

Information Further to Ministerial Answers

Information further to the debate on the Draft National Assembly for Wales (Legislative Competence) (Environment) Order issued by Jane Davidson, the Minister for Environment, Sustainability and Housing, on 4 December 2009

To Michael German:

I am writing to follow up an issue raised in the plenary debate on the Draft National Assembly for Wales (Legislative Competence) (Environment) Order 2009 held on Tuesday 1st December 2009.

During the plenary debate you asked about the use of floating exceptions and in particular whether such exceptions should apply to fields in which they were currently no matters conferring legislative competence on the National Assembly. I would refer you to the enclosed letter of 5th October 2009 from the First Minister sent to both Dr Hywel Francis MP, Chair of the Welsh Affairs Select Committee, and yourself in response to the letter of 17th August 2009 that you issued jointly with Dr Francis. The First Minister's response provides a detailed explanation of the Welsh Assembly Government's approach to the use of floating exceptions which I hope will clarify our thinking on this issue. I have also sent a copy of the letter to all Assembly Members, in line with my undertaking during the plenary debate.

Annwyl Hywel

The National Assembly for Wales (Legislative Competence) (Environment) Order 2009

I am writing in response to the letter dated 17 August 2009 you and Mike German AM, Chairman of the National Assembly for Wales Legislation Committee No.4, jointly sent regarding the recent scrutiny of the above Order. I would like to take this opportunity to thank both committees for their timely scrutiny of this draft Order, which forms a key part of the Assembly Government's legislative programme and to respond to the three main issues of concern to both committees.

Floating Exceptions

You raise a specific concern relating to the inclusion of floating exceptions in fields which do not contain any matters conferring competence on the National Assembly. I appreciate the opportunity to set out our thinking on this matter which I hope will address your concern.

The Assembly's legislative competence is defined by reference to the matters set out under Schedule 5, rather than by reference to fields. Furthermore, matters can and do relate to more than one field. Fields are defined in broad terms and consequently there is considerable scope for overlap between them. Where a matter overlaps between fields, a choice needs to be made as to the field in which the matter should be inserted. For convenience, a given matter is placed under the field that represents the best core fit for the content, but that does not constrain the scope of the legislative power conferred by the matter to that particular field.

Just as the inclusion of a matter in a particular field does not necessarily mean that it relates exclusively to that field, the same also applies to the floating exceptions which will be listed in paragraph A1 in Part 2 of Schedule 5. Indeed, the very purpose of floating exceptions is that they should apply to all matters, regardless of the fields in which they are listed. The Exceptions to Matters LCO, if and when made by Her Majesty in Council, will amend section 94(4) of GoWA 2006 to provide that a provision will be outside the Assembly's competence

if it falls within a floating exception ‘whether or not the exception is under a heading corresponding to the field which includes the matter’.

In considering the use of relevant floating exceptions in developing LCOs, as evidenced in the proposed Environment LCO, our view is a sequence of considerations which need to be followed before a floating exception is added to Schedule 5. These are as follows: a new matter or matters which it is proposed to add to Schedule 5 creates a need for a new exception; that exception is relevant to more than one matter; and it is evident that the exception should apply across the board to all matters (because the exception in question describes something that it is agreed remains the responsibility of the UK Government and Parliament in all circumstances).

If all three principles apply, then the exception should logically be a floating exception. The insertion of a floating exception will help to avoid having to repeat the exception several times, thus avoiding the over-cluttering of Schedule 5 and aiding clarity and transparency. It would also avoid the risk that an exception is not attached to a particular matter even though it turns out in future to be relevant to it.

Duplicating the Function of the Minister of the Crown restriction

The committees noted concern about those exceptions which duplicate the ‘functions of the Minister of the Crown’ restriction that is already included in paragraph 1 of Part 2 to the Government of Wales Act 2006. We agree that unnecessary duplication should be avoided. In those instances where the UK Government has requested exceptions which appear wholly or in part, to duplicate the functions of the Minister of the Crown restriction, we have drawn their attention to the particular restriction and the need to avoid duplication with provisions set out in the GoWA. It is appropriate, by the way of clarification, to note that the functions of a Minister of the Crown in relation to a topic are not necessarily the same as the topic itself and the UK Government has therefore highlighted that the Minister of the Crown restriction was not always sufficient to reserve their interest on particular issues.

Complexity of the Legislative Settlement and Explanatory Memoranda

Finally, the committees raised concerns about the complexity of the legislative settlement that is developing under Schedule 5 of the Government of Wales Act 2006 and the need to ensure that Explanatory Memoranda clearly explains what powers are being conferred and the reasons for and implications of any exceptions to competence.

You will appreciate that the precise terms of LCOs are the product of detailed discussions with Whitehall Departments. Much of the complexity of drafting in the form of detailed exceptions from competence, has arisen as a result of these negotiations. In relation to the Environment LCO, we are currently working with UK Government Departments to try to simplify the Order and avoid unnecessary exceptions. Nevertheless, there is a difficult balance to be struck between the desire for simplicity of drafting on the one hand, and the desire of reassurance about the boundaries and the extent of the National Assembly’s competence on the other. We are keen to work towards a simplified legislative settlement but this will require a shared interpretation between all those involved in the process about the breadth of the legislative competence that can properly be conferred on the National Assembly, given its character as a democratically elected legislature. The Assembly Government has consistently maintained that conferring legislative powers on such a body is very different to the conferral of subordinate law-making powers on the Executive, where close attention to the precise detail of the powers conferred may be more appropriate.

As I have noted above, the move towards the use of floating exceptions will in our view help to work towards a simpler settlement by decluttering Schedule 5 and avoiding needless

repetition of exceptions. This will in turn help to aid understanding of the legislative competence conferred upon the National Assembly.

I have noted your comments on the Explanatory Memoranda. We will aim to ensure that the revised explanatory memorandum for the Environment LCO and all future explanatory memoranda do clearly describe the powers to be conferred on the National Assembly and the reasons and implications of any exceptions to competence. In doing so it is important that these powers are put clearly in the wider context of the devolution settlement, as powers that are granted to a legislature in areas where executive devolution has already occurred. They should serve to enhance the capacity of the devolved institutions to develop distinctive solutions to meet Welsh circumstances in policy areas where it has already been accepted that a distinctive approach may be required. It would not serve that purpose if the powers conferred are hedged about with overly-complex limitations.

I hope this response serves to address the concerns of both committees.

Information further to OAQ(3)2452(FM) issued by Edwina Hart, the Minister for Health and Social Services, on 10 December 2009

To Gareth Jones:

During Questions to the First Minister on 1 December you raised concerns about the provision of healthcare services for armed forces and veterans. The First Minister promised that I would write to you regarding the points you made.

As the First Minister stated in his response to you, hospitals dedicated to treat serving personnel who are injured on duty are based in England, and they the responsibility of the UK Government and Ministry of Defence medical services. Under the previous arrangements for the Reception of Military Casualties (RAMP), the proposal was that major hospitals across the UK would take it in turn to receive casualties from any theatre of operations. Now, however, Selly Oak and Queen Elizabeth at Birmingham are the single receiving hospitals for casualties. All major treatment is carried out at Birmingham (Royal Centre for Defence Medicine) and patients transferred for specialist care (such as neuro and orthopaedic rehabilitation/limb fitting) to Defence Medical Rehabilitation Centre Headley Court, or discharged to a Regional Rehabilitation Unit for ongoing physiotherapy.

Therefore whilst armed forces policy is not devolved, health services are, so we are using powers in health to help improve the lives of those discharged from army on medical grounds and those of veterans generally. I outline below some of the work being undertaken by the Welsh Assembly Government in this area:

Veterans and Post Traumatic Stress Disorder (PTSD)

We are committed to supporting and treating veterans with PTSD across Wales. They can access services through GPs and local community mental health services. More specialised treatment is also available through the NHS Traumatic Stress Service at University Hospital Wales (UHW).

The evidence is that the vast majority of cases of PTSD can be treated by local services in an outpatient setting, which what most people and their families want. Veterans, and all people who access mental health services, will benefit by the Welsh Assembly Government's determination to ensure that the quality and availability of services improves over the next three years. As a fundamental part of the new intergrated local NHS bodies, mental health

services will have a strengthened presence across the NHS to the benefit of all the service users.

Community Veterans Mental Health Service Pilot

In February 2008 I launched a two-year pilot project called Community Veterans Mental Health Service. This part of the Traumatic Stress Service based at UHW Cardiff, and is led by Dr Jon Bisson, a veteran and internationally renowned expert in PTSD. The pilot costs £135,000 and is jointly funded by the Welsh Assembly Government and the MoD. The pilot project is currently identifying the level of veterans' need and most appropriate model of delivery for addressing these needs, part of which is to ensure that the health needs of veterans are able to be met within mainstream NHS services.

It is one of six centres in the UK to take part in a two-year pilot scheme for the treatment of veterans with PTSD, and provides services to areas covered by the former Cardiff & Vale and Cwm Taf NHS Trusts. The majority of veterans referred live within these areas but individuals have been referred from outside the catchment area. While the Service is based at the UHW Cardiff, individuals have been referred from outside the catchment area.

Referrals have been received from various sources including self and family referrals, mental health teams, the Service Personnel and Veterans Agency, Combat Stress, and GPs. Treatment options include the commissioning of services offered by Combat Stress, a charitable organisation to which the Welsh Assembly Government contributes annual grant funding.

Veterans' Health Needs Research

In order to complement this pilot and provide extensive survey data to inform the development of future mental health services in Wales for veterans. I also recently commissioned a Veterans' Needs Assessment Research project, led by Dr Jon Bisson of Cardiff University, to identify the level of veterans' health needs in Wales.

Veterans' Mental Health Task & Finish Group

I also asked Dr Bisson to set up and Chair a national Task and Finish Group that will compliment and enhance the work that is underway through the pilot project and the needs assessment research. This will involve both statutory and non-statutory representatives and consider the wider mental, physical and social needs of veterans, gathering evidence outside the scope of the pilot. Following their report being delivered to me, I will consider whether the planned model of service is effective and should later be rolled out across Wales. I am keen to ensure that there is no gap in service provision between the end of the pilot scheme and the adoption of the national model.

Veterans' Priority Healthcare and Treatment on the NHS

On 23 November 2007, I announced that all service veterans will be entitled to priority NHS treatment and care for service-related conditions, extending the current priority access to NHS services from war pensioners to all veterans. A Welsh Health Circular (WHC) has been distributed to NHS Trusts, LHBs, GPs and other health-related bodies in order to clarify the extension of priority treatment to veterans.

Prosthetic Limb Provision

The MoD Command paper states that the NHS as a minimum match the standard of provision to injured personnel by the Defence Medical Services. The Welsh Assembly Government has provided Health Commission Wales (HCW) with a direct allocation to enable the Artificial

Limb and Appliance Service Centres to meet this need. HCW provides the funding on an individual patient commissioning basis and on a retrospective basis in order to mitigate any potential delay.

Longer Term Rehabilitation and Life Care Planning

Spinal injuries and neuro-rehabilitation services for Wales are provided by Rookwood Hospital in the South and by the Robert Jones and Agnes Hunt service in Oswestry for the North. In the context of veterans the role of these services would be in longer term rehabilitation.

HCW Needs Assessment for War Veterans

A draft scoping document relating to a possible needs assessment for war veterans is being considered by HCW. The purpose of the needs assessment will be to:

- predict the increase in future demand on health services over the next 5 years arising from former armed service personnel;
- predict the financial/budgetary requirements necessary to meet this additional demand.

The precise range of health needs and services to be included in the needs assessment will need to be defined but will include the type of longer term rehabilitation service provided by Rookwood and the Welsh Artificial Limb and Appliance Services together with the needs that may arise related to traumatic brain injury.

HCW and the NHS will work closely with the MoD/Defence Medical Service to complete the review.

Information further to OAQ(3)2456(FM) issued by Edwina Hart, the Minister for Health and Social Services, on 10 December 2009

To Kirsty Williams:

During Questions to the First Minister on 1 December you raised concerns about the parallel exporting of pharmaceuticals. The First Minister promised that I would write to you regarding the points you made.

The UK has traditionally been viewed by the pharmaceutical industry as an important yardstick to set medicines prices across Europe, which has normally meant we paid more than the less affluent southern European countries. With the development of the European Union and the free movement of trade goods between member states, it did not take very long for this differential pricing to be identified as a lucrative import/export business.

The relatively high prices in the UK meant we were a target for importing cheaper medicines from these countries, so called 'parallel importing' because the branded medicines are often originated in the pharmaceuticals manufacturing plants in the UK for sale to the EU, then a person could go to a southern European country to purchase a large amount of the drugs at significantly less cost than could be purchased here. The current economic climate has reversed this trend such that the weakness of Sterling to the Euro has created an export market back into Europe from the UK which is causing some reports of disruption to medicines supply in parts of the UK.

Some of the stock shortages can be blamed on the parallel exporting issue; however, some drugs are in short supply due to other reasons such as manufacturing problems or quality control. Novartis, the manufacturer of Femara, recognise there are stock shortages and have set up an alternative supply route to ensure that pharmacists can obtain the medicine for their patients. This is a UK wide problem and there is currently no evidence to suggest that Welsh patients are being treated any differently to the rest of the UK.

Negotiations with drug companies are very difficult, but we do want the best value for patients and discussions are ongoing at the UK level to ensure that the exploitation of the Welsh patient body by producing a shortage of drugs essential to treatment diseases and in particular cancer does not prejudice the interest of our patients.

I can assure you that the Welsh Assembly Government is monitoring the situation and we are working with pharmacists, licensing authorities and suppliers to ensure adequate supplies of medicines are available to patients in Wales.