

Damages (Asbestos-Related Conditions)(Scotland) Bill

Bill Number:	SP Bill 12
Introduced on:	23 June 2008
Introduced by:	Kenny MacAskill MSP
Passed:	11 March 2009
Royal Assent:	17 April 2009

Passage of the Bill

The [Damages \(Asbestos-Related Conditions\) \(Scotland\) Bill](#) [SP Bill 12] was introduced in the Parliament on 23 June 2008. The Justice Committee, as lead committee, took oral evidence at stage 1 on the general principles of the Bill at two meetings in September 2008. The [stage 1 debate](#) took place on 5 November 2008. [Stage 2](#) consideration of amendments was completed by the Justice Committee on 2 December 2008. Five amendments were lodged at this stage. The [stage 3 debate](#) took place on 11 March 2009 when the Bill was passed by the Parliament. Nine amendments were lodged at stage 3.

Purpose and objectives of the Bill

The purpose of the Bill is to ensure that people who are negligently exposed to asbestos in Scotland and go on to develop certain asymptomatic asbestos-related conditions can continue to seek financial compensation for their condition.

The Bill will ensure that a House of Lords judgement in 2007 (*Johnston v NEI International Combustion Ltd*), which ruled that those with asymptomatic pleural plaques are not entitled to claim compensation, is not applied in Scotland.

The asbestos-related conditions covered by the Bill are pleural plaques, pleural thickening and asbestosis.¹

Provisions of the Bill

The Bill has five sections. The first section provides that asbestos-related pleural plaques are an actionable personal injury. Section two has similar effect for asbestos-related pleural thickening and asbestosis. Section 3 provides that claims for these asbestos related conditions do not become

¹ The pleura is a thin membrane covering the lungs and lining the inside of the chest walls.

time-barred during the period between the date of the House of Lords judgment (17 October 2007) and the date the Act comes into force. Section 4 sets out the provisions for commencement and retrospection and section 5 gives the short title of the Act and provides that the Act binds the Crown.

Parliamentary consideration

In its stage 1 report, the Justice Committee accepted that the Bill represents a departure from the established principles of delict in Scotland. However, it did not accept that the Bill would overturn or undermine this law generally as it is expressly restricted to asbestos related conditions.

In relation to the potential cost of the Bill, the Committee noted that there was a considerable divergence in the figures provided by the Scottish Government and Thompsons Solicitors, on the one hand, and those provided by the insurance industry, on the other, regarding the number of pleural plaques claims likely to arise in Scotland in any given year. The Committee invited the Scottish Government to give further consideration to the figures it presented in the Financial Memorandum and to provide the Parliament with a reassurance that the figures represent a fair indication of the likely costs of the Bill. The Committee also sought greater clarity on the Statement of Funding Policy. The Scottish Government subsequently provided a reassessment of the financial implications of the Bill based on a re-examination of existing data, material that had come to light since the Bill was introduced and other, new material.

Five amendments were lodged at stage 2 (by Bill Butler MSP, supported by Robert Brown MSP). Mr Butler argued that the purpose of his amendments was to achieve the Scottish Government's policy objective in a clearer, more direct and more economical way and in a way that would not give rise to unnecessary questions for the court. In speaking to his amendments, Mr Butler expressed doubt that the Bill, as drafted, would actually entitle the victims to claim damages for asbestos-related conditions. In particular, Mr Butler argued that the Bill, as drafted, did not make it sufficiently clear that pleural plaques are a personal injury that cause actionable damage for the purposes of the law of delict. In response, the Minister for Community Safety (Fergus Ewing) argued that the amendments would introduce weaknesses that may unintentionally defeat the objectives of the Bill. Nonetheless, the Minister indicated that he would seek further discussions on the matter with relevant stakeholders before stage 3. The amendments were not pursued.

At stage 3, government amendments were lodged to meet the Scottish Government's concerns and those articulated at stage 2 by Bill Butler and Robert Brown. In addition, an amendment was lodged by Derek Brownlee MSP which sought to ensure that the projected costs of the Bill are monitored after royal assent and that explanations are provided for any significant variance. Following debate this amendment was withdrawn. After debate, the Bill (as amended) was agreed to by division (the Conservative's voted against).

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