

HEALTH AND COMMUNITY CARE COMMITTEE

Tuesday 4 March 2003
(*Afternoon*)

Session 1

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HEALTH AND COMMUNITY CARE COMMITTEE

11th Meeting 2003, Session 1

CONVENER

*Mrs Margaret Smith (Edinburgh West) (LD)

DEPUTY CONVENER

*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)
Dorothy-Grace Elder (Glasgow) (Ind)
*Janis Hughes (Glasgow Rutherglen) (Lab)
*Mr John McAllion (Dundee East) (Lab)
*Shona Robison (North-East Scotland) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)
*Nicola Sturgeon (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

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

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Peter McGrath

ASSISTANT CLERK

Graeme Eliot

LOCATION

Committee Room 3

Scottish Parliament

Health and Community Care Committee

Tuesday 4 March 2003

(Afternoon)

[THE CONVENER *opened the meeting in private at 15:00*]

15:07

Meeting continued in public.

Item in Private

The Convener (Mrs Margaret Smith): Good afternoon, everyone and welcome to the committee. I have received apologies from Dorothy-Grace Elder.

The first agenda item is to discuss whether the committee is happy to discuss part of item 3 on the Mental Health (Care and Treatment) (Scotland) Bill in private. I propose that we discuss publicly the concerns that were raised about excessive security on 5 February, when the deputy convener was in the chair. At that point, the minister agreed to go come back with further amendments to try to alleviate committee members' anxiety. I suggest that we discuss in public suggested amendments and papers from the Mental Welfare Commission for Scotland and the Law Society of Scotland. I propose that we then move into private session for the second part of item 3, when we will hear further evidence from the minister on the issue. That will allow full and frank discussions to help us come up with a solution.

We will discuss item 4 on hepatitis C in private, again to allow for a full discussion of possible options and legal measures.

Members indicated agreement.

Subordinate Legislation

National Health Service Superannuation Scheme (Scotland) Amendment Regulations 2003 (SSI 2003/55)

The Convener: Turning to agenda item 2, there are three negative instruments to be dealt with today. The Subordinate Legislation Committee has drawn the National Health Service Superannuation Scheme (Scotland) Amendment Regulations 2003 (SSI 2003/55) to the attention of the committee on minor grounds regarding drafting styles. No members' comments have been received, no motion to annul has been lodged and it is recommended that the committee make no recommendation on the instrument.

Members indicated agreement.

National Assistance (Assessment of Resources) (Scotland) Regulations 2003 (SSI 2003/69)

The Convener: The Subordinate Legislation Committee has no comments on the regulations. No members' comments have been received and no motion to annul has been lodged. Is it agreed that the committee does not wish to make any recommendation in relation to the regulations?

Members indicated agreement.

National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2003 (SSI 2003/86)

The Convener: The Subordinate Legislation Committee has no comments. No members' comments have been received and no motion to annul has been lodged. Is it agreed that the committee does not wish to make any recommendation in relation to the regulations?

Members indicated agreement.

Mental Health (Care and Treatment) (Scotland) Bill (Draft Stage 3 Amendments)

The Convener: Item 3 is to discuss the Mental Health (Care and Treatment) Scotland Bill and the potential amendment of adding a new chapter 3 in relation to detention and conditions of excessive security. The committee discussed that at the meeting on 5 February.

There are some suggested draft amendments from the Executive and some comments on those draft amendments from the Law Society of Scotland and the Mental Welfare Commission for Scotland. I am interested to hear members' concerns or comments.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): I have a problem with the time scale in the draft amendment. When the committee discussed detention, it was quite clear that members thought that detention should be for as short a time as possible. I am concerned about the amount of time that the legal process could take before anything happens. The Mental Welfare Commission says:

"The Executive amendment allows a potential of 10 months, with further delays for repeated applications by the patient".

I am therefore unhappy with a six-month duration. The committee's view was that a three-month maximum would be acceptable, so I am not prepared to support the amendment as drafted.

Shona Robison (North-East Scotland) (SNP): The Executive amendments fall well short of the amendments I lodged at stage 2. I have several key concerns, one of which Margaret Jamieson has already spoken about, so I will not elaborate on that.

As the amendments are drafted, patients would not be able to claim that they are being held in excessive security if they require security that is not at the level that is required by the state hospital. A patient might require a medium secure unit, for example. Therefore my first concern is that the bill must include a statement that the person does not require the type of special security that can be provided only in the state hospital.

The duty to identify a facility is also a key concern. None of the provisions in the Executive amendments require the transfer of the patient; they require only identification of a suitable hospital. It is not clear what would happen if there were no appropriate hospital or if there were no beds in an appropriate hospital. Health boards

should be under a duty to identify and, crucially, to make available accommodation in an appropriate hospital; otherwise the intention of the amendments is seriously weakened.

The other serious omission is remedies or sanctions. What is the sanction for non-compliance with an order? If a tribunal order is not complied with, the tribunal should be able to refer the matter to the Court of Session. The Executive's draft amendment would require the patient rather than the tribunal to take the health board to the Court of Session for breach of statutory duty. Surely if the tribunal is the body that will make the order that is not complied with, the tribunal should have the authority to take the matter to the Court of Session. That is logical and would protect the rights of patients who might not be in a position to go to the Court of Session.

My other concern is about ministerial consent. It is not right that the consent of ministers should be necessary for an entrapped patient to succeed in an appeal. At the moment, we accept that ministers should be required to approve the transfer of a restricted patient, but an appeal is quite different from a tribunal. Ministers should not have the final say in that, because there would be a conflict of interests; ministers will be responsible for decisions about restricted patients, but they will also be responsible for the lack of provision of services. That represents a definite conflict of interests.

15:15

My final point is about hurdles. The repeated applications that would be required by the Executive's draft amendment are completely unnecessary. The amendments that I lodged required one application by the patient to the tribunal—that was all. The Executive's amendment would require three applications, and that is without the matter even reaching the Court of Session, which would require a fourth application. It is not fair on an entrapped person that all those hurdles be put in the way of the process. Those are my key concerns.

Nicola Sturgeon (Glasgow) (SNP): I will not repeat everything that Shona Robison said, because I agree with it 100 per cent. The draft amendment does not even come close to the one that the committee supported consensually the last time we discussed the issue. Shona ran through all the ways in which the amendment falls short. I will focus on one point—the first that Shona raised—because in some ways it is the key test of whether the draft amendments meet the criteria.

One of the key motivations was the plight of people who are trapped in the state hospital when their condition requires them only to be in a medium secure setting. The draft amendments would do nothing for those people. They would not give them any right of redress because, as Shona Robison said, as long as somebody is deemed to be in need of some sort of special security, any security is deemed appropriate. Somebody in the state hospital who would be better in a medium secure setting would not be helped by the amendment.

That worries me, because we know that the problem is a lack of medium secure places. The point of the amendments was that they would be a spur to get that sorted out, but that will not happen, because the draft amendments fall completely short of what the committee agreed. I hope that when we go into private session the minister can take that on board, together with all the other points that Shona Robison made extremely well.

Mary Scanlon (Highlands and Islands) (Con): We are all aware of the lack of medium secure units. One point that Shona Robison did not raise was made by the Mental Welfare Commission, which stated, "We feel that"—the amendment—

"gives less support to the human rights of an entrapped patient".

We should take that into account.

Shona Robison also made the point that only one application is required by amendments 804 and 805, but if the Executive's draft amendments were passed, three applications would be required

"without even reaching the Court of Session, which would require a fourth!"

We are getting into quite a bureaucratic muddle.

Finally, Shona Robison also raised the point that was made by the Law Society of Scotland, which suggests:

"It would be helpful if the amendment stated that if the Health Board does not comply with the final order of the Tribunal, it would be deemed a breach of statutory duty."

Given the legislation that we have passed about personal care and so on, and all the shenanigans that are going on in that matter, we must be much tighter and ensure that health boards perform the duties that we set them.

Convener, once we have discussed these matters publicly and privately today, what is the time scale? I would like to think that if the Executive lodged an amended amendment today, we would still have an opportunity to see it in plenty time for us to discuss it with the Law Society and other interested parties before going to stage 3.

The Convener: It is our intention to get that undertaking from the Executive.

Mary Scanlon: It is important to take time and get it right.

The Convener: It is an important issue.

Janis Hughes (Glasgow Rutherglen) (Lab): I concur with the other members. On reading the amendments and the comments from the organisations that have been involved, the amendments seem to be putting more hurdles in place. That seems to be worse than the status quo, which is of great concern.

Those of us who have been involved in our constituencies in dealing with the plight of entrapped patients know that nothing focuses the mind like the fact that we do not have enough medium secure units. If the Mental Health (Care and Treatment) (Scotland) Bill can do one thing, it should be to create a good situation for entrapped patients. The draft amendments do not focus the mind; they represent a backward step, which would be detrimental to our aim with the bill. I am greatly concerned that we must move forward and provide optimism about how we can end such patients' plight.

Bill Butler (Glasgow Anniesland) (Lab): I concur with everything that has been said. If the Executive is trying with the draft amendments to aid entrapped patients and to get them into a proper setting, it falls short of its aim. As Shona Robison and Nicola Sturgeon said, the major point is that the amendments' job is to concentrate health boards' minds wonderfully. That can be done only by making it a statutory duty to provide an appropriate place to which such people can go. We need not good intentions, but good effect. When we go into private session and in the next few days, I hope that we will obtain what we all desire—amendments that help entrapped patients.

Mr John McAllion (Dundee East) (Lab): I register my opposition to the amendments, about which the committee is unanimous. We have known about patients who are trapped in the state hospital for a long time. I have discussed with health board officials for years—since before the Parliament began—patients who should not have been in Carstairs, but who were allowed to stay there because health boards made no local provision for them. We will change that situation only by using some kind of steel on the Executive to make it say that the situation is no longer good enough and that health boards must start to make provision. No excuses are left; those patients' interests should come first.

The Convener: For the record, I say that I, too, object to the draft amendments. Members have covered all the points. The amendments fail categorically to address the many points that have

been made. As Mary Scanlon said, the issue is one of human rights. It is clear from members' comments that we are determined to have amendments that place a statutory duty on bodies that might have been well-intentioned, but have failed to make provision for people who are trapped in an inappropriate level of security. We will develop the matter in discussion with the minister and I hope that we will produce amendments that deal with the committee's comments.

15:22

Meeting suspended until 15:26 and thereafter continued in private until 16:39.

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