

**Evidence for the Justice Committee of the Scottish
Parliament**

Damages (asbestos-related conditions) (Scotland) Bill



From the Association of Personal Injury Lawyers (APIL)

August 2008

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation, formed by pursuers' lawyers with a view to representing the interests of personal injury victims. APIL currently has more than 170 members in Scotland. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured people.

The aims of APIL are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in the preparation of this evidence:

Ruth Martin	-	APIL Member
David Short	-	Secretary, APIL Scotland
David Sandison	-	APIL Member
Allan Gore QC	-	Past President, APIL
Karl Tonks	-	Executive Committee Member, APIL

Any enquiries in respect of this evidence should be addressed, in the first instance, to:

Lorraine Gwinnutt
Head of Communications
APIL, 11 Castle Quay, Nottingham NG7 1FW

Email: lorraine.gwinnutt@apil.org.uk
Tel: 0115 938 8707

General points

APIL welcomes the commitment of the Scottish Government to this legislation which overturns last year's House of Lords ruling, which represented a devastating blow for pleural plaques victims.

The fact that pleural plaques are asymptomatic belies the truth that they do represent a physiological change in the body. This fact was raised in an adjournment debate in Westminster Hall on 4 June 2008, when Michael Clapham MP, reading from a letter written by Dr Robin Rudd (consultant physician in medical oncology and respiratory medicine) said:

"People with pleural plaques who have been heavily exposed to asbestos at work have a risk of mesothelioma more than one thousand times greater than the general population."¹

"People with pleural plaques commonly experience considerable anxiety about the risk of mesothelioma and other serious asbestos diseases. Despite reassurance offered by doctors that the condition is harmless often they know of former work colleagues who have gone on to die of mesothelioma after being diagnosed with pleural plaques. For many the anxiety is ever present. Every ache or pain or feeling of shortness of breath renews the fear that this may be the onset of mesothelioma. The anxiety is real for all and for some has a serious adverse effect on quality of life."²

It is to the Scottish Government's great credit that it has taken this opportunity to use its authority to set public policy by stating what the law should be, in order to protect the most vulnerable of citizens. Overturning this decision also reflects the polluter pays principle: insurance premiums have already been collected and it is right and proper that the negligent party should make recompense for that negligence.

¹ Hansard 4 June 2008: Column 251WH

² Hansard 4 June 2008: Column 252WH

Specific points of clarification

At this stage, we would like to suggest some minor amendments to the Bill to ensure that the legislation achieves its purpose.

Clause 1 (1) line 4 should be amended to read:

Asbestos-related pleural plaques are a personal injury which is damage actionable in law

Rationale: this change represents precisely what the Bill is designed to achieve and avoids any future possibility of the courts deciding that to be actionable requires more than being 'not negligible'. In order to make the wording of the Bill consistent, the following amendments will need to be made for the same reason:

Clause 1 (3) line 8 should be amended to read:

personal injury or are not actionable in law

Clause 2 (1) line 15 should be amended to read:

condition is a personal injury which is damage actionable in law

In addition, for the sake of consistency, we suggest that sub-clauses 1 (2) and 1 (4) should be included in clause 2, as issues relating to the recovery of damages and liability apply equally to the conditions of pleural thickening and asbestosis.

Retrospectivity

Clause 3 (2) line 11 should be amended to read:

with 15 February 2005 and ending with the day on which this section comes into force is

Rationale: retrospectivity should be to the date of the High Court decision rather than to the date of the House of Lords as presently drafted because, although only a House of Lords decision is binding in Scotland, the decisions of lower courts in any jurisdiction can be persuasive. Making this amendment will provide clarity and certainty in the legislation.