

27 FEB 1992

11-21X

Mr Hunt  
NHSSA

FROM: Richard Armstrong,  
PS to PS(H)

DATE: 26 February 1992

COPY: Mr Phillips, PPS/SofS  
Mr Sands, PS/MS(H)  
Ms Burnett, PS/PS(L)  
Mrs White, PS/CE  
Ms Wright, PS/PermSec  
Mr Malone-Lee, NHS ME  
Mr Lillywhite, DM  
Mr Thompson, SOLC  
Mr Locke, NHSE  
Mr Bridges, FHS2  
Mr Barton, MDD  
Mr Powell, SOLB-H

#### USE OF CROWN USE PROVISION

Following the recent difficulties experienced by the NHS Supplies Authority in the purchasing of Hepatitis C Test Kits, there was a possibility that the Supplies Authorities would need to make use of crown use provision to obtain supplies of these kits. These provide that an alternative supplier may be required to supply the crown despite the fact that they are not authorised by the owners of the patent. You are aware of the Ministers concern over inappropriate use of this provision and has directed that such powers may only be used with the express authority of Ministers.

PS(H) believes that such broad guidelines are of limited use and that there needs to be clear policy guideline, agreed cross-departmentally, when such powers should be used by Government bodies. PS(H) has asked that a submission be prepared urgently for Ministers. This should set out the circumstances and procedures Government Agencies should follow before seeking, and expecting to obtain, Ministers agreement to crown use provision.

This is obviously an area where the experience of other departments may be of benefit to the NHS Supplies Authority and the Department as a whole. In particular, DTI and Treasury will clearly have an interest and be able to offer possible guidance.

This is a subject matter on which I have little knowledge on who has policy lead and as you have had the most recent experience in possible use of this provision it would seem sensible to draw on that experience. I have, however, copied this minute quite widely to those who may also have an interest. This is clearly a difficult area but it is one that the Minister wishes to see rapid progress. It would be helpful to have a note from you (or one of the copy recipients) setting out the issues and likely timetable for resolution of this. In view of the impending distraction of Ministers, it would be helpful to receive this information before 5 March in case the Minister needs to hold a meeting.

GRO-C

**RICHARD ARMSTRONG**

**121 RH**

GRO-C