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The *Road Traffic (NHS Charges) Bill*

Bill 3 1998-99

Currently, NHS trusts are empowered to claim back the costs of treating casualties of road traffic accidents from motor insurance companies, where those companies have paid out compensation in connection with the accident. However, the system is deemed by some to be bureaucratic, and only a small percentage of the possible revenue is recouped from insurance companies in this way

The *Road Traffic (NHS Charges) Bill* will reverse the current situation, giving insurance companies the duty of making these payments, instead of requiring NHS trusts to pursue them individually. The Department of Social Security's Compensation Recovery Unit will be responsible for dealing with the recovery of payments and then of remitting them to the appropriate NHS trusts. The Bill was presented on 27 November, and is due to have its Second Reading on 8 December.

Katharine Wright

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Summary of main points

- The NHS currently has the power, under the *Road Traffic Act 1988*, to recoup the costs of treating the casualties of road traffic accidents. GPs or hospitals may levy an "emergency treatment fee" of £21.70 directly on the patients, and NHS trusts may then levy rather larger fees in respect of out-patient and in-patient treatment on the insurance company which has made a compensation payment in respect of the accident. However, the system is seen as bureaucratic and much of the possible revenue which could be recovered from insurance companies is left unclaimed.

- In June 1997, the Chancellor announced the Government's intention of changing the system to ensure that the NHS recoups the full cost of treating road traffic accident victims. In the meantime, NHS trusts were urged to use their current powers to their full extent.

- The *Road Traffic (NHS Charges) Bill* (Bill 3 1998-99) was introduced on 27 November 1998 and is due to have its Second Reading on 8 December 1998. The Bill sets up a new administrative mechanism, whereby insurance companies who are making a payment in connection with a road traffic accident will be obliged to apply to the Secretary of State (in practice the Department of Social Security's Compensation Recovery Unit) for a "certificate of NHS charges". The charge on the certificate must then be paid within 14 days of the date on which the compensation payment to the injured party has been made. This will thus transfer the responsibility of initiating the payment from NHS trusts to the insurance industry, and will centralise the NHS administration in one place, the Compensation Recovery Unit (CRU). Regulations will make provision for the way in which the CRU then remits the revenue to individual NHS trusts.

- NHS hospitals will no longer be able to levy the emergency treatment fee of £21.70. However, GPs and charitable non-NHS hospitals (who will not benefit from the other changes in the Bill) will be allowed to continue charging it if they wish.

- Response to the Bill has been relatively muted. The NHS Confederation, representing NHS trusts and Health Authorities, has welcomed it, but the Doctor Patient Partnership (set up by the Department of Health and the British Medical Association to promote the sensible use of GP services) has expressed concern about the possible "knock-on" effect on the ethos of the NHS. Insurance companies have both raised the issue of the increased cost of premiums to motorists and queried the rationale of singling out motorists over other causes of accidents.

- The Conservative spokeswoman, Ann Widdecombe suggested that the charge might be seen as a "tax on accidents". Simon Hughes for the Liberal Democrats was not persuaded as to the logic of charging motor insurance companies in the absence of provisions to levy charges in connection with other situations where compensation is claimed for personal injury.

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I Background

A. The current legal position

Under sections 157-159 of the *Road Traffic Act 1988,* NHS trusts are entitled to collect both an emergency treatment fee and charges for subsequent in-patient or out-patient care after road accidents. Where emergency treatment is given by a GP before the patient arrives in hospital, the emergency treatment fee is payable to the GP instead. While the current legal authority is found in the 1988 Act, these charges in fact pre-date the National Health Service, being introduced in the *Road Traffic Act 1930* and first levied in 1934. The rationale for their introduction was to make sure that doctors (who were in private practice) and hospitals (some of which were run by voluntary bodies) received some payment for treating casualties of road accidents.

The emergency treatment fee (currently £21.30) is levied on the user of the vehicle involved in the accident, regardless of fault, but should be covered by all motor vehicle insurance policies. According to the Department of Health, many insurance companies reimburse it without "no claims" bonuses being affected.[1] The rather larger charges for in-patient and out-patient care (currently subject to a ceiling of £2,949 for in-patient care and £295 for out-patient care) are payable in cases where an insurance company has made a payment to a third party in respect of a person killed or injured after a motor accident.

Charges in respect of in-patient treatment should be calculated on the basis of an average cost per day, but charges for out-patient care should be calculated on the basis of the actual cost incurred.[2] These charges for in-patient and out-patient care are levied directly on the insurance company; Department of Health guidance emphasises that it is not appropriate for an NHS trust to chase the patient themselves for reimbursement.[3] No charges are payable where the driver of the vehicle was uninsured or untraceable. The level of the emergency treatment fee and the ceilings for in-patient and out-patient care are updated from time to time by Order under the *Road Traffic Act 1988,* with the most recent charges being introduced in 1995 through the *Road Traffic Accidents (Payments for Treatment) Order 1995*.[4]

B. Use of the current system

In July 1997, the Department of Health placed figures in the House of Commons Library, showing that in the financial year 1995/96, NHS trusts recouped £13.17 million from insurance companies under the provisions of the 1988 Act.[5] Shortly afterwards, in a parliamentary answer, the Secretary of State for Health, Frank Dobson, contrasted this

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1 Department of Health background note, *Road Traffic Act charges*, 1 February 1994
2 Dept of Health circular HSG(92)44
3 *ibid*
4 SI 1995/889
5 Deposited Paper Dep/3 5282

figure with the various estimates made of the amounts NHS trusts could have claimed: between £50 million (the Department of Health estimate) and £440 million (estimated by the Automobile Association).[6] The main reason cited in the press why NHS trusts on the whole have not instigated claims against insurance companies is the "paper chase" the current system involves.[7] The *Financial Times*, for example, reported a telephone survey around a number of NHS trusts by a solicitor specialising in personal injury who was told that trusts "can't be bothered" or "the legal process is too complicated". The solicitor, however, claimed that it is "easy money for trusts and solicitors to collect, as it is just a straightforward administrative process".[8]

C. Proposals for change

In the early 1990s, the Conservative administration expressed its intention to amend the provisions of the 1988 Act and abolish the emergency treatment fee when there was suitable mechanism for doing so. The then Parliamentary Under-Secretary of State for Health, Stephen Dorrell, for example, stated in 1991:

> The Government are on record that they intend to abolish the right of hospitals (but not general practitioners) to collect the emergency treatment fee, when a suitable legislative vehicle becomes available.[9]

No comment was made on the issue of in-patient and out-patient charges. However, in 1995, Mr. Dorrell's successor, Tom Sackville, stated in response to a further question on the emergency treatment fee that "we have no plans to change the Act", and no changes were subsequently made either to the emergency treatment fee or the more substantial charges.[10] Guidance issued to the NHS in 1995 on increases to the ceilings on charges urged "directly managed units and NHS trusts [to] ensure that they have arrangements for the collection of these charges".[11]

In December 1996, the Law Commission (which was set up in 1965 to recommend reforms of the law) published a consultation paper *Damages for person injury: medical, nursing and other expenses*, which put forward the idea that the NHS should be able to reclaim the costs of treating any patients who are injured as the result of negligence, or another legal wrong. If accepted, this proposal would extend the current powers to reclaim the costs of treating road traffic accidents to the recovery of the costs of treating any personal injury caused by negligence, where damages were payable to the injured person. The rationale given was that patients who are injured as a result of negligence are

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6 HC Deb 22 July 1997 c.745W

7 eg "Insurers may be forced to quiz claimants", *The Financial Times*, 5-6 July 1997 p.6 & "Car insurers will have to pay the NHS", *The Independent*, 4 December 1997 p.1

8 "Trusts not claiming enough insurance", *The Financial Times*, 27 February 1998 p.12

9 HC Deb 12 March 1991 c.493W

10 HC Deb 23 March 1995 c.355W

11 Dept of Health circular HSG(95) 24

entitled to recover the costs of *private* care and treatment, and that there seems no reason why this principle should not be extended to NHS care. The then Health Secretary, Stephen Dorrell, was reported as saying that the idea "would have to be carefully scrutinised" before the Government could endorse it,[12] and according to a parliamentary answer on 17 June 1998, the current Government is still considering the proposals.[13]

However, while the idea of extending the powers to recoup costs to a greater variety of accidents does not appear to have appealed to either Conservative or Labour administrations, the Labour Government has decided to take action on the low level of recovery of NHS costs following road accidents. After the change of administration in May 1997, the Chancellor of the Exchequer, Gordon Brown, announced in his Budget speech that:

> We shall also act to recoup in full the cost of treating road traffic accidents from insurance companies. That, like the action that we are taking against prescription fraud, shows our determination to ensure that NHS resources are focused on front-line patient care. [14]

In December 1997, guidance was issued to the NHS giving more detail on the changes the Government intended to make:

> It is our intention, when Parliamentary time permits, to introduce legislation to transfer the onus of responsibility for making such claims from hospitals to the insurance companies. We also intend to make use of the existing Department of Social Security Compensation Recovery Unit to collect monies due and transfer them, on a monthly basis, to relevant trusts. A new, simple, tariff will be introduced to ease the difficulty of establishing actual costs. We intend, at the same time, to remove the provision for collection of a separate emergency treatment fee by NHS trusts, although GPs and other hospitals will continue to be able to collect the fee if they wish.[15]

Pending legislation, NHS trusts were asked to look closely at their current systems for recouping money owed under the 1988 Act and ensure that claims were pursued "vigorously". The circular also urged trusts to ensure that "this initiative is handled sensitively" and that patients did not misunderstand the nature of the claim.

In the Queen's Speech on 24 November 1998, no specific mention was made of the promised Bill to transfer the onus of responsibility for paying charges on to the insurance companies. However, the Department of Health *Background Note* on the Speech made clear that a *Road Traffic (NHS Charges) Bill* would be included within the promised "other measures" mentioned at the end of the Speech.

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12 "Motorists wince at victims' NHS bill", *The Independent*, 13 December 1996 p.6
13 HC Deb 17 June 1998 c.257W
14 HC Deb 2 July 1997 c.315
15 Dept of Health circular EL(97)75, paragraph 3

II The Bill

The *Road Traffic (NHS Charges) Bill*[16] was presented on 27 November 1998 and is due to have its Second Reading on 8 December. Its main provisions are to transfer the responsibility of ensuring payments in respect of road traffic accidents are made on to the insurers, and to create an administrative system under which these payments will be handled.

A. Liability to make payments for NHS treatment

The main thrust of the Bill is found in **clause 1**. **Clauses 1(1)** and **1(2)** provide that where a person is injured or killed as a result of a traffic accident involving a motor vehicle, and a compensation payment is made (eg by an insurance company) in respect of that injury, then the person making the compensation payment is liable to pay the Secretary of State the "appropriate charges" to cover their NHS treatment. Under **clause 1(3)**, the term "compensation payment" is defined as covering both payments made by authorised motor insurers and payments made by the Motor Insurers' Bureau where drivers are uninsured or untraceable. This extends the current provisions under the *Road Traffic Act 1988*, where no payment may be claimed by the NHS if the Motor Insurers' Bureau, rather than a named insurance company, makes the compensation payment.

Clause 1(4) makes clear that payments count as compensation payments even if they are made outside the UK or on a voluntary basis, and **clause 1(5)** allows for regulations to make further stipulations as to what is, and what is not, a compensation payment. "NHS treatment" is defined further in **clause 1(6)**: it includes any treatment given in an NHS hospital other than that provided on a private basis. **Clauses 1(7)**, **1(8)** and **1(9)** make ancillary provisions: these include the provision that it is irrelevant whether or not an admission of liability has been made, and the provision that the section applies to all compensation payments made after the section comes into force (ie even where the accident took place earlier than this) unless a court order or an agreement in respect of the payment has already been made. According to the *Explanatory Notes* issued with the Bill, it is intended that the whole Act will come into force on 5 April 1999.

B. The administrative mechanism

Clauses 2 and **3** make provision for the issuing of "certificates of NHS charges" which will be the mechanism through which insurance companies (and anyone else liable to make payments, such as the Motor Insurers' Bureau) will pay the NHS charges resulting from traffic accidents. Once a compensation payment has been made, the person paying it must apply to the Secretary of State for a certificate specifying the NHS charge due (**clauses 2(8)** and **2(9)**); alternatively, they may apply for the certificate in advance of

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[16] Bill 3 1998-99

making the compensation payment (**clause 2(1)**). Certificates may be valid indefinitely, or they may expire on a specified date, or after a specified event (**clause 2(4)**); if a certificate has expired by the time a compensation payment has been made, then the compensator must apply for another. Regulations will provide for the manner with which applications for certificates should be made and will specify a period within which the application must be made.

According to the *Explanatory Notes* issued with the Bill, the Secretary of State's duties under the Bill will be delegated to the Department of Social Security's Compensation Recovery Unit, which is responsible for recovering social security benefits paid to individuals who subsequently receive compensation in connection with the same injury or disease. This is done by recovering the amount of benefit paid directly from the compensator, who will then pay the reduced compensation sum to the beneficiary. The "certification" scheme outlined in clauses 2 & 3 is designed to be as similar as possible to current schemes in use between the Compensation Recovery Unit and the insurance industry in order to make its introduction cheaper and easier. In particular, provision is made for insurers and others to obtain the certificate *before* the compensation payment is made if they wish, so that if the same incident involves both benefit recovery and a payment of NHS charges, the insurers and the CRU can handle the two claims together. It should be emphasised that while compensation payments made to beneficiaries are affected by the amount of social security benefits to be recovered, the compensation payment will *not* be reduced further by the NHS charges. The two systems are simply handled together for administrative convenience.

C. Levels of charges

Clause 3 makes provision for the level of charges payable: these will be set out in regulations (**clause 3(2)**). The regulations may specify a ceiling on the total amount payable in respect of one patient, may provide for differential payments depending on when the accident took place (in particular whether it was before or after 2 July 1997), and may make provision for more complicated cases where the casualty received treatment in more than one hospital, or more than one compensator is involved (**clause 3(4)**). The Regulations may apply to accidents which took place before the regulations were made, as long as a compensation payment has not already been made (**clause 3(5)**).

The Government's aim, according to the *Explanatory Notes*, is to set a simple tariff, with a set fee for patients treated in accident and emergency departments, and a daily rate for those admitted for in-patient treatment. These rates will be set at such a level that they should deliver, overall, the actual cost to the NHS of the treatment of road accident casualties. The reason for allowing different limits to apply to accidents happening before certain dates is to allow the rates to mirror more closely the actual cost to the NHS. The cut-off point of 2 July 1997 is relevant because this is the date on which the Chancellor announced his intention of recouping the full cost to the NHS of road traffic accidents: the *Explanatory Notes* state that any charges recouped under the new regulations relating to accidents before this date will not exceed those currently payable under the *Road Traffic Act 1988*.

D. Recovery of charges

Clause 4 requires compensators to pay NHS charges, either within 14 days of the date on which compensation is paid (the "settlement date"), or within 14 days of the certificate being issued, if the certificate is not issued until on or after the settlement date.

Clause 5 covers cases where the insurer, or other compensator, has made a compensation payment, but has either not yet applied for the certificate of NHS charges or has not made the payment within the timetable required by clause 4. In such cases, the Secretary of State may demand immediate payment; if necessary this may be enforced through the courts.

E. Reviews and appeals

Clauses 6-10 cover reviews and appeals. The Secretary of State (in practice the Compensation Recovery Unit, or CRU) is empowered to review certificates, either on request from the compensator or on his own initiative (**clause 6(1)**). When reviewing a certificate, the CRU may confirm it, vary it, or revoke it, but it may not vary a certificate in order to increase the total amount specified unless this is as a result of insufficient or incorrect information supplied by the compensator.

Compensators may also appeal against the certificate (**clause 7(1)**) on the grounds that the amounts set out in the certificate are incorrect, that the treatment is not NHS treatment provided in a health service hospital in respect of a road traffic injury, or that the payment on which the certificate is based is not a "compensation payment" within the meaning of the Bill. However, appeals may not be made until the claim giving rise to the compensation payment has been disposed of and the amount stipulated in the certificate has been paid to the Secretary of State (**clause 7(2)**). Where provisional damages are ordered in personal injury cases, then the claim will be considered "disposed of", and hence once the payment stipulated in the certificate has been paid the compensator may appeal (**clause 7(3)**). Regulations may make provision for the procedures to be followed in requesting and holding an appeal (**clause (7(4)**); the *Explanatory Notes* state that these procedures will be modelled on the existing appeal system for benefit recovery appeals.

Appeals must be referred to an appeal tribunal (**clause 8(1)**). The same tribunals which hear compensation recovery cases for social security benefits in England and Wales (currently Medical Appeal Tribunals, but from 1999 the new Unified Appeal Tribunals introduced by the *Social Security Act 1998*) will hear NHS charges appeals (**clause 8(6)(a)**). Appeals in Scotland will initially be held in the same way, according to the *Explanatory Notes*, but an alternative service will be set up through regulations in time for devolution (**clause 8(6)(b)**). Appeal tribunals may uphold the amounts claimed in the certificate, specify variations, or declare that the certificate be revoked. Once the tribunal decision has been received by the Secretary of State, he must follow the tribunal's decision in issuing a new certificate or confirming or revoking the existing one, as appropriate (**clause 8(3) & (4)**). The appeal regulations made under clause 7 may make provision for the non-disclosure of medical advice or medical evidence submitted as part

of the appeal (**clause 8(5)**). Regulations may also provide for an appeal to the High Court (in England and Wales) or to the Court of Session (in Scotland) on a point of law (**clause 9**).

Clause 10 makes provision for over-payments or under-payments, determined as a result of an appeal. Where the compensator has paid more than they should, then they must be repaid; regulations will determine who will be responsible for making this repayment (**clause 10(2)**). Where compensators are deemed by the appeal tribunal to have paid too little, then they must pay the difference to the Secretary of State (ie the Compensation Recovery Unit) (**clause 10(3)**). Regulations may make provision for the practicalities of repaying, or requiring further payment from compensators as a result of an appeal, if necessary by modifying the Act (**clause 10(4)**).

F. Information

Clause 11 requires a number of people to provide the Secretary of State with such information as may be prescribed about the circumstances of a traffic accident resulting in injury or death: these include the person against whom any compensation claim has been made, anyone else alleged to be liable, the traffic casualty, and the NHS trust managing the health service hospital where the person received treatment **(clause 11(2)**). The *Explanatory Notes* state that it is not expected that the injured person would usually be required to provide any information; this would apply only if the information obtained from the compensator was inadequate. **Clause 11(3)** allows for Regulations to prescribe the definitions of "claim" and "person against whom the claim is made"; according to the *Explanatory Notes*, this power will enable the Government to draft the regulations in such a way that potential compensators will be obliged to initiate the process and inform the Compensation Recovery Unit of the accident without being asked. Regulations may also provide for the way in which information should be provided and the required time-scale (**clause 11(4)**). Finally, they may also require the provision of information about the NHS treatment provided **(clause 1(5))**, 1although the *Explanatory Notes* suggest that this will probably only be necessary in the case of appeals.

Clause 12 makes provision for information supplied to the Secretary of State in connection with the recovery of social security benefits to be used in connection with the recovery of NHS treatment costs under this Bill, and *vice versa*.

G. Payments to hospitals

Clause 13 makes provision for the money received by the Compensation Recovery Unit in connection with a road traffic accident to be paid to the relevant NHS trust (or the body responsible for managing a hospital if it is not an NHS trust). Where treatment has been received at more than one hospital, the payment received must be divided among the relevant trusts (**clause 13(2)**). Regulations under this section may make provision for the way in which payments will be made, for example at what intervals the Compensation Recovery Unit will transfer money to trusts (**clause 13(4)(a)**). They may also make provision for cases where the NHS trust (or the body running the hospital if not a trust)

has ceased to exist (**clause 13(4)(b)**). Again, as in **clause 10(4)(a),** these regulations may modify the Act itself.

H. Miscellaneous and general provisions

Clause 14(1) allows for regulations to make provision for more complicated cases: where two or more compensation payments are made in connection with the same injury or death (**clause 14(1)(a)**); where payments are being made on a periodical, and not simply a lump-sum, basis (**clause 14(1)(b)**); and for cases where the compensation payment triggering the NHS charges is an interim payment of damages which a court then orders to be repaid (**clause 14(1)(c)**). Again, these regulations may modify the Act. **Clause 14(2)** allows for further regulations (which again may modify the Act), covering cases where payments into court are made, in particular allowing such payments into court to count in certain circumstances as a "compensation payment". This latter provision (ie **clause 14(2)**) applies to England and Wales only.

Clause 15 allows for regulations to apply the provisions of the Act to military hospitals, with such modifications as may be necessary.

Clause 16 provides for any regulations or orders made under the Act to be exercisable by statutory instrument, subject to the negative procedure. Regulations may make different provisions for different cases or areas.

Clause 17 lists the definitions of the terms used in the Act.

Clause 18 makes consequential amendments to the *Road Traffic Act 1988* and the *Tribunals and Inquiries Act 1992*. These include the re-definition of "hospital" within the *Road Traffic Act 1988*, so that only GPs and non-profit-making hospitals may claim the "emergency treatment fee" for providing immediate assistance to the casualty of a road traffic accident. NHS hospitals and military hospitals will henceforward be excluded from claiming this fee.

Clause 19 makes provision for any expenditure incurred through the Act to be provided by Parliament.

Clause 20 makes transitional provisions, including the use of the existing Medical Appeal Tribunals for the appeal procedure, pending the introduction of the new Unified Appeal Tribunals in England and Wales under the *Social Security Act 1998* in 1999 and the introduction of a new alternative tribunal service in Scotland under devolution.

Clause 21 gives the short title and extent. The Bill does not extend to Northern Ireland; according to the *Explanatory Notes*, this is because the current *Road Traffic Act 1988* provisions do not cover Northern Ireland. However, it is intended to introduce legislation in the future to bring the position in Northern Ireland into line with the rest of the UK. Commencement orders will specify when the Act comes into force, and different sections

may come into force at different times. The *Explanatory Notes* state that the Government intention is for the legislation to come into force on 5 April 1999.

I. Financial effects of the Bill

The *Explanatory Notes* do not estimate how much revenue the Bill is expected to raise for the NHS, but the *Background Note* issued by the Department of Health after the Queen's Speech suggests that it may be around £2 million a week or more. Other estimates, as cited earlier, go as high as £440 million a year.[17] The administrative costs of the new system are estimated in the *Explanatory Notes* as being up to £1.4 million a year, although it is stated that these will be absorbed within existing resources. The effect on motorists, if the costs are passed on by insurers, are estimated by the Government, again in the *Explanatory Notes*, as being in the region of £6-£9 on a typical motor insurance policy.

[17] HC Deb 22 July 1997 c.745W

III Responses to the Bill

A. Political responses

Both the Liberal Democrats and the Conservatives commented on the proposals to change the system for recouping NHS costs after road accidents in the health and welfare debate on the Queen's Speech on 26 November. Ann Widdecombe, for the Conservatives, hesitated to make claims as to how much motor insurance premiums might rise, but expressed concern that if they did, this might constitute a "tax on accidents":

> The Minister of State referred to a tax on accidents. If, as a result of the Government's proposals, it is true that insurance premiums will go up - I shall not make a value judgement on whether that should happen or not - is that a tax on accidents? Is that the first new charge that the Labour party is to introduce on new NHS treatment?[18]

Michael Ancram, the Conservative Party chairman, reportedly expanded on Miss Widdecombe's comments saying on Sky television:

> What I have heard suggests another tax on motorists. It will be regarded as another attack on rural interests at a time when the rural economy is in great trouble.[19]

Simon Hughes for the Liberal Democrats raised the issue touched on by the Law Commission's report (see page 8), asking why road traffic accidents should be singled out from any other sort of negligent accident:

> There is a problem with amending the *Road Traffic Act 1988*, and that is not because necessary legislation has not been on the statute book. We have had that legislation since the 1930s. What is the logic in levying money from insurance companies where the victim successfully claims compensation after a road accident but not where someone claims after an industrial accident or makes a claim after falling over in his local park or on the pavement, or makes a claim against someone else? We are talking of a charging mechanism, and if we are to consider charging an insurance company or others, we must consider all the circumstances and not some of them. My right hon. and hon. Friends and I will be critical and will scrutinise carefully the charging proposal. We are not yet persuaded.[20]

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18 HC Deb 26 November 1998 c.336

19 "Drivers to be tapped for NHS funds", *The Guardian*, 23 November 1998 p.4

20 HC Deb 26 November 1998 cc 361-2

B. Responses from the motor insurance industry

The possible cost of the proposed changes has, hardly surprisingly, aroused comment from motoring organisations. The AA, while describing the proposals as "sensible", estimated the increase in premiums as being rather higher than that suggested by the Government, and also raised the issues of uninsured motorists and of non-road accidents:

> "This is a sensible way forward, but yet again, it will be those drivers who buy insurance who will be forced to foot the bill, adding around £10 to the cost of the average £260 annual motor policy", says Rebecca Hadley, spokeswoman for AA Insurance. "Britain's estimated one to two million uninsured drivers will continue to dodge the charge. It is also an unfair levy: if you fall off a ladder while cutting your hedge, the hospital would provide treatment without claiming the cost from your home insurance, so why are motorists singled out, yet again, to pick up the tab?"[21]

The AA further made the comment that there is no guarantee that the ceilings for injury payments might not be raised, possibly substantially, in the future.[22] In response, it could be pointed out that the Government, in the *Explanatory Notes*, expressed their intention of setting the tariffs at such a rate that, overall, the NHS would recoup the actual amount spent on road traffic casualties. The amount would then only rise substantially if the cost of treating road accident casualties were also to rise unexpectedly. However, clearly, that intention is not on the face of the Bill and could not be held to be binding.

There appears to be some disagreement as to the actual effect which the Bill will have on premiums. While the Department of Health is estimating £6-£9 and the AA £10, the Association of British Insurers were quoted in the *British Medical Journal* as saying that "most companies already take their liability under the existing law into account when assessing premiums".[23] Other estimates suggest that premiums might increase by as much as £20.[24]

C. NHS response

There have been only limited responses within the NHS to the proposed legislation. The NHS Confederation, which represents NHS trusts and Health Authorities, is supportive, stating:

> We welcome the Road Traffic Bill which will mean the NHS gets the money it deserves. The principle has been in place for 20 years and the legislation will give us the cost-effective mechanism we need to collect it.[25]

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21 AA press notice 23 November 1998
22 AA response to Bill, 1 December 1998
23 "Road injury fees to be enforced in Britain", *BMJ*, 16 August 1997 p.386
24 eg "NHS bill may put £20 on car premiums", *The Independent*, 5 December 1997 p.10
25 NHS Confederation press release, 24 November 1998

The British Medical Association has not, at the time of writing, issued a formal response, but the "Doctor-Patient Partnership" (set up jointly in 1996 by the Department of Health and the BMA's General Medical Services Committee to encourage the responsible use of GP services) raised the issue of charges being levied on treatment other than that resulting from road traffic accidents. Their national co-ordinator commented that:

> We recognise that the NHS has been able to charge for caring for the victims of road traffic accidents for a number of years and we therefore do not criticise moves to make sure this is implemented. However we are concerned that this might create a precedent for other areas of health care.
>
> The NHS Executive, in a document published in June, *In the public interest*, questioned whether health services should be provided free of charge for those who adopted health damaging lifestyles. It is vital that the NHS continues to be free at the point of demand, funded through central taxation, and that no precedent is set to follow the American example where people find health care unavailable to them.[26]

While the NHS Executive document, *In the public interest*,[27] does mention the issue of the extent of the NHS's responsibility to "those who adopt health damaging lifestyles", this is in the context of the role of "citizens' juries" in the NHS, and is highlighted as one issue which such a jury might address as a way of raising the standard of public debate on controversial local health issues. Limiting NHS responsibilities in this way is not recommended by the document itself.

The Royal College of Nursing at the time of writing has also not commented formally, but delegates to the RCN conference in April 1998 reportedly expressed concern about the proposals. According to press reports, one nurse suggested that it demonstrated a shift towards insurance-based care, while others argued that patients would be alarmed by the charges, and that the fundamental principle of free NHS care would be compromised.[28]

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26 DPP, Comment on the *Road Traffic (NHS Charges) Bill*, 24 November 1998

27 Dept of Health, 1998

28 "Warning on NHS fee for accidents", *The Guardian*, 22 April 1998 p.6