

Estimates of the impact of extending the scope of the Mesothelioma payment scheme

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Introduction

1. This publication uses a methodology similar to that used in the Mesothelioma Bill Impact Assessment¹ to estimate the impact of expanding the scope of the Mesothelioma payment scheme to include;
 - Mesothelioma sufferers diagnosed before July 2012
 - non-occupational Mesothelioma sufferers
 - other asbestos related diseases and other non-asbestos work related diseases.

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¹ Published on 29th December 2013:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262466/mesothelioma-payment-scheme-ia-nov-2013.pdf

Background

The Mesothelioma Bill

2. The Mesothelioma Bill, if approved, will set up a payment scheme that will be funded by a levy imposed on insurers currently selling Employers' Liability (EL) Insurance. The payment scheme will make payments to eligible people with diffuse mesothelioma ('sick person') or to an eligible dependant if that person has died. A sick person will be eligible for a payment if certain eligibility criteria are met. A sick person will be eligible where a 'relevant employer'² exposed them to asbestos as a result of negligence or breach of statutory duty; they were diagnosed on or after 25 July 2012; they have not brought an action against the employer or the employer's EL insurer for damages and are unable to do so; and they have not received damages or a specified payment in respect of the disease and are not eligible to receive a specified payment. The payments will be made on a tariff basis that will equate broadly to a percentage of 'average civil compensation'³ and linked to the age of the person when diagnosed with diffuse mesothelioma (or linked to age at death if sooner).
3. The scheme is necessary because of the problems that many individuals have in tracing a liable employer or their employer's EL insurer against whom to bring a claim for damages. This is in part due to the long gap between exposure to asbestos and being diagnosed with diffuse mesothelioma, and in part due to poor standards of record keeping by the insurance industry. Work has been done on the part of the industry to improve record keeping and record tracing, but there still remains a group of people who cannot make a claim for damages because no liable party can be traced, and it is these people that the scheme aims to assist.

² A relevant employer is defined by clause 2(2) of the Mesothelioma Bill as:

'... an employer who, at the time of the person's exposure to asbestos.

(a) was required by the compulsory insurance legislation to maintain insurance covering any liability arising because of the exposure to asbestos, or

(b) would have been required by the compulsory insurance legislation to maintain insurance covering any liability arising because of the exposure to asbestos if the legislation had been in force at that time'.

³ 'Average civil compensation' is based upon a survey of civil compensation awarded in cases registered with the Compensation Recovery Unit between 2007 and 2012. Each civil case is decided upon its own merits, with a wide range of factors being taken into account. Therefore, this average should not be taken as indicative of what any particular individual might expect to receive.

The Mesothelioma Bill Impact Assessment

4. The most recent Mesothelioma Bill Impact Assessment was published on 29th November 2013.
5. The estimates in the Impact Assessment (IA) are based on a forecast of mesothelioma deaths. A number of assumptions are used to determine the proportion of those with diffuse mesothelioma that will apply to the new Diffuse Mesothelioma Payment Scheme (DMPS) and the proportion of those who will be successful in their application for a scheme payment.
6. Under option 2 of the IA, we have assumed that 14 per cent of those with diffuse mesothelioma will apply to the scheme and 90 per cent of applicants will be successful in receiving a payment from the scheme.
7. The IA estimates that over 10 years 3,500 people with mesothelioma who have been exposed to asbestos by their employer, negligently or in breach of statutory duty will receive scheme payments. The levy on insurers over this period is estimated to be £371 million.

Estimated volumes and costs if the scheme started on particular dates

8. On backdating the start of the DMPS to 1968 (where we first have actual Mesothelioma data on death volumes), we can estimate how many people would have been eligible for payment under the DMPS, how much they would have received, and what the total cost of the levy would have been if the Mesothelioma scheme were operational then. It was not possible to estimate the volumes and costs if the scheme started before 1968 as data on Mesothelioma deaths is unavailable. The table below is based on the average over the ten year periods shown. The scheme payments and cost of the levy are based on 75% of average civil compensation and use all the same assumptions as the IA.

Table1: Costs of the Scheme 1968/69 to 2007/08

Financial Year	Total number of Mesothelioma deaths	Number expected to apply for scheme payment	Number successful in receiving a payment from the scheme	Amount individuals receive directly from scheme⁴ in millions	Total - levy (if no government funding) in millions
1968/69 - 1977/78	2,342	321	289	£38	£50
1978/79 - 1987/88	5,710	784	705	£88	£111
1988/89 - 1997/98	11,367	1,560	1,404	£161	£204
1998/99 - 2007/08	18,846	2,586	2,328	£237	£305
2008/09 to June 2012	9,914	1,361	1,225	£111	£146
Total 1968/69 to June 2012	48,179	6,612	5,951	£635	£817

⁴ Amount individuals receive directly from scheme (scheme payment and amount to cover legal fees, minus government social security benefits and lump sum payments) in millions

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Notes⁵:

1. Source of mesothelioma deaths from 1968 to 2010 in Great Britain: <http://www.hse.gov.uk/statistics/tables/meso01.xls>
2. Forecasts of mesothelioma deaths were used from 2011 onwards.
3. All figures for Great Britain only.
4. All monetary figures are in £million. All monetary figures in 2012 values.
5. All estimates assume that scheme payments are based on 75% of average civil compensation.
6. All estimates are based on the assumption that the amount individuals will receive will include a contribution of £7,000 towards applicant legal fees.
7. Figures may not sum due to rounding

Extending the scheme to include those diagnosed from 1968/69 until June 2012 would result in approximately 6,000 extra successful applicants to the scheme. This would increase the levy by approximately £820m.

9. A table of one year periods has also been provided for the years 2008/09 to the end of June 2012 based on HSE death certificates mentioning mesothelioma. The table sets out the costs the DMPS would have paid out and levy cost had it been set up. The figures in bold italics (for the years 2011 and 2012) are based on HSE forecasts of mesothelioma deaths, since actual death data is not currently available for these two years. The scheme payments and cost of the levy are based on 75% of average civil compensation.

Table 2: Costs of the scheme 2008/09 to end of June 2012

Financial Year	Total number of Mesothelioma deaths	Number expected to apply for scheme	Number successful in receiving a payment from the scheme	Amount individuals receive directly from scheme ⁶ in millions	Total - levy (if no government funding) in millions
2008/09	2,282	313	282	£26	£34
2009 /10	2,337	321	289	£26	£35
2010 /11	2,347	322	290	£26	£34
<i>2011/12</i>	<i>2,353</i>	<i>323</i>	<i>291</i>	<i>£26</i>	<i>£34</i>
<i>April – June 2012</i>	<i>594</i>	<i>82</i>	<i>73</i>	<i>£6</i>	<i>£9</i>
Total April 2008 to June 2012	9,914	1,361	1,225	£111	£146

⁵ The ad-hoc published in July 2013 (Analysis to support the passage of the Mesothelioma Bill) used 100% of average compensation as the proportion of civil compensation awarded to applicants to the scheme had not yet been confirmed. This analysis uses the assumption that applicants will receive 75% of average compensation. This previous ad-hoc also used calendar years, whereas this publication has used financial years, in line with the impact assessment

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Notes⁷:

1. Source of mesothelioma deaths from 1968 to 2010 in Great Britain:

<http://www.hse.gov.uk/statistics/tables/meso01.xls>

2. Forecasts of mesothelioma deaths were used from 2011 onwards.

3. All figures for Great Britain only.

4. All monetary figures are in £million. All monetary figures in 2012 values.

5. All estimates assume that scheme payments are based on 75% of average civil compensation.

6. All estimates are based on the assumption that the amount individuals will receive will include a contribution of £7,000 towards applicant legal fees.

7. Figures may not sum due to rounding

Extending the scheme to include those diagnosed from 2008/09 until June 2012 would result in approximately 1,200 extra successful applicants to the scheme. This would increase the levy by approximately £150m.

Extending the scheme to include those diagnosed from February 2010 until June 2012 would result in an extra 700 successful applicants to the scheme. This would increase the levy by approximately £80m.

Estimated volumes and costs if the scheme included non-occupational Mesothelioma sufferers

10. Exposure to asbestos can also occur outside of employment. Non-occupational cases of Mesothelioma includes cases of para-occupational exposure, for example, family members exposed to asbestos fibres on an employee's clothes.

11. In the ten years following the schemes introduction, it is estimated that 5,600 individuals with non-occupational exposure to asbestos would be entitled to apply to the scheme. This has been calculated by subtracting the number of Mesothelioma sufferers receiving civil compensation and the number who would receive compensation from the Government's Mesothelioma scheme from the total estimated number of Mesothelioma sufferers. It is estimated that the same number (5,600) would be successful in applying for a scheme payment if they all claimed, as these cases would not have to prove an occupational link to their exposure, and none would have been covered by an insurance company.

12. In the ten years, it is estimated that individuals would receive £448million (in 2012 values) direct from the scheme (excluding government benefits but including legal

⁶ Amount individuals receive directly from scheme (scheme payment and amount to cover legal fees, minus government social security benefits and lump sum payments) in millions

⁷ The ad-hoc published in July 2013 (Analysis to support the passage of the Mesothelioma Bill) used 100% of average compensation as the proportion of civil compensation awarded to applicants to the scheme had not yet been confirmed. This analysis uses the assumption that applicants will receive 75% of average compensation. This previous ad-hoc also used calendar years, whereas this publication has used financial years, in line with the impact assessment

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fees and scheme payments) (£563million in total). It is estimated that the government would be able to recover £115million in government social security benefits and lump sum payments. The cost of recovery would be £3million.

13. If the scheme were to be extended in this way, the additional levy on insurers would be £577million and on average 3.82% of Employers Liability Gross Written Premium.

Extending the scheme to include non-occupational cases would result in an extra 5,600 successful applicants to the scheme. This would increase the levy by approximately £580m over the 10 year IA period.⁸

Including the current Mesothelioma Bill scheme, this would result in an estimated total levy of approximately £950m over the 10 year IA period.

Estimated volumes and costs if the scheme included other asbestos related diseases and other non-asbestos work related diseases

13. For the purposes of these estimates, other asbestos related diseases are defined as asbestos related lung cancer, asbestosis (a form of pneumoconiosis) and non-malignant pleural disease.
14. For the purposes of these estimates, other work related non-asbestos diseases are defined as all other work related cancers⁹, pneumoconiosis and a number of other diseases (including include Farmer's lung, Cadmium poisoning, Occupational Asthma, and Chronic bronchitis and/or emphysema).

Data sources

15. The analyses presented in this publication have been based on data on those with industrial diseases published on the Health and Safety Executive (HSE) website¹⁰. This includes research and medical evidence collected by the HSE and information on claimants in receipt of Industrial Injuries Disablement Benefit

⁸ Note that this levy figure is lower than the first case examined in this ad-hoc where the scheme was extended to include those diagnosed from 1968/69, despite a similar number of total extra applicants in both cases. The reason for this is that in the first case there would have been a greater proportion of applicants at younger ages that would be eligible for a higher amount of compensation payment compared to this case.

⁹ <http://www.hse.gov.uk/statistics/causdis/cancer/cancer.pdf>

¹⁰ <http://www.hse.gov.uk/statistics/causdis/index.htm>

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(IIDB), although the latter can only relate to claims rather than national incidence. See Table 3 below for the exact figures and sources used in the analyses.

16. Estimates of other lung cancer deaths are not based on death certificates as in the case of Mesothelioma. The number of asbestos related lung cancer deaths has been estimated by the HSE based on research published in 2005¹¹.

Table 3: Annual estimates of the volume of sufferers of industrial disease

This table shows the total estimated number of cases for other asbestos related diseases and non-asbestos work related diseases, for one year (2011 or 2012).

Other asbestos related diseases	Annual estimate ¹²	Source
Estimated Asbestos related lung cancer deaths (2011)	2,000	Second row: http://www.hse.gov.uk/statistics/causdis/asbestos.htm
Newly assessed cases of asbestosis (IIDB 2012)	980	Fourth row: http://www.hse.gov.uk/statistics/causdis/asbestos.htm
Non-malignant pleural disease (THOR/SWORD 2012)	686	Sixth row: http://www.hse.gov.uk/statistics/causdis/asbestos.htm
Total Asbestos related diseases	3,666	
Other work related cancers	3,709	Calculation (1)
Pneumoconiosis	300	Calculation (2)
Other prescribed diseases (IIDB)	175	Calculation (3)
Total Non-asbestos related diseases	4,184	

Notes:

- Calculation 1:* The HSE estimate 8,000 work related cancer deaths in a year¹³. Subtracting the number of mesothelioma deaths (2,291¹⁴) and the number of asbestos related lung cancer deaths (2,000¹⁵) from the estimate of 8,000 gives an estimate of 3,709 other work related cancer deaths.
- Calculation 2:* Total number of IIDB pneumoconiosis cases (1280¹⁶) minus IIDB asbestosis cases (980¹⁷) gives an estimate of the number of non-asbestos related pneumoconiosis cases.

¹¹ Darnton AJ, McElvenny D M, Hodgson JT (2005). Estimating the number of asbestos related lung cancer deaths in Great Britain from 1980-2000. *Annals of Occupational Hygiene* 50(1): 29-38.

¹² These figures are more recent estimates compared to the previous ad-hoc published in June 2013.

¹³ <http://www.hse.gov.uk/statistics/causdis/cancer/index.htm>

¹⁴ Row 1 of the table <http://www.hse.gov.uk/statistics/causdis/asbestos.htm>

¹⁵ Row 2 of the table <http://www.hse.gov.uk/statistics/causdis/asbestos.htm>

¹⁶ Cell W10 <http://www.hse.gov.uk/statistics/tables/iidb05.xls>

¹⁷ Fourth row of the table <http://www.hse.gov.uk/statistics/causdis/asbestos.htm>

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3. *Calculation 3:* The other diseases group¹⁸ is the sum of cases in receipt of IIDB for the following diseases: Farmer’s lung, Cadmium poisoning, occupational asthma, and chronic bronchitis and/or emphysema.

Table 4: Estimated impacts of the payment scheme for Mesothelioma sufferers provided for by the Mesothelioma Bill and the impacts if other asbestos related diseases and other work related diseases were also included, over the 10 years of the Impact Assessment (April 2014 to March 2024).

This table shows the total estimated number of successful applicants to the payment scheme and total levy amount for other asbestos related diseases and non-asbestos work related diseases, over the ten year IA period.

	Number of successful applicants	Cumulative Total	Total Levy on insurers £million (2012 values)	Cumulative Total £million (2012 values)
Mesothelioma Bill scheme	3,500	3,500	£ 371	£ 371
Other asbestos related diseases	4,500	8,000	£ 473	£ 844
Other non-asbestos work related diseases	5,100	13,100	£ 539	£ 1,383

Notes:

1. All monetary figures are in £million and rounded to the nearest million. All monetary figures in 2012 values.
2. Number of successful applicants has been rounded to the nearest 100.
3. Totals may not sum due to rounding.
4. All estimates are based on the assumption of a contribution of £7,000 towards applicant legal fees.

Extending the scheme to include other asbestos related diseases would result in approximately 4,500 extra successful applicants to the scheme. This would increase the levy by approximately £470m.

Extending the scheme to include other non-asbestos work related diseases would result in approximately 5,100 extra successful applicants to the scheme. This would increase the levy by approximately £540m.

Including the current Mesothelioma Bill scheme, this would result in a total levy of approximately £1,400m over the 10 year IA period.

¹⁸ Cells W6,8, 13, 19 <http://www.hse.gov.uk/statistics/tables/iidb05.xls>

Analytical assumptions and methodology for estimating the costs of including other asbestos related diseases and other non-asbestos work related diseases

17. The analysis is based on the methodology used in the IA and the analysis treats individuals that have contracted or died from other work related diseases the same as those that have died from mesothelioma. In the absence of evidence, we have used the same proportion of those with diffuse mesothelioma that will be eligible to apply for a payment under the scheme as the IA (14 per cent).
18. The analysis assumes a success rate of 76 per cent¹⁹ as cases where a causal occupational link may be more difficult to establish, tend to have lower success rates. However, evidence for diseases other than mesothelioma is not available at present.
19. The analysis assumes a fixed number of deaths and individuals with a particular disease throughout each of the 10 years.
20. The payment individuals are likely to receive from the Mesothelioma scheme is 75% of average civil compensation²⁰. Based on the changing age profile over the ten-year period the average payment including government social security benefits and lump sum payments is roughly £115,000 less benefit recovery (on average £20,000). If an individual has already received a recoverable social security benefit or a payment under the 1979 Act or 2008 scheme, this will be recovered from the substantially higher amount to be paid under the Diffuse Mesothelioma Payment Scheme.
21. Mesothelioma is unique in that it is always caused by exposure to asbestos and is always fatal to the sufferer. Other diseases can vary in severity and can be aggravated by other factors, such as smoking. The occurrence, severity and progression of these conditions can also vary according to the dose of asbestos that the individual was exposed to. This variability leads to very variable amounts of compensation awarded in civil cases, and lengthy calculations to establish the amount to be awarded. For the sake of estimating the costs of including these cases in the scheme, it is assumed that individuals with other diseases included in this analysis would receive the same payment under the Diffuse Mesothelioma Payment Scheme as an individual with Mesothelioma. The same rate of recovery of benefits and lump sum payments is also assumed, although it should be noted that due to the variability mentioned above, people who suffer from these other diseases may be entitled to different government social security benefit payments and lump sum payments.

¹⁹ This has been adjusted from a the June Ad-hoc which used a 90% success rate. There is reference to a 76% success rate for civil cases in the following ad-hoc: [Accessing compensation: supporting people who need to trace Employers' Liability Insurance](#), published in February 2010.

²⁰ Average civil compensation is based upon a survey of civil compensation awarded in cases registered with the Compensation Recovery Unit between 2007 and 2012. Each civil case is decided upon its own merits, with a wide range of factors being taken into account. Therefore, this average should not be taken as indicative of what any particular individual might expect to receive.

22. Of the asbestos related cancers, many mesothelioma cases are now compensated through government social security and lump sum payments, but it is likely that only a small proportion of cases of asbestos-related lung cancer are compensated through government social security and lump sum payments. This is despite recent changes to the eligibility criteria Industrial Injuries Disablement Benefit (IIDB) because of the range of different causes of lung cancer that may mask an asbestos cause. Lower figures based on IIDB payments and THOR²¹ illustrates the difficulty in attributing individual cases to occupational causes such as asbestos.

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²¹ Specialist physicians in the UK have been reporting work-related ill health, including occupational cancer to The Health and Occupation Research Network (THOR)
www.medicine.manchester.ac.uk/oeh/research/thor/ .