

LIABILITY FOR NHS CHARGES (TREATMENT OF INDUSTRIAL DISEASE) (SCOTLAND) BILL

MEMORANDUM FROM THE SCOTTISH GOVERNMENT TO THE HEALTH AND SPORT COMMITTEE

Introduction

1. This memorandum has been prepared by the Scottish Government to assist consideration by the Health and Sport Committee of the Liability for NHS Charges (Treatment of Industrial Disease) (Scotland) Bill, which was introduced by Stuart McMillan MSP on 9 March 2020.

Background

2. The Bill will enable Scottish Ministers to recover, from the party responsible for causing an industrial disease, certain costs incurred by the NHS in Scotland of providing care and treatment to those suffering from that disease in Scotland. The Bill would amend Part 3 of the Health and Social Care (Community Health and Standards) Act 2003, in relation to Scotland, to include industrial diseases within its scope.

3. This approach is comparable to the current NHS Cost Recovery Scheme, that extends across Scotland, England and Wales which allows the NHS to recover the costs of treating those who suffer a personal injury or an accident and receive compensation for it (“current scheme”).

Financial Impact and administration of any new scheme

4. Resources would be required to administer the new scheme for industrial diseases. Mr McMillan proposes that the Department for Work and Pensions (DWP) Cost Recovery Unit (CRU) carries this out on the Scottish Government’s behalf, additional charges would likely apply. The DWP administers the current scheme on behalf of the Scottish Government, and the DWP charged £215,600 for this in 2019-20.

5. According to the “[Civil justice statistics in Scotland: 2018-19](#)” published on 7 April 2020, the number of Asbestos related personal injury cases initiated and disposed of in the civil courts have increased over the last few years, however, still remain relatively low in total. Further exploration as to whether the costs of setting up a new scheme are worthwhile to ensure it would not incur a loss.

6. Whilst the DWP administers the existing scheme across England, Scotland and Wales, these arrangements are underpinned by agency agreement under the Scotland Act 1998. Given that the Bill proposes to establish a new scheme in Scotland only, the Scottish Government considers there is a need to identify who should administer this new scheme on their behalf in case a new statutory body needs to be established for this purpose, or new statutory functions need to be given to

existing body or person. This point needs to be fully considered in case further provision needs to go the Bill.

7. If the Bill proceeds, in case a new body needs to be established to administer the scheme or in case arrangements need to be put in place with any existing bodies, the Scottish Government also considers it would be better for the Scottish Ministers to commence the Bill by regulations as opposed to it coming into force a year after the Bill gets Royal Assent. This will ensure that any necessary administrative arrangements for the new scheme will be put in place before any new scheme commences. In those circumstances, if the Scottish Government has to set up separate recovery services, costs would be greater.

8. As yet we do not have an indication of the level of funds Mr McMillan expects to see recovered as a result of his proposed scheme and this is something the committee should obtain more evidence on.

Scottish Government's Position

9. While any proposal to increase funding for the NHS would largely be regarded as beneficial, there is no indication as to what amount of funds this new scheme might ultimately recover. We are therefore unclear whether or not the funds that would be recouped through this new scheme would be proportionate in relation to the time, effort and resource that would need to be spent on it.

10. There are some points of concern that would still require further clarification:

- There is still no clear indication of what revenue Mr McMillan thinks could be recovered from the new scheme. He indicates that there would be in the region of 500 cases per year, but ultimately states it is impossible to estimate what the costs are to the NHS for treating these people.
- The rest of the UK has no plan to do this, therefore it may cause confusion within the insurance industry.
- At present Scotland, like the rest of the UK, only recovers costs associated with accidents (the 'NHS Cost Recovery Scheme'). Implementing this bill would therefore put us out of step with the rest of the UK so further consideration needs to be given to who would administer the scheme. Even if Ministers were to be content for the DWP to administer a Scotland only scheme, we would need to get the agreement of the DWP to enter into separate arrangements with us. There is no indication that DWP is willing to agree to do this and may indicate they do not have the capacity to provide the service. In those circumstances we would have to set up separate recovery services.

Conclusion

11. The Scottish Government is supportive of the principle of recouping more funds for the NHS, however we believe more evidence is required to be able to fully understand how the scheme will work in practice and the cost of implementing such a measure.