INDIVIDUAL/ ORGANISATION	POINT RAISED	COMMENT
Kennedys Law	The Bill circumvents or usurps a decision of the highest court which binds the Northern Ireland Judiciary and is therefore inconsistent with its stated aim of maintaining and supporting an independent judiciary in which the public may have confidence.	In the UK, Parliament is supreme. For the most part, it can create or amend any law, including judge-made law. The power to make law in certain areas has been devolved to local institutions in Scotland and Northern Ireland and those institutions may duly amend the law in their designated fields. There is, therefore, no question of a usurpation of the courts' powers. The Department believes the comments of Lord Emslie in the Scottish judicial review are relevant here. He said - "there is in my view nothing intrinsically irrational or outrageous about a legislature deciding to modify or overrule a judicial decision at any level. To make and shape law is a primary function of any legislature, especially where existing rules and principles are perceived as unsatisfactory or unfair." The mere fact that the legislature chooses to legislate in a particular area does not in and of itself compromise the concept of judicial independence. The statement

		appears to suggest that the legislature is precluded from dealing with any matter which has been the subject of a judicial pronouncement. If that were true, the legislature would, for example, be precluded from closing an identified loophole in the law. However, that is patently not the case. On the issue of public confidence, the public not only value an independent judiciary - and, in this case, that independence is retained - it places particular value on a fair and just system of law which allows for access to the courts and ensures that wrongdoers are held to account.
	[Fo]r a person to be compensated in respect of an injury which (a) causes him no pain, (b) causes him no disability and (c) can only be detected radiologically; is illogical and inconsistent with the principle of awarding damages to compensate an injury.	Following on from the above quote, the Department believes the proposed change to the law is neither illogical nor inconsistent. In law, there is no requirement to establish pain or disability, albeit that either of those issues may be relevant considerations when assessing the level of damages. The implied criticism of radiological detection is unsustainable,

		given that there are other forms of damage which may only be detected in that way (e.g. brain damage). Ultimately, it has to be recognised that the Bill is neither strange nor unique. The legislature has previously established a right to a civil claim for damages where there is no physical damage to the Claimant. Article 5(2) of the Protection from Harassment (Northern Ireland) Order 1997 allows for damages to be awarded for anxiety. There is no need for that anxiety to have reached the level of a psychiatric illness or to have a physical impact. Indeed, Article 5(1) of that Order allows for a claim where a person *apprehends* that s/he will be harassed.
	The Judiciary apply the law to the factual matrix and the inbuilt safety mechanism is the right of appeal to a higher court be it the High Court, Court of Appeal or indeed the Supreme Court (and thereafter in some instances the European Court of Justice). This is so that justice is done and seen to be done by the public who put its confidence in the system.	The law is not a mathematical equation which is simply applied in a formulaic fashion. Individual interpretations come into play and it is entirely possible that a differently constituted House of Lords could have arrived at a different conclusion in the Johnston case. The fact that we have an appeal process recognises that judges do, on occasion, differ in their view of the law. As there is

		no suggestion that the appeal process, which allows a judgment to be set aside, undermines public confidence, there can be no suggestion that a democratic legislative process which enables the legislature to substitute a different principle from that decided by the court undermines public confidence. There will be occasions when the courts suggest that the legislature needs to look again at the law as, for example, the result is unjust or unreasonable.
	This Bill seeks to define what personal injury is (albeit it is apparently restricted to asbestos associated conditions). This is clearly something which is not within the remit of the elected officials to decide. The position adopted by the Committee in the draft Bill controverts established legal principles of precedent and independence of the judicial system. The Bill also effectively decides upon medical issues; that is, *what constitutes personal injury?* We submit that this is not within the expertise and thus the gift of the Assembly to do.	As stated above, the legislature is the supreme law-making body. Over the years, it has dealt with a vast range of legal issues, from who can claim as a dependent or what constitutes a valid will to how damages are defined or what expenses come within the scope of damages. Given that fact, it seems rather strange to suggest that the legislature should be precluded from determining what constitutes a personal injury – either generally or within a given context. It is worth saying a few words about the doctrine of precedent. This is a legal rule

		which provides for judges in lower courts to abide by legal principles established in superior courts. This concept cannot interfere with the legislature's right to make law. Indeed, as the Northern Ireland Human Rights Commission recognised during its oral evidence to the Committee, a freely elected legislature is well placed to determine what is in the overall best interests of the public. What should constitute damage for the purpose of the law of negligence is a legal, not a medical, question. Medical evidence may be adduced by a court to assist the examination of the issues, but that evidence is not determinative of the outcome. For example, a court may wish to hear evidence about life expectancy when determining an appropriate level of damages or the risk of deterioration in the Claimant's condition. The gulf between the legal and the medical spheres was apparent during the Committee's evidence session with the medical professionals. The clinician focuses on whether pleural plaques are classed as "a disease" or whether they will, through time, lead to a recognised

		disease. However, in this instance, the net question for the legislature is whether, under the law of negligence, pleural plaques should be regarded as material damage. The answer to that question does not require medical expertise. Indeed, it could be argued that it is a matter of common sense and should not be "reasoned away" in technical discussions. This was recognised by Smith LJ, who gave a dissenting judgment when the Johnston case went before the Court of Appeal. She said that ordinary people would readily recognise the harm done to those with pleural plaques and would not regard the plaques as trivial and undeserving of compensation. The Department believes there is force in that view.
	If it is now to be accepted that asymptomatic diseases constitute personal injury, will this logic extend to other asymptomatic conditions such as personal injury through smoking at work? Otherwise, the Bill is potentially discriminatory against other individuals with asymptomatic diseases.	The debate should not be about whether pleural plaques are asymptomatic or whether they constitute a disease (indeed, it will be noted that the title of the Bill reads "Asbestos-related conditions"), but whether they should constitute material damage under the law of negligence. Those who support the Bill say "Yes they should, because they are essentially scars, albeit that they are on the interior of

		the body, rather than the exterior". The distinguishing factor here is the identifiable bodily damage, rather than the mere fact of exposure, which is what would arise in the context of passive smoking.
	Clause 3 (limitation of actions) should not be applied. There is an inherent discretion for any Judge to extend time in any claim provided that it is just to do so. This clause endangers the application of Article 6 of the Human Rights Act for defendants whose right to a fair hearing is incrementally prejudiced by the passage of time especially when there may have already been inordinate delay in the bringing of a claim.	Unless the decision in the Johnston case is set aside and that setting aside is applied retrospectively, there can be no cause of action and the general power to extend the limitation period will not, therefore, come into play. The Department has always said that, on the civil side, there is no absolute bar on retrospective legislation and that statement has been confirmed by the Northern Ireland Human Rights Commission in its evidence to the Committee. The Department does not accept that Clause 3 endangers the application of Article 6 of the ECHR (right to a fair trial). Rather, it supports the principle of access to justice by ensuring that Claimants have an opportunity to place their case before a court.

		On the issue of the passage of time, it could be argued that any detriment is likely to be most keenly felt by the Claimant, who, over the years, may have lost work colleagues and vital witnesses to asbestos-related conditions. The comment about “inordinate delay” is, in the Department’s view, unjustified and unfair. It has been acknowledged that, for the most part, asbestos-related conditions develop over some considerable period of time. That should be viewed as the nature of the process, rather than the fault of the Claimant.
	How can legal certainty be achieved if a court decides on all the evidence yet the legislature turn the decision on its head by negating its effect? Claims will be brought where there is no physical symptomology just because it has been deemed to be personal injury. Claimants will be compensated not on the basis of being put back into the position they would have been in had they not suffered personal injury, pain and suffering; but on the basis that, “I am told that I have a personal injury and whilst I have not suffered any pain and suffering I can still claim even if there is no actual harm caused to me”.	During the policy development process and the consultation on the Bill, there was much talk about the need for legal certainty. It is, of course, important, that the law is not applied in a capricious manner. However, this does not mean that the law, either judge-made or in statute, cannot be changed. Indeed, the ability to overturn court decisions via statute is not unique to the UK. For example, in the US, the process has, over the years, produced some landmark pieces of legislation.

		In law, there is no requirement for "physical symptomology" – see the comments above in relation to the Protection from Harassment (Northern Ireland) Order 1997. As has been previously stated, an award of compensation can be important, in terms of enabling people to assert their rights against those causing damage or loss. Also, the claims process can have a regulatory effect in terms of encouraging responsible behaviour and reinforcing the 'duty of reasonable care'. On the issue of putting the claimant in the same position as s/he would have been in, but for the damage, that will not be possible because the penetration of the asbestos fibres cannot be reversed.
	To categorise as 'personal injury' conditions which are asymptomatic only serves to promote litigation and will cause unnecessary anxiety to claimants who might otherwise be expected to lead normal healthy lives. Giving a person with an asymptomatic condition the right to bring a claim conveys the wrong message. It makes them focus on the negligible risk that they will one day develop adverse physical symptoms, rather than encourage them to put such risk to the back of	The reinstatement of the option of legal action cannot be said to be "promoting litigation", especially in an era where mediated agreements are coming more to the fore. Ultimately, the Department believes individual citizens should be allowed to access the courts, as are the insurance companies.

	their mind and get on and enjoy life.	The Department also believes that- • the anxiety which individuals experience is attributable to the definitive proof that asbestos fibres have penetrated the body, with all that that entails; • the "right to bring a claim" conveys the correct message, namely that individual citizens can place their complaint before an independent arbiter for adjudication; and • the risk of "adverse physical symptoms" cannot, by any stretch of the imagination, be termed "negligible".
	We would simply comment that to apply legislation retrospectively does not sit comfortably with the principles of openness and fairness and may contravene the overriding intent of achieving justice between claimants and defendants.	The earlier comments about retrospective legislation apply.
	The Assembly Committee has not provided any clear and cogent evidence of the amount of claims that may materialise as a result of this legislative negation of the rule of law. The only support provided by the Committee is to say that the population of Northern Ireland is about one third of that of Scotland so that we can simply divide the Scottish number of claims by three. This arbitrary approach to the looming	There is no requirement to record a diagnosis of pleural plaques and the Department has always acknowledged that it has been difficult to assess the financial impact of the decision to legislate.

	economic realities of government cuts in spending is unnerving. Allowing an unknown number of claims which are likely to require Legal Services Commission backing raises very real implications about the further strain on an already 'stressed out' Legal Aid fund.	The Department's earlier calls for information about the number of cases withdrawn etc., the likely number of future cases, the level of compensation or the level of legal costs produced sparse details. The Department has, however, noted that, during the Committee's evidence session with plaintiff solicitors, it was suggested that, within Northern Ireland, pleural plaques cases largely fell to 4 firms, and it might be reasonable to assume that each of those had, like Thompsons McClure, 60-70 cases. The Committee has also heard that Harland & Wolff had around 1300 pleural plaques cases between 2002 and 2007 and that £12 million pounds has been set aside for pleural plaques claims during the next budgetary period. That "set aside" has been determined on foot of actuarial advice which reviews evidence, considers trends and endeavours to calculate potential liabilities. The identified sum has been criticised by ABI. However, the Department considers that DETI is based

		placed to produce an estimate of its own liabilities, albeit that that estimate may fall to be adjusted, up or down, over the budget period. It is important to bear in mind that the Bill does not provide for an entitlement to compensation. Rather, it reinstates pleural plaques as an actionable condition on which a court may pronounce an award of compensation. The level of the award will fall to be determined by the court and the Department has acknowledged that it may in fact be lower than was previously paid. On the issue of the legal aid fund, access to public funding for legal claims is governed by established rules and those rules will apply to claimants with pleural plaques in the same way as they apply to other claimants. Moreover, it is important to remember that the Bill is not creating a new area of legal claim, but merely re-establishing a previously recognised right of action.

	We submit that to apply legislation retrospectively is at odds with the Convention principles of striking a fair balance and being reasonably proportionate. It effectively removes any argument on causation from the remit of the courts and therefore, cannot be considered to be striking a fair balance between the rights of claimants and those of defendants. The Committee just has to look at the news to see that at present the Financial Services Authority (FSA) is being challenged in the High Court in London at present over compensation for the mis-selling of payment protection insurance (PPI) it appears on the basis that the new FSA Rules were to be applied retrospectively.	The comments above with regard to retrospective legislation apply. It is important to recognise that the Bill merely relates to the threshold conditions for a claim in negligence. It is, therefore, incorrect to say that the Bill "removes any argument on causation". A claimant will, for example, still have to deal with the issue of causation, identify a defendant and establish that that defendant owed a duty of care and breached that duty by negligently exposing him or her to asbestos. Far from being unfair, the Bill restores the balance between Claimant and Defendant by allowing both parties to state their case to the court. As stated above, retrospectivity is not prohibited. The fact that an organisation or individual has challenged a retrospective rule does not in and of itself mean that the rule is inappropriate.
	On behalf of the actual Defendants, the right to a fair trial is diminished by the passage of time and the unavailability of witnesses and the recollection of witnesses' evidence. Also by removing causation from the courts remit the Act effectively becomes judge and jury, facilitating claimants, (who have no	The issue of the passage of time is dealt with above, as is the issue of causation. This comment appears to assume that payment of compensation will be

	symptoms), recourse to compensation without the need to deal with the common law positions of remoteness of damage and forseeability.	automatic on proof of pleural plaques. However, as stated above, the Bill merely deals with the threshold conditions for a claim in negligence. Issues regarding remoteness of damage and forseeability will still fall to be explored by the court.
	As outlined, for example, pre the Smoking Ban, workers may have been exposed to second hand smoke. They may be asymptomatic at present but there still may be changes within their lungs that could, on this occasion, give rise to a more serious complaint at a later date such as emphysema and/or lung cancer or other pulmonary related diseases. Secondly, individuals who may have worked with fine detailed soldering work, for example, in relation to the building of circuit boards may find in later life that they have developed arthritic conditions which may or may not been caused by or contributed to by their working environment a number of years ago. Our research to date has not shown any asymptomatic conditions being compensated.	This issue of exposure to risk is dealt with above. Ultimately, any individual who has sustained damage, and the Department takes the view that pleural plaques are damage, may submit a claim for compensation at the point at which that damage is identified. An external scar may be both asymptomatic and concealed from view, but a claim for damages can still be brought. During her oral evidence, Ms Wylie, on behalf of Kennedy's Law asserted that pain would arise on the creation of the scar. However, it is possible to conceive of situations in which a scar could be created without pain or a very minimal amount of pain.

	We do not believe that legislation can be designed to provide that certain asbestos related conditions are actionable personal injuries, without defining what those injuries may be.	The Department does not consider that further definition is required.
	A “real” victim of asbestos related disease is someone who has actually sustained an injury which is symptomatic, has caused pain and suffering, has interfered with their life and amenity, has caused them to require treatment, prevented them from working, enjoying day to day activities and has had a real effect upon their quality of life.	This definition would exclude some people with asbestosis. This is discussed further below.
Thompsons McClure Solicitors	Concerned the Bill will leave a finite, but important category of Claimants without compensation – those whose cases were struck out by the courts, discontinued or withdrawn as a result of the decision in Johnston. The situation was different in Scotland. The Scottish Government announced soon after the decision in Johnston that the law would be changed. Cases in Scotland were stayed. It could be argued that cases which were withdrawn, discontinued or struck out have been “determined” and are therefore excluded from the terms of the Bill.	It is true that the Scottish Government quickly announced that it would be changing the law. However, the Department gave an early indication that it would be considering the implications of the judgment in the Johnston case and, as legislative change was clearly one of the options on such consideration, many cases were also stayed in this jurisdiction. As we understand it, cases are being “held out of the Master’s list”. This means the cases have not been formally withdrawn, nor are they being actively listed for regular review. However, if the Bill is made and the legislation is commenced, those cases could be

		progressed. On the issue of formal withdrawal etc, the Department has considered the concern raised and has sought the views of Legislative Counsel. It is content, for the reasons stated in its letter to the Committee, that such cases will not be regarded as having been “determined”.
	Opposed to a tariff system. Such a system was not consulted on and would represent a significant departure from the stated policy objective, namely to restore pleural plaques as an actionable condition. Further consultation would be required if such a system were to be pursued.	The legislative process allows for amendments to Bills. It could be argued that a provision which restricts the level of compensation does not represent a fundamental shift of subject matter. However, it is true that the general concept of a “ceiling” was not explored during the initial policy consultation exercise. The issue of an appropriate level of payment was, of course, raised in the context of a payment scheme. However, as few favoured that option, there was limited discussion about an appropriate sum and, in any event, it could be argued that different considerations would apply to the level of payment in a government-run scheme, as opposed to the appropriate level for a general “ceiling”.

Association of British Insurers	The Bill would fundamentally alter the law of negligence.	The Department does not agree with this assertion. As stated above, the Bill deals with a threshold issue, and the Department believes the Bill is well targeted and nestles within the overarching framework of the law of negligence.
	Compensation is not the best way to help people with pleural plaques. Paying compensation for pleural plaques sends the wrong message to people that the condition is serious. Instead the Northern Ireland Executive should reassure people with pleural plaques that they are benign and do not impair quality of life.	The Department believes it is appropriate to provide for recourse to the courts, whilst at the same time allowing for suitable support and assistance, as required. With regard to the latter, the Department has engaged with colleagues in the Department of Health in England and Wales and those colleagues have produced a leaflet for healthcare professionals, which is available on the British Thoracic Society's website. The leaflet sets out medical information on pleural plaques and highlights the payment scheme in England and Wales, the legislation in Scotland and the

		proposed legislation in this jurisdiction. The Department does not consider that there is any conflict in this approach. It is the medical diagnosis which gives rise to concern, not the payment of compensation. It has been recognised that it is difficult to explain to an individual that s/he has pleural plaques, which confirms exposure to asbestos and the possibility of serious life-threatening asbestos-related conditions, but then to endeavour to provide reassurance by saying that the plaques themselves do not degenerate into those conditions. That difficulty would exist for medical professionals even if there were no system of compensation. The leaflets endeavour to assist in that regard.
	There is a significant risk that the Bill's provisions would breach the European Convention on Human Rights (ECHR). This is especially the case as it is based on the Scottish Damages Act which is subject to judicial review. The Department for Finance and Personnel (DFP) has not considered these issues sufficiently, or fully evaluated	The insurance companies have sought to challenge the corresponding legislation in Scotland, as they are entitled to do. However, it is for the court to decide whether the grounds of challenge are made out. The court at first instance rejected the challenge and that decision

	alternative means of reaching its stated policy objectives.	stands until it is set aside. The Department does not accept that it has not fully considered the issues or evaluated other ways of reaching its stated policy objective. Not only did we consult on the initial policy, we also consulted on the Bill. The Department believes that people with pleural plaques should have the option of pursuing a claim for compensation. If that claim is not to be dealt with by the courts, it would have to be dealt with in the context of a payment scheme. However, the insurance industry effectively precluded the latter option by refusing to make any contribution whatsoever to payments under a scheme.
	A robust financial impact assessment of the impact of this Bill has not been produced. The Department for Enterprise, Trade and Industry (DETI) provision of £31 million for state asbestos related claims up to 2015 is likely to be a substantial underestimate of actual liabilities. We consider that the cost for pleural plaques claims alone up to 2015 is likely to be approximately £39.5 million.	See comments above.
	Business confidence in Northern Ireland will be undermined.	See the comments above regarding the

	By fundamentally altering the law of negligence the Bill will also undermine general business confidence in Northern Ireland. Any expansion of the law in this way will create a future precedent for claims from people who may have been exposed to risk, but do not have any symptoms. The Bill would undermine general business confidence in Northern Ireland. Overturning Johnston represents a fundamental change to the law of negligence, undermining the stability of the legal environment in Northern Ireland. Parties should be able to rely on certainty of House of Lords' decisions, to shape their business practices accordingly. Any expansion of the law in this way, however narrowly drafted, creates a future precedent for claims from people who may have been exposed to risk, but do not have any symptoms. This could open up a potential 'floodgate' of claims based on circumstances where no actionable damage has occurred and, even more widely, claims for risk of an illness occurring or for worry that something might happen. This potentially increases the level of litigation and likelihood of spurious claims, and also exposes the Northern Ireland Executive and defendants to potentially significant costs. The resulting legal instability would make Northern Ireland a less attractive place for investment.	law of negligence. Businesses operate in a dynamic environment and the law governing that environment will inevitably change from time to time, as it does in other spheres. Business operators recognise that and are adept at taking change in their stride. See comments above regarding exposure to risk. The Department remains of the view that the Bill is well targeted and is not an "exposure only" Bill. Floodgate arguments do not, therefore, arise. Indeed, as mentioned above, the Protection from Harassment (Northern Ireland) Order 1997, allows for damages for anxiety and there has never been any suggestion that that Order has opened the floodgates for anxiety claims.

		On the issue of spurious claims, that possibility exists in any area of law. For example, an individual could dishonestly claim that s/he tripped in a shop and sustained damage. However, one would never suggest that we preclude "tripping claims".
	ABI has serious concerns about the time available to the Committee to properly scrutinise this contested Bill. The Committee, as it stands, will not be considering critical evidence, such as medical opinion on pleural plaques, and the Committee has, as far as we understand, not sought legal advice on the complex and substantive issues associated with the compatibility of the Bill with the ECHR. We strongly urge the Committee to give adequate consideration to these important issues before deciding whether to proceed with the Bill.	The Bill was afforded the period set out in Standing Orders for Committee scrutiny. The Department considers that that period is sufficient and notes that the Committee has taken evidence from a range of sources, including medical professionals and the NICHR.
	Pleural plaques are not a disease. Pleural plaques are small fibrous discs on the surface of the lungs which indicate exposure to asbestos. They are symptomless in all but a handful of exceptional cases (which are eligible for compensation), and neither lead to, nor increase susceptibility to, any other conditions. They are benign and do not impair quality of life.	As stated above, the issue, in law is whether pleural plaques should constitute actionable damage, not whether they are classed as a disease.
	Despite this clear prognosis, there continues to be much confusion and concern among those with pleural plaques and	The understandable concerns which arise on a diagnosis of pleural plaques are

	the wider public about what pleural plaques really means for a person's health. Compensation under the common law system is for disease. Therefore, providing people with pleural plaques compensation, as this Bill will do, will make them think that the condition is more serious than it actually is.	referred to above. The statement about the common law is incorrect. Compensation is awarded on proof of damage, not disease. For example, whiplash is not a disease, but it can still form the basis of a claim for compensation.
	There is a risk that the desirability of raising awareness of the nature of pleural plaques and allaying unnecessary concerns could be undermined by the provision of compensation, as this could send mixed messages about the nature of the condition and increase concerns."	See comments above.
	Paying compensation to those with pleural plaques is likely to lead to an increase in the number of people who will be tested for the condition, causing them unnecessary concern, requiring them to undergo invasive testing	There is no evidence to support this assertion. Moreover, as has previously been highlighted, the use of x-rays and CT scans are governed by legislation and speculative testing could not be justified. That legislation applies equally to the NHS and the private sector.
	If compensation were introduced, it could lead to a rise in 'claims farmers', who encourage people to undergo unnecessary testing to ascertain if they have the condition.	ABI has not produced any evidence to support its comments about claims farmers or the use of scan vans. Indeed, when the Scottish Justice Committee asked ABI about the number of scan vans used in a 5-10 year period and information on claims farmers, the

		representative of ABI, stated – "We do not have data on that, but we know that scan vans exist and we know that people are there to make money out of claims." When pressed, the representative of ABI went on to say that he did not know if scan vans existed in Scotland and, when asked if such vans were used to detect mesothelioma or asbestosis, suggested that the vans might only be used for asymptomatic conditions.
	Insurers want to pay all valid claims for symptomatic asbestos-related conditions, such as mesothelioma, as fairly and quickly as possible.	
	Instead of paying compensation to those with pleural plaques, in our view, the Northern Ireland Executive should be raising awareness of the benign nature of pleural plaques to help allay concerns of those diagnosed with the condition, and the wider public. The Northern Ireland Executive could usefully produce leaflets similar to those that the Department of Health for England and Wales is in the process of developing.	The issue of awareness raising and leaflets is addressed above.

	However, for the reasons outlined above, there would be little point in aiming to reassure people with pleural plaques that their condition is benign if this reassurance is going to be undermined by compensation payments. For this reason, the Department of Health for England and Wales is only making its leaflets available now that the Westminster Government has confirmed that pleural plaques will not be compensated.	As noted above, the leaflet for healthcare professionals refers to the existing legislation in Scotland, so the absence of compensation is not a material factor. Moreover, the leaflet's main focus is, quite rightly, the medical consequences of a diagnosis of pleural plaques, rather than the issue of compensation.
	There is a significant risk that the Bill's provisions would breach employers' and insurers' rights under the European Convention on Human Rights (ECHR). Therefore there are real doubts as to whether the Northern Ireland Assembly can, in terms of its powers under the Northern Ireland Act 1998, enact the Bill. We raised these concerns in our consultation responses and directly with Ministers and officials but do not believe that these concerns have been sufficiently addressed. It is incumbent on the Executive to ensure that this Bill is ECHR compliant and we do not believe that the necessary steps have been taken to ensure this, nor that our stated concerns have been reflected in the Bill's Regulatory Impact Assessment.	The Scottish court of 1st instance rejected these claims and that decision still stands. The Department has already stated that, if that decision is set aside, it will re-visit the Bill.

	This would interfere with employers' and insurers' rights to property under Article 1 of Protocol 1 of the ECHR, and this could only be justified on the grounds of compelling public interest and where it could be shown to be a proportionate response. In our submission, compensating those who have an asymptomatic condition is not a legitimate policy goal and, even if it were, the benefits, if any, of doing so are not sufficient to justify such a substantial interference with the property rights of employers and insurers. In addition, the Bill would make employers and their insurers liable retrospectively for a condition for which they would not otherwise have been liable. This would be contrary to Article 1 of Protocol 1 of the ECHR as it would interfere with settled arrangements. This interference could only be justified on the grounds of compelling public interest which, in our submission, do not exist here. The questionable legality of imposing such retrospective liability is further compounded by the delay of two years between the Johnston decision and this Bill being introduced. The Bill might also breach the rights of employers and insurers under Article 6 of the ECHR, which is concerned with fair process. By introducing legislation that overrules a judgment that has progressed through the legal system and has been finally decided in the highest UK court, the Northern Ireland Executive would arguably be removing employers' and insurers' rights to have a decision impacting their business decided finally by an independent and impartial tribunal.	

	The Northern Ireland Executive should consider alternative means of achieving its policy objectives. Last year, the Westminster Government announced they would not overturn Rothwell to make pleural plaques compensatable.	The issue of alternative options is considered above. The UK Government is entitled to reach its own conclusions, as is the Northern Ireland Executive on matters within its remit.
	As the Northern Ireland Assembly report on this Bill notes, the Scottish Parliament is the only known example of a legislature that has legislated to make pleural plaques compensatable.	As the Assembly report (NIAR 478-10) notes, the handling of asbestos-related conditions varies from State to State and different ways of addressing the issues have been devised, from compulsory health, disability and workers' compensation to tort-law elements, such as product or employers' liability. The report goes on to note that, whilst ABI has suggested that most US States have moved away from compensating "pleural plaques and scarring", it has not produced any evidence to support that suggestion, either by reference to caselaw or legislation.
	We urge the Committee to seek legal advice on the complex and substantive issues associated with the compatibility of the	This latter point has already been covered. However, there is no

	Bill with the ECHR. We also recommend that the Committee consider the situation regarding pleural plaques in other countries in more depth.	requirement to undertake comparative research and were the Assembly to adopt such an approach to the legislative process, the process would very quickly become unmanageable. Ultimately it is for each jurisdiction to determine how it wishes to proceed.
	We have serious concerns that the DFP has not produced a sufficiently robust financial impact assessment of the impact of this Bill. It is very difficult to predict future pleural plaques claims. Of those who were exposed to asbestos, it is unknown how many people will develop pleural plaques, how many of these might make a claim, and how the cost of a claim might increase over time. In 2008, the Ministry of Justice for England and Wales estimated that, based on a combination of the medical estimates, between 1 and 2.5 million people will develop pleural plaques, and between 200,000 and 1.25 million people will be diagnosed with the condition.	The difficulties in this context have been highlighted above. The Department is not persuaded by the figures produced by the Ministry of Justice. Indeed, the Assembly report referred to above suggests that the MoJ methodology relied on a large number of assumptions and went on to say that, as each assumption was applied, accuracy was accordingly reduced
	History shows us that it is very difficult to accurately predict how many claims are likely to arise following changes to legislation: at the outset of the British Coal Chronic Obstructive Pulmonary Disease scheme, 150,000 claims were expected; by the time the scheme closed, 592,000 claims had been registered. This substantial underestimation was despite data with a greater degree of statistical certainty than exists for plaques.	This is not comparing like with like. The COPD scheme was a Government run scheme and it has been recognised that one of the main reasons for the large number of applications was the absence of what might be termed “entry barriers”. The costs of the scheme were met by DTI and the possibility of an insolvent or uninsured defendant did not come into

		play. In contrast, both issues will be relevant considerations when assessing whether to bring a claim for pleural plaques.
	However, we do know that the costs of the Bill are likely to be very high. Due to the uncertainties outlined above, the Ministry of Justice for England and Wales was only able to estimate a wide range of the potential costs for compensating those with pleural plaques in England and Wales: between £3.7 billion and £28.6 billion. Based on the Northern Ireland population of 1.75 million, Northern Ireland could expect to bear 2.9% of this cost, meaning costs of between £111 million and £858 million.	See comments above regarding MoJ figures and methodology.
	We also know that the majority of claims in the near future would sit with the Northern Ireland Executive given their Harland and Wolff liabilities. DETI recently made provision in its spending proposals for potential liabilities of £31 million up to 2015 in relation to asbestos-related liabilities, estimating about £3 million a year for pleural plaques claims. We believe this to be a substantial underestimate – we estimate that the cost up to 2015 is likely to be approximately £39.5 million for pleural plaques claims alone.	See comments above regarding DETI figures. Also, DETI officials have stated that, on the basis of actuarial advice, they are looking at a cost of £135m over the next 35-40 years for all asbestos claims. That figure will, of course, be subject to periodic review and, if required, adjustment, up or down.
	In the absence of further information from DETI, we have made some basic calculations based on our understanding of Harland and Wolff liabilities. An average of 200 pleural plaques claims were closed per year between 2006 and	DETI officials have confirmed, during their evidence to the Committee, that their figures include legal costs.

	2010. The cost of a pleural plaques claim in 2004 was £11,000, which on a moderately low claims inflation rate of 3% per year would bring the cost in 2011 to £13,800 per claim. If the claims trend continued on the same basis, this would amount to around £3 million per year in pleural plaques compensation. However, this does not take into account legal costs, which at £14,000 per claim, would amount to an additional £3 million per year. So annual costs would be £3 million in compensation plus £3 million in legal costs. We also understand there are 557 plaques claims outstanding from pre-Johnston. So immediate costs would be £7.7 million in compensation plus £7.8 million in legal costs. In other words, the state could be facing an annual cost of £6 million, plus an immediate cost of £15.5 million, for pleural plaques claims alone i.e. only a part of the overall asbestos-related liabilities. At a time when the block grant funding for Northern Ireland has been reduced by £128 million a year and government departments are being asked to save a further £398 million a year, taxpayers' money should not be diverted unnecessarily from other important priorities. We therefore believe that DETI have substantially under budgeted the potential impact of this legislation.	As stated above, the Department believes that DETI is best placed to assess its own liabilities. It is for the Northern Ireland Executive to prioritise spend, taking account of all relevant considerations, including the wider interests of the public.
	The Johnston decision was based on clear medical evidence that pleural plaques do not constitute negligible harm. The consensus of medical opinion has been made even clearer since the Rothwell judgement, with two reports published on behalf of the Chief Medical Officer for England and Wales, by	As stated above, material damage falls to be assessed in the legal, rather than the medical, context. Medical opinion may be relevant to, but is not determinative of, the legal outcome.

	Professor Robert Maynard, and by the Industrial Injuries Advisory Council. The Bill as it stands therefore dismisses the advice of the Chief Medical Officer for England and Wales on pleural plaques and the consensus of medical opinion used in the Johnston decision and since. This includes important medical evidence that has been submitted to DFP consultations on pleural plaques in advance of this Bill. We are concerned that in proceeding with the Bill, due regard is not being given to this clear and uncontested medical evidence.	
	The medical consensus that pleural plaques are not a disease is based on the fact that they do not demonstrate the characteristics associated with a disease: As pleural plaques are not a disease, the Law Lords in the similar cases of Rothwell and Johnston, and courts since then, have found that the presence of asymptomatic pleural plaques does not constitute negligent damage.	As stated above, it is not a question of whether pleural plaques are a disease, but whether they should constitute material damage under the law of negligence. The Law Lords did not reject the claims on the basis that pleural plaques are not a disease but on the basis that they do not constitute material damage.
	[A]lthough pleural plaques indicate some change to the lungs, they do not constitute damage as there is no perceptible effect upon health or capability.	As stated earlier, the Department has determined that they do constitute damage.
	[T]he Chief Medical Officer for Northern Ireland acknowledged two upcoming reports from the Chief Medical Officer for	The Department accepts that the IIAC is a very knowledgeable body. However, as it

	England and Wales and the Industrial Injuries Advisory Council. He said, 'The input from this authoritative body [the IIAC] will I hope prove useful. Likewise I note the independent review which the Chief Medical Officer for England…has commissioned and I look forward to its deliberations. Any effort which can be made to ensure a better understanding of pleural plaques to both the public and the medical profession is likely to be useful. Having reviewed in depth the latest medical evidence, both of these reports concluded that pleural plaques should not be classed as a compensatable disease.	itself recognises, its role is to decide whether a particular disease should be prescribed for the purposes of the Industrial Injuries Disablement Benefit Scheme. It concluded that, as the scheme compensates actual disablement, rather than future risk of disablement or "health anxiety", it would not prescribe pleural plaques as either a physical or psychological disability. However, its report explicitly says that "[i]n civil proceedings different considerations may apply". Accordingly, the report leaves open the question of compensation on foot of a civil claim.
	This Bill would therefore be imposing an interpretation of what constitutes a compensatable disease which is in direct conflict with the medical and legal consensus in both England and Wales, and in Northern Ireland.	See above.
	The Assembly should consider the proportionality of the legislation, and take into account vital questions of both state budget capacity and financial impact on the local economy.	To that list could be added considerations of the wider public interest, adherence to the principle of access to justice, the need to encourage responsible behaviour and the need to secure high standards of health and safety.
	Moreover, it is difficult to see that it is 'right' to compensate for an anxiety that some people may contract an asbestos-	The issue is not whether a diagnosis of pleural plaques causes anxiety which

	related disease, when the medical evidence demonstrates that they have no higher risk of contracting such a disease than those who worked alongside them but do not have pleural plaques.	merits compensation but whether the plaques should be regarded as material damage. On the issue of “higher risk”, Lord Rodger said as follows in the Johnston case : “It is common ground that the plaques are not symptomatic: they do not cause the claimants pain nor do they disable them in any way. But they do indicate that the quantity of fibres in the claimants' lungs is significant. According to the evidence, the risk that they may develop asbestosis or mesothelioma is significantly higher in men with plaques than in men who have been exposed to asbestos dust in the workplace but who have not developed plaques. For that reason, during the hearing before the House, the plaques were said to function as a marker or litmus test for this increased risk.” Lord Hope also stated in the same case: “In each case there was medical evidence that the presence of pleural plaques indicated that the claimants were at significantly increased risk of developing an asbestos-related disease which would

		be actionable - of developing asbestosis, mesothelioma or lung cancer."
	Leaving aside other investment priorities, this would leave DETI with fewer funds to compensate genuine sufferers, such as those suffering from mesothelioma, asbestos-related lung cancer, and symptomatic asbestosis, especially if DETI projections for these liabilities are similarly underestimated.	The qualification with regard to asbestosis in the definition of "genuine sufferers" is noted. This reinforces the Department's view that Clause 2 of the Bill is required to ensure that other asymptomatic asbestos-related conditions remain actionable. As stated above, we believe DETI is best placed to project its own liabilities.
	The Assembly should also consider in more depth the impact of the Bill on the wider economy and on private parties. The Bill would impact on insurers', employers' and Local Authority resources, as they would also have to make provisions to pay compensation to those with pleural plaques. In doing so, it again would deplete funds for compensating genuine sufferers from asbestos-related diseases. The diversion of resources away from claimants suffering from a disease we understand to be one of the concerns that prompted a number of US States to enact legislation preventing claims from being brought by those with symptomless asbestos-related conditions.	As has been previously stated, the Department asked ABI for its own figures to facilitate its assessment of the financial impact and very little was forthcoming.
	The Assembly should also consider that the Bill might well have a long term impact on the insurance market in Northern Ireland. Many factors go into insurers' pricing strategies, but,	The operation of the insurance market is influenced by a range of factors and is subject to a number of considerations,

	fundamentally, the cost of paying claims feeds into premiums. Northern Ireland already has levels of damages and costs that are higher than in Great Britain as a whole. This Bill would make Northern Ireland a riskier place to insure businesses as insurers could not be certain that when they went to court, there would not be a subsequent intervention that would entail further costs. Insurers are likely therefore to build this cost into their pricing strategies. Insurers might also withdraw capital capacity from markets where they do not foresee an adequate return. Any uncertainty about the stability of a legal environment could potentially make Northern Ireland a less attractive place for the investment of this capital, which in turn would restrict the availably of insurance in the market, and reduce competitive pressure on prices. At a time when the Executive is seeking ways to develop the private sector in Northern Ireland this may put Northern Ireland businesses at a competitive disadvantage relative to their UK competitors.	including appropriate competition. Likewise, investment decisions by the business sector are determined by reference to a range of factors and, as stated above, that sector is adept at taking changes in its stride.
	Moreover, the Assembly should consider whether the Executive has sufficiently considered alternative means of achieving its policy objectives. Last year, the Westminster Government announced they would not overturn Rothwell to make pleural plaques compensatable and instead would make payments of £5000 to those claimants who had begun claims in the courts before the Rothwell decision, on the basis of a reasonable expectation of compensation. These payments were limited state payments, and were ex gratia and therefore did not involve any interference with private parties' possessions and did not tamper with the law of	The Department believes it is wholly unfair of the insurance industry to expect the taxpayer to pay compensation when it has levied the insurance premiums and purported to cover the risks. Moreover, it has been suggested that the industry enjoyed a substantial windfall on foot of the Johnston decision. Asking organisations to pay their premiums and then asking them, as taxpayers, to fund

	negligence.	the liabilities could be termed as “doubly unfair”.
	Moreover, changing the law of negligence potentially increases the level of litigation and likelihood of spurious claims. Both of these consequences would make Northern Ireland a less attractive place for businesses to invest in.	See comments above.
	The Bill would alter the determination as to whether a particular disease or condition constitutes an injury which is compensatable, which has traditionally been a matter for the courts to decide. In order for there to be a valid liability claim under common law, there must be a negligent act by the defendant, this must cause an injury to the claimant’s body, and the claimant must suffer material damage as a result.	See comments above.
	It is true that pleural plaques claims were paid from the 1980s until the judgment in 2006. However, claims were paid on the basis of the uncertain medical evidence and on the concern that pleural plaques were potentially malignant. As the medical evidence moved towards the current consensus that pleural plaques do not have any symptoms, are non-malignant and do not impair quality of life, the challenge was brought that they should no longer constitute negligible damage.	The Assembly is free to legislate to reinstate asymptomatic pleural plaques as actionable/material damage.
	The Bill would create rights based on exposure and/or anxiety about the prospect of a future illness, rather than any damage, setting a dangerous precedent that could lead to a flood of ‘exposure only’ claims where no actionable damage	See comments above.

	has occurred and, even more widely, claims for risk of an illness occurring or for worry that something might happen. For example, exposure to sunlight increases the risk of developing skin cancer, so there could be claims from building site workers that they were not adequately protected from the sun and should be compensated for the anxiety of contracting skin cancer. Those exposed to second hand smoke from their colleagues in the workplace could also claim for the anxiety of contracting lung cancer. It would be difficult to estimate the full consequences of expanding the law of negligence in this way.	
	We believe there are no other asymptomatic conditions which are compensated in the way this legislation proposes. The ruling in Johnston has been subsequently tested in cases relating to symptomless or minimally symptomatic asbestosis. In the 2009 cases of Beddoes & Ors v Vinters Defence Stystems & Ors, the judge, HHJ Walton, found there is no general formula on asbestosis cases with either no or minimal symptoms, and each case has to be looked at on its own facts. Whether the claimant has suffered material damage is a matter of fact and degree. The judge applied Johnston in finding that, in deciding whether a condition which otherwise does not amount to material injury is actionable damage, the court cannot take into account the possibility that it might, in future, become symptomatic. HHJ Walton applied the same test in the 2010 case of Smith v Deanpast Ltd.	It would appear that the insurance industry has been trying to apply the principles in the Johnston case to other asbestosis-related conditions. Hence the need for Clause 2 of the Bill.
	Sufficiently investigated the cost impact of the Bill, in particular, because no detailed interrogation of DETI figures	It is not for the Department to “interrogate” DETI’s figures, which have been arrived at

	on asbestos-related liabilities and the specific breakdown for pleural plaques liabilities has been undertaken.	on foot of actuarial advice.
	Sought independent analysis of the cost impact, including actuarial estimates if required, on the potential cost impact of the Bill.	Actuarial estimates cannot be prepared in a vacuum. Without information on the number and source of cases (much of which is, one would imagine, within the knowledge of the insurance companies) further analysis cannot be undertaken.
	Sufficiently considered the ECHR implications of the Bill, given the potential for the Bill to be subject to judicial review, the reluctance of the Minister to release legal advice from the Attorney-General, and especially given the ongoing legal case in Scotland.	The Department believes the Bill is ECHR compliant. Whether the Attorney General has advised or not is a matter which, by constitutional convention, is not disclosed.
	Heard oral evidence from independent medical experts, including the Chief Medical officer for Northern Ireland, given the particular relevance of medical opinion to this Bill;	See comments above.
	Sought expert opinion on the likely effect on business of the Bill and any wider ramifications such as potential impacts on the NHS of increased screening.	See comments above.
	In our view, it is not appropriate for a Bill with such wide implications to be rushed through the legislative process, without sufficient time for scrutiny of the detail. This Bill is	The Bill is not being “rushed through”. The timings and procedures set out within Standing Orders are being duly observed.

	contested and the Committee has an important role in providing the Northern Ireland Assembly and its Members with an extensive and robust analysis that considers all matters of the Bill and its potential implications. It is this due process that properly allows Members to make an informed decision on whether the Bill should pass or fall.	
Royal College of Physicians	In two recent CT screening studies in France the prevalence in 5545 asbestos exposed workers was 15.9% and in a second study, 46.9% of 1011. For both studies the mean latency period was around 40 years. Other estimates indicate that between 5 and 15% of those with occupational exposure will have plaques after a latent period of 20 years, rising as the latent period increases.	Various studies have been cited during the consultation process. However, it would appear that there is no reliable systematic way of monitoring the number of cases.
	Pleural plaques are nearly always asymptomatic although the knowledge that pleural plaques are there can engender anxiety that may produce symptoms that include dyspnoea and chest tightness. A grating sensation in the chest is described in less than 1%. In some studies, subjects with pleural plaques have been shown to have a small but statistically significant reduction in lung volumes of around 5% compared with to matched controls. Other studies have not confirmed this after controlling for parenchymal changes representing fibrosis. The fact that plaques are present on the parietal pleura means that they have little effect on lung expansion. The lung function changes (if any) are considered too small, in a legal	This reflects submissions made during consultation.

	sense, to attract compensation. Extensive and confluent plaques are uncommon but can result in a restrictive ventilatory defect that results in disability.	
	Patients may be aware that they have been exposed to asbestos, but the finding of pleural plaques is evidence to them that the asbestos exposure has had a physical effect. This may increase the anxiety about the risk of other asbestos-related diseases. Patients may also misunderstand the term pleural plaque and may assume they have asbestosis	This reflects submissions made during consultation.
	It could also be argued that the knowledge that asbestos exposure confers risk of developing other more serious conditions is, on its own, enough to produce adverse psychological effects. Indeed how much extra distress is caused by the knowledge that pleural plaques are present over and above that of the knowledge of the increased risk of serious disease caused by asbestos exposure is a legal rather than medical debate.	
	Because asbestos exposure causes disease that can shorten life, there will be a reduction in average life expectancy for exposed individuals. Since there is evidence for cumulative exposure increasing the risk of asbestosis, lung cancer and mesothelioma, it follows that the reduction in life expectancy will be linked to level of exposure. This argument has led some European countries to compensate all asbestos-exposed individuals with a certain level of estimated cumulative exposure. The compensation	This supports the earlier comment that individual States adopt individual responses.

	has been in the form of a reduction in the retirement age.	
	Early changes that might indicate asbestosis can persist for years without progression. It is not currently known what proportion of these CT-diagnosed cases do progress to the more familiar form of asbestosis easily recognised on CT and often seen on chest X-ray. Thus, the diagnostic criteria for early asbestosis and the proportion that progress are important if patients are to be accurately informed about prognosis.	Professor Seaton suggested that asbestosis would give rise to symptoms and, as such, attract compensation. However, this supports the suggestion that the Johnston case could be more widely applied.
Confederation of British Industry	Concerned at the general principles of the Bill, the inadequacy of the Regulatory Impact Assessment which underpins it, and the negative budgetary impact the Bill is likely to create and which we do not believe has been fully assessed.	See comments above.
	The medical evidence supports the view that pleural plaques are an indication of exposure to asbestos but that they are not in themselves an injury or disease - the House of Lords ruled in 2007 that they are benign and do not themselves constitute any physical impairment on those that have them	See comments above.
	The Bill to overturn this House of Lords judgment will lead to a fundamental change to the law of negligence - for the first time compensation will be payable on the basis of something other than an actual injury. This could create an unwelcome precedent and create additional uncertainty for businesses	See comments above.

	and insurers	
	We recognise the legitimate concerns about the need for better information about pleural plaques - this can best be done through increasing the amount of accurate information about them.	See comments above regarding leaflets.
	The Bill will create confusion and add to the general lack of knowledge and misunderstanding associated with pleural plaques by saying that pleural plaques should be compensatable and thus indicating that they are a serious condition. This is likely to create more anxiety for those that have been diagnosed with pleural plaques,and also removes the focus on those who have asbestosis, who clearly do need to be compensated	See comments above.
	The financial estimates of the costs of compensation are not rigorous and we believe could seriously underestimate the levels of claims and associated costs. This will impact not just on the business community but on departmental budgets including DETI where £12 million has been allocated over the next four year budget period - this is likely to be a serious underestimate if past trends continue and outstanding claims progress. With legal costs exceeding the compensation costs the total cost of this Bill is likely to be a magnitude higher than has been previously estimated. At a time when the DETI draft budget states that 'good projects will not be able to be	See comments above.

	supported' and 'the amount of new business that Invest NI can support will be curtailed' the rushed introduction of this Bill is even more surprising.	
	The Bill is also likely to create demand within the health service by increasing the demand for x-rays and CT scans which are the only way to properly diagnose asymptomatic pleural plaques	See comments above.
	Finally the importance of the Bill and the fundamental change to the law of negligence which it brings is likely to mean the introduction of the legislation will follow similar developments in Scotland with costly judicial reviews - the only winners being the lawyers	
Association of Personal Injury Lawyers	The fact that pleural plaques are asymptomatic belies the truth that they do represent a physiological change in the body.	
	The Northern Ireland Executive has shown great leadership by introducing this Bill, and attempting to overturn the decision made by the House of Lords. The Northern Ireland Executive, by doing this, has recognised the polluter pays principle.	
	Insurance premiums have already been collected and it is	

	right and proper that the negligent party should make recompense for that negligence.	
	APIL supports the amendment suggested by Thompsons McClure Solicitors in its response to the draft Bill in September 2010. This gives protection under law to those claimants whose cases were struck out following the decision by the House of Lords. This amendment would clarify that those claimants are able to bring an action for damages.	See comments above.
	Retrospectively it should be the date of the High Court decision rather than the date of the House of Lords as presently drafted. Following this decision, cases may have been stayed, in the knowledge that leave to appeal had been granted. Adding this amendment will provide clarity and certainty in the legislation.	The Department does not consider that it is necessary to go beyond the date of the House of Lords' decision, as it is acknowledged that cases were stayed pending that decision.
Dr DRT Shepherd	It is common to find patients have been told that there is evidence of asbestos on their chest x-ray or CT scan and they have very little knowledge regarding the differences between asbestos-related diseases (namely mesothelioma, diffuse pleural thickening or asbestosis) and asbestos-related pleural plaques.	
	The plaques are a marker of exposure to asbestos and therefore a marker of a small degree of risk of possibly developing asbestos-related disease in the future, but that the plaques in themselves do not interfere with lung function, nor	

	do they become cancerous.	
	It would therefore be useful to have information leaflets setting out the difference between pleural plaques and asbestos-related disease and to put the risks of pleural plaques in context with other risks that patients may take and accept during their life, such as cigarette smoking and the risks of road traffic accidents etc.	Leaflets for individuals are to appear on the website of the British Lung Foundation.
	Would agree with the medical evidence presented in the Johnston case, namely that pleural plaques do not normally cause any symptoms, nor do they interfere with lung function Unless asbestos-related disease occurs (mesothelioma, diffuse pleural thickening or asbestosis), pleural plaques in themselves do not give rise to symptoms or cause any interference with lung function and are simply a marker of previous asbestos exposure and a marker for the risks that asbestos exposure conveys.	The Department recognises that this was the agreed medical evidence. However, as stated above, what should constitute material damage is a legal, rather than a medical, issue.
	From a medical point of view, therefore, pleural plaques do not cause any injury and are simply a marker of some degree of risk of possibly developing asbestos-related disease in the future.	
	Allowing pleural plaques to be compensatible on legal terms risks development of medically unjustifiable CT scans being carried out, looking to see if asymptomatic pleural plaques are present in those workers who have been exposed or may have been exposed to asbestos in the past.	See comments above.

	Medically, therefore, I would not feel that legislation should be introduced to overturn the decision in the Johnston case, that pleural plaques are not compensatable in Civil Legislation. I realise that this does produce two populations, one of which has had civil compensation for pleural plaques up until the Johnston case and that similar patients following the Johnston case will not get that compensation. It does seem to me, however, sensible that compensation should be for a disability rather than a future risk of possibly developing a disability.	As stated above, compensation is for material damage, rather than “disease” or even “ disability”.
	In view of the fact that pleural plaques do not cause any injury/disability, I would not support a payment scheme for pleural plaques in themselves with the consequent risk of frequent medically unjustifiable CT scans being carried out, looking for pleural plaques that may not be visible on a chest x-ray and may only have minimal plaque disease on CT scanning. I do not have any information as regards how possible legislation would impact on equality questions on the business sector	See comments above.
	Important to recognise that this risk is not related to the pleural plaques, but is related to their previous asbestos exposure and therefore the risks are the same between two workmen who have worked in the same firm with similar asbestos exposure, one of whom may only have pleural plaques and the other one does not. The workman with	See comments above regarding differing approaches. Moreover the response from the RCP clearly shows that compensation takes differing forms.

	pleural plaques is at no greater risk of developing asbestos-related disease than his fellow worker without pleural plaques. It is the previous asbestos exposure, not the pleural plaques, that gives rise to the increase in risk of possibly developing asbestos-related in the future. As pleural plaques in themselves do not impair lung function or cause symptoms, it seems inappropriate that they in themselves should be compensateable and medically it does seem inappropriate that we in N. Ireland are out of step with most of the rest of the world who do not compensate pleural plaques (except possibly in Scotland).	
	It may in fact be felt to be discriminatory against workmen with asbestos exposure but without pleural plaques to compensate only those with pleural plaques.	See comments above relating to exposure.
	The provision of compensation for pleural plaques is likely to increase concerns regarding their benign nature and send mixed messages to the asbestos exposed population.	See comments above.
	Compensation for asymptomatic pleural plaques therefore risks claimants being advised to have repeated CT scans as if they are not present on initial CT scan it is possible they may be found on a later CT scan some years later. This is likely to cause unnecessary concern to the claimants and place an additional burden on investigative facilities.	See comments above.
	This is also likely to lead to a claims culture, encouraging people to get regularly tested who otherwise would probably never have known they had pleural plaques.	See comments above.
	Efforts should be made to increase patient awareness and understanding and those patients who do develop asbestos-	See comments above.

	related diseases should be properly and adequately compensated.	
	It does not seem to me to be sensible that we in N. Ireland seek to overturn a decision of the highest court in the land that has been fully considered and to put N. Ireland in a different position than most of the rest of the world, including England and Wales, in compensating asymptomatic pleural plaques.	See comments above.
	I think it is likely that the publicity regarding this new bill may unearth more cases of asymptomatic pleural plaques in those who have never known about these and lead to the development of claimants being encouraged to have regular CT scans, looking for pleural plaques. These regular CT scans, of course, have a radiation dose and an increase in radiation dose increases the risk of developing cancer.	See comments above.
British Insurers Brokers' Association	Any guarantee of compensation would create a huge surge in NHS X-ray requests from all who may have worked with asbestos at some time.	The bill does not "guarantee" compensation. On the use of radiological equipment, see comments above.
	Any additional costs incurred by the insurance industry due to an increase in claims made could affect the stability of the Northern Ireland insurance market and potentially force some insurance companies to reduce their activities in Northern Ireland or withdraw completely. The consequences for this are potential customer detriment with reduced availability of cover and the increase in premiums required to pay for the new claims.	See comments above.

	We have looked at several Liability Policy documents and we would point out that the wording used by Insurers refers to "injury "- which is defined as bodily injury, death, disease or illness, mental injury, wrongful arrest or false imprisonment. - The term used within the proposed Bill refers to "personal injury " which is not normally used and as such could create uncertainty in relation to an insurance contract between the Insurer and policyholder (Business). It would not however exclude the claim against the policyholder. We would not want to see a situation develop a situation of legal uncertainty for customers and the insurance industry whereby the court says that injury (which it acknowledges is not really injury)– is called "personal injury" and policyholders will be requested to indemnify to the value of the award by the court but find their Employers' Liability policy is not behind them unless Bodily Injury is proven ??	"Personal injury" is the accepted legal term. If the insurance companies wish to dispute the terms of a policy, that is a matter for them and could arise, no matter what term is used. Indeed, we understand the "trigger litigation" which looked at when liability for mesothelioma claims will arise (i.e. on exposure to asbestos or when the condition manifested itself) turned on the interpretation of the policies. So the insurance industry has already raised interpretation issues in other contexts.
	BIBA believe everyone should have access to justice and compensation where this is due and that the law as it currently stands in England, Northern Ireland and Wales should remain unchanged in order to avoid prices increases and unintended consequences of the reduction in availability of cover.	The Department believes the Bill underpins the concept of access to justice.
Northern Ireland Human Rights	Attention is drawn to the retrospective impact of the Bill in the ABI submission. It is worth highlighting that there is no	Agreed.

Commission	absolute prohibition on any retrospective legislation within the ECHR. Article 7 provides that no one should be held guilty of a *criminal offence* which was not an offence at the time it was committed, and is therefore not relevant to civil claims.	
	Retrospective element can be considered however among other matters in assessing whether any impact on property rights under Article 1 Protocol 1 is proportionate.	Agreed.
Professor Anthony Seaton	Anxiety may be prevented by careful explanation of their implications to the subject. This medical process is hindered by the implication of available compensation that they are indeed a significant medical condition.	See comments above.
	The numbers of individuals currently with pleural plaques may be as many as a million in England and Wales.	There is no way of verifying this statement.
	Negative implications of their recognition as a tortious condition are an overall increase in anxiety among asbestos-exposed individuals, a significant increase in radiation hazard to the population, an increase in the risk of anxiety related to unnecessary investigations and false positive results requiring further investigation, and increases in public expenditure in defending actions and investigating and treating anxious patients in the NHS. On the positive side, while those well people with plaques may receive a sum of money, law firms and expert witnesses may look forward to significant increases in revenue.	See comments above. It is not open to the Department to comment on the level of fees levied by professionals in either sphere.

	The House of Lords has accepted medical evidence that pleural plaques are harmless indicators of past asbestos exposure and not a cause of ill health. They have discussed in extenso the legal issues surrounding compensation for such a condition and have decided that there is no case in law for actions against employers for the condition.	See comments above.
	Decision of the House of Lords is based on generally accepted medical knowledge. Much of the argument revolved around the anxiety felt by individuals as a consequence of receiving information that they had plaques. For the reasons given below, I am of the opinion that this anxiety relates to inability of doctors to reassure patients about the benign nature of the condition in light of legal implications that it is a serious disease. The risks relate to asbestos exposure, not to pleural plaques, and such risks can now be quantified and put into perspective in order to inform and usually reassure the individuals concerned.	See comments above.
	The least serious is the development of pleural plaques. This is however far and away the most common of all the asbestos-related conditions and thus has acquired important financial connotations to companies, lawyers and doctors as well as to workers, out of all proportion to its medical importance.	
	Asbestosis is now rarely fatal, since its development requires a very high exposure and such exposures are historic in the West. It does, however, still appear in a slowly progressive or arrested form in some individuals with heavy past exposures	It may be that the slow progressive nature of the condition has allowed for the insurers argument that it can be asymptomatic.

	and certainly can be disabling.	
	In contrast, pleural plaques are medically trivial, cause no impairment and, until it was proposed by lawyers that they should attract compensation, caused no medical problems.	
	They have now become big business for law firms (a Google search gives evidence of this) and an easy source of income for expert witnesses.	The Department is not able to verify this statement. However, given the evidence of the plaintiff solicitors, pleural plaques cases would not appear to account for a large proportion of business.
	Their unnecessary investigation by CT scanning has resulted in considerable radiation exposure of well people, sometimes at the instigation of lawyers rather than doctors.	The Department is not able to verify this statement.
	They neither involve the lungs themselves nor impair its function. They are not pre-malignant. They were however known to be an indication of previous asbestos exposure and thus a confirmation of the story recounted by the subject. They indicate that some asbestos has passed through the lungs and reached the lung lining and has then been inactivated by a fibrotic reaction. By their limited extent and their position away from the lung, they cannot impair its function.	This reflects submissions made during the Johnston case and the consultation process.
	During my earlier professional career it was possible to deal with patients in whom pleural plaques had been discovered, almost always as an incidental finding consequential upon having a chest radiograph, by explaining that they simply meant that, as the person usually knew, he (rarely she) had been exposed to asbestos and that they did not imply the likelihood of any serious disease. As time passed, it became	

	possible for chest physicians with suitable knowledge to explain any risk of other asbestos disease related to the exposures and to make a rough estimate of risk in relation to other likely conditions such as other cancer or heart attack. It was thus possible to reassure the person. A competent chest physician was therefore able to prevent a long legacy of usually unnecessary anxiety and allow the person to continue to lead his (almost always these people are male) normal life.	
	From a clinical medical point of view, matters changed when it was decided legally that individuals with pleural plaques became entitled to sue for injury and able to obtain financial compensation. Part of this acknowledged the presence of "anxiety", an inevitable consequence of bad medical management forced upon doctors by the difficulty of explaining the benign nature of the condition when the law apparently says it is a disease, with implied serious consequences. The management of these individuals was thus handed over to lawyers who did not have a strong interest in reducing any anxiety. Since the House of Lords' decision it has again been possible to manage such individuals according to established medical practice.	
	Regrettably, occupational disease is far from rare in the UK and many workers are seriously disabled as a consequence. In my opinion, however, the medical case for recognition of pleural plaques as a disease is flimsy in the extreme.	See comments above on "disease".
	If their Lordships' decision were to be overturned by legislation, the financial benefits to workers, lawyers and experts would be balanced by a return to the situation	

	whereby it again becomes difficult to explain to well people that they are not seriously ill, with the attendant psychological consequences.	
	If the law recognises, effectively, that pleural plaques are a disease for which compensation might be obtained through the Courts, it is not unreasonable in the light of what happened after recognition of bronchitis and emphysema (real diseases) in coalminers to expect that law firms might maximise efforts to obtain clients by advertisement. Since the risks of both mesothelioma and plaques relate to asbestos exposure, the targets of such promotional activity would be those who had worked in the above-mentioned industries. It would be necessary to subject such individuals to radiographic investigation.	See comments above.
	Roughly one in three of us will die of cancer and a similar proportion of cardiovascular disease, usually in old age. The risk of mesothelioma alters the odds of the sort of cancer from which an individual might die rather than altering the likely time at which the inevitable event of death will occur.	Mesothelioma is invariably fatal, usually within a very short period.
	Ultimately the management of litigation-induced anxiety falls on the NHS.	As stated above, the Department considers that the anxiety arises from the confirmation of exposure, rather than the possibility of a claim.
Dr Robin Rudd	People with pleural plaques who have been heavily exposed to asbestos at work have a risk of mesothelioma more than one thousand times greater than the general population. The risk for those more lightly exposed is less but still substantially	

	greater than that of the general population.	
	People with pleural plaques commonly experience considerable anxiety about the risk of mesothelioma and other serious asbestos diseases. It has been suggested that the anxiety is a result of lack of information about the true nature of plaques and that all that is needed to dispel the anxiety is a full explanation. It has also been suggested that the anxiety has been caused or contributed to by the fact that damages were payable in respect of plaques. While these factors may come into play, they are not responsible for all or even most of the anxiety.	See comments above.
	Explanation that the future risks arise from the asbestos exposure which caused the plaques and not from the plaques themselves is a fine distinction that means little to the person without scientific training. It is the discovery of the plaques that has led to the situation in which an explanation of the future risks is necessary. For those who have been heavily exposed to asbestos the truth about their future risks is not in fact reassuring. To be told your present condition is benign but there is a 10% risk that you will die prematurely of mesothelioma and that your risk of lung cancer may be 40% or more, as in the case of a heavily exposed smoker, is not likely to set your mind at rest.	
	Despite the best intentioned and comprehensive reassurance offered by doctors that plaques are harmless, often the person diagnosed with plaques knows of former work colleagues who have gone on to die of mesothelioma after being diagnosed with pleural plaques. Patients have	

	sometimes been told to look out for new symptoms and report them to their doctor. Every ache or pain or feeling of shortness of breath renews the fear that this may be the onset of mesothelioma. The anxiety is real for all and for some has a serious adverse effect on quality of life.	
DETI	DETI believes it is likely that a majority of the exposure to asbestos in Northern Ireland occurred in the Harland and Wolff shipyards in Belfast pre-privatisation. As the publically owned company's insurers went into liquidation, the cost of compensation for such claims is mainly funded by this department. Therefore a key issue for this Department is ensuring that there would be adequate additional budget cover within DETI going forward.	See comments above regarding DETI provision.
	The Committee should note that DETI support for the Bill has always been on the basis that the Executive agree to make available additional budget cover for the full cost of claims for pleural plaques that could fall to DETI.	As above.
	DETI has earmarked £32m for asbestos related liabilities out of its overall Draft Budget allocation, of which £12 million relates to potential additional costs associated with pleural plaques. In reality however any budgetary requirement can only be an estimate and actuarial reviews will be required	As above.

	across this and future Budget periods.	
	The key issues for DETI in the period from 2011-15 are therefore: • what is the near term profile of any actual budgetary requirement. Should this be greater than the Draft Budget allocation of £32 million then further bids for pleural plaques would be required; and • the need to fund pleural plaques liabilities lessens the funding available to allocate to core DETI business areas within the overall Draft Budget envelope should additional funding not be available.	As above.
	The Department recognises that funding what would be a new statutory requirement would put additional strain on the DETI budget and the NI Block. As DETI officials indicated in their evidence session on the Draft Budget, DETI will of course be seeking to make a case for additional funding for mainstream activities should any additional funding become available between Draft and Final Budget.	This approach accords with the customary budget procedure.
The Asbestos Victims Support Groups Forum – UK	Most importantly, the Forum is in daily contact with asbestos victims, victims of the world's worst occupational health disaster, whose suffering is rarely fully appreciated, and who face a continuous battle for justice. Hardly a year goes by without a new attempt, principally by employers' liability	The Barker case was highlighted in the analysis of the responses to the Department's policy consultation paper (see footnote 3). As was noted, the case was overturned by the Compensation Act

	insurers, to limit their liabilities for insurance they wrote to cover asbestos-related diseases. Several attempts have been rebuffed by the courts, but not in every case. In one notable case, Barker v Corus (UK) Plc. Parliament overturned a Law Lords' decision in a case that would have denied justice to thousands of dying mesothelioma sufferers.	2006. ABI itself has highlighted other cases to which Johnston is being applied. Almost 3 years after Johnston (8th October 2010), the Court of Appeal handed down its judgment in the employers' liability trigger litigation. It had been hoped the judgment would clarify which insurer should meet a mesothelioma claim resulting from historic asbestos exposure. However, the Court decided that, in some cases, the employers' liability insurance is "triggered" not by the exposure to asbestos but by the development of the disease, which is always decades later. This means that in every case the exact words used in the insurance contract will have to be studied and mesothelioma victims could be left without compensation.
	The decision to abolish compensation for sufferers of pleural plaques has caused huge dismay and led to a prolonged campaign to have this House of Lords' decision overturned.	

	We appreciate that the Department of Finance and Personnel (the Department) will have taken expert submissions concerning the medical, legal and human rights questions relating to the draft Damages (Asbestos-related Conditions) Bill 2010 (the Bill). Our submission is based on the experience of pleural plaques sufferers and our experience working with asbestos victims for nearly two decades and we hope that the Department will take some account of our submission.	Those with pleural plaques provided their own personal testimonies during the policy consultation exercise and those testimonies are reflected in the analysis of responses.
	Asbestos laggers who were heavily exposed to asbestos, often for many years, have suffered a high incidence of fatal asbestos cancers. Consider the GMB branch Heat & Frost Laggers experience. Out of 350 members 58 had contracted asbestos-related diseases. • 25 had pleural plaques (7 later contracted lung cancer or mesothelioma) • 8 pleural thickening (2 later contracted lung cancer or mesothelioma) • 15 asbestosis (3 later contracted lung cancer or mesothelioma) • 3 lung cancers • 7 mesothelioma Twenty three of the branch members had died from asbestos-	

	related illnesses.	
	The reality is that many pleural plaques sufferers know of, or have witnessed, the death of their work colleagues from asbestos-related cancers. One member of the above GMB branch, Brian Fairbrass (Benny) committed suicide on learning of his diagnosis. Pleural plaques sufferers often live in close-knit communities and all too often they read of the death of a fellow worker from mesothelioma or asbestos-related lung cancer – how can this not cause anxiety?	This reflects the personal testimonies submitted to the Department.
	It is argued that pleural plaques sufferers should not feel more anxious than those who have been exposed to asbestos who have not developed pleural plaques. This argument comes from people who have no knowledge or understanding of what a diagnosis of pleural plaques means. From our experience, once someone is told that they have an asbestos disease, everything changes for them. They know that their bodies have reacted to the asbestos fibres in their lungs, causing damage, and an irreversible change has occurred. In all likelihood, they will have been shown X rays or CT scans depicting the affected areas of their lungs. In our experience, reassurances that pleural plaques are the least serious of the asbestos diseases never allay their fears. The fact that it is the asbestos fibres in their lungs, not pleural plaques that may yet cause more serious disease makes no difference. They now know that their lungs have been affected and the chance	See comments above on exposure only risks and cause of anxiety.

	of something worse happening is real in a wholly different way.	
	The response to a diagnosis of pleural plaques varies, for example, one man said that he had 'put his house in order and paid for his funeral', but for most the news is bad and they hope for the best. In our experience, no one diagnosed with pleural plaques takes that diagnosis lightly.	
	We believe that our testimony on the impact of a diagnosis of pleural plaques is borne out by the experience of many health professionals who have diagnosed people with pleural plaques. We urge the Department to see beyond the reassurances of the insurance industry that pleural plaques are inconsequential and nothing for people to worry about. The insurance industry reassurance has gone so far as to say that pleural plaques are a "good thing" because it proved that the body's defence systems were in good working order. This was the view expressed by Dr. Pamela Abernathy of the Forum of Insurance Lawyers.	Dr Abernathy's observation was made during an evidence session with the Scottish Justice Committee and the Committee challenged the observation.
	The right to compensation for pleural plaques sufferers was a matter of settled law for twenty one years. Nothing has changed over twenty one years in the medical understanding of pleural plaques: they are, as they always have been, scarring of the lung pleura resulting from the body's reaction to asbestos. Pleural plaques occur where there has been significant exposure to asbestos, consistent with heavy occupational exposure. They are thus a marker of exposure to asbestos fibres, fibres which might yet cause serious	The medical profession has accepted that, whilst the pleural plaques do not "degenerate" into a more serious condition, they are concrete proof of asbestos penetration, with all that that entails.

	asbestos disease. For twenty one years compensation was paid for the damage done to the lung, the scarring of the lung pleura, and for the anxiety, and in some cases the distress that this diagnosis caused.	
	We accept that the law is not immutable, it changes over time. However to change the law in respect of compensation for pleural plaques where there has been no change in legal principles of the tort of negligence, and no new medical evidence, brings the law into disrepute. For pleural plaques sufferers, the abrupt change in the law makes no sense. The Forum groups have spent hours on the telephone for days on end talking to pleural plaques sufferers who cannot accept the fine legal distinctions as to what constitutes 'damage'. For them, their lives have changed, their fears are real and it is the law that is unreal.	We have no way of knowing whether the medical advice changed. On the one hand, Nick Starling, on behalf of ABI, stated as follows in his evidence to the Committee – "However, we started to see a very substantial increase in the number of claims and began to get different medical evidence. We had been paying compensation for claims based on uncertain medical evidence and on a concern that pleural plaques were potentially malignant. However, the medical evidence changed, and the challenge was, therefore, made." On the other hand, Lord Rodger stated as follows in the Johnston case: "For about twenty years pleural plaques have been regarded as actionable. Courts have awarded damages for them. Employers and their insurers have settled many claims for damages for them. Even though this has not resulted in an

		unmanageable flood of claims, in the present cases the defendants and their insurers have taken a stand." No mention was made of new medical evidence and, as has often been stated, the medical evidence in the Johnston case was agreed. It is, however, perhaps worth noting that, when Lord Hope referred to the earlier decisions which had established pleural plaques as actionable, he refers to "symptom-free pleural changes, the risk of the development of diseases that were harmful and….the understandable worry attendant upon those various matters". This might support the contention that the medical evidence had not in fact changed.
	In evidence to the Secretary of State for Justice in 2009, Dr. Rudd, an eminent consultant physician and authority on medico-legal matters, exposed the inconsistency in the law and articulated the instinctive objection of pleural plaques sufferers to a change which simply made no sense to them whatsoever. Dr. Rudd explained that the Law Lords' implication that 'physiological damage' as well as 'anatomical damage' is necessary for an injury to constitute actionable damage is inconsistent with other areas of personal injury law. He gave	See comments above regarding disability/anxiety.

	an example where a person suffers a facial injury which leaves a scar, ‘anatomical injury’, and is awarded damages even though the ‘physiological function’ of the face is not impaired. He gave another example where the law allows compensation where someone has neither anatomical nor physiological damage. Where someone receives an injection where, for a while, it is thought to be contaminated with the virus, HIV, the only physical injury is the puncture of the skin by a needle, yet compensation is allowable for psychological damage. Dr. Rudd goes on to say: “It must be at least equally appropriate to award damages to persons who are acknowledged to have been negligently exposed to asbestos, who have suffered ‘anatomical injury’ i.e. pleural plaques, who are at significant, and in some cases large, long term risks of lung cancer and mesothelioma.” We urge the Department to take account of the inconsistency of the law as described by Dr. Rudd. We believe that the fine legal distinctions about what constitutes damage in respect of pleural plaques, which are so perplexing to asbestos victims and seem so unfair, do not provide the grounds to abolish compensation. On the contrary, they are in conflict with existing law.	
	Were it not for the negligence of employers and the institutional failure of government, health and safety enforcement agencies and public health authorities we would	

	not be witnessing an epidemic of mesothelioma deaths and the persistent diagnoses of non-cancerous asbestos-related diseases, all too often preceding a diagnosis of mesothelioma or lung cancer. The fine legal distinctions concerning what constitutes damage are not just lost on someone who has just seen an X ray showing the 'damage' to the lungs, they seem utterly offensive to someone who worked with no protection whatsoever in a dirty, dusty environment, full of asbestos fibres with no warning of the dangers of asbestos exposure or any protection whatsoever from fibres that can cause cancer.	See comments above.
	It has been argued that to allow compensation for pleural plaques will 'open the floodgates' for claims for anxiety caused by other injuries. This argument is unsustainable. For twenty one years pleural plaques were compensatable and there was not an explosion of other claims based on the law relating to pleural plaques compensation. There is no reason whatsoever to believe that the situation will change if the law is returned to the position prior to the Law Lord's judgment in 2007. In respect of claims for pleural plaques we would like to categorically state that we deplore the use of scan vans to encourage people to make claims. It is not only damaging for people to be exposed to radiation, it is also wrong to put people in the way of anxiety and distress about a potential	See comments above. See comments above.

	asbestos disease. Where a diagnosis of pleural plaques is made during a medical investigation then it is right to inform a patient of their diagnosis. In these circumstances patients should also have the right to sue for compensation.	
	We have no doubt that the testimonies from pleural plaques sufferers in Northern Ireland will confirm our experience working with asbestos victims in England, Wales and Scotland. The incredulity, shock and profound sense of injustice felt by so many asbestos victims we have supported over the years we believe will be reflected in the testimonies of people in Northern Ireland.	
	As for England and Wales, the reaction to the decision to end compensation from Alan Watson was: “I worked at British Rail and I have known work colleagues die of Mesothelioma, being diagnosed with pleural plaques is like standing on the edge of a precipice, to be denied compensation as well, adds insult to injury”	
	A reaction to the decision to provide some compensation only for those diagnosed prior to 17th October 2007 was summed up by Mr. Molyneux who said: “I was wrongly exposed to asbestos for many years and have seen the effect it has had on so many people who have died from mesothelioma. The asbestos fibres lodged in my lungs,	

	causing pleural plaques, signal a heightened risk that I too may suffer serious consequences. I have to live with that and so do hundreds of others. Can the Government live with its decision today to compensate some but not others?"	
	Compensation for pleural plaques is not just about money, it is first and foremost about justice.	See comments above.
Department of Justice	Policy on the law of negligence is one which it is intended will transfer to the Department of Justice in the future, along with the transfer of responsibility for keeping the civil law under review.	There are presently no plans to transfer functions. Civil law remains within the remit of DFP.
	the Bill…is unlikely to make a substantial impact on overall levels of court business.	See comments above.
	I expect that DFP officials will be liaising with officials [in the Department of Justice] on any implications for legal aid.	The Department has previously indicated to the Northern Ireland Court Service, that, in terms of legal aid, the Bill will be reinstating pleural plaques as actionable damage, rather than creating a new head of damage.