

Date: Wednesday 23 June 2004
Venue: Committee Room 3, National Assembly for Wales
Title: Current European Issues

Purpose

1. This paper contains a list of all the EU documents with relevance to the Health and Social Services Committee, which have been deposited in the UK Parliament between the 27 April and 4 June 2004. The paper also contains further information on the European Working Time Directive as requested by the Committee on 3 March 2004.

Action

2. Members are invited to:

- consider whether they wish to give further scrutiny to the items identified as possibly significant for Health and Social Services (Annex A);
- note the other EU documents of relevance to Health and Social Services (Annex B);
- Raise any issues in relation to the European Working Time Directive (Annex C).

Background

3. The attached annexes A and B contain details of all the EU documents deposited in the UK Parliament since 27 April 2004 that have been considered:

- of possible significance for Health and Social Services (Annex A); or
- appropriate to inform the Committee about (Annex B).

4. This is the third list provided to the Committee under the new arrangements for scrutinising EU documents agreed by Committee members at the meeting on 3 March 2004.

5. As promised at the meeting on 5 May 2004, this paper now includes Annex C which relates to developments of those specific items identified by the Committee as being of interest, their relevance to Wales and any scope available to the Assembly Government to influence the proposals.

Members' Research and Committee Services

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EU documents deposited with the UK Parliament 27 April 2004 – 14 June 2004: Possible items for consideration by the Health and Social Services Committee

Date of deposit	EU ref. no.	Title	Summary	Link to document
27/04/2004	COM(2004) 301 final	Follow-up to the high level reflection process on patient mobility and healthcare developments in the European Union	This communication incorporates a number of different aspects of health care related to a proposal for a Directive on Services in the Internal Market. It clarifies entitlement to treatment from, and reimbursement of medical costs incurred in, another Member State. It goes on to discuss collaboration across Member States for better health care, mobility of health professionals, co-ordination of assessments of new health technologies, improving information and knowledge about health systems to ensure use of best practice, and better access to high quality health care.	http://europa.eu.int/eur-lex/en/com/cnc/2004/com2004_0301en01.pdf
27/04/2004	COM(2004) 304 final	Communication: Modernising social protection for the development of high-quality, accessible and sustainable health care and long-term care: support for the national strategies using the “open method of coordination”	Defines a common framework to support Member States in the reform and development of health care and long-term care, a result of the three principles approved in Barcelona in March 2002. Member States are being asked to present preliminary reports covering the challenges facing their systems at national level, current reforms and medium-term policy objectives with statistical data and, where relevant, quantified objectives, by the next Spring Summit in March 2005.	http://europa.eu.int/eur-lex/en/com/cnc/2004/com2004_0304en01.pdf
12/05/2004	COM(2004) 356 final	Making healthcare better for European citizens: An action plan for a European e-Health Area	An action plan for e-Health, seen as a vital tool for future restructuring and a patient-centred health care system with an ability to make substantial productivity gains. e-Health includes health information networks, electronic health records, telemedicine services, personal wearable and portable communicable systems, health portals, and many other information	http://europa.eu.int/eur-lex/en/com/cnc/2004/com2004_0356en01.pdf

			and communication technology-based tools assisting prevention, diagnosis, treatment, health monitoring, and lifestyle management. Contains an annex of actions and responsibilities.	
12/05/2004	SEC(2004) 539 Commission Staff Working Paper	Making healthcare better for European citizens: An action plan for a European e-Health Area	This is a preliminary impact assessment for the Action Plan. The consultative process will be through the distribution of communications and feedback in meetings with national e-Health initiatives through a high level eHealth forum, and the eEurope 2005 Action Plan (eEurope Steering Group and Second Chamber).	http://europa.eu.int/comm/secretariat_general/regdoc/liste.cfm?CL=en or from The Members Research Service
12/05/2004	COM(2004) 327 final	Green paper on public-private partnerships and Community law on public contracts and concessions	Interested parties are invited to respond to this Green paper by 30 July 2004 . The Paper seeks to clarify definitions of and relationships between PPPs in the European Community. Responses will be published on the EU website.	http://europa.eu.int/eur-lex/en/com/gpr/2004/com2004_0327en01.pdf

Other items of interest to note

Date Deposited	EU ref no.	Title	Link
27/04/2004	COM(2004) 317 final	Amended proposal for a Directive of the European Parliament and of the Council on the Recognition of professional qualifications	http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0317en01.pdf
05/05/2004	COM(2004) 290 final	Proposal for a Directive of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses (Codified version)	http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0290en01.pdf
06/05/02004	COM(2004) 341 final	Proposal for a Recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry (see also Annex C)	http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0341en01.pdf
06/05/2004	SEC(2004) 482	Proposal for a Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation	http://europa.eu.int/com/secretariat_general/egdoc/liste.cfm?CL=en or from the Members' Research Service

Identified Items: Recent Developments

At the Committee meeting on 3 March 2004, three items were identified as being of possible interest:-

- ◆ the evaluation of the Multi-annual Community Action Plan on promoting safer use of the Internet and new on-line technologies by combating illegal and harmful content for the protection of children and minors
Members may be interested to see COM(2004) 341 final, a proposal for a recommendation at Annex B
- ◆ the European Working Time Directive
See below
- ◆ the establishment of a European Centre for Communicable Diseases
No further developments

The European Working Time Directive (EWTD)

Background

- 1 The European Working Time Directive (EWTD), which underpins the UK 1998 Working Time Regulations for employment, was reviewed by the European Council of Ministers during 2003 and on 15 January 2004, the Commission published a Communication and conducted an open consultation of interested parties to consider five main matters:
 - ◆ The length of the reference period
 - ◆ The definition of working time following the European Court of Justice (ECJ) rulings
 - ◆ The conditions for the application of the opt-out
 - ◆ Measures to improve the balance between work and family life (which were not included in the original Directive)
 - ◆ How to find the best balance of these measures.
- 2 The consultation closed on 31 March 2004, and the Commission is expected to propose an amended Directive to be implemented by Member States on 1 August 2004.
- 3 The most pertinent proposed changes for the National Health Service are the conditions for the application of the opt-out clause and the implementation of two European Court of Justice judgements. The opt-out clause allows Member States the freedom to exclude certain employment sectors from parts of the Directive and in the case of the UK Government, doctors were omitted from sections related to reducing average weekly working hours. The two judgements are:

- ◆ the SiMAP (2000) judgement that hours spent asleep when on-call are counted as working time and
 - ◆ the Jaeger (2003) ruling that doctors are entitled to compensatory rest after resident on-call duties, even if they have been able to rest while on duty.¹
- 4 There are other main changes to the Directive that will potentially impact on employment of junior doctors and other health workers in the National Health Service. However, there has been little reaction to this, unlike the issues around working hours and compensatory rest. This suggests they are not seen as having a potential significant impact for the UK. They are:
- ◆ a limit of an average of 8 hours work in 24 which night-workers can be required to work
 - ◆ the right for night workers to receive free health assessments
 - ◆ the right to 11 hours rest a day

Key Issues

The opt-out clause for doctors and the two judgements have been perceived as potentially having a profound impact on the UK National Health Service because it is considered that:

- ◆ **the deadline of 1 August 2004 was too short a lead-in time in which to respond**
- ◆ **the number of required hours in a working week for junior doctors will be reduced to 58, although they can choose to work longer hours on a voluntary basis (opt-out), and there is further provision for the working hours of junior doctors to be reduced to a lower level of 48 hours per week by 2009.**
- ◆ **the rulings of the two judgements were unworkable (see explanations later)**

UK responses to the proposed changes

- 5 The Royal College of Surgeons² have responded to the opt-out clause by saying that although doctors in training may voluntarily opt-out on 1 August by signing a waiver stating that they choose to work in excess of the average weekly hours, in

1. Information on these two judgements can be found in the UK Government's response to the Directive http://www.dti.gov.uk/er/work_time_regs/ and also a House of Lords Select Committee Inquiry on the Directive <http://www.publications.parliament.uk/pa/ld200304/ldselect/ldecom/67/6711.htm>

² <http://www.rcseng.ac.uk/eEWTD/optingout.html>

- practice this conflicts with their contracts of employment. For doctors in training, the contract states that they should not exceed an average of 56 hours per week, so contractually, the opt-out clause would not be legal. Consultants may opt-out of the requirements for the EWTD, although there is currently pressure from the EC to remove the opt-out clause from the Regulations.
- 6 The House of Lords Select Committee on European Union held an Inquiry (see *Footnote 1*) into the proposed changes of the EWTD, the results of which were published in its ninth report on 30 March 2004. The Department of Trade and Industry (DTI) provided a response to the consultation that illustrates there is a consensus between themselves, the Select Committee, the Royal College of Surgeons and the British Medical Association (BMA)³ on the key issues for concern.
 - 7 There has been some significant disagreement between the UK Government and the European Parliament Employment and Social Affairs Committee over the UK Government's desire to retain the voluntary individual opt-out contained in the Directive. The European Parliament Committee produced a report calling on the Commission to launch infringement proceedings against the United Kingdom at the European Court of Justice for using the opt-out and calling for it to be removed by 2007. However, on 11 February 2004, the European Parliament although endorsing the report in plenary, deleted the call for infringement proceedings against the United Kingdom and replaced the reference to 2007 by 'as soon as possible'⁴.
 - 8 The DTI response to the consultation (see *Footnote 1*) included the following observations:
 - ◆ To comply with these judgements and continue providing round-the-clock emergency services either more doctors must be found to cover on-call periods in hospitals overnight, or other ways will have to be found of providing these services.
 - ◆ The supply of additional doctors is limited so solutions will need to include alternative ways of working that are already being piloted in the NHS, such as substituting non-medical practitioners where possible, instituting new forms of multidisciplinary team working, or redesigning services in some areas⁵.
 - ◆ There will be problems around drawing up rotas if some doctors do not volunteer to work longer hours while others do.

³ <http://www.bma.org.uk/ap.nsf/Content/ewtd0204>

⁴ House of Lords Select Committee Report
<http://www.publications.parliament.uk/pa/ld200304/ldselect/ldecom/67/6704.htm#a1>

⁵ See Department of Health website for New Ways of Working and related links
http://www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/WorkingDifferently/NewWaysOfWorking/NewWaysOfWorkingArticle/fs/en?CONTENT_ID=4053513&chk=iVbb71

- 9 As a result, they have proposed a number of amendment options for the Directive, although they accept that what might be workable for some sectors, will be problematic for the health sector. For example, one of their suggestions, that there should be sectoral 'norms' for average working hours, is recognised as problematic for the NHS because different hospitals and different specialties have different working arrangements (*see also Footnote 1*).
- 10 In their report compiling both written and oral evidence, the House of Lords Select Committee concluded that:
- ◆ the evidence from Government and the medical profession is unanimous that it will be impossible for the NHS to comply with the extension of the Directive to junior hospital doctors by August of this year if the definition of working time in the SiMAP ruling is applied as it stands.
 - ◆ There were differences of opinion over the feasibility of applying the principles underlying the SiMAP ruling in the longer term, and recommended that the Directive for junior doctors should be referred until a satisfactory solution to the problems posed by the SiMAP ruling can be devised and agreed with Member States.
 - ◆ The UK Government should continue to work closely with representatives of the medical profession and NHS management, as well as with the Commission and other Member States, in attempting to devise a common approach to the definition of working time for hospital doctors on-call duties. The approach should be consistent with the spirit of the Directive as interpreted in the SiMAP judgement whilst being workable in practice and a reasonable programme should be devised to phase in whatever changes are needed without detriment to standards of patient care or medical training.
 - ◆ Particular difficulties have been suggested for the UK in the House of Lords Select Committee Report and these are the:
 - ◆ relative shortage of doctors in the United Kingdom in comparison with other Member States
 - ◆ ratio of junior to senior doctors in the United Kingdom of 1.4 juniors to 1 senior doctor, compared with the EU average of 1 junior to 4 senior doctors
 - ◆ long-standing British practice of delivering at least 50 per cent of hospital service through doctors in training, and
 - ◆ British tradition of dispersing doctors in training to virtually every hospital, rather than concentrating them in fewer centres as in most other Member States.

- 11 The Select Committee took a strong line on the Jaeger ruling on immediate compensatory rest and described it as being 'perverse' and 'wholly impracticable to implement'⁶, although this was not qualified in the conclusions.
- 12 The BMA addressed similar concerns and both they and the Select Committee mentioned that there was pressure from other EU Member States to amend the Directive because of difficulties for implementation on the grounds of costs and a short lead-in time.

Scope for the Committee to influence the legislation

- 13 According to the British Medical Journal (BMJ) the Commission has since launched a further consultation on the 'possible future modification of the directive' which accepts the need to consider how best to define working time so that a 'flexible legislative framework' does not create 'unnecessary burdens'⁷.

If this is the case, the Committee might like to consider providing advice through Parliamentary and UK Government channels.

⁶ House of Lords Select Committee Report, Final Conclusions
<http://www.publications.parliament.uk/pa/ld200304/ldselect/ldcom/67/6708.htm#a35>

⁷ BMJ April 2004; 328:911
http://bmj.bmjournals.com/cgi/content/full/328/7445/911?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=working+time+directive&andexactfulltext=and&searchid=1087478772938_7519&stored_search=&FIRSTINDEX=0&sortspec=relevance&resourcetype=1