

DAMAGES (ASBESTOS-RELATED CONDITIONS) (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Damages (Asbestos-related Conditions) (Scotland) Bill. It describes the commencement provisions in the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND TO THE BILL

2. The House of Lords (HoL) decision in *Johnston v NEI International Combustion Ltd*, published on 17 October 2007, ruled that asymptomatic pleural plaques (an asbestos-related condition) do not give rise to a cause of action under the law of damages. The Judgment is not binding in Scotland, but is highly persuasive.

3. The purpose of the Bill is to ensure that the HoL Judgment does not have effect in Scotland and that people with pleural plaques caused by negligent exposure to asbestos can raise an action for damages. As it is possible that the courts might look to *Johnston* as authority in relation to claims in respect of other asymptomatic asbestos-related conditions, the Bill also provides that asymptomatic pleural thickening and asymptomatic asbestosis, when caused by negligent exposure to asbestos, continue to give rise to a claim for damages in Scotland.

DELEGATED POWERS

Section 4(1) Commencement and retrospective effect

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: None

4. Section 4(1) gives the Scottish Ministers power to commence the substantive provisions of the Bill by Order. No commencement date is specified in the Bill. It is however anticipated that the provisions will come into force two months after the Bill receives Royal Assent. As is normal with commencement orders, no form of parliamentary procedure is required. During the

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as introduced in the Scottish Parliament on 23 June 2008*

period between Royal Assent and commencement, the Scottish Government will ensure that stakeholders are informed of the date on which the provisions will come into force.

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