

Health and Social Services Committee

HSS(2)—07-05(p2)

Date: Wednesday 25 May 2005

Venue: Committee Rooms 3&4, National Assembly for Wales

Title: Current European Issues

Purpose

1. The purpose of this paper is to provide Members of the Health and Social Services Committee with an update on current European issues and to highlight opportunities for action in relation to the issues selected from the European Commission's Forward Work Programme list for 2005.

Action

2. Members of the Committee are invited to note that during the summer term, the European Commission will publish a Green Paper on their programme for nutrition and health, and this will provide the Committee with an opportunity to respond. Since it is likely this may happen during the latter part of the term, the Committee may wish to consider ways in which this might be done if the consultation period takes place during the summer recess.

Members are also invited to note the information provided in Annex A and B on developments in relation to the following three Directives:

- Services in the Internal Market (Annex A)
- Working Time (Annex B)
- Avian Influenza updated measures (Annex C)

Members may wish to consider inviting the Welsh Assembly Government to produce a paper on aspects of policy guidance or implementation in relation to any of these three items.

Background

3 The actions suggested above emanate from a discussion on the European Commission Work Programme (HSS(2)-04-05), presented by Anna Daniel, European Policy Analyst, Members' Research and Committee Services at the 2 March 2005 meeting of the Health and Social Services Committee. At

that meeting, the Committee agreed to undertake the following actions:

- To look for opportunities to respond to the Green Paper on a programme for nutrition and health
- Follow progress, and possibly influence, the Directive updating measures to control Avian influenza
- Scrutinise the Welsh Assembly Government on the implications of the Working Time Directive
- Monitor the progress of the proposed Services Directive, and in particular, the response of the UK Government

At their meeting on 14 April 2005, the European and External Affairs (EEA) Committee received an update on The Working Time Directive and two papers on the Services in the Internal Market Directive. These papers provided an impact assessment for Wales and the UK, and a report and discussion paper on the proposal itself. Summaries of passages and responses from the EEA Committee pertinent to Health and Social Services will be included in Annexes A and B.

Members' Research and Committee Services

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Annex A

Services in the Internal Market

Action Point: DTI has backed an exclusion clause for publicly funded healthcare (see para.5 below). However, the wording suggests that this covers NHS institutions in England only and the Committee might wish to explore whether it is intended to include NHS institutions in Wales.

1 The EU Services Directive has attracted controversy generally in the UK and other Member States and in particular in relation to the provision of healthcare. The Directive states its objective as:

"Providing a legal framework that will eliminate the obstacles

to the freedom of establishment for service providers and the

free movement of services between the Member States, giving

both the providers and recipients of services the legal certainty

they need in order to exercise these two fundamental freedoms

enshrined in the Treaty."

2 The Directive is intended to cover a wide variety of economic services and their activities, and contains some exclusions including financial services. However, it does not exclude services provided by medical practitioners and other healthcare providers such as nurses and pharmacists.

3 The European and External Affairs Committee has discussed the implications of the Directive in some detail and taken evidence from key organisations. At the meeting on 24 February 2005, the British Medical Association (BMA) highlighted issues of "prohibitions that reduce national control over health systems" and "cross-border freedoms that reduce ability of national systems to supervise". The Association felt that the Directive:

"fails to recognise that health and healthcare services should be governed by regulations for the purposes of health and safety and in accordance with the principle of subsidiarity".

Evidence was also taken at the meeting from Community Pharmacy Wales, the organisation which represents the 700 plus community pharmacies in Wales contracted to the NHS. Their main objections to the Directive were:

- Removal of control of entry regulations;
- The "country of origin principle" whereby a service provider from one Member State working in another would be subject only to the rule and regulations of their home member state; they would not have to comply with any rules or legislation pertaining to Wales.
- It is not compatible with key elements of the new pharmacy contract for Wales.

The CBI also expressed more general concerns about the "country of origin principle" which they felt related to a wide range of providers in the service sector.

5 At the EEA Committee meeting on 14 April 2005, the DTI gave evidence. The DTI official stated that they were seeking to obtain exclusion for publicly funded healthcare on the grounds that the NHS could not continue to operate as it does under the proposed Directive. The DTI has defined the services, which in England would come under the umbrella of publicly funded healthcare, to include:

- NHS and foundation trusts,
- the NHS's commissioning function and healthcare services provided by independent contractors under contract to the NHS, e.g. independent treatment centres, purchasing via primary care trusts and community pharmacy provision.

6 The European Union produced a guide on perceived benefits to services from the Directive on 29 April 2005. It claims that health services should benefit from an Internal Market framework and argues that the Directive will not impact adversely on the healthcare systems of Member States. The text in the guide relating to healthcare services states that the Directive:

"Seeks to remove unjustifiable and in particular discriminatory barriers on freedom of establishment and freedom to provide services in those areas which are open to competition.

- It does not require MS to liberalise or privatise health or social services which are currently provided at national, regional or local level by the public sector or public entities.
- It does not aim to harmonise MS regulation or modes of delivery of health or social services.
- It does not interfere with the way MS organise or finance their health and social systems."

7 The latest situation is that on 26 April 2005, the European Parliament's Industry Committee rejected a proposal from MEP rapporteur Evelyne Gebhardt to amend the draft Directive on Services in the Internal Market. The proposal had included the removal of the 'country of origin principle', and the introduction of wide exemptions for services of general interest (such as transport, communication and energy services), moves that were intended to make the draft more acceptable. The Internal Market Committee, the lead committee on Ms Gebhardt's report, will continue its discussion of the opinion during May.

Annex 2

Working Time Directive - Update

To note

There are two unresolved issues in relation to the Working Time Directive (WTD) which have the potential to impact on the NHS in Wales:

- Whether or not the opt-out clause where individual workers can opt out of the 48 hour maximum working week should be scrapped, and
- Whether or not "on-call" hours should count as working time in most cases.

1. This is an issue because some Member States, and particularly the UK Government, want the opt-out clause to remain; there is also concern about the European Court of Justice ruling that on-call hours be counted as working time.

2. Contrary to these issues, on 19 April 2005, the European Parliament's Employment Committee adopted a report on the WTD which called for the scrapping after three years, from the implementation of the Directive, of the right of individual workers to opt out of the maximum 48-hour working. The

report also called for 'on-call' hours to count as working time in most cases (see para.4 for further clarification).

3. The European Parliament debated the report in plenary on 10 May 2005 and voted to accept the recommendations of the report, i.e. to scrap the opt-out from the Directive on health and safety grounds, and to count "on-call" hours as working time in most cases. However, the result of this vote is not binding and it will be some time before the situation is resolved.

4. MEPs agreed in general with the Commission's proposal to extend the reference period over which the average working week is calculated from 4 to 12 months, but with the proviso that conditions applying to this part of the Directive are strengthened. This proposal impinges on the "on-call" hours issue allowing for the inactive parts of on-call time to be calculated in special ways in order to comply with the maximum weekly average working time. Clarification is needed for definitions of the terms "on-call time" and "inactive part of on-call time".

5. Further information on the plenary session and vote is available from the European Parliament website.

Annex C

Avian Influenza Directive – Update

To note

Avian influenza is not currently an issue in Wales. However, an A subtype H7N7 of the Highly Pathogenic Avian Influenza virus (HPAI) was responsible for an outbreak of influenza in the Netherlands that spread to Belgium and Germany.

A proposal for a Directive to update EU-level measures on the control of Avian influenza was adopted by the European Commission on 28 April 2005. The Avian influenza Directive proposal has three strands: systems to prevent new outbreaks of Avian influenza in the EU, swift management of those that do occur, and minimisation of their negative impact.

Legislation will require EU Member States to introduce and reinforce surveillance and control measures against the low pathogenic viruses, an action that is necessary to prevent virus mutation and highly pathogenic forms of the disease.

The proposal is now awaiting action from the European Parliament.