



SPICe Briefing

Pàipear-ullachaidh SPICe

Liability for NHS Charges (Treatment of Industrial Disease) (Scotland) Bill

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The Liability for NHS Charges (Treatment of Industrial Disease) (Scotland) Bill ¹ is a Member's Bill, which aims to bring industrial diseases within the scope of the Health and Social Care (Community Health and Standards) Act 2003 ². This would allow Scottish Ministers to recover NHS costs for treating industrial diseases from the people whose negligence caused the diseases. This briefing outlines the proposals in the Bill and the views expressed in written evidence received by the Health and Sport Committee.



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Executive Summary

- The Bill seeks to amend Part 3 of the [Health and Social Care \(Community Health and Standards\) Act 2003](#)² so that it includes NHS costs incurred from treating industrial diseases.
- This would allow Scottish Ministers to recover costs for NHS treatment and ambulance services from the people whose negligence caused the industrial diseases. Currently the NHS charges can only be recovered in cases where compensation is paid for a physical or psychological injury.
- Currently, the person making the compensation payment is liable to pay NHS charges for the treatment received by an injured person at hospital and the ambulance charges to take the person to hospital. For 2020 the amount payable has been capped at £54,566.
- In the Bill an industrial disease is defined as a disease that arises from the employment of the injured person; from the employment of a person associated with the injured person or which makes the person eligible for employment injury assistance.
- The Health and Sport Committee launched its [call for views](#)³ on the Bill on 12 August 2020 and it closed on 30 September 2020.
- Many respondents were supportive of the general principles of the Bill.
- A number of issues were raised in the written evidence. These focused on the potential impact of the legislation on working conditions and health and safety, identifying industrial disease and apportioning liability, potential delay to compensation claims, the administration of the scheme and the amounts that would be recoverable by the NHS.
- The Health and Sport Committee will take oral evidence in the Autumn before publishing its Stage 1 Report.

Introduction

[The Liability for NHS Charges \(Treatment of Industrial Disease\) \(Scotland\) Bill](#) ¹ is a Member's Bill which was introduced in the Scottish Parliament, on 9 March 2020, by Stuart McMillan MSP.

The Bill seeks to amend Part 3 of the [Health and Social Care \(Community Health and Standards\) Act 2003](#) (2003 Act) so that it includes NHS costs incurred from treating industrial diseases. This would allow Scottish Ministers to recover costs for NHS treatment and ambulance services from the people whose negligence caused the industrial diseases. Currently, the 2003 Act only allows for the recovery of NHS charges in cases where compensation is paid for a physical or psychological injury.

Alongside the Bill a [Policy Memorandum](#) ⁴, [Explanatory Notes](#) ⁵ and a [Financial Memorandum](#) ⁶ were published. The Non-Government Bills Unit also produced an [Equality Impact Assessment](#) ⁷.

The Policy Memorandum states that the purpose of the Bill is to allow the Scottish Government to recover the cost of treating industrial diseases in NHS hospitals in cases where there is already a “compensator” – that is, someone who has made a compensation payment in respect of the disease.

It goes on to note that the Bill aims:

- to reduce the burden on the taxpayer
- to incentivise employers to improve working conditions
- and to incentivise employers to take a more precautionary approach in respect of working conditions that could in future turn out to be the cause of industrial diseases.

Background to the Bill

Stuart McMillan MSP lodged a draft proposal for a Member's Bill on the [Recovery of Medical Costs for Asbestos Diseases](#) on 5 January 2015 (Session 4).

Prior to this the [Recovery of Medical Costs for Asbestos Diseases \(Wales\) Bill](#)⁸ was passed by the National Assembly for Wales in 2013. However, this Bill was referred to the [Supreme Court](#) which decided, in February 2015, that the Bill was outside the Assembly's legislative competence and could not be enacted. This was because it did not fall under the devolved subject matter of the "organisation and funding of [the] National Health Service" and it was incompatible with the rights of compensators and insurers under the European Convention on Human Rights to the peaceful enjoyment of their possessions⁹. The Bill would have meant that compensators and insurers would have had new financial liabilities which long pre-dated the Bill.

The [draft proposal for the current Bill](#) was lodged on 28 March 2018 and the consultation closed on 22 June 2018. Sixteen responses were received and a [summary of the consultation responses](#)¹⁰ was published. The individual responses are published on [Stuart McMillan's website](#).

[Twenty two MSPs](#) expressed support for the final proposal for a Bill. The party breakdown was as follows:

- fifteen Scottish National Party;
- two Scottish Labour;
- two Scottish Green Party.

The Scottish Government has produced a [memorandum on the Bill](#).

Current situation

Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 allows for the recovery of NHS charges in cases where compensation is paid for a physical or psychological injury, for example after a road traffic accident ¹¹. The legislation currently only covers personal injury and does not extend to any disease, unless the disease is attributable to the injury.

Under the current scheme the person making the compensation payment (normally a third-party compensator/insurer) is liable to pay NHS charges for the treatment received by the injured person at hospital, and the ambulance service charges to take the person to hospital.

For accidents that happened on or after 1 April 2020 the treatment and ambulance journey charges have been set at:

- out-patient £743
- in-patient daily charge £913
- ambulance charge per person per journey £224.

The maximum charge in respect of an injury is £54,566.

Compensators are required to pay within 14 days of the compensation claim being settled or within 14 days of receiving the certificate confirming the amount, if the claim has already been settled.

In Scotland, the administration of the scheme is undertaken on behalf of Scottish Ministers by the [Compensation Recovery Unit](#), part of the Department for Work and Pensions (DWP). The Scottish Government's memorandum states that the DWP charged £215,600 for the administration of the current scheme in 2019-20.

Industrial diseases

The Bill defines industrial disease as a disease:

“ (a) arising out of the employment of the injured person; (b) arising out of the employment of any person associated with the injured person; (c) which makes the person suffering from the disease eligible for employment-injury assistance under regulations made by the Scottish Ministers under section 33 of the [Social Security \(Scotland\) Act 2018](#) ¹² [2018 Act]. ”

In [oral evidence to the Health and Sport Committee](#) ¹³ when discussing a legislative consent memorandum on the UK Health Bill, in 2006, Ross Scott from the Health Department of the then Scottish Executive said that:

“ Industrial disease was discussed in relation to the 2003 act, but it was decided that it was too difficult to define or identify what an industrial disease is because somebody could have a disease that had developed over a number of years. ”

Employment injury assistance

Section 33 of the Social Security (Scotland) Act 2018 relates to employment injury assistance. This is defined as assistance given by the Scottish Ministers to an individual on account of the individual, or another individual, having suffered an injury, or contracted a disease, in the course of employment. Section 33 of the 2018 Act is not yet in force (as at October 2020).

The UK Government's [Industrial Injuries Disablement Benefits \(IIBD\) Scheme](#)¹⁴ provides non-contributory no fault benefits for disablement because of an accident at work, or because of one of over 70 prescribed diseases known to be a risk from certain jobs. The Industrial Injuries Advisory Council makes recommendations to the Secretary of State on [what diseases the scheme covers](#)¹⁵ and includes asbestosis, diffuse pleural thickening, mesothelioma, deafness vibration white finger, carpal tunnel syndrome, chronic obstructive pulmonary disease (COPD) and pneumoconiosis¹⁶.

Executive competence for the IIBD scheme transferred to the Scottish Government on 1 April 2020. The scheme of benefits continue to be delivered by the Department for Work and Pensions on behalf of the Scottish Government through an Agency Agreement. The Scottish Government is intending to undertake a public consultation on employment injury assistance which will replace the IIBD scheme when [Social Security Scotland](#) begins delivery of this suite of benefits¹⁷.

Health and safety at work

The [Health and Safety at Work etc. Act 1974](#)¹⁸ is the primary piece of legislation covering occupational health and safety in Great Britain. It sets out the general duties which employers have towards employees and members of the public, employees have to themselves and to each other and certain self-employed people have towards themselves and others¹⁹. Health and safety is a reserved matter under the [Scotland Act 1998](#)²⁰.

The Bill's provisions in detail

Section 1: Liability for relevant NHS charges

Section 1 of the Bill seeks to amend section 150 of the Health and Social Care (Community Health and Standards) Act 2003 to extend the scope of this provision to include industrial diseases. It provides a definition of industrial diseases and expands the definition to include a person associated with the injured person if there is a causal link between the associated person and the person's employment. The [Explanatory Notes](#) give the example of a disease contracted by an industrial worker's spouse as the result of hazardous substances brought home from work on the worker's clothing.

Under section 1 of the Bill there would be no retrospective liability to pay NHS charges in respect of industrial diseases. The Explanatory Notes comment that:

“ New subsection (5E) mirrors the special legal rules created to deal with some industrial diseases like mesothelioma. In diseases like this, even a very short exposure to the harmful substance may cause the disease, but the disease may not generate symptoms until many years later. This means that when an employee has been exposed to a harmful substance by more than one employer it is not usually possible to prove which period of exposure caused the employee's illness. In such cases, it may be enough to make an employer legally liable that they increased the risk the employee might suffer from the disease.”

The Bill aims to ensure that harmful events covers events that expose a worker, or an associated person, to a material risk of harm (such as breathing fumes that might cause damage) as well as events that cause direct harm (such as a worker's injury by a corrosive substance).

Section 2: Liability for NHS charges: further provision

Section 2 of the Bill relates to cases where the legislation comes into force during the period of exposure to the harmful events. It sets out that the amount that the compensator is liable to pay should be reduced, to reflect the fact that a proportion of the harmful event occurred before the date of commencement. The way in which the amount would be calculated would be set out in regulations.

The [Explanatory Notes](#) outline that when all harmful events occur after the commencement date the compensator will be liable to pay the relevant NHS charges. If the harmful events all occurred before the commencement date, there would be no liability on the compensator to repay any NHS charges, even if the injured person was treated after that date.

Section 3: Exclusion of effect on contracts of insurance

Section 3 of the Bill seeks to amend section 164 of the 2003 Act which relates to the liability of insurers. This is to ensure that it does not apply in industrial disease cases. This aims to ensure that the Bill has no impact on the law relating to insurance (which is a reserved matter under Schedule 5 to the [Scotland Act 1998](#)) and does not allow for retrospective application.

The [Explanatory Notes](#) comment that the intended effect of this is that an employer who wishes to be insured against liability to pay compensation for industrial disease and liability to repay NHS charges would need to take out additional insurance. They would not be able to rely on the 2003 Act overriding the terms of their policies and making their insurers liable either prospectively or retrospectively.

Section 4 and 5: Regulation and commencement

Section 4 of the Bill seeks to make the first regulations under the Bill subject to the affirmative subordinate legislation procedure, while any subsequent regulations would be subject to the negative procedure. This would bring the new powers in line with those in the 2003 Act.

Section 5 relates to the commencement of the Act. Sections 1 to 4 would come into force one year after Royal Assent. The [Explanatory Notes](#) comment that this is to give Scottish Ministers time to put in place administrative arrangements. It is also intended to allow industrial employers time to adjust their insurance arrangements and for insurers to calculate the additional premiums.

Financial Memorandum

The [Financial Memorandum](#) (FM) on the Bill notes that the non-retrospective nature of the Bill makes it difficult to predict the number of cases that may fall under its provisions. The costings in the FM are estimated on the basis of the current number of industrial disease cases and the number of industrial disease cases from the last five years.

Using figures provided by Thompsons Solicitors, which handles the majority of asbestos and industrial disease cases in Scotland, the FM estimates that 514 Scottish industrial disease cases would be registered with the Compensation Recovery Unit (CRU), for the purposes of NHS cost recovery, each year.

The FM acknowledges that there are difficulties estimating the cost to the NHS of treating potential future industrial disease cases. It states that:

“ Different conditions may require different amounts of treatment and even the same condition may require vastly different levels of treatment depending on the severity of the diagnosis. ”

Under the current scheme for accidents that happened on or after 1 April 2020, a cap of £54,566 has been set for NHS treatment and ambulance services.

The FM notes in the short-term it is likely that in most claims made the amount of NHS charges recovered will be small. This is due to the long latency periods of many industrial diseases. It goes on to comment that:

“ It may be years or even decades before the majority of cases are such that all of the exposure will have occurred post commencement and that, as a result, all of the cost of NHS treatment can be recovered.”

The FM notes that Stuart McMillan MSP’s preferred option is for the Scottish Government and the UK Government to come to an agreement under which the CRU administers the new scheme. However, if an agreement is not reached the Scottish Ministers would need to administer this cost-recovery separately. The FM estimates that if three (full-time equivalent) staff were required to administer the scheme this would cost of around £66,000 a year.

The FM also makes reference to the cost of reviews and appeals and enforcing payment. It notes that there is no available data for the cost of reviews and appeals but considers that the the number of reviews and appeals is likely to be very low.

Health and Sport Committee call for views

The Health and Sport Committee launched its [call for views](#) on the Bill on 12 August 2020 and it closed on 30 September 2020. The call for views asked three questions:

1. How will the Bill lead to improved working conditions, and health and safety practices, in workplaces?
2. How will the Bill help prevent industrial diseases in the future?
3. What impacts will the Bill have on individuals, NHS boards, workplaces and insurance?

[Fifteen responses](#) were received from organisations including NHS Boards, legal professionals, insurance companies, academics and trade unions.

Key issues raised in the Committee's call for views

General views on the Bill

Many submissions were supportive of the Bill with a number commenting that the legislation is in line with the ["polluter pays" principle](#). For example, the Law Society of Scotland said:

“ NHS charges should be recoverable in cases where a “compensator” has been identified. This is akin to the ‘polluter pays’ principle.”

Unite Scotland said that it supports "the proposal as the employers should rightly pay for this as the costs arise from their negligence". This view was echoed by the Association of Personal Injury Lawyers (APIL) who commented that:

“ When a person is made ill as result of the negligence of someone else, the principle that the responsible party should pay for the injured person’s care and rehabilitation should be unarguable. It is inequitable that the tax-payer should have to foot the NHS bill for such treatment.”

Thompsons Solicitors said that:

“ The Bill is a long overdue recognition that negligent employers should recompense not only the injured person who suffers from an industrial disease but also the NHS to which the cost of treating these individuals is significant. There is no justifiable reason why the same principle of NHS recovery as applies in the case of accidents ought not also to apply to diseases caused by the negligence of others. ”

However, a number of submissions raised concerns about potential unintended consequences of the legislation, such as delaying claims for compensation and increased insurance premiums for businesses in Scotland. Concerns were also raised around the administration of the scheme and apportioning liability.

The Scottish Government's position is:

“ 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.”

Legislative competence

In relation to the legislative competence of the Bill the Law Society of Scotland commented that:

“ Whilst we note that the stated purpose of the Bill as introduced relates to devolved matters, we also note that the proposed amendments to the Health and Social Care (Community Health and Standards) Act 2003 are not at present drafted in such a way as to apply only in Scotland. Care must be taken to ensure that the Bill remains within the legislative competence of the Scottish Parliament.”

Definition of industrial disease used in the Bill

A number of submissions discussed the definition of industrial disease used in the Bill. The University of Stirling Occupational and Environmental Health Research Group considered that the definition used in the Bill is constructive and that it "captures occupational diseases recognised internationally but still ignored in the UK". It goes on to say that:

“ The Bill’s broadening out of what is understood by ‘industrial diseases’ is an important step forward. It should help to ensure neglected numbers of occupational diseases occurring among women and marginalised groups are finally fully recognised and recorded as the bill will be able to include diseases contracted beyond those in traditional male-dominated industries.”

Identifying industrial disease

A number of submissions raised concerns in relation to identifying industrial disease. The Forum of Scottish Claims Managers highlighted that industrial diseases may only appear a significant time after exposure and that there are potential difficulties with identifying the exposure which directly leads to industrial disease. It notes that:

“ In many cases, it will be impossible to attribute or apportion the NHS treatment to individual causes for the purpose of the Bill....The treatment of individuals with industrial disease is by no means as straightforward as it can be for accident victims where there is a clear date upon which the injury occurs and clear evidence of the injury sustained to identify the NHS treatment given as a result.”

BML (an insurance risk and commercial law firm) highlighted some of the potential difficulties in diagnosing industrial diseases. It notes that, "differences between medical professionals on the diagnosis of a particular disease are not uncommon and comorbidities are more frequently encountered in disease cases".

Zurich Insurance plc also commented on the potential difficulties associated with dealing with co-morbidities and the Association of British Insurers said:

“ There are questions in respect of individuals who have an industrial disease, but who also have other co-morbid conditions. For example an individual may have some respiratory or lung condition alongside a significant past smoking history. It is unclear at this stage how the Bill will deal with such situations. The treatment of individuals with industrial disease is not always as straightforward as it can be for accident victims. ”

The Forum of Insurance Lawyers expressed its view that "identifying the cost of medical care for industrial diseases will be much more difficult than in injury claims".

Settlement of claims

The Association of Personal Injury Lawyers highlighted a potential issue in relation to insurance companies delaying compensation settlements due to the obligation to pay NHS costs for industrial disease. It notes that:

“ Under the terms of the Compensation Act 2006, mesothelioma cases should be handled differently from other cases where there are multiple defenders. The life expectancy of people who are diagnosed with this terminal asbestos-related cancer is usually very short once a diagnosis has been made. Time is, literally, of the essence if the patient is to benefit from the compensation to which he is entitled. For that reason, any individual employer liable for exposing the pursuer to asbestos which has caused the mesothelioma has to pay full compensation to the patient and then claim contributions from any other responsible employers afterwards. It is the experience of our members, however, that this does not happen in reality and that, in fact, settlements are delayed even in mesothelioma cases while behind-the-scenes arguments take place between insurers about who is most liable. The proposals in this Bill are likely to make this completely unacceptable situation even worse.”

It concludes that, while being fully supportive of the intention and principles behind this Bill, it is:

“ Extremely concerned that the benefits it may eventually deliver will be undermined by the unforeseen consequence of delays in the settlement of cases of sick and vulnerable people.”

The Forum of Insurance Lawyers also expressed its concern:

“ The proposals will disrupt the thrust and direction of reform already seen in the handling of industrial disease claims, which over recent years has been to focus on the pursuer and pay compensation as quickly as possible, recognising that the life expectancies of pursuers with the most serious industrial diseases is short and that it is psychologically important to many pursuers to settle the matter of compensation whilst they are able to do so ... The potential for large NHS charges to be added to the claim might discourage settlement of some claims and result in causation being fought more frequently.”

The Law Society of Scotland also addressed this issue:

“ There is a potential negative impact on Pursuers if disagreements regarding apportionment of liability and damages lead to delays in making payments to individuals. Where there are multiple Defenders or insurers involved there is very often disagreement between them over apportionment of liability and damages. This can lead to insurers appealing the certificates issued by the DWP outlining what has to be repaid by way of NHS charges and that can result in months of a delay. Whilst it is important that appeal processes are available, it is appropriate that safeguards are in place to avoid prejudice to the Pursuer arising from disputes between Defenders and Insurers.”

Working conditions and health and safety

There were varied views as to whether the Bill would lead to improved working conditions and health and safety practices in workplaces.

A number of respondents believe that the legislation would contribute to improved working conditions. NHS Grampian commented that:

“ The Bill will incentivise employers to reduce or eliminate exposure to occupational hazards that may cause an industrial disease. Risk of financial consequences may motivate employers to ensure that safe systems of work are in place, including the reduction in use of hazardous substances and exposure to dangerous substances which could cause industrial disease. ”

Thompsons Solicitors also believe that the legislation could have a positive impact, saying that:

“ As a result of the additional financial burden, the Bill is likely to focus the minds of employers on the types of poor practice which lead to diseases rather than accidents, an area of health and safety which tends to be given less priority as the consequences tend to be less immediate and obvious but are in fact often far more long term and debilitating than the aftermath of an accident ... In short, it will be even more costly for employers to foot the bill for poor health and safety practices which lead to industrial disease and therefore in their financial interest to improve them.”

This view was echoed by Unite Scotland who said that:

“ Employers must be held financially responsible for their negligence, if anything to force them to recognise the responsibility they have for the health and safety of their workers and to enforce change in behaviour that can lead to avoidable incidents or accidents ... Unite believes that the proposals and subsequent additional financial implications, could help to focus employers attention on health and safety practices which would lead to safer workplaces.”

This view was also shared by the Association of Personal Injury Lawyers, the Association of British Insurers and the University of Strathclyde.

The University of Stirling Occupational and Environmental Health Research Group reflecting on the current COVID-19 pandemic said:

“ The long-term NHS treatment costs for those contracting the new occupational COVID-19 due to employer health and safety failures could well be considerable in Scotland. The bill is therefore especially timely. It should be one practical tool in a bigger toolbox to help to address the current UK neglect of worker health and safety.”

However, contrary to these views some respondents considered that the legislation would not have a positive impact on working conditions and the prevalence of industrial diseases due to existing health and safety legislation. A submission by an individual commented that "It is difficult to see in the Bill any mechanism that supports, upholds or advances the aims of existing health, safety and environmental legislation". This view was shared by the Faculty of Advocates which noted that it:

“ Does not consider that the Bill will necessarily lead to improved working conditions and health and safety practices in workplaces. Those outcomes are already incentivised through awards of damages for personal injury to employees and criminal sanctions for breaches of statutory duty under the Health & Safety at Work Act 1974. There is no reason to believe that the Bill will have any additional incentivising effect.”

This view was also held by the Forum of Scottish Claims Managers, BML and the Forum of Insurance Lawyers who said it:

“ Does not believe that the Bill will have any impact on working conditions and health and safety practices ... The introduction of a further financial liability will have no additional effect. ”

Insurance premiums

Most respondents believed that insurance companies would develop products that would provide cover for the eventuality of an employer becoming liable for NHS costs under the Bill and that insurance premiums may rise.

In relation to increased insurance premiums, Unite Scotland commented that:

“ There is likely to be additional costs associated with the additional insurance employers should be required to take out against any liability due to an industrial disease. If employers fail to take reasonable precautions then they will be required to make a claim on their insurance. Insurance companies measure risk and apply premiums based on that risk. If employers take reasonable steps working with trade union Health and Safety Reps to ensure the risk of industrial disease is low then the costs for insurance should not be prohibitive.”

Some respondents, including BML, made the point that the legislation could result in differences in the insurance premiums paid by companies in Scotland and the rest of the UK. The Forum of Scottish Claims Managers noted that:

“ There will then be a material difference between the position in Scotland and that in England, Wales and Northern Ireland leading to greater uncertainty and making Scotland a less attractive and more expensive place to do business.”

Financial impact on NHS

There was a range of opinion in relation to the potential impact of the Bill in relation to NHS finances. A number of submissions, including the the Faculty of Advocates, considered that the Bill would reduce, to some extent, the financial burden on the NHS of treating industrial diseases. Thompsons Solicitors said:

“ NHS Boards will potentially recover significant sums of money, particularly as the treatment of disease can be highly specialised and last over many years, and therefore a significant pull on NHS resources. ”

However, NHS Grampian commented on the cap for treatment and stated:

“ Many industrial diseases require significant more investment to treat so a funding gap will still remain”. NHS Tayside commented that “in the short term the financial implications for individual Boards although welcome is unlikely to be financially significant.”

Other respondents raised concerns about the amount of money that would be recovered under the legislation compared to the cost of administering the scheme (Forum of Scottish Claims Managers and Zurich Insurance plc). The Forum of Insurance Lawyers commented that:

“ Given the administrative costs of recovering the NHS charges ... and the percentage of claims where the respondent is a public body, there is no certainty that there will be a net benefit to the state.”

Administration of the scheme

In relation to whether the proposed scheme should be administered by a Scottish Government department or the UK Government's Compensation Recovery Unit (CRU) the University of Stirling Occupational and Environmental Health Research Group noted:

“ The Act should only be administered within a Scottish Government department. The UK Compensation Recovery Unit (CRU) would not be an appropriate location for such an activity in Scotland. The Scotland Act 2016 gave the Scottish Government new powers relating to social security including responsibility over certain benefits. The Scottish Government as a result indicated that they would use these powers to create a Scottish social security system based on dignity, fairness and respect and design a social security system with a strong local emphasis through the Social Security Scotland agency. In March 2016 the Scottish Government published the document Creating a Fairer Scotland: A New Future for Social Security in Scotland. In these circumstances it would be contradictory to then delegate any new system to a UK DWP department. ”

A number of respondents highlighted potential issues with administering the scheme highlighting that industrial diseases claims were often much more complex than injury claims. The Forum of Insurance Lawyers warned that:

“ There is the potential for both the defendant compensator, CRU and the NHS to become involved in ancillary litigation-type activity with disputes over diagnosis, potentially requiring detailed investigation, additional medical tests and expert reports, and time-consuming appeals, absorbing financial and human resource which should be committed to the pursuer and the general provision of medical care.”

BML commented that:

“ In our view, the complexities of disease cases are likely to mean that the administrative burden placed on NHS Boards is greater than that with which they are presently accustomed. The nature of disease cases means that data provided by NHS Boards would likely be challenged more frequently than accident-related data. ”

It goes on to highlight that there may be the potential for dispute on diagnosis, impact of co-morbidities, allocation of liability, and cases where there may have been exposure in Scotland and in one or more other jurisdiction. Noting that:

“ These issues are also likely to give rise to a greater proportion of requests for reviews and appeals against NHS charges certificates in industrial disease cases than in accident-related cases.”

In its Memorandum on the Bill the Scottish Government notes that:

“ Further exploration as to whether the costs of setting up a new scheme are worthwhile to ensure it would not incur a loss. ”

It concludes that:

“ 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. ”

Financial memorandum

In its submission the Forum of Insurance Lawyers raised some questions in relation to the Financial Memorandum accompanying the Bill. It questioned the estimates made of the costing associated with the Scottish Government administering the scheme. Highlighting that it considers that reviews and appeals will be more frequent than the current levels. BML also outlines its view that the:

“ Administrative cost estimate at paragraph 37 [of the Financial Memorandum] of £66,000 a year is likely to be significantly light. ”

Next steps

The Health and Sport Committee will take evidence from representative organisations, the Scottish Government and Stuart McMillan MSP (as member in charge of the Bill) before publishing its Stage 1 Report. More information is available on [the Committee's webpage](#) and the [Bills page on the Scottish Parliament website](#).

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