

HEALTH AND COMMUNITY CARE COMMITTEE

Tuesday 25 March 2003
(Morning)

Session 1

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HEALTH AND COMMUNITY CARE COMMITTEE 14th 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 4

Scottish Parliament

Health and Community Care Committee

Tuesday 25 March 2003

(Morning)

[THE CONVENER *opened the meeting at 10:08*]

Item in Private

The Convener (Mrs Margaret Smith): Good morning and welcome to the Health and Community Care Committee. We have received apologies from a number of colleagues, so we will proceed as we are. I think that members will turn up in due course, transport allowing.

The committee is asked to consider whether to discuss in private agenda item 4, which is a letter to the Procedures Committee on legislative procedure. The letter is a draft at this stage and we are to discuss possible courses of action. Do members agree to discuss item 4 in private?

Members indicated agreement.

Subordinate Legislation

Fish Labelling (Scotland) Regulations 2003 (SSI 2003/145)

The Convener: There are 12 negative instruments on today's agenda.

The Subordinate Legislation Committee

"holds to its view that late implementation of EC directives is, given the explicit terms of section 57(2) of the Scotland Act, a breach of Community law and to that extent raises a devolution issue. **The Committee therefore draws the Regulations to the attention of the lead committee and the Parliament on that ground.** It observes, however, that in the case of these Regulations, it may be that the breach is more apparent than real."

I am sure that, had we the time, we would go back and question what "more apparent than real" means. However, at this stage, no members' comments have been received, and no motion to annul has been lodged, so the recommendation is that the Health and Community Care Committee make no recommendation in relation to the regulations. Is that agreed?

Members indicated agreement.

Regulation of Care (Registration and Registers) (Scotland) Amendment Regulations 2003 (SSI 2003/148)

The Convener: The Subordinate Legislation Committee has made comments to the Executive on defective drafting, which the Executive has acknowledged and will take account of in future instruments. No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the Health and Community Care Committee make no recommendation in relation to the instrument at this time. Is that agreed?

Members indicated agreement.

Regulation of Care (Requirements as to Care Services) (Scotland) Amendment Regulations 2003 (SSI 2003/149)

The Convener: The Subordinate Legislation Committee

"observes that it is customary to give an indication in the instrument text of the subject matter of the provisions amended. **In the Committee's view, failure to do so does not comply with proper legislative practice and it reports the instrument to the lead committee and the Parliament on that ground.**"

No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the committee make no recommendation on the instrument. Is that agreed?

Members indicated agreement.

**Regulation of Care
(Requirements as to Limited Registration
Services) (Scotland) Regulations 2003
(SSI 2003/150)**

The Convener: The Subordinate Legislation Committee has made several comments and considers the regulations to have been defectively drafted. No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the committee make no recommendation on the instrument. Is that agreed?

Members indicated agreement.

**Regulation of Care
(Applications and Provision of Advice)
(Scotland) Amendment Order 2003
(SSI 2003/151)**

The Convener: The Subordinate Legislation Committee has made comments to the Executive on defective drafting, which the Executive has acknowledged and will take account of in future instruments. No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the committee make no recommendation on the instrument. Is that agreed?

Members indicated agreement.

**Regulation of Care (Fees) (Scotland)
Order 2003 (SSI 2003/152)**

The Convener: The Subordinate Legislation Committee has made comments to the Executive on defective drafting, which the Executive has acknowledged and will take account of in future instruments. No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the committee make no recommendation on the instrument. Is that agreed?

Members indicated agreement.

**Health Education Board for Scotland
Amendment Order 2003 (SSI 2003/154)**

The Convener: The Subordinate Legislation Committee has made comments to the Executive on defective drafting, which the Executive has acknowledged. No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the committee make no recommendation on the instrument. Is that agreed?

Members indicated agreement.

**Adults with Incapacity
(Management of Residents' Finances)
(Scotland) Regulations 2003 (SSI 2003/155)**

The Convener: The Subordinate Legislation Committee

"noticed that, in Schedule 1 on the Note to the form (page 4 of the instrument), it states that the certificate 'shall be reviewable' within three years in certain circumstances. In fact, section 37(7)"

of the Adults with Incapacity (Scotland) Act 2000

"states that the form 'shall be reviewed' in those circumstances, which is significantly different. The point was raised with the Executive ... the Executive accepts that the Note to the form in Schedule 1 does not exactly reflect the wording in section 37(7) of the 2000 Act. The Regulations will be amended at the next available opportunity ... In the Committee's view, this constitutes a serious error. The Note to the form did not reflect the wording of the Act. It suggests that a review is discretionary whereas, under the parent Act, it is mandatory. **To that extent there is a serious doubt as to whether the Regulations are *intra vires*. The Committee therefore draws the attention of the lead committee and the Parliament to the Regulations on that ground and to the Executive's undertaking to make an appropriate amendment at the next available opportunity.**"

We should put on record the fact that although we have run out of time to do anything about the regulations, we support strongly the Subordinate Legislation Committee's view—the breach is serious.

No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the committee make no recommendation on the instrument. Is that agreed?

Members indicated agreement.

**National Assistance
(Assessment of Resources) Amendment
(No 2) (Scotland) Regulations 2003
(SSI 2003/156)**

The Convener: The Subordinate Legislation Committee draws our attention to regulation 2(2) on the ground of

"defective drafting acknowledged by the Executive and to the Executive's undertaking to correct the error."

No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the committee make no recommendation on the instrument. Is that agreed?

Members indicated agreement.

National Health Service (Dental Charges) (Scotland) Regulations 2003 (SSI 2003/158)

The Convener: The Subordinate Legislation Committee has made comments to the Executive on defective drafting, which the Executive has acknowledged and will take account of in future instruments. No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the committee make no recommendation on the instrument. Is that agreed?

Members *indicated agreement.*

National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2003 (SSI 2003/200)

The Convener: The Subordinate Legislation Committee has noticed five instances of defective drafting in the regulations, which the Executive has undertaken to correct through an amending instrument. That committee welcomes the Executive's undertaking and notes that its action should take account of any technical difficulties. No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the committee make no recommendation on the instrument. Is that agreed?

Members *indicated agreement.*

National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2003 (SSI 2003/201)

The Convener: The Subordinate Legislation Committee has made no comments on the instrument. No members' comments have been received and no motion to annul has been lodged, so the recommendation is that the committee make no recommendation on the instrument. Is that agreed?

Members *indicated agreement.*

The Convener: The Executive's draftspeople did not cover themselves in glory with that little lot.

Hepatitis C

10:15

The Convener: Agenda item 3 is our final discussion of the parliamentary session on hepatitis C, with which we have been dealing for well over two years. Disappointing letters from the Minister for Health and Community Care and from the Secretary of State for Work and Pensions have been circulated. As members know, the committee suggested to the Minister for Health and Community Care ways in which payments could be made to people who have suffered because of defective blood products. It is unfortunate that the minister has not accepted our suggestions as a way forward.

We asked the Secretary of State for Work and Pensions to come to the committee to answer questions about implications for Westminster and the potential clawback of any payments that might be made. It is unfortunate that the secretary of state has twice declined to come to the committee to answer such questions. That is disappointing, given the manner in which the committee has proceeded with the issue: we have tried to be as constructive as we could be.

Two draft letters have been circulated to members as private papers, but we are having our discussion in public, so it is important to put on record our final thoughts on this important issue and to do what we can. One letter is to the Lord Advocate. The committee agreed last week that, if all other courses of action fail, we would invite the Lord Advocate, Colin Boyd, to examine the issue; we would draw the matter to his attention under schedule 6 to the Scotland Act 1998 and ask him for a determination on the related devolution issues.

In the third last paragraph on the second page of the letter, we should take out the text in brackets. Legal advice suggests that that text relates to a political decision rather than to a legal decision. We are asking the Lord Advocate to investigate the legal aspects of whether the Scottish ministers can act as has been proposed. The clawback issue is a political matter: Westminster has the legal right to derogate social security payments and benefits and the choice whether to exercise that right is a political decision.

Do members have comments on the letter? Are we happy for it to be sent?

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): I am happy for the letter to be sent.

The Convener: The next letter is the committee's final letter to the Minister for Health

and Community Care. It points out our considerable frustration and disappointment, although the minister has made progress on the issue, which is no accident, because the committee has exerted much pressure. The Executive said on record to the committee that it will make the proposed payments and the minister believes that he has the power to make the payments, but no progress has been made beyond that for those who have suffered.

Our letter says that on 29 January, the minister told the committee that he felt that he had the power to make payments and that he wanted to do that; however, we are near the end of March and no further progress has been made. The letter asks about progress on discussions with the UK Government and calls on the minister to answer a variety of questions about progress, the powers that he thinks he can use and whether he might consider pressing ahead with a scheme on his own in the absence of a UK Government view. We also ask him to respond before dissolution at the end of this week.

The letter is fairly strongly worded and reflects the committee's extreme frustration, disappointment and anger on behalf of the people who have suffered through no fault of their own. The letter reflects fairly the committee's consistent views. As members have no comments, we will sign off that letter. There are a couple of typos, but we will sort them out.

This is the final meeting of the Health and Community Care Committee in this parliamentary session so I want, before we move into private session, to record in the *Official Report* my thanks to the committee clerks, who have served the committee well. I hope that they have found time to read the *Official Report* of last week's stage 3 deliberations on the Mental Health (Care and Treatment) (Scotland) Bill.

Nicola Sturgeon (Glasgow) (SNP): That is the last thing that they need.

The Convener: I am sure that they have not read the transcript of the whole debate; however, I refer them to what committee colleagues and I said at the end of the debate about the great amount of work that the clerks put into the bill. I thank not only the clerks who are currently working with the committee, but those who have been with it throughout the four years of the session. They have worked incredibly hard and all the committee's members have appreciated their support.

I thank the two members who have been deputy conveners—Mr Malcolm Chisholm and Margaret Jamieson—for their support and considerable input into what I hope was the smooth running of the committee. I do not know what happened to Mr Chisholm—does any member ever hear of him?

I also thank all my committee colleagues. We have sometimes been a thorn in the Executive's side, but we have also tried to be constructive, particularly in respect of hepatitis C. Considerable progress has been made on hepatitis C, on free personal care—proposals for which initially came from a Health and Community Care Committee report—and on a variety of other issues. This has been a good and hard-working committee and I want to record in the *Official Report* my thanks to all members who have served on it.

10:22

Meeting continued in private until 10:32.

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