

HEALTH AND COMMUNITY CARE COMMITTEE

Wednesday 21 November 2001
(Morning)

Session 1

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HEALTH AND COMMUNITY CARE COMMITTEE

28th 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

WITNESS

Malcolm Chisholm (Deputy Minister for Health and Community Care)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Peter McGrath

ASSISTANT CLERK

Graeme Elliott

LOCATION

The Chamber

Scottish Parliament

Health and Community Care Committee

Wednesday 21 November 2001

(Morning)

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

Items in Private

The Convener (Mrs Margaret Smith): Good morning and welcome to this meeting of the Health and Community Care Committee.

Item 1 is to ask members whether they are happy to discuss items 5, 6 and 7 in private. Item 5 is the appointment of an adviser for the budget process, and individuals might be discussed. Item 6 is the approach to stage 1 of the Scottish Public Sector Ombudsman Bill, and possible witnesses will be discussed. Item 7 is the draft stage 1 report on the Community Care and Health (Scotland) Bill and it is the committee's usual practice to consider drafts in private. For the reasons I have given, is it agreed that we take those items in private?

Members *indicated agreement.*

Statutory Instruments

The Convener: Members were asked to indicate in advance whether they wished to debate the statutory instruments that are before us today. No comments have been received. It is therefore suggested that the committee agree not to debate those instruments. Is that agreed?

Members *indicated agreement.*

National Health Service Reform and Health Care Professions Bill

The Convener: Item 3 is the National Health Service Reform and Health Care Professions Bill, which is the subject of a Sewel motion. The Deputy Minister for Health and Community Care is with us this morning.

The background is that the National Health Service Reform and Health Care Professions Bill is currently being considered by the United Kingdom Parliament. The bill has provisions that affect Scotland and are within the legislative competence of the Scottish Parliament. The UK Government and the Scottish Executive have taken the view that it would be more practical and appropriate for the relevant provisions to be dealt with in the UK bill rather than in a separate Scottish bill. That is why the bill is the subject of a Sewel motion.

Although there will be a Sewel motion in respect of the bill in the Parliament tomorrow, the committee has an opportunity to consider the bill before it goes before the chamber. Members should have received a memorandum on the bill.

I will hand over to the minister to say anything he wants to say about the bill. Also, my colleagues have questions to ask about the bill.

The Deputy Minister for Health and Community Care (Malcolm Chisholm): The situation is quite complex, so I will say a few words. People have already made comments to me about the memorandum so I may be in the position of having to explain my explanation.

There are two key texts that should be referred to at the beginning. One is the Scotland Act 1998—I know you are all familiar with section G2 of schedule 5, under which regulation of the health professions is a reserved area. The section defines the health professions as those regulated by the eight acts of Parliament that set up the following eight bodies: the General Medical Council; the General Dental Council; the General Optical Council; the General Osteopathic Council; the General Chiropractic Council; the Royal Pharmaceutical Society of Great Britain; the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, which will soon become the nursing and midwifery council; and the Council for the Professions Supplementary to Medicine, which will soon become the health professions council.

Those eight regulatory bodies are reserved. However, if the Scottish Parliament chooses to set up a new regulatory body, it is able to do so. It is quite a strange situation where the existing bodies

are reserved but any new body would be devolved. If it were not for that latter fact, we would not be discussing a Sewel motion because the matter would be for Westminster. I hope that was clear.

The second text to which I refer is the Kennedy report on the Bristol inquiry. That report made a strong recommendation that

"a single body should be charged with the overall co-ordination of the various professional bodies and with integrating the various systems of regulation. It should be called the Council for the Regulation of Healthcare Professionals."

The report goes on to describe what the purpose of such a body would be. I will not quote all the text but I will refer to one paragraph, which states:

"The Council for the Regulation of Healthcare Professionals should have formal powers to require bodies which regulate the separate groups of healthcare professionals to conform to principles of good regulation. It should act as a source of guidance and of good practice. It should seek to ensure that in practice the bodies which regulate healthcare professionals behave in a consistent and broadly similar manner."

We agree with that analysis and feel that the UK body proposed by the bill has the right balance between encouraging the professions to regulate themselves more effectively and having the power to back up that encouragement where necessary. Realistically, co-ordinated and consistent regulation for health professionals can be achieved only on a UK basis. We are therefore happy that the proposed council should also oversee any regulators that the Scottish Parliament might establish in future. I am not convinced that we should establish such regulators for Scotland, but we need to recognise the possibility.

The bill also proposes to alter Scottish ministers' powers in connection with the appointment of a member of a council and with the power to fund the council, should the ministers choose to do so. Those powers flow from the UK remit of the body and I believe that they should be supported.

I am happy to take questions.

Dr Richard Simpson (Ochil) (Lab): I understand fully the eight professions that are already covered. First, however, I wonder about any additional groups that might be anticipated. Are any additional councils coming on stream?

Secondly, what about those areas of health that are not currently covered by a council? We have just passed the Regulation of Care (Scotland) Act 2001; are all the workers who are providing personal and nursing care in the community care field included?

Technicians and, to some degree, scientists are increasingly undertaking tasks that were

previously undertaken by nurses or doctors. As those groups are increasingly involved in direct patient care, their regulation is a matter of concern, particularly in light of the Bristol inquiry, which was about technical and surgical matters. The scientists have tended to be in the back room but, as the patterns of medicine change, they may increasingly come into contact with patients. What is the minister's view on that situation?

Does the minister envisage the overarching body taking control of those groups that are not currently covered by a regulatory body or will they have to establish their own subsidiary regulatory body? If it is the latter, does he anticipate that being done on a Scottish or a United Kingdom basis?

Malcolm Chisholm: You made a lot of points, but perhaps they were encapsulated in one of your questions. The overarching body will not cover groups that are not currently regulated by another body. It is an overarching body for the eight existing bodies.

You asked whether new regulatory bodies were in the pipeline. I mentioned in my introduction that the nursing and midwifery council will replace the UKCC. The nursing and midwifery council has perhaps been drawn to the committee's attention more than has the health professions council. We have heard a lot about the composition of the health professions council, which will replace the Council for Professions Supplementary to Medicine. In the regulations that set the new bodies up, it is clear that they are only taking over from existing bodies and are therefore covered by the reservation in schedule 5 to the Scotland Act 1998.

Clearly, there is potential for new bodies to be set up. I know that there is discussion of that in chiropody at the moment. Our view is that it would be better if any new bodies were to be UK-wide. That decision is clearly not in my gift. The public and members might take a different view. Because of the theoretical possibility that a devolved regulatory body might be set up, we need a Sewel motion that proposes that such a body would still be covered by the overarching UK body.

I think that some scientists in the health service are covered by the CPSM. Obviously, the Royal Pharmaceutical Society of Great Britain also covers a particular kind of scientist. I imagine that there are other scientists in the health service who are not covered by any such body. Clearly, scope for development exists, but the bill does not deal directly with that.

We spent a lot of time earlier in the year on the Scottish Social Services Council. That is a Scottish body that will not be affected by what we are discussing today. The overarching regulatory

body will want to have discussions with the council, but there are no direct implications for the council.

Dr Simpson: Has the Executive made a specific decision not to include the Scottish Social Services Council in the overarching body? Does it not wish to do so? Powers under the Scotland Act 1998 would allow any Scottish regulatory body to fall within the ambit of the proposed organisation but you have made a specific decision to exclude the Scottish Social Services Council. How does that sit with paragraph 15 in the Executive memorandum on the Sewel motion, which states:

"There will be some professionals working in the social service sector who will be regulated both by a body under the oversight of the CRHP and by the Scottish Social Services Council"?

There will be some joint regulation, but the Scottish Social Services Council's work on community care will not come under the CRHP.

Malcolm Chisholm: That is correct. It will not come under the CRHP.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): I declare an interest as a member of Unison. You talked about the regulation of the professions allied to medicine. A difficulty exists with the term professions allied to medicine, as it refers only to a pay group—it is nothing other than that. There are individuals in that pay structure who are not qualified. Where will they fall? Will they be regulated?

I will use the example of operating department assistants, who have campaigned long and hard to be recognised professionally. A small number of them have now gone through an education process that provides them with a qualification and pay structure that brings them in at approximately D grade nurse level. Where will they fall?

Malcolm Chisholm: A few groups will be under the wings of the new health professions council. It is being set up initially to regulate the 12 professions that were previously dealt with under the Professions Supplementarily to Medicines Act 1960, but I expect other groups to attach themselves to the council in due course.

It is obvious that there is another reserved-or-devolved issue. If a new body seeks to join the council, there could be an issue over whether it is purely a Scottish body or whether it wants to be part of the UK position. The situation is complex and unusual because under the Scotland Act 1998 existing regulatory bodies are reserved and new ones are devolved.

09:45

Nicola Sturgeon (Glasgow) (SNP): I have two questions, the first of which follows on from points

that were raised by Richard Simpson and Margaret Jamieson. It seems that we are being asked to agree to a fairly minor proposal, but the more I consider it, the more I wonder whether it is necessary or sensible. The memorandum says:

"Currently, no circumstances are foreseen in which it would be necessary to promote a separate regulatory body for Scotland."

There are two ways of looking at that. One could ask, "If that is the case, why bother about the matter? We should hand over power and not worry about it." On the other hand, one could ask, "If no circumstances are foreseen at the moment, how do we know what the circumstances will be that give rise to setting up a body?" At this stage, how do we know that it will be appropriate for that body to fall under the aegis of an overarching body?

Richard Simpson rightly made the point that the Scottish Social Services Council, either by accident or design, will not fall under the council for the regulation of healthcare professionals, so there will not be a completely overarching structure. Are we unnecessarily tying our hands at this stage? If we cannot foresee the circumstances in which it would be necessary to set up a new body, how do we know that, when we are faced with those circumstances, we will want it to fall under the aegis of the council? Is it not better to allow Parliament to deal with such issues on a case-by-case basis and decide what is appropriate at any given time? That is my first question.

Malcolm Chisholm: In my opening remarks, I said that, as a matter of principle, co-ordinated and consistent regulation for health professionals can best be achieved on a UK basis. I remind members of the two subsidiary points that I made. The bill proposes to alter Scottish ministers' power in respect of the appointment of a member of the council—that is another reason for the Sewel motion. The power to provide money is also involved. Although Westminster will provide core funding for the council, the bill will also give Scottish ministers the power to fund specific projects or initiatives. I emphasised the first point, but the two subsidiary points are relevant.

Nicola Sturgeon: I accept that. However, because there are two good reasons for passing a Sewel motion does not mean that we should include a third bad reason through laziness.

You mentioned a matter of principle, yet regulatory bodies will not be part of the structure. The Scottish Social Services Council will not fall under the new body. Therefore, how do we know at this stage whether any new body that we might decide to set up in the future will be appropriately included under the council?

My second question is on accountability. The memorandum's explanations are not particularly

helpful, but my reading suggests that the council will be accountable to the Scottish Parliament only for bodies that we set up. Because the council does not cover any bodies that we have set up, it will not be accountable to the Scottish Parliament at all—it will be accountable to Westminster. Is that appropriate? Should there be some council accountability to the Scottish Parliament in general?

One of the council's functions will be to promote the interests of patients and other members of the public in the operation of the regulatory bodies. Concerns have been expressed in Scotland about some of the bodies that will be covered by the council—the new health professions council, for example. I have heard it said by all the professions allied to medicine in Scotland that the council is not going to allow the proper representation of their interests, because of its structure. How can this Parliament ensure that it does its job as regards Scotland? Currently, there seems to be no accountability to us.

Malcolm Chisholm: As I said, this is substantially a reserved area. I accept that Nicola Sturgeon will not support that, but it is a fact.

The reports and accounts of the council for the regulation of healthcare professionals will be presented to the Scottish Parliament. Some people might be slightly surprised by that, as it is substantially a reserved body. That should reassure Nicola Sturgeon that the Scottish Parliament will have a role in relation to the council.

Nicola Sturgeon: I am not disputing the minister's comments, but I read somewhere that only bodies that this Parliament sets up will be accountable to it. Where does it say that all the reports will be laid before the Scottish Parliament, as well as Westminster?

Malcolm Chisholm: It is in the bill. I hope that we will find the appropriate section for you.

Dr Simpson: I should have declared that I am registered with the General Medical Council, as it is one of the bodies covered by the bill.

The Convener: Is that a new declaration?

Dr Simpson: As a doctor, one automatically has to register with the GMC. It is a subsidiary point to the declaration of being a doctor.

The Convener: It is nice to get some variety.

Malcolm Chisholm: Paragraph 14(6) of schedule 7 states:

"A copy of the accounts shall be laid before—

(a) the Scottish Parliament by the Scottish Ministers"

and paragraph 15(2) of schedule 7 states:

"the Council must lay a copy of its report for that year before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly."

Margaret Jamieson: I will pick up on the point that Nicola Sturgeon raised about professions that feel they may lose their independence, to a certain extent. That especially relates to health visitors, who have an area in the register of the UKCC, which will disappear. An individual must be a nurse before they can become a health visitor. As other areas of nursing, such as public health nurses, emerge, how will they fit in with the current UKCC register?

Malcolm Chisholm: I will try to answer that, although it is beyond the scope of what we are discussing this morning.

First, I will make a final point about the previous matter raised by Nicola Sturgeon. A further reassurance to the committee is that the council for the regulation of healthcare professionals will be accountable to the Westminster Parliament and this Parliament. This committee would be the appropriate forum for the Scottish member of the council to be called to. There is direct accountability to the committee, rather than to the Executive.

Margaret Jamieson's raised a point that has been one of the matters of debate about the health professions council. Sorry, that point relates to another new body, the nursing and midwifery council—I am getting confused.

There will be good Scottish representation on the nursing and midwifery council. It will include a nurse, a midwife and a health visitor. I am not entirely clear what the concerns are about health visitors. That is certainly beyond the scope of the discussion today.

Margaret Jamieson: The concerns are because the full title of the UKCC, which will be replaced by the nursing and midwifery council, currently includes nurses, midwives and health visitors. "Health visiting" will be removed from the title.

Malcolm Chisholm: That may be the new title, but the substance remains as one of the people from each of the constituent nations is going to be a health visitor.

Nicola Sturgeon: As we have gone into the substance of some of the regulatory bodies, what is the minister's view on the make-up of the health professions council? Many concerns have been expressed that each of the 12 professions allied to medicine will be represented on the body as professions, but the only geographic representation of each of the devolved parts of the UK will be the stipulation that one of those 12 professional members must come from one of the devolved parts of the UK. Somebody on that body will be there not only to represent their profession,

but will also have the responsibility of representing Scotland across all 12 professions. Are you satisfied that the best way to ensure that the distinct nature of Scottish education, training and health service delivery is represented is in a body of that nature?

Malcolm Chisholm: The issue is controversial. The system is complex: it involves members, alternates and lay members. In the first round, it has stacked up pretty well for Scotland—three of the members plus one of the alternate members of the council are Scottish.

Nicola Sturgeon: That is by accident and it may not always be the case. It is the way it happens to have happened this time.

Dr Simpson: Convener, is this really in order?

The Convener: The minister has kindly made an attempt to answer the question, but we are drifting into areas that are not covered by the bill. Perhaps we can return to the subject at a later stage. It is not part of what we are attempting to do today.

Nicola Sturgeon: I can make a good argument that, in some way, it is part—

The Convener: I am sure you can. You have a good argument for most things. That does not mean that the argument is right.

Dorothy-Grace Elder (Glasgow) (SNP): I am not quite clear whether we could have better controls over the private sector, especially over those contentious parts of the private sector that involve cosmetic surgery. Is it not compulsory for a patient to see a general practitioner before they are referred for cosmetic surgery?

We know that it is illegal for anyone to pretend wilfully to be a doctor. Richard Simpson referred to technicians and the dubiety of their role. Can you give guidance on how that part of the private sector might be better regulated? Might that involve the Independent Healthcare Association?

Malcolm Chisholm: That question takes us into the territory of the council to regulate health care professionals again. It takes us beyond the scope of our discussions today, which is about a body that will oversee existing regulatory bodies. I accept that there are issues around who is brought within the scope of the regulations. Richard Simpson raised that question. I accept that at present some people are not caught by a regulatory body. The body that we are debating today will not affect that, as it will oversee only existing and possibly future regulatory bodies.

Dorothy-Grace Elder: Do you get my point that some people belong to known, recognised, qualified professions but that a grey area nevertheless exists outwith those professions?

Would it be advisable to have something like the Independent Healthcare Association represent them, so that we can give patients better protection?

Malcolm Chisholm: The Independent Healthcare Association is not a regulatory body—

Dorothy-Grace Elder: No, but it is a body.

Malcolm Chisholm: There are lots of medical bodies, but we are talking about regulatory bodies. I accept Dorothy-Grace Elder's point that some groups of professionals may not be covered by a regulatory body. That issue needs to be dealt with, but it is not within the scope of the Sewel motion that is before the committee today.

Mr John McAllion (Dundee East) (Lab): The Sewel motion that we will debate in the chamber tomorrow will say that the Parliament

"agrees that the Council be made accountable to the Scottish Parliament in respect of such of its functions as fall within devolved competence".

The minister has told us that the report and accounts of the council will be laid before the Scottish Parliament, but how can we hold the council to account? I know that one member out of a large number of members will be an appointee of the Scottish Parliament. Do we have the power to summon other representatives of the council to the Health and Community Care Committee? Can they dissent and say that they are not prepared to come because they have gone already to the UK Parliament? Will you explain what the powers of the Scottish Parliament are in holding the members of the council to account?

Malcolm Chisholm: As I said earlier, the Scottish Parliament could call the Scottish member—

Mr McAllion: But the Scottish member may not be the appropriate member for the part of the council's work that interests us. Would we have the power to summon the chairperson of the council?

Malcolm Chisholm: You would not have the power to summon—

Mr McAllion: So they are accountable only if they agree to be accountable?

Malcolm Chisholm: As I deliberately said at the beginning, the area is substantially reserved. People may not agree with that, but under the Scotland Act 1998 that is a fact.

Mr McAllion: We are talking about health care professionals working in the Scottish health service. That area of health care is devolved to the Scottish Parliament.

Malcolm Chisholm: What can be done—it is for the Parliament rather than the Executive to do—is

for the Health and Community Care Committee to summon the Scottish member to appear before it.

Mr McAllion: Cannot we summon any other member?

Malcolm Chisholm: The committee could certainly invite someone else, but I think that it would not have the right to insist on the attendance of somebody who was not the Scottish member.

The Convener: I want to clarify that. If a new regulatory body were set up by an act of the Scottish Parliament, would the chair of the overarching body be accountable to us?

Malcolm Chisholm: I think that you are right: the situation would probably change if there were a Scottish regulatory body. In that case, the Parliament would probably have the power to summon the chair or anyone else, but if that situation does not arise, members would have the power to summon only the Scottish member.

Dr Simpson: Given the fact that the CRHP's main function is to promote the public's interest, does the bill contain anything that suggests how the new body will have a relationship with the public? What is the process by which the public can express an interest?

10:00

In the Bristol inquiry, it took a long time before the parents and some of the health professionals got a hearing, despite the fact that the regulatory bodies were approached relatively early. I have examples from my constituency of occasions when the General Medical Council has, in my view, been slow to act on complaints that have been levied.

If the CRHP will not have the right to intervene in individual cases, how will we have access to that body if the processes of the GMC—or any of the other eight regulatory bodies—are thought to be slow? In other words, what will happen if one of the regulatory bodies does not act in the public interest? If elected representatives such as my colleagues and I are faced with constituents' complaints about the time taken for serious complaints to be heard, how will we be able to get involved on behalf of the public? How will the public be able to get involved with that body?

Malcolm Chisholm: In a sense, that issue has been built into the structural arrangements. The majority of appointments to the council have been reserved—if I may use that word in a different context—for individuals who are from outside the health professions. That means that the public will have a majority on the council. The council will have nine representatives of professional organisations: eight of them will be drawn from the

eight organisations that are mentioned in the Scotland Act 1998 and one of them will be drawn from the regulatory body in Northern Ireland, the name of which escapes me. Because of the inclusion of the extra body from Northern Ireland, there will be an extra member of the public on the council. Thus, instead of nine public and eight professional members, as was originally set out, there will now be 10 members of the public and nine professional members. The public members will have a majority over the members from professional regulatory bodies.

Dr Simpson: I accept that and welcome it—that is absolutely essential for the new body—but my question was a little bit different. How do the public contact the new body when they have concerns about the regulatory authorities? I understand the process that will come from the top down. I know that the new body will attempt to standardise, spread best practice and examine the processes of the individual regulatory bodies. Will there be a process by which an individual member of the public will be able to complain to the new body that a regulatory body is not functioning adequately?

Malcolm Chisholm: It is certainly expected that that will be possible. I do not envisage that there will be a difficulty with members of the public approaching the new body. There may be a secondary question about the extent to which the new body should seek the views of the public. I am not sure whether that has been planned for. As long as people are aware of the existence of the new body, people should be able to approach it quite easily.

Dr Simpson: If public bodies have no right to intervene in the determination of individual fitness-to-practise cases, they sometimes turn round and say, "This is an individual case, so it is nothing to do with us." The bill clearly states that the new body will not be able to intervene in individual cases. That would seem to obstruct the reasons for setting it up. The Bristol inquiry recommended that a new body be set up because the various systems in the health service did not deal adequately with the concerns of the parents who were involved in the paediatric heart surgery unit.

Malcolm Chisholm: Explaining the matter is a task. I am trying, but I have not been entirely successful because the area is complex. An important point is that the new body will have the right of appeal in fitness-to-practise cases. That must be communicated to the public, which is not easy. If people are dissatisfied with a ruling of, for example, the General Medical Council, it is worth their getting in touch with the new body because it will have the right of appeal directly to the courts rather than to the judicial committee of the Privy Council.

Dr Simpson: I find it satisfactory that a mechanism for appealing to the courts exists and that the committee will be involved, but it is important that the public are reassured that they will have access to the new body for issues of process. Will you return to the point in tomorrow's debate in Parliament?

Malcolm Chisholm: I will try to pick up on that tomorrow, although the debate will be short.

Dr Simpson: It is a complex point.

Mary Scanlon (Highlands and Islands) (Con): I want to follow up Richard Simpson's point about public confusion. Will you tell us where the Scottish Public Sector Ombudsman Bill fits in? I understand that it applies to the entire health service. When will people go to the ombudsman and when will they go to the new body? Are there clear, distinctive lines for pursuing complaints?

Malcolm Chisholm: There is not a direct connection because the National Health Service Reform and Health Care Professions Bill allows a separate ombudsman system for particular regulatory bodies to be set up by regulation. That will be a separate ombudsman system, but the process for people who wish to make complaints will be clear and transparent.

Mary Scanlon: Will you give an example of complaints that will go to the ombudsman and ones that will go through the new council?

Malcolm Chisholm: Complaints about regulatory bodies acting wrongly in an administrative sense will go to the new ombudsman.

Mary Scanlon: What about complaints or appeals against an ombudsman's decision?

The Convener: That is a separate issue.

Malcolm Chisholm: I think that the next port of call would be judicial review.

The Convener: We should hold our fire on that issue until we get further down the agenda.

Shona Robison (North-East Scotland) (SNP): Given the present level of interest in public appointments, will the minister tell the committee in what ways the public appointment of the lay person from Scotland will be open and transparent?

Malcolm Chisholm: The normal Nolan procedures will be followed. I know that Shona Robison takes an interest in that matter in another context, but it will not be different from other public appointment procedures.

Shona Robison: That is a cause for worry.

The Convener: I want to clarify a point before I ask colleagues for their views on the

memorandum. A range of issues have been covered this morning and colleagues—Dorothy-Grace Elder, Richard Simpson and Nicola Sturgeon—have discovered some grey areas and strayed outwith the bill in their concerns. What is the procedure for you to liaise with your opposite numbers at UK level, to ensure that concerns that have been raised in the Scottish Parliament are taken on board?

Malcolm Chisholm: We can convey the questions and concerns directly to our opposite numbers at Westminster, although given that the area is substantially reserved, people might want to take up the matter with Scottish members of the UK Parliament. The Executive will communicate the issues to London.

The Convener: The committee can either agree or disagree that the UK Parliament should legislate on the devolved matters in the National Health Service Reform and Health Care Professions Bill.

Do members have any further comments on the motion? Are members content with the motion?

Nicola Sturgeon: I will not push this matter to a vote, but I think that Sewel motions should always be closely scrutinised. The Executive should make out a strong case to explain why the Parliament should cede power to Westminster in any circumstance. I am not convinced that that has been done this morning, or that the Executive has a clear idea or understanding of what that legislation is for, why the matter should be given over to Westminster or whether it might be better for us not to bother at this stage and to keep our options open. The explanations that we have been given today are quite unsatisfactory.

Dr Simpson: I totally disagree with Nicola Sturgeon. The bill covers an intensely complex area and it makes total sense for the matter to be dealt with on a UK basis. In tomorrow's debate, the minister will have the opportunity to return to the questions that the committee asked this morning, in order to satisfy us. The way in which we have dealt with the bill is entirely appropriate. This is an excellent bill and we should agree to the Sewel motion.

Mr McAllion: I accept Richard Simpson's point—it makes total sense that the matter should be handled on a UK basis. However, under the Scotland Act 1998, any new body that is set up would be devolved to the Parliament. I do not understand how that is consistent with the argument that the bill should proceed on a UK basis. If that were the case, there would seem to be a flaw in the Scotland Act 1998. At some point in the future, the Scottish Parliament may well decide to set up separate regulatory bodies. If that happens, we could find ourselves in somewhat of

a constitutional corner that we would have to box out of, although I am sure that the minister is capable of boxing out of any corner. An anomaly exists and I am not satisfied that we have had full answers to our questions about the position. Having said that, I will not oppose the Sewel motion.

Dorothy-Grace Elder: There is a definite anomaly. I am also concerned about setting the matter in a European context, as there is freedom of movement of health care staff throughout the member states. What consultation has been undertaken with our European partners?

The Convener: Are members content with the motion?

Members indicated agreement.

The Convener: During the debate tomorrow, the fact that the committee is content with the motion will be reported to Parliament. However, in our comments and in those of the minister, it will be made clear to the Parliament that some anomalies exist and that concerns have been raised during the committee's scrutiny of the motion this morning.

Subordinate Legislation

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 10) (Scotland) Order 2001 (SSI 2001/406)

The Convener: We move on to agenda item 4.

The Subordinate Legislation Committee has nothing to report on the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 10) (Scotland) Order 2001 and no comments have been received from members.

Dorothy-Grace Elder: May I ask a question, convener? Can the minister give us an update, perhaps at a later date, on what the research has shown so far? The situation has been going on for about two years, and I understand that he was looking into it quite rigorously.

Malcolm Chisholm: A detailed letter is being sent to the committee—the person from the Food Standards Agency Scotland who is dealing with the matter is on holiday, for which I apologise.

I have a brief note with me and can advise members that, over the next three years, the Food Standards Agency is funding research that is worth almost £1 million so that we can learn about shellfish toxins. Work on investigations into the causative agent for amnesic shellfish poisoning in shellfish harvested from Scottish waters is already under way, as is work on investigations into the development of methods for dealing with, and surveying, recently discovered toxins in UK shellfish. Work on the assessment and validation of a commercial, rapid, qualitative assay for the detection of ASP and paralytic shellfish poisoning in the UK monitoring programme as an end-product test is also under way. A number of other research projects are expected to come on stream in the next few months. A letter with more detail will be sent when the official returns from holiday.

Dorothy-Grace Elder: Thank you.

Motion moved,

That the Health and Community Care Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 10) (Scotland) Order 2001 be approved.—[*Malcolm Chisholm.*]

Motion agreed to.

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 11) (Scotland)
Order 2001 (SSI 2001/420)**

The Convener: The Subordinate Legislation Committee has nothing to report on the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 11) (Scotland) Order 2001 and no comments have been received from members.

Motion moved,

That the Health and Community Care Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 11) (Scotland) Order 2001 be approved.—[*Malcolm Chisholm.*]

Motion agreed to.

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 12) (Scotland)
Order 2001 (SSI 2001/423)**

The Convener: The Subordinate Legislation Committee has nothing to report on the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 12) (Scotland) Order 2001 and no comments have been received from members.

Motion moved,

That the Health and Community Care Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 12) (Scotland) Order 2001 be approved.—[*Malcolm Chisholm.*]

Motion agreed to.

The Convener: I thank the minister for attending this morning's meeting. I now close the public part of the meeting.

10:14

Meeting continued in private until 11:18.

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