

# Estimates of the impact of extending the scope of the payment scheme in the Mesothelioma Bill to include other asbestos related diseases and other non-asbestos work related diseases

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# Introduction

1. This publication uses a methodology similar to that used in the Mesothelioma Bill Impact Assessment<sup>1</sup> to estimate the impact of expanding the scope of the Mesothelioma Bill to include other asbestos related diseases and other non-asbestos work related diseases.
2. For the purposes of these estimates, other asbestos related diseases are defined as asbestos related lung cancer, asbestosis (a form of pneumoconiosis) and non-malignant pleural disease.
3. For the purposes of these estimates, other work related non-asbestos diseases are defined as all other work related cancers<sup>2</sup>, pneumoconiosis and a number of other diseases (including include Farmer's lung, Cadmium poisoning, Occupational Asthma, and Chronic bronchitis and/or emphysema).

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<sup>1</sup> Published on 7<sup>th</sup> May 2013: <https://www.gov.uk/government/publications/impact-assessment-mesothelioma-payment-scheme-and-mandatory-membership-of-employer-liability-tracing-office-elto>

<sup>2</sup> <http://www.hse.gov.uk/statistics/causdis/cancer/cancer.pdf>

# Background

## The Mesothelioma Bill

4. The Mesothelioma Bill sets up a payment scheme that will be funded by public money to be raised through a levy imposed on insurers currently selling Employers' Liability (EL) Insurance. The payment scheme will make payments to eligible people with diffuse mesothelioma ('sick person') or to an eligible dependant if that person has died. A sick person will be eligible for a payment if certain eligibility criteria are met. A sick person will be eligible where a 'relevant employer'<sup>3</sup> exposed them to asbestos as a result of negligence or breach of statutory duty; they were diagnosed on or after 25 July 2012; they have not brought an action against the employer or the employer's EL insurer for damages and are unable to do so; and they have not received damages or a specified payment in respect of the disease and are not eligible to receive a specified payment. The payments will be made on a tariff basis that will equate broadly to a percentage of 'average civil compensation'<sup>4</sup> and linked to the age of the person when diagnosed with diffuse mesothelioma (or linked to age at death if sooner).
5. The scheme is necessary because of the problems that many individuals have in tracing a liable employer or their employer's EL insurer against whom to bring a claim for damages. This is in part due to the long gap between exposure to asbestos and being diagnosed with diffuse mesothelioma, and in part due to poor standards of record keeping by the insurance industry. Work has been done on the part of the industry to improve record keeping and record tracing, but there still remains a group of people who cannot make a claim for damages because no liable party can be traced, and it is these people that the scheme aims to assist.

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<sup>3</sup> A relevant employer is defined by clause 2(2) of the Mesothelioma Bill as:

'... an employer who, at the time of the person's exposure to asbestos.

(a) was required by the compulsory insurance legislation to maintain insurance covering any liability arising because of the exposure to asbestos, or

(b) would have been required by the compulsory insurance legislation to maintain insurance covering any liability arising because of the exposure to asbestos if the legislation had been in force at that time'.

<sup>4</sup> 'Average civil compensation' is based upon a survey of civil compensation awarded in cases registered with the Compensation Recovery Unit between 2007 and 2012. Each civil case is decided upon its own merits, with a wide range of factors being taken into account. Therefore, this average should not be taken as indicative of what any particular individual might expect to receive.

## **The Mesothelioma Bill Impact Assessment**

6. The Mesothelioma Bill Impact Assessment was published on 7<sup>th</sup> May 2013.
7. The estimates in the Impact Assessment (IA) are based on a forecast of mesothelioma deaths. A number of assumptions are used to determine the proportion of those with diffuse mesothelioma that will apply to the new Diffuse Mesothelioma Payment Scheme (DMPS) and the proportion of those who will be successful in their application for a scheme payment.
8. Under option 2 of the IA, we have assumed that 14 per cent of those with diffuse mesothelioma will apply to the scheme and 90 per cent of applicants will be successful in receiving a payment from the scheme.
9. The IA estimates that over 10 years 3,500 people with mesothelioma who have been exposed to asbestos by their employer, negligently or in breach of statutory duty will receive scheme payments. The levy on insurers over this period is estimated to be £322 million<sup>5</sup>.

## **Methodology**

### **Data sources**

10. The analyses presented in this publication have been based on data on those with industrial diseases published on the Health and Safety Executive (HSE) website<sup>6</sup>. This includes research and medical evidence collected by the HSE and information on claimants in receipt of Industrial Injuries Disablement Benefit (IIDB), although the latter can only relate to claims rather than national incidence. See Table 1 below for the exact figures and sources used in the analyses.
11. Estimates of other lung cancer deaths are not based on death certificates as in the case of mesothelioma. The number of asbestos related lung cancer deaths has been estimated by the HSE based on research published in 2005<sup>7</sup>.

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<sup>5</sup> This is different from the figure in the published Impact Assessment (£339 million) due to using £2,000 as the assumption for the contribution towards applicant legal fees.

<sup>6</sup> <http://www.hse.gov.uk/statistics/causdis/index.htm>

<sup>7</sup> Darnton AJ, McElvenny D M, Hodgson JT (2005). Estimating the number of asbestos related lung cancer deaths in Great Britain from 1980-2000. *Annals of Occupational Hygiene* 50(1): 29-38.

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**Table 1: Annual estimates of the volume sufferers of industrial disease**

Other asbestos related diseases	Annual estimate	Source
Estimated Asbestos related lung cancer deaths (2010)	2,000	Second row: <a href="http://www.hse.gov.uk/statistics/causdis/asbestos.htm">http://www.hse.gov.uk/statistics/causdis/asbestos.htm</a>
Newly assessed cases of asbestosis (IIDB 2011)	725	Fourth row: <a href="http://www.hse.gov.uk/statistics/causdis/asbestos.htm">http://www.hse.gov.uk/statistics/causdis/asbestos.htm</a>
Non-malignant pleural disease	821	Sixth row: <a href="http://www.hse.gov.uk/statistics/causdis/asbestos.htm">http://www.hse.gov.uk/statistics/causdis/asbestos.htm</a>
<b>Total Asbestos related diseases</b>	<b>3,546</b>	
Other work related cancers	3,653	Calculation (1)
Pneumoconiosis	320	Calculation (2)
Other prescribed diseases (IIDB)	215	Calculation (3)
<b>Total Non-asbestos related diseases</b>	<b>4,188</b>	

**Notes:**

1. *Calculation 1:* The HSE estimate 8,000 work related cancer deaths in a year<sup>8</sup>. Subtracting the number of mesothelioma deaths (2,347<sup>9</sup>) and the number of asbestos related lung cancer deaths (2,000<sup>10</sup>) from the estimate of 8,000 gives an estimate of 3,653 other work related cancer deaths.
2. *Calculation 2:* Total number of IIDB pneumoconiosis cases (1045<sup>11</sup>) minus IIDB asbestosis cases (725<sup>12</sup>) gives an estimate of the number of non-asbestos related pneumoconiosis cases.
3. *Calculation 3:* The other diseases group<sup>13</sup> is the sum of cases in receipt of IIDB for the following diseases: Farmer's lung, Cadmium poisoning, occupational asthma, and chronic bronchitis and/or emphysema.

**Analytical assumptions and methodology**

12. The analysis is based on the methodology used in the IA and the analysis treats individuals that have contracted or died from other work related diseases the same as those that have died from mesothelioma. In the

<sup>8</sup> <http://www.hse.gov.uk/statistics/causdis/cancer/index.htm>

<sup>9</sup> Row 1 of the table <http://www.hse.gov.uk/statistics/causdis/asbestos.htm>

<sup>10</sup> Row 2 of the table <http://www.hse.gov.uk/statistics/causdis/asbestos.htm>

<sup>11</sup> Cell AR14 <http://www.hse.gov.uk/statistics/tables/iidb05.xls>

<sup>12</sup> Fourth row of the table <http://www.hse.gov.uk/statistics/causdis/asbestos.htm>

<sup>13</sup> Cells AR8,11, 17, 25 <http://www.hse.gov.uk/statistics/tables/iidb05.xls>

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absence of evidence, we have used the same proportion of those with diffuse mesothelioma that will be eligible to apply for a payment under the scheme as the IA (14 per cent).

13. The analysis assumes the same success rate (90 per cent) as for applicants in mesothelioma cases. Diseases where a causal occupational link may be more difficult to establish may have a lower success rate. However, evidence for diseases other than mesothelioma is not available at present.
14. The analysis assumes a fixed number of deaths and individuals with a particular disease for each of the 10 years, as forecasts for other deaths and/or disease incidence are not available.
15. The payment individuals are likely to receive from the mesothelioma scheme is roughly 70% of average civil compensation<sup>14</sup>. Based on the changing age profile over the ten-year period the average payment including government social security benefits and lump sum payments is roughly £87,000. If an individual has already received a recoverable social security benefit or a payment under the 1979 Act or 2008 scheme, this will be recovered from the substantially higher amount to be paid under the Diffuse Mesothelioma Payment Scheme.
16. Mesothelioma has specific characteristics and many of the diseases covered in this note may not share those characteristics. However, in the absence of other evidence, it is assumed that individuals with the other diseases included in this analysis would receive the same scheme payment as an individual with mesothelioma. In addition, it is assumed that the Government will be able to recover the same amount of social security benefits and lump sum payments. Mesothelioma has specific characteristics and sufferers may be entitled to different government social security benefit payments and lump sum payments. Many of the diseases covered in this note may not share these characteristics, and their occurrence, severity and progression may vary depending on the heaviness of exposure to asbestos.
17. Of the asbestos related cancers, many mesothelioma cases are now compensated through government social security and lump sum payments, but it is likely that only a small proportion of cases of asbestos-related lung cancer are compensated through government social security and lump sum payments. This is despite recent changes to the eligibility criteria Industrial Injuries Disablement Benefit (IIDB) because of the range of different causes of lung cancer that may mask an asbestos cause. Lower

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<sup>14</sup> Average civil compensation is based upon a survey of civil compensation awarded in cases registered with the Compensation Recovery Unit between 2007 and 2012. Each civil case is decided upon its own merits, with a wide range of factors being taken into account. Therefore, this average should not be taken as indicative of what any particular individual might expect to receive.

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figures based on IIDB payments and THOR<sup>15</sup> illustrates the difficulty in attributing individual cases to occupational causes such as asbestos.

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<sup>15</sup> Specialist physicians in the UK have been reporting work-related ill health, including occupational cancer to The Health and Occupation Research Network (THOR)  
[www.medicine.manchester.ac.uk/oeh/research/thor/](http://www.medicine.manchester.ac.uk/oeh/research/thor/) .



# Results

**Table 2: Estimated impacts of the payment scheme for mesothelioma sufferers provided for by the Mesothelioma Bill and the impacts if other asbestos related diseases and other work related diseases were also included, over the 10 years of the Impact Assessment (April 2014 to March 2024).**

	<b>Number of successful applicants</b>	<b>Cumulative Total</b>	<b>Total Levy on insurers</b>	<b>Cumulative Total</b>
			£million (2012 values)	£million (2012 values)
Mesothelioma Bill scheme	3,500	3,500	£ 322	£ 322
Other asbestos related diseases	5,100	8,600	£ 478	£ 800
Other non-asbestos work related diseases	6,100	14,700	£ 564	£ 1,364

**Notes:**

1. All monetary figures are in £million and rounded to the nearest million. All monetary figures in 2012 values.
2. Number of successful applicants has been rounded to the nearest 100.
3. Totals may not sum due to rounding.
4. All estimates are based on the assumption of a contribution of £2,000 towards applicant legal fees.

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