MEMORANDUM
HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) BILL

Motion

"That the Parliament endorses the principle of ensuring consistency in recovery of NHS charges where compensation is paid following injury as set out in Part 3 of the Health and Social Care (Community Health and Standards) Bill and agrees that the relevant provision to achieve this end including extending Ministers powers to make regulations under a scheme for recovery should be considered by the UK Parliament."

Background

1. Since the 1930s, where, under the terms of compulsory motor vehicle insurance, personal injury compensation was paid to the victim of a road traffic accident, then the insurer paying compensation has been liable to meet the costs of any hospital treatment the victim may have needed.

2. The recovery of NHS charges for road traffic accidents is provided through The Road Traffic (NHS Charges) Act 1999 which revised and centralised the arrangements for recovering such charges. The 1999 Act applies in England, Scotland and Wales but for Scotland the matter is a devolved one. Accordingly, the 1999 Act confers powers on Scottish Ministers to make regulations setting the amount to be recovered and the timing, manner and procedure for appeals. The charge recovery process for the three countries is co-ordinated and managed centrally, in accordance with an agency agreement under section 93 of the Scotland Act, by the Compensation Recovery Unit (CRU) (part of the Department for Work and Pensions).

Consultation

3. A consultation exercise was launched last September proposing to extend the cost recovery process to <u>all</u> cases where people claim and receive personal injury compensation for injuries that require treatment by the NHS. Any NHS costs would be reimbursed by the compensator and <u>not</u> the victim who is compensated. As the current RTA cost recovery scheme operates on a UK-wide basis, Department of Health launched a similar consultation exercise in parallel. A total of 19 responses were received to the Scottish consultation.

Content of the Bill

4. The relevant provisions are contained in Part 3 of the Bill.

5. The Bill provides for two separate but parallel schemes – one for Scotland for which the Scottish Ministers will be responsible and one for England and Wales for which the Secretary of State for Health will be responsible. Also, the Bill will confer powers on Scottish Ministers to make regulations in a like manner to The Road Traffic (NHS Charges) Act 1999.

6. Commencement of the Bill provisions in Scotland is the responsibility of Scottish Ministers. However, the Bill does not permit Scottish Ministers to lay a commencement

order without the authority of the Secretary of State since agreement was to given to the Department for Work and Pensions that Scottish Ministers, like the Secretary of State for Health, would not make such an order in advance of the outcome of the Employers' Liability Compulsory Insurance review. The outcome of the review is not expected before the end of this year.

7. Furthermore, the Executive's policy is that commencement will be deferred until a time at which the Executive is content that the insurance market has addressed the potential inequalities in the charging of premiums, either by introducing a fairer system of premium setting, or an alternative solution

Financial Effects

8. The UK level of recovery is estimated to be between £100 - £120m per annum. The share for Scottish NHS Trusts would be in the region of 7 - 10%, i.e. £7m to £12m although it will be at least three to four years before this level of income is reached (or longer if the making of regulations is delayed). Like the current RTA cost recovery scheme, the money recovered by CRU will be paid directly to the NHS Trusts responsible for the hospital where treatment was provided, not the Executive. The administrative cost of collecting the charges will be around 1% of the amount collected.

Repealed Legislation

9. Commencement of the legislation introduced in this Bill will repeal the Road Traffic (NHS Charges) Act 1999.

Conclusion

10. The Executive believe that it would make sense for Westminster to legislate for Scotland on the aspects of the Bill described above in order to achieve a GB-wide coherent scheme albeit commencement of the scheme in Scotland will be at the discretion of Scottish Ministers.

SCOTTISH EXECUTIVE
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