

HEALTH AND SPORT COMMITTEE

Wednesday 1 October 2008

Session 3

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CONTENTS

Wednesday 1 October 2008

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DECISION ON TAKING BUSINESS IN PRIVATE	1167
SUBORDINATE LEGISLATION	1168
Plastic Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2008 (SS1 2008/261)	1168
Adult Support and Protection (Scotland) Act 2007 (Restriction on the Authorisation of Council Officers) Order 2008 (SSI 2008/306)	1170
PETITIONS	1171
Methadone Prescriptions (PE789)	1171
Ice Rinks (PE1138)	1173
Local Leisure Activities (PE1173)	1174
Smoking, Health and Social Care (Scotland) Act 2005 (PE1037 and PE1042)	1174

HEALTH AND SPORT COMMITTEE

23rd Meeting 2008, Session 3

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Ross Finnie (West of Scotland) (LD)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)
Rhoda Grant (Highlands and Islands) (Lab)
*Michael Matheson (Falkirk West) (SNP)
*Ian McKee (Lothians) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)
*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

COMMITTEE SUBSTITUTES

Joe FitzPatrick (Dundee West) (SNP)
Jamie McGrigor (Highlands and Islands) (Con)
Irene Oldfather (Cunninghame South) (Lab)
Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

David Slater

LOCATION

Committee Room 1

Scottish Parliament

Health and Sport Committee

Wednesday 1 October 2008

[THE CONVENER *opened the meeting at 10:01*]

Decision on Taking Business in Private

The Convener (Christine Grahame): I welcome members to the 23rd meeting in 2008 of the Health and Sport Committee. I remind all present to ensure that mobile phones are switched off. Apologies have been received from Rhoda Grant.

Item 1 on the agenda is a decision on taking business in private. The committee is invited to take item 4 in private, in line with its usual practice of considering its work programme in private. Are we agreed?

Members *indicated agreement.*

Subordinate Legislation

Plastic Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2008 (SSI 2008/261)

10:02

The Convener: Our first main item of business is consideration of subordinate legislation, and we have before us two negative instruments.

We are considering for the second time the Plastic Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2008. The instrument was brought to the committee's attention by the Subordinate Legislation Committee on several grounds: doubt as to whether parts of the instrument are *intra vires* because of the failure to justify adequately its coming into force less than 21 days after it was laid before the Parliament; failure to provide a Presiding Officer with such an explanation when the instrument was laid; and apparent failure to provide transitional arrangements for substance "ref. 74560".

The Subordinate Legislation Committee wrote to the Minister for Parliamentary Business on 17 September to raise its serious concerns about the handling of the instrument. With due regard to the parliamentary timetable for consideration of the instrument, the Minister for Parliamentary Business has responded and his response was circulated with members' papers. No comments have been received from members and no motions to annul have been lodged. Do members wish to make any comments?

Ross Finnie (West of Scotland) (LD): I have read the papers again, and read carefully the Minister for Parliamentary Business's response. I have much sympathy with the poor view that has been taken of the Food Standards Agency's failure to respond adequately, but I do not agree with the Subordinate Legislation Committee's view that when the 21-day rule is breached, questions arise about the instrument's *vires* and the minister's actions.

It seems to me that the 21-day rule is a matter of administrative law. If a committee believes that the failure to meet the 21-day law has resulted in Parliament being incapable of dealing adequately with whether a measure has been properly explained, it is right for Parliament or the committee to use the final option of annulling the instrument and therefore allowing it to come back for further consideration. I do not understand, however, the suggestion that a failure to comply with the administrative law renders the instrument *ultra vires*. It seems to me that the *vires* comes

from the primary legislation on which the secondary legislation is based. Unless the instrument is demonstrably outwith the powers that the primary legislation has granted, it is within vires. If that is proven, the question whether there has been a failure in an administrative legal matter simply does not arise. I do not agree with the Subordinate Legislation Committee's view on that.

I hope that a way can be determined to ensure that such an issue will not arise again. Clearly, the Subordinate Legislation Committee's legal advisers—or the committee as a whole—now believe that failure to comply with the administrative legal matter means that an instrument is not within vires. Effectively, that could mean that any instrument could come before committees, for consideration as to whether they are within vires.

I am in your hands on this, convener. I do not know whether you can take the matter to the Conveners Group or elsewhere, but the issue must be determined in the interests of the workings of Parliament, otherwise committees will continue to have this matter brought before them.

The Convener: Perhaps I can assist the committee by saying that the Subordinate Legislation Committee is considering the correspondence. In addition, as members will note from their papers, the Minister for Parliamentary Business has made it plain that he is in dialogue with the Subordinate Legislation Committee. I think that the full response that we received from the minister is helpful. Perhaps we should just leave the Subordinate Legislation Committee to reflect on the content of the correspondence.

Ian McKee (Lothians) (SNP): The issue will be discussed fully at the next meeting of the Subordinate Legislation Committee.

The Convener: Are you on the committee?

Ian McKee: Helen Eadie and I are on that committee.

The Convener: That is good.

Ian McKee: We will certainly keep an eye on the issue. The legal matters will be gone into in great depth. However, what is the fate of substance “ref. 74560” in the meantime? I ask because it was incorrectly referred to as “ref. 74530” in the regulations, and that has not been altered.

The Convener: I suggest that Ian McKee raise that typographical error with the Subordinate Legislation Committee. I am sure that he and Helen Eadie will keep an eye on the issue, and I thank them for that.

As no motion to annul has been lodged, the Health and Sport Committee has completed its consideration of the instrument. Are we agreed

that the committee does not wish to make any recommendation on the instrument?

Members indicated agreement.

Adult Support and Protection (Scotland) Act 2007 (Restriction on the Authorisation of Council Officers) Order 2008 (SSI 2008/306)

The Convener: There are more people in the public gallery now, so I remind everyone to ensure that mobile phones and BlackBerrys are switched off.

The second negative instrument before us is the Adult Support and Protection (Scotland) Act 2007 (Restriction on the Authorisation of Council Officers) Order 2008 (SSI 2008/306). The instrument specifies the restrictions to be placed on persons before they may be authorised by a council to perform the functions of a council officer under the Adult Support and Protection (Scotland) Act 2007.

No comments have been received from members and no motions to annul have been lodged. Are we agreed that the committee does not wish to make any recommendation in relation to this instrument?

Members indicated agreement.

Petitions

Methadone Prescriptions (PE789)

10:08

The Convener: Our next item of business is consideration of petitions. I refer members to briefing papers 4 and 5.

PE789, by Eric Brown, calls for the Parliament to take a view on regulation to ensure that the patient takes methadone prescriptions while supervised by a suitably qualified medical practitioner. The committee is invited to consider, first, closing the petition on the basis of the response from Mr Fergus Ewing, the Minister for Community Safety, taken in conjunction with the previous work undertaken by the Public Petitions Committee; secondly, writing to the Scottish Government asking what research has been undertaken on the scale and impact of the selling on of prescribed methadone and whether measures are being undertaken to address that specific problem; or, thirdly, proposing an alternative approach. Can I have members' comments?

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Dr McKee and I have experience of prescribing methadone in the community. It is important to consider certain facts, which I am sure the Public Petitions Committee considered. The amount of methadone being prescribed rose enormously between 1997 and 2007 because of Government policy to bring people into treatment as rapidly as possible. We will not get into a discussion on the alternatives.

For the purposes of the petition, it is important to recognise that during that period of substantial increase in the prescription of methadone, the number of deaths from methadone dropped, which means that, on the whole, clinicians have acted responsibly and followed the approach to prescribing methadone that was recommended by the Minister for Community Safety in his letter and by the Scottish Advisory Committee on Drug Misuse in its report of last year.

The only issue is whether further research is needed, because it is clear that there is variation in whether methadone is prescribed on a supervised or an unsupervised basis. The minister's letter refers to the guidelines of the National Treatment Agency for Substance Misuse in England, which are relatively clear and state that during the initial phase of treatment, when someone is introduced to methadone, the treatment should be supervised seven days a week, if possible, although in Scotland supervision tends to be provided six days a week because only supermarket pharmacies open on a Sunday.

That is an issue. In many cases, a reduction in supervision will be something that is earned.

If someone's general state improves, if they respond to treatment or if they cease the use of alternative opiate drugs, they will be moved on to the unsupervised use of methadone, but there are some groups for whom that is problematic. In the most recent audit that I did in my own clinical work, 9 per cent of my clientele were in work at the time of referral. It is clear that it is more difficult for someone who is in work to obtain methadone, although the situation has improved over the past 10 years, as pharmacies have moved into supermarkets. The fact that supermarkets' pharmacy sections are often open until 9 o'clock at night means that access to methadone for people who are in work is less restricted.

I make a plea to the committee: rather than close our consideration of the petition, we should write to the minister to ask him whether, in the light of the SACDM report on methadone prescribing, "Reducing harm and promoting recovery", which was published in July 2007, further research will be carried out—perhaps by SACDM's new research sub-committee, the minister's setting up of which I very much welcome—into the variations in methadone prescribing across Scotland and the presence or absence of links between those variations and deaths that occur as a direct result of methadone consumption, particularly when the victim is not in treatment. That is what the petitioner is concerned about—the leakage of methadone from people who are prescribed it to others who are not prescribed it.

The Convener: Thank you for those helpful and informative comments. Our other doctor on the committee, Ian McKee, has some informative comments to provide us with.

Ian McKee: I totally agree with what Richard Simpson said and with his proposed course of action.

My only additional point is a small one about the wording of petition PE789, which asks that people who take methadone be supervised

"by a suitably qualified medical practitioner".

I am sure that we all agree that such supervision must be done by a suitably qualified pharmacist. If medical practitioners were to be involved in supervision, they would have to do the dispensing as well, which would lead to all sorts of other problems. The supervision should be done by suitably qualified pharmacists.

The Convener: It is helpful to put that on the record.

Mary Scanlon (Highlands and Islands) (Con): Richard Simpson and I will have to agree to disagree on whether to be enthusiastic about the

use of methadone. My party has led the debate on the issue and has supported the Government's approach in "The Road to Recovery: A New Approach to Tackling Scotland's Drug Problem" as an alternative to what is often described as parking people on methadone.

The petitioner makes some excellent points, but I have two questions. I assume that the Government's audit of all the effective detox and rehab treatments, which I think is being undertaken by Audit Scotland, will include a critical appraisal of methadone treatment. Can we ask the Government to confirm whether that is the case?

Secondly, in the final paragraph of his letter, Fergus Ewing says:

"I note the Committee's intention to review the Government's new drugs strategy".

I am not sure that that is part of our work programme. Can you clarify that?

10:15

The Convener: The answer to your second question is that such a review does not form part of our work programme, so that was an error.

As for your first point, you have put it on the record, so I am quite happy to refer the Cabinet Secretary for Health and Wellbeing to it and to ask her to respond.

On the issues to do with the policing of methadone use that members have raised, we can write to the minister for public safety—I think that that is his title.

Michael Matheson (Falkirk West) (SNP): He is called the Minister for Community Safety.

The Convener: I knew that I would get the title wrong, although I was close.

I will be happy to circulate the draft letters to members before they are sent out. Are members content with that suggested course of action?

Members indicated agreement.

Ice Rinks (PE1138)

The Convener: The next petition on the agenda is PE1138 by Erica Woollcombe on the provision of local ice rinks. I invite members to decide whether we should consider the issues that the petition raises on the provision of ice rinks as part of the community facilities element of our pathways into sport inquiry; close our consideration of the petition on the ground that it is concerned primarily with a local issue—I counsel members that we cannot go into local issues but must consider the broader picture; or agree an alternative approach. I invite comments from members.

Oh! I have missed out the petition on designated smoking areas. We will go back to it.

Ian McKee: I suggest that we take the situation with which the petition deals into account in our study of community facilities, which we will embark on shortly. We should consider ice rinks along with other community facilities and come to a general policy on the matter.

The Convener: Thank you. We will absorb the petition into the discussion on our pathways into sport inquiry, which we will have shortly. Is that agreed?

Members indicated agreement.

Local Leisure Activities (PE1173)

The Convener: The next petition is on a related subject, so we will deal with it before we return to the one that I missed out in error.

PE1173 by Parisa Tadjali on local sports facilities is similar to the petition that we have just dealt with. Again, the options are to consider the issues that the petition raises on the provision of ice rinks and other sports facilities as part of the community facilities element of our pathways into sport inquiry, or to come up with an alternative approach. Are members content that we absorb consideration of the petition into our pathways into sport inquiry?

Members indicated agreement.

Smoking, Health and Social Care (Scotland) Act 2005 (PE1037 and PE1042)

The Convener: As PE1037 by David Nelson, which is on the provision of designated smoking areas in pubs and clubs, and PE1042 by Belinda Cunnison, which is on smoking in public places and indoor air pollution, are on similar issues, the committee agreed at a previous meeting to consider them together. The committee also agreed that the issues that the petitions raise would best be considered as part of post-legislative scrutiny of the Smoking, Health and Social Care (Scotland) Act 2005 at a future date.

On that basis, members are invited to consider closing the petitions on the grounds that the issues that they raise will be taken into account during any post-legislative scrutiny of the 2005 act and that there is very little prospect of such scrutiny being carried out in the short to medium term, given our proposed work programme, which involves inquiries and the consideration of bills. Members can, of course, suggest an alternative approach. What course of action should we take?

Dr Simpson: Are we dealing with both petitions at the same time?

The Convener: That is what we agreed to do on a previous occasion.

Dr Simpson: That is fine.

I have just one comment on air pollution. It is interesting that when Kenny Gibson and I made the original proposal for a bill to ban smoking in pubs and restaurants, which was rejected by the health minister at the time, the alternative to such a ban was the installation in premises of air filtration and anti-pollution systems. We now know from information that was provided as a result of freedom of information requests to the tobacco companies in America that such systems do not filter carcinogens from the air. I put on record the fact that, as we tackle smoking problems in the future, we will again face one of the most powerful global industries, so we should be extremely careful not to be duped into taking voluntary measures to curtail smoking that could subsequently be circumvented by the tobacco industry.

Helen Eadie (Dunfermline East) (Lab): It is important to consider all the issues in detail. That is why I agree that when post-legislative scrutiny of the 2005 act is undertaken, consideration of the issues that the petitions raise should be right up there with consideration of the other impacts of the smoking ban. It is right and proper for consideration of such matters to feed into that scrutiny.

The Convener: Without prejudging the post-legislative scrutiny, I think that it would be appropriate for the issues that the petitions raise to be considered along with other issues, such as the impact of the ban on businesses. Are members content with that approach?

Members *indicated agreement.*

The Convener: I am pleased to say that that concludes our business in public.

10:20

Meeting suspended until 10:25 and thereafter continued in private until 11:06.

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