

COMPENSATION ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS: PART 1

Provisions relating to the law of negligence and breach of statutory duty

Section 1: Considering a claim in negligence or breach of statutory duty

16. **Section 1** provides that in considering a claim in negligence or breach of statutory duty, a court may, in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions or otherwise), have regard to whether a requirement to take those steps might prevent an activity which is desirable from taking place (either at all, to a particular extent, or in a particular way), or might discourage persons from undertaking functions in connection with the activity.
17. This provision reflects the existing law and approach of the courts as expressed in recent judgments of the higher courts.

Section 2: Apologies, offers of treatment or other redress

18. **Section 2** provides that an apology, an offer of treatment or other redress shall not of itself amount to an admission of negligence or breach of statutory duty. This provision is intended to reflect the existing law.

Section 3: Mesothelioma: Damages

19. **Section 3** contains provisions establishing joint and several liability in cases where a person has contracted mesothelioma as a result of being negligently exposed to asbestos.
20. Subsection (1) sets out the conditions that must be satisfied before the substantive provisions of the section will apply. The conditions are that someone contracts mesothelioma from exposure to asbestos, that they were exposed to asbestos as a result of negligence by a person (defined as the 'responsible person') and that it is not possible to prove whose negligent act caused them to become ill. Paragraph (d) indicates that the final condition is that the responsible person must be liable in tort.
21. Subsection (2) provides that where the conditions in subsection (1) are met, the responsible person is liable for all of the damage caused by the mesothelioma. The provision establishes that it makes no difference whether or not someone else also could have caused the disease; whether the person could have contracted the disease from environmental exposure; or whether the responsible person would not be liable in tort for some of the periods of exposure. Paragraph (b) indicates that, if there is more than one responsible person, the liability is joint and several. That means that the victim (or any dependants if the victim is dead) may proceed against any of the responsible persons and that any person proceeded against is responsible for paying the full amount of compensation, and for recovering contributions from the others.
22. Subsection (3) confirms that contributions from other responsible persons may subsequently be sought by the responsible person who has paid the compensation (or

*These notes refer to the Compensation Act 2006
(c.29) which received Royal Assent on 25 July 2006*

by any who have jointly done so). The subsection also makes clear that if the victim is found to have negligently exposed himself to asbestos then the damages may be reduced accordingly under the principle of contributory negligence (as is currently the case).

23. Subsection (4) provides that a court shall, when deciding the level of contributions, have regard to the relative lengths of exposure, unless the responsible persons agree to approach the apportionment differently or the court thinks another approach is more appropriate. This will assist parties in agreeing the basis on which contributions are to be made without going to court.
24. Subsection (5) makes it clear that the provision covers failure to protect someone from exposure to asbestos.
25. Subsection (6) makes provision in relation to the application of the section in Scotland.
26. Subsections (7) to (11) confer power on Her Majesty's Treasury to make regulations about the provision of compensation to a responsible person or an insurer of a responsible person in specified circumstances. These provisions would enable responsible persons to claim money back from the Financial Services Compensation Scheme when a liable employer and insurer are both insolvent. The power includes the ability to deal with situations arising prior to the establishment of the Financial Services Compensation Scheme that were settled under the Policyholders Protection Act 1975. The provisions would only come into effect once Treasury has laid the necessary regulations and the FSA has made the relevant rules. However, the power provides that rules could permit the liable party to claim contributions in respect of claims dealt with from the date of Royal Assent.

Part 2: Claims Management Services

Summary

27. **Part 2** of the Act sets out the framework for the regulation of claims management services.