HEALTH AND COMMUNITY CARE COMMITTEE

Wednesday 7 November 2001
(*Morning*)

Session 1

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HEALTH AND COMMUNITY CARE COMMITTEE

† 26th 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

WITNESSES

Shona Barcus (Community Care Providers Scotland)
Malcolm Chisholm (Deputy Minister for Health and Community Care)
Annie Gunner (Community Care Providers Scotland)
Jim Jackson (Community Care Providers Scotland)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Peter McGrath

ASSISTANT CLERK

Graeme Elliott

LOCATION

Committee Room 1

† 25th Meeting 2001, Session 1—held in private.

Scottish Parliament

Health and Community Care Committee

Wednesday 7 November 2001

(*Morning*)

[THE CONVENER *opened the meeting at 09:35*]

Item in Private

The Convener (Mrs Margaret Smith): Good morning, everybody. Welcome to this morning's Health and Community Care Committee.

I begin, surprisingly, with item 1, which is to ask whether the committee is prepared to take the draft budget response in private. Is that acceptable to members?

Members *indicated agreement*.

Subordinate Legislation

The Convener: Members were asked whether they wished to have the affirmative instruments debated. No comments have been lodged to that effect, so I suggest that we do not formally debate them this morning. Is that acceptable?

Members *indicated agreement*.

Community Care and Health (Scotland) Bill: Stage 1

The Convener: We have with us representatives of Community Care Providers Scotland. Good morning and welcome. Would you like to introduce yourselves and make a short statement? My colleagues and I will then ask you questions.

Annie Gunner (Community Care Providers Scotland): Thank you. It is a pleasure to be here.

Community Care Providers Scotland is the association for voluntary sector care providers. I am the co-ordinator of CCPS and my colleagues are members of the management committee. On my right is Shona Barcus, the chief executive of the Scottish Association for Mental Health, and on my left is Jim Jackson, the chief executive of Alzheimer Scotland—Action on Dementia.

I do not want to make a lengthy statement, because we have already given you written comments, but I will say something about who we are. Shona Barcus, as well as being on the CCPS management committee, is a member of Disability Agenda Scotland, which has also submitted written evidence to the committee. Jim Jackson was a member of the care development group. Although we are here on behalf of CCPS, you are in some ways getting three for the price of one. If we can help you with other areas, we would be happy to do so.

The Convener: In your written submission you say that you think that a set of general principles should be outlined in the bill, which is not the case at present. Will you expand on that and tell us whether you generally welcome the bill and think that it will improve equity and fairness in the community care services?

Annie Gunner: We broadly welcome the bill. When we were last before the committee, we talked about the Regulation of Care (Scotland) Bill, which we were keen should outline a set of principles. In fact, we wrote a draft set to put before the committee.

The Community Care and Health (Scotland) Bill is slightly less straightforward. It is a composite of different policy strands, whereas the Regulation of Care (Scotland) Bill was about one clear area. However, two principles come out quite strongly in the Community Care and Health (Scotland) Bill. One is about the enhancement of rights of users and carers through free personal care, direct payments and carers assessments, and the other, in part 2, is about joint working. We would be happy to see a set of principles in the bill. We thought that the Parliament set a good example by

expressing in clear terms in the Regulation of Care (Scotland) Bill what that bill was all about.

We have some comments about the principle of equity in particular. The majority of CCPS members provide care not for elderly people, but for younger disabled adults. We are concerned that the discussion about equity has focused on income versus diagnosis, whereas the issue for some of our members is age. Nothing in the bill excludes younger disabled adults from the entitlement to free personal care, but we believe that that will be a matter for regulation.

Janis Hughes (Glasgow Rutherglen) (Lab): How did you consult your member organisations and gather their views on the bill?

Annie Gunner: We held a consultation meeting. We had three or four weeks' notice and we invited all our members to the meeting as well as the network of local provider forums with which we are beginning to link in. The local provider forums include some of the smaller agencies. The membership of CCPS predominantly consists of the large, national organisations. We have set up a system to link up with local provider forums in Edinburgh, Glasgow, Grampian, Highland and Moray. We sent our draft comments to them and, with all our members, they were invited to the meeting. Some of them sent me e-mails. We got round to almost all our members.

Janis Hughes: Do you think that the Executive has provided an adequate opportunity for you to consult and take on board the views of the people whom you represent?

Annie Gunner: So far, yes. However, if significant issues are to be taken forward in regulations rather than in the bill, we want a further duty to be placed on the Executive to consult on regulations. I am thinking of the definition of free personal care—what will and will not be chargeable. Another issue relates to age limits, as I mentioned. It is not that important to us whether those issues are addressed in the bill or in regulations, but if it is going to be the latter, there needs to be something in the bill confirming a requirement to consult. That was a slightly tortuous way of putting it.

Janis Hughes: You said that you welcomed the notice that you were given before coming before the committee, as that allowed you to consult your members. However, the care development group's final report, "Fair Care for Older People", was published on 14 September and the bill was introduced on 25 September. Was that timing appropriate given that it limited the period for consideration?

Annie Gunner: The period was relatively short, but the different elements in the bill had already been the subject of consultation. The joint working and direct payment elements were included in the document "Better Care for all our futures", which had been out for some time. The care development group did a lot of consulting over the summer. Nothing in the bill was a huge surprise; it contained nothing about which we had not already had some opportunity to make our views known. However, I agree that the time between the publication of the report and the introduction of the bill was rather short.

Mr John McAllion (Dundee East) (Lab): Good morning. In your initial comments and in your submission, you raised the issue of age. You said that the majority of the organisations that you represent deal with younger disabled adults and that, although the bill does not specifically exclude them from free personal care, it does not specifically include them. Has CCPS assessed how many younger disabled adults pay for personal care in Scotland? How can the Executive best address that issue in the bill?

Annie Gunner: We have not done that work, but we think that someone should.

Jim Jackson (Community Care Providers Scotland): As a member of the care development group, I should point out that our task was to collect the background figures to find out whether free personal care was affordable. We believe that a similar exercise needs to be carried out in respect of younger people. We do not know how large the problem is. In some cases, younger people can access other benefits.

In terms of equity, it seems wrong that someone aged 64 with dementia would not be eligible for free personal care, whereas a person aged 65 would be. That would apply to other disabilities and illness. We would therefore like the Executive to put together a group that would investigate the needs of the under-65s and the numbers involved and calculate the cost of introducing free personal care for that group.

Mr McAllion: Let me be clear about this. You seem to be suggesting that the work of the care development group was to establish whether free personal care for the elderly was affordable. You say that the group has done that, or thinks that it has, but that it has not done any work on whether younger disabled people should have access to free personal care.

Jim Jackson: The terms of reference of the care development group were for people aged over 65.

Mr McAllion: Is it the case that we simply do not know whether we can afford free personal care for younger disabled adults within the Scottish Executive's budget?

Jim Jackson: That would be my answer, yes.

09:45

Mr McAllion: You have said several times this morning that you believe that there should be a duty to consult on the regulations that will define who gets access to free personal care and who is charged for care. Those regulations are already subject to parliamentary scrutiny. Are you suggesting that, over and above that parliamentary scrutiny, there should be a duty on ministers to consult organisations such as yours?

Jim Jackson: We believe that there should be a duty to consult before parliamentary scrutiny so that, by the time the Parliament is asked to scrutinise, information on what is generally felt about the proposed regulations will be available to members.

Mr McAllion: So even before the regulations are introduced, you want ministers to have a duty to consult relevant organisations.

Jim Jackson: That is what we would like. If my memory is correct, the Regulation of Care (Scotland) Act 2001 contains various requirements for the Executive to consult. We think that a similar provision should be introduced into this bill.

Mr McAllion: Is it your impression that young disabled adults will be given access to free personal care through the regulations? Do you think that that is the Executive's intention?

Annie Gunner: Our impression is that young disabled adults will not be given access to free personal care. That seems to be what the policy memorandum says. The policy memorandum refers to older people's services pretty much all the way through.

Mr McAllion: Do you suspect that that is on the ground of cost?

Annie Gunner: I do not know what it is on the ground of, because it is not even discussed.

The Convener: Let us hold on to that question for another half hour.

Mr McAllion: We shall ask the minister.

Shona Robison (North-East Scotland) (SNP): You have given a fairly detailed account of the definition. I think that you are saying that you would be happy for the definition of personal care either to be in the bill or in regulations, but only if there is consultation on those regulations prior to parliamentary scrutiny. Is that your position?

Annie Gunner: Yes.

Mary Scanlon (Highlands and Islands) (Con): You acknowledge the extension and expansion of direct payments and we note that you have set up a working group to examine that in more detail. What are the remit, membership and time scale of that working group?

Annie Gunner: The group is an internal one set up by CCPS and composed of CCPS members—organisations that are care providers.

Mary Scanlon: When are you likely to report your findings?

Annie Gunner: Probably in January or February. We are about halfway through our deliberations.

Mary Scanlon: The bill will probably be completely through Parliament by then, so your report will be of little use to us, even though you represent so many organisations. As you told Janis Hughes, you have had plenty of time to consult. Is not it possible for you to represent your organisations and advise us?

Annie Gunner: We can probably give you some kind of interim report. The working group is a purely internal exercise. We have been concerned that providers have not been considered in the context of direct payments and we feel that the way in which direct payments operate has significant implications for care providers. The group is something that we have set up, resourced and decided to do completely by ourselves, which puts certain restrictions on how soon we can report.

Mary Scanlon: Given that very few people in Scotland have taken up direct payments—I think that it is 129 in total—I would not have thought that the exercise was huge. In the Highlands, only three people have taken up direct payments. What is your response to direct payments for those recovering from drug and alcohol addiction, for those fleeing domestic abuse and for all others who may benefit? Will direct payments address choice? You have said quite a bit about the voluntary and independent sector. Will direct payments increase the uptake of the service providers that you represent? Do you have any concerns about section 7 of the bill, which amends the Social Work (Scotland) Act 1968?

Annie Gunner: We broadly support direct payments, because choice and control for service users is fundamental. At the same time, we cannot ignore the fact that there will be implications for service providers, which we must examine. The route that we are taking is to consider how providers can adapt to accommodate service users who want to use direct payments. As few people use direct payments at the moment, we have little experience of service users directly purchasing services from us.

That is the nature of the group. We will consider how to adapt our processes for the possibility of dealing with hundreds of individual purchasers rather than one block purchaser—a local authority. Our systems will have to change considerably to cope with that. We want to support direct

payments, but we must be ready for them.

I have forgotten the end of your question about section 7.

Mary Scanlon: Section 7 is all about direct payments. Given that direct payments are likely to increase choice and uptake for the people whom you represent, I hoped for better feedback, which would allow the committee to pursue the issue.

Annie Gunner: I hope to draft a report for the working group by the beginning of December, so we could let the committee have the draft as soon as it is ready. We had not planned to publish that report, simply because of logistics and resourcing, but we can certainly help the committee if it would find a draft report helpful.

The Convener: More generally, what have been the obstacles to individuals taking up direct payments? Why have people not used them in great numbers?

Annie Gunner: My understanding is that many people do not know that direct payments are available. Local authorities have discretion about whether to establish a scheme. If they do not establish one, there is no way in which a service user will know that direct payments are an option.

The bill will entitle individuals to ask for direct payments, which will make a big difference. Service providers must ensure that they are ready for that, especially as most people currently use direct payments to employ personal assistants. It is almost unheard of for people to use direct payments to purchase services from an agency—it is certainly very rare.

The bill will also allow service users to purchase services directly from local authorities, which so far they have been prevented from doing. In CCPS's experience, several organisations support individuals in their use of direct payments and their employment of personal assistants, but not many organisations sell services to individuals. If the scheme expands, as the bill enables it to, that might raise an issue, as we would move into uncharted territory. We are taking the initiative to prepare ourselves for the situation.

Mary Scanlon: You say that your organisation represents people and encourages them to take up direct payments. I have been closely involved with one of the three people in the Highlands who receive direct payments. Her application was rejected twice because it had a spelling error, and she was asked to take on the responsibility of being an employer. I hoped that, rather than considering only the providers, CCPS would make the case for increasing direct payments, which can only come from carers. I hoped for advice on that. If carers cannot take up direct payments, there is no point in your examining better provision.

Annie Gunner: I cannot disagree with that.

The Convener: I think that you are dealing with what you consider your end of the bargain and looking ahead to ensure that services are available. As you said, that will include ensuring that people have information about what is available from your organisations. Is that correct?

Annie Gunner: Yes. The committee might want to get in touch with the people involved in a new project called direct payments Scotland, which was established with a Scottish Executive grant. The remit of that project is to increase the take-up of direct payments. I do not know whether the committee has taken evidence from those involved. If not, I would be happy to give you a contact address. The project was established explicitly to promote direct payments to individuals and local authorities. It might be useful for the committee to speak to that group.

The Convener: The clerk will talk to you about that after the meeting.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): I will follow on from that point with a question on promoting choice for individuals. We have discussed one area this morning, but what is your group's view on the inclusion in the bill of the deferred payment scheme and the opportunity to top up residential accommodation costs?

Annie Gunner: I am not sure that either of those issues was perceived to be massive ones during our consultation.

Jim Jackson: Most of our members are not providers of residential and nursing home care. Our interest lies in working with people who may leave our services in order to enter such forms of care. I understand that the bill acknowledges what is happening already. Many families top up the cost of care; in some cases, the resources of the person in residential or nursing care are also used. There is some ambiguity about whether that is legal and we think that the tidying-up measure in the bill is a sensible step forward.

Margaret Jamieson: Is it appropriate for the Executive to provide the various schemes on promoting choice for the individual? Is your organisation in a position to assist someone who has to make that choice?

Jim Jackson: There is a need for advocacy and brokerage schemes. An implication of the expansion of the direct payment service is that some groups of people, such as those who have learning difficulties or dementia, will be able to benefit from direct payments only if their carer can act on their behalf or if a broker or an organisation can assist them to purchase the service that they require. That is part of the challenge for

organisations in the voluntary sector, not only because they are service providers but because they will have to create new services to act as brokers to support people who wish to benefit from direct payments. I know that some organisations are keen to take up that challenge.

The Convener: You are here as an umbrella group of service providers but, wearing both your individual hat and your collective hat, you have a lot of experience of dealing with users and their carers. The bill provides for an independent right for carers to request an assessment for services, irrespective of whether the person for whom they care is being assessed. Does the bill adequately provide for the needs of carers? An idea that came out of the carers legislation working group was that there should be a duty on statutory organisations to identify and deal with carers. Would that be a useful addition to the bill or does the bill adequately cover the needs of carers as it stands?

Annie Gunner: When we held our consultation meeting, we focused narrowly on the care providers' perspective on the bill; strictly speaking, the issue of assessing carers' needs did not fall within that focused approach.

On a general policy note, I know that in previous evidence-taking sessions there has been some discussion of the usefulness, if you like, of a right to an assessment if there is no right to receive services as a result of that assessment. Mr McAllion has been particularly interested in that point and we share his confusion over it. Service users are in the same position.

Mary Scanlon: On the provisions that relate to joint working, you express your disappointment at the lack of recognition and involvement of the voluntary sector at a strategic level. Can you outline in what further ways you would like to be involved at that level?

Annie Gunner: Our experience of joint working is that we were brought in at the end of the process. So far, we have experience of involvement in specific projects, such as hospital closures or reprovisioning projects. The voluntary sector tends to be brought in once all the decisions have been made and all the resource allocations have been decided. At that point, voluntary organisations are encouraged to compete with one another to provide the services.

The nature of voluntary organisation is to be service providers, but that is only one part of our activity. We also have something to offer at the strategic level, so we would be interested in considering the levels of need in a particular community. Voluntary organisations often focus on, for example, people with learning disabilities, mental health problems or dementia. When an organisation is brought in at the end of a process to be a care provider, its expertise and experience of the needs of a group are sidelined.

Our fear is that the bill, as we understand it, will not be about joint working on specific projects but about joint working across the board as a matter of course. We are concerned that care providers in the voluntary sector will be looked on as nothing but care providers and the range of our other activities will not be harnessed. That would be a missed opportunity for local authorities and health boards that might find us useful. The issue is as simple as that.

10:00

Mary Scanlon: Your submission suggests that the bill be amended to include a requirement to involve voluntary sector providers. CCPS was involved at the strategic level in the Regulation of Care (Scotland) Bill. When I spoke in the chamber in support of your amendment, which had been lodged by Dr Richard Simpson, I was told that it had been withdrawn. When you lodge an amendment and want to be involved at that level, do you not think it courteous to tell MSPs that you have withdrawn an amendment before we stand up to support you in the chamber?

Annie Gunner: I agree. You and I had a long conversation after the event and we apologised unreservedly for that. At this stage, we just want to discuss the idea of an amendment rather than write one and have it lodged.

In England and Wales, the care trust mechanism has been set up—if organisations want to work jointly, they have to follow that route. In Scotland, decisions on joint working are left much more to individual and local discretion. Organisations need to work jointly, but it is up to them to work out the mechanisms. At the national level, it would be difficult for the bill to insist that the voluntary sector be involved strategically because, presumably, each local arrangement is going to be different.

We wanted to float the idea that the voluntary sector should be involved in local partnership arrangements. However, I am not a bill draftsman so I do not know whether that can be done—it is just an idea. The danger is that, if we do not allow for that, the voluntary sector will be sidelined once again. Voluntary organisations believe that they have a lot to offer at the strategic level of decision making.

Mr McAllion: Mr Jackson, I want to return to the answer that you gave the convener about the opportunity to top up residential accommodation costs. You said that most families already do that and that the bill is simply tidying up that reality. My understanding of the provision in the bill about top-up costs is that it allows people to pay for extras

over and above the basic care package in any residential accommodation. Is not it a reality that many families have been asked to top up costs because of inconsistencies between local authorities in financing places in residential accommodation?

There is an example in my area, where an elderly person was placed in a home just over the boundary from the local authority where she was resident. The charges agreed by the other local authority were higher than the ones that Dundee was prepared to pay and so the top-up had to be paid by the family. Is not that an abuse of the opportunity to top up residential accommodation costs? Should not there be one charge for the basic care package throughout Scotland?

Jim Jackson: One charge would be attractive if there were sufficient funding to pay whatever the local charge is for residential and nursing home care. However, in practice, local authorities have made individual decisions about how much they are prepared to pay for publicly funded places.

It is my understanding that in exercising choice, a significant number of families will say that they would prefer their relatives to go into a home that is either near the family or near their friends and relations. That means that the nearest home might charge at a higher rate than the local authority is prepared to pay. I understand that, in those circumstances, families would pay the top-up costs.

There has also been some ambiguity about whether residents can pay top-up costs using their capital assets, even although they are eligible for publicly funded care.

There is concern about residents of any type of care home being asked to contribute toward extra care from their personal allowance of—I think—£14 a week. That is an abuse of the idea of top-up. However, I understand that—through the Regulation of Care (Scotland) Act 2001, in conjunction with the Adults with Incapacity (Scotland) Act 2000—there will be some oversight of the finances of residents who are incapable of making their own decisions. That might be a way of preventing possible abuse.

Mr McAllion: Does the voluntary sector believe that there should be a national charge for the basic care package, which would apply wherever the local authority happens to be? If there is not, different rates in different local authority areas will be paid for the same care. That might reflect the individual circumstances of a local authority, but is hardly fair on the user.

Jim Jackson: Some local authorities have different rates because of the local market. In the City of Edinburgh, for example, the cost of care is much higher on average in nursing and residential homes than it is in other parts of Scotland. Local decisions are made by local authorities to reflect local markets, but if people are to have choice there is still a need in some cases for families or the resident to top up.

The issue must be considered carefully and the devil is in the detail. There are legitimate fears that the top-up facility will be used to undermine the intentions that lie behind free personal care or a local authority's funding policy. However, that seems to be a reality and it is better to bring it into the open. Other forms of legislation can be used to investigate and minimise possible abuses for adults in respect of whom powers are misused.

Shona Robison: Before I ask about monitoring, I ask Jim Jackson to tell the committee about the extent of abuse of the personal allowance in Scotland. Do you have evidence that people having to use their personal allowance to top up is widespread?

Jim Jackson: We do not have statistical evidence, but we have anecdotal evidence. Age Concern Scotland also has anecdotal evidence. People say that abuse occurs, but I do not have a research study or a source of statistical information at my fingertips to substantiate that.

Shona Robison: Perhaps we should contact Age Concern Scotland; such abuse concerns me.

On monitoring, you stress the need for the inclusion of adequate monitoring mechanisms to evaluate the effectiveness of legislation. Should such mechanisms be included in the bill or can they be accommodated in the current regulatory framework? Could there be a role for the Scottish commission for the regulation of care, for example?

Annie Gunner: We were talking about that before we arrived. The Royal Commission on Long Term Care originally recommended that the national commission should consider the quality and volume of care for older people. In respect of the Regulation of Care (Scotland) Bill, the Executive made a commitment to include that function in the scope of the Scottish commission for the regulation of care.

Some of the draft regulations for the Scottish commission for the regulation of care are being published. It is not immediately apparent to us that the Royal Commission's recommendation has come out of that work. The Scottish commission for the regulation of care does not officially come into being until 1 April, so it will be difficult to see how much of its activity will examine the overall monitoring pattern. So far, that does not seem to have been given a high profile in the work of the Scottish commission for the regulation of care.

We mentioned monitoring because one of the

key findings in the Health and Community Care Committee's report on its inquiry into the delivery of community care in Scotland—published about this time last year—was that under-resourcing is one of the significant problems in community care. The committee recommended a full audit of all the resources that were going into community care and how they were being spent. I am not sure whether that has been done. Our concern is this: if under-resourcing is the fundamental problem in community care, how much will the bill address the real problem?

That is a slightly roundabout way of putting it. One of the key problems that the voluntary sector faces is that local authorities are unable or unwilling to fund the full economic cost of care. Therefore, the voluntary sector must subsidise that cost in a variety of ways—for example, by paying its staff less, cutting service availability or raiding reserves. If it does not do those things, the long-term future of the services is under threat. That is our key problem. Although we support the bill, none of its provisions address the clear and fundamental problem that the full economic cost of services will not be met from the budget. We therefore mentioned monitoring not to find out only whether the bill allows direct payments to expand and carers assessments to take place, but—at a much more basic level—to find out whether the bill addresses the underlying difficulty with community care in Scotland.

I have posed the question, but I cannot begin to answer it. It plays on our minds that we are not able to secure the resources to provide the services that we want to provide.

The Convener: Are you confident that the Executive has made sufficient financial provision to fund free personal care? From what you have just said, you are not confident that we have the financial package to provide adequate funding for community care services in general. Is that a fair comment?

Annie Gunner: We do not question the sums that have been done for free personal care; we have not done any sums of our own that suggest that the Executive's sums are not right. The question is whether the funds will be used in the way in which they are supposed to be used. That brings up ring-fencing. We know to our considerable cost that, if funds are not ring-fenced, they do not always find their way to the group at which they are targeted. Our experience of that relates to resource transfer, which is the great bugbear of community care. In resource transfer, money comes in from health boards after hospital closures, for example, and the voluntary sector then provides the reprovisioned services. We find that, for example, some of the money that is uplifted for inflation at health-board level is not uplifted for inflation when it gets out to the providers. That has been a huge problem for us.

We have no reason to question the amount of money that has been calculated, but we have concerns about whether it will be spent on what it is supposed to be spent on. We mentioned that in our submission.

The Convener: The indication is that the money would be ring-fenced, but would after a number of years be re-examined to find out whether we could move instead to a system of outcome assessments.

Annie Gunner: I know from previous evidence-taking sessions that the committee has, because a funding gap exists in other areas, been concerned about that. Will some of the money for free personal care be channelled towards plugging the gap elsewhere? There does not seem to be any doubt that the gap exists. That is what I am trying to say. If under-resourcing of community care overall is a key issue, how far will the bill go towards addressing it?

10:15

The Convener: The other funding issue that you touched on in your written submission is the question of standardisation of charges. From previous work that the committee has done, we are aware of the wide range of charges throughout Scotland; people are paying very different amounts depending on where they live.

The Convention of Scottish Local Authorities has been doing work on that, which you describe in your submission as a "purely … internal exercise". You suggest that the committee should do what it can to ensure that

"other relevant interests are involved (or at least consulted)."

Will you expand on that?

Annie Gunner: We obtained a copy of the early work—virtually by subterfuge, I have to say. If one works in this area, one comes across documents that have been drawn up—we did not receive the document officially for consultation and we were not involved in the process. Clearly, charging by local authorities is a matter for local authorities. However, once again in the spirit of joint working, we feel that other interests ought to be brought in when drafting the proposals.

One of the matters that we drew to the committee's particular attention in our submission was something that is being dictated by certain local authorities to voluntary sector providers, to the effect that those voluntary organisations will have to collect charges directly from service users. Anybody who has worked in the voluntary sector will understand how difficult it is to ask voluntary

organisations to do that. We would like to see provision that will address that in the charging guidance that comes out.

Perhaps our written comments came out as being slightly snide in relation to COSLA. They were not meant to be so. Charging is such a huge issue that we think that COSLA should work on it with other interest groups.

The Convener: Have we covered everything that you wanted to put on record?

Annie Gunner: I would like to make one more point about joint working. We talked about the involvement of the voluntary sector at a strategic level. I would like to leave the committee with the thought that so far, all the discussion about joint working has been about how people who are employed in the health service will work with people who are employed by local authorities and all the difficult issues that surround that.

We have set up our own working group to consider the potential for the voluntary sector to provide some integrated services as commissioned services under contract, which is not a word that I like to use very often because people complain about it so much. That is another area on which the committee might like to work with us in future.

We are talking only about health boards and local authorities. What is the scope for the voluntary sector to employ health-care staff and social-care staff simultaneously, and to offer that kind of integrated service? I cannot answer that because we are in the middle of working out what our potential to do that is. I leave the committee with the thought that in all the discussions about the issue, the voluntary sector's scope to offer that service has not been considered. That is a real missed opportunity.

Shona Barcus (Community Care Providers Scotland): A number of voluntary organisations already employ significant numbers of nursing and social work staff, although nurses are not employed in that capacity. We have experience of working with people from different cultural backgrounds and different disciplines and of managing their transition into the voluntary sector.

Some of us also have experience of working in partnership with local authorities and trusts. A particular example of that regards the use of European social funds in situations where staff who are employed by a national health service trust earn more than staff who manage them and who are employed by the voluntary sector. We can contribute our experience to the joint working aspects of the bill. We would be willing to do that at strategic level.

The Convener: Thank you for your contribution. I am sure that colleagues will be interested to see what your two working groups come up with regarding that matter and regarding direct payments, which we touched on earlier. Thank you very much for your contribution.

There will be a short adjournment before we hear from our next set of witnesses.

10:19

Meeting adjourned.

10:24

On resuming—

The Convener: Our next set of witnesses is from the Scottish Executive. We are joined by the Deputy Minister for Health and Community Care, Malcolm Chisholm. Good morning. Before we move to questions, would you like to introduce your team and to make a statement?

The Deputy Minister for Health and Community Care (Malcolm Chisholm): I will introduce my team, which I have been known to forget to do in the past. For that I offer retrospective apologies.

I have three people to protect me this week, compared with two last week. Perhaps that is a reflection on my performance last week. Thea Teale, on my right, is head of the community care division. On the far left is Gerry McLaughlin, who is the bill team manager. On my immediate left is Peter Stapleton, who is also on the bill team.

There is so much to say about the Community Care and Health (Scotland) Bill that I think it will be better to go straight to questions, otherwise my opening statement might go on until half past 12.

The Convener: Well said.

Janis Hughes: During your evidence to the committee on the Regulation of Care (Scotland) Bill you argued that it was not appropriate to include a statement on the bill's principles in the bill. However, members might recall that, following amendments, the act that was passed included a statement on general principles. How do the provisions of the Community Care and Health (Scotland) Bill uphold its general principles?

Malcolm Chisholm: I am sorry, but I thought that you were going to ask me a question about the general principle of having a statement on principles in the bill.

The Convener: We are a principled bunch here.

Malcolm Chisholm: I was slightly more relaxed about that issue, because there is a tradition of not including a statement on principles in a bill. However, a new tradition is developing in the

Parliament that makes that possible, so I do not rule out including a statement on general principles in this bill. You asked about another matter at the end of your question, which I did not grasp.

Janis Hughes: We are concerned that general principles are not included in the Community Care and Health (Scotland) Bill.

Malcolm Chisholm: This is a piece of classic legislation, which might be a virtue or a defect. Members can express their views on that. However, strong principles underlie the bill and those have been welcomed generally. One can divide the principles into issues about improving rights and services for individuals through free personal care, issues about direct payments and issues about help for carers. There are also process issues, which will result in better services. Part 2 of the bill is about the joint-working processes.

The strong principles that underlie the bill are stated in accompanying documents—such as the report of the care development group, which the Executive has accepted in full. The bill must ensure that those fine principles and aspirations are enacted in legislation. I know that it is a bit frustrating to have to refer to the National Assistance (Scotland) Act 1948, the Social Work (Scotland) Act 1968 and the Mental Health (Scotland) Act 1984. However, as John McAllion—who is objecting—knows better than most because of his long years of experience at Westminster, if we do not refer to those acts, we cannot deliver the policy. I hope that everybody accepts that that must be done.

The issue is whether one can also include general principles in the bill. I will not take a hard line on that matter. If people present general principles that can work in legislation, I am happy to consider them—as I was in the matter of the Regulation of Care (Scotland) Bill.

Janis Hughes: I feel a sense of déjà vu, because we discussed the issue during the passage of the Regulation of Care (Scotland) Bill. You seem to be saying that you are not opposed to general principles being included in the Community Care and Health (Scotland) Bill. No one would argue that the principles are not present throughout the bill, but a school of thought believes that the principles should be enshrined in the bill. Much of the bill's detail will be introduced via secondary legislation. Is there a danger that future ministers will implement proposals that are at odds with the current principles?

Malcolm Chisholm: I understand your general point, but regulations are not issued from St Andrew's House without anybody noticing. Perhaps that happened sometimes in the past; however, every regulation would come before the committee. Although regulations would all be subject to the negative procedure, as the bill is drafted, I am open to making some of them subject to the affirmative procedure—especially those that relate to issues that are of most concern to the committee.

As members know, not even an amnesic shellfish poisoning order can be passed without my coming to the committee to speak to it—not that such an order would be unimportant. There is no way in which an imaginary minister could suddenly decide to remove the principle of personal care from the bill: the committee and the Parliament would not allow that to happen. That is an unnecessary fear. Our discussion should focus on whether regulations will make better legislation and deliver the policy better.

10:30

I note that when representatives of Carers Scotland came to the committee, they thought—because some of the details might require to be changed—that it was a virtue that the definition of personal care was going to be introduced by regulations. That is not because of some great reneging by the Scottish Executive; it is just the nature of it. We are breaking new ground with some parts of the bill. Although similar things have been done in England, such provision for personal care has certainly not been made by the Westminster Parliament.

We are setting up an implementation group—that was one of the key recommendations of the care development group—which will have a lot of work to do on the detail of the way in which the policy will work in practice. That is just the reality of the situation. Although I understand the desire to include a definition of personal care in the bill, there could be some dangers in that. If the definition is not clear in the bill, it will not be interpreted by the Parliament, but by the courts. It is up to us to get all the details right so that we, not the courts, decide the policies. We would have to work out exactly how even the excellent definition of personal care that was produced by the care development group would work out in legislation, so that it would not be left to the courts to interpret it. There is more work to be done by the implementation group on working out the nuts and bolts of the matter.

Nicola Sturgeon (Glasgow) (SNP): I am glad that you are not hostile to the idea of including the general principles in the bill. Perhaps we made some progress on that during the passage of the Regulation of Care (Scotland) Act 2001. All bar one of the organisations that have given evidence to us so far have said that they would like the general principles to be contained in the bill. In the

light of that and what you said about the need to get the definition right, if we choose to go down that road, will you give an undertaking today to lodge an Executive amendment to that effect at stage 2? After all, you have a team of advisers and lawyers who are more likely than anybody else properly to draft an amendment. Are you swayed even a bit by those arguments, and do you feel that it is incumbent on you to lodge an amendment?

Malcolm Chisholm: That depends on what the general principles are. At least two sets of witnesses were opposed to including the definition of personal care in the bill—the carers and the Convention of Scottish Local Authorities. There might have been others, but those are the two groups that I remember.

The carers were supportive of the general principle of carers being partners in care, which I accept completely. Although our draftsmen might have comments to make on that, I do not think that such a declaratory principle would do any harm. One could ask what good its inclusion in the bill would do and what it would change; however, I do not see any immediate problem with it. We should be absolutely clear about the effect of including any principles in the bill and we should ensure that they do not create problems when it comes to interpretation and implementation of the legislation.

The committee has questioned others about the time scale of the policy. We are committed to delivering free personal and nursing care by April 2002; committee members know better than anybody does what a tight time scale we have. If things go according to schedule, we will consider the first section of the bill in about a month. We want to ensure that the bill can be implemented by April, but we also want to ensure that we get all the details right. That also becomes part of the argument about whether things should be included in the bill or introduced by regulations.

Nicola Sturgeon: All that is very interesting. However, with respect, I am not sure whether that was a yes or a no to my question.

Malcolm Chisholm: I cannot give you a yes or a no, because there are various principles involved.

Nicola Sturgeon: Come on, minister. You can say whether the Executive will consider lodging an amendment at stage 2. That is a fairly simple question, which can probably be given a fairly simple answer.

Malcolm Chisholm: It depends on what principle you are talking about. I am always happy to consider suggestions but I am not minded at the moment to introduce an amendment that defines personal care or makes some statement about personal care—I am not quite clear what is being asked for. You may be surprised to hear that I have been considering such an amendment, but I also refer to the other option that has been mentioned, which seems less problematic. One might ask what would be added to the bill in terms of delivery for carers if the definition were included.

The Convener: Is that a yes?

Malcolm Chisholm: I am perfectly happy to consider anything that the committee suggests. Why would I say anything else?

The Convener: It is likely that our stage 1 report will indicate what we would like to happen with regard to the general principles. You have already touched on the principles surrounding personal care, joint working and carers. We hope that, in a spirit of co-operation, the Executive will seriously consider the proposals in our report. You mentioned that there was a problem with the time scale. That reinforces the point that the Executive, which is backed up by legal draftsmen and more civil servants than we have at our disposal, has more chance of getting this right than the committee has. The onus is therefore on you.

Malcolm Chisholm: Time scale was not my leading argument in relation to personal care. My main point was to do with the continuing work of the implementation group and the fact that we have to make sure that we have taken in all of the details. The definition of personal care has been broadly accepted but it is still fairly general. We may have to be careful about how it is interpreted because, as soon as the bill is passed, someone can challenge the law in court and we will have to rely on the judgment of the courts.

Some people think that things are put in the regulations rather than in the bill so that they can be changed for a bad reason but, equally, they might be put in the regulations so that they can be changed for a good reason. The committee should consider the positive reasons as well as the possibly negative reasons. Consider the nature of the Scottish Parliament. Hypothetically, someone could come along and change the nature of free personal care but everyone knows that the political reality is that that will not happen, which means that the issue of placing the definition in the regulations should not influence the committee's decisions too much.

Mr McAllion: This morning, we discussed with Community Care Providers Scotland whether details should be in the bill or in regulations. The point was made that, if details are to be in the regulations, ministers should have a duty to consult widely before the Parliament scrutinises the regulations. Would the Executive be prepared to consider such a duty?

Malcolm Chisholm: We always consult on regulations. In relation to the Regulation of Care (Scotland) Bill, there was a great deal of discussion and consultation on various regulations and some are still being consulted on. Again, however, having decided that we want to get through this process quickly and that everything should be ready by 1 April—

Mr McAllion: That means that you will not consult widely.

Malcolm Chisholm: The consultation will be, of necessity, truncated, but there will be consultation.

Mr McAllion: Would the Executive support an amendment that placed a duty on ministers to consult before introducing regulations to Parliament?

Malcolm Chisholm: That duty does not need to be in the bill as we would consult anyway. We had this discussion in relation to the Regulation of Care (Scotland) Bill and ended up including something about consultation. I do not object to the idea in principle.

Mr McAllion: I will take that as a no.

Malcolm Chisholm: I think that you should take it as a yes.

Janis Hughes: In its original response to the Sutherland report, the Executive stated that the proposals for free personal care would benefit only 7,200 people. Do you still believe that that number is correct? If not, what work has convinced the Executive that the number of beneficiaries has changed?

Malcolm Chisholm: That figure related to self-funders in care homes. Clearly, however, there are a large number of people in the community— [*Interruption.*] I am sorry?

Nicola Sturgeon: I am laughing because that was the argument that people made at the time but it was rejected by your colleagues.

The Convener: It is nice to win an argument occasionally.

Malcolm Chisholm: A much larger number of people are receiving personal care in the community. Also, in the normal course of things, the number of self-funders will increase over time, given the marked increase in home ownership that has taken place over the past 20 years in Scotland. That figure was arrived at in good faith with regard to existing self-funders in care homes. Clearly, others will be affected by the policy.

Janis Hughes: If you have considered that more closely, can you put a figure on it now, minister?

Malcolm Chisholm: Somebody else may have a better memory of this, but I do not think that the care development group came up with a precise figure for the number of people in the community paying for personal care. We took a percentage of the total amount of charges that were levied—45 per cent—as being personal care. That was based on smaller studies of the extent to which charging for home care was attributable to personal care and the extent to which it was attributable to domestic care. We did not include such a figure in the care development group report because it is not easily obtainable.

Mary Scanlon: Are you concerned that the bill was drafted before the care development group reported? Have you had any representations on that issue from any organisations?

Malcolm Chisholm: I do not think that we have had any such representations. That is almost an inevitable consequence of the time scale of the care development group's work and the proposed introduction of free personal and nursing care. Inevitably, work was done on the bill at the same time that the care development group was working. It was already quite a challenge for the care development group to carry out its work in six months. I do not think that there was a way round some of those time-scale problems.

Mary Scanlon: Much of the bill amends the Social Work (Scotland) Act 1968. Does the minister understand why that has led to confusion about definition? I appreciate that some of our discussion has concerned personal care, but paragraph 18 of the policy memorandum refers to free nursing care and free personal care. Paragraph 19 says:

> "the Bill provides powers for Ministers to prescribe in regulations which aspects of social care shall not be charged for."

I understand what personal care is, but can you tell us what social care and nursing care are?

Malcolm Chisholm: That is a very good question, if I may say so. This is a very technical bill—in a way, it is a classic bill, in that it repays detailed study by people who are interested in how legislation works. People are frustrated by some of it, but, as I said, we have to do it this way or we will be caught.

"Social care" is a good term to home in on, because it does not exist in the 1968 act. One of the key terms in that act is "accommodation", and many of the current arguments surrounding the tenant's allowance are connected with what accommodation is. When I first considered the attendance allowance regulations, I thought that they were just dealing with accommodation as you or I would understand it, and that there would not be a problem.

In the 1968 act, "accommodation" includes

personal care and nursing care. Section 2 is, in a way, the pivot of the whole bill, because it takes out what we would call housing and living costs in care homes—which will still be charged for under the 1968 act—and separates social care from that. Social care, therefore, is everything else in the 1968 act—everything except what we will clarify as being accommodation in the regulations under section 2. We will have a normal, commonsense definition of "accommodation".

Personal care, nursing care and domestic care all come under the umbrella of social care. Because the 1968 act gives local authorities discretion about charging, we have to change that and say that social care will be subject to what we at the centre decree. Equally, we must pull away personal and nursing care—which are parts of social care—from accommodation, or we will be caught by the Social Work (Scotland) Act 1968 and will still have to charge for them. I am not sure whether that has clarified the situation. In summary, social care is a new construct that covers all the services in the 1968 act, apart from what is defined as accommodation—basically, housing and living costs in a care home. Everything else is social care and personal and nursing care are subsets of that.

The care development group report addresses the question of what nursing care is. We did not want to define nursing care, because there is a continuum between personal care and nursing care. There is an argument for collapsing the two into each other, because in going for free nursing care we are following a sort of international definition of nursing. We are saying that nursing care is to do with the more intensive levels of care—the higher-dependency end of the spectrum. We know that definitions of nursing care in England—that which is done by nurses—have caused some difficulties. With the new roles that people are adopting, that becomes difficult. We will stick with Scottish problems.

10:45

Mary Scanlon: I think I understand a bit better.

Paragraph 19 of the policy memorandum says:

"the Bill provides powers for Ministers to prescribe in regulations which aspects of social care shall not be charged for".

What did your bill team have in mind when it wrote that?

Malcolm Chisholm: That paragraph refers to section 1. Because social care covers nursing care, personal care and domestic care, the purpose of section 1 is clearly to separate out those aspects of home care that will be charged for—domestic care—from those aspects of home care that will not be charged for, which are personal care. Section 1 separates out the bits of social care that will continue to be charged for—albeit with new guidance or controls from the centre to address the unevenness of charging—from those bits that will not be charged for.

Mary Scanlon: Are you saying that someone living in their own home whose care fulfils all the criteria for the definition of personal care and whose personal care will be paid for will still have to pay for some social care?

Malcolm Chisholm: Taking into account the definition given by Sutherland, it has always been accepted that that will be the case. We are separating out personal care from domestic care in the case of someone living at home and from housing and living costs in the case of someone living in a care home. That has always been part of Sutherland's approach, which we followed.

Mary Scanlon: Can you give an example of what aspects of care in their own home people whose care meets the personal care definition will have to pay for?

Malcolm Chisholm: That is precisely the territory that we must go into in the regulations. We must ensure that we get that absolutely right, because there will be some grey areas. That is why we must be careful about whether we formulate things in regulations, as we propose to do, or in the bill, as some members of the committee might wish. We all know what is obviously personal care and we all know, perhaps, what is obviously domestic care—help with housework and so on. Some issues could arise where the two meet. We must get those absolutely right in the regulations.

Mary Scanlon: If people have no mobility or memory or cannot feed themselves, dress themselves and so on, will you charge them for their housework and for someone to do their shopping?

Malcolm Chisholm: That has always been proposed under the definition of personal care. People can put up a contrary argument and say that all home care should be free. That is not being proposed at the moment. If someone did propose that, it would increase the cost of the policy.

Nicola Sturgeon: An organisation—I think it was Age Concern Scotland, although I may be wrong—put it to us that changing the definition of accommodation might be the way round your spat with Westminster about attendance allowance payments. It seemed to me that that might be too simple a solution. Do you believe that, by changing the definition of accommodation in Scotland, you can change the application of UK social security legislation?

Malcolm Chisholm: Obviously, I have considered that possibility, as I am considering every possible way around the problem that we face.

My first superficial reading of the regulations suggested to me that we would not have a problem, because we will still charge for accommodation as normally understood by the public at large. However, as I have explained, accommodation includes personal and nursing care. At issue here is the general principle of whether we can amend legislation on reserved matters. The basic answer to that question is no. However, there is also a problem of detail, because we are changing the definition of accommodation for the purposes of charging. We are changing the definition of accommodation in part VII of the 1968 act for the purposes of charging, but the attendance allowance regulations refer to accommodation as described in part IV of the act. The option to which Nicola Sturgeon referred will not get us round the problem that we face either in principle or in detail.

The Convener: Can you provide us with our regular weekly update on the continuing discussions on this issue that are taking place between you and the Department for Work and Pensions?

Malcolm Chisholm: I do not think that we are any further forward than we were last week. My answer to Nicola Sturgeon's question in the chamber last Thursday indicated the point that we have reached in discussions.

Shona Robison: When is your next meeting with the Department for Work and Pensions scheduled?

Malcolm Chisholm: The negotiations are being conducted in various ways. The First Minister is leading on this issue and various channels are open to him. I do not know when he will next speak or write about the issue, but negotiations are continuing.

The Convener: I would like to ask about more general resource issues. Are you confident that the Executive has made sufficient financial provision for free personal care?

Malcolm Chisholm: We took account of more factors than the Royal Commission on Long Term Care for the Elderly did. The biggest difference between our report and the Sutherland report was that we factored in a significant sum of money for the development of services in the community. That was a desirable thing to do in itself, but it also recognised that people who do not receive services at the moment might respond to the new policy by seeking services—that is the issue of unmet need—and that there might be some switching from informal to formal care. I know that David Bell dealt with that issue when he gave evidence to the committee at the beginning of October. He was very involved in producing the relevant calculations. To some extent, the figure of £50 million for new services by year 3 is the result of the research that David Bell headed up. That gives us some protection, as one of several criticisms of the Sutherland report was that it did not take account of the factors that I have mentioned.

The amount that will be needed to reimburse people in care homes and people in the community who currently pay for personal care is much easier to calculate. Taking the various factors together, we can be pretty confident that we have enough money to fund free personal care in the immediate future. People can question whether the sums are right to deal with the situation in 15 or 20 years' time, although very few have. Given the criticism to which the Sutherland report was subjected, I thought that our projections would also be analysed and criticised. Members may have heard Lord Lipsey's exchange with Nicola Sturgeon on "Newsnight". Although he was very critical of our policy, he said that the care development group had produced a good report and did not question our costings.

The Convener: The care development group report calculations assumed a 2 per cent per annum real increase in the cost of care. We would expect a general upward pressure. To what extent has the Executive budgeted for costs increasing at a greater rate?

Malcolm Chisholm: We are now on to three-year budgeting, which is a relatively recent development, and the next round of the comprehensive spending review is not far away. Although we make projections for the next 20 years, we do not set budgets for the next 20 years. The 2 per cent rate is our best prediction, based largely on the advice and work of David Bell, one of the leading economists in Scotland. Other people may arrive at a different figure, but I am happy to accept David Bell's judgment on the matter, because he is such a good economist.

The Convener: Another question that has been asked by many people who have given evidence is whether the resources should be ring-fenced. In the past, the committee and others have been concerned about the funding gap. COSLA is very concerned about the resources being ring-fenced, but this morning we heard that providers and service users and so on see that as a way to mitigate the continuing funding gap. How will the Executive work with local authorities in moving from a ring-fencing system towards outcome assessment? Can you comment on the work that COSLA is doing on the standardisation of charges?

Malcolm Chisholm: We meet on the middle ground of outcome agreements. I know that COSLA is not very happy about the recommendation that the money should be ring-fenced initially, but it is happier with the intention to move towards outcome agreements. That is what we did with the first £100 million that was announced by Susan Deacon last October. We have outcome agreements with COSLA for some of the objectives in that announcement—for example, members will remember the 22,000 extra weeks of short breaks and the provision for intensive home care and rapid response teams.

The care development group report included the bold intention to hand out all money for older people on the basis of outcome agreements. That is quite an ambitious aim, but it is one that COSLA goes along with. We will have to see how it works. Ultimately, if outcome agreements do not work, the momentum to go further will become strong, if not unstoppable.

COSLA did some work on charging towards the end of last year. However, it put that work on hold during the work of the care development group. There was some sense in doing that because COSLA could not produce a charging proposal without knowing what its basis would be. COSLA has now resumed that work. We will let COSLA propose solutions to the difficulties resulting from the wildly different approaches to charging in different parts of Scotland. The bill gives us the power to regulate that if we so wish. That may be controversial from COSLA's point of view, but we hope that COSLA will come up with something that is acceptable to their members and the wider public.

Mary Scanlon: Most of us are in favour of some standardisation. However, on a recent visit to Shetland, I learned that the council had set up a welfare trust from its oil funds and that very few elderly people in Shetland pay anything for their care—it is paid for through the welfare trust. Would you recommend that those people should now pay for their share of care, given that it is standardised across Scotland, or would you allow the council to use its oil funds to help pay for care for the elderly?

Malcolm Chisholm: We want to see what COSLA proposes. I think that everyone will be inclined to think that it is important that we ensure that people are not overcharged, rather than that we ensure that they are not undercharged. I understand your point, but the important thing is to even it out at the top end. Let us see what COSLA comes up with in that regard.

Mr McAllion: Before I ask about deferred payment schemes, I would like to ask about evidence that we heard earlier from Community Care Providers Scotland. The witnesses pointed out that the care development group's costing for free personal care was based solely on access to free personal care for elderly people, and that there was no indication of whether the Executive intended younger disabled adults also to have access to free personal care. Has any work been done on that? Will younger disabled adults have access to free personal care?

11:00

Malcolm Chisholm: I understand why people might think that younger disabled people ought to have access to free personal care, but I do not understand why anybody in Scotland is asking a question about it. For the past nine months, every statement about free personal care has been about free personal care for older people. That was the care development group's remit. Since January, there has been absolutely no doubt about what the policy is. I fully accept that people will campaign for provision to be extended, but there is no doubt about the existing policy.

Mr McAllion: So no regulations will be introduced to extend free personal care to younger adults?

Malcolm Chisholm: You raise an interesting question, which relates to whether things should be in the bill. The policy is for free personal care for older people and that is what is in the bill, so regulations would also be about free personal care for older people. However, if people such as you campaign for free care for younger people and win the argument, it would be easy to change the situation through regulations in future. I have just thought of that argument for free personal care in regulations, so I hope that it will persuade you.

Mr McAllion: Your answer was clear, but I do not think that it has persuaded me.

Margaret Jamieson: That could leave the Executive wide open to legal challenges of agism. Will you reconsider the point that John McAllion has raised?

Malcolm Chisholm: I do not suppose that anybody in Scotland is against extending provision in principle, but we are putting up a very large sum of money for free personal care for older people. You have asked whether it is enough money and I think that it is, but we will have to see how the policy works out over the next year or two. At the end of the day, politics is about choices and—certainly in the Scottish Parliament—about how we allocate money from year to year. We should implement our existing policy and see how it goes. There will obviously be demands for it to be extended and that is something that I am sure the Parliament will discuss in time, but it would be unwise to try to start everything simultaneously, as that would make more expensive what is already,

by any reckoning, quite an expensive policy.

Margaret Jamieson: If the only difference between two individuals at joint assessment is that one of them is 63 and the other is 65, that leaves you with a legal difficulty.

Malcolm Chisholm: We will have to wait and see. I have not heard anyone make that point before, but it may be a valid one.

Mary Scanlon: In its written evidence, Unison drew attention to joint working criteria, such as staff who are employed by different employers undertaking—

The Convener: I am sorry to interrupt, but I thought you wanted to ask another question about people with disabilities.

Mary Scanlon: No, John McAllion covered the point that I wanted to make.

Mr McAllion: It is understandable that, under deferred payment schemes, local authorities will be required to create loans against the security of the user's house to fund the revenue costs of their care. COSLA has described the scheme as one that it is "not appropriate" for councils to become engaged in, because interest rates are likely to rise over time from the current historically low levels. That will have a cost implication for local authorities, for which there is no budget in the three-year funding that is available to them.

I know that the Executive argues in the policy memorandum that no interest will be charged on the additional amount paid by the local authority while the agreement continues. Who is right? Are the local authorities right to say that there will be a cost to them and that you have not budgeted for it, or are you right to say that there will be no cost?

Malcolm Chisholm: Of course there will be a cost. That is why local authorities have been given £3.5 million a year in the current three-year period—to pay for that. That is more than enough. You will remember that the policy was first announced by Susan Deacon in October 2000, when there was no intention to deliver a policy of free personal care and more people would have had to sell their homes.

There is more than enough money in local authority budgets to cover the cost. Obviously, a much smaller number of people might now be unable to pay their housing and living costs in a care home. First, the money is there, but secondly, we are not making the agreement binding on local authorities in the first instance, precisely so that we can see what the demand is and how much money will be required. We are starting the policy very gently, to see how it works out and to let local authorities have some discretion over it. Given that the money is in their budgets, there should not be a problem in the next three years.

Mr McAllion: You are telling us that the money is in the budgets. COSLA's submission to the committee said:

> "contrary to the Executive's assertion in the policy memorandum for the Bill, there is no budget for this purpose in the three-year local government settlement (2001/02 – 2003/04)."

Who should we believe: you or COSLA?

Malcolm Chisholm: On this occasion you will have to believe me. Not only was the money announced, but we can refer to the circular that went out with it. It was part of a larger sum of money for various purposes. I am sure that you will all remember the details of the 5 October 2000 statement; £3.5 million of that money was for deferred payments.

Mr McAllion: Is the Executive in discussions with COSLA about this?

Malcolm Chisholm: I am not aware that COSLA has raised the matter directly with us, but I am sure that we will be meeting COSLA soon, so if it wishes to raise it, I am sure it will.

Mr McAllion: Are there any similar schemes in the United Kingdom, so that we can see how such schemes operate? I understand that there may be a similar scheme in Wales, which is not working effectively.

Malcolm Chisholm: A deferred payment scheme was passed in, I think, the Health and Social Care Bill in England and Wales, so in effect, the scheme is being applied throughout the United Kingdom. However, our circumstances are different. Far more people will seek to use the scheme in England and Wales because, in the absence of free personal care, more people will have to sell their homes, so more people will seek a deferred payment.

Mr McAllion: You said that the scheme would not be a requirement on local authorities—it will be at their discretion. You seem to be beginning to create a situation in Scotland in which local authorities who are strapped for money simply say, "We will not implement this," and other local authorities, in a better financial position, say, "We will implement it." As a result, elderly people throughout Scotland will have differential access to the scheme.

Malcolm Chisholm: We expect all local authorities to implement the policy next April and we are holding a reserve power to direct them to do so. The money is there and we expect them to implement the policy.

Mr McAllion: So they do not have discretion; in fact, if they do not implement the policy voluntarily, you will require them to implement it.

Malcolm Chisholm: Probably.

Mr McAllion: You have to say yes or no.

Malcolm Chisholm: The intention is that people who wish to use the scheme should be able to use it. We are giving some discretion, for example on how many people the local authorities apply the scheme to. That gives them some discretion if they plead financial difficulties.

Mr McAllion: They are allowed discretion to do what they are told.

Malcolm Chisholm: John, you are making this sound sinister. We are the Scottish Executive and the Scottish Parliament, which have a great deal—

Mr McAllion: Discretion usually means that you can make up your own mind whether you implement something. You seem to be saying that local authorities have to implement it.

Malcolm Chisholm: We have a great deal of democratic legitimacy in the new Scotland. Not only are we saying that we want to have free personal and nursing care, but we want to avoid anybody having to sell their house immediately. Deferred payment means that the payment will have to be made eventually. We are saying that it is an important policy, which we want to implement, and that local authorities can pace it. They should start the policy and we will see how it works out. If they feel that too many people are asking for deferred payment, they can draw that to our attention and we can sort it out in future financial rounds.

Local authorities should start implementing the policy. In doing so, they will have a little discretion in the initial stages. If the policy is implemented satisfactorily, we will continue with it.

Mr McAllion: Will you provide the committee with the details of the additional money that was identified in the budget, so that we can tell COSLA that it is wrong?

Malcolm Chisholm: I have told you that the additional amount is £3.5 million. I do not know how I can be more specific than that. If I can give more information, I will send the convener a letter, just as I did this week in relation to the question that Mary Scanlon asked last week.

The Convener: Will you give us a copy of the memorandum that was sent to local authorities?

Malcolm Chisholm: Right.

The Convener: It is possible that the specific amount of money may not have been ring-fenced for deferred payments.

Margaret Jamieson: That answers part of my question, which was whether the Scottish Executive ring-fenced the £3.5 million for the area that the minister just described to John McAllion.

Malcolm Chisholm: Margaret Jamieson knows how money goes out to local authorities. We say that the money must be used for a particular purpose, but only a little of the money from the community care budget is ring-fenced. We have outcome agreements, but ring fencing is a rare thing. Indeed, if we ring-fenced the money, we would have even more complaints from COSLA.

Margaret Jamieson: Since 1999, concern has been expressed to the committee about the delivery of community care. There is a groundswell of opinion that moneys should be ring-fenced. In fact, we have asked to be provided with a table that indicates the percentage of grant-aided expenditure that is spent. We are concerned that some councils may exceed the GAE and that others may divert the money. That is why we raise the issue at almost every meeting that we have with you.

Malcolm Chisholm: Local authorities probably think that I am far too much on your side of that argument, but—

Margaret Jamieson: You were a member of the committee.

Malcolm Chisholm: Apart from the £125 million, we will not go down the route of ring fencing, although arriving at output agreements is a step in that direction. We have sent out clear signals, not least in the care development group report, that we are concerned that the money that goes out through GAE for older people's services is not all spent on those services. It would be quite difficult to ring-fence the £3.5 million, because the money will be used in response to demand. It may be the case that few people will want to use the arrangements, so it may not be an ideal use of ring fencing, even if people support that approach. Equally, if we do not ring-fence the money, we may have a problem, as local authorities may pretend that the money does not exist if it is mixed in with other money for older people's services.

Margaret Jamieson: Can I take you back to the implementation timetable? Last week, we heard evidence from COSLA that indicated that it does not believe that local authorities will be able to meet the implementation deadline of April 2002. The COSLA witnesses cited the difficulty of ensuring the creation of the infrastructure that local authorities must have in place, in particular an appropriately audited process for making direct payments. Is there any way we can reach a compromise with COSLA on a sensible, phased implementation timetable?

Malcolm Chisholm: That is what we are going to do, as we have no intention of implementing the direct payment section of the bill in April 2002. I refer you to the wording of the bill—such wording is quite common at the end of bills—at sections

24(2) and 24(3):

"(2) This Act, except this section, comes into force on such day as the Scottish Ministers may by order appoint.

(3) Different days may be so appointed for different provisions and for different purposes."

We accept that certain transitional issues must be dealt with. Local authorities have made some reasonable points about how those should be managed.

Margaret Jamieson: How will the committee be advised of the phased implementation timetable?

Malcolm Chisholm: To an extent, we will be influenced by what people tell us. There will be pressure from people who want local authorities to adopt the new arrangements for direct payments. I do not know whether there will be questions about that. We think that the new arrangements are a positive step forward and work is being undertaken to prepare for them.

April 2003 might be a more realistic date, but a final decision has not been made. We will have to see how local authority preparations go and what representations are made. We do not need to decide about that while the bill is going through Parliament, but I would be interested to hear people's views on a desirable starting point.

Margaret Jamieson: COSLA raised that concern with us when it gave evidence. It was unaware that such slippage would be available to local authorities. You may need to re-examine the issue when you consult COSLA.

11:15

Malcolm Chisholm: That is fair enough.

Shona Robison: I will rewind to local authorities meeting their agreed community care outcomes. What action will be taken if they do not achieve those outcomes?

Malcolm Chisholm: That is a good question. The relationship between central and local government is a live issue in relation to many policies. As local authorities keep reminding us, they have their own electorates and systems of accountability, so difficulties exist.

Ministers have a power of direction, to which section 23 refers. We can direct local authorities as a last resort, but sensitivity is required in deciding what we can impose and what should be left to local authorities to decide. If outcome agreements do not work, we will probably move into a different phase of ensuring that local authorities deliver on the strategic objectives of the Scottish Executive and the Scottish Parliament. Local authorities know that.

Shona Robison: Some recommendations of the Scottish carers legislation working group were not included in the bill. What progress is being made on those recommendations, particularly the recommendation on a requirement to identify carers?

Malcolm Chisholm: I spoke to someone from the group, who also appeared before the committee, two or three weeks ago. I understand the concerns. Everyone accepts that a right to an assessment, irrespective of an assessment of the cared-for person, is a big step forward. People who have that right must know that they have it. Providing information to carers is vital. We will take steps with local authorities through guidance and other means to ensure that.

I think that the group was thinking mainly of the NHS in its recommendation to go further with a duty to identify. I found that difficult, because I was not sure how such an obligation could be expressed in law, where it would bite in the NHS and how it would be enforced. I think that the group was thinking of general practitioners. Most of the issues that relate to GPs concern negotiation and contracts, and negotiations about GP contracts continue.

I am not sure how the duty would be implemented in legislation or how it would work, but I fully accept that we must do everything we can to use GPs' knowledge about carers. Some good initiatives exist. The Princess Royal Trust for Carers has been involved with individual GP practices in identifying carers. We should spread that good practice. Local health care co-operatives could be pivotal to that. Primary care has an important role to play in identifying carers, but I am not clear how that would be dealt with in legislation.

Shona Robison: That is my question: if it is not going to be done in legislation, how will it be done?

Malcolm Chisholm: Guidance is the overarching argument. I know that carers have concerns that guidance is not always followed, but there is a will to do so. From the responses of those to whom I have mentioned it, I think that GPs would not be averse to that. It is more likely that we can make progress through guidance and discussion, in particular through LHCCs, than through legislation—I am not clear how such legislation would be formulated or enforced. That has always been my position. I was not in any doubt that that proposal was not readily acceptable when I first saw it several months ago.

The Convener: I have a question about assessments. One issue is that the bill, which has generally been welcomed, gives carers the right to their own independent assessment, which will have a knock-on impact on the number of people

who require to be assessed. I presume that people who currently have personal care supplied at home at a cost will also require to be reassessed for free personal care. Have you taken into account the impact on resources and on the time that people will wait for assessments as a result of the extra work load?

Malcolm Chisholm: No, but there is an issue. We do not know, but the number for carers may not be enormous. Not every carer wants an assessment. Sometimes, carers are asked and they do not want one. No doubt there will be extra carers who want to be assessed, and obviously there will be extra people in the community, many of whom currently pay for personal care. There are therefore two groups, which you rightly highlighted.

You will know that the care development group made a decision—I think wisely—not to go down the route of assessing people who are currently in care homes. That saved us a further complication, and seems right for other reasons. One of the reasons why we wanted to set aside money for the development of services in the community was to cover things such as assessment. The way that the money is profiled—with a rising amount for unmet need and some switching from informal to formal care—means that we have earmarked money in the first couple of years for any immediate expenditure that arises in relation to issues such as assessment. Part of the £50 million in years one and two could certainly be used for that purpose, because it may be that the rush for assessment, in so far as there is one, will be in the early stages, and thereafter it will be more even and consistent.

Shona Robison: Some of your answers suggest that you are not sure how many people in the community we are talking about in terms of free personal care. That worries me slightly, because I am not sure how you came up with the costings, the time scales and all the rest of it if you do not know.

Malcolm Chisholm: There are two issues. The first relates to those who currently receive personal care. We know how much is paid through charging by authorities and privately, and that is the money that we have to reimburse. As long as we know how much money is involved, the precise number of people is secondary, because it is the money that matters. Secondly, we have estimated unmet need and added that on as well. Through those two things, we have covered the full extent of the need, but it is the money that matters rather than the numbers.

Shona Robison: I would not have thought that the numbers were difficult to find, given that local authorities make returns, although some people receive private care, which the returns would not cover. The SNP has done some work on that which, in a spirit of co-operation, I would be happy to share—and we did it without the wealth of civil service resources that you have at your disposal.

Malcolm Chisholm: Your offer is very kind. I will be interested to hear what you say. However, I should point out that local authorities do not separate out personal care from domestic care. Perhaps the SNP does.

Shona Robison: Actually the local authorities do as well.

The Convener: Shona Robison has made an interesting offer.

I want to dip out of the community care part of the bill into the health part. However, I will then dip back into the community care aspects, so you are not completely off the hook, minister.

Nicola Sturgeon: We were talking about GPs a moment ago. The bill obviously specifies that GP non-principals must register on a health board list to practise in that health board area. When the Royal College of General Practitioners gave evidence last week, it expressed a concern that such a provision would prevent locums from working across health board boundaries. Would locums be required to register in every health board that they wanted to work in, or would registering in one health board area be enough to allow them to practise across boundaries?

Malcolm Chisholm: Locums have to register in various health board areas because of the nature of disciplinary procedures and the NHS tribunal. However, the transfer process from one list to another would be very quick and unbureaucratic; I know that people are concerned that the process itself would be very bureaucratic and time-wasting. That said, it is technically necessary that locums should be on a separate list in a different local area, because otherwise they cannot be part of the disciplinary procedure, which is based on health board areas. Although the argument is rather technical, it should not cause problems in practice.

Mary Scanlon: In its written evidence, Unison drew attention to the implications that staff and other measures would have on joint working. What steps are you taking to address those concerns? Furthermore, how will you ensure that joint working will be successful?

I am sure that, in your answer, you will refer to paragraph 66 of the policy memorandum, which says that "in cases of failure", you will recommend that

"local authorities and NHS bodies adopt certain principles, such as … a single budget".

Are you recommending a single budget only

where joint working has been seen to fail? Given that the Sutherland commission and the committee recommended a single budget, do you think that such a measure will be used generally or only in cases of failure?

Malcolm Chisholm: I am trying to work out the context of the term "single budget", because the problem is that people mean different things by it. You probably use the phrase in a slightly different way from us. We tend to use it as the overarching term for either an aligned or pooled budget. We would specifically use the terms "aligned budget" and then, after any further development of the budget under section 12 of the bill, "pooled budget". I think that you might mean something narrower by single budget. I have answered that point, but I have lost the rest of your question.

Mary Scanlon: But paragraph 66 of the policy memorandum says:

"It is intended that these powers be used only in cases of failure where expected service outcomes are not being delivered."

Furthermore, you will have the power

"to require local authorities and NHS bodies to adopt certain key principles, such as a single management structure"

or a "single budget". By single budget, do you mean an aligned budget or a pooled budget, or do you mean that you would take a budget from a local authority and give it to the NHS or vice versa?

Malcolm Chisholm: That is a good question, because the power that we are taking in section 14 refers back to section 12, which concerns pooled budgets. We are examining the powers conferred by section 14 to find out whether they need to be more widely drawn. For example, we might want a power that directs towards an aligned budget.

The problem is that we do not need to make any legislative changes for aligned budgets; the provision to make them already exists. However, the pooled budget requires legislation, which is why section 14 is tied into section 12. In any case, we do not want to use those particular powers—this sounds like the discussion I had with John McAllion a moment ago—although most people would be pleased that we had them in reserve. No less than the Health and Community Care Committee itself—right from its first report—emphasised the importance of the whole area. As a result, there is no clearly no point in sitting here saying that something is necessary and desirable and then letting local agencies simply ignore it. In summary, it is important to have the power. Although it is currently with reference to the pooled budgets mentioned in section 12, we are considering whether it should be more widely drawn.

Mary Scanlon: Minister, you obviously have your reservations, as we do. Much of the evidence that we have heard has expressed reservations. What is the Scottish Executive doing to ensure that councils and health boards have management systems in place that ensure effective joint working? The voluntary sector has told us this morning that they feel sidelined.

11:30

Malcolm Chisholm: There is a circular—"Joint Resourcing and Management of Community Care Services", from 5 September—which should be sent to the committee, if that has not already been done. It is a useful document and is mentioned in the Unison submission of last week. It talks about the different possible partnership arrangements under joint resourcing and management.

In a way, that document is the overarching document. However, clearly we have not just sent out a document and let local authorities and health boards just get on with things. We are concerned with the operational development of the policy. A series of seminars and presentations have been held and there have been visits to various local areas. A great deal of work is going on.

Mary Scanlon asked about staffing. An important group—the integrated human resources working group—is headed by Peter Bates, the chair of NHS Tayside. The group is due to report in April 2002. I will have a meeting with Peter Bates very soon and I am looking forward to hearing details of the group's work. I am sorry I have not had that meeting before today. I will draw his attention to what has been said about the voluntary sector. Clearly, the vast majority of the people involved are in the various health agencies and the local authorities, but we are not forgetting the voluntary sector.

Mary Scanlon: What criteria would you use to gauge the failure of joint working? Margaret Jamieson has mentioned the situation when GAE is not spent on care of the elderly. Would failure be measured in that way, or would it be measured by bedblocking or by something else? What criteria would you use to identify failure, as mentioned in paragraph 66 of the policy memorandum?

Malcolm Chisholm: The precise sums of money spent are obviously related to outcomes, but ultimately it is the outcomes that matter, rather than the sums of money. The criteria will have to be based on outcomes and they will have to be developed at the same time as performance management arrangements are developed. Service outcomes will be considered, rather than the precise sums of money spent.

Mary Scanlon: So, if a local authority was spending less than its GAE on care of the elderly, would you step in and use your powers to recommend a single management structure as well as a single budget?

Malcolm Chisholm: That is a good question. You are pointing out that having aligned or pooled budgets will not, in itself, solve the problem of local authorities not spending all of their GAE. The amount of money that goes into joint or pooled budgets is still a decision for the local authority or the NHS board. You have highlighted an interesting point—we will still have to consider the issue of how much money goes into the budgets in the first place.

Margaret Jamieson: Before asking a question, I declare an interest as a member of Unison. That should keep everything right.

Minister, you mentioned the integrated human resources working group that is headed by Peter Bates. What is the membership of that group?

Malcolm Chisholm: I do not think that anyone would have thought that you were a member of Unison after the way you treated Jim Devine last week. [*Laughter.*]

Margaret Jamieson: Having particular interests should not influence members of the committee.

Malcolm Chisholm: My officials will have to hand me a note of the people in that group. I do not carry that kind of information in my head. Perhaps nobody does. However, the group includes a representative from Unison and I think that it is Jim Devine. I spoke to him last week and he told me that he was involved.

Margaret Jamieson: The reason I ask is that I am concerned that the group might be weighted to one side—health, local government or the voluntary sector. I would be interested to know whether there is an equal number of individuals from each sector to ensure that we are considering the issues in an equal way. There are difficulties in all the sectors. One of the areas identified in Unison's submission related to the evidence we heard today about joint working in Perth and Kinross and Dumfries and Galloway, which has floundered to a certain extent because individuals employed by different employers are undertaking the same job but receiving different remuneration. Those are areas of concern for the trade unions. How will that be addressed?

Malcolm Chisholm: Those are big issues. I will write to the convener with a note of the people on the group and where they come from. As I said, I am looking forward to meeting Peter Bates soon.

Margaret Jamieson describes the problems just as Unison did last week. However, the solutions are not quite so easy to identify. Section 13 should give comfort and maximum protection to staff who are transferring. I know that, so far, arrangements have mostly been made through secondment and that Unison raised concerns about using secondment as a long-term arrangement. Section 13 provides protection for transfer but the issue that Margaret Jamieson described—people doing the same or similar jobs with different wages and conditions and probably pensions too—still arises.

The Peter Bates group is considering that because it is a more difficult and intractable problem. Once again, I am sorry that I cannot give the committee an interim report on that. Peter Bates has until April 2002 to come up with some proposals on those issues.

Margaret Jamieson: You have asked the group to consider those areas, but it is the attitude of staff that is important in ensuring that the bill, should it be enacted, will deliver for the people of Scotland. I would have thought that the staffing issue would be one of the first things to be tackled. I am surprised that it has been tacked on the end.

The Royal College of Nursing raised that issue as well. That is not an area that I usually pursue. However, the RCN said that there was not enough emphasis on robust consultation processes and that there should be a requirement on the national health service and local authorities to consult their staff, the public and any others with a legitimate interest. It seems to be an area in which you have fallen down.

Malcolm Chisholm: I do not know about that. The Peter Bates group has been up and running for a while. We acknowledge that it is a complex area. I do not know all the people on the group, but I know that Jim Devine is on it and I assume that most of the major players are represented—the Royal College of Nursing is represented on the group. It would seem to be the correct forum to deal with those issues.

Margaret Jamieson: No doubt we will return to that at a later date.

Malcolm Chisholm: I am sure that you will.

Margaret Jamieson: Did the care development group consider the provision and funding of aids and adaptations and what the level of service would be?

Malcolm Chisholm: We made a recommendation on that. This is one of the matters about which it was not very easy to get detailed information. We produced figures showing how much was being spent by local authorities and Scottish Homes, but we recommended that the national strategy forum

"should take forward further work to consider the effectiveness of current provision of equipment and adaptations and to progress improvements in these

services."

We flagged up that issue in the section of our report on housing, which at a previous meeting of this committee one of our members described as a little short. This is another area in which the initial money that is being made available for the development of services in the community could be deployed beneficially.

The Convener: Are there any further points that you would like to make, minister, or do you think that you have covered everything that you wanted to discuss this morning?

Malcolm Chisholm: Yes, I think that we have covered most things.

The Convener: The questioning has been fairly comprehensive. I thank the minister for giving evidence to us this morning. No doubt we will see much more of him in the weeks to come, as we continue to take evidence on the Community Care and Health (Scotland) Bill.

I want to put on record that the committee invited representatives of Scottish Care to attend this meeting to give evidence to us, so that we could hear the views of those working in the private care home sector. Unfortunately, Scottish Care did not feel able to do that at present. We hope that we will receive a written submission from Scottish Care before our stage 1 report is put together.

Subordinate Legislation

The Convener: The Deputy Minister for Health and Community Care is here to discuss the statutory instruments that are before us. We are to deal with a series of instruments on the issues of amnesic, paralytic and diarrhetic shellfish poisoning. Minister, would you like to open with a general statement, or should we just work our way through the instruments?

Malcolm Chisholm: I can make a little speech, if members would like me to.

The Convener: I know that Mary Scanlon has a question for you.

Malcolm Chisholm: This is a delaying tactic.

Today's debate concerns emergency orders banning the catching of king and queen scallops in waters around Scotland. Orders SSI 2001/374 and SSI 2001/388 prohibit the harvesting of king scallops because of amnesic shellfish poisoning. Order SSI 2001/387 prohibits the harvesting of king scallops because of paralytic shellfish poisoning. Order SSI 2001/391 prohibits the harvesting of queen scallops because of diarrhetic shellfish poisoning. In all cases the orders have been introduced due to the respective toxins being present in concentrations above the action level set by the European Union. This is a consumer safety measure, as scallops containing high levels of toxins can cause illness in humans ranging from nausea, vomiting and headaches through to extremes of short-term memory loss and death, which can occur when a large amount of toxin is ingested

I assume that I will have to move each motion separately.

The Convener: We will deal with each instrument individually.

Mary Scanlon: All these problems are caused by toxins and toxic algae. There seem to be more outbreaks of shellfish poisoning at this time of year, when the weather is cooler. Ought not outbreaks to diminish at this time? What is the Executive doing to discover the cause of outbreaks? Has any progress been made in finding out why outbreaks are on the increase?

Malcolm Chisholm: When I come to a meeting of this committee with an official, as I have done on the previous six occasions on which subordinate legislation has been discussed, I am not asked any questions by members. When I come on my own, I am asked a detailed question of a scientific nature. [MEMBERS: "Aw."] Shellfish poisoning is a long-standing problem and I am not aware of any significant deterioration in the situation. Clearly, I will have to write a second

letter to the convener about the research that has been done on this issue, to add to the letter that I promised to write on a matter raised under the previous item. I will write that letter, answering Mary Scanlon's questions, within the next week.

The Convener: Are you happy with that, Mary?

Mary Scanlon: Yes. That is fine. Thank you.

The Convener: In the spirit of co-operation, we are happy to accept that, minister.

The first four statutory instruments are subject to the affirmative procedure.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 8) (Scotland) Order 2001 (SSI 2001/374)

The Convener: The Subordinate Legislation Committee had nothing to report on the order.

Motion moved,

That the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 8) (Scotland) Order 2001 (SSI 2001/374) be approved.—[*Malcolm Chisholm*.]

Motion agreed to.

Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (East Coast) (No 2) (Scotland) Order 2001 (SSI 2001/387)

The Convener: The Subordinate Legislation Committee had nothing to report on the order.

Motion moved,

That the Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (East Coast) (No 2) (Scotland) Order 2001 (SSI 2001/387) be approved.—[*Malcolm Chisholm*.]

Motion agreed to.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 9) (Scotland) Order 2001 (SSI 2001/388)

The Convener: The Subordinate Legislation Committee had nothing to report on the order.

Motion moved,

That the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 9) (Scotland) Order 2001 (SSI 2001/388) be approved.—[*Malcolm Chisholm*.]

Motion agreed to.

Food Protection (Emergency Prohibitions) (Diarrhetic Shellfish Poisoning) (Orkney) (Scotland) Order 2001 (SSI 2001/391)

The Convener: The Subordinate Legislation Committee had nothing to report on the order.

Motion moved,

That the Food Protection (Emergency Prohibitions) (Diarrhetic Shellfish Poisoning) (Orkney) (Scotland) Order 2001 (SSI 2001/391) be approved.—[*Malcolm Chisholm*.]

Motion agreed to.

The Convener: We now move to consideration of statutory instruments subject to the negative procedure.

Malcolm Chisholm: I can go now.

The Convener: You are free to go, minister. Thank you very much for your attendance.

Feeding Stuffs and the Feeding Stuffs (Enforcement) Amendment (Scotland) Regulations 2001 (SSI 2001/334)

The Convener: The regulations were originally circulated to members on 5 October. No members' comments have been received. The Subordinate Legislation Committee has made comments to the Executive and is satisfied with the Executive's response on drafting matters. No motion to annul the regulations has been lodged; therefore, the recommendation is that the committee does not wish to make any recommendation in relation to the instrument. Are we agreed?

Members *indicated agreement*.

National Health Service (General Dental Services) (Scotland) Amendment (No 2) Regulations 2001 (SSI 2001/368)

The Convener: The regulations were originally circulated to members on 9 October. No members' comments have been received. The Subordinate Legislation Committee has made comments to the Executive and is satisfied with the Executive's response. No motion to annul the regulations has been lodged; therefore, the recommendation is that the committee does not wish to make any recommendation in relation to the instrument. Are we agreed?

Members *indicated agreement*.

The Convener: That brings us to the end of our public business for this morning.

11: 46

Meeting continued in private until 12:05.

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