HEALTH AND COMMUNITY CARE COMMITTEE

Wednesday 6 October 1999
(*Morning*)

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HEALTH AND COMMUNITY CARE COMMITTEE
7th 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

THE FOLLOWING MEMBER ALSO ATTENDED:

The Deputy Minister for Community Care (Iain Gray)

COMMITTEE CLERK:

Sarah Davidson

ASSISTANT CLERK:

Irene Fleming

Scottish Parliament

Health and Community Care Committee

Wednesday 6 October 1999

(*Morning*)

[THE CONVENER *opened the meeting at 09:33*]

Amnesic Shellfish Poisoning Orders

The Convener (Mrs Margaret Smith): Welcome to this meeting of the Health and Community Care Committee. Our friends the statutory instruments have returned to haunt us again. I welcome the Deputy Minister for Community Care, Iain Gray, to his first meeting of this committee.

The first three items on the agenda today are instruments that are subject to approval. All of them deal with amnesic shellfish poisoning, an issue that we have considered before in some depth. These orders concentrate on incidents around the coast of Orkney. I would like to let the minister lay the motions before us.

The Deputy Minister for Community Care (Iain Gray): I would like to say that I am pleased to be here, although it took some arm-twisting—the legal advice that a minister has to move an affirmative statutory instrument as Susan Deacon did before.

With your forbearance, I move,

That the Parliament's Health and Community Care Committee in consideration of the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 3) (Scotland) Order 1999 (SSI 1999/73) recommend that the Order be approved.

Motion agreed to.

Iain Gray: I move,

That the Parliament's Health and Community Care Committee in consideration of the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No 2) (Scotland) Order 1999 (SSI 1999/72) recommend that the Order be approved.

The Convener: I forgot that one of them was an east coast order.

Motion agreed to.

Iain Gray: I move,

That the Parliament's Health and Community Care Committee in consideration of the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Order 1999 (SSI 1999/71) recommend that the Order be approved.

Motion agreed to.

The Convener: That last order relates to the west coast, whereas our papers told us that all the orders relate to Orkney.

I thank the minister for giving us his time this morning. I hope that we will not have to see you on too many occasions such as this. The next time we speak to you it will be about a substantive issue—the issue of community care—that is on today's agenda.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I am sure that we are all pleased to see Iain at this time in the morning, but I am surprised by what he said about the legal advice. Paper 15 on procedure says that if a member who gives notice of a motion does not move it, it can be moved by any other member who has indicated his or her support for it before the end of the previous meeting day. Is something that, as a result of a previous debate, is known to be uncontroversial, a good use of a minister's time? Could that be investigated further?

The Convener: I take your points on board, Malcolm. Can we hear from the clerk on the issue?

Sarah Davidson (Committee Clerk): The legal advice on that is not absolutely settled. The committee office's view was that we should probably play safe until it is settled, but it is certainly under review. Malcolm's point will be taken on board.

Dorothy-Grace Elder (Glasgow) (SNP): It is nice to see you, Iain, but we feel that ministers should come before us when the issues are more controversial—that saves your time as well as ours.

Iain Gray: I agree, with a little trepidation.

Petition

The Convener: Item 4 on our agenda—a petition from Stracathro hospital—will probably generate more discussion than the previous items. The committee may remember a representation by members of the Stracathro staff action committee in one of our meetings some weeks ago. As a result of that visit, the Stracathro staff have lodged a petition—the first to be placed before us in that way—through the Public Petitions Committee. I have a vested interest, as I sit on that committee.

The Public Petitions Committee will keep a watchful eye on what subject committees do with the petitions that are passed to them. The Parliament should ensure that when representations are made to it, they are given full and proper consideration, despite the tight

timetables for our work load.

I am aware that a petition gives only one side of the story, but this one makes quite worrying reading. Some aspects have already been raised by the staff action committee, particularly communication problems between the health board and the work force at Stracathro. As the petition has in excess of 25,000 signatures on it, the committee should spend some time on an initial discussion about it before taking any action.

So far, only one petition has been dealt with formally by a subject committee, but it was decided that the matter was not within the competence of that committee and it turned it around. We are treading into new territory here. We will have a general discussion and then discuss how we can take the matter forward.

Mary Scanlon (Highlands and Islands) (Con): I am very worried about the Stracathro petition. I want to ensure that we are seen to respond to people's genuine and on-going concerns. I am concerned that there is a move towards locating all hospitals in major cities. Stracathro serves Angus and the Howe of the Mearns—it is almost a matter for the Rural Affairs Committee.

I am also concerned about the gradual running down of services. I visited Stracathro in the summer. As Kay Ullrich has said, the situation is death by a thousand cuts. Although I would like to think that the Rural Affairs Committee will take an interest, I suggest that we allocate some time to listen to representatives from Stracathro and Tayside University Hospitals NHS Trust. In this age of openness and accountability, those people should give us their views and explain any decisions that have been taken. That could happen after the acute services review, which is due quite soon.

The Convener: One of the main points raised by the Stracathro group in the petition and in comments to the committee is that there is a continuing erosion of services, which should be halted until after the acute services review.

Dr Richard Simpson (Ochil) (Lab): I realise that we have a tight timetable, but this is an important issue. The decisions that have been taken by the acute services trust in Dundee, which have been defended as being operational, have been interpreted by the staff as a prelude to hospital closure or permanent withdrawal of services. As the patients group said, the decisions appear to pre-empt the acute services review, which is being headed by Professor Jung.

With my colleague Roseanna Cunningham—we are both local MSPs—I attended a meeting at Perth City Hall to hear a presentation on the acute services review. Usually, such meetings are attended by 20 or 30 interested people; on this occasion, almost 1,200 attended. The concerns about the possible withdrawal of services that have been expressed at Stracathro are also being expressed by the people of Perth, Kinross and Milnathort. The acute services trust has done itself a grave disservice by taking a decision on operational and financial grounds—which I fully appreciate—to close or partially close those units, albeit without withdrawing specific services. That was politically naive. The trust has given the impression of pre-empting the acute services review and that has done it no good service.

The committee can play an important role in getting the debate back on a rational basis. We must call both the Tayside University Hospitals NHS Trust and Tayside Health Board to account for their approaches to the issues at Stracathro and the acute services review. We must create an atmosphere that will allow rational debate.

Dorothy-Grace Elder: We should have an investigation into the matter and a presentation from the parties involved. As we know, many nurses and staff from Stracathro visited the Parliament recently. There are 25,000 signatures on the petition—the entire population of Angus is only about 111,000—which represents the majority of the adult population of the area. I have never seen such a high ratio of signatures on any of the many petitions in which I have been involved. That really is vox populi and we must heed it.

When one reads the evidence, it appears that the health board is extremely concerned because there is a £10 million deficit and closing a hospital seems the easy way out. As it is the only district general hospital in the whole of Angus, I think that we have to ask some searching questions. Furthermore, I note that Beattie Media does the publicity for Tayside Health Board.

The Convener: Ah, now that is a road that I do not want to go down. Let us keep the meeting friendly.

Kay Ullrich (West of Scotland) (SNP): I just want to reiterate what every other member has said. This petition is worthy of the committee's action. If a health service is to work properly and serve the community, the morale of health service workers must be in good shape. It is obvious that the people at Stracathro are working under very strained circumstances and there is much concern about that. The committee should call both the people who have presented the petition and representatives from the trust and the health board.

09:45

Malcolm Chisholm: I agree with the general points that have been made. Perhaps we should

emphasise procedural points such as whether the health board and the trust have been consulting fully and pre-empting the results of the acute services review. It is right that we hold health boards and trusts to account, but I would like to flag up a slight reservation. We do not want to give the impression that we are against the reorganisation of services. Saying that the status quo is acceptable is not a tenable position—although I am speaking generally, as I do not know about the specific case. I do not think that we are giving such an impression, but I want to put that down as a marker.

It is clear that we need a health services review and that, in some cases, difficult decisions about reorganisation need to be taken. Although I support what has been said, we have to emphasise procedural points and to hold the health board and trust to account for the way in which they are going about this.

The Convener: Based on the representations that have been made to the committee and on committee members' comments, I suggest that we call members of the staff action group and representatives of the acute services trust and from Tayside Health Board. The points that have been raised touch on issues of staff morale and how staff are treated in the health service in Scotland. Malcolm has made a good point about procedural issues. Although that issue demands the committee's attention, it also flags up procedural problems and the committee can help people by pointing them in the right direction and allowing them to learn lessons. If we are to undertake strategic reviews of services in the health service, it is only common sense to wait for the outcome of those reviews rather than for people to prejudge them.

On the other hand, as I would not like to think that this committee would prejudge anything, the health board and acute services trust will have an opportunity to tell us their version of what is happening at Stracathro. I thank the committee for giving the matter proper consideration.

One problem is that we have a very tight schedule of meetings in order to discuss Arbuthnott and the recess also looming—thankfully. Realistically speaking, it will probably be November before we can timetable in the matter; however, if the committee is happy to let me organise that as soon as possible, I can work with the clerks and bring the matter back to the table.

Dr Simpson: I find that acceptable. However, the only thing that concerns me is that I am not absolutely sure of the acute services review; I think that it will come out in December or January. Furthermore, the atmosphere that has been created by the events at Stracathro will harm Tayside Health Board's prospects of undertaking the acute services review in a rational way. We could allocate not even a whole meeting, but an hour or an hour and a quarter to deal with the matter.

We could provide a good service, most importantly for the staff and patients of Stracathro, but also for the trust and health board, which will be in grave difficulties if the Perth situation reflects the general attitude in Tayside.

The Convener: I will take on board Richard's comments and come back to committee members as soon as possible with a date to get this actioned. Our work load and housekeeping matters such as access to rooms may affect our ability to do this.

Dorothy-Grace Elder: You did not mention the Brechin and district patients association.

The Convener: I did not—you are absolutely right.

Dorothy-Grace Elder: It is an outside body.

May I throw another suggestion into the air? The editor of the local newspaper has done a remarkable job with that petition. It might be useful to receive a written statement from the editor on how difficult it has been to get information. A local editor can give more of an overview than there has been in previous cases. The secrecy surrounding this concerns me considerably.

Kay Ullrich: I agree that it might be useful to have a statement. We do not want a cast of thousands appearing. It is sufficient to have the action group, the trust and the health board.

The Convener: Dorothy, do you think that we should get a statement from the Brechin and district patients association?

Dorothy-Grace Elder: No. I suggest that we speak to a representative of that association. I suggested that, to save time, we get a written statement from the local paper. We do not want to add a vast number of witnesses, but I think that that will give a useful overview.

Kay Ullrich: Is that patients group the only one involved?

Dorothy-Grace Elder: It is the major one of which I am aware. I realise that we do not want to get tributaries of the main river. The patients association was formed in 1991 to counter a perceived threat to Brechin infirmary.

Kay Ullrich: There is also the health council. We must narrow our consideration down to the main players.

The Convener: Can members leave it with me to get a written statement from a group that I feel

best represents the views of patients generally? We can do some investigation behind the scenes to find out who that group might be.

Dorothy-Grace Elder: I have a letter from the Brechin and district patients association. It says that the association is

"supported by people from all walks of life and their commitment to Stracathro is the unifying agent."

The association is an "apolitical organisation" supporting the work of the hospital.

The Convener: We will take that on board. I will investigate this so that a representative of the patients comes to speak to us.

Food Additives

The Convener: Item 5 is consideration of a proposal for a directive of the European Parliament and of the Council amending a directive on food additives other than colours and sweeteners. It is unfortunate that Hugh Henry is not here this morning, as I had hoped that, as the convener of the European Committee, he would make this proposal clear to us.

I do not think that there is a problem with this. The additives in question appear to have been evaluated recently by the scientific committee on food. The thinking is that some countries have had the additives for two years and this proposed directive would standardise the position across the European Union in terms of food safety and free trade.

Are there any comments?

Mr Duncan Hamilton (Highlands and Islands) (SNP): I have several comments. A theme that will run through most of today's meeting is that we still do not have sufficient information on this stuff. I will give an example from this directive. The appendix to the paper on consideration of European documents talks about consultation. This committee wants to examine the impact of directives and statutory instruments on people—that is the point, presumably, of consulting interested parties, consumer organisations, industry, and so on. An analysis of responses is not attached so we do not know what such people think of this.

The Convener: All we had was an impact assessment form.

Mr Hamilton: The impact assessment form says that the proposal will have no effect on employment. I would like to be able to test that. How can that be said with any degree of certainty? Although there is more to this briefing than we normally get, I still do not think that there is enough.

The Convener: The European Committee meets on 19 October and will require a report from this committee before then. Our next scheduled meeting is 26 October. If we want to make a report, we will have to schedule another meeting.

Mr Hamilton: We are going to have to make a choice: either we proceed on the basis that the dates are against us—and be aware that we will have to work with partial information—or we think of a way around the problem.

Kay Ullrich: This raises the question of the information that we are being given in the statutory instruments. We do not have enough information. Many of the instruments could go through on the nod, but how do we know which ones?

Duncan has raised some important points. It seems that we have to come up with something by 19 October, but we received the instruments only two days ago and have only scant information about them.

The Convener: It would probably have been unfair to Hugh, but he could have given us some background information if he had been here. However, committees should not have to process SSIs on the basis that one of their members sits on another committee.

I have raised the issue of statutory instruments with the conveners committee and with Murray Tosh, the convener of the Procedures Committee. Murray has written to George Reid, the Deputy Presiding Officer, to say that the way in which the Health and Community Care Committee has had to deal with instruments has been unacceptable.

As Duncan said, we have been given more information on this instrument than on others, but without full information we cannot be sure that what we are doing is acceptable. There is no way out of this that I can see. The issue appears to have been investigated elsewhere. As Duncan said, we are not getting the full arguments put to us; we are getting a précis of what other people have done.

It is assumed that we will pass an instrument on the nod on the basis of work that has been done elsewhere without our investigating, for example, what the additives are and what they do. What has Westminster done? We note that the instrument has been to committees in Westminster but we have only the bare bones. On this occasion, I am minded to accept the instrument and put it through.

10:00

What level of information does the committee require on items of this sort? How much time do members want to spend considering them? By going back to basics, so to speak, we would be

sending a message to clerks and others that we want a high level of information on all instruments, as they could not second-guess which ones we wanted to investigate further. Obviously, that would require more time from them and us, and would have resource implications. What are the committee's views on that?

Malcolm Chisholm: I do not think that we should insist on detailed information about everything. This directive raises many interesting general points that may come up in tomorrow's debate on concordats. David Martin said that 50 per cent of the legislation that we process in this Parliament will be European legislation, so this is a major issue. The relationship between this Parliament, Whitehall and Europe will feature prominently in tomorrow's debate.

As I said yesterday, if we had access to directives and statutory instruments at an earlier stage, we could flag up whether we want to know more about them. Because the statutory instruments that we will be dealing with later in this meeting are technical, we will not require a briefing on those. If we do not use our discretion, the committee will become tied up on unimportant matters. However, we do not have any evidence that enables us either to accept or to reject this directive. On the whole, one would tend to assume that the scientific advice is correct, but we are probably right to be sceptical—there was an item in the news this morning about food additives. Ideally, this should have been flagged up beforehand so that those of us who wanted to contact interested organisations could have done so.

The Convener: When did members receive these papers?

Kay Ullrich: On Monday.

The Convener: If my memory serves me correctly, I received them on Friday. I was able to read them on Saturday, so I must have received them the day before. However, this was an added item.

Mary Scanlon: We tend to go home to our constituencies on Thursday night.

The Convener: I know. It is handy to know when people received these papers, as the current situation is unsatisfactory from our point of view. We have to fit in with other committees' time scales.

Mary Scanlon:. I support what Malcolm has said. Paragraph 2.3 of document HC/99/7/2 states:

"The committee's role is to consider whether it has any serious concerns as to whether the directive should be implemented in Scotland as a consequence of it being agreed at UK level."

I do not have the time to ask the relevant people whether they have any serious concerns. None of us has the research staff to phone round the ophthalmic, pharmaceutical, dental and food additive industries. That means that I am not able to do this job as rigorously as I would like.

The Convener: I do not think that the fault lies with you.

Mary Scanlon: I do not think so either.

The Convener: You do not want that put on record.

Mary Scanlon: I am happy not to spend much time on this directive and to approve it on a nod and a wink, but I am also keen that we do this properly and are seen to be doing it properly. Is there any way in which researchers or others could inform us of whether there are any serious concerns of which we should be aware, or is it up to us to find out? That would be a very rigorous task.

The Convener: We do not have a meeting between today and 26 October. The European Committee meets on 19 October and has to deal with the instrument then. Theoretically, what Mary said about access to research or references is correct, but we do not have a meeting scheduled to deal with this matter. We would have to timetable a special meeting, ask for research to be done prior to that and have anyone that we wanted to speak to appear before us. We cannot fashion that out of the air.

Mary Scanlon: I am not asking for a special meeting. Yesterday Ben had one of his researchers phone round some of the major food industries to ask whether they had any concerns. I thought that that was an excellent approach. However, we do not have the staff to pursue it. I am not asking for further meetings, but is there anything that would allow us to fulfil our role as outlined in paragraph 2.3?

The Convener: At the conveners committee yesterday, as a result of my taking forward points about research back-up that had been raised in this committee, a report about research was put before us. There will be some changes in the way in which the internal research capacity works and we were given some indication of the budgets. This year, the budgets cover both internal and external research capabilities, including special advisers, and they seem reasonable given that this is a short year.

I maintained our position that we were not happy with the amount of research back-up to which committees have access. That is an on-going problem, and we hope that it can be addressed using the limited resources that are available. It has been suggested that, twice a year,

committees and conveners should give researchers an indication of their research needs. That does not mean that we can phone them at home on a Friday night and say, "By the way, can you do some research on food additives for me by Wednesday morning?" Some of the ideas that have been put to us were good, but I added the caveat, on behalf of the committee, that I was still unhappy about the level of research.

We still do not have a research capability and, as you said, Mary, that will mean that members of the committee will end up using their own staff. My assistant, who is employed to help with constituency work, spends 50 to 60 per cent of her time on committee business. The work will fall on our own staff and on researchers in our party groups. With respect to all the researchers in our party groups, we need access to non-partisan research, and that will be difficult.

Later this year, we shall tackle the issue of community care and I hope that we can give our research back-up a steer as to the issues that we want to consider so that, over the next few weeks, they can do that background work for us. We must be aware of the constraints under which they are working and give them as much time as possible, but we should be able to demand that service of other instruments in the Parliament. As a committee, we need to know in good time whether we need to hear evidence or whether we need research. It is not acceptable to have papers delivered to members just a couple of days before a committee. By the time people are back in Edinburgh on a Monday afternoon, there is too little time to study the research papers before a 9.30 committee on a Tuesday morning.

That takes us away somewhat from the problem before us, but it is worth putting our concerns on record. I know that the Presiding Officer reads all our deliberations, so maybe he will read this and take it on board. Coming back to food additives, do you have any comments, Kay?

Kay Ullrich: I would back most of what Malcolm Chisholm said. We cannot make a blanket decision about how we are to deal with such things because many of them are purely technical issues. I would be concerned about setting a precedent. We should know more about the issue of food additives before making a decision. The fact that it has been through committee at Westminster does not necessarily mean that it would also be in the best interests of Scotland. The whole idea of a Scottish Parliament is to address the needs and wishes of the people of Scotland. Members will not be surprised to hear that its having been through Westminster would not be a recommendation to me simply to nod my head.

The Convener: The non-partisan point that I made, Kay, was that the instrument has also gone through the scientific committee and Westminster.

Kay Ullrich: I do not doubt that we may end up coming to the same view, but I do not want to create a precedent. We must be careful that we do not allow things to slip through that may not be in the best interests of the health and well-being of the people of Scotland.

Mr Hamilton: We have had this discussion at great length before. It was Ben, I think, who said that the committee was not being shown the respect it deserved. A message has been sent that we are not getting enough time, yet here we are, back in the same position. Frankly, it does not fill me with great hope for the future.

We must remember what the committee's role is. If we pass the instrument that is before us, we are saying that we are happy with it. We will then be on record as officially having given the nod to something that we do not properly understand.

As you say, convener—and I have no doubt that you are correct—the time scale is entirely inflexible and there is no way that the deadline can be pushed back. We therefore have two options. If the instrument absolutely must go through, we can pass it on the nod. However, if we do that, we should make a statement to say that we are passing it purely as an administrative procedure, and not in any way on the instrument's merits, for which we have no evidence. Alternatively, we do not pass it.

I come back to the point that not all instruments have the same worth or weight. I have questions on, perhaps, four or five of them, but that is not to say that the rest of them could not go through as a technicality. Could we put those ones through, to get them out of the way, and come back to consider the contentious ones? Convener, you will have to tell us whether we can do that, as it will be driven by the timetable. If we are wasting our time trying to consider this instrument again, we should move on, but say explicitly that we are passing it only as an administrative procedure.

The Convener: There are obviously strong feelings about this issue, which I accept and echo. The key question is whether committee members feel strongly enough. We can pass the instruments with a caveat, as Duncan suggested, that we are doing so purely as an administrative thing, due to lack of time. However, if we feel strongly enough about it, we can say that we must have another meeting of the committee and call witnesses. I will get a feel for how the committee wants to proceed once Richard has spoken.

Dr Simpson: We need to separate the specific issue from the general issue. On the general issue of the time we have to consider instruments, the committee's view seems to be clear—we are

getting a little frustrated, to put it extremely mildly, at being given instruments, which may or may not be contentious, at such short notice. We are all agreed on that. We should, therefore, make a statement saying that we are not prepared in future to consider statutory instruments that are laid before us at one day's notice. We have the right to decide our agenda and we will say that we will not accept such instruments onto it. We need to take a tough line on that matter.

Furthermore, we are signed up to various levels of representation and democracy. Members of the European Parliament have presumably considered, discussed and debated such European legislation, as the UK Government will have done, in terms of how it affects the areas of the United Kingdom for which it is responsible. We receive such legislation third hand. It should not, therefore, be impossible when the instruments are laid to receive at least an indication of how the debates at other levels went.

If debate has not taken place at the other two levels, we have an obligation not to pass the regulations without having a proper discussion. If it has, it is a matter of judgment—we must decide whether the debate was adequate. If it was inadequate, as Kay suggests, we need to reconsider.

The specific instrument before us deals with additives, which are a difficult subject—they are not non-contentious, as some of the other instruments that have been laid before us are. On a fairly rapid reading, it seems that this instrument deals in part with areas such as gases being used for packaging—something for which the United Kingdom has been pressing for a considerable time. Our food industry has already been using gases. The document therefore ensures that the European legislation comes into line with what we have been seeking.

Page 4 of the explanatory memorandum says that the

"temporary . . . authorisation for the use of the propellant gases butane, iso-butane and propane in certain vegetable oil food sprays . . . lapsed at the end of December 1997."

The Government has been pressing the Commission to come forward with proposals, so the Commission is responding to something that we have been asking for. Presumably, the United Kingdom Government considered the scientific evidence before making the Miscellaneous Food Additives Regulations 1995. There has already been a series of debates on this issue.

I do not have any problems with the gases, but I have no feel for the other bits, which deal with wood rosins and propylene. We may have to take them on the nod.

10:15

Dorothy-Grace Elder: We should not pass anything to do with food additives and colourants. We are not here to be ciphers, just rubber-stamping anything. I have not read through the papers at all—I have been in Glasgow for the past two days. I am not prepared to put my name to them, just as you would not want to sign a blank cheque. We should turn down the two most contentious ones—

The Convener: There are two separate types of business for us—there is a European document and there are Scottish statutory instruments. At the moment, we are considering the request for European scrutiny advice. Having listened to members' comments, I am minded to try to find time for a further meeting to look at the issue. That would also provide a further opportunity to find out more about the particular food additives. We need proper notification of matters that are to be put before us, so that we can do some background research and can learn about the debates which, as Richard said, have been held elsewhere on European directives and so on.

In this instance, we probably would have been okay, but why should I and why should committee members, as elected representatives, pass something just because we think that it is probably all right? That is not good enough. We are in a Parliament and we have to have respect for ourselves—that is the message that I am hearing loud and clear from the committee.

We will proceed with this at a future meeting, which we will have to arrange. In the meantime, with the clerks and the research team, I will come up with some background research and some ideas on the people whom we might call as witnesses.

Mary Scanlon: The first document deals with the harmonisation of food additives throughout the European Community, which is part of the completion of the single market. It comes under a strict European directive. It is all very well our using our time to scrutinise the document, but if we disagree with it, what can we do?

The Convener: We have to investigate that.

Mary Scanlon: I would like to know the answer.

The Convener: Yes, we need to know the answer. This is probably the first of many such European proposals.

Mr Hamilton: I appreciate what you are saying about the document—you are absolutely right. To allow us to get background research, it would be useful if members could tell you what specific information they were looking for.

The Convener: Would it be acceptable for

members to do that today and tomorrow morning?

Malcolm Chisholm: It was becoming an interesting political discussion, but I will not go down that route. Directives are interesting, and I hope that they will come up tomorrow. There is flexibility in the implementation of some directives, and the situation becomes interesting in terms of Whitehall and the Scottish Parliament.

I agree in principle with what you are saying, but I am not clear when the meetings will take place if the European Committee is to deal with the matter on 19 October.

The Convener: We are working to a tight timetable—I appreciate that. The view of the committee is that we should have another meeting to deal with the matter.

The next items are negative instruments. We have met them before. No motion has been lodged to

"recommend that nothing further be done under the instrument."

That is a wonderful line. Perhaps it is too early in the morning for me.

Some of the instruments are worth commenting on. I believe that the Subordinate Legislation Committee has done so; we would do well to echo some of its comments. All the SSIs are subject to the negative procedure. The report states:

"Any MSP may by motion propose to the lead committee that the Committee recommend that nothing further be done under the instrument. No motions have been lodged."

I think that that means that we can simply take note and agree that the attention of Parliament need not be drawn to the instrument.

Malcolm Chisholm: I would like to make a general point. There is a serious issue about the standing orders, particularly rule 10.4.

The Parliament is trying to deal with statutory instruments in a better way than Westminster does, but it seems that we are dealing with them worse than Westminster because we can discuss them all we like, but—as there is no motion—we cannot do anything about them.

Paragraphs 1, 3 and 4 of rule 10.4, which all mention 40 days, do not make sense. We should amend that rule to ensure that motions can be lodged within 40 days. We are time-barred already: even if we find that there is something terribly wrong with the SSIs, there is nothing that we can do about it.

If we find a problem with these SSIs today, we should be able to lodge a motion within 40 days, but we cannot because of the other daft rules that state that the Parliament has to debate them within 40 days as well. It is impossible.

The Convener: We should bring that to the attention of the Procedures Committee.

I do not want to spend too much time on the SSIs, but we should make comments.

National Health Service (General Dental Services) (Scotland) Amendment (No 2) Regulations 1999 (SSI 1999/51)

The Convener: I note that the Subordinate Legislation Committee felt that the instrument was overdue for consolidation. In some cases, there have been several amendments already, which makes a powerful case for consolidation.

Is the committee happy to agree that the attention of the Parliament need not be drawn to the instrument? It is agreed.

Scottish Dental Practice Board Amendment Regulations 1999 (SSI 1999/52)

The Convener: Most of the instruments are in connection with the fact that we deal with primary care trusts now. I note again the comments made about the instrument by the Subordinate Legislation Committee.

Is the committee happy to agree that the attention of the Parliament need not be drawn to the instrument? It is agreed.

National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1999 (SSI 1999/53)

Mr Hamilton: The explanatory note states that these regulations

"also amend the principal Regulations to introduce a provision whereby excessive sight testing or excessive issuing of vouchers may be investigated".

I was rather confused about how that would be decided. What is the definition of excessive?

Dr Simpson: The problem is that whenever an item of service, such as tests, can be paid for by the health service, it is possible for practitioners to undertake those tests more frequently than is clinically necessary to obtain additional items of service. Therefore, there should be provision for investigation, which is usually carried out by a peer group. It is a benchmarking exercise in which outliers are examined. If a practitioner starts carrying out four times as many tests on a community as before or starts carrying out repeated tests on individuals, and those are permitted under the item of service claim, the situation can be investigated.

Mr Hamilton: Fair enough. That reassures me. However, we do not know whether that is the case in this instance—we do not know what triggers the procedure, and we do not know what mechanism exists for conducting the investigation. That causes me some concern.

The Convener: Is the committee happy to agree that the attention of the Parliament need not be drawn to the instrument? It is agreed.

National Health Service (General Medical Services) (Scotland) Amendment (No 4) Regulations 1999 (SSI 1999/54)

The Convener: Is the committee happy to agree that the attention of Parliament need not be drawn to the instrument?

Members *indicated agreement.*

National Health Service (General Ophthalmic Services) (Scotland) Amendment (No 2) Regulations 1999 (SSI 1999/55)

The Convener: The Subordinate Legislation Committee noted that the instrument had already been amended 11 times, and that we should give priority to consolidation of it. That is a point well made. The instrument relates to eligibility for free eye tests, taking into account benefits such as working families tax credit. Is the committee happy to agree that the attention of Parliament need not be drawn to the instrument?

Members *indicated agreement.*

Health Act 1999 (Fund-Holding Practices) (Transfer of Assets, Savings, Rights and Liabilities and Transitional Provisions) (Scotland) Order 1999 (SSI 1999/56)

The Convener: Again, I note comments by the Subordinate Legislation Committee on the instrument. Is the committee happy to agree that the attention of Parliament need not be drawn to the instrument?

Members *indicated agreement.*

National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 1999 (SSI 1999/57)

The Convener: Again, no motion has been lodged. Is the committee happy to agree that the attention of Parliament need not be drawn to the instrument?

Members *indicated agreement.*

National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment Regulations 1999 (SSI 1999/63)

The Convener: Again, no motion has been lodged. Is the committee happy to agree that the attention of Parliament need not be drawn to the instrument?

Mr Hamilton: What I have to say will not change the fact that Parliament will not be considering the instrument, but I want to put it on the record. The explanatory note states:

"Regulation 4 amends Table A in Schedule 1 to the principal Regulations . . . in relation to the calculation of resources in the case of students."

That might be an issue, but we do not have table A. I would love to know why there is a lack of transparency as to the impact that the measure will have on the calculation for students.

The Convener: We have to cut through the gobbledegook. There is no point in our being given an explanatory note if it refers to things that we do not have in front of us. It is then meaningless and worthless.

Mr Hamilton: Parliament will not be able to consider the instrument because we cannot turn it around, according to standing orders. It is important that when there is a problem the committee should flag it up, so we can return to it.

The Convener: We should probably raise that with the Procedures Committee as another item relating to SSIs in general. We can use the instrument as a specific example. It is sometimes easier for us to explain what we mean when we have a solid example—this is a fairly solid example of lack of information.

However, with that caveat, are we happy to accept the instrument as outlined?

Members *indicated agreement.*

National Health Service (Optical Charges and Payments) (Scotland) Amendment (No 2) Regulations 1999 (SSI 1999/64)

The Convener: Again, no motion has been lodged. Is the committee happy to agree that the attention of Parliament should not be drawn to this instrument?

Members *indicated agreement.*

The Convener: I thank members of the committee once again for their forbearance and patience when dealing with the instruments. I am

sure that all of us agree that, although they may be quite important in themselves, we are being put in an incredibly frustrating position by having to consider them without being able to do much about them. I am sure that we look forward to moving on to a more substantive discussion.

Malcolm Chisholm: I would like to make a specific proposal, which probably will have to be put to the Procedures Committee.

Committees consider statutory instruments before the deadline for lodging motions has passed. The Scottish Parliament is trying to deal with statutory instruments better than Westminster does. In principle, it is good that they are presented to a committee—even if the committee just nods them through—but it is pointless if that committee cannot then lodge a motion.

The simple way to deal with this is to omit "40 days" from paragraphs 3 and 4 of rule 10.4, so that if, having considered an instrument, the committee decides to lodge a motion, it can do so within 40 days. The rest will follow.

The Convener: If the committee agrees, I will write in that vein to the convener of the Procedures Committee.

Members *indicated agreement.*

Community Care

10:30

The Convener: We now move to item 15, under which—thank goodness—we will discuss community care.

As members know, we have gone a long way towards setting our agenda according to what we think is important. There was a great deal of support for an examination of community care. We will have a general discussion about the issues that come under the community care umbrella. I thank Murray McVicar and Morag Brown for the research notes that they produced for us. Last week, I was told that they would not be able to do that, so I appreciate that they have made a real effort to give us something on which to base our discussion.

I hope that at the end of our discussion we will have some idea of the direction and remit, and of the aspects of community care that we are interested in examining. That will be helpful for our choice of background reading and will enable us to give specific research topics to the researchers.

Kay Ullrich: As we want to examine community care and the Sutherland report, our consideration should be in two sections.

First, we must examine community care at present, particularly in terms of the funding to local authorities. It is difficult to get information about the number of people on local authority waiting lists for long-term residential or nursing care as, I understand, the figures are not held centrally, but must come from each local authority. I suggest that, to start with, we undertake a trawl of local authorities to find out how many people are on waiting lists for long-term residential or nursing care, and what the funding is.

For example, I know of a local authority that has 113 people on a waiting list and which has the funding to place only four people a month. We need such information, so that we know the real state of affairs and whether there is a crisis in placing people. That concerns disabled as well as elderly people. One can see from the briefing that mental health organisations are involved. Bed blocking is the emotive issue. Let us consider the situation by local authority and establish what the problem is in Scotland.

Secondly, many people believe that the way forward in the funding of community care is to follow the recommendations of Sir Stewart Sutherland's commission. We will want Sir Stewart to give evidence to us, and we will also want to talk to people who are involved with mental health associations and Age Concern. We should talk to a selection of directors of social work—we cannot meet all 32—from differently sized rural and city authorities, to find out what the problems are.

Mary Scanlon: At the Labour party conference, Sir Stewart Sutherland made the alarming statement that £750 million that is allocated to care for the elderly in the UK is lost. We do not have a Scottish figure, but I have lodged a written question on the matter.

We must consider the interface between councils and the NHS. We need to ask why more than 1,600 patients are lying in beds in acute hospitals in Scotland, costing between £700 and £1,100 per week. That clogs up hospitals and waiting lists. Those patients could be cared for in residential homes or in the community at less than half that cost. That would alleviate bed blocking.

As well as considering the care providers that Kay mentioned, I suggest that we hear from the Scottish Association of Care Home Owners, which is a good example of public-private partnership. I would also like to consider good practice. In Monday's *Edinburgh Evening News*, I was pleased to read that Lothian Health is uniting the funding of social work and the NHS to provide a single budget for care of the elderly. That will ensure that the patient really is at the heart of the health service.

The Convener: Mary's key point is that we need to ensure that people receive the appropriate care.

There has been a tendency for people to think that politicians who discuss bed blocking and so on simply focus on the financial aspects of care; the crucial issue is the appropriateness of care for the individual. Many people in acute hospital beds would, with some support, be able to remain in their own homes with their families, or they could have another form of residential care.

Kay Ullrich: We must be careful not to pre-empt our investigation into the delivery of community care. Bed blocking is a very emotive term. Community care must be needs led, rather than resource led. People are left in inappropriate hospital wards because—if there are more than 100 people on a waiting list and only four can be moved each month—local authorities and social work departments give priority to people in the community as people in hospital are seen to be safe, if not appropriately placed. The bed blocking continues because of that.

We must make a list of people from whom we want to take evidence. Mary mentioned that the Federation of Small Businesses has a private nursing home section that might give us some useful information. There are also local authority residential homes, Church of Scotland homes and various other Churches that are involved in the provision of care for the elderly. It will be a big list.

The Convener: We want to hear from organisations such as Age Concern and the mental health charities. It will be an extensive list, because there is a large client group of people with different types of disabilities, such as dementia, but also HIV and AIDS, and drug and alcohol problems.

It is important that we hear from carers. The committee should put on record the great debt that Scotland owes to the thousands of people who care for relatives and friends. Those people save us an incredible amount of money and make the lives of the people for whom they care immeasurably better. I want to take the opportunity to mention young people who care for their parents at the same time as going through the difficulties of growing up. We should try to listen to what carers organisations have to say about the issue.

Kay Ullrich: Sir Stewart Sutherland has made recommendations on caring about carers.

Dr Simpson: I should begin by declaring interests. I am still the director of a nursing home company, albeit one that does not operate in Scotland. My son is a health service researcher and published a paper in *Health Bulletin* in March on the subject of inappropriate placement of patients. The paper gave a conservative estimate of the costs arising from inappropriate placement of £41 million per year.

As Kay said, the money is the lesser of the two problems. Obviously, it is a problem that we cannot avoid and, being responsible for the public purse, we should try to use money as best we can. However—and here I disagree with Kay—hospitals are not safe. They are perceived as being safe, but they are not. Of course, staff do their level best, but inappropriate placement leads to two problems for hospital patients. First, they run the risk of infection and, secondly, they run the risk of institutionalisation and dependency, which makes it more difficult to maximise their potential thereafter.

I want to know what funds have been transferred from health boards to local authorities as part of the closure of long-term-stay beds. I also want to know what proportion of that money has been used for nursing home accommodation, for part IV accommodation and for home care packages. The main thrust of the Government's—and now the Scottish Executive's—policy on community care is that everybody should be managed at home if at all possible. We need to know whether some of the waiting list crises have arisen because there is not enough money or because there are not enough staff with the right skills to undertake home care packages. We must find out what is actually causing the block, and we must not make too many assumptions until we know what it is. A lot of money has been transferred, but we need to know how much.

There is another side to the coin. If a health board closes a unit or a hospital, the savings that are made are quite substantial. If it closes a few beds in a ward, the savings are much less. We need to know the total savings, how much has been retained by the health board and what the health board has then used that money for. I have heard that up to 50 per cent of the funds have been retained by health boards. That might not be inappropriate, but I do not have a feel for it. If the money is being used to support other services that are not in the community, that might be part of the problem about transfer.

We need to examine those detailed issues. We also need to review the vacancy monitoring arrangements for nursing homes and part IV accommodation in the private, independent, voluntary and local authority sectors. In the past week I have obtained documents about that, but we need a researcher to examine those documents and compile them so that we have a view from 1993—when the Community Care Act 1990 came in—of what has been happening in terms of placement trends. The document has been difficult to review because of the changes in the local authority system. It used to be based on the regions but has now been transferred to individual authorities and, at the point of the change, the tables have been altered. I am sorry

to go into so much detail, but we need someone to review that.

10:45

The Convener: Richard, you may recall that, at the previous meeting, I said that we will have access to an intern from the University of Edinburgh who will do some research for us for 10 weeks. The full-time research staff will keep a watchful eye on this issue as well. We will need a lot of research, and it will be useful to have another person who will be able to work full time on this project for the committee, as that will mean that we can probably accommodate it.

Dr Simpson: My final point follows on from Mary's point. The management executive and the social work services group between them should be able to give us illustrations of good practice, and we should ask for that. For example, I understand that, in Aberdeen, one of the long-stay hospitals was about to be closed but, instead of closing, its management was transferred and the social work department and the health board now jointly manage it, which means that there is a safety valve on the acute system. Along with Mary's example, that makes two examples and we need the social work services group and the management executive to give us more examples of good practice.

There are some examples in the document that contained proposals on community care, which was produced earlier in the year. We need to understand those proposals and to assess why good practice is not being rolled out, if that is the case. Is there a mechanism that the social work services group and the management executive can follow, to ensure that local authorities, health boards and trusts take up good practice? How are they held to account to ensure that good practice is followed?

Kay Ullrich: For the record, I did not say that hospitals were safe places. I said that local authorities see them as safer as opposed to housing someone in an inappropriate home.

I am pretty certain that the term "part IV" is no longer used. Perhaps it was known as part IV when Richard and I were both involved in the delivery of community care services, but now people refer to residential accommodation as opposed to nursing homes.

The Convener: I hope, Kay, that by the time that we have finished with this, we will be complete experts on such matters.

Kay Ullrich: Yes, we will be experts on jargon.

I back up what Richard said about resource transfer and the problems that surround that approach. A couple of years ago, one of the organisations involved with the elderly—it might have been Age Concern—produced figures that showed a great variation in the amount transferred for a bed from health board to local authority. The amount could vary from about £8,000 to £32,000. It seems that there is a need for national standards and guidelines; we should examine the issue of resource transfer.

I want to put down a marker for inviting to the committee professional social work organisations, such as the British Association of Social Workers, the Association of Directors of Social Work, Unison, the British Medical Association and the Royal College of Nursing—the list is almost endless.

The Convener: It has been brought to the attention of the conveners committee over the past couple of weeks that quite a lot of our housekeeping discussions are going on the record because the official reporters are present. If everyone is agreeable, towards the end of this discussion, I will ask the committee to continue the meeting without the official reporters, when we can discuss who we want to invite to the committee. That means that the official reporters will not have to spend time writing up our discussion and it will free up the official report's time, which is quite precious.

We are still in public session, but we will come back to those issues and take everyone's suggestions when the official reporters have left.

Malcolm Chisholm: We have a massive subject—our usual problem. We must try to focus on certain aspects, which might mean making some hard decisions.

The two main areas of community care on which the committee should focus are care of the elderly and mental health, which would open up general issues such as appropriateness of care, funding and co-ordinating social work and health. There are other pressing reasons to examine those areas. Although I should not need to explain why we should consider care of the elderly, we have to take into account the Sutherland commission and the winter problems that always arise. Mary referred to Sir Stewart Sutherland's comments about how much local authorities spend on the elderly.

The issue of mental health was raised in the committee two or three weeks ago in relation to acute beds. I am told that an interesting Accounts Commission report is coming out in November, which I believe will flag up how money from the closure of mental health beds has not always been spent on mental health. Mental health issues such as funding, the appropriateness of care and co-ordination will form a large agenda for the committee. Obviously, as we know what the

issues are without knowing the answers, there is no point in repeating matters. We need to find out about the many funding issues that are involved in care of the elderly, such as resource transfer and the earlier Department of Social Security transfer.

My positive feelings about community care underlie all that. Those issues will open up the whole argument about whether bed numbers are the key issue. Appropriate care in the community would take a lot of pressure off beds and would, in fact, be my approach to the recent controversy on acute psychiatric beds. I hope that we can find out a lot of information, some of which—such as the amount that local authorities spend on the elderly—is not in the public domain. As there is a long way to go in co-ordinating social work and health, perhaps we can also make a positive contribution to more constructive work at local level.

The Convener: That includes a wide range of different issues. Over the coming year, we will be able to see how the new health care co-operatives deal on the ground with local working. From our papers, I notice that there is a need for better working practice in many areas, between the health service and social work. We need to get the message across about joint training and student training, so that people are not as isolated in their professions as they might have been.

I know anecdotally that the issue of hospital discharge is of great concern. It is felt that hospitals are discharging people without realising the difficulties that they might face when they get home. There should be a seamless transition from hospital to the next stage of recovery with, for example, joint assessments. Those of us who have been involved as councillors know how difficult it is for people to receive assessments of care in a reasonable period. It is almost a form of rationing. People are not having the relatively inexpensive alterations made to their housing—for example, to baths and showers—that will allow them to stay in their own homes. If such inexpensive alterations are the difference between people staying at home and going into residential care or to acute hospital beds, perhaps we should examine that issue.

That impinges on housing, which comes up in a number of the areas that we are examining. We should ensure that as much of our housing as possible is free of barriers to the elderly and people with disabilities. That should include not only people's own homes, but the homes of people they visit. In my experience, assessment and the consideration of ways in which people can make their homes more accessible are relatively inexpensive investments. I would like to ensure that we cover that.

I take on board Malcolm's comments on care of the elderly and mental health—those are probably our two key issues. In discussing them, we will come across the other issues, such as co-ordination of services, resource transfer and so on.

Dorothy-Grace Elder: I could not agree more. Being a fresh Parliament, we can make a fresh start and get away from some of the old prejudices. The worst prejudice was—or still is—age discrimination. We should concentrate on trying to help the elderly, their families, and people in Scotland who have someone to look after. That would involve better inspection of nursing homes, private or otherwise, talking to families and paying particular attention to carers. Carers should be asked about their own case histories, although Sutherland covered some of that. Through my work in that area, I have encountered carers as young as six—we must not just make nice noises and pat them on the head.

We have to help keep the elderly on their feet and active for longer. However, that means more home care; we must look at the home help service, which has been cut so much that many people are receiving only half an hour twice a week if they are lucky. Half an hour is not enough. I would like to concentrate on the young and chronically sick, and to try to be of some use to those with multiple sclerosis. That is an area in which we could make a difference early on.

We want the public and patients to be whistleblowers—to be able to clype on bad services. I will give you a brief anecdote about a young woman in Scotland who was aged 32 and had had multiple sclerosis for about four years, for most of which time she had been in a wheelchair. She had deteriorated quite rapidly and had had to give up a good career in banking. A local charity purchased a super-duper electric wheelchair for her. She was promised help to learn how to operate it, not by the charity but by her local health board. The person who had been sent delayed the appointment twice—when the young woman was up to high doh waiting for someone to come—and finally turned up and said, "I have only half an hour until the next appointment." That was not enough time for the patient to be shown how to work the complicated chair. It is still in her garage, just for lack of that bit of efficient care.

People should be given help with employment and encouraged in every possible way, to lift the depression suffered by people with multiple sclerosis and their families. ME is another example—we could go on and on about such issues.

The Convener: Let us not go on and on. I mentioned the housekeeping part of our business earlier. I have been instructed that we should bring the formal part of the meeting to a close and

then—in public—discuss which people we would like to hear from. At that point, Dorothy can suggest organisations that are dealing with particular complaints, disabilities and so on. We will still be in public—and in committee, if you like—but the official reporters do not have to spend their time listening to that. We should return now to more general topics.

11:00

The key point that has been raised in connection with community care is care of the elderly. We will be considering the Sutherland report.

The mental health issues on which we broadly agree are resource transfer and the funding of community care, and the need for co-ordination of care between the health and social work services.

If we accept those matters as part of our remit, at the end of the meeting we can discuss among ourselves the groups that we want to invite as witnesses. We will probably unintentionally miss out some people, so we will also put out a general call for written statements from anyone in the field who wants to contribute.

Until we have a better idea of our work load, we should not set a timetable. This is not going to be a quick fix—if we are to do this, we will do it properly and well.

Malcolm Chisholm: It seems that we will be working on Arbuthnott intensively for two or three weeks after the recess. It is perfectly normal practice, even in this Parliament, to ask for written evidence first. Why do we not put out a call for written evidence to be submitted before the end of October? Then, at the beginning of November, we could decide from whom we want to take oral evidence. As far as I can see from our timetable, we will not be able to hear oral evidence until mid-November.

The Convener: If there are key people from whom we definitely want to hear, we could give them prior notice.

Kay Ullrich: Sir Stewart Sutherland?

The Convener: Yes.

Malcolm Chisholm: We are all agreed that we want to hear from him—he is my constituent.

The Convener: We should set the ball rolling. That will allow our back-up team to make some initial contacts.

Dr Simpson: Do you want names now?

The Convener: No—we will do that after the end of the meeting.

Emergency Business

The Convener: The next item concerns a report on the process for dealing with emergency business. We have already had a couple of discussions on that process, and I am keen to ensure that we do not get bogged down in having to react all the time. However, paper HC/99/7/22 allows me some discretion in deciding what should be on our agenda. It also states:

"Standing Orders contain no references to the conduct of emergency business in committees."

Emergency business is handled on the floor of the Parliament. I hope that that is acceptable. Does anyone wish to comment? Shall we simply note the contents of that paper?

Members *indicated agreement.*

11:03

The meeting continued informally.

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