HEALTH AND COMMUNITY CARE COMMITTEE

Wednesday 4 April 2001
(*Morning*)

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HEALTH AND COMMUNITY CARE COMMITTEE
11th Meeting 2001, Session 1

CONVENER

*Mrs Margaret Smith (Edinburgh West) (LD)

DEPUTY CONVENER

*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

COMMITTEE MEMBERS

*Dorothy-Grace Elder (Glasgow) (SNP)
*Janis Hughes (Glasgow Rutherglen) (Lab)
*Mr John McAllion (Dundee East) (Lab)
*Shona Robison (North-East Scotland) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)
*Dr Richard Simpson (Ochil) (Lab)
*Nicola Sturgeon (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Malcolm Chisholm (Deputy Minister for Health and Community Care)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Joanna Hardy

LOCATION

Committee Room 2

Scottish Parliament

Health and Community Care Committee

Wednesday 4 April 2001

(*Morning*)

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

The Convener (Mrs Margaret Smith): Good morning, everybody. I have enough paper in front of me to fill an Amazonian rainforest. Item 1 seeks the committee's agreement to take items 4 and 5 in private at the end of the meeting. Item 4 is on the timetabling of committee meetings and item 5 is a discussion of the publication of the committee's report on the measles, mumps and rubella vaccination. Are we agreed to take those items in private?

Members *indicated agreement*.

Subordinate Legislation

The Convener: Item 2 is on subordinate legislation subject to the negative procedure. The National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2001 (2001/62) were originally circulated to members on 13 March and no comments have been received. The Subordinate Legislation Committee comments that the Executive has agreed to work towards consolidation of NHS regulations and that it would like progress to be made. No motion to annul the regulations has been lodged, therefore I suggest that the committee make no recommendation. Is that agreed?

Members *indicated agreement*.

The Convener: The National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2001 (2001/70) were also circulated on 13 March and no members have commented. The Subordinate Legislation Committee comments that, although several drafting defects have been acknowledged by the Executive, the committee still has concerns over the vires of new paragraph 3A of schedule 1, which it has drawn to the Executive's attention. No motion to annul the instrument has been lodged, therefore I suggest that the committee make no recommendation. Is that agreed?

Members *indicated agreement*.

The Convener: The National Health Service (Personal Medical Services) (Scotland) Regulations 2001 (2001/72) were circulated on 13 March. No members have commented on them, nor has the Subordinate Legislation Committee. No motion to annul the instrument has been lodged, therefore I suggest that the committee make no recommendation. Is that agreed?

Members *indicated agreement*.

The Convener: The National Health Service (Choice of Medical Practitioner) (Scotland) Amendment Regulations 2001 (2001/85) were circulated on 13 March and no members have commented on them. The Subordinate Legislation Committee's comments have been responded to satisfactorily by the Executive. No motion to annul the regulations has been lodged, therefore I suggest that the committee make no recommendation. Is that agreed?

Members *indicated agreement*.

The Convener: The Specified Risk Material Amendment (No 2) (Scotland) Regulations 2001 (2001/86) were circulated on 13 March and no members have commented on them. The Subordinate Legislation Committee commented on

the regulations and the Executive has provided a satisfactory response. No motion to annul the regulations has been lodged, therefore I suggest that the committee make no recommendation. Is that agreed?

Members *indicated agreement*.

The Convener: The National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2001 (2001/88) were circulated on 13 March. No members have commented on them and neither has the Subordinate Legislation Committee. No motion to annul the regulations has been lodged, therefore I suggest that the committee make no recommendation. Are we agreed?

Members *indicated agreement*.

The Convener: The Meat (Hygiene and Inspection) (Charges) Amendment (Scotland) Regulations 2001 (2001/89) were circulated on 21 March. No members have commented on the regulations and neither has the Subordinate Legislation Committee. No motion to annul the regulations has been lodged, therefore I suggest that the committee make no recommendation. Is that agreed?

Members *indicated agreement*.

The Convener: The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2001 (2001/100) were circulated on 21 March. No members have commented on the regulations and neither has the Subordinate Legislation Committee. No motion to annul the instrument has been lodged, therefore I suggest that the committee make no recommendation. Is that agreed?

Members *indicated agreement*.

The Convener: The Restriction on Pithing (Scotland) Regulations 2001 (2001/73)—I had to be careful how I said that—were originally circulated to members on 22 March. No members' comments have been received—or, if they have, they are not printable. The Subordinate Legislation Committee comments:

"The Committee therefore draws the instrument to the attention of the Parliament, lead committee and European Committee on the grounds that the instrument may be ultra vires in failing to implement a Community obligation by the due date and by postponing the coming into force of the Regulations. To that extent, the instrument raises a devolution issue."

No motion to annul the instrument has been lodged, therefore I recommend that the committee make no recommendation. Is that agreed?

Dorothy-Grace Elder (Glasgow) (SNP): The regulations will obviously be passed to the relevant committee. However, what will replace pithing, if anything? Pithing controls the animal and ensures not only that the abattoir staff are safe from kicking, but that the animal does not suffer greater pain—although it is a horrific practice in itself. Will the welfare of the animals be guaranteed by measures to ensure that they are totally dead? We might ask the relevant committee whether any replacement for pithing has been suggested that would also be a humane way of killing the animals.

The Convener: I am informed that we are the relevant committee. As there is a problem with timing, the only thing that we can do is ask for clarification on the point that you raise.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): Is that legitimate, convener? The regulations were circulated to members on 22 March, but no one commented on them.

The Convener: The decision is mine. I suggest that the committee makes no recommendation, but I am happy to ask for clarification on behalf of the member. Is that agreed?

Members *indicated agreement*.

Regulation of Care (Scotland) Bill: Stage 2

The Convener: Agenda item 3 is consideration of the Regulation of Care (Scotland) Bill at stage 2.

Members have gone through the bill once already. I therefore hope that we all know what we are doing.

The process is likely to be slightly different today in that there are some pre-emptions. That means that if one amendment is agreed to, another amendment cannot be called. That will prevent inconsistency. I will let members know when we are about to deal with pre-emptions.

I hope that members are happy with the procedures that we used last week. We will deal with any other issues and problems as they arise. I will not read through the instructions again because members did perfectly well last week.

I welcome the minister and the bill team, if I can use that as a handy abbreviation.

Our remit is to look at everything from the end of section 4 to section 22. We will try to get through as much as possible.

After section 4

The Convener: Amendment 120, in the name of Margaret Jamieson, is on local advisory committees and is grouped with amendment 174, in the name of Richard Simpson. I call on Margaret Jamieson to move amendment 120 and to speak to both amendments in the group.

Margaret Jamieson: Amendment 120 has widespread support from local authorities and the Convention of Scottish Local Authorities supports the call for the establishment of advisory committees. Such committees would ensure that there is a local base and that individuals in each locality have access to the commission. That would ensure that their views are taken on board.

I move amendment 120.

The Convener: I call on Richard Simpson to speak to amendment 174.

Dr Richard Simpson (Ochil) (Lab): Amendment 174 refers to section 16 of the bill and proposes that, if local advisory committees are established under the bill, they should be notified if emergency powers are requested to deregister an organisation. I believe that local advisory committees are important in respect of that sort of emergency procedure and that such matters will often be of concern to local communities.

The Convener: Members may comment before and after the minister has spoken.

Shona Robison (North-East Scotland) (SNP): I want to reiterate Margaret Jamieson's point. Evidence in favour of the local link was consistently given and I hope that the minister will take action on that.

The Deputy Minister for Health and Community Care (Malcolm Chisholm): The intention of the amendments is to increase stakeholder involvement. I accept that that is crucial to the commission's work.

Our proposal is that a national advisory forum should be established as a committee of the commission under the powers in schedule 1 of the bill and that the forum should have sub-committees to feed in views.

Whatever arrangement the committee prefers, I think that the matter is best dealt with by regulation, not by primary legislation, so that the commission is not tied to a particular committee structure for evermore and the structure and functions of committees can change and develop. Schedule 1, paragraph 5(d) refers to regulations concerning

"the appointment of, constitution of and exercise of functions by committees and sub-committees".

I see real advantages in a network of sub-committees of the advisory forum that feed in user, carer and provider views. The role of those sub-committees would not be to advise the commission on how it should exercise its regulatory functions locally. That would not be appropriate, as it would undermine the national perspective of the commission—a point that the Executive has been making for some time. However, the involvement of a range of service users, their carers and providers from throughout the country can only be a good thing. The sub-committees could be geographically based, or topic-focused if that is more appropriate.

I hope that the committee acknowledges our commitment to involving interested parties, especially users and carers, in the work of the commission. I believe that the establishment of an advisory forum and associated sub-committees will provide an important voice for users and carers, as well as other stakeholders. As I have indicated, that does not need to be in the bill, but I can give a commitment that those measures will be enshrined in regulations. Draft regulations will be issued for wide consultation in the summer. The committee will not only see them, but will ultimately vote on them.

I also point out that there would be problems with the wording of amendment 120 as drafted. I am sure that members will agree that "appropriate" is open to wide interpretation, as is the word

"local"; it is by no means clear from the amendment how local "local" is intended to be.

09:45

Richard Simpson's amendment 174 depends on the acceptance of amendment 120. It would make provision in section 16 to require ministers to notify local advisory committees if ministers were seeking urgent cancellation of a registration. Provision already exists in the section to require ministers to notify local authorities, health boards and other statutory authorities at such times.

The reason for specifically mentioning local authorities and health boards at that point is so that local authorities are put in a position to fulfil their statutory duties by providing or arranging alternative care for service users in accordance with section 12A of the Social Work (Scotland) Act 1968. Health boards may have to consider whether to make provision for NHS services.

It is not necessary to require the commission to notify any of its committees as suggested by the amendment. Those committees would not have statutory duties to fulfil in such circumstances, in the way that local authorities and health boards do, and they would not need to react in the same way to the cancellation of a registration. The commission will nevertheless have the power to notify the committees if it considers that that is appropriate. The committees will be statutory authorities for the purposes of the act, and the commission will be able to inform them under section 16(4)(b).

The wording of amendment 174 would require the commission to inform every local advisory committee, no matter where the service in question was situated. In the light of that, and of my previous undertaking to introduce advisory arrangements by regulation, I hope that Margaret Jamieson will seek leave to withdraw amendment 120 and that Richard Simpson will not move amendment 174.

The Convener: Are you saying that you accept the principle behind COSLA's suggestion, as well as the view of the committee, that there must be some sort of local base to what is a national framework? You mentioned that there would be draft regulations in the summer. Will ministers draw up those regulations or will it be up to the commission to decide whether the local committees—you called them sub-committees—are geographically based or topic based? When will we know that and who will make that decision?

Malcolm Chisholm: Regulations are always a matter for ministers. It would be fair, prior to the stage 3 debate, to give you an indication of what would be in those regulations.

Mr John McAllion (Dundee East) (Lab): I welcome the announcement that there is to be a national advisory forum—that is a step forward—but I am concerned by the minister's implication that he is opposed to the local advisory committees varying, if you like, the national standards of care applied by the commission. There is no question of that. The COSLA amendment makes it clear that the committees would be advisory and that the minister himself would establish the powers and the role of the committees in regulation. He would be in control of the extent of what they could do.

It is important that there is a local dimension to any national system of care standards, because local users and carers must be in a position to feed back into the system the impact of national standards and how they are applied locally. Therefore, it is important that the minister assures us before stage 3 that geographical sub-committees of the advisory forum will not be optional.

The point of the COSLA amendment is to ensure that there is a local dimension to the national system. What the minister has said does not guarantee that, because the topic sub-committees will be national rather than local committees, which would defeat the purpose of the COSLA amendment.

The Convener: Are there any other comments?

Janis Hughes (Glasgow Rutherglen) (Lab): I echo what John McAllion said. We must look at the current advisory committees, and how they provide a forum for service users and carers and give them a voice in the inspection process. I would not like us to move away from that.

I accept the minister's point about the word "appropriate" in Margaret Jamieson's amendment 120, but it is not intended that there should be 32 local advisory committees. In keeping with the spirit of the bill, it would be appropriate for local advisory committees to work at regional-centre level. There is no desire for a large number of advisory committees, but we must bear in mind the valuable role that they currently play in care services. It is important that we maintain that local element. I urge the minister to introduce an enforceable measure, not just an expectation that would be legally unenforceable.

The Convener: Minister, do you wish to respond to those points?

Malcolm Chisholm: What I have said today is consistent with the general approach that we have adopted, because our only concern is that the user focus and the national focus might pull in opposite directions. Of course we want more user involvement—the whole point of the care standards in the bill is to have more user

involvement—but we are concerned that some of the discussion about local advisory committees has suggested that they should have a similar role to their current one, which is geared to local inspection arrangements. That is why I have raised the idea of sub-committees feeding into a national forum, because it is important that the sub-groups are seen as part of a new national structure. As long as that is clear, I do not have a problem with what people are saying.

I do have a problem if it is being suggested that local committees can comment on how standards may vary, or how inspection methods may vary, because the intention of the bill is to get away from local variation, and to have new national standards for the first time.

The Convener: I am sure that you did not mean to say what you just said.

Malcolm Chisholm: What was that?

The Convener: Surely local committees will have a right to comment—because if they do not comment, the standards cannot be kept under continual review—but they will not be able to change the standards.

Malcolm Chisholm: I had better clarify. I was not aware that I had said that. Clearly, they should comment, but they should not be able to interpret the standards differently in different areas.

The Convener: Yes. One of the main points that people are trying to get over is that without that sort of local committee it will be difficult to know how the systems are working on the ground. We are talking about being able to comment, which is important in developing the service.

Margaret Jamieson: There is nothing more to say, convener. Everybody has had a fair go at the issue, and while I am still slightly uncomfortable that there will be nothing in the bill, we will await with interest what the minister brings forward at stage 3. I am prepared to withdraw amendment 120.

Amendment 120, by agreement, withdrawn.

Section 5—National care standards

The Convener: I call John McAllion to speak to and move amendment 138, which is grouped with amendments 168, 157 and 169.

Mr McAllion: Amendment 138 is inspired by the National Association of Inspection and Registration Officers. It changes the first line in section 5 of the bill from:

"The Scottish Ministers may prepare and publish national care standards",

to read:

"The Scottish Ministers shall prepare and publish national care standards".

NAIRO's point is that the whole purpose of the bill is that there shall be national care standards, so why does it not say so in the bill? Why does it say only that there "may" be national care standards? The bill should say what it intends to implement, which is that there "shall" be national standards.

Amendment 157 is inspired by COSLA. Again, section 5 states that ministers

"shall consult any person they consider appropriate."

COSLA is of the view that there should be a guarantee of consultation with local authorities and health authorities before the publication of national care standards. Amendment 157 would include that guarantee in the bill.

I move amendment 138.

The Convener: Will you also speak to amendment 168, as Irene McGugan is not here?

Mr McAllion: It can just be moved formally.

The Convener: It is similar to amendment 138, in that it deletes "may" and inserts "shall".

Shona Robison: I intend to move amendment 168.

The Convener: It does not need to be moved at this stage. If nobody else wants to speak to amendment 168, we shall leave it to be moved when we reach that point in the marshalled list.

I call Richard Simpson to speak to amendment 169.

Dr Simpson: Amendment 169 says that, before publishing the standards, the appropriate committee of the Parliament must also be consulted. That is very straightforward and is in line with a number of amendments that I have lodged, as it tries to give the committees certain powers in the bill.

Malcolm Chisholm: We are strongly committed to preparing and publishing national care standards so I would argue that, strictly speaking, amendment 138 simply gives the impression of strengthening a commitment that already exists. However, I shall surprise John McAllion by saying that I am entirely happy to accept his amendment as drafted. I know that he says that one can never get a "may" turned into a "shall" at Westminster, so I hope that that confirms his feelings about the Scottish Parliament.

I am also content to accept amendment 168, which also gives the impression of strengthening that commitment, and which ensures consistency in section 5.

Amendments 157 and 169 both deal with consultation on the standards. Amendment 157

would require ministers to consult local authorities and health boards before publishing national care standards. Amendment 169 would require us to consult the relevant committees of the Parliament. There is a general duty on ministers before publishing standards to consult

"any person they consider appropriate",

including local authorities and health boards, which are all considered persons in terms of the wording of the section. Ministers will be bound by that duty. We have already demonstrated our commitment by the extensive consultation that we are conducting on the draft standards.

I have two concerns about amendment 157. First, in naming only a small number of consultees, we run the risk of narrowing the general duty. Secondly, those specified in the amendments are not necessarily the most important groups in this context. I am sure that members agree that users and carers, who are directly affected by the standards, are the first people whom we should look to consult. We should also consult the providers of relevant services. The general duty to consult, which on purpose is drawn very wide, will ensure that local authorities and health boards have the chance to comment on the standards. Last week, however, I undertook to look at all the consultation provisions in the bill to ensure that they are consistent and appropriate. I shall, of course, be looking at the provisions in section 5 in that context. I therefore hope that John McAllion will not press amendment 157.

Amendment 169 brings us back to consultation with the committees of the Parliament, which was also mentioned last week in a different context. I am strongly in favour of involving committees in the consultation process on standards. However, as I said last week, the wording of the amendment is inappropriate. I undertake to lodge another, appropriately worded, amendment at stage 3, and I therefore ask Richard Simpson not to press amendment 169.

10:00

Mr McAllion: I thank the minister for accepting amendment 138—I think that that is the first success that I have enjoyed in 14 years in Parliament. It is a small success, but important to me nevertheless. I take the minister's point about the general duty to consult deliberately being wide. Given that he is guaranteeing that he will consult local authorities and health boards, I would be happy not to move amendment 157.

Amendment 138 agreed to.

Amendment 168 moved—[Shona Robison]—and agreed to.

Amendment 157 not moved.

Dr Simpson: On the basis of the minister's assurance that he intends to consult parliamentary committees throughout the progress of the bill, I am happy not to move amendment 169.

Amendment 169 not moved.

The Convener: Amendment 47, in the name of the minister, is grouped with amendments 6 and 48.

Malcolm Chisholm: I will deal with amendment 6 first, as it is a minor technical amendment. It clarifies that the body to which section 5(3) refers is the Scottish social services council, as that is the first reference to that body in the bill. The amendment does not materially affect the provisions of the section or any other part of the bill.

Amendments 47 and 48 introduce to section 5(3) equivalent provisions for local authority adoption and fostering services. Private and voluntary adoption and fostering services will be registered under part 1 and will be covered by the existing provisions in section 5(3). However, because local authority adoption and fostering services will be registered under a different part—part 1A, which we will discuss later—we need to make amendments 47 and 48 to ensure that all services are covered by section 5.

Private and voluntary adoption and fostering services regulated under part 1 have normal registration procedures and can be deregistered. As there is a statutory duty on local authorities to provide adoption and fostering services for their area, deregistering would leave them in breach of that duty and would take away the entire service. Therefore, a different enforcement scheme is provided in part 1A whereby standards must be met. Amendment 48 ensures that the care standards and codes of practice will be taken into account in relation to decisions made under both parts.

I move amendment 47.

Amendment 47 agreed to.

Amendment 6 moved—[Malcolm Chisholm]—agreed to.

Amendment 48 moved—[Malcolm Chisholm]—agreed to.

Section 5, as amended, agreed to.

Section 6 agreed to.

Section 7—Registration

The Convener: Amendment 170, in the name of John McAllion, is grouped with amendments 49, 50 and 171.

Mr McAllion: Amendment 170 would add a new subsection at the end of section 7(2) that would make it clear that an application by a local authority should be made by the local authority's chief social work officer within the meaning that is given by section 3 of the Social Work (Scotland) Act 1968.

The amendment was inspired by the Association of Directors of Social Work, which is perhaps not surprising. It pointed out that subsections (3), (4) and (5) of section 7 will have major implications for local authorities in that they will have to make multiple applications. That will have resource implications, not just in respect of fees.

Therefore, there should also be clarity as to who the applicant in respect of a local authority should be. It is suggested that the chief social work officer should be required to be the applicant, and that that would bring consistency across all local authorities in Scotland—rather than leaving a mixed-up situation in which all kinds of different officers will be making different applications, which would have resource implications for local authorities.

I move amendment 170.

The Convener: I ask the minister to speak to amendments 49 and 50 and to other amendments in the group.

Malcolm Chisholm: Should I speak to all of them?

The Convener: Please speak to all the amendments together, but, obviously, speak to your own ones first.

Malcolm Chisholm: What about amendment 171?

The Convener: If you could speak to them all at the same time, please.

Malcolm Chisholm: Amendment 171 is Richard Simpson's.

Dr Simpson: Should I speak to my amendment first?

The Convener: Okay—you do yours first, Richard.

Dr Simpson: I found section 7(4) and (5) confusing. The minister's response to amendment 171, lodged in my name, will perhaps help. The matter of branches being separate or together, and of their being entities is slightly beyond me—that is obviously legal language. If a provider has a residential establishment and provides a day care service from the same premises, is that establishment to be regarded as a single entity or as two separate entities? The services may be managed in a different way, or indeed separately within the one establishment. I am concerned that two or more branches, even if providing the one care service, may have to be treated separately, as specified in subsection (4). I invite an explanation of that.

This is the first time that we have debated the services that are provided within institutions, so I again draw the committee's attention to my written declaration of interest in respect of nursing home management and of adoption and fostering services.

Malcolm Chisholm: Section 7 sets out the provisions for applications to the commission for registration. It also sets out when services have to be treated as separate care services—each of which would have to be registered with the commission.

Amendment 170 makes specific reference to local authority applications and attempts to specify who the applicant should be. It seems to me that the chief social work officer would appropriately apply to register only care services that are provided as part of the local authority's social work function; he or she could not cover applications for the registration of pre-five provision in schools or for housing support services, for example. To achieve John McAllion's intended effect would be very complicated, and would mean having to identify every possible named officer or responsible person who might appropriately make an application on behalf of the local authority. There would be no justification for doing that for local authorities alone—what about large voluntary or private organisations?

I do not consider that such specification is necessary in the bill, and believe that that can best be dealt with in guidance through the new commission. Accordingly, I ask John McAllion to withdraw amendment 170.

Amendments 49 and 50, in my name, restrict the adoption and fostering providers that are covered by section 7 to voluntary organisations. Local authority adoption and fostering will be dealt with in another part of the bill. I therefore intend to move amendments 49 and 50.

I agree with the general purpose behind amendment 171, namely to reduce any bureaucracy that is involved for providers of care services. However, the amendment refers only to services that are provided from the same premises; it takes no account of the nature of those services or providers. It is quite possible that different providers might provide different services from the same premises, in which case each should be registered and inspected separately by the commission.

Section 7(5) will guide the commission's decision making. In cases where a provider is providing two care services in an integrated way

from the same premises, there will have to be two applications for registration, but it will be open to the commission to handle the two applications together and section 20(3) allows the commission to waive the fee or charge a nominal fee. The commission will want to ensure that, in cases of integrated services that are provided to the community from the same premises—for example a hospice and its palliative care service or a care home service that also offers support to older people or vulnerable adults during the day—those services are considered together and that section 20(3) comes into effect.

In addition to those substantive points, there is the objection that Richard Simpson's amendment introduces terminology that is not used in the bill and that it is too narrow as it refers only to residential and day care. On that basis, I hope that he will not press his amendment.

Mary Scanlon (Highlands and Islands) (Con): I appreciate that you referred to local authorities, but at stage 1, I raised a matter relating to Leonard Cheshire homes. Leonard Cheshire has day care centres and offers residential care, supported accommodation, home care services and respite. You have mentioned that fees may be reduced or waived for one or two services, but many organisations offer up to five services. Leonard Cheshire has said that what is proposed will be crippling, not only financially but because of the bureaucracy that is involved in making separate applications for registration. As there are fears about section 7(3), will you give some clarification and reassurance on that?

Malcolm Chisholm: I must apologise for not responding to that point at stage 1. You made many points and I referred to you on several occasions, but not in relation to that point. That was not because I did not know the answer, as it is clear that, in the Leonard Cheshire example that you give, only one fee would be involved.

Mary Scanlon: Are you saying that there would be only one fee for all the services that I have mentioned?

Malcolm Chisholm: There would have to be separate applications, but the fee arrangement would be as I outlined in my initial remarks. The commission would not impose a separate fee for each of those services.

Mary Scanlon: Would that fee be based on the fee for a day centre, on that for a residential home, or on that for supported accommodation? The differences are quite considerable.

Malcolm Chisholm: It would be up to the commission to decide on the details.

Mary Scanlon: But where organisations offer about five services, one fee would be charged?

Malcolm Chisholm: Yes.

Mary Scanlon: That is an important point.

Margaret Jamieson: The response that the minister has just given to Mary Scanlon has confused me. We are talking about an organisation that may provide those services in one geographical area or over a wider area. That makes a mockery of the system. If a local authority in a similar situation has to pay the fee, we need to ensure that there is equity. Will the minister explain the situation?

Mary Scanlon: I am sorry to labour this, but I will stick to the Leonard Cheshire example. Regardless of geography, we can talk about one organisation, Leonard Cheshire Scotland, that has services throughout Scotland. Would there be one fee for the whole of Scotland?

Malcolm Chisholm: No. I misunderstood what you were saying. I thought that you were talking about services that are offered from one premises and managed by the same people. That is the kind of situation I mean. Obviously, services that are offered from many different places—a day care centre in one place and an older people's care service somewhere else—would be considered as separate services.

The Convener: Your answer to Mary Scanlon's point about four or five—

Malcolm Chisholm: It was based on a misunderstanding of what she said.

The Convener: It was based on the fact that you thought that she meant that the four or five services were all together in one enormous premises.

Malcolm Chisholm: And that they were singly managed.

The Convener: So your answer would be different if the services were in three or four different locations and were managed by three or four lots of managers. In such cases, different registrations and fees would be required.

Malcolm Chisholm: Yes.

Margaret Jamieson: But local authorities come under virtually the same consideration as the one that you are saying voluntary organisations come under. One officer will make the registration application for various premises within a local authority area. As we question you further, the situation is becoming more muddled.

Dorothy-Grace Elder: The straightforward answer that Mary Scanlon ascertained from the minister is that one local organisation, such as Leonard Cheshire, would pay one fee for five services. Equally, people are concerned about the amount of time that might be drained from

charities. Many charity officials now spend all or half their time on fundraising alone.

Would the Scottish commission for the regulation of care be responsible for simplifying the amount of paperwork that organisations must deal with? Can we do anything about that at this stage? I doubt that we can.

10:15

Malcolm Chisholm: I envisage that that level of detail would be up to the commission, although we could consider members' suggestions.

Shona Robison: The confusion that exists makes it difficult for us to proceed with amendments to section 7. I am not clear where our discussion leaves us and I would like further clarification.

The Convener: We must consider section 7 today as we cannot come back to it after the recess. We must come to a decision today, but we could ask the minister to come back with clarification at stage 3, which we have done on many other occasions.

Malcolm Chisholm: The only way I can sum up is to say that each separately managed service would require a separate application and fee. We should focus on management.

The Convener: How do you define separate management? Are you talking about a named manager?

Malcolm Chisholm: There is no doubt that the commission will have to use its discretion in certain cases. We cannot have absolutely clear dividing lines to cover every circumstance.

The Convener: Some people made the point that it may not be reasonable to expect services in rural and remote areas to be based in one centre. The same managers may manage different services and those services may be provided in different centres. I presume that the commission would have to use its discretion in those situations as well.

Shona Robison: I take the point that the commission may have to use its discretion, but an element of guidance is required in the bill. I do not think that the matter has been clarified this morning and I suggest that such clarity should be provided before stage 3.

Dr Simpson: I agree with Shona Robison. Rachel House, the children's hospice, is another example. Soon, it will have two centres. It provides support services in every local authority area, but may do so from a base in a different local authority area. The level of bureaucracy would be unheard of if the hospice had to register with all 32 local authorities.

I am happy not to move amendment 171 because of the difficulties with legal phrasing, but, with due respect to the minister, consideration must be given to how his department can ensure that the commission operates with the minimum of bureaucracy. Otherwise, strict interpretation of section 7 would place an intolerable level of bureaucracy on charities. The committee and many of our witnesses have been concerned about that throughout consideration of the bill. I hope that the minister will return to the matter at stage 3.

Mary Scanlon: I will be brief. Richard Simpson, Margaret Jamieson and others made a good point. For charities, bureaucracy means time and money—that applies to everyone—but the fees will also be a problem. It would be understandable if charities were to centralise their services in Scotland by, for example, providing home care services through a telephone number in Edinburgh. If applications and fees were required for each separately managed service—depending on the definition of management—charities would centralise their services to overcome the bureaucracy and the fees.

I agree with Shona Robison—more clarity is required. We would not want services to be reconfigured on the basis of economies of scale in relation to registration and fees.

Malcolm Chisholm: There are a couple of things that I can do. I do not think that the points raised should go in the bill, but they could certainly go into guidance. I undertake to have draft guidance ready before stage 3, which will cover some of the details that have been mentioned. The other thing that I can do is to ask the inspection methods working group to consider the matter. Inspectors will have to deal with it at a practical level. I hope that those two things will have satisfied the committee by the time we get to stage 3.

Mr McAllion: The minister says that he will come back before stage 3 with information about the guidance. I hope that he will give a commitment that the guidance will refer also to local authorities—their officers' time is money as well. It is important that it is clear how they are to submit applications for registration and what the implications of such applications will be for fees and bureaucracy. The issue affects not only the voluntary sector; there must be clarity in the guidance for the local authority sector too.

The Convener: Does John McAllion wish to press amendment 170?

Mr McAllion: No—if the minister gives a commitment that he will clarify the issues, I will be happy to withdraw the amendment.

Malcolm Chisholm: I have already given an

undertaking on that. We have said that there will be guidance.

Amendment 170, by agreement, withdrawn.

Amendments 49 and 50 moved—[Malcolm Chisholm]—and agreed to.

Amendment 171 not moved.

Section 7, as amended, agreed to.

After section 7

Amendment 51 moved—[Malcolm Chisholm]—and agreed to.

Section 8—Grant or refusal of registration

The Convener: Amendment 52 is grouped with amendments 53, 54, 55, 158 and 159. I ask the minister to move amendment 52 and to speak to all the amendments in the group.

Malcolm Chisholm: I will speak first to amendments 52 to 55, which are purely technical. Amendment 52 makes it clear that the commission may grant applications

"either unconditionally or subject to such conditions as the Commission thinks fit".

Amendment 53 simply removes unnecessary wording. Amendment 54 makes it clearer how applications will be granted or refused by referring to the sections of the bill that deal with that: section 13(1)(a) and section 15(1) deal with different kinds of granting of an application; section 13(1)(b) deals with refusals. Section 8(2) is removed by amendment 55; it is replaced by the wording that is inserted by amendment 52. Section 8(3) is removed because it is replaced by the provisions to be inserted by amendment 60.

I understand the thinking behind amendments 158 and 159, but I do not think that they are necessary. It is right that, in granting conditional registration, the commission should impose fair and reasonable conditions, but we do not need amendments 158 and 159 to achieve that. The commission must already act reasonably in all that it does. If it were to act unreasonably, it could find itself subject to judicial review and could be ruled to have acted ultra vires.

That general restriction is enough to ensure that any conditions imposed on the registration of a care service are reasonable and that the commission carries out all its functions in a reasonable and equitable manner. If we were to agree the amendments, it would be necessary to place "reasonable" in front of references to all the actions of the commission to ensure consistency within the bill. Failure to do so could be interpreted as meaning that the commission was free to act unreasonably in carrying out its other functions. I therefore hope that Mary Scanlon and John McAllion will not press their amendments.

I move amendment 52.

Mary Scanlon: Given the reasonable assurances given by our reasonable minister in a very reasonable fashion, I will be happy not to move amendment 158.

The Convener: That is very reasonable of you. I call John McAllion to speak to amendment 159, and I hope that he will be just as reasonable.

Mr McAllion: I am always reasonable. I shall certainly not move amendment 159. I am sure that the people who drafted the bill will be mightily relieved to hear it.

Amendment 52 agreed to.

Amendments 53 and 54 moved—[Malcolm Chisholm]—and agreed to.

The Convener: If amendment 55 is agreed to, I cannot call amendment 158, because of the pre-emption rule.

Amendment 55 moved—[Malcolm Chisholm]—and agreed to.

Section 8, as amended, agreed to.

Before section 9

The Convener: I call Shona Robison to speak to and move amendment 172, which is grouped with amendments 56, 57 and 27.

Shona Robison: The purpose of amendment 172 is to introduce a new form of notice—a preliminary improvement notice—which would be served on the person providing the service in circumstances where there had been a deterioration in care standards that was not sufficiently bad to merit the serving of an improvement notice. The commission's powers are directed towards cancellation of registration and, if an improvement notice is served, significant improvement is required, the ultimate sanction for failure to comply being cancellation. It might be helpful and effective if the commission had the power to intervene at an earlier stage, before the deterioration in care standards becomes significant. That would give the commission a more proactive role, so that it could work with the service provider to address the root cause of the problem and perhaps avoid the necessity of serving an improvement notice.

I move amendment 172.

Malcolm Chisholm: Amendment 172 attempts to introduce another stage into the existing enforcement procedures. Although I am sympathetic to ensuring that providers are given opportunities and due notice of the need to change unacceptable practices, and a degree of

support from the commission to do so, Shona Robison's proposal does not add value to what is already proposed in the bill. The inspection process is the mechanism by which the commission will point out areas for improvement and provide advice as to how improvements can be made. There is no need for preliminary improvement notices to achieve that.

Proposed subsection (2) in amendment 172 would allow the commission to give guidance and assistance to providers about the required improvements. The inspection process is intended to be positive. The feedback that providers receive is meant to enable them to improve their services regularly. There is no need for an additional procedure. It is for providers to take action to improve the service as a result of recommendations in inspection reports.

10:30

Amendment 172 would provide no additional benefit and could lead to more protracted enforcement procedures and consequent potential risk to those who receive the service. The amendment could also deflect inspectors from their main tasks of monitoring services and protecting vulnerable individuals. I hope that Shona Robison will agree that the bill's enforcement provisions are adequate and that further proposals on improvement notices would be unnecessary. Accordingly, I ask her to withdraw amendment 172.

Amendments 56 and 57 deal with the action that the commission can take when the terms of an improvement notice are not complied with. The amendments are needed because there are different enforcement procedures for local authority adoption and fostering services. Improvement notices can be served on those services in the same way as for all services that the commission registers.

The notices will set out the improvements that are needed and when they must be achieved, but because local authorities are under a statutory duty to provide those services, the commission will be unable to cancel their registration, as it can that of other care services, if improvement notices are not complied with. Instead, the commission will have the power to make a report to ministers that details its concerns about the quality of the service. That is a strong power. Ministers will then be able to take up those concerns with the local authority involved and, if necessary, take default action, as set out in part 1A. Amendments 56 and 57 are therefore consequential to part 1A. I commend them to the committee.

Amendment 27 is technical and is consequential to other amendments to section 12. It will ensure consistency throughout the bill and does not materially affect the existing provisions.

Amendment 172, by agreement, withdrawn.

Section 9—Improvement notices

Amendments 56 and 57 moved—[Malcolm Chisholm]—and agreed to.

Section 9, as amended, agreed to.

Section 10—Cancellation of registration

The Convener: I call John McAllion to move amendment 139, which is grouped with amendment 173.

Mr McAllion: Amendment 139 would add to the grounds for cancelling registration under section 10 the

"failure to pay the annual continuation fee under section 20(2)(b)".

The amendment has the backing of NAIRO and the head of inspection group of the Association of Directors of Social Work, which think that adding the new ground is necessary. They speak from long experience of inspecting premises and feel that the bill does not recognise that payment problem. I look forward to hearing the minister's reply.

I move amendment 139.

Dr Simpson: Amendment 173 would delete subsection (1)(c), which says that the commission may propose to cancel registration

"on any other ground which may be prescribed."

I understand the purpose of the provision, as it allows the commission additional powers to prescribe, but the wording seems incredibly wide. There is no indication of what the grounds might be. Subsection (1)(b) should cover most or all of the commission's requirements, because it provides

"the ground that the service is being, or has at any time been, carried on other than in accordance with the relevant requirements".

Subsection (1)(a) covers conviction for an offence, so I am not sure that there is any need for the broad set of additional powers.

Malcolm Chisholm: Section 10 gives the commission the power to cancel the registration of a care service, which, having been issued with an improvement notice under section 9, is still not meeting the relevant requirements. Concern may be expressed about how effectively the care standards are being taken into account, that a condition of registration has been breached, or that a relevant offence has been committed. As has been pointed out, further grounds may be prescribed by order. I will address that point in a

moment.

I can see the rationale behind amendment 139, as care services that do not pay their annual continuation fee should face some kind of sanction. I was somewhat surprised to hear that the amendment was lodged by John McAllion, given some of the things that he has said about fees in the past few weeks. I am not convinced that amendment 139 is necessary, as section 10 already provides for cancellation if the service is not being carried out in accordance with the act. Under section 20(1), ministers have the power to prescribe circumstances in which fees are payable, which would include annual continuation of a registration fee. Once the necessary order has been made, failure to pay the fees would mean that a care service had not met the requirements imposed by the act and the commission would meantime have grounds for cancellation under section 10(1)(b).

Allowing provisions to be set out in an order will allow additional detail to be included, for example, on what constitutes failure to pay. It also offers the flexibility to respond to unforeseen circumstances. Failure to pay is best addressed in that way. I hope that John McAllion will withdraw amendment 139.

Amendment 173 would delete the power to prescribe new grounds for cancellation by order. That would remove ministers' flexibility to respond to unforeseen circumstances. We cannot anticipate all the circumstances that might occur in the future. We need to be able to react swiftly should that be necessary. I hope that Richard Simpson will be reassured by my saying that Scottish ministers will do the prescribing. Although it may be dangerous for me to do so, I remind him that that provision can be found at many points in the bill—although I do not intend to encourage him to try to amend all of them out of existence.

The fundamental point is that the power to prescribe gives us the flexibility that we need. I repeat that the order is to be prescribed by Scottish ministers and would come before a committee such as this one. I hope that Richard Simpson will not move amendment 173.

Mr McAllion: I assure the minister that I am not in favour of "can't pay, won't pay" campaigns on every occasion. On this occasion, I am a vehicle for other organisations. They are concerned about the issue and asked me to raise it at the Health and Community Care Committee. I have done so and I am satisfied with the minister's reply that the powers under section 20 would allow ministers to ensure that those who were not paying their continuation fees would be dealt with. On that basis, I am happy to withdraw amendment 139.

Amendment 139, by agreement, withdrawn.

Dr Simpson: In general, I am not in favour of even ministers having powers to prescribe willy-nilly—not that the minister would do so. However, I am reassured by the minister's assurance that the committee would be consulted on the matter. I am happy not to move my amendment.

Amendment 173 not moved.

Section 10 agreed to.

Section 11 agreed to.

Section 12—Applications in respect of a registration

The Convener: We now come to amendment 7, which is grouped with amendments 8, 9, 58, 59 and 60.

Malcolm Chisholm: Amendments 7, 8 and 9 are technical amendments to ensure that there is consistency throughout the bill. They do not materially affect the existing provisions. If the commission grants an application for a change of condition, it must give notice in writing and issue a new certificate of registration. The amendments do not change that position.

Amendments 58 and 59 make minor amendments to section 14, which sets out that a person can make representations to the commission about conditions that the commission proposes to attach to their registration. Amendment 58 is a technical amendment, which is designed to simplify the existing text. The amendment does not materially affect the provisions under section 14 or any other part of the bill. Amendment 59 provides that section 14 shall not apply to local authority adoption or fostering services. There is to be separate provision for local authorities to appeal against condition notices that are imposed on adoption or fostering services in part 1A. We will discuss that later.

Amendment 60 introduces a new provision in place of section 8(3), which amendment 55 leaves out. The amendment seeks to clarify what numbers the commission would limit. The commission will be able to use the power to keep the scale of a new provider's operation to an appropriate level or to limit the extent of an existing provider's operation. That would be a useful addition to the existing powers relating to enforcement action. For example, where a provider is served with an improvement notice, it would be useful for the commission to be able to ensure that the service did not exceed a particular scale until the terms of the improvement notice had been met. That would be a valuable additional power for the commission to use where necessary.

I move amendment 7.

Amendment 7 agreed to.

Amendments 8 and 9 moved—[Malcolm Chisholm]—and agreed to.

Section 12, as amended, agreed to.

Section 13—Further provision as respects notice of proposals

Amendment 159 not moved.

Section 13 agreed to.

Section 14—Right to make representations as respects proposals

Amendments 58 and 59 moved—[Malcolm Chisholm]—and agreed to.

Section 14, as amended, agreed to.

Section 15 agreed to.

Section 16—Urgent procedures for cancellation of registration etc

Amendment 174 not moved.

Section 16 agreed to.

After section 16

Amendment 60 moved—[Malcolm Chisholm]—and agreed to.

Section 17 agreed to.

Section 18—Offences in relation to registration under this Part

The Convener: I call amendment 140 in the name of John McAllion. The amendment is grouped with amendments 61, 131, 132 and 134.

Mr McAllion: Amendment 140 is again inspired by the National Association of Inspection and Registration Officers. It would add additional registration offences in respect of anyone who

"provides a care service while disqualified from registration"

or anyone who

"knowingly employs a disqualified person to provide a care service".

The amendment is a probing amendment. NAIRO has asked whether the bill's intention is to repeal the current process of issuing an enforcement notice on persons who mind children without registration, or, as outlined in the bill, to move straight to prosecution. NAIRO argues that, if the intention is to continue with the enforcement notice procedure, it will be necessary to include those two offences in the bill.

I move amendment 140.

The Convener: I call on the minister to speak to amendments 61, 131, 132, 134 and 140.

Malcolm Chisholm: John McAllion poses an interesting question that does not have anything to do with the amendment. I will address the amendment first and answer the question separately.

It is essential that the new regime has teeth. Although I do not want the courts to be a common feature of the regime, the bill must have strong provisions on offences.

Amendment 140, in the name of John McAllion, raises an important issue about the safeguards that are in place to ensure that so-called disqualified persons cannot run care services. I assume that amendment 140 means to refer to people who have been removed from the register of the Scottish social services council and who are, by virtue of that, unsuitable to run a care service. As part of its inspection regime, the commission will check whether people who are required to be registered with the council to do their job—such as heads of care homes—are registered and have not been removed from the council's register. There is already a regulation power related to that under section 24(2)(b).

10:45

Equally, employers will be required to check whether employees have the necessary registration for particular jobs. Our consultants, who are looking at the whole area of council registers, will look at that issue specifically. Although the issue is clearly important, it is best dealt with through the commission's inspection regime rather than through the provision of offences. The commission will be able to take the necessary enforcement action against any care service that is found to be employing a care person who has been removed from the relevant council register.

With those assurances on how the issue is being dealt with, I ask John McAllion to withdraw amendment 140.

Amendment 61 would insert provisions on adoption and fostering. If an individual or body that is not an adoption agency arranges the adoption of a child, it is already committing an offence under the Adoption (Scotland) Act 1978. There is therefore no need for the offence power in section 18 to relate to adoption. Amendment 61 would exclude adoption from that provision.

Amendments 131 and 134 would make provision for an offence if a person applies for registration to the commission or council and

"knowingly makes a statement which is false or misleading in a material respect".

That could relate to the applicant's initial application or to an application to vary or remove a

condition.

Amendment 132 would enable regulations to be made to

"make it an offence to contravene or fail to comply with ... any specified provision of the regulations; or ... a condition of registration".

I would not expect that power to be used frequently, as I hope that the commission will work with providers to resolve most problems. However, the amendment further strengthens the enforcement powers of the commission and gives the regulatory regime more bite.

I am not sure about the question that John McAllion asked on enforcement.

Mr McAllion: My question was on enforcement notice procedure.

Malcolm Chisholm: I am not sure that that is a universal procedure throughout Scotland anyway, although it is applied in certain areas. Clearly, there is an issue about whether one should proceed straight to prosecution. The amendments would make it an offence not to comply with the regulations, but the commission could, obviously, exercise some discretion if it wished. If the care service in question was a childminder, the commission could, if it wished, say that it would take action by the end of the week, or whatever. There is no intention to have enforcement provision in the way that John McAllion's question suggests—although there is a possibility that such a matter could be referred to a procurator fiscal.

The Convener: Do any other members wish to make a point?

Mary Scanlon: I ask for a point of clarification. I understand that the minister has said that staff would be accountable by being registered to the social services council. It has been pointed out to me that many nurses—who are accountable to the United Kingdom Central Council for Nursing, Midwifery and Health Visiting—will be employed in care homes. Given the fact that nurses are accountable to another body, can the minister assure us that nursing staff within the Scottish social services council will be accountable? How are nurses integrated into that?

Malcolm Chisholm: The UKCC would be the primary regulator, but I indicated in the stage 1 debate that we are having discussions so that we can have dual registration. The UKCC would remain nurses' primary regulator.

The Convener: Does John McAllion wish to press his amendment?

Mr McAllion: Given the minister's assurance that a disqualified person who was either providing the care service or being employed in the provision of a care service will be dealt with under the commission's inspection regime, and given the minister's further assurance that it is not the intention to use the enforcement notice procedure in such cases, I seek agreement to withdraw the amendment.

Amendment 140, by agreement, withdrawn.

Amendment 61 moved—[Malcolm Chisholm]—and agreed to.

Section 18, as amended, agreed to.

The Convener: We will have a short comfort break.

10:49

Meeting adjourned.

10:59

On resuming—

After section 18

The Convener: We now resume. I call amendment 131, in the name of the minister, which has already been debated.

Amendment 131 moved—[Malcolm Chisholm]—and agreed to.

Section 19—Offences by bodies corporate, etc

The Convener: Amendment 10, in the name of the minister, is grouped with amendments 11 and 12. I ask the minister to move amendment 10 and to speak to the other amendments in the group.

11:00

Malcolm Chisholm: This group of amendments is technical and would ensure that the offence provisions work as intended. Section 19 sets out the arrangements whereby bodies corporate, firms and other organisations, as well as individuals, can be prosecuted under the offence provisions in the bill. Amendments 10, 11 and 12 would amend section 19 to adapt it appropriately for local authorities as well.

I move amendment 10.

Amendment 10 agreed to.

Amendments 11 and 12 moved—[Malcolm Chisholm]—and agreed to.

Section 19, as amended, agreed to.

Section 20—Registration fees

The Convener: Amendment 175, in the name of Richard Simpson, is grouped with amendments 176, 160, 177 and 178. I ask Richard Simpson to move amendment 175 and to speak to the other

amendments in the group.

Dr Simpson: Representations that we received from many organisations expressed considerable concern over the possible level of registration fees. Although, under section 20(1), ministers can prescribe the maximum fees and indicate when fees will not be payable, concern was expressed over the exercise of those powers. There should be provision to ensure that the ministers take into account the bureaucracy of the system and the impact of fees on the service providers and on the standard of the service that is provided.

The minister has repeatedly taken the view that the level of registration fees that we are talking about is low compared to the turnover of organisations. Nevertheless, there are several voluntary, charitable and independent sector organisations that regard as substantial the possible increase in fees that has been discussed. Relating those fees to the turnover of the commission does not seem to be an acceptable argument.

Amendment 175 suggests that the minister should have regard to certain aspects of the providers' function and the care service provision. Amendment 178, which is also in my name, confers similar constraints on the commission in the exercise of its powers to impose registration fees. I move amendment 175.

The Convener: I call Shona Robison to speak to amendments 176 and 177 and to the other amendments in the group.

Shona Robison: As Richard Simpson said, almost every organisation that has given evidence to the committee said that it is not realistic for the commission to be self-funding and that, if it were self-funding, that would be detrimental to organisations and to community care budgets, because the cost would be passed on to them.

It is unfortunate that the minister does not seem to have taken those concerns on board. It cannot be that those organisations are wrong and the minister right. With that in mind, I lodged amendment 176 to change the emphasis in section 20. We have all found it difficult to address the issue of fees in the bill, which does not lend itself to addressing the matter. I have attempted to change the emphasis by removing the words

"reasonable expenses in carrying out its functions under this Act".

Those words allude to self-funding by the commission. My amendment would insert the words

"the anticipated impact of fees on service provision and service providers".

Amendment 177 can be taken either with amendment 176 or on its own. Essentially, amendment 177 would add that account should be taken of representations that were made to the commission by local authorities, health boards, voluntary organisations or other interested parties. Amendments 176 and 177 are about the principle of having ministers and committees listen to the evidence that is given. The overwhelming view of the organisations and people who submitted evidence was that full self-funding of the commission is totally unrealistic.

The Convener: John McAllion will speak to amendment 160.

Mr McAllion: When Richard Simpson described the reaction to the new regime for setting fees as being one of considerable concern, he was guilty of understatement—the reaction goes far beyond that. The briefing that the Convention of Scottish Local Authorities provided the committee with described the move to self-financing through fees from 2004-05 onwards as "unrealistic". Indeed, COSLA, along with many others who have given evidence to the committee, points out that

"moving money from one set of public bodies (local authorities) to another public body (the Commission) will not be the best use of the community care pound, as there will be a leakage of its value due to the cost associated with the administration of a fees system."

Such evidence has been given to the committee consistently by everyone in the field. COSLA has suggested that, where section 20 gives power to the commission to have regard to its own expenses in setting particular fees, it should also have regard to any representation made to it in that respect, particularly by local authorities and health authorities.

I understand that the commission will not make the critical political decisions about fees and that that will be a matter for ministers, which means that amendment 160 might not be technically appropriate. However, I believe that ministers will have to take into consideration the serious and strong representations that have been made to the committee. The proposals for self-funding have not been welcomed in the field and almost everyone is opposed to a move towards that kind of system.

Nicola Sturgeon (Glasgow) (SNP): This argument was well rehearsed at stage 1, both in deliberations in the committee and in the debate in Parliament. The amendments on fees that are before us this morning should come as no surprise to the minister. Like John McAllion, I think that Richard Simpson was understating the case when he said that there had been concerns about the new regime for setting fees. The witnesses that we heard from were as close to unanimous as it is possible to get. Their concerns fell into two broad categories. The first was about the impact of fees on service providers and the second was about

the burden of bureaucracy that is inherent in a fees-based system. It is felt that such bureaucracy would diminish the value of the community care pound. Those strong concerns were voiced by almost every witness who came before us and I think that the committee and, by extension, the Executive and the minister are duty bound to take cognisance of that.

The consensus from witnesses was that the bill focuses too much on making the commission self-funding and not enough on the effects that that will have on service providers and purchasers. Although no committee member objects in principle to fees, we need a better balance than we have at the moment between transparency about the costs of regulation through fees and the provision of a quality service.

I have no doubt that the minister will come up with a variety of technical objections to the amendments. Although his objections might or might not be valid, I hope that he accepts in principle that this section of the bill must be changed and that there will be changes at stage 3. Furthermore, I hope that he and his colleagues will listen to the overwhelming and unanimous concerns that have been expressed.

Mary Scanlon: Many residential care home owners will have to make a substantial investment in homes to comply with the bill's standards, which of course we all agree about. Such homes are faced with having to pay water rates for the first time; for example, Highland Hospice will have to pay £12,000 that it has never had to pay before. The voluntary sector is concerned that money from fundraising will be used to pay fees instead of providing and developing services, with the result that the range of services might diminish and that services might stand still instead of developing.

Furthermore, community care providers told the committee that this year they have had a 44 per cent increase per bed, which takes the figure up to £65 per bed. When NAIRO gave evidence, it raised concerns that such hefty, crippling fees would drive services—particularly childminding—underground. Most of us would prefer such services to be regulated rather than their being deregulated.

Finally, most care service owners are frightened by the prospect of the cost of continuation fees in a 40-bed home rising in 2004 from £2,600 to as much as £7,200. That would mean the end of many businesses.

The Convener: Before the minister responds to those points, I should say that members' comments reflect the evidence that the committee received at stage 1 from a number of organisations from all parts of the sector. As a result, I hope that the minister will address Shona Robison's point about that kind of unanimity.

Malcolm Chisholm: Clearly, as Nicola Sturgeon said, there has been much discussion about the impact of fee levels on providers of care. As a result, I am not at all surprised to see the amendments on fees, although it should be pointed out that the section as drafted is completely compatible with the concerns that have been expressed. Contrary to what Shona Robison said, the bill contains no allusion to self-funding and its provisions allow any kind of balance between fees and central Government grant.

Amendment 175 would require ministers to have regard to the likely administrative and general impact of fees on providers and their standard of service, and to consult as appropriate on proposed maximum fee levels. Amendment 175 is right to the extent that ministers should certainly consult providers about the effect of the proposed fees before laying the necessary order. However, I cannot accept the breadth of amendment 175 as drafted; indeed, Richard Simpson himself expressed some reservations about its wording. Furthermore, there is also a lack of clarity about the words "administrative" and "general" and the use of the term "service providers" is not consistent with the bill's terminology.

However, I propose to take the matter away and bring back an appropriate amendment at stage 3. I would involve Richard Simpson and anyone else who so wishes in drawing up that amendment. On that basis, I hope that he will seek to withdraw his amendment.

11:15

The other amendments—176, 160, 177 and 178—all deal with the functions of the commission, under section 20. They seek to require the commission to undertake a period of consultation and consideration, similar to that envisaged for ministers, before setting fee levels within the maximum that is prescribed by ministers. I am not inclined to accept the amendments, as I do not consider that such a secondary process is necessary. Before they set fee levels, ministers will consult those who will pay the fees about the effect of the proposed fees. I do not believe that a second consultation along similar lines would be worth while. I hope that those with an interest would feed their views to ministers and would not need a second invitation to air their views. Indeed, that would be only sensible, since the commission's decisions about fixing fees in section 20(3) would be hugely influenced by the prior decisions of ministers in section 20(1), as John McAllion correctly pointed out.

Once again, as Nicola Sturgeon predicted, the language in the amendments is not consistent with

the language of the bill. In addition, amendment 177 is not drafted entirely correctly to fit in with the bill. We are committed to ensuring that the views of those who would be affected by fees are heard in the fees-setting process. I am happy to lodge an amendment to that effect at stage 3. With that understanding, I hope that amendment 175 will be withdrawn and the others in the group not moved.

Nicola Sturgeon: I am not 100 per cent sure, but I think—I hope—that there was a sign of movement in there. Arguably, the real problem lies not on the face of the bill, but in the accompanying financial memorandum. Malcolm Chisholm said that the bill allows balance between fees and provision of services. That is true, but the problem is that the financial memorandum makes it clear where the Executive intends to strike that balance, which is unacceptable. The financial memorandum sets out the level of fees that will be required to make the commission self-funding. While I take some encouragement from the fact that Malcolm Chisholm is prepared to take into account in the setting of fees some of the issues that are contained in the amendments, what we perhaps need from the Executive, to give us and the people we spoke to real assurance, is a clear statement that departs from the financial memorandum and that says that self-funding will not be the driving force in setting fees. As things are laid out now, it is the driving force.

Perhaps we need movement away from that: not necessarily abandonment of the principle of self-funding but a statement to the effect that if achieving self-funding would make levels of fees unacceptably high, it will not be the driving force. The driving force would instead be the quality of service and the impact on services. I appreciate that that perhaps cannot be incorporated on the face of the bill. That takes me back to my original comment, which is that I fear that the real problem here is not the bill, but what the Government's intentions appear to be, as stated in the financial memorandum. It is movement on that matter that we will be looking for.

Mary Scanlon: Section 20(3)(b) says that

"where it appears to the Commission to be appropriate it may charge a nominal fee, or remit the fee altogether."

I see a glimmer of hope in that, when I hear the minister say that he will take into account the effect of the proposed fees. When someone says, "I'll go bankrupt and have to close my home next year", is there the possibility of negotiation? What criteria would be used for the charging of a nominal fee or remission of the fee? Will that be based on someone's profitability or their balance sheet, or are we talking about means testing? There should be consistency. I have a lot of sympathy for many providers in the private sector, but there is the possibility of abuse—someone could tell a hard-luck story in order to evade the payment of fees.

Mr McAllion: I welcome the minister's assurance that he will lodge an amendment at stage 3 to ensure that the bill will at least include provision for consultation of the bodies that are affected by the decisions. When he does so, I hope that he will make a statement about the principle of moving towards self-financing through fees beyond 2004-05. There has been a basic objection to that principle in the evidence that the committee has taken and the Executive must address that. I hope that the minister will address that point at stage 3.

Shona Robison: I support what has been said. The minister must demonstrate a change of emphasis towards the impact that fees will have and, as Nicola Sturgeon mentioned, away from the driving force for fees being the self-funding of the Scottish commission for the regulation of care. If the minister is giving assurances to that effect, I am sure that we can live with that. However, I ask him to reiterate that that is what he is saying.

Dr Simpson: I appreciate the minister's difficulty in trying to finance the Scottish commission for the regulation of care. I will give one illustration. The drive towards home care as opposed to residential care, which we all support, means that a number of independent, voluntary and charitable sector homes are operating on the margin. In my constituency there are homes with, for example, 75 beds, of which only 50 are occupied but 75 are registered. If the fee is only £40, the care home owner would not undertake the exercise of deregistering or reregistering the 25 beds that are not occupied. If that fee is multiplied by three, or three and a half, and reaches £120 or £150, a bureaucratic situation will exist in which care home owners are registering and deregistering beds when those beds are empty. The whole thing will become a complete mess.

The principle should be that services, rather than individuals, are registered. When the fees scheme is drawn up, there must be much greater clarity and determination to ensure that it is not bureaucratic.

I welcome what the minister said about consultation, but I ask him to have another think about the process. I look forward to meeting him and discussing that matter in more detail before stage 3.

Dorothy-Grace Elder: There is concern about homes that are on the margin, particularly those that are run by charities. However, the minister will be mindful of the overall unfairness to those smaller institutions. Some care organisations are so wealthy that they are registered in the Isle of Man and other tax havens. The minister must bear

in mind the fact that those wealthy organisations will pay the same fees as very small organisations. I have a list of some of those organisations that might be helpful to the minister.

The Convener: The issue is a key one for the committee. That is why I allowed all members to have their say. Does the minister want to comment on the points that have been raised?

Malcolm Chisholm: I thank members for welcoming what I said about consultation on the effect of the proposed fees. We are very aware of that dimension. As I have said elsewhere, in my work on the care development group, and particularly in relation to older people, I am interested in the whole supply side. We have to consider the whole range of factors that might affect the supply of services. I am dealing with that major consideration in a more general way in the care development group.

The bill is not based on self-funding; a large exemption has already been made in respect of child care. Moreover, at any point before or in 2004, people can put forward arguments. People are concerned mainly about what will happen when the regime moves from the pre-2004 set-up to what is proposed thereafter in the financial memorandum. I understand those concerns, but there is nothing in the bill that prevents anyone from arguing for subsidy for other services in 2004 or before that. I made the point that the bill does not shut down any particular options, although Shona Robison is right to point to the financial memorandum.

To answer Mary Scanlon's point, under section 20(3)(b), it will be for the commission to decide when to charge a nominal fee. Earlier, we discussed the fact that that provision would allow the commission to waive fees when a service provides more than one care service and would allow the commission to take other matters into account in considering whether to waive a fee. Strictly speaking, the wording of that section means that the commission could take into account the factors that Mary Scanlon referred to, although I do not imagine that it would be easy for it to do so on a case-by-case basis. However, members will be more interested in the general principles that underlie the fee regime than in specific exceptions.

I have listened to, and I am continuing to investigate, people's concerns: the guarantee that I have given to lodge an amendment requiring consultation on the effects of registration fees indicates that. I reiterate the point that nothing in the bill precludes a change in the proposed balance between fees and central Government grant.

Nicola Sturgeon: I hope that we can make progress today and we have all welcomed the proposed amendment. However, in the financial memorandum—the statement of the way in which the Government intends to implement the new system—the Executive's attitude to fees seems to be determined by the drive towards self-financing. We are seeking a statement from the minister to the effect that, if it became clear—we think that it is clear already—that self-financing is incompatible with a fee structure that protects the service supply, the principle of self-financing would not be sacrosanct and would not take priority over the protection of the service. That reassurance is what I seek to convince me that the minister is listening to the concerns that are being expressed.

Mary Scanlon: Policy seems to be being made on the hoof and I seek some clarification. The minister said that, if someone was providing five services, discretion could be used, and that the commission will have a lot of discretion. I am concerned about what lies behind the Executive's thinking on the matter. When would it be appropriate to reduce or waive the fee?

If someone said that they would have to close down their residential home or day-care centre, would they still have to pay the full fee because they had finances in the Isle of Man or because they had plenty of money? If they were on the breadline—Richard Simpson cited the fact that some homes are two-thirds full and are not getting referrals—the prospect of closing down would lead to a lot of negotiation, many appeals and much bureaucracy. I imagine that anyone who was faced with fees of a few thousand pounds would lodge an appeal and make a good case for not paying those fees. Can we have more clarification, further to the example that was given previously?

Malcolm Chisholm: Mary Scanlon makes a good point. If the payment of fees became a problem, guidance would have to be issued. However, I do not envisage it being a major problem for the commission. It is the setting of maximum fees that is crucial in section 20. The commission will have some discretion, but it must cover its costs; the ministers' decision on maximum fee levels will be the fundamental driver of the fees policy. As John McAllion said, that is the fact of the matter.

Margaret Jamieson: I seek further clarification. The minister is suggesting that there could be thousands of different interpretations. His response to Mary Scanlon has further muddied the waters—

Mary Scanlon: I am good at that.

Margaret Jamieson: You certainly are this morning, Mary.

It is obvious that the commission must consider many issues when it performs inspections.

Dorothy-Grace Elder made a point about how organisations that hold their accounts offshore must still declare their incomes, as they must go through financial checks as well as the checks that will be done when the inspectors go round those establishments.

Given what the minister has just said, it is difficult to know what the fee structure will be. What he said leads me to think that the fee structure could be changed. For example, several homes in one street could be treated differently. I thought that the bill aimed to introduce standardisation of services; if there is standardisation of services, there should be standardisation of fees.

11:30

Nicola Sturgeon: I would like an answer to my basic question. I appreciate the points of detail that have been discussed, but a point of principle is involved. As matters stand, the minister's policy is to make the commission self-funding. Will he confirm that, if that policy turns out to be incompatible with the protection of the supply and quality of services—which is what we believe will happen—the quality and supply of services are more important to him than the principle of self-funding?

The Convener: It is a question of primacy, is it not?

Nicola Sturgeon: The minister will not dodge my question if he answers it now.

Dr Simpson: What the minister said has helped me to understand the situation. The financial memorandum indicates that self-funding is paramount. However, if the minister makes some groups, such as childminders, exempt from paying fees, and determines that other groups, such as charitable service providers, should not pay a fee or should pay only a minimal fee, the commission will have to work out its budget annually and in a way that reflects the provision of the service.

We are getting into an area of such complexity that it reinforces the argument that was put to us originally: there will be a substantial increase in administrative costs and in the bureaucracy that is involved in the transfer of the care pound from central Government, through local authorities or health boards, to other providers. We must consider that carefully before we go down that route. I will be frank: while I welcome the minister's comments this morning to a degree, I am even more concerned about the bureaucracy of that set-up.

The Convener: The first question that we would like you to answer, minister, is about primacy, either of the supply and quality of services, or of the move towards self-funding. Nicola Sturgeon asked that question a couple of times. Then you may move on to the issue of bureaucracy—

Malcolm Chisholm: There is a general issue and a particular issue. Mary Scanlon raised a good point—

The Convener: Will you answer Nicola Sturgeon's question first?

Malcolm Chisholm: Would you like that question to have primacy?

The Convener: Yes.

Malcolm Chisholm: I have nothing to add to what I have said. The bill does not deal with that question and the financial memorandum states existing policy, which I have talked about at great length. I can safely predict that there will be further debate on the issue at stage 3.

Nicola Sturgeon: Can I clarify what you mean? Does your policy on fees and self-funding, as laid down in the financial memorandum, remain the same?

Malcolm Chisholm: It is clear that that is the policy, as no one has announced a change to it. However, I have taken on board the comments that have been made about consultation and so on. This issue will come up again at stage 3 and I cannot add to what I have said about it today.

Mary Scanlon made a good point and has demonstrated how effectively the committee system is working. Although we intend that the commission will set its fees consistently and that section 20(3)(b) will be used for exceptions, I recognise that I must examine the precise wording of that provision. I will certainly reflect on whether our intention is accurately delivered by the existing wording, as it is clear that members are suggesting that section 20(3)(b) has wider implications than were intended. It is helpful that that has been drawn to our attention.

The other matter is clearly the most controversial, although it is not actually dealt with in the bill yet. I have stated the position as it is today; I will obviously reflect further on it. I hope that the amendment that I have promised will be helpful. Clearly, there will be discussion of the matter at stage 3. In the meantime, I will reflect on what members have said.

Amendment 175, by agreement, withdrawn.

The Convener: Amendment 62, in the name of the minister, is grouped with amendments 63 to 68, 70 to 75, 133, 69, 77 and 87.

Malcolm Chisholm: As I explained last week, it was always our intention that adoption and fostering services, whether provided by local authorities or by voluntary organisations, should

be subject to the new commission's registration and inspection regime, in the same way as other providers of care services.

The amendments in this group, which are all in my name, set out the detail of how that can be achieved for local authority services. Amendments 62 to 67 will ensure that public sector adoption and fostering services are treated in the same way as other care services with regard, for example, to payment of fees, timing of inspections, any regulatory requirements on making applications for registration, and categories of applicants who cannot competently make applications.

Amendments 68 to 75, 133 and 77 will insert a new part 1A to cover the special circumstances under which local authorities provide adoption and fostering services. As I noted last week, it is not legally possible for the commission either to refuse to register or to deregister a statutory service. Local authorities have a statutory duty to provide such services and cannot therefore be prevented from doing so by the commission. We have therefore made special provisions to ensure that we can maintain and improve service standards.

Local authorities will have to apply for registration, which the commission will grant either unconditionally or conditionally. The same provisions as in part 1 will apply in relation to condition notices. The difference is that the new commission will have to report to the Scottish ministers in certain situations. In particular, the commission must copy improvement notices, and report on their outcomes, to ministers. It must also report on other matters when it considers that necessary, or if the Scottish ministers require it to do so. For example, the commission may consider that a service is not being carried out in line with relevant requirements, which will include national care standards for adoption and fostering.

Instead of deregistration by the commission, Scottish ministers will be able to take default action against a local authority if they are satisfied that the authority has no reasonable excuse for failing to comply with an improvement notice or for not complying with relevant service requirements.

Amendment 87 will adjust the definition of a condition notice to take account of proposed part 1A.

The amendments are important and will help to ensure that adoption and fostering are properly covered by the bill. I commend them to the committee.

I move amendment 62.

Mary Scanlon: Given that the British Agencies for Adoption and Fostering and other organisations raised at stage 1 the issues that are covered by the amendments—they were not covered by the bill as introduced—I seek assurance that, if any of the relevant organisations feel that further amendments are necessary, such amendments could be lodged for discussion at stage 3.

The Convener: It is up to members to lodge amendments. There is an issue about the sheer volume of amendments that will be proposed at stage 3. The Presiding Officer must be made aware of the substantial number of amendments that will be lodged for that stage with ministerial and committee agreement. We may be heading into an issue about the amount of time that is available for consideration of stage 3 amendments.

Mary Scanlon: I feel that this is an exceptional circumstance.

The Convener: It is entirely up to the Presiding Officer. Given the likely volume of stage 3 amendments, I will certainly discuss the matter with him at some point between now and stage 3. That will be useful for both of us.

Amendment 62 agreed to.

Amendments 63 and 64 moved—[Malcolm Chisholm]—and agreed to.

The Convener: Does Shona Robison wish to move amendment 176?

Shona Robison: I will not move the amendment, but I add a caveat. The minister has made a commitment to introduce an amendment and to reflect further on the financial memorandum.

Amendment 176 not moved.

Amendment 160 not moved.

Shona Robison: I will not move amendment 177 on the same basis as I did not move amendment 176.

Amendments 177 and 178 not moved.

Section 20, as amended, agreed to.

Section 21—Inspections

The Convener: Amendment 141, in the name of John McAllion, is grouped with amendments 179 and 142.

Mr McAllion: Section 21 deals with inspections and the powers of the commission and its inspectors. At line 27 on page 12 of the bill, after the word "service", amendment 141 would insert the phrase

"or whom the Commission has reasonable cause to believe is providing a care service".

Amendment 141 was inspired by NAIRO, which says that inserting the phrase would empower the

commission to obtain information in advance of any inspection, as described in section 21(2)(b).

Amendment 142 was also inspired by NAIRO. It would give powers to the commission's inspectors to enter a range of premises to inspect records or registers, including ones held on computer, that relate to various services, service users and staff. NAIRO argues that the amendment is necessary because the current wording of section 21(2)(b) is not robust enough to ensure the right of access to premises—such as a care provider's own home—other than those in which the service is mainly provided. Amendment 142 ensures that commission staff have the right to inspect relevant records that are held away from the main premises in which care or support is provided. It substantially reinstates section 6(2) of the Social Work (Scotland) Act 1968, as amended.

Removing everything from line 37 on page 12 to the end of line 8 on page 13 would have the effect of avoiding duplication of inspections by Her Majesty's inspectorate—unless I have got that mixed up. Yes, I have. Forget that last part.

The Convener: Strike that.

Mr McAllion: Strike that from the record.

I move amendment 141.

Malcolm Chisholm: Amendment 141 provides for suspected illegal providers to be required to provide information. I do not consider that amendment 141 is necessary. In such a situation, the commission would use powers in the bill under section 21(2)(b) to enter and inspect premises that it believed were being used to provide a care service. I believe that that power will be sufficient to enable the commission to form an opinion as to whether a care service was being provided or not. In any case, I think that members will realise that there is nothing to stop the commission writing—just as we can write to anyone. Clearly, however, they require a specific power to break into someone's premises, just as we would. On that basis, I ask John McAllion to withdraw amendment 141.

Amendment 179 is a small technical amendment to remove a redundant word in section 21(2)(b). The word "may" has already appeared in line 31. The change will have no material effect on the provision.

Amendment 142 would allow the commission to see all records relating to staff or users of care services that are held by local authorities, health boards and so on. That could be interpreted as including records that have nothing to do with the care service, for example, the medical records of staff, or the rent and council tax records of staff and users. That is far too wide and has confidentiality and European convention on human rights implications. Section 21(4) and section 21(6) already give inspectors sufficiently wide powers to undertake their job effectively.

Given my reassurance that the issue is covered in the bill to the required degree, I ask John McAllion not to press his amendments.

11:45

Dr Simpson: I hear what the minister says. I understand that, under section 21(2)(b), the commission has powers to enter and inspect care service premises. However, where it suspects that a service is being provided—or has reasonable cause to do so as John McAllion's amendment sets out—a reasonable first step would seem to be for the commission to seek information from that person, rather than to enter and inspect premises. Unless I have misunderstood the wording of that paragraph, the commission does not have the powers to seek information from people whom it suspects are providing care services. The minister should give serious consideration to what would seem to be an omission from the bill.

Malcolm Chisholm: As I said earlier, there is nothing to stop the commission writing to the person under suspicion. There is a difference between doing that and breaking into someone's premises.

The Convener: I am glad that you spot the difference.

Malcolm Chisholm: My fundamental argument is that the commission could send somebody to check that the care service premises existed. That would be the obvious thing to do. There is clearly nothing in the bill, or in law, to stop the commission writing to a person under suspicion, if it so wishes.

Dr Simpson: The word that we are debating now is "require". It is an important word. I recognise that, at the moment, there is nothing to stop the commission writing to anybody, as and when it wants to do so. However, it cannot require a response from a person whom it suspects, or has reasonable cause to believe, is providing a care service. If that requirement was in the bill, those people would have to respond to letters from the commission. I presume that somewhere in the bill there is provision for people who do not respond, whereby they would be deemed to be disobeying the act and would be punished. I am sorry to press the minister on the matter, but that first step should be included in the bill.

The Convener: As no other members have comments to make, I will ask the minister to respond.

Malcolm Chisholm: I have nothing to add to what I have already said.

The Convener: In that case, will the minister look at that issue again?

Malcolm Chisholm: Yes, I undertake to do so.

Mr McAllion: I support everything that Richard Simpson has said in the debate. It is a trifle optimistic for the minister to assume that everyone who provides a care service is a reasonable person, and that they will always respond to letters written by the commission. The commission needs to have powers to require those whom it suspects of providing a care service to supply information. For the commission only to be able to write to those people is to give it a weak option. When the minister has had an opportunity to reflect on that point, he may want to return with a different attitude to it at stage 3.

I accept the minister's point on amendment 142. I agree that inspectors should not have a right to information on matters such as rent and council tax. However, the amendment makes the serious point that there may be some care providers who keep records relating to the care service, not on the care service premises but in their homes. I need to be satisfied that inspectors would have rights of access to those records, in the same way that they have rights of access to records held at the care service premises. The minister has not yet addressed that important point. I ask him to give an assurance that he will reconsider that point and come back to the committee with his response, at or before stage 3. A direct response from the minister would help me in my decision about pressing amendment 142.

Malcolm Chisholm: In my response to section 21 amendments, I had to address a number of points that related to issues of confidentiality and the ECHR. However, given that the amendments are detailed, I will look more closely at the individual points that were raised, to see if they need to be covered by the bill.

Mr McAllion: Given the minister's reassurance, I am happy to withdraw amendment 141.

Amendment 141, by agreement, withdrawn.

Amendment 179 moved—[Malcolm Chisholm]—and agreed to.

Amendment 142 not moved.

Amendment 65 moved—[Malcolm Chisholm]—and agreed to.

The Convener: Amendment 180, in the name of Shona Robison, is grouped with amendment 143. If amendment 180 is agreed to, I cannot call amendment 143 due to the pre-emption rule. I invite Shona Robison to speak to amendment 180 and to speak to both amendments in the group.

Shona Robison: After the issue of fees, the proposed level of inspections has been the most contentious issue in the bill, and one on which we have received much evidence. Most of the bodies that have given evidence have said the same thing: that it is wrong to consider reducing the number of inspections of residential care from two to one, which would constitute a reduction in the regulation of care and send out the wrong signal at a time when it is important to bolster public confidence in residential services. It is equally important that one of those inspections should be unannounced, to allow on-the-spot inspections to take place that would give a more accurate picture of the service that was being provided.

Amendment 180 is not so different from amendment 143; however, it is too restrictive to specify that only day care services will receive an inspection. The many other care services that are to be regulated by the bill are listed under section 2. I hope that the minister has listened to the evidence that has been received on the matter and that he will consider accepting amendment 180.

I move amendment 180.

The Convener: I call John McAllion to speak to amendment 143 and the other amendment in the group.

Mr McAllion: Amendment 143 was inspired by NAIRO, but COSLA and the Association of Directors of Social Work also support it. The amendment attempts to do the same as amendment 180, requiring yearly inspections of day care centres and at least twice-yearly inspections of residential services. Those inspections would take place in the 12 months immediately following registration, and one of them would be unannounced. Amendment 143 deletes the text from line 37 on page 12 to line 8 on page 13, thereby removing the possibility of duplication through HMI inspections carrying on at the same time.

I hope that the minister will take time to address this important issue, as there is widespread support for the idea of having at least one unannounced inspection of such services throughout the country.

Nicola Sturgeon: This is another important issue, which has inspired feelings as strong as those that were inspired by the fees sections. We appreciate the fact that, at the moment, there is no statutory inspection requirement. Nevertheless, people feel that what the bill proposes is a move away from current practice. If there was a statutory requirement for a single inspection, that is what there would be: there would be no level of inspection of the service above the statutory minimum. A great deal of concern has been expressed about that.

Witnesses also recognised that a distinction

should be drawn between day care centres, however broadly they are defined, and residential services. The argument was put for having announced and unannounced inspections of the latter, the reasons for which are pretty obvious. The people who provide care in residential settings should always have at the back of their minds the thought that somebody could turn up at any point and inspect the quality of the care that they are providing. Inspection should not take place only once a year, on which occasion they put on their best clothes, get the books in order, do the hoovering, tidy up and ensure that things are looking good. The arguments for unannounced inspections are overwhelming, and I hope that the minister has reflected on discussions that have taken place in the committee and at stage 1, and that he will be prepared to accept one of these amendments in principle, even if there are technical difficulties with them.

Margaret Jamieson: I support the idea that residential services should be inspected twice yearly because, as a number of the witnesses said, the staffing ratios and the skills mix that is available can vary, particularly on the overnight shifts. From previous experience, I know that health board establishments would be subject to unannounced overnight inspections. Such inspections uncovered difficulties and some registrations were removed because there had been inappropriate levels of staff or the required skills mix had not been present. We have an obligation to the general public to ensure that all services are being appropriately inspected. The bill is designed to regulate the care services but the public also expects the services to be safe 24 hours a day, seven days a week, 52 weeks a year.

The amendments go a long way towards strengthening the bill, as the minister previously indicated that there would be only one inspection a year.

Malcolm Chisholm: I welcome amendments 180 and 143. I recognise that, for users of residential services, one inspection a year might not be enough while, for other groups, it might be sufficient.

Our inspection methods working group is currently considering the number of inspections that are required for each care service and the skills mix that the commission will need. My understanding is that they are already persuaded that at least two inspections, at least one of which would be unannounced, should be the norm for residential services, which include care homes for adults and children, secure accommodation, school care accommodation and certain independent health care services such as hospices and hospitals. We will have to consider how such a process will work in practice in the light of the advice of the working group.

On that basis, I am sympathetic to amendments 180 and 143. However, the wording of the amendments would have to be altered to correspond with the terminology in the rest of the bill, as the terms “day care services” and “residential services” are not used in the bill, whereas the terms that I used a moment ago are.

John McAllion’s amendment 143 also seeks to remove section 21(3)(b)(ii), which provides for a 12-month gap between HMI inspection and inspection by the commission. We are considering ways in which better integration of the roles of HMI and the commission can be achieved. John McAllion has, therefore, anticipated the probability that the provisions in section 21(3)(b)(ii) will have to be removed.

I can undertake to produce an amendment at stage 3 to deal with inspections of residential services at least twice a year with at least one of those inspections being unannounced and to bring forward the legislative consequences of our new thinking on the integration of roles of HMI and the commission. On that understanding, I ask John McAllion and Shona Robison not to press their amendments.

Margaret Jamieson: I welcome the minister’s comments. This significant move will be welcomed by everybody who gave evidence and by the members of the committee. It would be helpful, minister, if you could give us an early indication of what form your stage 3 amendment is likely to take and of the on-going work that you mentioned. That would be extremely helpful to the committee.

Dorothy-Grace Elder: We welcome the move, minister. People have obviously been listening to the views of the committee. I noticed that you said that at least one inspection would be unannounced, which indicates that it would be possible for both to be unannounced. Would you accept that that might be more appropriate, as, in some cases, one inspection would be during the day and the other might be during the night? That might offer more protection to the residents.

Mary Scanlon: I am getting quite concerned about the number of amendments that are due to be lodged at stage 3. I support the point that Margaret Jamieson made and ask for a copy of the amendments before they are lodged and request the opportunity to discuss them in the committee, given that we cannot ask for a stage 4. Although I welcome the amendments that we are due to deal with at stage 3, they are beginning to look quite onerous, given their number.

The Convener: I echo that view.

Malcolm Chisholm: The committee will want to examine the amendment that I have just proposed

and the others in good time in case you decide that you want to amend them or act in whatever way you are free to do. I will ensure that the amendments are made available to the committee. Dorothy-Grace Elder has made her point, but I do not think that I can go further than what I said in my statement. No doubt that point will be discussed further when the amendment comes before the committee.

The Convener: Shona Robison, do you want to press or withdraw your amendment?

Shona Robison: On the basis of what the minister has said, I would like to withdraw my amendment.

Amendment 180, by agreement, withdrawn.

Amendment 143 not moved.

The Convener: This feels like a reasonable point at which to take a break from consideration of the amendments. We are certainly not going to get through all the amendments this morning and we have dealt with a substantial part of the bill.

To recap, there has been movement on three key areas this morning: local area involvement, fees and inspections. I welcome the minister's agreement to bring the amendments before the committee in good time prior to stage 3.

I thank the minister and the bill team for their attendance. We will now move into private session.

12:01

Meeting continued in private until 12:33.

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