LETTER FROM WESTMINSTER

Three political birds killed with one stone?

PHILIP JOHNSTON

The parliamentary written answer is a time honoured vehicle for ferrying information from government departments via the House of Commons to the public at large. Every day hundreds of questions from members are answered. The resulting bumbf materialises in the press gallery on to a large table containing a separate tray for the responses of each ministry.

Sometimes a diligent reading of the day's Order Paper will alert reporters to a question worth knowing the answer to. More usually, a laborious search through every single reply is a required daily chore; the written answers' tray is a goldmine of information, even of good stories, but it is rare indeed to find the mother lode.

Major policy announcements are made by way of an oral statement, on which a minister can be questioned in the House. Members of parliament frown on any attempt to make public an important decision by way of the written answer. For a start, many of them will not know of its existence until they read about it in the papers the next day. There are times, however, when everyone is happy for the written answer to be used to disseminate a government decision, particularly when it signifies a ministerial volte face. Thus a fortnight ago there was backslapping all round when the Secretary of State for Social Services, Norman Fowler, accepted the inevitable and announced his decision to introduce legislation to remove the crown immunity enjoyed by NHS hospitals.

The question which elicited the reply was tabled by Tory backbencher Richard Shepherd, who the next day was to introduce his own private member's bill to do precisely the same thing. His thunder was comprehensively stolen, but he had the satisfaction of knowing he had contributed to a long overdue change of heart by the Department of Health and Social Security.

In his answer, Mr Fowler said: "I intend to introduce legislation in the present session to remove crown immunity from hospital catering in respect of the food hygiene regulations by making health authorities subject to the provisions of the Food Act." You could be forgiven for thinking that this is all the Bill would do. That is all Mr Fowler said that it would do. And yet the next day a funny thing happened. The Conservative member for Slough, Mr John Watts, received a reply to a question, totally unsolicited I am sure, asking when the government intended to introduce legislation to bring in the new contract for NHS community pharmacists.

This, you may recall, harks back to the legal tangle in which the DHSS found itself last year. Ministers had spent two years negotiating the contract with the pharmacists in order to provide a more rational spread of pharmacies and, incidentally, save some £4m a year. The government believed that the contract could be put into place merely by seeking the approval of MPs to a ministerial order. But the day before the contract was due to start the Minister for Health, Mr Barney Hayhoe, announced that it could not go ahead without primary legislation.

With a heavy parliamentary year in prospect there seemed little chance of finding a suitable legislative vehicle to transport the contract on to the statute book. The pharmacists' negotiators were told that they would probably have to wait until 1987 to get their contract introduced in England and Wales. And though a Scottish Bill, at that time before parliament, had been amended to allow the

introduction of the contract north of the border, the House of Lords put paid to that plan by insisting that the government bring in a Bill for the whole country and not do it piecemeal.

Ministers had resigned themselves to at least a 12 month delay before the contract could be effected. Clearly, they were anxious to bring it in as soon as possible for more than £10 million in potential savings would be lost and the efforts to control the concentration of pharmacies in high streets and around doctors' surgeries would be hindered.

Which brings us back to the Crown Immunities Bill. Why, said some bright spark at the DHSS—Mr Fowler himself for all I know—why don't we tag the pharmacists' contract on to this Bill? And, while we are about it, why not sort out the problem of overpayments to family practitioner services professional contractors? Brilliant. How do we announce it? A written answer of course. Not, you will notice, Mr Fowler's original written answer, but the response the following day to Mr Watts's coincidental question about the pharmacists' contract.

Mr Hayhoe, whose reply it was, said that the Crown Immunity Bill would "also propose the provision of powers to introduce, in full, the new pharmacists' contract; and to re-establish beyond doubt the government's ability, challenged in court proceedings last autumn, to ensure that the remuneration and reimbursement arrangements for all NHS family practitioner services professional contractors are fair to the contractors themselves and to the taxpayer by allowing past overpayments or underpayments to be reflected in future fees."

Political hot potato

So what was to have been a totally uncontentious piece of legislation, removing crown immunity for NHS hospitals, has now become a political hot potato. Legal action against the government is being threatened by the British Pharmaceutical Association, a breakaway group of small chemists unhappy with the deal struck by their bigger brothers, the Pharmaceutical Services Negotiating Committee.

Some big chemists, which would be barred from opening new stores in high streets already supplied by chemists shops, are also expected to challenge the government's decision. And the inclusion in the Bill of powers to reclaim overpayments to family practitioner services contractors, an issue on which the government was defeated in the courts last year, will not be taken lying down. Three birds may have been killed with one stone, but the resulting ricochet may break the glass house.

The whole exercise has been a classic example of Whitehall pragmatism. Ministers find themselves in a politically untenable position by resisting pressure to remove crown immunity. A scandal—the Stanley Royd Hospital food poisoning outbreak—forces a rethink, even though it has been claimed that the hospital kitchens would probably not have warranted prosecution had immunity been lifted. The government then gratefully accepts the plaudits for realising something needs to be done after all and announces the necessary legislation. Then it appends two more controversial pieces of legislation to the main Bill in the knowledge it will get a fairly trouble free passage through the House because everyone wants to do away with crown immunity. Well, we shall see.