

STATEMENT BY THE WELSH GOVERNMENT

TITLE Referral of the Recovery of Medical Costs for Asbestos Diseases (Wales)
Bill to the Supreme Court

DATE 10 February 2015

BY Theodore Huckle QC, The Counsel General for Wales

The Recovery of Medical Costs for Asbestos Diseases (Wales) Bill was a private member's bill introduced into the National Assembly for Wales by Mick Antoniw AM on 3 December 2012. The Recovery of Medical Costs for Asbestos Diseases (Wales) Bill was passed by the Assembly on 20 November 2013.

On 11 December 2013, I published a written statement in the Assembly to announce my decision to refer the Bill to the Supreme Court. I took the view that the Bill was within the legislative competence of this Assembly. I considered, however, that it was appropriate in this case to have the issue of the competence of this Bill clearly resolved before it came into force, given that bodies representing the insurance industry had consistently disputed the Assembly's competence to pass this Bill. The alternative option of allowing the Bill to proceed to Royal Assent would have resulted in an inevitable challenge in potentially far more expensive court proceedings perhaps when substantial amounts of money had been recouped under the Bill's provisions.

Before the Supreme Court I argued strongly that the Bill was within the Assembly's legislative competence. Yesterday, the Supreme Court delivered its judgment. The Court ruled that the Bill is outside the legislative competence of the National Assembly for Wales.

Whilst the Court is unanimous in its conclusion it was divided in its analysis of the extent of the Assembly's legislative competence. Lord Mance delivers the majority judgment with which Lord Neuberger and Lord Hodge agree. The Supreme Court ruled that the Bill falls outside the legislative competence of the Welsh Assembly as it is not within section 108 (4) or 108 (5) of the Government of Wales Act 2006. Lord Mance further concludes that the Bill infringes Article 1 Protocol 1 of the European Convention on Human Rights and is outside competence on that ground also.

Lord Thomas delivers a separate judgment with which Lady Hale agrees. Whilst Lord Thomas agrees that s14 of the Bill – the retroactive provision providing for liability of insurers which was the single provision I referred to the Court - is outside competence he supports the primary submissions made about the legislative

competence basis for the Bill and two justices in the minority of the Court would not have found the Bill as a whole to be outside competence.

Whilst I am disappointed, I of course accept the decision of the Supreme Court.

The Government will give careful consideration to the judgment.