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Dear Jim

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PRODUCT LIABILITY

Thank you for your letter of 9 February about the position of blood and blood products under the Consumer Protection Bill, which we have already discussed briefly.

The Department of Trade and Industry and DHSS have considered the position of blood and blood products at some length. They have taken the view that these items fall within the meaning of goods as defined in Clause 45(1) of the Bill and that the provision of such products falls within the meaning of "supply" as defined in clause 46(1) either as a sale, a contract for work or materials or, in the case of the NHS products supplied in the course of a statutory function. The EEC Directive and consequently the clause in the Bill on product liability does not permit a distinction between "service" and "goods".

DTI and the DHSS were not persuaded that there was justification in removing such products from the legislation as they would be considered defective for the purposes of Part I of the Bill only if their safety was not such as persons generally are entitled to expect - the test which is to apply to all products. In addition, such products are already classed as "goods" by member states which already have strict liability in place. Thus to remove them from UK legislation would disadvantage citizens of member states who received these products in the UK; and this would not have been acceptable to the Commission.

The case of a product containing an undetectable defect is covered by clause 4(1)(c) of the Bill which provides the "state of the art" defence. It is believed that such a defence would include use of the best known scientific procedures available to treat a product. The interpretation of this defence in individual cases will, of course, be for the Courts to determine but the availability of this defence should, I hope, go some way to removing your concern about blood products.

I am copying this letter to Dr Cash.

Yours

Hugh.

HUGH MORISON