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

### **Summary of Legislative Competence Issues**

#### **Background**

1. The Recovery of Medical Costs for Asbestos Diseases (Wales) Bill has been submitted to the Presiding Officer by the Member in charge of the Bill, Mick Antoniw AM, to enable the Presiding Officer to state her view on whether the Bill is within the legislative competence of the Assembly. In accordance with section 110(3) of the Government of Wales Act 2006 (GoWA), and Standing Order 26.4, this statement must be made on or before the Bill being introduced.
2. After receiving advice from the Assembly's legal advisers, the Presiding Officer has decided that, in her view, the Bill is within competence. However, the Presiding Officer considers it appropriate to bring certain issues relating to competence, which she considered in reaching her view, to the attention of the Committees that will be scrutinising the Bill, so that they can decide whether or not to probe these issues further as part of the scrutiny process.

#### **Overview of the Bill**

3. The purpose of the Bill is to ensure that a person who pays compensation to a 'victim' of an 'asbestos-related disease' also has to reimburse the Welsh Ministers for costs incurred by the NHS in Wales in providing care to the 'victim'. The same applies if the compensation is paid by someone else on behalf of the person responsible for the harm to the 'victim', including insurance companies.

#### **Competence Issues considered by the Presiding Officer**

4. The first issue concerns section 15 of the Bill. This deals with the liability of insurers to pay the new charges which the Bill introduces. Schedule 7 to GoWA contains an exception from competence drafted in these terms: "Financial services, including ... insurance". This exception is set out under Heading 4, "Economic Development", whereas the provisions of the Bill relate to Subjects listed under Heading 9, "Health and Health Services". However, exceptions from competence apply equally to all the Subjects listed in Schedule 7.

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5. The Presiding Officer considers, on balance, that section 15 is within competence, on the grounds that it is incidental to the other provisions of the Bill, or appropriate to make the Bill fully effective.
6. The second issue concerns section 17 of the Bill. This provides that the Bill binds the Crown. As such, it will affect UK Government Departments. The question arises whether, in doing so, it will modify a function of a Minister of the Crown, or impose a new function on such a Minister, or merely create a liability to which such Ministers will become subject in certain circumstances..
7. Paragraph 1 of Part 2 of Schedule 7 to the GOWA 2006 prohibits a Bill from modifying a pre-commencement function of a Minister of the Crown. These are functions held by a Minister of the Crown since before 5th March 2011. The paragraph also prohibits a Bill from imposing a function on a Minister of the Crown. However, a Bill can do any of these things if the Secretary of State consents. Alternatively, a Bill can modify a function (but not impose one) if to do so would be incidental on, or consequential to, another valid provision of the Bill.
8. The Presiding Officer considers that section 17 should not be seen as outside competence, given that there are credible arguments that it does not modify a function of a Minister of the Crown or impose a new function on such a Minister; or that, if it does modify a function of a Minister of the Crown, the modification is incidental to other provisions of the Bill.
9. The third issue concerns whether section 2, the core provision of the Bill, relates sufficiently closely to one or more Subjects listed in Schedule 7 to GoWA.
10. Paragraph 4 of Part 2 of the Explanatory Memorandum cites heading 9 (Health and health services) in Schedule 7 to GoWA as providing the legislative competence to permit the National Assembly to pass this Bill. The subjects that appear under that heading, and that are potentially relevant to the Bill, are:
  - “Prevention, treatment and alleviation of disease, illness, injury [and] disability ... Provision of health services... Organisation and funding of national health service.”
11. The decision as to whether a provision of a Bill “relates to” a Subject is to be made primarily by reference to the “purpose” of the provision.
12. None of the Bill’s provisions have as their purpose the ‘prevention, treatment and allevation of disease (etc)’. The same applies to the Subject “provision of health services”.

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13. However, the Presiding Officer considers that all the provisions of the Bill do, on balance, “relate to” the subject ‘Organisation and funding of national health service’. This is because the purpose of section 2, and therefore of the whole Bill, is to reimburse the Welsh Ministers – the funders of the Welsh NHS – for the cost of funding certain asbestos-related NHS services. This is a sufficiently close relationship with the Subject to bring section 2, and therefore the whole Bill, within competence.
14. In reaching her decision that the provisions of the Bill were within competence, the Presiding Officer also considered all the other tests for competence set out in GoWA: compatibility with the Convention rights; compatibility with EU law; protection of certain other enactments; protection of the position of the Comptroller and Auditor General; and the test that the Bill must not have a prohibited effect on the Welsh Consolidated Fund. She was satisfied that the Bill clearly met all these tests.
15. Finally, the Presiding Officer considered whether it would be necessary for the consent of Her Majesty the Queen and of the Duke of Cornwall would be required for the Bill to be passed by the Assembly. She concluded that these consents may be necessary and the Member in Charge has been asked to address this issue before Stage 3 of the Bill. This is not an issue of legislative competence as such.