

*These notes refer to the Damages (Asbestos-related Conditions) Act (Northern Ireland) 2011 (c.28) which received Royal Assent on 25 July 2011*

# Damages (Asbestos-related Conditions) Act (Northern Ireland) 2011

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## EXPLANATORY NOTES

### BACKGROUND AND POLICY OBJECTIVES

3. In *Johnston v NEI International Combustion Ltd*, published on 17 October 2007<sup>1</sup>, the House of Lords (“HoL”) ruled that asymptomatic pleural plaques (an asbestos-related condition) do not give rise to a cause of action because they do not signify damage or injury that is sufficiently material to found a claim for damages in tort.
4. The decision in the Johnston case was welcomed by the insurance industry. However, several early day motions, which called for the decision to be overturned, were set down in the UK Parliament and the matter was the subject of adjournment debates. During the debates, many MPs spoke in favour of the decision being overturned by legislation.
5. On 29 November 2007 the Scottish Government announced that it would legislate to “overturn” the decision. The Damages (Asbestos-Related Conditions) (Scotland) Act 2009 (“the 2009 Act”), which provides for asbestos-related pleural plaques to be a non-negligible personal injury for which damages can be recovered, came into force on 17 June 2009. As it is possible that the courts might look to the Johnston case as authority in relation to claims in respect of other asymptomatic asbestos-related conditions, the 2009 Act also provides that asymptomatic pleural thickening and asymptomatic asbestosis, when caused by wrongful exposure to asbestos, should continue to give rise to a claim for damages.
6. On 25 February 2010 Jack Straw, the then Secretary of State for Justice and Lord Chancellor, announced that the UK Government had decided not to “overturn” the decision in the Johnston case in England and Wales. Mr Straw went on to say that an extra-statutory payment scheme, which would allow for payments of £5000, would be introduced in that jurisdiction. However, payments would only be available to individuals who had already begun, but not resolved, a legal claim for compensation for pleural plaques at the time of the HoL’s ruling in October 2007. The scheme was duly launched on 1 August 2010 and is set to run to 1 August 2011.

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1 <sup>1</sup><http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd071017/johns-1.htm>

7. Following consultation in Northern Ireland (paragraphs 8-9 below refer), it was decided that the law should be amended to ensure that the decision in the Johnston case does not have effect in Northern Ireland. The purpose of the Act is, therefore, to reinstate asymptomatic pleural plaques as an actionable condition under the law of negligence. The Act also provides that asymptomatic pleural thickening and asymptomatic asbestosis, when caused by wrongful exposure to asbestos, continue to give rise to a claim for damages in Northern Ireland. The Act does not affect the law on quantum (the amount that is paid in damages). Where a person sustains a physical injury which is compensatable, the compensation he or she receives can include sums, for example, for anxiety or the risk of the condition deteriorating in the future.