

## Finance Committee

### Financial Scrutiny of *Recovery of Medical Costs for Asbestos Diseases (Wales) Bill*

Paper to note: Financial Memorandum

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Date of paper

5 December 2012

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#### Related Information

[\*Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill\*](#), 3 December 2012

[\*Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill, Explanatory Memorandum\*](#), 3 December 2012

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## 1. Introduction

On 21 March 2012, Mick Antoniw AM was successful in his ballot to introduce a Proposed Member Bill relating to recovering the costs of medical treatment and care provided to patients in Wales who have sustained asbestos-related diseases and have received compensation. On 16 May 2012 the National Assembly for Wales agreed that Mick Antoniw AM could lay a Bill based on the pre-ballot information he had provided. Following a consultation exercise in May 2012 on his proposals for legislation, Mick Antoniw AM introduced the *Recovery of Medical Costs for Asbestos Diseases (Wales) Bill*<sup>1</sup> on 3 December 2012. The scrutiny of this Bill is the responsibility of the Health and Social Care Committee. The Health and Social Care Committee will consider and report on the Bill's **general principles** by 8 March 2013.

## 2. Aims

According to the Explanatory Memorandum (EM) treating asbestos-related disease costs the NHS in Wales at least £2million per annum<sup>2</sup>. The principle behind the Bill is that 'the cost to the public purse of providing NHS services should be recouped from the person who has caused (or is alleged to have caused) the harm that gave rise to the need for those services'. This principle already underpins other existing legislation in the UK<sup>3</sup>. However, the comparable legislation that the EM discusses limits this 'harm' to injuries rather than, as in the case of the Bill, diseases.

## 3. Content of Bill

The Bill proposes that in cases where a compensation payment has already been made to victims of asbestos related disease<sup>4</sup>, the Bill will enable Welsh Ministers to recover charges in respect of the cost of the care and treatment of asbestos-related disease to the NHS in Wales from insurance companies or employers. The scale of these charges will be set using a tariff that will be established by future subordinate legislation.

Once recovered, the money will go into the Welsh Consolidated Fund, though the Bill states that the Welsh Ministers 'must have regard to the desirability' of making an amount equal to that reimbursed available for the 'treatment of, or other services relating to, asbestos related diseases'<sup>5</sup>.

The EM explains how the proposed scheme builds on the existing personal injury compensation scheme which is operated on a UK basis under the *Health and Social Care Act 2003*. The current scheme is administered by Compensation Recovery Unit (CRU) at the Department for Work and Pensions (DWP).

## 4. Financial implications of the Bill

The EM considers three potential options looking at **how** and **by whom** the scheme would be administered:

- 2.i The Compensation Recovery Unit (CRU) at the Department for Work and Pensions (DWP) administers the scheme (the preferred option)
- 2.ii Welsh Government administers the scheme
- 2.iii Local Health Boards (LHBs) in Wales administer the scheme.

<sup>1</sup> [Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill](#), 3 December 2012 [accessed 5 December 2012]

<sup>2</sup> [Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill, Explanatory Memorandum](#), para 30, 3 December 2012, [accessed 5 December 2012]

<sup>3</sup> [Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill, Explanatory Memorandum](#), paras 6-12, 3 December 2012, [accessed 5 December 2012]

<sup>4</sup> Asbestos related diseases are defined in the Bill as; asbestosis, mesothelioma, asbestos-related lung cancer and pleural thickening.

<sup>5</sup> [Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill](#), 3 December 2012, paragraph 16 [accessed 5 December 2012]

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The EM states that the preferred option (Option 2.i) will give rise to **transitional costs in 2013-14 of around £97,500** and **annual costs of £29,000 for the subsequent four years**. These costs would fall on the Welsh Government, the CRU, LHBs, insurance companies and employers and are detailed below.

#### *Transitional costs*

Transitional costs in 2013-14 include:

- **Redeveloping the existing CRU administration systems**, which is estimated to cost around **£82,500** to cover all the changes needed (including changing automated tariff calculations, developing a new electronic data collation form and ensuring the relevant payments are made to Welsh Ministers)
- **Training for staff** in the CRU, Welsh Government and LHBs on how to use the new system which is assumed to be **£5,000** in total.
- **Insurance companies and employers familiarising themselves** with the requirements of the scheme which is estimated to cost **£10,000**.

#### *Average annual costs*

Annual costs from 2014-15 to 2017-18 include:

- Processing charges and additional management and system monitoring costs to the CRU which are assumed to be around £7,000 per annum.
- The administrative cost to LHBs and NHS Trusts of providing the CRU with details of the care provided to individuals, this is estimated to be £10,000 per annum in total.
- The additional cost of complying with legislation which is assumed to cost employers or insurers £12,000 per annum.
- The cost to insurance companies and employers of compensating the NHS for mesothelioma treatment calculated using the NHS standard tariff system would be around £2.01 million per annum based on 80 cases in Wales per year.

#### *Average annual benefits*

The **recovered NHS treatment costs are also a benefit** and making an allowance of one per cent for disputes and other non-payment issues gives a **net recovered income of around £2.01 million** per annum.

#### *Net benefits 2013-14 to 2017-18*

The result of subtracting the average annual costs from the average annual benefits gives an **annual net loss of £29,000 for each year from 2014-15 to 2017-18**. Adding the transitional costs in 2013-14 of £97,500 to the average annual costs of £29,000 per annum (over 2014-15 to 2017-18) gives a **total net benefit of -£213,500 for the five-year period**.

As shown in table 1 below the EM converts these future costs and benefits into present values to give a **net present value<sup>6</sup> (NPV) of -£197,100 for Option 2.i over this five year period**.

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<sup>6</sup> The EM uses a discount rate of 3.5 per cent (para 69) which is taken from HM Treasury, to adjust for inflation *Green Book: Appraisal and Evaluation in Central Government*, July 2011 [accessed 5 December 2012]

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**Table 1: Summary table of additional costs of Option 2.i - CRU administers the scheme**

							<i>£ (thousands)</i>	
	2013-14	2014-15	2015-16	2016-17	2017-18	Total	NPV	
Welsh Government	87.5	0.0	0.0	0.0	0.0	87.5	84.5	
CRU	0.0	7.0	7.0	7.0	7.0	28.0	24.8	
LHB	0.0	10.0	10.0	10.0	10.0	40.0	35.5	
Employers/ insurance companies	10.0	2,020.6	2,020.6	2,020.6	2,020.6	8,092.4	7,180.5	
<b>Total cost</b>	<b>97.5</b>	<b>2,037.6</b>	<b>2,037.6</b>	<b>2,037.6</b>	<b>2,037.6</b>	<b>8,247.9</b>	<b>7,325.3</b>	
<b>Total benefit (recovered income)</b>	<b>0.0</b>	<b>2,008.6</b>	<b>2,008.6</b>	<b>2,008.6</b>	<b>2,008.6</b>	<b>8,034.4</b>	<b>7,128.2</b>	
<b>Net benefit</b>	<b>-97.5</b>	<b>-29.0</b>	<b>-29.0</b>	<b>-29.0</b>	<b>-29.0</b>	<b>-213.5</b>	<b>-197.1</b>	

Source: [Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill, Explanatory Memorandum](#), para 70, 3 December 2012, [accessed 5 December 2012]

Note: The Welsh Government costs comprise of £82,500 for system developments and £5,000 for training. The system development costs are based on assumptions outlined in the EM (para 79), if fewer system amendments were required this cost would reduce substantially

The EM states that:

Each option has a negative net present value showing the costs to society of the proposed legislation outweigh the financial benefits. The negative NPV reflects the transitional and administrative costs of the scheme. Although each option has a negative NPV (...) making the liable party pay mesothelioma victims' treatment costs represents a more equitable outcome than the NHS having to meet the costs<sup>7</sup>.

## 5. Key Issues

### *Use of recovered funds*

The Bill is not prescriptive when it comes to the matter of where the recovered medical costs will go. The Bill states that the money would go to the Welsh Ministers, with the EM explaining:

**The 2003 Act requires recovered NHS charges to be paid over to the hospital or ambulance trust that provided the treatment or services in question (section 162). That approach is considered too prescriptive in the context of this Bill.** Instead the recovered sums will be returned to the Welsh Ministers to be retained. Within the Annual Budget Motion, allocation of income for the recovered costs to the Department for Health, Social Services and Children Main Expenditure Group (MEG) would be sought, and for allocation of resources to the same MEG for the provision of services to asbestos victims and their families<sup>8</sup>.

[My emphasis]

Though the EM states that the recovered costs could be used “for the general benefit of asbestos victims and their families”, there will be no compulsion for this to happen. On this topic, section 16 of the Bill states:

The Welsh Ministers must **have regard to the desirability** of securing that an amount equal to that reimbursed by virtue of section 2 is applied, in accordance with the National Health Service (Wales) Act 2006, for the purposes of treatment of, or other services relating to, asbestos-related diseases.<sup>9</sup>

[My emphasis]

<sup>7</sup> [Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill, Explanatory Memorandum](#), para 121, 3 December 2012, [accessed 5 December 2012]

<sup>8</sup> [Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill, Explanatory Memorandum](#), para 40, 3 December 2012, [accessed 5 December 2012]

<sup>9</sup> [Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill](#), 3 December 2012, paragraph 16 [accessed 5 December 2012]

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### *Amount of net recovered income*

The figure for net recovered income in the EM is **based solely on looking at the anticipated number of mesothelioma claims** and settlements in Wales; it is assumed there will be 80 cases per year<sup>10</sup>. When the full range of asbestos-related diseases covered by the Bill is included we would therefore expect the annual net recovered income to be higher. **The EM does not make it clear how much higher this figure could be expected to be.**

Whilst considering the net recovered income the scheme would generate, the EM notes that the costs of NHS treatment for **11 patients** who had been diagnosed with mesothelioma ranged from £6,870 to £53,035. This is a small sample size and the EM states that **additional research** will be commissioned to develop a **tariff of charges** that relate directly to asbestos related diseases.

### *Impact on employers and insurance companies*

It is not clear what assessment has made of the overall benefit to taxpayers given that **insurance companies may respond by increasing premiums** to cover the costs associated with this Bill.

It is also not apparent if any assessment of the potential difficulties in recovering costs from companies and insurers based overseas has been factored into the costs and benefits.

### *Administration costs*

The assumptions on how the administrative costs in options 2.i, 2.ii and 2.iii have been calculated are not clear. Given that the preferred option is particularly sensitive to an increase in the cost of redeveloping the CRU system (£82,500) it would be helpful to know if this is the minimum or maximum cost.

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<sup>10</sup> [Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill, Explanatory Memorandum](#), para 68, 3 December 2012, [accessed 5 December 2012]