounts to be paid under the Scheme will be based on the age of the claimant and range from £203,778 (40 and under) to £65,734 (90 and over). The claimant's legal costs are expected to be fixed at approximately £7,000.

The Act's Regulations explain how to make an application to the Scheme, the information and evidence that will be needed to support an application, how the application will be administered and how applicants can ask for a review and, eventually, an appeal if they disagree with the decision.

The full draft Regulations can be found at:

<http://www.legislation.gov.uk/ukdsi/2014/9780111109106/contents>

The future

Despite the Act only receiving Royal Assent on 30 January 2014, the surrounding debates continue, but are largely concentrated on the percentage level of damages that can be recovered by claimants. Lord McKenzie, the Labour peer who led the Bill in the House of Lords, has suggested 100% compensation should be possible when claim numbers fall. This assumes the levy remains static at 2.74% and, with a general election in 2015, one may assume this will be a Labour proposal.

The ABI have been quick to respond and say that, whilst the levy has been agreed for the first four years of the Scheme, thereafter if claim numbers fall, the levy should do likewise. The percentage level was fixed at 75% based on what was reasonably affordable, for the insurance industry and also to act as a disincentive to claim under the Scheme where an insurer could and should be traced. Increasing the level to 100% would not act as a deterrent and would likely result in an increase to the levy.

Additionally, Lord McKenzie has also hinted at the prospect of a similar scheme being extended to include other types of diseases. For example, this could apply to lung cancer deaths caused by asbestos which are also on the increase and are likely to face similar traceability problems. Current estimates suggest there are at least 8,000 occupational cancer deaths each year in Great Britain. (*Source, Health and Safety Executive, Annual Statistics Report for Great Britain 2012/13*).



And finally...

The Recovery of Medical Costs for Asbestos Diseases (Wales) Bill has been referred to the Supreme Court who will determine in May whether the Welsh Assembly acted within their competence in passing the Bill. The Bill was passed by the National Assembly for Wales on 20 November 2013, but will not come into force until the Supreme Court ruling.

The Bill seeks to recover the NHS cost of treating asbestos-related diseases from businesses and their insurers. It is estimated that this Bill could cost the insurance industry £1 million per annum.



Completed 18 February 2014 - written by QBE EO Claims. Copy judgments and/or source material for the above available from Tim Hayward (contact no: 0113 290 6790, e-mail: tim.hayward@uk.qbe.com).

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