MEMORANDUM

HEALTH AND SOCIAL CARE BILL

Background

The Health and Social Care Bill, which was introduced on 20th December 2000 in the UK Parliament introduces a number of measures to implement the NHS Plan in England and the English response to the Royal Commission on Long Term Care. The provisions of particular relevance for Scotland are those which address the system of 'preserved rights' to higher levels of Income Support for people in residential and nursing home care, and those which enable NHS pharmaceutical services to encompass professional groups to which NHS prescribing rights may be extended following amendment of the Medicines Act.

Content of the Bill

The Bill deals almost entirely with matters to do with the principles, performance and scrutiny of the NHS in England, and pharmacy services, patient information, and long term care in England.

The particular provisions which are the subject of this memorandum and where the Parliament's approval is sought to include devolved issues in the UK Bill, relate to the transfer of responsibility for 'preserved rights' cases from the Department of Social Security to local authorities, and the assumption by Scottish Ministers of executive powers in connection with prescriptions written by new NHS prescriber groups, and the dispensing of such prescriptions by NHS community pharmacists in Scotland.

Preserved Rights

Preserved rights are the rights some people in residential accommodation have to higher rates of income support.

The NHS and Community Care Act 1990 gave local social services authorities the responsibility for assessing the care needs of individuals and for arranging and funding care to meet those needs. Prior to the Act, residential and nursing care had been funded through the social security system, with residents given entitlement (subject to means) to income support to meet the costs of their care. A new rate of income support was introduced in April 1993 for residents of independent sector care homes who were subject to the new arrangements.

People living in independent sector residential care and nursing homes before 1 April 1993 were not subject to the provisions of the NHS and Community Care Act 1990. Local authorities were given no responsibility for assessing their care needs, or for arranging or funding their care. Instead, such people acquired preserved rights to a higher rate of income support with which to fund their own care. This category of people included people resident in (or temporarily absent from) an independent sector residential care or nursing home on 31 March 1993 who were receiving income support. It also included people who were resident in such a home on 31 March 1993 but who were paying the fees themselves and were not receiving income support because they had not spent down to the income support capital limit.

The system of preserved rights was introduced to facilitate the transition to the new community care arrangements. It was a means of reassuring and protecting existing care

home residents by continuing to give them a higher rate of income support so that they would have the purchasing power so that the choice they had already made about their residential accommodation continued to hold sway. It also ensured that local social services authorities would not be faced with the considerable task of assessing the care needs of existing residents.

The Problem

Although the preserved rights scheme was designed to protect existing residents there is now evidence that it fails to do that. The preserved rights system does not require the assessment of a person's needs. There are also concerns about the shortfall between fees charged by homes and the weekly (DSS) benefit income of residents. This may be because in some areas it is difficult to find a residential care home that charges at or below the level of preserved rights income support. It can also be difficult for people whose care needs change and who need to move from a residential care home to a nursing home to find a new home whose fees are within the preserved rights level. Where there is a shortfall, residents may have to use their personal expenses allowance, savings or rely on help from friends, relatives or charities to fund the difference.

Proposal

The proposals on preserved rights are to end the existing system for those people in residential or nursing home care since 1st April 1993 and transfer responsibility and resources for those people from DSS to local authorities. This is in line with one of the recommendations of the Royal Commission on Long Term Care. It will require a mixture of reserved (social security) and devolved (community care) legislation.

The Scottish Executive would like the Bill to apply to devolved local authority responsibilities to ensure that the transfer is co-ordinated and consistent across England, Scotland and Wales.

It is proposed to:

- Transfer the responsibility for the funding of preserved rights to local authorities from April 2002 and, as a consequence, end the entitlement to the higher 'preserved rights' rate of Income Support
- Ensure that former preserved rights cases fall to be assessed under the same legislation as others receiving community care services, rather than under any newly devised assessment process.
- Repeal section 135(3) of the Social Security Contributions and Benefits Act 1992 (which provides for the regional variation in applicable amounts for preserved rights cases but has never been commenced).
- End the preserved rights to disability benefits, namely attendance allowance or the care component of disability living allowance.
- To enable DSS to provide LAs with the names and addresses and other necessary details of the preserved rights cases for whom they will become responsible.

NHS Prescribing and Dispensing

The groups of persons who may write prescriptions is a reserved matter which is dealt with under the Medicines Act 1968. Clause 44 of the Health and Social Care Bill deals with

amendments to the NHS (Scotland) Act which would be required to allow pharmacists to dispense NHS prescriptions written by new prescriber groups. Following amendment of Section 58 of the Medicines Act, NHS prescribing rights for the following groups of registered health care professionals could be introduced by secondary legislation:-

- Registered members of professions supplementary to medicine
- Registered pharmacists
- Dental auxiliaries
- Ophthalmic opticians
- Registered osteopaths
- Registered chiropractors
- Registered nurses, midwives and health visitors
- Persons registered under an Order in Council under Section 60(1) of the Health Act 1999.

The Problem

Clause 44 amends the NHS (Scotland) Act to allow prescriptions written by specific groups of prescribers to be dispensed under the NHS should the necessary secondary legislation be introduced. It also enables Scottish Ministers to restrict the products which may be dispensed. This is necessary because, unless a specific list of drugs and appliances is drawn up for each prescriber group, all authorised NHS prescribers would be able to prescribe every product listed in the Scottish Drug Tariff. This would be inadvisable because it would not be appropriate, for example, for ophthalmic opticians to prescribe Ventolin which is used in the treatment of asthma, or for dental auxiliaries to prescribe Tamoxifen, which is a treatment for breast cancer.

The Proposal

It is proposed that Scottish Ministers assume executive powers to authorise that prescriptions written by groups of registered healthcare professionals who have been granted NHS prescribing rights may be dispensed by NHS community pharmacists in Scotland; and to determine the list of medicines and appliances which each NHS prescriber group may prescribe and which NHS community pharmacists may be paid for dispensing.

The Executive believes that it would make sense to use the opportunity offered by the Health and Social Care Bill to replace the system of 'preserved rights' in Scotland and to assume executive powers in connection with the introduction of new groups of NHS prescribers, so that these matters may be managed in a consistent and co-ordinated way with the rest of Great Britain.

SCOTTISH EXECUTIVE

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