

# **HEALTH AND SPORT COMMITTEE**

Wednesday 11 February 2009

Session 3

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## HEALTH AND SPORT COMMITTEE

### 5<sup>th</sup> Meeting 2009, Session 3

#### CONVENER

\*Christine Grahame (South of Scotland) (SNP)

#### DEPUTY CONVENER

\*Ross Finnie (West of Scotland) (LD)

#### COMMITTEE MEMBERS

\*Jackie Baillie (Dumbarton) (Lab)

\*Helen Eadie (Dunfermline East) (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)

Mr Frank McAveety (Glasgow Shettleston) (Lab)

Jamie McGrigor (Highlands and Islands) (Con)

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 6



## Scottish Parliament

### Health and Sport Committee

*Wednesday 11 February 2009*

[THE CONVENER *opened the meeting at 10:02*]

### Decision on Taking Business in Private

**The Convener (Christine Grahame):** Good morning, and welcome to the fifth meeting in 2009 of the Health and Sport Committee. I remind all members to ensure that mobile phones and BlackBerrys are switched off. No apologies have been received.

Agenda item 1 is a decision on taking business in private. In line with usual practice, the committee is invited to agree to take in private item 3, which is the committee's approach to a proposed European Union directive on cross-border health care. Are we agreed?

**Helen Eadie (Dunfermline East) (Lab):** Can I just question that?

**The Convener:** Certainly.

**Helen Eadie:** When we deal with travel expenses for witnesses and so on, I can see the rationale for taking the item in private. However, given that we are not talking about commercial or sensitive issues in this case, I wonder whether we should consider the item in public rather than in private. I accept that there are sometimes good reasons for considering matters in private, but I wonder whether that is the case for this item. I move against taking it in private.

**The Convener:** I have just discussed the matter with the clerk and our view is that it is really for the committee to decide whether to take item 3 in public rather than private. I am easy about it.

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** I think that we should take it in public.

**The Convener:** Fine. Let us go for it. Comments, please—oh, sorry, we have not come to that item yet. Right. Let us roll our sleeves up and start again.

**Ross Finnie (West of Scotland) (LD):** The convener got quite excited when we decided to take the item in public.

**The Convener:** Be gentle with me.

## Forthcoming Legislation

10:04

**The Convener:** The next item is forthcoming legislation. Specifically, a bill to make provision on tobacco control and general medical services is expected to be introduced in the Parliament in the near future. I am not really required to declare an interest in this regard, but I am sure that members are aware that I had a consultation on positive licensing of tobacco retailers and tobacco sales. I put that on the record because I have expressed a view in public on certain issues.

I refer members to the paper from the clerks and invite the committee to agree that a call for written evidence should be published following the bill's introduction; that possible candidates for oral evidence should be considered in private, following consideration of written evidence received; that responsibility for arranging for the Scottish Parliamentary Corporate Body to pay, under rule 12.4.3 of standing orders, any witness expenses in respect of consideration of the bill should be delegated to the convener; and that drafts of the committee's report to Parliament on the bill should be considered in private. I think that members would concur that those are the usual procedures. Are members content with that?

**Members indicated agreement.**

**Mary Scanlon (Highlands and Islands) (Con):** I understood that the bill was due in January. Have you any idea when it will be introduced?

**Callum Thomson (Clerk):** I understand that it is likely to be introduced shortly after the February recess.

## Cross-border Health Care

10:06

**The Convener:** Item 3 is cross-border health care. The yellow briefing paper has recommendations, but we need not keep to them, because they are only recommendations. I invite members' comments.

**Helen Eadie:** I have followed this issue with interest for a considerable time. I have done so because I read initially that the cross-border health care directive could have major financial implications for any Parliament, whether it is the Scottish Parliament, the Westminster Parliament, the National Assembly for Wales or the Northern Ireland Assembly. We need to keep an eye on the issue because all the relevant papers state, as does the expert opinion in all the submissions that we have read, that we would be writing a blank cheque if we immediately launched into this process.

On process, the Government's consultation finished on 3 December and not on 31 January, as is stated in the briefing paper. The website states that the United Kingdom Government had a different closing date from that of the Scottish Government. I think that that should be noted.

So, where is the directive now? It has had a first reading in the European Parliament, so we are too late to suggest any amendments to it. The Scottish Government has not submitted any response. I received that information in an e-mail from a Government civil servant, who confirmed that the Government will simply act as a postbox and will not submit its own views on the issue.

The Scottish Government will get away with it in this instance because the whole procedure will come to a standstill in June because of the European Parliament elections. After June, the newly elected Parliament will have to start from scratch. The Scottish Government and Parliament have been lax on this directive and should have pursued the issue with a great deal more diligence. I know that it is the member state's responsibility to submit a response to the consultation, but I believe that, on behalf of the people of Scotland, the Scottish Government ought to have taken a view on whether it is appropriate to write a blank cheque in this way.

I happen to think that the draft directive has many merits. It contains provisions on standards and quality that we probably all aspire to because we want to see good standards across Europe. However, there are differing opinions in the mere 15 responses to the Government's consultation. Members will see that clear concerns were expressed in the consultation.

It is down to the member state to submit its view, and Westminster will do that in this case. However, I feel that the Scottish Government must be more proactive on the issue and that the Health and Sport Committee needs to collaborate better in future with the European and External Relations Committee on the issue. I have had informal discussions with colleagues on that committee. We need to learn lessons from the process for this directive, which will come to a standstill in June and will not go further until after the elections. As I said, we are past the date for amendments, so it is too late to do anything.

**The Convener:** Having taken advice from the clerks, my understanding is that the Scottish Government did not respond to the consultation because it concerned British issues and that it was content to go along with the United Kingdom Government's submission, although we need to clarify that with the Cabinet Secretary for Health and Wellbeing. I am not saying that that is necessarily what happened, but that is the advice that I have received.

Given what Helen Eadie has put on the record, would the committee be content to write to the cabinet secretary to clarify that the Government has not made an individual submission and to ask for an explanation of why it did not do that?

**Helen Eadie:** The Government must be asked why it did not take action timeously, because it has missed the opportunity to make amendments or recommendations.

**The Convener:** It may have decided not to respond, which would make that question irrelevant. We should ask whether the Government decided not to respond and, if so, why. We should also ask whether it simply missed the deadline.

**Helen Eadie:** With respect, it is important to respond timeously in such cases to avoid missing European Parliament deadlines for amendments and so on. The critical point here is that the directive's proposals will determine whether there will be prior authorisation schemes for cross-border access to general practice and primary care services. Under the proposals as they stand, no prior authorisation will be needed for dentistry and all kinds of GP, primary care and hospital services.

**The Convener:** I am simply saying that the issue is whether we ask the Government why it made no submission. Did it take a positive decision not to make a submission? If so, we would like the detailed reasons for that. Alternatively, did the Government not pay attention to the directive and simply miss the deadline? Those are two separate issues. If the Government

made a conscious decision not to make a submission, we need to know why.

**Michael Matheson (Falkirk West) (SNP):** I note from the briefing paper that the Government passed on to the UK Government the consultation responses that it received. It may be helpful to know what impact the submissions from the Scottish organisations have had on the submission that the UK Government intends to forward. I suggest that it is worth writing to the responsible minister or department at Westminster to find out what impact the Scottish submissions have had on their thinking.

**Callum Thomson:** I understand that the UK Department of Health will respond in March, so I presume that it is still considering the submissions from Scotland.

**The Convener:** So it is premature to ask about their impact.

**Michael Matheson:** From our point of view, however, it is important to understand whether the submissions have been taken into account and, if so, what impact they have had.

**Jackie Baillie (Dumbarton) (Lab):** I am persuaded by Helen Eadie's argument. However, the question arises whether there was an opportunity for the Parliament's European officer to alert us to the issue much earlier. I am worried about whether deadlines were missed. Perhaps it would be helpful for our clerks to discuss that with the clerks to the European and External Relations Committee.

**Helen Eadie:** Can I answer Jackie Baillie's point?

**The Convener:** Just a minute, please, while I clarify timetables. [*Interruption.*] I am advised that we took the view at our away day in August and in committee in September that we would keep a watching brief on the issue, which is what we are doing in this discussion of the briefing paper. This is therefore the consequence of our previous decision.

**Jackie Baillie:** I was not present at the away day.

**The Convener:** And I had forgotten our decision.

**Helen Eadie:** When we have a watching brief, it is important for officials to bring back to us information about timetables and deadlines—it was important to do that for this issue. I was the one who pressed throughout to have the European officer come to our away day and give us advice. I believe that this committee is not doing its duty with regard to the discussion of health matters at the European level. I also believe that the Scottish Government is not fulfilling its

responsibilities and commitments in that regard. Much more work needs to be done.

I flag up now that work is being done on mental health at the European level. We must be much more proactive about such work for the benefit of the citizens of Scotland, who are our particular concern.

10:15

**The Convener:** The clerks will check the various deadlines and timescales.

**Callum Thomson:** On the back of this meeting, we will check future timescales for the directive with the European officer and, if necessary, the European Commission.

**Helen Eadie:** The process will come to a standstill in June. There is no question but that it will have to go back to square one after the June European Parliament elections. We have missed the boat completely and cannot influence events. The purpose of having a European and External Relations Committee—and of giving responsibility to this committee—is to receive early intelligence about such European matters and to ensure that we influence events and do not lodge amendments too late, which would be the case now if we wanted to amend the directive.

**Ross Finnie:** Without rehearsing the arguments around the directive on cross-border health, this situation illustrates the difficulties with which the Parliament has wrestled for 10 years regarding the European and External Relations Committee's role. I confess that I have never understood why we have a European committee. We do not have a Britain committee—largely because we are a member of Britain. We are a member of Europe, too, so I have never understood why we have that committee. It is almost as if we have a foreign affairs committee—these are not people whom we deal with because, actually, they are foreign.

All that gives rise to this discussion, and let us be honest that we rehearsed it when we had the European officer with us at our away day. We discussed the extent to which subject committees, as opposed to the European and External Relations Committee, have a responsibility to monitor legislation from the European Parliament and the European Commission. I understand Helen Eadie's frustration, given that she had a clear interest in the issue. However, it has never been clear to me how lines of responsibility for European issues are divided between the committees.

Sourcing information can be difficult. If an issue becomes the Health and Sport Committee's responsibility, our clerks would have that in their diaries. However, if responsibility for the issue is

split between us and the European and External Relations Committee, there is the potential for it to fall between the cracks. I wish we could sort this out. During the eight years when I was in office, I benefited from the fact that, because fishing, agriculture and the environment were so material to Scotland's interests, they were dealt with. We had representatives and we brought the issues before subject committees. However, I accept that such issues were the exception, because they were of material interest to Scotland. Health matters tend to flit between the European and External Relations Committee and this committee. I am not sure that that arrangement is entirely satisfactory.

**Helen Eadie:** Can I respond, convener?

**The Convener:** I just want to confirm something first. I should look at my script more carefully, but I understand that there were 15 responses to the Scottish Government's consultation and that the UK Government will report on behalf of all UK jurisdictions. That just confirms what the process is.

Before Helen Eadie comes in, I will let in other members who have been waiting.

**Dr Simpson:** In our letter, I would like us to ask whether the Scottish Government's invitation to respond to the consultation indicated that it was possible that the responses would simply be passed on. Of the 15 respondents, seven or eight will have responded already at a UK level. Frankly, they will have wasted their time in responding separately to the Scottish Government, if it had no intention of making a separate submission. We need clarity on that matter because it is not worth while wasting the time of busy people.

Given that the deadline for consultation responses was 3 December, there is an issue around the fact that, if we were to make any comment, we should have done so before 31 January. I am not sure why we missed that deadline, but I presume that it was because the Scottish Government did not publish the consultation responses, so we have not had a chance until now to respond.

**The Convener:** We will check the date on which the consultation closed. I appreciate that we have been given different dates.

**Helen Eadie:** The information is on the Scottish Government's website.

**The Convener:** We will have it confirmed.

**Mary Scanlon:** I am concerned about what Helen Eadie is saying, and we should thank her for bringing the issue to our attention. If the European officer was keeping a watching brief on the issue, it should not have come back to us after the deadline. We should have known about it.

I do not agree that we should write a letter to the Cabinet Secretary for Health and Wellbeing. We should ask her to come to the committee. This is an enormous issue that has huge implications for the national health service in Scotland, and even bigger implications for patients in Scotland.

I am not saying that I do not agree with Helen Eadie, but I do not understand the guidelines in the way that she understands them. The Department of Health guidelines say that, in order to be reimbursed, someone has to get permission from their health board before they go to a European country; the guidelines also set the condition that the person should be facing undue delay in their country. Our country is Scotland and I remind you, convener, that many women in Scotland face a four-year wait for infertility treatment. I would have thought that that is, at the very least, an undue delay, given that there is a time bar.

I am not happy about this. I am sorry to say this, but I believe that the committee has been let down and that we have missed an opportunity. I remember John McAllion raising a similar issue in 1999. This is an enormous issue, and we should be paying much more attention to it. We need to be fully briefed and absolutely on top of it.

**The Convener:** I am, of course, happy to listen, but I am also trying to find out what the processes are.

**Mary Scanlon:** I appreciate that.

**The Convener:** With the committee's leave, I will have the clerks bring us a further paper about the processes and why the issue has come to us at this stage.

Would it be appropriate for us to write to the Cabinet Secretary for Health and Wellbeing about the details that we have on the record, so that we get a full response from her? We then have the option of calling her to come before the committee after we get that response, which would give us questions to ask. That would be quite useful. I would be quite content to circulate the letter to the committee for approval to ensure that we hit all the right issues.

Because I would rather see the *Official Report* before we do that, we will have to wait a few days. We can go through all the issues that have been raised and, if members feel that something has been missed, we will put that into the letter and ask the cabinet secretary to respond.

As for the processes that are in place for dealing with European legislation, I will ask the clerks to look at the timescales and provide us with more information, rather than try to deal with it on the spot.



**Helen Eadie:** Mary Scanlon is right to say what the current position is, but the directive proposes that, in order to get health treatment abroad, a patient will not need prior authorisation for primary care services, although they will require prior authorisation for acute hospital services.

**Mary Scanlon:** That is what we need to know.

**Helen Eadie:** In relation to Ross Finnie's points, you told me, convener, that I could go to European elected members information liaison and exchange meetings on behalf of the committee, and I have done that. A meeting took place at which Bill Aitken, the reporter from the Justice Committee, raised and responded to justice issues that were on the agenda. I was there to hear the report on health issues that was put before us. The deadline had already passed when that meeting took place, so we had missed the opportunity presented by that meeting as well. That is my argument.

I say to Ross Finnie that although our responsibility is to respond through the member state, if something is going to have a huge impact on the devolved assemblies' budgets, the committee needs to be sure that it flags that up to everyone, and Parliament needs to take a view on it. That view can then be fed into the response of the UK as the member state, so that our views—or amendments or whatever—can be addressed at the European level through the appropriate process. That applies not only to the Scottish Parliament but to the Welsh Assembly and the Northern Ireland Assembly. I hope that that clarifies my point.

**The Convener:** In summation, a letter will go to the cabinet secretary for clarification of what the Government did, when and why.

The other thorny issue for separate consideration is about committees getting into proposed European legislation early enough to try and make a difference, through either the committee process or the Government.

The second issue will be covered by a paper, and the first will be covered in a letter that will be circulated to members. I have taken it as read that we do not want to write to the UK Secretary of State for Health yet because the Department for Health's report will be produced in March. I am just clarifying that we are not going to do that just now.

**Helen Eadie:** I do not oppose any of the actions that you are proposing to take, but you have missed all the deadlines so you will not be able to influence the process, which will finish in June, following which it will have to start afresh.

**The Convener:** I presume that our response went into the UK response and did not miss the deadlines. I hope that you are not saying that the UK missed the deadlines.

**Helen Eadie:** You have missed the deadlines because—

**The Convener:** Excuse me, but are you saying that the UK missed its deadlines?

**Helen Eadie:** I do not know what has happened at Westminster. I am talking about what I know has happened here in Scotland.

**The Convener:** The issue has been well aired now. We will circulate the letter to the cabinet secretary once we have seen the *Official Report*.

10:26

*Meeting continued in private until 11:18.*



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