

PROPOSED RECOVERY OF MEDICAL COSTS FOR INDUSTRIAL DISEASE (SCOTLAND) BILL

A proposal for a Bill to enable Scottish Ministers to recover, from the party responsible for causing an industrial disease, certain costs incurred by the NHS in providing care and treatment to those suffering from that disease.

**Consultation by
Stuart McMillan MSP
Greenock and Inverclyde**

28 March 2018

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FOREWORD BY STUART MCMILLAN MSP

For many years, there have been in place legal mechanisms which enable the state to recover compensation in cases where injuries are treated by the National Health Service (NHS). In Scotland, this has meant many millions of pounds have been recovered. There is an inherent sense of “fiscal fairness” in this recovery, so that the NHS in Scotland is not disadvantaged by paying the financial price for the care and treatment of individuals whose injuries have been caused by a person or organisation’s negligence.

I believe that the NHS in Scotland should also be fairly compensated when it treats someone who suffers from an industrial disease.

The Bill’s objective is to allow the recovery of costs associated with NHS treatment for industrial diseases caused by negligence.

There are many reasons why I believe the Bill is necessary, desirable and entirely appropriate:

- Scottish society, industry and our economy has benefited from a proud industrial history. It is a history, however, scarred by industrial injury and disease; none experienced more acutely than our workers who were exposed to asbestos at work. Certainly that is why the Scottish Parliament has always been quick to act to support victims of asbestos-related disease. In that spirit, it is entirely right and proper that victims of industrial disease are put on an equal footing with victims of road traffic accidents and other injuries.
- Secondly, we are in financially straitened times. I think it is wrong that the taxpayer should bear the full financial burden of caring for victims of industrial disease when the burden ought, more fairly and appropriately, fall on those whose negligence caused the industrial disease.
- A financial penalty on negligent employers who cause these diseases may be sufficient incentive to improve health and safety practices across the country and thus reduce the incidence of industrial disease.

This consultation, therefore, aims to elicit views from experts, industry, the public sector and individuals about a Bill which would allow Scottish Ministers to claim compensation on behalf of NHS Scotland for all industrial disease. This would include asbestos-related conditions, as well as industrial diseases which can include skin conditions, respiratory conditions, deafness and asthma. The Bill would only apply to those industrial diseases which are developed where the exposure to an occupational hazard occurred after the commencement date of the Bill.

I believe this proposed Bill would treat victims of industrial disease in the same way victims of accidents and injuries are treated and that much needed finances could be recouped by the NHS.

I would, therefore, encourage as wide an input of opinion as possible through the consultation process and I would be happy to meet with organisations or individuals who have a particular interest in this matter.

Stuart McMillan MSP
28 March 2018

HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

Stuart McMillan MSP
26 Grey Place
Greenock
PA15 1YF

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website (www.parliament.scot) under Parliamentary Business / Bills / Proposals for Members' Bills.

AIM OF THE PROPOSED BILL

BACKGROUND

Industrial diseases result from exposure to an occupational hazard in the workplace. The occupational hazard will vary according to the type of work being carried out, but it could be a harmful substance, such as dust or fumes, or a harmful environment, such as one that is very loud. Typically, workers are exposed to the harmful substance or working conditions over a period of time and this results in a serious impact on their body and general health. The Department for Work and Pensions officially classes around 70 injuries and diseases as industrial illnesses for the purpose of social security payments.¹ My Bill would seek to cover all the diseases listed in this document.

Scotland's society and economy has benefited from its proud industrial history, but places of work have not always been safe for the men and women employed in certain industries. In the second half of the 20th century, industries such as shipbuilding, coal-mining and heavy manufacturing declined while the oil industry, construction, technological manufacturing and the service sector grew. Workers in some industries have been exposed to the risk of many types of industrial disease. Notably and acutely, men and women who contracted asbestos-related diseases because of where they worked have been the focus of specific action by the Scottish Government and specialist care exists for asbestos survivors within NHS Scotland. Sadly, the legacy of asbestos-related diseases may not have reached its peak. The latency period between exposure to asbestos and the victim showing the signs of an asbestos-related disease can be very long – there can be a period of between ten and sixty years between exposure and the development of the disease. The impact of the industrial use of asbestos will, therefore, be with us for many decades to come. Other diseases, including skin diseases and respiratory diseases such as asthma, have been linked to workplace negligence and experts are monitoring and understanding the links between workplaces and diseases more and more as time goes on. There are ways to prevent all these diseases but negligent employers choose not to implement them

The Civil Justice Statistics in Scotland for 2015-16 confirms that, of the 8,766 personal injury cases raised in the Scottish courts in that year, 1,460 of those related to causes other than road traffic and other accidents, medical negligence or asbestos disease.² Those other causes are primarily industrial diseases and injuries, such as industrial deafness, vibration white finger, silicosis and a number of industrial cancers. Those, plus the 300 asbestos cases that year, are all claims with the potential for the NHS treatment costs to be met by the negligent party.

¹ UK Government, Department for Work and Pensions (2017). *Industrial Injuries Disablement Benefits: technical guidance*. Available at: <https://www.gov.uk/government/publications/industrial-injuries-disablement-benefits-technical-guidance/industrial-injuries-disablement-benefits-technical-guidance>. Accessed 27 March 2018.

² Scottish Government (2016). *Civil Justice Statistics in Scotland 2015-16*. Available at: <http://www.gov.scot/Publications/2017/03/5915/9>. Accessed 27 March 2018.

The common law ‘duty of care’ and right to claim compensation

The dangers of exposure to industrial processes have been known since at least the 1800s. Someone who suffers harm from negligent exposure to dust, noise and harmful chemicals or the industrial environment can sue in court for compensation.

Scots law has its origins in Roman law. Even ancient Roman law recognised that there are circumstances where compensation must be paid where someone causes suffering to another. For more than a century, Scots law has recognised that the payment must be made by the negligent party if she or he has been negligent or has otherwise breached a rule of law such as an Act of Parliament or regulations. Suffering has never been restricted to physical injury. The law has long recognised that the requirement to pay compensation includes circumstances where the negligent party causes the victim to develop a disease.

Other recovery schemes

There is already precedent in UK law for costs associated with a person suffering from an injury to be recovered by the state.

The Social Security Administration Act 1992 (later superseded by the Social Security (Recovery of Benefits) Act 1997) places an obligation on a person or company – who has been found to have caused injury and is required by law to pay compensation – to recompense the state for certain social security benefits. In most instances, of course, the compensator would not be the individual or company but its insurer.

There are other ways in which injury can have a financial impact upon the public purse. The Road Traffic (NHS Charges) Act 1999 required the compensator to also repay the cost of NHS treatment arising from road traffic accidents.

Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 extended the obligation on compensators to repay NHS charges in relation to all incidents causing an injury. The 2003 Act excludes diseases (except where they result from the injury).

The obligation to recompense the state only arises where there has been a negligent or other wrongful act in circumstances where the law requires a payment of compensation to a victim. If there is no fault and, accordingly, no obligation to pay compensation to the victim, there is no obligation to pay anything to the state.

There is currently no obligation for any costs incurred by the state to be repaid in relation to an industrial disease. I want to address this. Where an individual or organisation has been found to be liable for causing an industrial disease, I want to ensure any costs met by the public purse in relation to the NHS treatment of that disease can be recovered.

My 2015 draft proposal for a Recovery of Medical Costs for Asbestos Diseases (Scotland) Bill

Three years ago, I proposed a Bill which sought to recover the costs of NHS treatment for those suffering from asbestos-related diseases. The Bill sought to parallel the legislation which has been in place since 1999 in relation to road traffic accidents and from 2003 in relation to injuries. Diseases caused by the negligence of others have historically been excluded from such legislation which, in my view, is a social injustice.

The previously proposed Bill was restricted to asbestos-related diseases because, in my parliamentary region of the West of Scotland, I had become so acutely aware of the suffering and struggle caused by the health impact of Scotland's industrial past and the enormous pressures that places on the resources of our NHS.

After careful consideration of the responses to the consultation on the previous Bill, I reached two conclusions: firstly, that there were areas of that proposed Bill which were outside the legislative competence of the Scottish Parliament and which needed to be addressed and, secondly, that there was no justifiable reason why the scope of the Bill should be restricted to asbestos-related diseases when there are numerous other victims of industrial disease who require NHS treatment for conditions contracted due to the negligence of others.

2015 Supreme Court judgement on the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill 2013

A Bill aiming to allow for the recovery of costs for the treatment of asbestos-related diseases was passed by the National Assembly for Wales in 2013 but was referred to the Supreme Court on the question of legislative competence. The Supreme Court held that the Bill was outside the legislative competence of the Assembly both because it wasn't sufficiently related to the devolved matter of "the organisation of the funding of the National Health Service" and, moreover, that the Bill was in breach of Article 1, Protocol 1 of the European Convention on Human Rights as it retrospectively imposed liability on compensators and their insurers. The effect of the Supreme Court judgement was to prevent the 2013 Bill becoming an Act.

It would be remiss of me not to give due consideration to the Supreme Court's decision when revisiting this proposed Bill. There were two key issues in the judgement: devolved competence and retrospectivity.

It is my view that the Supreme Court's first reason for rejecting the 2013 Bill would not have applied had the Bill been passed by the Scottish Parliament, which has wider devolved competence in relation to health than the Assembly. I recognise, however, that a specific provision about insurance in the 2013 Bill could not have been included in a Scottish Parliament Bill – since insurance is a reserved matter under the Scotland Act 1998. I can, therefore, confirm that the Bill I am currently proposing would not include

any such provision about insurance and that any liability under the Bill would lie with the negligent party, not their insurer.

On the second matter, of retrospectivity, I concede that this may also apply to any Scottish Parliament Bill (which, like the Assembly, may only legislate compatibly with ECHR). Therefore, to move ahead in view of the Supreme Court judgement, the Bill I am currently proposing removes the retrospective element in its entirety. This Bill would only apply to industrial diseases resulting from exposure to an occupational hazard if the exposure occurred after the commencement date of the Bill.

DETAIL OF THE PROPOSED BILL

My proposed Bill would impose on the negligent party (found to be such through a civil litigation process) an obligation to pay the costs of the NHS treatment required by the injured party. The injured party would be suffering from an industrial disease (which I would expect to include any disease listed in Appendix 1 of the Department for Work and Pensions (DWP) guidance, *Industrial Injuries Disablement Benefits: technical guidance*).³

It is important to recognise that my proposal would not create any new class of person who requires to pay compensation arising from an industrial disease. The obligation to repay the NHS benefits would only arise where there is negligence or a breach of a statutory obligation which gives rise to a primary obligation to compensate the victim or, in cases where the disease has caused death, the victim's family.

The Bill would not have retrospective effect nor would it impose the liability on the employer's liability or public liability insurer, but would find the negligent party responsible for the treatment costs.

I would like to see the NHS costs recovered by the Compensation Recovery Unit (CRU), part of the DWP, which already has in place the mechanism for recovery of the costs in relation to social security payments and NHS costs for injuries. I believe the remit of the CRU could be readily extended to include treatment for diseases. I expand further on this in the following section.

Under current legislation in relation to the recovery of NHS costs for injury, the monies are repaid to the health board which provided the original treatment. This proposal would follow that same model.

³ UK Government, Department for Work and Pensions (2017). *Industrial Injuries Disablement Benefits: technical guidance*. Available at: <https://www.gov.uk/government/publications/industrial-injuries-disablement-benefits-technical-guidance/industrial-injuries-disablement-benefits-technical-guidance>. Accessed 27 March 2018.

The proposed Bill seeks to achieve the following:

- Impose a statutory obligation on negligent parties to repay NHS charges associated with the care of victims of industrial disease.
- Create a framework for certifying the amount which requires to be repaid, calculating that sum and the basic means of recovery by the Scottish Ministers.
- Create an appeal and review process including an appeal on a point of law to the First-tier Tribunal.
- Use existing methods of recovery in circumstances where the compensator does not fulfil their obligation voluntarily.

Implementation

There are two options for the implementation of my proposed Bill.

The first is for the costs relating to industrial disease to be recovered in exactly the same way as costs relating to injuries are currently recovered. The NHS Injury Costs Recovery (ICR) scheme⁴ allows health boards to receive payments from the compensation paid out to those involved in road traffic accidents and personal injuries that were no fault of their own.

The scheme to recover both social security benefits (under the 1997 Act) and NHS charges (under the 1999 and 2003 Acts) is operated on a GB wide basis (Northern Ireland operates a comparable scheme) by the CRU which is part of the Department of Work and Pensions. This scheme places an obligation on insurers and solicitors to notify the CRU of personal injury compensation claims in progress, including whether the injured person attended hospital, and to request a certificate of NHS charges when the case is determined. The CRU carries out these legislative functions on behalf of Scottish Ministers as well as UK Ministers.

The CRU liaises with insurers to recover costs which, in turn, are paid to the health board. Disputes with insurers are dealt with, in the first instance, by the CRU. There is also an appeal system via the Independent Tribunal Service.

The amounts raised by the CRU are significant and provide valuable compensation for the NHS which has incurred the cost. For example, the total paid to the NHS under the ICR for Scotland between April 2017 and August 2017 was £6,001,012⁵.

⁴ UK Government, Department for Health and Social Care (2017). *NHS Injury Costs Recovery scheme*. Available at: <https://www.gov.uk/government/publications/nhs-injury-cost-recovery-scheme>. Accessed 27 March 2018.

⁵ See Annexe.

My Bill would, ideally, operate on the same basis. The obligation on insurers and solicitors to notify the CRU of personal injury compensation claims would be extended to cover claims relating to industrial diseases. The CRU would continue to coordinate the process, with monies returned to the relevant health board.

Responses to the 2015 consultation on this issue gave a measure of support for this approach, with 29% of respondents expressing that the CRU could adequately deal with an extended role, subject to adequate resourcing, including resourcing for training and any additional spend on infrastructure. One frequently expressed concern in responses to the consultation on my previous Bill proposal was about how well the CRU could cope with claims invoking the issue of co-morbidity, where patients present with more than one condition, and where these conditions may or may not be related to the industrial disease.

I feel strongly, however, the complexities of co-morbidity are becoming better understood by the medical, legal and underwriting professions with each passing year. Although the treatment of industrial disease may involve more complex packages of treatment when compared against an average injury claim, I do not believe that this presents an insurmountable barrier.

As the DWP is part of the UK Government, however, this first option could only go ahead if the UK Government agrees to the CRU taking on this additional workload. The Scottish Parliament cannot legislate to require the UK Government to collect the compensation monies. My second option, therefore, would be for the Scottish Government itself to administer a compensation recovery scheme, based on the IRC. I believe it would be more expensive and complex, and less efficient, if a Scotland-only scheme had to be created.

Costs

UK Government

If the proposed scheme could be incorporated into the existing ICR, administered by the CRU/DWP, there would be a small cost to that unit in terms of its expanded remit. It is anticipated these costs would be minimal.

Scottish Government

I believe the cost to the Scottish Government would be minimal, especially if the proposed scheme could be incorporated into the existing ICR, administered by the CRU/DWP.

There would be some costs, however, if the proposed scheme could not be incorporated into the existing ICR and Scottish Ministers had to establish their own scheme. It is anticipated these costs would be moderate.

NHS

The nature of industrial disease is such that the costs of treatment are variable. For example, the estimated cost for diagnosing and managing mesothelioma – a tumour on the lining of the lung – is around £60,000 a patient.⁶ The cost of treating an adult with mild or moderate body eczema for one year with first-line treatments is £49.98.⁷

Negligent parties

Costs would fall to employers who have been found liable to pay compensation for causing industrial diseases through a civil litigation process. It is expected these costs would be met by insurers, who would develop a new class of insurance to cover employers from industrial disease claims.

Retrospectivity and costs

There is no retrospectivity element in this proposal.

Equalities

An initial assessment has been undertaken to consider the impact of this proposed Bill on those groups whose characteristics are protected under the Equality Act 2010.

The Bill seeks to provide a mechanism to allow the NHS to recover any medical costs. The Bill does not impact on, or change in any way, an individual's access to NHS medical treatment.

On this basis, it is not anticipated the proposed Bill would impact on any of those groups with protected characteristics.

Sustainable development

An initial assessment has also been undertaken to consider the impact of this proposed Bill in terms of supporting the sustainable development of society, environment, economy and governance.

The proposed Bill seeks to create a fairer society by extending the current rules regarding the recovery of medical costs to treatment for industrial disease. This would allow the money previously used to treat industrial diseases to be reallocated to other areas of the NHS budget and this could improve some people's health and wellbeing. The proposed Bill aims to improve general health and safety by incentivising employers to ensure employees have no exposure to an occupational hazard which may cause an industrial disease.

⁶ BBC News website (21 February 2017). *Bid to reclaim NHS asbestos costs*. Available at: <http://www.bbc.co.uk/news/uk-scotland-26289420>. Accessed 27 March 2018.

⁷ Pitt M, et al (28 February 2007). *A cost-utility analysis of pimecrolimus vs. topical corticosteroids and emollients for the treatment of mild and moderate atopic eczema*. Available at: <http://www.crd.york.ac.uk/crdweb/ShowRecord.asp?LinkFrom=OAI&ID=22006001222>. Accessed 27 March 2018.

It is not anticipated the proposed Bill would have a significant impact on the environment but, as one of the aims of the Bill is to raise health and safety standards, this would hopefully lead to a decrease in the amount of, and an improvement in the disposal of, hazardous waste.

The proposed Bill would have a limited impact on the economy by extending the liability for the repayment of NHS treatment costs to (people and) companies whose negligence causes industrial disease. It is likely these would, in reality, be met by the negligent party's insurance provider and this might result in higher premiums.

It is not expected the proposed Bill would impact on governance issues.

QUESTIONS

ABOUT YOU

1. Are you responding as:

- an individual – in which case go to Q2A
 on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

- Politician (MSP/MP/peer/MEP/Councillor)
 Professional with experience in a relevant subject
 Academic with expertise in a relevant subject
 Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
 Commercial organisation (company, business)
 Representative organisation (trade union, professional association)
 Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
 I would like this response to be published anonymously
 I would like this response to be considered, but not published (“not for publication”)

Please give a reason why you have requested anonymity or asked for your response not to be published:

- 4. Please provide your name or the name of your organisation.** This will not be published if you have asked for the response to be anonymous or “not for publication”. Otherwise this is how your name/name of your organisation will be published.

Name:

Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

Contact details:

- 5. Data protection declaration**

I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data will be used.

YOUR VIEWS ON THE PROPOSAL

Aim and approach

1. Which of the following best expresses your view of the proposed Bill?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

2. What do you think would be the main practical advantages and disadvantages of the proposed Bill?

3. What is your view of my preference for the recovery of medical costs for the treatment of industrial disease in Scotland to be incorporated into the Injury Costs Recovery scheme and administered by the Compensation Recovery Unit, part of the UK Department for Work and Pensions?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response. Are there other ways the scheme could be administered?

Financial implications

4. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

(a) Government and the public sector

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(b) Businesses

- Significant increase in cost

- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(c) Individuals

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

- 5. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?**

Equalities

- 6. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, race, religion and belief, sex, sexual orientation?**

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

- 7. In what ways could any negative impact of the Bill on equality be minimised or avoided?**

Sustainability

- 8. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?**

General

9. Do you have any other comments or suggestions on the proposal?

HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:

<http://www.smartsurvey.co.uk/s/RecoveryOfNHSCosts/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or at the end of this document.

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

Stuart.McMillan.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Stuart McMillan MSP
26 Grey Place
Greenock
PA15 1YF

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on (01475) 720930.

Deadline for responses

All responses should be received no later than **Friday 22 June 2018**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website <https://stuartmcmillansnp.wordpress.com/>. Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The Privacy Notice (below) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The Privacy Notice (below) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The Privacy Notice (below) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.

Privacy Notice

This privacy notice explains how the personal data which may be included in, or is provided with, your response to a MSP's consultation on a proposal for a Member's Bill will be processed. This data will include any personal data (including sensitive or special categories of personal data) that is included as part of your response (i.e. in your answers to consultation questions), and will also include your name and your contact details provided with the response (but separately from your answers to consultation questions).

Collecting and holding Personal Data

The Scottish Parliamentary Corporate Body (SPCB) processes any personal data you send to it, or that the MSP whose consultation you respond to shares with it (under a data-sharing agreement) according to the requirements of the General Data Protection Regulation (EU) 2016/679 (the GDPR), the Data Protection Act 1998 (the DPA) and any Acts that replace the Data Protection Act 1998. Personal data consists of data from which a living individual may be identified. The SPCB will hold any personal data securely, will use it only for the purposes it was collected for and will only pass it to any third parties (other than the MSP whose consultation you respond to) with your consent or according to a legal obligation. Further information about the data protection legislation and your rights is available here:

<https://ico.org.uk/for-the-public/is-my-information-being-handled-correctly/>

Sharing Personal Data

The data collected and generated by Smart Survey will be held by the Non-Government Bills Unit (NGBU), a team in the Scottish Parliament which supports MSPs progressing Members' Bills, and shared with the MSP who is progressing the Bill and staff in the MSP's office. Data submitted by other means (e.g. by email or hard copy) will be held by the MSP's office and shared with NGBU for the purpose of producing a summary of responses to the consultation. The MSP and NGBU are joint data controllers of the data. Under a data-sharing agreement between the MSP and the Scottish Parliament, access to the data is normally limited to NGBU staff working on the Member's Bill/proposal, the MSP and staff in the MSP's office working on the Member's Bill/proposal; but data may also be shared by NGBU with the Scottish Parliament's solicitors in the context of obtaining legal advice.

Publishing Personal Data

“Not for publication” responses will not be published and will only be referred to in the summary of consultation responses in the context of a reference to the number of “not for publication” responses received and, in some cases, in the context of a general reference that is considered by you to be consistent with the reasons for choosing “not for publication” status for your response.

Anonymous responses will be published without your name attached, your name will not be mentioned in the summary of consultation responses, and any quote from or reference to any of your answers or comments will not be attributed to you by name.

Other responses may be published, together with your name; and quotes from or references to any of your answers or comments, together with your name, may also be published in the summary of consultation responses.

Contact details (e.g. your e-mail address) provided with (but not as part of) your response will not be published, but may be used by either the MSP’s office or by NGBU to contact you about your response or to provide you with further information about progress with the proposed Bill.

Where personal data, whether relating to you or to anyone else, is included as part of your response (e.g. in your answers to consultation questions), the MSP’s office or NGBU may edit or remove it, or invite you to do so; but in certain circumstances the response may be published with the personal data still included.

Please note, however, that references in the foregoing paragraphs to circumstances in which responses will not be published are subject to the Parliament’s legal obligations under the Freedom of Information (Scotland) Act 2002. Under that Act, the Parliament may be obliged to release to a requester information that it holds, which may include personal data in your response (including if the response is “not for publication” or anonymous).

Use of Smart Survey software

The Scottish Parliament is licensed to use Smart Survey which is a third party online survey system enabling the Scottish Parliament to collect responses to MSP consultations, to extract and collate data from those responses, and to generate statistical information about those responses. Smart Survey is based in the UK and is subject to the requirements of data protection legislation.

Any information you send by email or in hard copy in response to a consultation on a proposal for a Member’s Bill (including personal data and sensitive or special category

personal data) may be added manually to Smart Survey by the MSP's office or by NGBU.

The privacy policy for Smart Survey is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

While the collected data is held on Smart Survey, access to it is password protected. Where the data is transferred to our own servers at the Scottish Parliament, access will be restricted to NGBU staff through the application of security caveats to all folders holding consultation data.

Access to, retention and deletion of personal data

As soon as possible after a summary of consultation responses has been published, or three months after the consultation period has ended, whichever is earlier, all of your data (i.e. your response to the consultation and the personal data provided with it) will be deleted from Smart Survey. If, three months after the consultation period has ended, a summary has not been published, then that response (but not the personal data provided with it) may be downloaded from Smart Survey to SPCB servers and retained until the end of the session of the Parliament in which the consultation took place. If the MSP lodges a final proposal, he/she is required to provide a copy of your response (unless it was "not for publication"), together with your name (unless you requested anonymity), but not the other personal data provided with it, to the Scottish Parliament Information Centre (SPICe), where it may be retained indefinitely and may be archived.

Purpose of the data processing

The purpose of collecting, storing and sharing personal data contained in consultation responses is to enable Members to consider the views of respondents to inform the development of the Bill, with the support of NGBU. Personal data contained in consultation responses will not be used for any other purpose without the express consent of the data subject.

The legal basis

The legal basis for collecting, holding, sharing and publishing your personal data is that the processing is necessary for the performance of a task carried out in the public interest. The task is the support of Members seeking to introduce Members' Bills to the Parliament.

Your rights

Data protection legislation sets out the rights which individuals have in relation to personal data held about them by data controllers. Applicable rights are listed below,

although whether you will be able to exercise data subject rights in a particular case may depend on the purpose for which the data controller is processing the data and the legal basis upon which the processing takes place. For example, the rights allowing for erasure of personal data (right to be forgotten) and data portability do not apply in cases where personal data is processed for the purpose of the performance of a task carried out in the public interest. The right to object to the processing of personal data for the purpose of a public interest task is restricted if there are legitimate grounds for the processing which override the interest of the data subject. This would be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data would pose to you. As described above, the collection, storage, sharing and publishing of personal data contained in consultation responses is a task carried out in the public interest, which means that these three data subject rights do not apply here or only in a restricted scope.

Access to your information – You have the right to request a copy of the personal information about you that we hold.

Correcting your information – We want to make sure that your personal information is accurate, complete and up to date and you may ask us to correct any personal information about you that you believe does not meet these standards.

Objecting to how we may use your information – Where we use your personal information to perform tasks carried out in the public interest then, if you ask us to, we will stop using that personal information unless there are overriding legitimate grounds to continue.

Restricting how we may use your information – In some cases, you may ask us to restrict how we use your personal information. This right might apply, for example, where we are checking the accuracy of personal information about you that we hold or assessing the validity of any objection you have made to our use of your information. The right might also apply where this is no longer a basis for using your personal information but you don't want us to delete the data. Where this right is validly exercised, we may only use the relevant personal information with your consent, for legal claims or where there are other public interest grounds to do so.

Please contact us in any of the ways set out in the *Contact information and further advice* section if you wish to exercise any of these rights.

Changes to our privacy notice

We keep this privacy notice under regular review and will place any updates on this website. Paper copies of the privacy notice may also be obtained using the contact information below.

This privacy notice was last updated on 22 March 2018.

Contact information and further advice

If you have any further questions about the way in which we process personal data, or about how to exercise your rights, please contact:

Head of Information Governance

The Scottish Parliament

Edinburgh

EH99 1SP

Telephone: 0131 348 6913 (Text Relay calls welcome)

Textphone: 0800 092 7100

Email: dataprotection@parliament.scot

Complaints

We seek to resolve directly all complaints about how we handle personal information but you also have the right to lodge a complaint with the Information Commissioner's Office:

- Online: <https://ico.org.uk/global/contact-us/email/>
- By phone: 0303 123 1113

Background note

The document contained in this annexe is an enquiry response to Stuart McMillan MSP from the Scottish Parliament Information Centre (SPICe), received on 25 September 2017.

Please note that the link included in the footnote is regularly updated by the Department for Work and Pensions. The figures provided in the enquiry response were correct as of 25 September 2017.

SPICe enquiry response

The NHS Scotland [Injury Costs Recovery Scheme](#) (ICR) was launched in January 2007. It allows for NHS Boards to directly receive payments from the compensation paid out to those involved in Road Traffic Accidents and personal injuries that were no fault of their own, etc.

The collection of these funds is organised through the Compensation Recovery Unit (CRU), which is part of the Department of Work and Pensions (DWP) and is based in Wolverhampton. It works with insurance companies, solicitors and the DWP to recover costs from compensation payments. The costs it aims to recover are: social security benefits paid as a result of an accident, injury or disease; or costs incurred by the NHS and Ambulance service for treatment from injuries from road traffic accidents and personal injury claims.

The basic process for recovering compensation is that when compensation is awarded to a claimant, the compensator must inform the CRU before any payment is made. The CRU then sends a certificate outlining the amount of benefit that is recoverable to the compensator, as well as a copy to the claimant.

The legislative framework for how the CRU encompasses Scotland is outlined in Part 3 of the Health and Social Care (Community Health and Standards) Act 2003. There are technically two schemes in existence, with the Scottish Ministers administering the scheme covering Scotland. However the CRU carries out the legislative functions on behalf of Scottish Ministers.

With regard to how much money the ICR claims back there are several tables [published](#) that provide this information broken down into the different totals for the separate nations. For example, Scottish NHS Trusts have received £1,123,728 in April 2017, and a total of £6,001,012 since August 2017. The full table⁸ is included below for ease of reference.

⁸ UK Government, Department of Health and Social Care. *NHS Injury Costs Recovery (ICR) scheme: amounts collected April 2017 to March 2018*. Available at: <https://www.gov.uk/government/publications/nhs-injury-costs-recovery-scheme-april-2017-to-march-2018/nhs-injury-costs-recovery-icr-scheme-amounts-collected-april-2017-to-march-2018>.

Accessed 27 March 2018.

Table 1: Total amounts collected per month by the Compensation Recovery Unit and paid to the NHS under the Injury Costs Recovery scheme Totals for England, Scotland and Wales.

Month	England	Scotland	Wales	Ambulance Trusts	Total
April 2017	£12,980,457	£1,123,728	£1,149,391	£659,360	£15,912,936
May 2017	£13,368,684	£1,314,184	£834,832	£658,748	£16,176,447
June 2017	£13,677,903	£1,227,993	£833,598	£762,064	£16,501,559
July 2017	£13,562,428	£1,126,242	£882,745	£701,946	£16,273,361
August 2017	£12,885,464	£1,208,865	£800,465	£662,640	£15,557,434
Total 2017/18	£66,474,936	£6,001,012	£4,501,030	£3,444,759	£80,421,738