

# **HEALTH AND COMMUNITY CARE COMMITTEE**

Wednesday 15 September 1999  
(*Morning*)

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## HEALTH AND COMMUNITY CARE COMMITTEE

### 4<sup>th</sup> Meeting

#### CONVENER :

\*Mrs Margaret Smith (Edinburgh West) (LD)

#### COMMITTEE MEMBERS :

\*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

\*Dorothy-Grace Elder (Glasgow) (SNP)

\*Mr Duncan Hamilton (Highlands and Islands) (SNP)

Hugh Henry (Paisley South) (Lab)

\*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

Ms Irene Oldfather (Cunninghame South) (Lab)

\*Mary Scanlon (Highlands and Islands) (Con)

\*Dr Richard Simpson (Ochil) (Lab)

\*Kay Ullrich (West of Scotland) (SNP)

\*Ben Wallace (North-East Scotland) (Con)

\*attended

#### COMMITTEE CLERK:

Jennifer Smart

#### ASSISTANT CLERK:

Irene Fleming



## Scottish Parliament

### Health and Community Care Committee

*Wednesday 15 September 1999*

*(Morning)*

[THE CONVENER *opened the meeting at 09:32*]

**The Convener (Mrs Margaret Smith):** This morning we have a number of food issues to discuss, which is interesting, given that this afternoon in Parliament we will be debating the food standards agency. Some extra items have been added to our agenda at fairly short notice, so I hope that we can be patient with each other as we work our way through them. I believe that this is the first time that any of the committees of the Parliament has had to consider how to deal with this type of statutory instrument. I therefore propose to adjourn the committee—after only a minute—so that we can have a private briefing on how we should proceed.

09:33

*Meeting suspended.*

10:03

*On resuming—*

**The Convener:** I have received apologies from Irene Oldfather and Hugh Henry, who will not be joining us this morning.

### Food (Animals and Animal Products from Belgium) (Emergency Control) (No.2) (Scotland) Order 1999 (SSI 1999/32)

**The Convener:** Item 1 on the agenda is a negative instrument and we are expected only to note it; no motion has been lodged, so we have nothing to debate. Are we agreed that the attention of Parliament need not be drawn to this instrument?

**Members** *indicated agreement.*

**The Convener:** It is agreed.

## Animal Feedingstuffs from Belgium (Control) (No.2) (Scotland) Regulations 1999 (SSI 1999/33)

**The Convener:** Item 2 is another negative instrument concerning animal feedingstuffs from Belgium. There is an explanatory note covering items 1 and 2 but, again, no motion has been lodged. I therefore recommend that the attention of Parliament need not be drawn to the instrument.

**Mary Scanlon (Highlands and Islands) (Con):** If the feed has gone to farms in France and Holland, as well as to 416 Belgian farms, why are we banning only food from Belgium?

**The Convener:** If we want to debate the matter, we need to call people who can answer your question. I cannot give you that answer, and we must therefore call another meeting to debate the issue.

**Ben Wallace (North-East Scotland) (Con):** Can I suggest that, when we are to consider Scottish statutory instruments, we tell the Executive that we need to get them at least 10 to 14 days beforehand? Once we are in committee, it is too late to lodge a motion.

**The Convener:** I totally agree. I think that it is unacceptable that the committee should have to function in this way. Mary Scanlon has raised a legitimate point. If circumstances were different, we would all want to raise a lot of questions about the instruments. Our feelings will be made known and the matter will be brought up with the Executive and with the Procedures Committee.

We need the time to call meetings if we want to hear evidence. It is unacceptable to have SSIs placed before us at such short notice.

**Mary Scanlon:** I accept that and fully support what you are doing—I appreciate that we are working together and are all on a steep learning curve—but is there a process by which this question can be answered without referring it to further committee meetings?

**The Convener:** The only way we can ask questions is to lodge parliamentary questions as individuals. You can lodge a parliamentary question on this or on any other issue in the background notes.

**Mary Scanlon:** Thank you.

**Ben Wallace:** Mary's question on the reason for banning food from Belgium, but not from France or Holland, is valid. If we close the meeting now without reaching a decision on the statutory instrument, and agree to meet again with a more competent agenda and a clearer, more precise

timetable, we can study this matter. If we continue this meeting, we cannot raise this question except through parliamentary questions.

**Jennifer Smart (Committee Clerk):** We are given time scales for Scottish statutory instruments. We have to report to Parliament on 29 September. To meet that deadline we will have to give information to the bureau by 23 September. Our next meeting is on 22 September, which is too late to allow us to prepare the report for the bureau. So, if this item is not considered at this meeting, we will have to call an additional meeting between now and 22 September. That is why members have had such short notice.

**Mr Duncan Hamilton (Highlands and Islands) (SNP):** Why is the time scale so inflexible? I agree entirely with Ben. What leeway is there to move the time scale that has been set? It is not a sustainable position for this committee to agree that it needs to consider matters properly with the facts before it, but to turn a blind eye to these particular instruments.

**Margaret Jamieson (Kilmarnock and Loudoun) (Lab):** I have a problem with this. We are nodding things through, but we have not had sufficient information to back up any decision. Mary has made a valid point—she has obviously had time to read the documents this morning, but I had to drive here.

It is difficult, as we are involved in a new process. I am not prepared to agree to something without knowing the full facts. It is unacceptable that this committee has to operate in a vacuum and risks making a wrong decision.

**Dr Richard Simpson (Ochil) (Lab):** I agree entirely with Margaret Jamieson in principle, but that is part of the new process. These statutory instruments were laid before the UK Parliament, as the issue arose before the Scottish Parliament assumed its powers. We are annulling an instrument that the UK Parliament introduced. That will not recur in future. We should pass these regulations, because if we do not, Scotland alone will continue to ban Belgian food for a prolonged period. Scotland will be out of step with the rest of the UK and—for all I know—with the rest of Europe.

In principle I agree that we need to make it clear to the Executive that in future we need a proper timetable so that we can consider such matters in detail. However, I think that we should nod this instrument through. As far as the Belgian and United Kingdom Governments and the European Commission are concerned, the Belgian situation has been solved. If we were to continue to ban Belgian foods, it could lead to rather a nice little altercation between us and Belgium, which I do not imagine any of us wants.

**Margaret Jamieson:** It would have been helpful if committee members had been made aware of that fact. I thank Richard for advising me of that.

**Ben Wallace:** Statutory instruments are laid before Parliament 40 days before they have to be passed. They should be with us the day they are laid. Forty days before 29 September was in mid-July, which was within our Parliament's competence.

This instrument comes from a directive from the Council of Ministers. As Richard said, and from what I know from the European Committee, if we do not pass it we will find ourselves in court and we will be fined for being out of step with other European member states. In the future, Scottish statutory instruments should come to us on the first day so that we have 40 days in which to timetable them. I do not like the number of SSIs that are coming to us with only a few days before they become law.

**Dr Simpson:** Again, I agree with Ben Wallace in principle. However, if we were to get a negative SSI on the fishing industry, for example, because laboratory tests showed that amnesic shellfish poisoning toxins had gone, it would be unacceptable to the fishermen if we had to wait 40 days to lift the instrument, because that is what the committee has decided.

The mechanism has to be practical, but it must also allow us time. We need to seek advice on what that mechanism should be—I am not experienced enough. On some issues, though, we need to move as fast as we can, for the sake of those involved.

**Dorothy-Grace Elder (Glasgow) (SNP):** We are—or should be—a flexible organisation. If there is yet another of these quasi-emergencies about food, we should be prepared to meet in the break and, within reason, to make ourselves available at very short notice, rather than cluttering up the committee. Last week, we did not really need to take up 1 hour 40 minutes of the most senior minister's time to talk about the shellfish ban when we all wanted to question her about the sick children's hospitals.

**The Convener:** We had to look at that motion at the minister's request.

The clerk has just pointed out to me that, although the Health and Community Care Committee may be seen as the lead committee, which will have to bring the instrument before Parliament, there may be issues that the Rural Affairs Committee and the European Committee will need to discuss within the 40 days. We are, therefore, only one of a number of committees that may need to consider the instrument within the 40 days.

I will take that issue up as a matter of urgency with the head of the committee office. I will also speak to the Convener of the Procedures Committee and raise the matter at the conveners committee. It is important that we get the process right.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** I want to pick up on the points made by Richard and Ben. It may be rather alarming to realise this, but the Executive has the power over statutory instruments. The orders have already been implemented. We do not need to approve them before that can be done. We, therefore, can use the whole 40 days. I back Ben's suggestion that all statutory instruments of relevance to this committee should be sent to us immediately they are laid. People on the committee will then be in a position to raise points and move motions against them.

We should ask the Executive why we have to report by 29 September. We have 40 days. Given that the order is already in force, why can we not use all 40 days?

**The Convener:** We will ask the Executive that. Jennifer will clarify the matter for us.

**Jennifer Smart:** The difficulty with the 40-day period is that until we are designated the lead committee we do not know where the statutory instruments will be sent. Instruments have to be laid before Parliament before a decision can be taken on who is to consider them and—if more than one committee is to do that—which will be the lead committee. Part of the 40-day period is used up doing that.

10:15

**The Convener:** The whole process seems incredibly cumbersome. It is certainly not satisfactory.

**Malcolm Chisholm:** All that needs to happen is for someone to pray against the instruments within 40 days. It does not matter if they go to three or four committees.

**Margaret Jamieson:** Dorothy raised the issue of special meetings of the committee. She talked about a break—I assume that she meant the October recess.

**Dorothy-Grace Elder:** I was referring to the lunch break.

**Margaret Jamieson:** We all have things to do during that time. I have yet to have a full lunch break.

**Dorothy-Grace Elder:** The same is true of me.

**Margaret Jamieson:** We need to be very careful—this is not the only committee of which I

am a member and this is certainly not the only subject in which I am interested. We also need to be mindful of the staff, as they have other committees to serve.

**Dorothy-Grace Elder:** I appreciate what a frantic time the lunch break can be. I meant that we should be available to meet then if the matter was urgent. We would rather know than be brushed aside or wait until our next meeting.

**The Convener:** I understand the spirit in which Dorothy was suggesting that we give up our lunch hour, but we need this matter resolved, not only for our committee but for every committee of the Parliament. This is not the first time—nor will it be the last—that we have found that the working practices of the Parliament are cumbersome and do not serve this committee's best interests.

I will argue very forcefully that something should be done about that. I will meet the head of the committee office and take up the issue with the Convener of the Procedures Committee. I will also raise it at the next meeting of the conveners committee. In that way we should be able to ensure that in future we have proper time to consider these issues. Mary's question was the tip of the iceberg—I am sure that all of us had some queries.

However, I am mindful of what Richard said. On this occasion, I recommend that we note the instrument and no more, but I will do everything that I can to ensure that we are not put in this position again.

**Mr Hamilton:** What exactly are we doing here? The clerk said that it is not in this committee's power to pass this legislation and that, therefore, it will come into effect.

**Jennifer Smart:** The committee's task is to decide whether to agree that the attention of the Parliament need not be drawn to the instrument.

**Mr Hamilton:** That involves our assessing whether the matter under consideration is sufficiently important to come before the Parliament.

**Jennifer Smart:** The only other step that the committee can take is to consider a motion recommending that nothing further be done under the instrument.

**Ben Wallace:** These regulations derive from a law that has already been passed. At issue is whether we want to question whether the regulations are fit and appropriate to that law, which Parliament has made. Sometimes the Executive has overlooked regulations or not thought them through properly. It is then that a motion should be lodged with the Parliament. The problem is that only an individual, not the committee, can do that. That means that, if we do

not like the regulations, we must nominate an individual to lodge a motion at the chamber office so that it can be put before Parliament. Is that correct?

**Jennifer Smart:** Someone would have to lodge a motion recommending that nothing further be done under the instrument.

**Ben Wallace:** It is all fun on this committee.

### **Spreadable Fats (Marketing Standards) (Scotland) Regulations 1999 (SSI 1999/24)**

**The Convener:** Let us move to item 3, as I think that we have agreed items 1 and 2. This is another negative instrument. Again, no motion has been lodged, so I suggest that we agree that the attention of Parliament need not be drawn to the instrument. That is agreed.

### **Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No.2) (Scotland) Order 1999 (SSI 1999/42)**

**The Convener:** Item 4 is an amnesic shellfish poisoning order that seeks an extension of the area around the Orkney coast. This is not a negative instrument and we have to give it our approval. As we have debated similar instruments, we are not expected to go through the debate again.

The committee recommends that the order be approved.

I understand that there have been some questions about the drafting of items 1, 2 and 4. The committee clerk will follow up those concerns to make sure that we have a commencement date for each paper that comes before us.

### **Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.2) (Scotland) Order 1999 (SSI 1999/50)**

**The Convener:** Item 5 is another amnesic shellfish poisoning order that seeks an extension of the area in west coast waters. We have already debated the matter at some length.

The committee recommends that the order be approved.

### **Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) Partial Revocation (Scotland) Order 1999 (SSI 1999/49)**

**The Convener:** Item 6 is a partial revocation of an amnesic shellfish poisoning instrument, which I am pleased to see. No doubt the fishermen will also be pleased.

As the order is a negative instrument and no motion has been lodged, the committee recommends that the Parliament's attention need not be drawn to the instrument.

### **Remit Clarification**

**The Convener:** You will be happy to hear that we are moving out of the land of SSI and various foodstuffs into item 7, which concerns the clarification of the committee's remit.

At our previous meeting, I said that the Rural Affairs Committee had invited the chief medical officer to speak to the committee about amnesic shellfish poisoning and the beef-on-the-bone ban and that the convener and clerk of the Rural Affairs Committee had asked whether members of this committee would be interested in attending the briefing. Members pointed out that this committee should be asking the chief medical officer about public health issues. I was prepared to be flexible at the beginning. Although it will take time for committees to find the best way of working together, that will be better for the Parliament in the long run. At the time, I suggested that the convener and the three party spokespeople could attend the briefing—although I am sure that the Rural Affairs Committee would have been happy for all members to attend.

However, because of the debate caused, we have asked for a clarification of remit on this issue. As agenda item 7 says, the subject of the inquiry was entirely within the remit of the Rural Affairs Committee. However, members of this committee are welcome to attend and to ask questions of the chief medical officer, but will not be able to vote as it is a meeting of the Rural Affairs Committee. I understand that the briefing is an information-gathering exercise and that no motion will be involved.

How does the committee wish to proceed? The Rural Affairs Committee will meet on 5 October, and we are invited. The head of the committee office has clarified that it is within that committee's remit to talk to the chief medical officer. We could go along and take part, we could ignore the invitation, or we could ask the chief medical officer

to come to talk to us on another occasion. However, that would be a waste of his time, frankly.

**Ben Wallace:** You say that there is to be no vote during that Rural Affairs Committee—

**The Convener:** That is my understanding.

**Ben Wallace:** I know that the parties have different opinions on the beef-on-the-bone ban, but we all accept that it is a health issue. If there were to be a vote, it would be about health, and the Health and Community Care Committee should do the voting. Our remit is to study and to protect the health of the people of Scotland. If we went along to the Rural Affairs Committee and it voted on a health issue, that would be back to front.

**The Convener:** I understand that the Rural Affairs Committee has invited the chief medical officer to give the committee members information on the beef-on-the-bone situation. We asked for a clarification of the committee's remit, and were told that its invitation had been couched in such a way that it fell within its remit. The Rural Affairs Committee is perfectly at liberty to invite him. The question for us is not what that committee has done—because it has not done anything wrong—but whether we want to go along to its meeting and take part, or whether we want to invite the chief medical officer to this committee so that we can talk to him about beef on the bone and so that we can vote on it.

**Kay Ullrich (West of Scotland) (SNP):** Our going along would set a dangerous precedent, and we should not set such a precedent. The issue clearly falls within the remit of this committee and we should speak to the chief medical officer here.

**Dr Simpson:** We have unanimity.

**The Convener:** So far.

**Dr Simpson:** Beef on the bone is clearly a health issue. In the context of today's discussion, it is an issue that will be for the food standards agency. The food standards agency relates to the Health and Community Care Committee, not to the Rural Affairs Committee; and I think that the clerks have got it wrong. That is not to say that the Rural Affairs Committee cannot call the chief medical officer.

This is an opportunity to test our systems properly: at the beginning of the meeting to which the chief medical officer has been invited, the two committees should sit together as a joint meeting. In that way, the chief medical officer would not have to waste his time by coming twice, and the interest that the members of the Rural Affairs Committee quite correctly have in this area—which is not to be denied—would be identified. We must not get into turf wars over whether we go to

or it comes to us. I do not care about that; what I care about is that this committee and the Rural Affairs Committee should jointly interview the chief medical officer.

**Ben Wallace:** Can you clarify whether the Rural Affairs Committee has competence to vote on the issue? If the chief medical officer goes to speak to the Rural Affairs Committee and the committee then proposes a motion on lifting the beef-on-the-bone ban, will that be ruled to be within the committee's competence?

**The Convener:** I understand that the Rural Affairs Committee is simply gathering information to give it some background. I do not know whether the clerks have considered the possibility of having a joint meeting.

**Jennifer Smart:** That was not suggested before, but we could look into it.

**Mary Scanlon:** Earlier, Jennifer outlined the system by which a statutory instrument should progress, telling us where it would go and when, who it would go to, and what would be done. She mentioned the lead committee. Is there some doubt about whether the Health and Community Care Committee is the lead committee?

**Jennifer Smart:** No.

**Mary Scanlon:** None at all?

**The Convener:** We are the lead committee. I will explain what happened. An approach was made to me by the Convener of the Rural Affairs Committee and the clerk, after a decision had been taken in that committee. Had the approach been made beforehand, I think that we would have investigated other options. However, the decision had already been taken. Although I felt that that was not the best way to do things, in the spirit of co-operation, and because our joint working arrangements have not yet been—

**Mary Scanlon:** I am worried by the wording of the clarification of whether extending an invitation to the chief medical officer to speak about beef on the bone was within the remit of the Rural Affairs Committee. The clarification states that the invitation was on a matter

"entirely within the remit of the Rural Affairs Committee."

**The Convener:** Yes—Jennifer, can you explain that?

**Jennifer Smart:** Food safety falls entirely within this committee's remit. Members of the Rural Affairs Committee should not examine anything to do with food safety. However, they can gather information concerning their own remit from anyone they choose. We understand that they have invited the chief medical officer so that he can give them an informed view of how to tackle their own remit. There is no cross-over remit—this

committee has food safety and the Rural Affairs Committee does not.

10:30

**Ben Wallace:** Could you or the clerk make it clear, in your representation, that it is not within that committee's competence, if it were to lodge a motion, to vote on it?

**Mary Scanlon:** The matter is not "entirely within the remit" of that committee.

**Malcolm Chisholm:** I do not think that we should lose too much sleep over this.

**Dorothy-Grace Elder:** It is such a major issue that a lot of us would like to hear that question and answer session. Only if it came to a vote might we have problems.

**The Convener:** Can we agree that we should go along and take part on the basis that there will be no vote on that subject—that we will take part in an information-gathering exercise, and that in future, if the Rural Affairs Committee wants to examine anything that impacts on food safety, we would appreciate it if the matter were discussed with our convener beforehand, so that we could work together on such things more effectively?

**Kay Ullrich:** Are you suggesting that we should all go along?

**The Convener:** I am mindful of the fact that committee members have an awful lot on their plates. My suggestion was that I and the three spokespeople should attend. If the rest of the committee wants to attend as well, I do not mind.

**Kay Ullrich:** The committee should decide that.

**The Convener:** Exactly. If all committee members want to go along on 5 October, it is up to them. The invitation was sent to the committee. I made the suggestion that only some of us might want to go along simply because I thought that others might take the opportunity not to have an extra meeting.

**Malcolm Chisholm:** In practice, anybody from the committee who wants to attend should be able to do so.

**Ben Wallace:** At what time will the meeting take place?

**The Convener:** We imagine that it will be 9.30 am on Tuesday 5 October. On the basis that it will be information gathering, that there will be no vote, and that all members of the Health and Community Care Committee who want to attend may comment and ask questions, we will attend that meeting. In future, if there is anything that impinges on food safety that the Rural Affairs Committee wants to discuss, we suggest that it might be more useful for the conveners of the

committees to discuss the matter in advance. We will still be able to get the information from the chief medical officer on two important issues.

There is no further business before us today, so I bring this meeting of the committee to a close.

**Malcolm Chisholm:** What is happening next week?

**The Convener:** We will examine more statutory instruments. If you feel the need to take a holiday, that would be a good day on which to do so.

**Jennifer Smart:** The Accounts Commission for Scotland has offered to give us a pre-publication briefing on its document on GP prescribing, on 22 September.

**Malcolm Chisholm:** That is a good idea, but can we use next week's meeting to flesh out what we decided last week? There is a properly scheduled meeting next Wednesday, so can we have an agenda item on fleshing out the community care inquiry and the work of individual groups? Will that be on the agenda?

**The Convener:** Yes.

**Margaret Jamieson:** Can we also look at how we are going to plan our work? Are we going to meet fortnightly?

**The Convener:** Yes. It has been difficult. We have had odd meetings that have been slotted in. It would be nice to know how often we are going to meet.

**Dorothy-Grace Elder:** Could we have the Minister for Health and Community Care or her deputy come to our next meeting to discuss the hospitals for sick children in Glasgow and Edinburgh? A decision is imminent, as she made clear at our previous meeting.

**The Convener:** We had an open invitation to both ministers to come and speak to us on a range of issues, as you know, but the minister is unavailable for some time. However, we have a meeting organised for the beginning of November.

**Dorothy-Grace Elder:** But she said at the end of our previous meeting that she would present something within a few weeks. The issue of the children's hospitals in Glasgow and Edinburgh is the big one.

**The Convener:** With respect, it is one of a number of issues. Last week, I tried to make the point that we could continually pick up local issues that each of us thinks are important. I appreciate that that one has a national impact, but it is of particular interest to local members. There is any number of issues that we could pursue. Margaret's point about trying to work out our work load is one we must grapple with.

As for the minister, she will come before us again when we consider the Arbutnott report and after we have taken evidence from other people. She will come to us in November to talk about a range of issues. Prior to that, we must work out what are the major issues that we want to ask her about. You are able, as are the rest of us, to lodge parliamentary questions on this and any other important issue. I think that that is the line that you would be best served taking, because the minister is not available to come to this committee and, frankly, if she were, every member of the committee would say, "This is the big issue that we must look at."

Although it seems on the face of it that it is unfortunate that we will not meet the minister until November, there is a benefit for us. By then, we will have had a chance to work through a number of the issues in our own minds and had time to consider what the committee feels are the important issues that we want to bring to the minister's attention. That is better than a knee-jerk reaction, demanding that we talk to her about one thing one week, and another the next.

By the time we meet the minister in November, we should have a clear idea of what we consider to be the important strategic issues that we want to discuss with her.

**Dorothy-Grace Elder:** But as you will appreciate, just as in the quasi-emergency situation over shellfish, it is the pressure of time that is important in this matter. The minister is making a decision. We already know from Glasgow, and perhaps from Edinburgh, that quite a number of groups have been cut out of the consultation process on the sick children's hospitals. It is a matter of huge public concern.

**The Convener:** There is no notice of this item on the agenda. I have made my view on it known. As far as I am concerned this is an issue that you and anyone else is able to ask parliamentary questions on and you can write to the minister. I know that you have brought it to her attention. I and others have done so, too. The matter is in no way linked with our business today.

**Dorothy-Grace Elder:** No, I meant that because of the time scale she had to come before us soon.

**The Convener:** This issue has been debated at previous meetings. We have also commented on it today. My comments are easily understood: this committee will not examine the issue. You have the right to lodge a parliamentary question. If you want to debate an item that is not on this agenda, please let me know in writing in advance of the meeting and we will then debate it, but do not debate an issue by bringing it up in the middle of a meeting.

This meeting is closed.

*Meeting closed at 10:39.*



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