

HEALTH AND COMMUNITY CARE COMMITTEE

Tuesday 16 May 2000
(*Afternoon*)

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HEALTH AND COMMUNITY CARE COMMITTEE

13th Meeting 2000, Session 1

CONVENER

*Mrs Margaret Smith (Edinburgh West) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

Dorothy-Grace Elder (Glasgow) (SNP)

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

*Hugh Henry (Paisley South) (Lab)

*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

*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

WITNESSES

Susan Deacon (Minister for Health and Community Care)

Stephen Rooke (Food Standards Agency in Scotland)

Lydia Wilkie (Food Standards Agency in Scotland)

CLERK TEAM LEADER

Jennifer Smart

SENIOR ASSISTANT CLERK

Irene Fleming

LOCATION

Committee Room 4

Scottish Parliament

Health and Community Care Committee

Tuesday 16 May 2000

(Afternoon)

[THE CONVENER opened the meeting at 15:52]

Subordinate Legislation

The Convener (Mrs Margaret Smith): Good afternoon, everybody, and welcome to this afternoon's Health and Community Care Committee. We welcome once again the Minister for Health and Community Care, Susan Deacon. Obviously you cannot keep away, Susan.

Before we begin the first item of business we must decide the time limit for the debate on the Scottish statutory instrument on butcher licensing. I suggest that we agree a time limit of 45 minutes for that debate. We have a foreshortened meeting today because of the move to Glasgow and we also have to discuss the budget. Is that agreeable to members?

Members indicated agreement.

The Convener: We are considering a negative instrument. A motion has been laid in my name in relation to the Food Safety (General Food Hygiene) (Butchers' Shops) Amendment (Scotland) Regulations 2000 (SSI 2000/93). Committee members will recall that we discussed the matter last week and heard evidence from the Scottish Retail Consortium, the Scottish Executive and the Food Standards Agency in Scotland. As a result of that evidence and of the concerns raised, the committee decided that there were still unanswered questions and that clarification, and perhaps amendment, was needed. The minister is therefore with us this afternoon. We shall debate those points at the beginning. I shall open up the discussion to committee members once the minister and I have made our opening statements.

Before I do anything further, I have to put on record the committee's great disquiet and annoyance at the discourtesy, to the committee and the minister, of the fact that the *Official Report* has not been made available to us in time for today's meeting. We requested last week on record that the report be made available for us today so that we could engage in substantive and substantial debate on those issues and concerns.

We all appreciate the great difficulties that the official report is suffering, but I would certainly

suggest that, as convener, I write to the chief executive, Paul Grice, and to the official report, noting with great concern the fact that we have been put in an almost impossible position. We are unable to take the matter further into next week, because of the time limit on the SSI. The matter is complex and—given the nature of some of the evidence that we heard last week—the report would have been very useful. We have been left in a position where we are unable to make use of that evidence because the *Official Report* has not been presented as requested by the committee. Are all members agreed that that is the correct course of action?

Members indicated agreement.

Dr Richard Simpson (Ochil) (Lab): As Ben Wallace said before the meeting began, the time scale for the submission of SSIs is still causing us difficulty, as we receive them close to the point at which a negative order has to be laid. Committee members were unanimous in their desire that an appropriate regulation be introduced in this field. We feel constrained by the fact that we have received this SSI at a time that does not allow us to give it due consideration, and that has been exacerbated by the *Official Report* problem.

The Convener: Thank you, Richard. I shall make that point. The situation is made worse because, at the point where the committee feels that it has concerns about an instrument, we must decide whether to take evidence. Time constraints at that stage make it difficult for us to give full cognisance to the issue in hand.

I have to check with the clerk as to the proper procedure at this point, but I believe that I have formally to lay my motion open to debate.

Jennifer Smart (Clerk Team Leader): That is right. If members of the committee would like any points of clarification to be answered by the civil servants, they should ask before the debate begins.

The Convener: Are there any points of clarification on any of the details of the instrument? Are there any questions for the officials at this stage, as opposed to comments?

Dr Simpson: The committee's main concern was that, given the undoubted need to introduce the regulations, there were differences between the English regulations and the Scottish ones. There is no problem with that in itself, but these regulations appear to have problems in the way in which they restrict non-food handlers—people who would not regularly handle unwrapped meat.

The example that was given to us in evidence was that shelf stackers, who will not come into contact with unwrapped meat, will have to undergo the full rigours of training procedures, the cost of

which would be substantial. Although that cost could be borne by major supermarkets, it would have an effect on small mixed shops, particularly in rural areas, where some staff might not be employed in the meat section. That might lead to closure or serious adverse business effects on medium-sized supermarkets and small stores. Can we have a response to that rather lengthy question?

Lydia Wilkie (Food Standards Agency in Scotland): The policy that was developed as part of the licensing scheme was that any person who handles either wrapped raw meat or unwrapped raw meat ought to receive the basic level of hygiene training. The reason for that is that we believe that, where there can be leakage, the same risks are involved in handling both wrapped raw meat and unwrapped raw meat. We felt that basic levels of hygiene training, which are estimated by the Meat and Livestock Commission not to cost a significant amount per person, should be adhered to. If there were only wrapped meat on the premises, the butcher licensing would not apply.

16:00

Mary Scanlon (Highlands and Islands) (Con): Apart from the other concerns, I do not think that we can move forward until the Scottish Retail Consortium—which submitted a petition and came before the committee—has had an opportunity to read annexe C, which contains the Executive's responses on many of the questions that it raised.

The Convener: Yet again, we are up against time. The response became available to us only yesterday.

Mary Scanlon: It is not an acceptable situation.

Kay Ullrich (West of Scotland) (SNP): It is not acceptable at all. We are being asked to make decisions with a gun at our head.

The Convener: Can we move forward on the basis that we have the opportunity today to ask questions and debate the matter? If, at the end of that process, the committee feels that further time or clarification is needed, we can bring the matter before Parliament. I think that we should ask the officials questions for clarification at this stage.

Mary Scanlon: Annexe C talks about a twin-track approach. Why is it necessary to take that complex approach instead of having one route to obtaining a licence as is the case in England? How do E coli regulations differ in Scotland?

Lydia Wilkie: The policy view in Scotland followed directly the Pennington report and the findings of the fatal accident inquiry that followed. After consultation, the view of the trade and the enforcers was that it would take some time for the

complexities of the hygiene system known as hazard analysis and critical control points—or HACCP—to get through to smaller butchers. They felt that it was possible to safeguard consumers by introducing strict hygiene rules and separation rules at the same time. That would give butchers more choice while ensuring the same level of safeguard.

Mary Scanlon: Are the rules stricter in Scotland than in England?

Lydia Wilkie: The HACCP rule is exactly the same as it will be in England, when it is introduced. The butchers in England, however, have no alternative to the HACCP route. In Scotland, it will be possible to follow a strict regime of separation.

Mary Scanlon: Why is it different? Are you saying that the English system is not up to the standards required?

Lydia Wilkie: The difference arose because we listened to the comments that we received during the three consultation exercises from enforcers, the trade and other interested groups.

The Convener: Mary, we are in danger of straying into points of policy when we are meant to be asking for clarification.

Ben Wallace (North-East Scotland) (Con): Paragraph 5(2)(d) of the Scottish statutory instrument mentions

“persons handling and preparing raw meat or meat products”.

Could you clarify the meaning of “meat products”? Although the term “raw meat” has been defined, “meat products” has not.

Stephen Rooke (Food Standards Agency in Scotland): The term “meat products” has been defined in the Meat Products (Hygiene) Regulations 1994 and includes cooked meats, pies and other meats where the cut surface appears to have been cut so that it looks like cooked meat.

Ben Wallace: Are you happy that there will be no conflict in relation to people who handle meat products, whether raw or cooked? Some might be exempt from the stringency of the SSI because they are handling packaged, cooked products as opposed to meat products that are raw.

Stephen Rooke: The conflict is in the juxtaposition of the raw and cooked meat. The regulations cover a butcher's shop, for example, where a limited number of staff handle raw meat, which means picking up the organism in their hands. The legislation now requires staff to wash their hands before moving on to handle anything other than raw meat—the meat products.

Ben Wallace: The English statutory instrument defines the term “mixed business premises”, which is something that you have chosen not to do in the Scottish statutory instrument. Do you have a copy of the English statutory instrument?

Lydia Wilkie: Yes. I am aware of the difference in definition.

Ben Wallace: Why have you decided to disagree with the clarifying aspects of that part of the English statutory instrument?

Lydia Wilkie: In policy terms, the phrase “mixed business premises” refers to supermarkets. We felt that there was a high risk of cross-contamination, particularly in Scotland, where there is a wide variety of supermarket sizes, and that the best way of handling that situation would be to apply licensing to the whole premises. However, the conditions apply to the risk of cross-contamination.

Ben Wallace: So you have based your decision on the interpretation of the phrase “mixed business premises” as supermarkets and the fact that the size of Scotland’s supermarkets varies more than is the case in England.

Lydia Wilkie: One of our last two rounds of consultation followed the English style and the other followed in response to consultation responses. We then amended the regulations to the current style, which takes in the whole premises.

Ben Wallace: Consultation aside, you say that you do not have a defining schedule for mixed business premises because the term predominantly refers to supermarkets and the size of Scotland’s supermarkets varies more than is the case in England and Wales.

Lydia Wilkie: The main point is that we took into account the responses from the consultation exercise.

Mr Duncan Hamilton (Highlands and Islands) (SNP): I just want to clarify option 2 in annexe C, which addresses the SRC’s central contention about the licensing of the whole store. However, your position is that the licensing scheme will aim at areas associated with raw meat and ready-to-eat foods, which means that the legislation will not have the broad sweep that you claim. Why did you take a position that essentially asks people to take on trust that a blind eye will be turned, instead of specifying what we want to achieve in the legislation? There was a feeling last week that, although we are all on the same side on this issue, the legislation is not clear and is therefore open to contradiction.

Stephen Rooke: From a technical point of view, Scotland has a wide range of supermarkets—from very small one-person businesses to the

multinational supermarkets. In a supermarket, the cooked and raw meat can enter through a goods entrance that might also admit non-food items. It can then go into storage and handling areas that can be spread throughout the supermarket. Each supermarket will be different and the legislation will enable the whole premises to be identified as the licensed premises. As a result, the enforcement officer will sit down with the business and identify areas where the conditions will apply. We are applying conditions to areas of risk, which will be different on a case-by-case basis.

Mr Hamilton: I understand that. I think that that answer gets us further than we got last week, which is good. If such flexibility is devolved to that level, who will check whether the interpretation is correct?

Stephen Rooke: At the end of the day, there is an appeals mechanism in the issuing of a licence. However, the enforcement officer will discuss the matter with the business and they will agree where the areas of risk are. If they are going down the HACCP route, the business will have identified those risk areas, because that is a requirement of existing regulations. It is nothing to do with the butcher licensing regulations. The previous, 1995, regulations required the business to consider the whole premises and to identify the areas of risk. That takes it one step further in relation to cooked and raw meat.

If we are going down the prescription-only route—the route of more separation—again, the enforcement officer will sit down with the applicant and highlight the areas where there are problems and try to reach a consensus. However, if there is a disagreement, there is an appeals mechanism.

Mr Hamilton: That is useful. Can you say more about the appeals procedure?

Stephen Rooke: There is the standard appeals procedure under the Food Safety Act 1990, which allows the applicant to appeal to the sheriff. It is an independent appeal against the decision of the licensing authority to refuse or revoke a licence. That is established in existing legislation, but it is not covered in these regulations because they are subsidiary to the 1990 act.

Ben Wallace: What is the cost impact on local authorities of having enforcement officers going round the 1,200 or so properties or premises throughout Scotland that you have identified as butchers?

Stephen Rooke: The costs of inspection and enforcement are met from general taxation. Local government has a settlement for carrying out those enforcement duties. However, in addition to that, as a result of the Pennington inquiry, an additional £2.6 million is given to local government annually to enable it to increase enforcement

levels at high-risk premises. That has been happening for three years and will continue for another two, subject to review through the normal financial settlement.

Ben Wallace: Is that money ring-fenced?

Stephen Rooke: It is earmarked for local government; it is shown separately in the finance settlement to local government from the Scottish Executive. It is based on a population and high-risk premises split: we take into account the population of a local authority and the number of high-risk premises that it has.

Kay Ullrich: Why did you decide to use the term “butchers’ shops”? Perhaps this is an age thing but, to me, a butcher’s shop is a shop that sells only butchered meat. It is confusing when you talk about butchers’ shops—I do not think of supermarkets as being butchers’ shops.

Lydia Wilkie: It arose out of the tragic outbreak in a butcher’s shop. As is often the case, the business turned out to be much bigger than it had first appeared to be. Once it was decided that we were talking about licensing of butchers, it would have been difficult to change it.

Kay Ullrich: But you can appreciate the confusion that it causes.

Lydia Wilkie: The main thing was to ensure that, whatever the title of the regulations, all premises with the same risk were covered; that is why supermarkets are covered as well.

The Convener: I will bring the questioning to a close there and speak to the motion in my name. The minister will speak in response and I will then open up the meeting to comments from the committee.

I think that I speak on behalf of all committee members in saying that public safety and public health are pre-eminent in our minds. We know the reason why we have had moves to license butcher shops and supermarkets in this way—we all support those moves. However, some clarification is needed, and some suggestions for amendments have been made as a result of concerns that were raised with us last week by the Scottish Retail Consortium.

Regulations have to encourage consumer confidence and public safety, but they also have to be workable, fair and understandable. They need to be applicable across the sector in butchers’ shops and mixed-retail businesses and able to be clearly interpreted in any court proceedings that may come about as a result of this legislation. The regulations focus on the whole floor area of the supermarket, rather than on the butcher’s shop area alone. Mr Rooke has just given us some clarification, which, as Duncan Hamilton said, was very helpful. We did not get that level of

clarification in response to some of our questioning last week. I think that Mr Rooke is saying that the licensing area covers the whole of the mixed-retail area but there are areas within that area in which these regulations will apply.

16:15

Last week, the issue of catering premises in mixed-retail developments was raised. Catering premises have been proactively excluded from the regulations and they seem to have been left in a halfway house. More clarification is required on the regulations for catering premises in supermarkets.

The committee seeks clarification on a range of the applications of these regulations and on the way in which they would impact on, in particular, supermarkets and training in them. Last week, there was a feeling in the committee that the approach that had been adopted was rather a gold-plated, catch-all one, rather than being specific to the people and the areas that would involve a risk factor.

We were concerned about the impact on business costs. That, and all our other concerns, pale into insignificance when compared with our main concern, which is public health. Nevertheless, we cannot introduce a measure without having some regard to the costs for the people at the sharp end—in butchers’ shops and supermarkets—especially the costs of unnecessary training. As we have heard, small shops and supermarkets are treated the same as regards the fee, which has an economic impact. There is also an economic impact because of equipment that is required. It is not as though training is the only aspect to be considered; the impact on jobs and business costs must be considered. If memory serves me correctly, we raised some concerns last week about the way in which people would be trained. In some cases, there would be external examination; in others, it would be internal.

We felt that we needed clarity and that we needed to feel sure that the legislation, as presented, could hold up in legal proceedings and would not be open to all sorts of different interpretation. That was not the impression that we were left with last week.

The Subordinate Legislation Committee has also raised some concerns over these regulations because of a lack of consistency in the drafting—in particular, in the use of the terms “proprietor” and “holder of the licence”. As a result, the Subordinate Legislation Committee’s report on this legislation

“draws the attention of the Parliament to the Regulations on the grounds of defective drafting”.

The committee has questioned whether the Executive had considered a different scheme for small businesses. We have also asked about the application of regulations elsewhere in the United Kingdom. Overall, the main thing that we should put on record is a general committee feeling, after listening to the answers to our questions last week, that there is a need for greater clarification, and that there is a question mark over what areas and what members of staff would be affected by the regulations.

It seems really weird to follow on from myself, but I call the minister to speak to the negative instrument.

Susan Deacon (The Minister for Health and Community Care): Thank you. Is there a limit on how long I may speak?

The Convener: You have about five minutes.

Susan Deacon: I am grateful to have the opportunity to address this important issue. I appreciate the comments that you made, convener, about the *Official Report*; in the absence of that information, it has been difficult to get a sense of committee members' concerns. For that reason, it has been useful to listen to the questions that members have asked today.

In the next few minutes, I will try to give members the clarification that they are looking for on at least some of the issues that they have raised. I would like to put the current position in context, because I hope that having a sense of the historical development of the regulations will allay some of members' concerns and answer some of their questions. I will attempt to reassure members that the regulations are both necessary and robust.

I am conscious that there is a sense around the table that the committee is being rushed on this issue, or that matters are not being considered fully; I assure members that neither is true. The regulations that are before the committee have their roots back in 1996, at the time of the E coli 0157 outbreak in Wishaw, which led to 21 known deaths. However, their development really began in April 1997, when Professor Pennington published his recommendations. As the officials have said, the regulations that we are debating have been built on, and have grown out of, the recommendations that Professor Pennington made in his report.

In summer 1997, after the publication of Professor Pennington's report, the first Scottish consultation on licensing proposals was launched. In 1998, a second consultation was conducted, which gave particular consideration to the HACCP route. In August the same year, the fatal accident inquiry into the Wishaw incident published its report, which endorsed and reinforced the

Pennington recommendations. In July 1999, the Scottish Executive launched a third formal consultation, on the specific regulations that are before the committee. The regulations have developed over a considerable period, and many people have been involved in their production. Somewhere in the region of 300 organisations were consulted.

I recognise that the Scottish Retail Consortium has raised a number of issues. However, as well as consulting some 300 organisations, we have worked very closely throughout the process with the main trade body, the Scottish Federation of Meat Traders Associations, which represents 70 per cent of independent butchers. We have also worked very closely with the relevant enforcement body, the Royal Environmental Health Institute of Scotland. There has been real and meaningful consultation, out of which the regulations have grown.

I want to address specifically the issue that Mary Scanlon and others have raised about differences between Scotland and England. I can understand why committee members are asking that question, and there are several answers. The first has to do with the history that I have just outlined and the specific resonance that the problem of E coli 0157 has in Scotland; there is also a higher incidence of E coli 0157 in Scotland. Secondly, there are differences between the regulations for Scotland and for England because our legal system, enforcement regime and trade practices are different. It is not for me to answer for the Westminster Government and, broadly, we share the same objective—to protect public health in this area as effectively as possible. However, I think it is right and proper that we have developed a scheme in Scotland that suits Scotland's needs and that, crucially, responds to the input of consultees here in Scotland and the respective representative bodies.

I hope that, by placing the regulations in a wider context, I have given the committee some reassurance about why some of the details are as they are. I stress that the regulations have not been drafted quickly, but have been developed in tandem with a lengthy consultation process. The regulations have been drafted tightly so as to accord with our policy objectives; I am satisfied that they do so.

As part of the process that the regulations have been through, they have been presented to—and approved by—the European Community, as is required for a measure of this nature. The regulations were sent to Europe for scrutiny in November last year and returned here in February this year, before they were presented to Parliament in March. There has been a long parliamentary process, going back to July 1999.

It is especially relevant to mention the European dimension, because if any substantial change were to be made to the regulations now, the whole process would have to be repeated. A submission to the EC would be required and that would delay the implementation of the regulations by at least five months.

I welcome the fact that, around the table, the committee has voiced its commitment to public health and high standards of food safety. We all share that objective; I do not think that any of us wants to face a second incident of the type that we have experienced here in Scotland.

I believe that the regulations enable us to put in place in Scotland a system that suits our specific needs. That system acts on the recommendations of the Pennington report and on the input of the main representative bodies in Scotland, both those in the trade and those who will be required to enforce the regulations. The regulations are a robust series of proposals. I understand fully the questions that are being asked and the reasons why members wish to be fully reassured on those points, but I assure members that those questions—and many more—have been raised and addressed with a wide range of interests over more than three years.

For that reason, and because of the important nature of the proposals and the need for us to put them in place to raise the standards of public health and food hygiene in Scotland, I hope that the committee sees fit to approve the progress of the regulations.

I hope that my comments have been helpful in putting some further information in front of the committee.

Dr Simpson: The answers we have been given today have been extremely helpful in clarifying some of the issues of concern. They indicate how the committee is working; it is our job to examine such matters closely.

We heard an answer on the need for basic hygiene training for all staff who work in a store where they might handle unwrapped meat that might leak. That is a reasonable answer to the requirement to train all those in a store who might, at any point, come into contact and therefore run the risk—however remote—of cross-contamination. That indicates the level to which we are prepared to go in Scotland to ensure adequate public safety.

The answer on enforcement areas, which exclude those areas in a mixed business where staff will work without possibility of cross-contamination, also clarifies matters and resolves some of the concerns that were put to us about the extent to which all staff in a mixed business might require training.

I still have concerns about costs—both capital costs and training support costs—to small businesses. I am not sure what measures have been taken. We heard about the £2.6 million that is going to local authorities, but it might be interesting to know what is being done to assist small businesses. The sums involved seemed to be quite substantial.

The measures are robust and necessary. I hope that the minister will monitor the impact and effect of the regulations. The main consideration must be public safety, but I hope that the minister will continue to have regard to the balance between bureaucracy, implementation and costs to small businesses.

16:30

Finally, why did the regulations go to Europe first? I take the minister's point that to revise them now would involve a lengthy process and that that would send out the wrong message about public safety. Perhaps we should ask the Parliament whether the current procedure is appropriate, or whether in future it would be better for draft regulations to be laid before the Health and Community Care Committee prior to their being sent to Europe for consultation, where appropriate.

On the basis of what I have heard today, I will vote against our convener's motion, and in favour of approving the regulations. I feel that my questions have been answered.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): Time is very short, so I will be brief; Richard Simpson has made several of the points that I wanted to make. I was not persuaded by what the Scottish Retail Consortium said last week, although I think that it was reasonable for the committee to ask certain questions about the regulations. I am pleased that there was such extensive consultation on the regulations and proud that Professor Pennington's recommendations are being acted on. I remember the terrible days in November and December 1996, when I was the Labour party spokesperson on health in Scotland.

Some of our concerns have been addressed. I thank the official who talked about applying conditions to areas of risk. That deals with the premises issue. I support strongly the view that all handlers of uncooked meat, including wrapped raw meat, should be trained. The fact that the regulations are different from those in England is neither here nor there. We could ask why England has not adopted the Scottish model. We have set up our Parliament so that we can do things differently if we want to.

Mary Scanlon: I do not see why Europe should have got the regulations in November. The

improving regulation in Scotland—IRIS—scheme was set up in November 1999, the same month that these regulations went to Europe. I am concerned that because the regulations have already been to Europe, this committee will be seen as a rubber stamp for what has been decided in Europe. I do not think that it is acceptable that a Scottish statutory instrument that was laid on 30 March should have come before us last week. Because the instrument has been to Europe and because we would be seen to be delaying it by five months if we were not to approve it, we have no choice but to pass it. I do not think that Scotland set up a Scottish Parliament to rubber-stamp European decisions.

I am also concerned that the regulations were not run past IRIS, which was set up to simplify this kind of legislation. Last week, it was apparent to all members of the committee that not only are the regulations vague and ambiguous, but the answers that we received were vague and ambiguous. I say once again that we have not had an opportunity to scrutinise the *Official Report* of that meeting and to see the vagueness and the ambiguities that it contains.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): I want to follow up what Mary Scanlon said. Some of the responses that we have received today are quite different from those that we received last week. From memory, I recall asking why terms such as mixed premises, food handling and so on were not clarified in the regulations. We did not receive an appropriate answer. The legal definitions are important. I am afraid that many individuals will disagree with the enforcer about the meaning of the regulations, and that a profession will be lining up to make money out of that. I do not think that that is the intention behind any of the legislation that is coming out of this Parliament.

We have an obligation to ensure that legislation is clear. If we are talking about legislation being robust, it must also be robust in its clarity, and leave no room for doubt. That is the point that I raised last week, and I return to it today.

Ben Wallace: I welcome most of the measures that are before us to make things safer for us all—the consumer as well as the producer. I do not think that any of us would wish to see a repeat of the tragedy that we saw some years ago. I also recognise that much of the movement on food safety has come from Europe. The idea of a food standards agency was originally initiated in Europe for all the countries of Europe, and the idea of regulating food came originally from Europe, so I understand why that has been mentioned.

A statutory instrument on raw milk is coming up; at present it is in Europe. I have had a copy of it—or one of the drafts—since September. It is a good

base point for consideration, and I am waiting for it to come to the committee so that we can discuss it. However, it was a draft statutory instrument before it went to Europe. In future, perhaps the committee should look at ways of getting our heads up in advance, so that we are not cornered into a position such as the present one.

I am content with the answer that I received on moneys to local authorities. I was worried that the new regime would increase the financial burden on local authorities, with not much Government backing to go with it, but in this case, there is. However, I am concerned at the cost implication for small businesses. I wish that some of those moneys, or more moneys, could aid the smaller butchers who are finding the situation difficult at the moment, and who have done for a considerable time, especially in rural areas.

I am not content with the minister saying that the statutory instruments for England and Scotland are different because of our legal systems, when her official said that one of the reasons for the difference was that the term “mixed business premises” predominantly referred to supermarkets, and that there was a wide variety of supermarket sizes, large and small, in Scotland. If anybody has spent any time in England or Wales, they will know that there are large and small supermarkets there, so that is not a basis for ruling out a clear and clarifying part of the English statutory instrument, which helps to define mixed business premises. That sums up the problem with the statutory instrument. For a reason unbeknown to us, the clarity is not there.

That leads me to the consultation that we had last week. The minister said that the instrument was laid before Parliament on 30 March, but it did not appear before the committee until last week, and I would bet my bottom dollar that it did not appear in Parliament on that date. I seek clarification on whether it did or did not, but I am almost sure that it did not. If we had such clear consultation, why did we see, as never before with regard to a statutory instrument, the Scottish Retail Consortium and a senior representative of Somerfield plc making efforts to come here to put their case? Why have I had butchers from all over Scotland ringing me with their fears and concerns about the regulations?

Although I am pleased about the cost to local authorities, I do not feel that the consultation has been correct, or that it has listened to the fears that are out there. The officials have gold-plated regulations that have their roots in a simple aim to guard the welfare of consumers, but which have become an exercise in legal gobbledegook and in penalising our butchers, rather than the butchers in England and Wales. They are not serving their original purpose. In fact, I can foresee more

confusion arising, and with that confusion will come straightforward ignoring of the regulations, or businesses will close down, and important retail outlets will be lost.

I back the convener's motion.

The Convener: Do any other members wish to speak?

I will give the minister an opportunity to sum up and to pick up points made by committee members. I ask her to limit herself to a few minutes.

Susan Deacon: I will deal first with the procedural issues that have been raised. Some are beyond my jurisdiction and that of the committee. If there are questions about wider parliamentary procedure, that is legitimate—we are dealing with a number of firsts—but all I can say is that in the case at issue, we followed parliamentary procedure as set out.

In addition to looking at the procedure relating to secondary legislation and to the relationship between the Executive and the committees, we must bear one issue in mind, about consultation processes. The third consultation on the issue was launched in July last year. Listening to the discussion, I can think of at least four other consultation processes in my department that are going on at present. It is for any individual, any MSP and any committee to comment on them at any time. I have been dealing with a significant amount of ministerial correspondence and parliamentary questions on the issue. I am not saying that we have the optimal procedures in place, but from the Executive's point of view, we have worked hard to comply with due process and to answer questions as fully as we can.

On the proposals, again we return to the point about different approaches north and south of the border. I hope that in my opening comments I gave the reasons for that. On the point about clarity, I am happy to state on the record and before the committee that I believe that the necessary clarity exists within the regulations as currently drafted. In order further to reassure the committee, I stress that detailed guidance will be prepared for the industry and for those who are required to enforce the regulations, as is the standard procedure, and in that guidance there will be further clarification of the application of the regulations. I am confident that the regulations as currently drafted are robust and workable, but if a scheme is found to be unworkable, it is of course open to the Parliament at any future date to amend it.

The Scottish Retail Consortium was mentioned; a question was asked about the timing of comments and so on. I cannot answer for the consortium. It was established only in April last

year and I can speculate that that might be the reason. I stress that the involvement of the main trade bodies and enforcers' representative bodies on the consortium has been significant and long running. That is why, for example, we have the twin-track approach and the HACCP or separation options.

In response to some of Ben Wallace's concerns, I hope that that is better for butchers in Scotland and smaller operators in particular, because it gives them a choice of route to becoming licensed. We have chosen that path because of the Pennington report and also because of the discussions that we have had with the trade in Scotland. We all agree that it is a crucially important public health measure.

Malcolm Chisholm evoked the memory of the Wishaw incident. We all agree that we have an obligation to act on the lessons that emerged from that outbreak. I believe that we have worked hard to do that. If there are points of procedure or style to be addressed, which have arisen from this discussion and which might have wider resonance, they ought not to be lost. However, it would be tragic to lose the substance of the regulations as a consequence of those concerns. I hope that the committee will allow the regulations to proceed on that basis.

The Convener: I will move the motion in my name. Are we all agreed?

Malcolm Chisholm: What does the motion say?

16:45

The Convener: The motion annuls the regulations. That means that the matter would go to the Parliament and, as I understand it, in Parliament there would be a three-minute debate, with me speaking to my motion and the minister responding. Then there would be a vote on whether the regulations should become law. If members feel that—

Malcolm Chisholm: I move against it.

The Convener: I should like to continue my clarification. If members vote in favour of my motion, that is what you are doing. I conjecture that you might have two reasons for doing so. One is to take the issue to Parliament; the other is that you do not want to see the regulations go ahead. If you vote against my motion, that will be the end of the matter as far as we are concerned and the instrument will go forward to Parliament with no comments from the committee.

I move motion S1M-845,

That the Health and Community Care Committee recommend that nothing further be done under the Food Safety (General Food Hygiene) (Butchers' Shops) Amendment (Scotland) Regulations 2000 (SSI 2000/93).

The Convener: The question is, that motion S1M-845 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Margaret Jamieson (Kilmarnock and Loudoun) (Lab)
Mary Scanlon (Highlands and Islands) (Con)
Ben Wallace (North-East Scotland) (Con)

AGAINST

Malcolm Chisholm (Edinburgh North and Leith) (Lab)
Mr Duncan Hamilton (Highlands and Islands) (SNP)
Irene Oldfather (Cunninghame South) (Lab)
Dr Richard Simpson (Ochil) (Lab)
Mrs Margaret Smith (Edinburgh West) (LD)
Kay Ullrich (West of Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: I thank all committee members, the minister and officials.

16:47

Meeting continued in private until 17:45.

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