

European and External Affairs Committee

EUR2 03-05 (p7)

Date:14 April 2005

Time:9.00 to 12.30

Venue:National Assembly for Wales, Cardiff Bay

Title:Assessments of the impact of the EU Services Directive on Wales and the UK

Introduction

At the last meeting Members asked what assessment had been made of the impact of this Directive on Wales and the UK more generally.

Annex A attached is an extract from a note prepared by WAG officials for submission to the DTI giving an assessment of the Welsh Impact.

Annex B is the summary of the DTI's response to their consultation on this Directive.

DTI officials have indicated that, subject to confirming that General Election restrictions do not prevent them, they will attend the meeting to answer Members' questions.

John Grimes
Clerk, EEAC

Annex A:

Extract from a note prepared by WAG officials for submission to the DTI giving an assessment of the Welsh Impact of the EU Serviced Directive.

That meeting confirmed the now well rehearsed concerns of health colleagues in relation to the provisions of the Directive but also uncovered a number of considerations in other policy areas, ranging from the impact on the licensing of abattoirs (since determined to be subject to the same process across the UK) and issues around broadcasting, in particular in the Welsh Language.

The more substantive discussion was around the impact on local government and I have attempted to synthesise below the contributions received from colleagues for your information.

However, our general conclusion is that we are yet to identify any issues that are unique to Wales and I am sure that the issues documented below may well have already been highlighted through your [the DTI's] earlier consultation process. In this context we anticipate that you [the DTI] are already very well placed to represent our interests in relation to the Directive.

Local Government.

Issues:

Colleagues believe that there are a number of areas where the Directive has implications for local government. However there are two key areas of concern: housing and the provision of personal services. For the most part, these are not unique to Wales, although the housing issue in particular has greater salience here because of the relatively high proportion of council housing in some authorities. Nonetheless, it is important to be sure that these issues are considered and reflected as appropriate in the UK line.

Rights of recipients - article 21

There are two areas where it is felt that the Directive could cause difficulty.

The first and potentially most serious is housing. Local authority housing is generally made available to residents of that authority's area, or who have some other connection to it. Under s199 of the Housing Act 1996, local authorities are only obliged to provide housing to homeless persons with a demonstrable "local connection" to the authority's area: those who don't would instead be referred to any authority with which they did have a connection. Nor are authorities able to provide housing to persons subject to immigration control (s160A of the same Act). Both of these rules seem prima facie as though they could amount to discrimination on the basis of nationality or place of residence, contrary to article 21 of the draft directive: a citizen of another member state may well have no local connection to any UK authority. However, if local authorities were no longer able to restrict their housing provision to persons resident in, or connected with, their area, there could be serious consequences for their ability

to plan and deliver the amount of housing required. Having said that, it is not at all clear, that housing is a "service" within the meaning of the directive: what the authority provides in return for rent is not an "activity" but the right to live in a house.

The second issue concerns personal social services. Some services (eg home helps) are generally charged for, although often on a means-tested basis. One might think that a similar issue arises here as it does in relation to health services. However, it seems that many if not most personal social services which authorities provide are necessarily provided to those who live in their areas, whether at home or in local authority care. It is hard at first glance to conceive of services which a person might receive other than at or connected with their place of residence, and thus hard to see how a person might travel from one member state to another to obtain them. We are not aware of any bar on citizens of another member state obtaining such services if they otherwise qualify for them. It may well be that this is not a serious issue: compliance with the EC Treaty in this regard is covered by the 2002 Nationality, Immigration and Asylum Act - so it is only if the Services Directive is going beyond what the Treaty would currently require that this may be an issue.

More generally, though, there is a potential absurdity in a strict application of Article 21 here. Local authorities exist to provide services only in a specified area; in some cases, that necessarily means only to residents of that area. They generally have no legal right to provide services outside that area, or to persons resident outside it as the case may be. We would hope that the obligations of all authorities taken together and covering the whole UK would be sufficient to ensure that an individual authority were not in breach of the Directive simply for providing services on an area basis (in other words, for not providing a service to a person who was another authority's responsibility). That, though, is not apparent in the Directive, and may not be sufficient to overcome the "local connection" and immigration-related rules in relation to council housing anyway.

A

authorisations - article 13

Local authorities grant authorisations to trade for a very wide range of businesses: cinemas, theatres, market traders, taxi operators, campsites, zoos, kennels, catteries and stables, licensed premises, nightclubs, tattooists and sex shops, to name but some. All of these are clearly caught by the directive. However, authorities act within a national statutory framework in each case, and it ought simply to be a matter (a) of ensuring that that framework complies with the directive in each case, and (b) notifying authorities of any changes to it. As the relevant licensing and trading standards legislation is almost wholly non-devolved, this would be a matter for the UK Government.

Annex B

Proposed Directive on Services in the Internal Market: Government response to the public consultation

Over the summer, the DTI consulted publicly on the proposed Directive on Services in the Internal Market. The public consultation was launched on 29 March and the launch event was followed by presentations to stakeholder groups and five regional events. A total of 116 responses were received and a summary of these responses has been published on the DTI website at <http://www.dti.gov.uk/ccp/topics2/servicesdirective.htm>

These responses, along with the views of other government departments, have now been analysed and taken into account by the Government in developing the lines that the UK will take in the detailed negotiations on this Proposal, which will begin in earnest in 2005.

The proposed Directive aims to open up the European market for services, by cutting red tape and removing barriers to cross-border services provision. The UK strongly supports the aims of this Proposal, both in opening the Internal Market and in contributing to better regulation. We believe that it will deliver significant benefits for businesses, consumers and employees here in the UK and across Europe. We are committed to the country of origin principle as critical to delivering liberalisation, though regard it as vitally important that nothing in the proposed Directive compromises our standards of health and safety or the protection of workers, consumers, the environment and animals.

The DTI will continue to keep stakeholders informed of, and engaged with, the progress of negotiations, through regular updates and meetings.

UK negotiating line

During the negotiations, we will seek to achieve the following main objectives:

Strongly support the market opening objectives of the proposed Directive, in particular through:

simplification and better regulation; and

support for the country of origin principle;

Ensure that the proposed Directive does not cover taxation, publicly funded health services and occupational pensions;

Ensure that the proposed Directive does not impinge upon UK criminal law and policy or on immigration and social security policy;

Clarify the relationship with sector-specific legislation;

Uphold UK standards on health and safety in all circumstances;

Maintain high standards of protection for workers, consumers, the environment and animals;

Ensure that the proposed Directive does not affect sensitive policy areas where regulation is principally not for economic motives; and

Negotiate an acceptable outcome as regards Private International Law.

We recognise that considerable work will be needed to develop workable practical solutions in many areas, including single points of contact and the mutual assistance procedures governing the supervision of providers of temporary services (particularly in cases of urgency).

Further details will be found on our web page:

<http://www.dti.gov.uk/ccp/topics2/servicesdirective.htm>

Proposed Directive on Services in the Internal Market: Government response to the public consultation

In order to meet UK objectives, we will be seeking amendments and clarifications to the text of the proposed Directive. In order to retain flexibility during negotiations on the proposed Directive and ensure the best possible outcome from these negotiations, we may need to reconsider or add to the following indicative list of suggested amendments. In particular, further amendments may be necessary in order to provide an acceptable solution in the areas of criminal law and Private International Law.

UK negotiating line: suggested article-by-article amendments

Art. 2 Scope

Complete exclusions to cover taxation and publicly funded healthcare services, and clarification of the definitions carving out financial services and transport to ensure that they are comprehensive.

Clarification of the scope of the proposed Directive with regards to social security matters.

Art. 3 Relationship with other provisions of Community law

Clarification of the relationship between this Proposal and other EC legislation to ensure that other EC legislation will prevail in the event of conflict or uncertainty between the proposed Services Directive and other Community instruments.

Art. 4 Definitions

Clarification and elaboration of terms, including 'overriding reason relating to the public interest' and 'establishment'.

Art. 6 Single points of contact

Clarification to ensure that provisions for single points of contacts are realistic, workable and cost-effective.

Art. 7 Right to information

Clarification that these requirements will not require the publishing of sensitive security or defence information.

Art. 8 Procedures by electronic means

8(2) Clarification that originals/certified copies permitted under Art. 5(2) are not covered by Art. 8, and that physical examination may be required of the character of a provider (for example, in relation to the sale of alcohol), as well as his capability.

Art. 9 Authorisation schemes

9(3) Clarification that this disapplication covers both:

schemes that are implicitly permitted, or that are reasonable in circumstances where Member States are permitted by Community instruments to adopt measures the form of which are unspecified, as well as those that are explicitly permitted by other Community instruments; and the Directive on the Recognition of Professional Qualifications.

The inclusion of a new paragraph 9(4), based on the text in Recital 35, disapplying Chapters 2 and 3 of the proposed Directive to activities that are not open to competition.

Art. 10 Conditions for the granting of authorisation

10(1) Amendments to permit the proper exercise of discretion in authorisations that depend on balancing a complex set of factors, including risk.

10(3) Amendments to ensure that these prohibitions may be derogated from in appropriate circumstances.

10(4) Clarification that this provision does not cut across the powers of devolved administrations, regional or local authorities or competent authorities in their regions or territories.

Art. 11 Duration of authorisation

11(1)c Clarification that limited authorisations are allowed for one-off events.

Art. 12 Selection from among several candidates

12(1) A broadening of the permitted reasons for a limitation on the number of authorisations, to cover other situations where appropriate.

Art. 13 Authorisation procedures

13(2) Clarification that, since the definitions in Art. 4 make clear that authorisation schemes cover both access to a service activity and exercise thereof, charges levied on applications may be proportionate to the costs of ongoing regulation by the competent authorities, not just to the unit cost of authorisation of access.

13(4) A widening of the exemption from tacit authorisation so that it may be permitted in appropriate circumstances. In such cases, tacit authorisation should be replaced by an obligation that competent authorities must as soon as possible provide reasons for the delay and an indication of when resolution can be expected.

Art. 14 Prohibited requirements

14(5) Amendments to ensure that this Article does not undermine schemes that are not primarily economic in nature.

14(6) Clarification that competent authorities can consult bodies that include competitors if they judge this necessary for the proper exercise of their authority, provided such consultation does not determine the granting of authorisation or any other decision.

14(7) Clarification that this prohibition refers solely to the place of establishment of the provider of the financial guarantee having to be in the host Member State, not to having guarantees or insurance per se.

Art. 15 Requirements to be evaluated

15(6) An amendment to bring the provisions here in line with notification requirements for goods and information society services as laid out in Directive 98/34/EC.

Art. 17 General derogations from the country of origin principle

Clarification that where a derogation under Art. 17 applies it will also disapply Arts. 20, 22 and 34-36.

17(16) Clarification (in Recital 42) that a prohibition where the activity is entirely prohibited in certain circumstances but not in others, and in those other circumstances where it is permitted is not reserved to certain providers, is a general prohibition for the purposes of the Directive.

17(17) Amendments to widen the permitted derogations in order to protect vulnerable groups or sensitive services, but without widening the scope of the provision beyond what is necessary or relaxing conditions to an extent that would harm UK business interests.

17(20) – (23) Amendments and clarifications to ensure an acceptable outcome with regards to Private International Law.

Art. 18 Transitional derogations from the country of origin principle

Clarification that where a derogation under Art. 18 applies it will also disapply Arts. 20, 22 and 34-36.

Art. 19 Case-by-case derogations from the country of origin principle

19(1)a Inclusion of animal health as a justifiable reason alongside public health.

19(1)c Deletion of 'notably aspects related to the protection of minors' from this clause, since while this is a serious and valid reason, to single it out from the many others could adversely affect their validity.

19(2) The disapplication of 19(2)a,b and c in cases of urgency covered under Art. 37(6).

Art. 21 Non-discrimination

Clarification that this article does not compromise local authority powers to provide local services only to local residents.

Clarification that the accompanying Recitals 49 and 50 are not in conflict with competition law on differential pricing.

Art. 23 Assumption of health care costs

Deletion of this Article in its entirety, as a consequence of the exclusion of publicly funded healthcare from the scope of the Directive at Art. 2.

Art. 24 Specific provisions on the posting of workers

24(1) An amendment to reflect the fact that there are other ways of implementing Directive 96/71/EC (Posted Workers Directive) than carrying out 'checks, inspections and investigations'.

Clarification that Art. 24(1) does not apply where an authorisation or registration or equivalent requirement may be required under Art. 17(17).

24(2) Amendments to ensure clear and reasonable documentation and information obligations.

Insertion of a reference to the Posted Workers Directive in order to provide legal certainty that this provision refers to the employment and working conditions applied to the posted worker.

Art. 25 Posting of third country nationals

25(2) Amendments to ensure compatibility with current UK immigration controls, by bringing this article into line with the Schengen agreement.

Art. 26 Information on providers and their services

Clarifications to ensure that information obligations are clear and fair.

Art. 27 Professional insurance and guarantees

Amendments to this article to ensure that its scope is narrower and that Member States retain a key role in determining the providers to whom it applies. Provisions need to be clear and

workable (capable of being met by the insurance industry) and take proper account of wider risks than simply those to the recipient.

Art. 29 Commercial communications by the regulated professions

Clarification of terms.

Art. 30 Multidisciplinary activities

30(1) Inclusion of an 'overriding reason relating to the public interest' as a third reason allowing requirements to be imposed on providers in relation to certain specific activities.

Art. 32 Settlement of disputes

Clarification of terms to ensure that obligations are fair and reasonable.

32(4) Inclusion of an amendment in line with the qualifying phrase at Art. 27(3) to allow Member States to require supplementary guarantees in the event of only partial equivalence.

Art. 33 Information on the good repute of providers

Clarification of obligations and terms.

33(3) Amendments to ensure full compliance with data protection laws for all persons.

Art. 34 Effectiveness of supervision

Inclusion of a qualification to the effect that Art. 34 is derogated from where Arts. 17, 18, or 19 apply.

Art. 35 Mutual assistance

Inclusion of a qualification to the effect that Art. 35 is derogated from where Arts. 17, 18 or 19 apply.

35(3) Clarification of the obligations and requirements laid out in these provisions.

Art. 36 Mutual assistance in the event of the temporary movement of the provider

Inclusion of a qualification to the effect that Art. 36 is derogated from where Arts. 17, 18 or 19

apply.

Art. 37 Mutual assistance in the event of case-by-case derogations from the country of origin principle

37(1) Clarification of the scope of court proceedings covered by this provision.

37(6) An amendment to ensure that cases of urgency are not hampered by bureaucracy, by adding derogations from Art. 37(2) and Art. 19(2)a, b and c in the case that Art. 37(6) applies.

37(6) Clarification that, in such cases of urgency, the Member State of origin can be notified after measures have been taken.

Arts. 38-45

Technical text clarifications.

DTI

**Consumer & Competition Policy Directorate
November 2004**