

# Mick Antoniw AM

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David Melding AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff  
CF99 1NA

15 April 2013

Dear David,

## **Report on the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill**

Further to your recent report on the above Bill, I would like to provide some clarification in relation to recommendations 5 and 6, which are concerned with the regulation making power in section 15(4). For convenience, these recommendations are reproduced below—

**Recommendation 5: We recommend that the Member in charge considers tabling an amendment to ensure that the regulation making power contained in section 15 is subject to the affirmative procedure.**

**Recommendation 6: We recommend that the Member in Charge clarifies, during the Stage 1 debate, why the power in section 15(4) of the Bill is required at all, and if it is required, why it is limited to insurers rather than applying to all compensators.**

During my appearance before the Committee, Members asked why the Welsh Ministers needed the regulation making power provided by section 15. Responding to this, I said that the regulations would enable the Welsh Ministers to set a cap, the purpose of which would be to give a degree of certainty to the insurance industry in terms of managing its potential liabilities in the future. My full response is set out in paragraph 87 of your report.

I would like to clarify that the regulation making power and cap I was referring to here is that contained in section 6(5) of the Bill, rather than that in section 15(4).

Section 6(5) of the Bill provides that regulations may set a cap on the amounts which may be set out in certificates. The effect of this is to provide a maximum limit

to the amount of NHS charges which may be recovered under the Bill. The first set of these regulations will be subject to the affirmative procedure.

The regulation making power in section 15(4) has a different purpose to the regulation making power in section 6(5). The regulations to be made under section 15(4) relate to circumstances where a limit may be applied to the liability of insurers in respect of compensation payments, where the insured person's liability in respect of the disease is greater than that covered by the insurance policy.

These regulations would provide that—

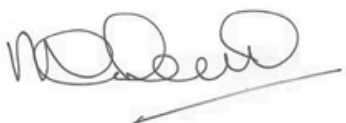
- i. where an insurance policy is treated under section 15(1) as covering the insured person's liability to pay relevant NHS charges under section 2, and
- ii. under the insurance policy the amount of cover in respect of the disease is limited to a maximum sum or a proportion of the compensation which the insured person is liable to pay in respect of the disease, and
- iii. as a result of that limitation, a proportion of the compensation which the insured person is liable to pay in respect of the disease would not be covered by the policy but for section 15(1);

then the insurer's liability under section 15(1) of the Bill in respect of relevant NHS charges must be reduced by the same proportion as their liability for the compensation payment.

Any reduction in the insurer's liability will be based on the amount of cover provided for in the insurance certificate. Consequently, the regulations in section 15 relate to a formulaic and technical matter, more suitable to be made under the negative procedure.

I hope this clarification is helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mick Antoniw', with a horizontal line underneath it.

**Mick Antoniw AM**

Member in charge, Recovery of Medical Costs for Asbestos Diseases (Wales)  
Bill