 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Mesothelioma Pre-Action Protocol and Fixed Cost Regime	
Lead Department/Agency	Ministry of Justice	
Stage	Consultation	
IA Number	MOJ 200	
Origin	Domestic	
Expected date of implementation (and SNR number)	July 2014 (SNR 7)	
Date submitted to RPC	03/06/2013	
RPC Opinion date and reference	25/06/2013	RPC13-MOJ-1807
Overall Assessment	AMBER	
<p>RPC comments</p> <p>The IA is fit for purpose. However, the IA lacks a Small and Micro Business Assessment (SMBA) which should be addressed prior to consultation. In addition, the IA should clearly identify which costs and benefits will affect compliant businesses.</p>		
<p>Background (extracts from IA)</p>		
<p>What is the problem under consideration? Why is government intervention necessary?</p>		
<p><i>“Concerns have been raised about the time taken for mesothelioma claims to settle, especially where liability has been admitted. Claims for compensation can take over one year to resolve, which exceeds the life expectancy of many sufferers. Concerns have also been raised about the resources required and processes involved in settling claims, especially for more straightforward cases. Court rule changes and other government involvement would be necessary to introduce pre-litigation reforms which affect the processes for handling claims and the legal costs which may be recovered.”</i></p>		
<p>What are the policy objectives and the intended effects?</p>		
<p><i>“The primary policy objective is to secure quicker settlement of mesothelioma claims. Improved pre-litigation processes are being considered in order to achieve this. Two further objectives relate to these processes, notably to reduce legal costs incurred in the process and to support more cases being resolved at pre-litigation stage.”</i></p>		
<p>Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options</p>		
<p><i>Likelihood and Volume of cases:</i> The Department makes a number of assumptions that will need to be tested at consultation. In particular, the Department’s assumptions about changes to the likelihood and volume of subsequent claims made as a consequence of these proposals. These assumptions will need to be tested with stakeholders during consultation and the final stage IA will then need to provide</p>		

further discussion on the robustness of the assumptions.

Comments on the robustness of the Small & Micro Business Assessment (SMBA)

The proposals regulate business and are intended to come into force after 1 April 2014 and therefore the SMBA is applicable.

The IA does not include an SMBA. The IA must be updated to include and specifically reflect the impact of the proposals on small and micro-businesses in line with the Better Regulation Framework Manual (Section 2.6 pages 34 to 36).



Comments on the robustness of the OITO assessment.

The IA says that this is a regulatory proposal which is in scope of OITO and would have a net benefit to business (an 'IN' with Zero Net Cost).

Based on the evidence presented, the majority of the costs and benefits that have been identified appear to fall to non-compliant businesses. These impacts would therefore be out of scope of OITO. However, the Department should identify and set out more clearly in its final stage IA the benefits, from reduced legal costs, that will fall to compliant businesses – where firms have not been found liable for damages by claimants that have developed mesothelioma – as these may fall within scope of OITO.

The Department will need to use the consultation period to identify and monetise, where possible, any costs or benefits that may fall on compliant businesses.

Signed

Michael Gibbons, Chairman