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Dear Colleague

**IMPROVEMENTS ANNOUNCED FOR PUBLIC
PRIVATE PARTNERSHIPS INCLUDING PFI**

1. I am writing to draw your attention to a number of policy changes made in respect of Public Private Partnerships and PFI in Scotland, announced by the Minister for Finance, Jack McConnell MSP during a debate in the Scottish Parliament on Thursday 24 June 1999. The text of the debate can be found in the Official Report at the Scottish Parliament website <http://www.scottish.parliament.uk/>.

2. The changes announced are as follows:

- ◆ Surplus land should not be included in public private partnerships unless it represents value for money to do so;
- ◆ Protection of the pensions of staff who transfer under new contracts to the private sector will be extended to transfers made under subsequent contracting rounds and in cases of subcontracting;
- ◆ For most hospital deals it should now be an option in contracts for the assets to revert to public sector ownership at the end of the contract period at no cost to the public sector; and
- ◆ More financial information on projects will be made publicly available.

3. While these changes apply directly to Government Departments and Agencies, Mr McConnell has made clear his expectation that the rest of the public sector, including the NHSiS, will follow suit. He also announced that Susan Deacon, the Minister for Health and Community Care, will be consulting widely, through the Scottish Partnership Forum, on the way in which we go forward in the NHSiS using the principles described in the debate.

9th July 1999

Addressees

For action:

Chief Executives,
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Health Boards

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4. As you may have seen in the press, the Treasury Taskforce has within the past week issued revised accounting guidance for PFI transactions – Technical Note No.1 (Revised). The text of the Note will shortly be available on the Treasury Taskforce website: <http://www.treasury-projects-taskforce.gov.uk/>. The revised guidance applies to Scotland.

5. Published copies of the Technical Note will be issued in due course to Directors of Finance in Health Boards and NHS Trusts under separate cover.

Land

6. There has up until now always been a presumption that any surplus land resulting from a PFI deal should be disposed of as part of the deal. In the early days of PFI such arrangements were attractive as the capital receipt received was used to offset the PFI contract payments and thereby improve the affordability of delivering new facilities through PFI. Although there is no implication that to date it has not proved value for money to dispose of surplus land in this way, in future when considering a PFI contract, due consideration should be given to the costs and benefits of alternative disposal methods and land should only be included in PFI deals where it is clearly better value for money to do so.

Pensions and Statement of Practice on Staff Transfers

7. In PFI contracts where public sector staff who supply the services have transferred to the private sector there have been concerns that their terms and conditions of employment would suffer as a result. The Transfer of Undertakings (Protection of Employment) (TUPE) Regulations give employees protection over many of these conditions when they transfer to the private sector. TUPE does not however extend to pensions and NHS Trusts negotiate with the private sector contractor to ensure that transferred staff have broadly comparable pension arrangements. (The comparability of such arrangements is assessed by the Government Actuary Department.)

8. On 14 June 1999 the Chief Secretary to the Treasury, Alan Milburn, launched 'A Fair Deal for Staff Pensions' which included a plan designed to guarantee fair treatment of employees in Government departments and their agencies, where the Government is the employer. Under the new policy, which will apply to all new PFI contracts the existing employee protection extends to transfers made under subsequent contracting rounds and in cases of subcontracting, where this is an integral part of the primary contract. Although this change was specifically for Government departments and their agencies, the rest of the public sector, including NHS Trusts, will also be expected to follow this guidance.

9. On 5 July 1999 the Cabinet Office published a consultation document: *Staff Transfers in the Public Sector, Statement of Practice a Consultation Document*. This covers a range of transfer issues and includes full details of the Treasury guidance on pensions. Copies can be found on the Cabinet Office website <http://www.cabinet-office.gov.uk/>.

Revised Treasury Accounting Guidance

10. Technical Note No 1 (Revised) states that in the case of specialised properties, such as hospitals, it is acceptable for the purchaser (ie the public sector) to bear the residual value risk

associated with the asset. Such a situation will not influence whether or not the asset is on or off balance sheet. In future therefore, contracts should include an option for assets to revert to public sector ownership at the end of the contract period at no cost to the public sector.

11. The revised guidance also excludes the risks related to support services from the accounting judgement. My colleagues in the HR Directorate will be working with the Scottish Partnership Forum over the coming months to develop a new framework for support services within NHSiS PFI deals.

12. The transitional arrangements for the determination of accounting treatment are that for projects which have gone to best and final offer (BAFO) by 1 July 1999, the Treasury Interim Guidance should be used (ie Treasury Technical Note No.1); and for projects going to Invitation to Negotiate (ITN) within 3 months of 1 July the arrangements for assessing the accounting treatment should be discussed with the PFCU.

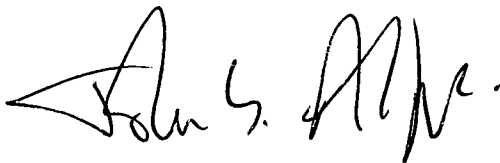
13. It is not yet clear what the impact of the revised guidance will be on signed deals. Treasury and NAO are currently doing further work on this aspect of the guidance

Openness

14. The publication of business cases was introduced within the NHSiS over a year ago – MEL(1998)39 refers. NHS Trusts and Health Boards are reminded that they are required to publish key documents including Outline Business Cases (OBCs) and Full Business Cases (FBCs) one month after they have been approved. This requirement applies to all PFI projects and to publicly funded capital projects in excess of £4m.

15. Business cases for schemes in excess of £10m approved after 1 July will need to be made available to the Scottish Parliament library. Arrangements for this need to be assessed and guidance on this point will be issued at a later date.

Yours sincerely



JOHN ALDRIDGE
Director of Finance