

**Written Evidence for the Committee for Finance and  
Personnel of the Northern Ireland Assembly**

**Damages (Asbestos-Related Conditions) Bill**



**From the Association of Personal Injury Lawyers (APIL)**

**January 2011**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation, formed by pursuers' lawyers with a view to representing the interests of personal

injury victims. APIL currently has more than 100 members in Northern Ireland. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured people.

The aims of APIL are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

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General Points

APIL welcomes the commitment of the Northern Ireland Executive to this legislation which overturns 2007's House of Lords ruling, which represented a devastating blow for pleural plaques victims.

The fact that pleural plaques are asymptomatic belies the truth that they do represent a physiological change in the body. This fact was raised in an adjournment debate in Westminster Hall on 4 June 2008, when Michael Clapham MP, reading from a letter written by Dr Robin Rudd (consultant physician in medical oncology and respiratory medicine) said:

“People with pleural plaques who have been heavily exposed to asbestos at work have a risk of mesothelioma more than one thousand times greater than the general population.”<sup>1</sup>

“People with pleural plaques commonly experience considerable anxiety about the risk of mesothelioma and other serious asbestos diseases. Despite reassurance offered by doctors that the condition is harmless often they know of former work colleagues who have gone on to die of mesothelioma after being diagnosed with pleural plaques.

For many the anxiety is ever present. Every ache or pain or feeling of shortness of breath renews the fear that this may be the onset of mesothelioma. The anxiety is real for all and for some has a serious adverse effect on quality of life.”<sup>2</sup>

The Northern Ireland Executive has shown great leadership by introducing this Bill, and attempting to overturn the decision made by the House of Lords. The Northern Ireland Executive, by doing this, has recognised the polluter pays principle: insurance premiums have already been collected and it is right and proper that the negligent party should make recompense for that negligence.

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<sup>1</sup> Hansard 4 June 2008: Column 251WH

<sup>2</sup> Hansard 4 June 2008: Column 252WH

## **Specific points of clarification**

We would like to suggest some amendments to the Bill to ensure that the legislation achieves its purpose.

### **Clause 3- Limitation of actions**

APIL supports the amendment suggested by Thompsons McClure Solicitors in its response to the draft Bill in September 2010, which suggests:

Clause 3 (1 b) should be amended to read:

- (b) which, in the case of action commenced before the date this section comes into force,
  - (i) has not been determined by that date, or
  - (ii) has been struck out, withdrawn or discontinued after 17 October 2007 on the grounds that it disclosed no cause of action

**Rationale:** this gives protection under law to those claimants whose cases were struck out following the decision by the House of Lords. This amendment would clarify that those claimants are able to bring an action for damages.

In addition, we suggest that

Clause 3 (2) line 15 should be amended to read:

Beginning with 15 February 2005 and ending with the day on which this section

**Rationale:** retrospectively it should be the date of the High Court decision rather than the date of the House of Lords as presently drafted. Following this decision, cases may have been stayed, in the knowledge that leave to appeal had been granted. Adding this amendment will provide clarity and certainty in the legislation.

