

HEALTH AND COMMUNITY CARE COMMITTEE

Wednesday 22 January 2003
(*Morning*)

Session 1

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HEALTH AND COMMUNITY CARE COMMITTEE

4th Meeting 2003, Session 1

CONVENER

*Mrs Margaret Smith (Edinburgh West) (LD)

DEPUTY CONVENER

*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

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Nicola Sturgeon (Glasgow) (SNP)

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Brian Adam (North-East Scotland) (SNP)
Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Mr Tom McCabe (Hamilton South) (Lab)
Ben Wallace (North-East Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Mrs Mary Mulligan (Deputy Minister for Health and Community Care)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Peter McGrath

ASSISTANT CLERK

Graeme Eliot

LOCATION

Committee Room 2

Scottish Parliament

Health and Community Care Committee

Wednesday 22 January 2003

(Morning)

[THE CONVENER *opened the meeting at 10:03*]

Subordinate Legislation

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

There are two negative instruments to be considered under agenda item 1.

Plastic Materials and Articles in Contact with Food (Amendment) (Scotland) Regulations 2003 (SSI 2003/9)

The Convener: No comments have been received from members on the regulations, the Subordinate Legislation Committee had no comments and no motion to annul has been lodged. The recommendation is that the committee should not make any recommendation on the regulations. Is that recommendation agreed to?

Members indicated agreement.

National Health Service (General Medical Services) (Scotland) Amendment Regulations 2003 (SSI 2003/11)

The Convener: No comments have been received from members on the regulations, the Subordinate Legislation Committee had no comments and no motion to annul has been lodged. The recommendation is that the committee should not make any recommendation on the regulations. Is that recommendation agreed to?

Members indicated agreement.

Mental Health (Scotland) Bill: Stage 2

The Convener: Agenda item 2 is further consideration at stage 2 of the Mental Health (Scotland) Bill. Again, we are joined by the Deputy Minister for Health and Community Care and her team.

A number of this morning's amendments are in the name of Adam Ingram, but he is unable to be with us. We will see as we progress whether other members wish to move those amendments.

Section 62—Responsible medical officer's duty to review order from time to time

The Convener: Amendment 162, in the name of Adam Ingram, is grouped with amendments 377, 379, 380, 383, 385, 394 and 395. Does any other member wish to speak to and move amendment 162?

Members indicated disagreement.

Amendment 162 not moved.

The Convener: Amendment 255, in the name of Adam Ingram, was debated with amendment 240. It would be helpful if members would indicate whether they want to move Adam Ingram's amendments.

Amendment 255 not moved.

The Convener: I call the minister to speak to the amendments in the group and to move amendment 377.

The Deputy Minister for Health and Community Care (Mrs Mary Mulligan): Amendment 377 will remove section 62, which deals with the responsible medical officer's duty to keep a compulsory treatment order under review. Section 62 will be replaced by the provisions in amendments 383 and 436. Amendments 379, 380, 394 and 395 will remove references to section 62.

Amendment 383 will clarify the duties on the responsible medical officer to consider regularly whether a patient needs to be on a compulsory treatment order and, if not, to make a determination that revokes the compulsory treatment order. Amendment 383 introduces a new section that, in part, replaces section 62 and the deleted elements of section 64. Amendment 385 is a technical amendment that follows on from amendment 383.

I move amendment 377.

Amendment 377 agreed to.

Section 64—Responsible medical officer's duty to revoke order

Amendments 378 to 382 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 498 not moved.

Section 64, as amended, agreed to.

After section 64

Amendment 383 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 384 is grouped with amendments 386 to 389, 391, 392 and 474.

Mrs Mulligan: Amendment 384 introduces a new section that will give the Mental Welfare Commission for Scotland the power to revoke a compulsory treatment order. The commission currently has the power to discharge patients from detention and Millan recommended that that continue. The power was not included in the bill as introduced, but our consultation uncovered a clear consensus that the commission should have the power, which offers patients an additional safeguard on top of the right to make applications for variation or revocation to the tribunal.

Amendments 386 to 389, 391 and 392 will modify the notification arrangements when a compulsory treatment order is revoked by either the responsible medical officer or the Mental Welfare Commission. The patient, the patient's named person, any guardian of the patient and any welfare attorney of the patient should be notified as soon as practicable after the determination is made and, in any event, within seven days. The Mental Welfare Commission, the tribunal, the mental health officer and the responsible medical officer should also be notified within seven days. The amendments are structured so that the person who revokes the compulsory treatment order does not have to notify himself.

The commission is not a party to tribunal proceedings. Therefore, amendment 474 will remove the commission from the list of persons who should have the opportunity to make representations or to lead or produce evidence to a tribunal that is holding a hearing following any of the triggers in section 77(2).

I move amendment 384.

Amendment 384 agreed to.

Section 65—Determination revoking order: notification

Amendments 385 to 390 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 218 not moved.

Amendments 391 and 392 moved—[Mrs Mary Mulligan]—and agreed to.

Section 65, as amended, agreed to.

Section 63—Reviews of order: further steps to be taken by responsible medical officer

Amendments 393 to 396 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 499 not moved.

10:15

The Convener: Amendment 397 is grouped with amendments 398, 399, 400, 402 and 420.

Mrs Mulligan: Amendment 397 will adjust section 63, which covers further steps to be taken by the responsible medical officer under a first or further review, so that the responsible medical officer is required to consider whether a compulsory treatment order will continue to be necessary after the day on which the current order would otherwise expire.

Amendment 398 will clarify the reference in section 63(3) to the compulsory measures or recorded matters that are specified in a compulsory treatment order.

Amendment 399 will require the responsible medical officer to consult certain persons as part of the first or further review process, once he is satisfied that the patient continues to meet the criteria for compulsion.

Amendment 400 will relocate section 63 to a position after section 65, so that the sections are presented in groups that follow the logical sequence of events. After sections 60 and 61, which initiate the first and further reviews, will come section 64, the new section that will be introduced by amendment 383 and section 65.

Amendments 402 and 420 will ensure that where the responsible medical officer has to have regard to the views of the persons he consulted during the initial phase of a first or further review, he also has to have regard to the views of the persons he consulted during the second phase. Those amendments are necessary as a result of the restructuring of chapter 2.

I move amendment 397.

Amendment 397 agreed to.

Amendments 398 to 400 moved—[Mrs Mary Mulligan]—and agreed to.

Section 63, as amended, agreed to.

Section 66—Responsible medical officer's duty to extend order

Amendments 401 and 402 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 403 is grouped with amendments 404 to 407.

Mrs Mulligan: These amendments will make minor adjustments to section 66. Amendments 403 to 406 will clarify the conditions relating to the criteria for long-term compulsion that must be met in order for the patient to remain subject to a CTO. The amendments make it clear that it must appear to the responsible medical officer that the CTO will continue to be necessary after the day on which it would otherwise expire. Amendment 407 will clarify the reference to the compulsory measures or recorded matters specified in the CTO.

I move amendment 403.

Amendment 403 agreed to.

Amendment 500 not moved.

Amendments 404 to 411 moved—[Mrs Mary Mulligan]—and agreed to.

Amendments 163 and 164 not moved.

Section 66, as amended, agreed to.

After section 66

Amendments 412 and 413 moved—[Mrs Mary Mulligan]—and agreed to.

Section 67—Determination extending order: notification etc

Amendments 414 to 417 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 418 is in a group on its own.

Mrs Mulligan: Amendment 418 will restrict the circumstances in which a copy of the record of the responsible medical officer's determination to extend a CTO may be withheld from the patient. The only reason for withholding a copy of the record from the patient is that the responsible medical officer considers that there will be a significant risk of harm to the patient or to others if the patient receives a copy of the record.

I move amendment 418.

Amendment 418 agreed to.

Section 67, as amended, agreed to.

Section 68—Responsible medical officer's duty to apply for extension and variation of order

Amendments 419 to 421 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 501 not moved.

Amendment 422 moved—[Mrs Mary Mulligan]—and agreed to.

Amendments 165 and 166 not moved.

Section 68, as amended, agreed to.

After section 68

Amendments 423 and 424 moved—[Mrs Mary Mulligan]—and agreed to.

Section 69—Application for extension and variation of order: notification

Amendments 425 to 429 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 219 not moved.

Amendments 430 to 432 moved—[Mrs Mary Mulligan]—and agreed to.

Section 69, as amended, agreed to.

Section 70—Application to Tribunal

The Convener: Amendment 433, in the name of the minister, is grouped with amendments 451, 469, 476 to 479 and 484. The minister will move amendment 433 and speak to all other amendments in the group.

Mrs Mulligan: The amendments in the group will clarify references to the compulsory measures or recorded matters that are specified in the compulsory treatment order. Any change to the compulsory measures or the recorded matters requires the approval of the tribunal. The compulsory measures are any of those listed at section 54(1), and recorded matters are any treatment or services specified by the tribunal under section 53(4)(a)(ii).

I move amendment 433.

Amendment 433 agreed to.

Amendments 434 and 435 moved—[Mrs Mary Mulligan]—and agreed to.

Section 70, as amended, agreed to.

Section 71—Variation of order: requirements to be complied with by responsible medical officer

Amendment 502 not moved.

Amendment 436 moved—[Mrs Mary Mulligan]—and agreed to.

Section 71, as amended, agreed to.

Section 72—Application by responsible medical officer for variation of order: notification

Amendment 437 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: I point out that if amendment 438 is agreed to, I cannot call amendment 220.

Amendment 438 moved—[Mrs Mary Mulligan]—and agreed to.

Section 72, as amended, agreed to.

Section 73—Application by responsible medical officer to Tribunal

Amendment 439 moved—[Mrs Mary Mulligan]—and agreed to.

Section 73, as amended, agreed to.

After section 73

The Convener: I call amendment 440.

Mrs Mulligan: Amendment 440 will introduce a new section that sets out the procedure that the responsible medical officer must follow if it appears that any recorded matter that is specified in a compulsory treatment order is not being provided. Where the RMO is satisfied that a recorded matter is not being provided, he must refer the issue to the tribunal as soon as is practicable.

Amendment 441 will oblige the responsible medical officer to notify the persons mentioned in subsections 69(a), (b), (c) and (d) that a reference is to be made to the tribunal concerning lack of provision of a recorded matter.

We believe that it is important that the Mental Welfare Commission can refer any compulsory treatment order to the tribunal, for any reason it considers appropriate. Amendment 442 will introduce a new section that gives the commission the power to do that. The commission may use that power whenever it thinks it appropriate. For example, it may do so because it is concerned about a lack of provision of a recorded matter, about whether the patient meets the criteria for compulsion or about whether a compulsory treatment order is appropriate given a change in a patient's circumstances. The commission must give notice that a reference is to be made to the patient's responsible medical officer and certain other persons, including the patient and the named person.

I move amendment 440.

Amendment 440 agreed to.

Amendments 441 and 442 moved—[Mrs Mary Mulligan]—and agreed to.

Section 74—Mental health officer: duties as respects patient

Amendment 256 not moved.

Amendment 443 moved—[Mrs Mary Mulligan]—and agreed to.

Section 74, as amended, agreed to.

Section 75—Application by patient etc for revocation of determination extending order

The Convener: Amendment 444, in the name of the minister, is in a group on its own. The minister will move and speak to the amendment.

Mrs Mulligan: Amendment 444 is a technical amendment to section 75. It will clarify section 75(1) to provide that only the patient's responsible medical officer may make a determination to extend a compulsory treatment order in respect of that patient.

I move amendment 444.

Amendment 444 agreed to.

Amendment 445 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 446, in the name of the minister, is grouped with amendments 449, 467, 468, 475 and 486. The minister will move amendment 446 and speak to all amendments in the group.

Mrs Mulligan: Amendments 446, 449 and 467 relate to the circumstances under section 77(2) in which the tribunal is required to review the responsible medical officer's determination to extend a compulsory treatment order. Amendments 446 and 449 will clarify the policy that, when the tribunal is required to review the determination anyway, it should not be possible for persons to apply to the tribunal to have the determination revoked. Amendment 467 will adjust section 77(2) so that review by the tribunal is automatic and does not depend on an application by the MHO.

Amendment 475 will divide section 77 into two sections to improve the reading of the chapter. Amendments 468 and 486 will be necessary following the division of section 77.

I move amendment 446.

Amendment 446 agreed to.

10:30

The Convener: Amendment 447, in the name of the minister, is grouped with amendments 448, 450 and 452. I ask the minister to move amendment 447 and to speak to all the amendments in the group.

Mrs Mulligan: Amendments 447 and 448 will remove the commission from the list of persons who may apply to the tribunal for revocation of a determination extending a compulsory treatment order. Amendments 450 and 452 will remove the commission from the list of persons who may apply to the tribunal for revocation or variation of a compulsory treatment order itself. Those provisions are no longer necessary given the

commission's power to revoke a compulsory treatment order—which was given through agreement to amendment 384—and to refer the compulsory treatment order to the tribunal, under the provision in amendment 442.

I move amendment 447.

Amendment 447 agreed to.

Amendments 448 and 449 moved—[Mrs Mary Mulligan]—and agreed to.

Section 75, as amended, agreed to.

Section 76—Ancillary provision

Amendments 450 to 452 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 503, in the name of the minister, is grouped with amendments 454 to 463. I ask the minister to move amendment 503 and to speak to all the amendments in the group.

Mrs Mulligan: The amendments will clarify the right of the patient and the patient's named person to apply to the tribunal for variation or revocation of a compulsory treatment order.

The policy is that no application can be made to the tribunal by the patient or the patient's named person for revocation or variation of a compulsory treatment order within three months of the order's being made or any tribunal hearing arising from the responsible medical officer's decision to extend the order, whether or not it includes variation. That is not totally clear in the current draft of the bill. Amendment 453 will clarify section 76(4) so that the three-month time limit also applies after the tribunal has considered a responsible medical officer's decision to extend a compulsory treatment order.

Amendments 454 to 457 will implement the policy intention that the patient and the named person may make two applications each for revocation or variation under section 76 in each of the periods that are specified in section 76(6). The amendments seek to remove the ambiguity from section 76(5).

Amendments 461, 462 and 463 will correct an error in section 76(6) to which the amendments 454 to 457 refer. A compulsory treatment order lasts initially for six months. It may then be extended for six months after the first review and is renewable annually thereafter.

Under section 75, the patient or his named person may apply for revocation of a determination extending a compulsory treatment order. Amendments 458 to 460 will clarify the policy intention that any person who makes such an application, and whose application is refused, has effectively used up one of his two allowed applications under section 76.

I move amendment 503.

Amendment 503 agreed to.

Amendments 454 to 463 moved—[Mrs Mary Mulligan]—and agreed to.

Section 76, as amended, agreed to.

Section 77—Review by Tribunal of responsible medical officer's determination under section 66

Amendments 464 to 469 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: I call the minister to speak to amendment 470.

Mrs Mulligan: Under section 77, the tribunal is obliged to hold a hearing irrespective of whether any representations are made to it. Amendment 470 will remove that requirement. It will remove the barrier to the tribunal's carrying out a review without a full tribunal hearing. The circumstances in which that is appropriate will be prescribed in the tribunal rules in schedule 2, paragraph 9(1), as amended by amendment 39.

I move amendment 470.

Amendment 470 agreed to.

Amendment 504 not moved.

Amendments 471 and 472 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 167 not moved.

Amendments 473 and 474 moved—[Mrs Mary Mulligan]—and agreed to.

Section 77, as amended, agreed to.

Amendment 475 moved—[Mrs Mary Mulligan]—and agreed to.

Section 78 agreed to.

Section 79—Powers of Tribunal on application under section 70, 73, 75 or 76

Amendments 476 to 480 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 505 not moved.

Amendment 481 moved—[Mrs Mary Mulligan]—and agreed to.

Section 79, as amended, agreed to.

After section 79

The Convener: Amendment 482, in the name of the minister, is grouped with amendments 483, 485 and 487.

Mrs Mulligan: Amendments 440 and 442 gave the responsible medical officer and the

commission the duty and power, respectively, to make a referral to the tribunal. Amendment 482 will insert a new section that specifies the powers of the tribunal to vary a compulsory treatment order or revoke a compulsory treatment order following such a reference. Amendment 482 will also make provision for certain persons to have the opportunity to make representations or to lead or produce evidence to the tribunal.

Amendment 483 is a technical amendment that will remove the reference to section 77 in section 80(1) and add a reference to the sections introduced by amendments 475 and 482. Amendment 483 is necessary as a result of structural changes to previous sections.

Amendment 485 is a technical amendment that will remove sections 80(1)(b) and 80(2). Those provisions set out the procedure for circumstances in which the tribunal specifies measures or services other than those that are set out in the application. Amendment 485 is necessary because the powers in section 80 will apply to situations in which the tribunal is considering a compulsory treatment order but no application has been made—for example, following referral by the commission. Amendment 485 is also necessary because the right of certain persons to have the opportunity to make representation or to lead or produce evidence to the tribunal is now located elsewhere.

Section 81, as amended, gives the tribunal powers to require the responsible medical officer or mental health officer to provide it with a report. Amendment 487 will expand the application of section 81 to cover references to the tribunal by the RMO, concerning recorded matters, or by the commission, for any reason.

I move amendment 482.

Amendment 482 agreed to.

Section 80—Tribunal's powers etc when varying compulsory treatment order

Amendments 483 to 485 moved—[Mrs Mary Mulligan]—and agreed to.

Section 80, as amended, agreed to.

Section 81—Ancillary powers of Tribunal

Amendments 486 and 487 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 488, in the name of the minister, is in a group of its own. I ask the minister to speak to and to move the amendment.

Mrs Mulligan: Amendment 488 will replace section 81(2) with a more general provision. Currently, section 81(2) gives the tribunal the power to require a report from the MHO stating

certain specified information and a needs assessment by the RMO. The amendment generalises this to a power to require reports from the mental health officer and the responsible medical officer, with the details to be specified in regulations.

I move amendment 488.

Amendment 488 agreed to.

Section 81, as amended, agreed to.

After section 81

Amendment 93 moved—[Mrs Mary Mulligan]—and agreed to.

Section 82—Meaning of “modify”

The Convener: Amendment 489, in the name of the minister, is in a group of its own. I ask the minister to speak to and to move the amendment.

Mrs Mulligan: Section 82 defines the meaning of “modify” in relation to the modification of the measures or recorded matters that are specified in a compulsory treatment order. Amendment 489 will replace almost all of section 82, clarifying references to measures or recorded matters. I move amendment 489.

Amendment 489 agreed to.

Section 82, as amended, agreed to.

The Convener: That ends today's business.

Meeting closed at 10:43.

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