



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Mesothelioma Bill:
Legislative Consent Motion

6 June 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Gregory Campbell
Mr Sammy Douglas
Mr Mark Durkan
Mr Fra McCann

Witnesses:

Mr Stephen Baird	Department for Social Development
Ms Jane Corderoy	Department for Social Development
Ms Anne McCleary	Department for Social Development

The Deputy Chairperson: I welcome Stephen Baird, Jane Corderoy and Anne McCleary from the Department for Social Development (DSD).

Ms Anne McCleary (Department for Social Development): First, I thank the Committee for inviting us here today, as it is important that we clear this issue as quickly as possible. I stress that my colleagues Jane Corderoy and Stephen Baird are taking this work forward in addition to their usual nine-to-five jobs.

The Mesothelioma Bill is a Westminster Bill, but it extends to Northern Ireland. It was introduced in the House of Lords on 9 May this year, but it will extend to Northern Ireland only if the Assembly approves the legislative consent motion (LCM). That is why we are here. The intention of the Mesothelioma Bill is to help people and their dependants who were negligently exposed by their employer to asbestos, diagnosed with diffuse mesothelioma on or after 25 July 2012, and who have been unable to avail themselves of employers' liability insurance for a variety of reasons. The scheme is beneficial in nature. The legislative consent motion will ensure that potential beneficiaries in Northern Ireland are not excluded from the scheme.

I will outline the background. Under the Employers' Liability (Compulsory Insurance) Act 1969, most employers carrying out business in Great Britain are required to insure their liability to their employees for bodily injury or disease sustained in the course of their employment. The corresponding provision in Northern Ireland is the Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972. In the case of employer negligence, the majority of individuals are able to make a claim for injury or disease against the employer. In cases where that employer no longer exists, they can claim against the relevant employers' liability insurer. Therefore, they can claim either against the employer, who will then refer it to their insurer, or go direct to the insurer.

Diffuse mesothelioma is a disease caused almost exclusively by exposure to asbestos, usually in the course of employment. The disease may not appear for decades after the initial exposure, but, once diagnosed, it is, sadly, terminal. By this time, the employer might have ceased trading, or the relevant insurance records might have been lost or destroyed. In such circumstances, the individuals concerned may be unable to recover any compensation.

The Bill makes provision for the establishment of a diffuse mesothelioma payment scheme (DMPS) to make payments to eligible people with diffuse mesothelioma, and eligible dependants of people who have died from the disease before making an application to the scheme.

I will outline how the formal funding is arranged. The DMPS is to be funded by a levy on a small number of active insurance companies that are authorised to provide employers' liability insurance — authorised insurers within the meaning of the Employers' Liability (Compulsory Insurance) Act 1969 or the Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972. The amount of the levy to be paid by each insurer will be determined by reference to that insurer's market share during the relevant period.

The Bill provides for the establishment of a technical committee to decide disputes as to whether an employer has maintained employers' liability insurance with an insurer at any particular time.

Why have we come to you with an LCM? The regulation of financial services, such as the insurance companies, is a matter that lies outside the legislative competence of the Assembly. It is appropriate for Westminster to legislate in this area. However, the rights and duties of employers and employees are devolved matters, which means that the Mesothelioma Bill cannot apply to Northern Ireland unless the Assembly gives its consent. The proposal for the LCM is to include transferred provisions within the Mesothelioma Bill at Westminster and, subject to a decision by the Executive later today, the Minister will seek the agreement of the Assembly to the extension of the Mesothelioma Bill to Northern Ireland by laying a legislative consent motion.

Further down the line, other Departments in Northern Ireland will have an interest in how the scheme will work, namely the Department of Enterprise, Trade and Investment, and the Department of Justice. The Department for Social Development's interest lies in the fact that the Bill amends social security legislation to permit the recovery of benefits paid to people with diffuse mesothelioma who have received a payment under the scheme. There may be an impact on the amount of benefits paid by my Department and the lump sum payments scheme provided for by the Mesothelioma, etc., Act (Northern Ireland) 2008. Although there may be a small increase in administrative costs to the Department in recovering those payments, that would be offset against the amount of benefits recovered.

Other than that, the Bill has no significant financial implications for Northern Ireland because the cost of the scheme will be met by the insurance companies, which are required to contribute to the levy. That will involve a small number of major national and international insurers. We understand that the scheme is unlikely to have any financial impact on local insurance companies.

The Minister and the Department very much appreciate the Committee dealing with this issue so promptly. The consideration of the measure, beginning at this point, will, hopefully, ensure that we can table the LCM before the summer recess. That means that we can keep up with the GB timescales.

Ms Brown: I declare an interest because a family member recently passed away. This measure may affect the relatives.

The Deputy Chairperson: A friend of mine died 22 years after contracting the condition. He worked in a shipyard for three months, red-leading. Apparently, when you get a particle of asbestos in the lung —

Ms McCleary: It takes only a very small amount.

The Deputy Chairperson: He was 44 years old, so he was in his early 20s when it happened. It is an insidious disease. The issue is encapsulated in your briefing paper:

"DSD's interest in the establishment of the proposed scheme is in relation to ... the impact on recovery of social security benefits".

A number of years ago, I dealt with a case of someone who very badly injured a leg in an industrial accident and who, unfortunately, has since lost the leg. They applied for compensation but, in the interim, got what was then incapacity benefit and disability living allowance. That was all recovered from the compensation. They ended up with £2,500 because that was the minimum amount at that time. That has changed; the insurance companies are now liable for the recovery of the benefits. Will that apply here?

Ms McCleary: There was a debate at the time about whether the recovery of benefits should be taken from the compensation award. As you said, there was a £2,500 threshold. Consequently, a lot of cases were settled at £2,500.

The Deputy Chairperson: They had no choice.

Ms McCleary: Yes. Things then changed and, as I understand it, in general litigation, the norm is now that benefit is ahead of claim. The claim could be for industrial injury or somebody who falls on the street and is knocked down by a car. They add recovery of the benefit figure to the amount that they are claiming. Therefore, the victim of the accident does not suffer a reduced amount.

The Deputy Chairperson: That was really for clarification.

Ms McCleary: Yes, but that is not what we are talking about here. I will let Jane explain exactly what the position is.

Ms Jane Corderoy (Department for Social Development): The lump sum payments would be recoverable because somebody got a publicly funded claim and are then getting a payment from the insurance industry. That would be offset. Your specific question was about benefit recovery. There is a list of benefits that would be recoverable. Stephen and I were just talking about the practicalities of this scheme and the individuals affected by it. Because of the aggressiveness of the disease, those benefits would be able to be recovered, but we do not imagine there would be any substantial amount, and they would not make a particular impact on the lump sum payment, which is estimated to be £100,000 on average.

The Deputy Chairperson: Mesothelioma is a debilitating condition. Once diagnosed, it can progress very quickly and is terminal. However, that person's health may have been affected over years as a result of the condition and they may have qualified for disability living allowance, etc. Will the amount of benefit significantly reduce the amount of compensation that they receive?

Ms Corderoy: We do not think that it would significantly reduce the amount.

The Deputy Chairperson: Could we have clarification on that?

Ms Corderoy: We have been doing our best to try to find out.

The Deputy Chairperson: It is important because people could apply for and receive compensation but not benefit from it because of the benefits that they previously received. That is particularly so for contributory benefits such as employment and support allowance because they already paid into the national insurance scheme, which ensures that they get back, to some degree, what they paid in. With compensation recovery, the £2,500 cut-off meant that many people with long-term serious conditions did not benefit, through no fault of their own.

Ms McCleary: That happened for a number of years. There were disputes about it at the time, some of which went to court. In the end, it was accepted that it should be added to the claims.

Ms Corderoy: We know that the Department for Work and Pensions does not envisage that there will be much recovery with regard to these cases.

The Deputy Chairperson: With respect — call me cynical if you like — saying that it does not envisage that is not stating definitively or clearly that it will not happen. It probably did not envisage what happened the last time. I think we need clarification on that.

Ms McCleary: We are clear about certain schemes that relate specifically to mesothelioma. Payments under those schemes will definitely be reduced. They will be taken out of the new claims simply because they both compensate for exactly the same thing. However, we take the point. We will try to come back to you on that as quickly as we can.

The Deputy Chairperson: I just want to point out to members that the Minister will be seeking the Executive's approval on this today, so the Committee is not able to agree the motion at this meeting anyway. We have received information today and more is forthcoming. Assuming Executive approval, no motion could be agreed formally until next week at the earliest.

Ms Corderoy: Chair, as you said, because of the aggressiveness of mesothelioma, the period when somebody would be diagnosed and be able to claim a benefit that was related directly to their diagnosis before they could qualify for the scheme would be very short. The whole point of the scheme is that people can get a payment within, say, three to six months, rather than having to wait one or two years.

The Deputy Chairperson: Just to add to that, if someone is diagnosed with a respiratory condition, which is later diagnosed as having been caused by mesothelioma, what you are saying is that, from the date of diagnosis, presumably, to the date of death —

Ms McCleary: The specific diagnosis of mesothelioma.

Ms Corderoy: It has to be directly related to the diagnosis.

The Deputy Chairperson: It would be very quick.

Ms McCleary: Yes. It is known that the vast bulk of those folk, unfortunately, have a very restricted outlook. We are talking about months.

The Deputy Chairperson: I understand that. I just wanted to clarify that further. There could be people whose condition can be traced back as being a direct result of that condition. It is a very nasty and horrible condition. It progresses very quickly. By the time it is diagnosed, people are almost at the point of death.

Ms McCleary: We are clear that the period of time until diagnosis of diffuse mesothelioma does not count.

The Deputy Chairperson: Could we just have clarification on that?

Ms McCleary: Yes. That is fine.

Mr Douglas: I spoke to someone recently, and six of his colleagues died from the condition. He could not understand why he had not developed it because they all worked on the same job. On a point of clarification, the Bill specifies "on or after 25 July 2012". Is there any particular reason why?

Ms McCleary: Yes. That is the date when the Prime Minister made the announcement.

Mr Douglas: OK. Thanks.

The Deputy Chairperson: Anne, Jane and Stephen, thanks very much.