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Recovery of Medical Costs for Asbestos Diseases (Wales) Bill

[AS PASSED]

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Recovery of Medical Costs for Asbestos Diseases (Wales) Bill

[AS PASSED]

An Act of the National Assembly for Wales to make provision for and in connection with the recovery by the Welsh Ministers of the cost of providing services under the National Health Service for persons suffering from asbestos-related diseases.

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:-

Introduction

1 Overview

This Act—

- (a) imposes liability on persons by whom or on whose behalf compensation payments are made to or in respect of victims of asbestos-related diseases to pay charges in respect of National Health Service services provided to the victims as a result of the diseases;
- (b) makes provision for the certification of the amount of the charges to be paid, for the payment of the charges, for reviews and appeals and about information;
- (c) extends insurance cover of liable persons to their liability to pay the charges.

Liability to pay for NHS services

2 Liability to pay charges

- (1) Where a compensation payment is made to or in respect of a person (the “victim”) in consequence of any asbestos-related disease suffered by the victim, the person who is, or is alleged to be, liable to any extent in respect of the asbestos-related disease and by whom or on whose behalf the compensation payment is made is liable to reimburse the Welsh Ministers in respect of any relevant Welsh NHS services provided to the victim as a result of the asbestos-related disease.
- (2) The amount which the person is liable to reimburse is the amount of the appropriate charges.

3 Meaning of main terms

- (1) In this Act “compensation payment”, in relation to an asbestos-related disease, means a payment made (after the coming into force of this section) by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the asbestos-related disease, other than an excluded payment.

- (2) A payment may be a compensation payment –
 - (a) whether it is made in money or money’s worth,
 - (b) whether it is made with or without an admission of liability,
 - (c) whether it is made voluntarily, in pursuance of a court order or an agreement, or otherwise,
 - (d) whether it is made in the United Kingdom or elsewhere, and
 - (e) whether any claim for it was made before or after the coming into force of this section.
- (3) In this Act “asbestos-related disease” means –
 - (a) asbestosis (a non-malignant scarring of the lung tissue),
 - (b) mesothelioma (a form of cancer mainly affecting the lining of the lungs),
 - (c) asbestos-related lung cancer, or
 - (d) pleural thickening (a non-malignant form of asbestos-related pleural disease),(whether caused or discovered before or after the coming into force of this section) and includes any psychological effects of any of those illnesses.
- (4) In this Act “appropriate charges” means the amount or amounts specified in a certificate which is issued, in respect of the victim, to the person making the compensation payment and which is in force.
- (5) In this Act “relevant Welsh NHS services” means treatment or other services to the extent that they are provided, secured, commissioned or funded under the National Health Service (Wales) Act 2006 (“the 2006 Act”) at any time after the coming into force of this section, other than excluded services.
- (6) In subsection (5) “excluded services” means –
 - (a) services provided by virtue of Part 4, 5 or 6 of the 2006 Act (primary medical, dental and ophthalmic services),
 - (b) services provided by virtue of paragraph 15 of Schedule 2 to, or paragraph 11 of Schedule 5 to, the 2006 Act (accommodation and services for private patients), and
 - (c) services provided by virtue of section 198 of the 2006 Act (use of national health service accommodation or facilities in private practice).
- (7) The Welsh Ministers may by regulations amend the meaning of “excluded services”.
- (8) In subsections (5) and (6) references to services includes accommodation, facilities, and drugs, medicines, appliances and other goods, used or supplied in connection with services.

4 Excluded payments

- (1) In this Act “excluded payment” means a payment mentioned in the Schedule.

- (2) Regulations may amend the Schedule by omitting or modifying any payment for the time being specified in it.
- (3) Regulations may amend the Schedule by adding any payment of a prescribed description, either generally or in prescribed circumstances.

Certificates of charges

5 Applications for certificates etc

- (1) Before a person makes a compensation payment to a victim in consequence of an asbestos-related disease suffered by a victim, the person may apply to the Welsh Ministers for a certificate.
- (2) A person who has made a compensation payment in consequence of an asbestos-related disease suffered by a victim must, within the prescribed period beginning with the day on which the compensation payment is made, apply to the Welsh Ministers for a certificate if—
 - (a) at the time the payment is made no certificate has been issued to the person in respect of the victim, or any certificate which has been issued to the person in respect of the victim is no longer in force, and
 - (b) no application for a certificate in respect of the victim has been made by the person during the prescribed period ending immediately before the day on which the compensation payment is made.
- (3) If the Welsh Ministers receive an application under subsection (1) or (2) they must arrange for a certificate to be issued as soon as is reasonably practicable.
- (4) A certificate may provide that it is to remain in force—
 - (a) until a specified date,
 - (b) until the occurrence of a specified event, or
 - (c) indefinitely.
- (5) A person may apply under subsection (1) for a fresh certificate from time to time.
- (6) The Welsh Ministers are not required by subsection (3) to arrange for a fresh certificate to be issued to a person applying under subsection (5) if, when the application is received, a certificate issued to the applicant in respect of the victim is still in force; but the Welsh Ministers may arrange for a fresh certificate to be issued so as to have effect on the expiry of the current certificate.
- (7) If a certificate expires, the Welsh Ministers may arrange for a fresh certificate to be issued without an application having to be made.
- (8) An application for a certificate must be made in the prescribed manner.

6 Information contained in certificates

- (1) A certificate must specify the amount or amounts for which the person to whom it is issued is liable under section 2.
- (2) The amount or amounts to be specified must be as set out in, or determined in accordance with, regulations.

- (3) If a certificate relates to a claim made by or on behalf of a victim –
- (a) in respect of which a court (in any country or territory) has ordered a reduction of damages to reflect the victim’s share in the responsibility for the asbestos-related disease, or
 - (b) which has been settled or agreed on a basis which specifies that damages are reduced to reflect such a share in that responsibility,
- the amount or amounts specified in the certificate must, except in such circumstances as may be prescribed, be such as would be so specified apart from this subsection, reduced in the same proportion as the reduction of damages.
- (4) If a certificate relates to a victim to whom no relevant Welsh NHS services are provided as a result of the asbestos-related disease suffered by the victim, it must indicate that no amount is payable under section 2.
- (5) Regulations under subsection (2) may, in particular, provide –
- (a) that the amount, or the aggregate amount, specified in a certificate is not to exceed a prescribed amount;
 - (b) for different amounts to be specified in respect of different circumstances;
 - (c) for cases in which a victim is provided with relevant Welsh NHS services at more than one place;
 - (d) for cases in which liability under section 2 is apportioned between two or more persons making compensation payments to or in respect of the same victim in respect of the same asbestos-related disease;
 - (e) for cases in which a fresh certificate is issued or a certificate is revoked as a result of a review under section 9 or an appeal under section 10 or 11;
 - (f) for any matter requiring determination under or in consequence of the regulations to be determined by the Welsh Ministers.
- (6) Regulations under subsection (2) which provide for cases mentioned in subsection (5)(d) may modify this Act and may (among other things) provide in the case of each compensator for –
- (a) determining, or re-determining, the amount for which the compensator is liable under section 2,
 - (b) giving credit for amounts already paid, and
 - (c) the payment by any person of any balance or the recovery from any person of any excess.
- (7) Regulations under subsection (2) which provide for cases mentioned in subsection (5)(e) may (among other things) provide in the case of any compensator for –
- (a) giving credit for amounts already paid, and
 - (b) the payment by any person of any balance or the recovery from any person of any excess.

- (8) A person to whom a certificate is issued is entitled to such particulars of the manner in which any amount specified in the certificate has been determined as may be prescribed if the person applies to the Welsh Ministers for those particulars.
- (9) Regulations under subsection (2) may be made so as to apply to any certificate issued after the time when the regulations come into force, other than one relating to a compensation payment made before that time.

Payment of charges

7 Time for payment of charges

- (1) If the certificate by reference to which an amount payable under section 2 is determined is issued before the settlement date, that amount must be paid before the end of the period of 14 days beginning with the settlement date.
- (2) If the certificate by reference to which an amount payable under section 2 is determined is issued on or after the settlement date, that amount must be paid before the end of the period of 14 days beginning with the day on which the certificate is issued.
- (3) In this section “the settlement date” means the date on which the compensation payment is made.
- (4) This section is subject to section 8(2).

8 Recovery of charges

- (1) This section applies if a person has made a compensation payment and either –
 - (a) subsection (2) of section 5 applies but the person has not applied for a certificate as required by that subsection, or
 - (b) the person has not made payment, in full, of any amount due under section 2 by the end of the period allowed under section 7.
- (2) The Welsh Ministers may –
 - (a) in a case within subsection (1)(a), issue the person who made the compensation payment with a certificate, or
 - (b) in a case within subsection (1)(b), issue the person who made the compensation payment with a copy of the certificate or (if more than one has been issued) the most recent one,

and, in either case, issue the person with a demand that payment of any amount due under section 2 be made immediately.

- (3) The Welsh Ministers may recover the amount for which a demand for payment is made under subsection (2) from the person who made the compensation payment.
- (4) If a county court so orders the amount demanded is recoverable under section 85 of the County Courts Act 1984 or otherwise as if it were payable under an order of that court.
- (5) A document which states that it is a record of the amount recoverable under subsection (3) is conclusive evidence that the amount is so recoverable if it is signed by a person authorised to do so by the Welsh Ministers.

- (6) For the purposes of subsection (5) a document purporting to be signed by a person authorised to do so by the Welsh Ministers is to be treated as so signed unless the contrary is proved.

Reviews and appeals

9 Reviews of certificates

- (1) The Welsh Ministers must review a certificate issued by them if the certificate relates to a claim mentioned in section 6(3) and notice of the order, settlement or agreement in question has been given to the Welsh Ministers in the prescribed manner.
- (2) The Welsh Ministers may review a certificate issued by them –
- (a) either within the prescribed period or in prescribed cases or prescribed circumstances, and
 - (b) either on application made for the purpose or on their own initiative.
- (3) On a review under this section the Welsh Ministers may –
- (a) confirm the certificate,
 - (b) issue a fresh certificate containing such variations as they consider appropriate, or
 - (c) revoke the certificate.

10 Appeals against certificates and waiver decisions

- (1) An appeal against a certificate may be made by the person to whom the certificate was issued on one or more of the following grounds –
- (a) that an amount specified in the certificate is incorrect,
 - (b) that an amount so specified takes into account something that is not relevant Welsh NHS services, or
 - (c) that the payment on the basis of which the certificate was issued is not a compensation payment.
- (2) No appeal may be made until –
- (a) the claim against the person to whom the certificate was issued, which gives rise to the compensation payment, has been finally disposed of, and
 - (b) payment of the amount (or amounts) specified in the certificate has been made to the Welsh Ministers (but subject to subsection (4) and section 11(5)).
- (3) For the purposes of subsection (2)(a), if an award of damages in respect of a claim has been made under or by virtue of –
- (a) section 32A(2)(a) of the Senior Courts Act 1981, or
 - (b) section 51(2)(a) of the County Courts Act 1984,
- (orders for provisional damages in personal injury cases), the claim is to be treated as having been finally disposed of.

- (4) The Welsh Ministers may, on an application by the person to whom the certificate was issued, waive the requirement in subsection (2)(b) that payment of the amount (or amounts) specified in the certificate be made before making an appeal.
- (5) The Welsh Ministers may grant a waiver only if it appears to them that payment of the amount (or amounts) specified in the certificate would cause exceptional financial hardship.
- (6) An appeal against a decision of the Welsh Ministers on an application under subsection (4) (a “waiver decision”) may be made by the person to whom the certificate was issued.
- (7) Regulations may make provision—
 - (a) as to the manner in which an application under subsection (4) may be made;
 - (b) as to the manner in which, and the time within which, an appeal to the Welsh Ministers against a certificate or waiver decision may be made;
 - (c) as to the procedure to be followed on the making to the Welsh Ministers of an appeal against a certificate or waiver decision;
 - (d) for the purpose of enabling the Welsh Ministers to treat an appeal to them against a certificate as an application for a review under section 9.

11 Appeals to tribunal

- (1) The Welsh Ministers must refer to the First-tier Tribunal an appeal against—
 - (a) a certificate, or
 - (b) a waiver decision.
- (2) In determining an appeal against a certificate, the tribunal must take into account any decision of a court relating to the same, or any similar, issue arising in connection with the asbestos-related disease in question.
- (3) On an appeal against a certificate, the tribunal may—
 - (a) confirm the amount or amounts specified in the certificate,
 - (b) specify any variations which are to be made on the issue of a fresh certificate under subsection (4), or
 - (c) declare that the certificate is to be revoked.
- (4) When the Welsh Ministers have received the decision of a tribunal on an appeal against a certificate, they must (in accordance with that decision)—
 - (a) confirm the certificate,
 - (b) issue a fresh certificate, or
 - (c) revoke the certificate.
- (5) On an appeal against a waiver decision, the tribunal may—
 - (a) confirm the decision, or
 - (b) waive the requirement in question.

Miscellaneous

12 Provision of information

- (1) If compensation is sought in consequence of an asbestos-related disease suffered by a victim such information with respect to the circumstances of the case as may be prescribed must be given by the following persons to the Welsh Ministers –
 - (a) the person against whom the claim is made and anyone acting on behalf of that person, whether or not proceedings have been commenced;
 - (b) any other person, or anyone acting on behalf of any other person, who is, or is alleged to be, liable to any extent in respect of the disease;
 - (c) the victim or, if the victim has died, the victim’s personal representatives or anyone acting on behalf of the victim or the victim’s personal representatives;
 - (d) if the claim is not made by the victim, the person by whom it is made or anyone acting on behalf of that person;
 - (e) the persons responsible for any institution or organisation by which relevant Welsh NHS services are provided to the victim in respect of the asbestos-related disease.
- (2) A person who is required to give information under this section must do so –
 - (a) in the prescribed manner, and
 - (b) within the prescribed period.
- (3) Regulations under this section may, in particular, require the provision of information about any relevant Welsh NHS services provided to a victim in respect of asbestos-related disease.

13 Regulations governing lump sums, periodical payments etc

- (1) Regulations may make provision (including provision modifying the operation of this Act) –
 - (a) for cases to which section 2 applies in which two or more compensation payments in the form of lump sums are made by the same person in respect of an asbestos-related disease;
 - (b) for cases to which section 2 applies in which an agreement is entered into for the making of –
 - (i) periodical compensation payments (whether of an income or capital nature), or
 - (ii) periodical compensation payments and lump sum compensation payments;
 - (c) for cases in which the compensation payment to which section 2 applies is an interim payment of damages which a court orders to be repaid.
- (2) Regulations under subsection (1)(a) may, in particular, provide –
 - (a) for giving credit for amounts already paid, and

- (b) for the payment by any person of any balance or the recovery from any person of any excess.
- (3) Regulations may make provision modifying the application of this Act in relation to cases in which a payment into court is made and, in particular, may provide—
 - (a) for the making of a payment into court to be treated in prescribed circumstances as the making of a compensation payment, and
 - (b) for application for, and issue of, certificates.

14 Liability of insurers

- (1) Where the liability or alleged liability of the person by whom or on whose behalf a compensation payment is made is, or (if established) would be, covered to any extent by a policy of insurance, the policy is to be treated as covering the person's liability under section 2.
- (2) Liability imposed on the insurer by subsection (1) cannot be excluded or restricted.
- (3) For that purpose excluding or restricting liability includes—
 - (a) making the liability or its enforcement subject to restrictive or onerous conditions,
 - (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
 - (c) excluding or restricting rules of evidence or procedure.
- (4) Regulations may in prescribed cases limit the amount of any liability imposed on an insurer by subsection (1).
- (5) This section applies in relation to policies of insurance issued before (as well as those issued after) the date on which this section comes into force.
- (6) References in this section to policies of insurance and their issue include references to contracts of insurance and their making.

15 Use of amounts reimbursed

- (1) The Welsh Ministers must, in the exercise of their functions under the National Health Service (Wales) Act 2006, have regard to the desirability of securing that an amount equal to that reimbursed by virtue of section 2 is applied, in accordance with that Act, for the purposes of research into, treatment of, or other services relating to, asbestos-related diseases.
- (2) The Welsh Ministers must report annually to the National Assembly for Wales on the application of amounts equal to sums reimbursed by virtue of section 2.

Miscellaneous and general

16 Crown application

This Act binds the Crown.

17 Order and regulations

- (1) Any power to make orders or regulations under this Act is exercisable by the Welsh Ministers.
- (2) Any order or regulations under this Act—
 - (a) may make different provision for different purposes, and
 - (b) may make incidental, supplementary, consequential, transitory or transitional provision.
- (3) Any power to make regulations under this Act (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.
- (4) Any power to make an order or regulations under this Act is exercisable by statutory instrument.
- (5) The following regulations—
 - (a) regulations under section 3(7),
 - (b) regulations under section 4(2),
 - (c) the first regulations under section 6(2), and
 - (d) the first regulations under section 10(7),

may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the National Assembly for Wales.

- (6) A statutory instrument containing any other regulations under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

18 Interpretation

In this Act—

“2006 Act” (*“Deddf 2006”*) means the National Health Service (Wales) Act 2006;

“appropriate charges” (*“ffioedd priodol”*) has the meaning given in section 3(4);

“asbestos-related disease” (*“clefyd sy'n ymwneud ag asbestos”*) has the meaning given in section 3(3);

“certificate” (*“tystysgrif”*) means a certificate under this Act;

“compensation payment” (*“taliad digolledu”*) has the meaning given in section 3(1) and (2);

“excluded payment” (*“taliad a eithrir”*) has the meaning given by section 4 (and the Schedule);

“prescribed” (*“rhagnodedig”* and *“a ragnodir”*) means prescribed by regulations;

“relevant Welsh NHS services” (*“gwasanaethau perthnasol GIG Cymru”*) has the meaning given in section 3(5) to (8);

“victim” (*“dioddefwr”*) has the meaning given by section 2;

“waiver decision” (*“penderfyniad hawlildio”*) has the meaning given by section 10(6).

19 Commencement

- (1) Section 1, this section, section 20 and the powers conferred by this Act to make regulations come into force on the day after the day on which this Act receives Royal Assent.
- (2) Subject to subsection (1), this Act comes into force in accordance with provision made by order.

20 Short title

The short title of this Act is the Recovery of Medical Costs for Asbestos Diseases (Wales) Act 2013.

SCHEDULE
(Introduced by section 4)

EXCLUDED PAYMENTS

- 1 Any payment made by the Secretary of State under the Pneumoconiosis etc (Workers' Compensation) Act 1979 or Part 4 of the Child Maintenance and Other Payments Act 2008.
- 2 Any payment made to or for the victim under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders against convicted persons).
- 3 Any payment made in the exercise of a discretion out of property held subject to a trust in a case where no more than 50 per cent by value of the capital contributed to the trust was directly or indirectly provided by persons who are, or are alleged to be, liable in respect of—
 - (a) the asbestos-related disease suffered by the victim, or
 - (b) any related disease suffered by another.
- 4 Any payment made out of property held for the purposes of a prescribed trust.
- 5 (1) Any payment made to the victim by an insurer under the terms of any contract of insurance entered into by the victim and the insurer.
(2) In sub-paragraph (1) "insurer" means—
 - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance, or
 - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance.
- (3) Sub-paragraph (2) is to be read with—
 - (a) section 22 of the Financial Services and Markets Act 2000,
 - (b) any relevant order under that section, and
 - (c) Schedule 2 to that Act
- 6 Any payment to the extent that it is made—
 - (a) in consequence of the Fatal Accidents Act 1976, or
 - (b) in circumstances where, had an action been brought, it would have been brought under that Act.