

HEALTH COMMITTEE

Tuesday 16 September 2003
(*Afternoon*)

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2003.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 16 September 2003

Col.

| | |
|---|-----|
| ITEM IN PRIVATE | 167 |
| SUBORDINATE LEGISLATION | 168 |
| National Health Service (General Medical Services) (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/310) | 168 |
| Condensed Milk and Dried Milk (Scotland) Regulations 2003 (SSI 2003/311) | 168 |
| Feeding Stuffs (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/312) | 168 |
| Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Modification) Order 2003 (Draft)..... | 169 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) (No 3) Order 2003 (SSI 2003/365) | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (Scotland) Order 2003 (SSI 2003/366)..... | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (Scotland) (No 2) Order 2003 (SSI 2003/369) | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 5) (Scotland) Order 2003 (SSI 2003/381)..... | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No 3) (Scotland) Order 2003 (SSI 2003/380)..... | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 2) (Scotland) Order 2003 (SSI 2003/321)..... | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Order 2003 (SSI 2003/374)..... | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 6) (Scotland) Order 2003 (SSI 2003/392)..... | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No 5) (Scotland) Order 2003 (SSI 2003/394)..... | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 7) (Scotland) Order 2003 (SSI 2003/397)..... | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 8) (Scotland) Order 2003 (SSI 2003/402)..... | 170 |
| Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No 4) (Scotland) Order 2003 (SSI/2003/393)..... | 171 |
| HEPATITIS C | 188 |

HEALTH COMMITTEE

6th Meeting 2003, Session 2

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Mr David Davidson (North East Scotland) (Con)

*Helen Eadie (Dunfermline East) (Lab)

*Kate Maclean (Dundee West) (Lab)

*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)

*Shona Robison (Dundee East) (SNP)

*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Paul Martin (Glasgow Springburn) (Lab)

Mrs Nanette Milne (North East Scotland) (Con)

Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Mr Tom McCabe (Deputy Minister for Health and Community Care)

Martin Reid (Food Standards Agency Scotland)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Peter McGrath

ASSISTANT CLERK

Graeme Elliot

LOCATION

Committee Room 3

Scottish Parliament

Health Committee

Tuesday 16 September 2003

(Afternoon)

[THE CONVENER *opened the meeting at 14:01*]

The Convener (Christine Grahame): I open the sixth meeting of the Health Committee in session 2 of the Parliament. No apologies have been received.

This is Peter McGrath's last meeting as senior assistant clerk to the committee, as he has been purloined by the Education Committee. We wish him well there. Graeme Elliott will take over Peter's post and Hannah Reeve will take over from Graeme. The chairs are being moved round. I ask members to ensure that mobile phones and beepers are switched off.

Item in Private

The Convener: Item 5 on our agenda concerns a matter with which we did not deal at last week's meeting—consideration of our forward work programme. It is proposed that we discuss that in private, but we will publish the priorities that we decide to include in our forward work programme. Do members agree to discuss item 5 in private?

Members indicated agreement.

Subordinate Legislation

14:02

The Convener: We have to deal with a plethora of statutory instruments—three negative instruments and 13 affirmative instruments. We will start with the negative instruments.

National Health Service (General Medical Services) (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/310)

The Convener: The first instrument for consideration is the National Health Service (General Medical Services) (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/310). Like the Deputy Minister for Health and Community Care, I have to read out the full title of the instrument. No members' comments have been received and the Subordinate Legislation Committee has made no comment on the instrument. No motion to annul has been lodged. The recommendation is that the committee should make no recommendation in relation to the instrument. Is that agreed?

Members indicated agreement.

Condensed Milk and Dried Milk (Scotland) Regulations 2003 (SSI 2003/311)

Feeding Stuffs (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/312)

The Convener: The next two instruments to be considered are the Condensed Milk and Dried Milk (Scotland) Regulations 2003 (SSI 2003/311) and the Feeding Stuffs (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/312). No members' comments have been received. The Subordinate Legislation Committee's comments on the instruments have been circulated to members. No motion to annul has been lodged. The recommendation is that the committee make no recommendation in relation to the two instruments. Is that agreed?

Members indicated agreement.

The Convener: We will now consider 13 affirmative instruments. I welcome Tom McCabe, the Deputy Minister for Health and Community Care, and one official. I will explain to members at which point officials may take part in the meeting. I understand that David Davidson wants to ask questions about the instruments.

I refer members to paper HC/S2/03/06/2, which has been circulated. The Subordinate Legislation Committee has made no comments on the instruments.

**Mental Health (Care and Treatment)
(Scotland) Act 2003
(Consequential Modification) Order 2003
(Draft)**

The Convener: I ask the minister to speak to the first instrument under agenda item 3.

The Deputy Minister for Health and Community Care (Mr Tom McCabe): Today's debate concerns 12 emergency orders that ban the harvesting of king scallops in waters—

The Convener: I must correct the minister and ask him to speak to the first instrument under agenda item 3, which is the draft Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Modification) Order 2003, before we do the large batch of instruments.

Mr McCabe: The Mental Health (Care and Treatment) (Scotland) Act 2003 received royal assent in April this year. Some provisions in the act came into force on royal assent, one of which was schedule 6, which amends the Mental Health (Scotland) Act 1984 to make it clear that the burden of proof in appeal cases does not rest with the patient.

The amendments to the 1984 act introduced an incorrect reference into section 64 as amended, which the modification order will put right. Section 64 as amended refers to subsection (A1), which has no paragraphs, rather than to subsection (1), which is the intention. The drafting error is obvious, but it is not obvious how section 64(2) should read.

I move,

That the Health Committee recommends that the draft Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Modification) Order 2003 be approved.

Motion agreed to.

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (Scotland) (No 3)
Order 2003 (SSI 2003/365)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (East
Coast) (Scotland) Order 2003 (SSI
2003/366)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (East
Coast) (Scotland) (No 2) Order 2003 (SSI
2003/369)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 5) (Scotland) Order 2003
(SSI 2003/381)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (East
Coast) (No 3) (Scotland) Order 2003 (SSI
2003/380)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (Orkney)
(No 2) (Scotland) Order 2003 (SSI
2003/321)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 4) (Scotland) Order 2003
(SSI 2003/374)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 6) (Scotland) Order 2003
(SSI 2003/392)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (East
Coast) (No 5) (Scotland) Order 2003 (SSI
2003/394)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 7) (Scotland) Order 2003
(SSI 2003/397)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 8) (Scotland) Order 2003
(SSI 2003/402)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning) (East
Coast) (No 4) (Scotland) Order 2003
(SSI/2003/393)**

The Convener: We move on to the 12 emergency orders. Does the committee wish to debate the motions on the orders?

Mr David Davidson (North East Scotland) (Con): I want to make my position clear in advance of a series of votes.

The Convener: I will explain about asking questions, which might cover your intention. We can ask for clarification from the minister and from officials, who cannot participate in a debate. We cannot ask questions of officials during a debate. I take it that members want not to have a debate but to ask for clarification. Is that correct?

Mr Davidson: No. I would like to make a statement of my position and ask a couple of questions. I am happy to do that in two steps.

The Convener: Do members want to have a debate?

Mr Davidson: I do not need a full-scale debate.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Surely David Davidson is requesting a debate. The convener has made it clear that we can either ask questions for clarification or have a debate in which we make statements or discuss the issue.

The Convener: I am easy. We can call it a debate or not call it a debate.

Mr Davidson: May I confirm what you said, convener? Did you say that we could ask officials questions and move on to a debate if required?

The Convener: Right. We will ask questions first; we can then decide whether a debate is required. I will confirm the procedure with the clerk. *[Interruption.]* That was too much of a stage whisper; members will have heard about my inadequacy. Do members want to ask the officials questions about the instruments before the minister moves the motions?

Members indicated agreement.

Mr Davidson: The committee asked the Deputy Minister for Health and Community Care on Wednesday 18 June to write to confirm the number of reported cases of food poisoning that have arisen from amnesic shellfish poisoning. The response was a letter to the convener from Chester Wood of the Food Standards Agency Scotland, which confirmed that

“there have been no recorded cases ... in Scotland or indeed the UK”

and that

“the Agency is unaware of any recorded cases ... in the European Union.”

Have the Executive departments—there is more than one involved—made any moves towards, or done any research on, end-product testing, which would guarantee safety for the consumer and would acknowledge that such a blanket ban affects other areas?

Martin Reid (Food Standards Agency Scotland): The requirements for the sampling and monitoring programme that the FSA runs are set out in council directive 91/492/EEC. The agency is therefore fulfilling its obligations under the directive to have in place a sampling and monitoring programme.

In addition, all producers are required to ensure that their products meet the end-product standard. As such, they carry out an element of end-product testing to ensure that the products that go on the market are safe. In itself, the agency's sampling and monitoring programme is not a comprehensive system that is able to guarantee protection of public health; rather, it gives an indication of the situation in the waters at any given time. Public health is protected by a combination of end-product testing and the sampling and monitoring programme.

Mr Davidson: Has there been any communication with the Irish system, which relies totally on end-product testing?

Martin Reid: The system that the agency has in place has been audited by the Food and Veterinary Office of the European Commission, as has the Irish system. The system is deemed to be adequate in that it meets the requirements of the directive. During the most recent FVO mission, certain issues in the system that is in place in Scotland and the rest of the United Kingdom were picked up on as requiring some controls to be tightened up.

It is not appropriate for me to comment on the Irish system. The FVO has to judge whether each member state meets the directive's requirements. I understand that both systems are deemed to be doing so.

Mike Rumbles: You said that the sampling and monitoring programme is required by a European directive. What would happen if the SSIs were not passed? Would we face infraction proceedings?

Martin Reid: If we did not have a sampling and monitoring programme in place we could face infraction proceedings from the European Commission. It would also mean that we had no indication of the status of the waters that the fishermen harvest. That would probably lead to a greater number of consignments failing end-product testing and could increase the risk to public health.

The Convener: I was putting up my hand to speak when I realised that I am in the chair.

I read the *Official Report* of the thrilling debate about amnesic shellfish poisoning that took place on 28 May. The bit that I understood was about the gap between testing and the closing of boxes that are attached to the orders we are discussing. In that debate my colleague, Fergus Ewing, said that in the past four years

"there was a gap of 10 days between the catching of scallops that tested positive for ASP and the closure of the box from whence they came."—[*Official Report*, 28 May 2003; c 113.]

Is that still the case? What is the current position? It seems to me that people will still be eating the shellfish during that gap.

Martin Reid: There is always a delay between test results' being reported and legislation's coming into force. In such cases, we try to ensure that the legislation is processed as quickly as possible in order to minimise the delay; 10 days would be at the extreme end of how long it would take to introduce such orders. As an interim measure and to protect public health, we introduced what we call shucking advice. That means that the parts of the scallops that contain a higher level of toxins than is deemed safe by the EU are removed before the scallops are placed on the market.

The Convener: That did not quite answer my question. How long is the gap between designation of a box as an area in which no fishing for scallops is to take place, and closure of that box?

Martin Reid: That can vary. The shortest time it is ever going to take is 24 hours, but it could take in excess of a week or so. That is why we have introduced the interim measure of shucking advice, which is designed to ensure that no dangerous products can reach the market.

The Convener: Does that happen immediately after designation?

Martin Reid: We usually issue advice weekly. However, if we receive information a week or so before advice would be issued under the normal cycle, we would try to produce an interim report. As a result, it could be two or three days before the information was issued.

That said, processors also carry out end-product testing, which is—if you like—the ultimate safety net to ensure that the products that reach the market are safe. Processors are aware of their obligations to carry out such testing.

14:15

The Convener: Thank you very much.

We now proceed to the debate. I ask the minister to open the debate. I should tell members that, as we have already dealt with points of clarification and other technical questions on the orders, only the minister can answer questions on policy matters.

Minister, I must ask you to move the motions separately. First of all, I ask you to move motion S2M-236—[*Interruption.*] Sorry, we have done that one. I knew that I would get confused with this. [*Interruption.*] Members will excuse me for a minute while the clerk briefs me. [*Interruption.*] Okay, I think that I know what I am doing now, but we will soon find out.

Minister, I ask you to open the debate. Any committee member who wants to come in after your opening speech can do so, after which we will go to closing speeches and then move the motions. I hope that I have not confused you, minister.

Mr McCabe: No, indeed you have not. I need as much instruction as you do in these brand new, but rather arcane, procedures. I think that I will take some advice on these matters for future meetings.

Today's debate concerns 12 emergency orders that will ban the harvesting of king scallops in waters mainly off the west coast of Scotland, but also off some areas of the east coast and around Orkney. The orders have been triggered because of the discovery of amnesic shellfish poisoning above the action levels that have been set by Europe. As the committee is aware, ASP is especially prevalent over the summer months.

The orders represent measures to address issues of consumer safety and public health. Shellfish that contain high levels of toxin can cause illnesses in humans that range from nausea and vomiting to short-term memory loss and—in extreme instances and if enough toxin is ingested—can lead to more serious conditions.

Do you want me to move the motions one at a time, convener?

The Convener: I think that, first of all, we will open the debate up to the committee and then ask you to move the motions after we close the debate. I knew that I would confuse you, minister.

Shona Robison (Dundee East) (SNP): I have to say from the outset that I do not claim to be an expert on amnesic shellfish poisoning. However, I have sat through many meetings of the previous Health and Community Care Committee and, indeed, meetings of this committee in which various health ministers have introduced such orders.

What research is the Executive currently carrying out into the European Union's evidence in

relation to the matter? After all, as David Davidson pointed out, it seems that different practices and measures exist. It could be argued that our current testing regime is overly cautious compared with what the Irish are doing. I am not necessarily arguing that that is the case; I am saying merely that that argument could be made. No cases of ASP have been reported in Scotland and I think that there have been no such cases in Ireland—although I am willing to be corrected on that matter. However, we continue to have this very stringent regime. Will the Executive have another look at the regime that it is promoting? Is it carrying out research into alternative measures and into whether we can relax the regime in Scotland?

Mr McCabe: The FSA is undertaking a number of research projects on various shellfish issues such as algal toxins. A considerable amount of research is already under way. It is important to point out that that research is being carried out not by the Executive but by the FSA, which was set up as an independent body to advise ministers.

Experience of the food industry convinced us all that there was a need for a great deal more independence, which was the rationale behind the Food Standards Agency. As members know, ministers have no power of direction; the Food Standards Agency is independent. That is the direction of travel that people wanted, given some of the serious things that happened in the past when problems cropped up in the food chain.

I hear what is said about the Irish industry, but all my information tells me that that industry is on a completely different scale from the Scottish scallop industry, which is a major industry and is far larger than anything that is carried out in Ireland.

The rationale behind the measures, and the thread that runs through them, is that there is a great desire to protect public health and to protect a highly regarded Scottish industry. We have learned from experience about the damage that can be done to highly regarded industries—Scottish and British—by CJD and so on. We know how long it can take to repair that damage and how great an impact such things can have on the people who are involved in those industries.

The Food Standards Agency was created to avoid such things happening in future. We are taking a precautionary approach because I and the Executive as a whole would rather err on the side of caution in order to try to avoid some of the disasters that have happened in the past.

The Convener: Because of the confusion that I caused at the beginning, I should say that we are debating all the orders in a lump. We will not have individual debates because our time is limited to 90 minutes. I knew that that would excite David Davidson.

Mr Davidson: I agree with some of the points that the minister has made and I am a great supporter of the Food Standards Agency. However, when the agency has not raised any specific concerns, one has to ask whether it should not perhaps be developing for itself a future role in scallop fishing with specific reference to the Scottish industry. I accept the minister's points about the importance of food safety, but bad news gets out and I have heard feedback about how questions are raised by the number of orders that are passed, which is done as if cases of illness had been proved.

A response from officials to questions that were asked by members of this committee stated that the EU was content with the Irish system. As the convener pointed out, there is a 10-day delay, during which time many people could be eating infected products that have not been dealt with properly by the processors. Merely enforcing a ban after the event is not really what the measures should be about. We should be looking forward and putting in place systems that are robust and that are run here in this country. The response that Mike Rumbles got to his question was that our current two-step system, with the processors as the long stop, satisfies the EU. We have spoken to the processors themselves; they are extremely sensitive to the whole issue and take it very seriously indeed.

I have to ask where we are going. It appears that there is no joined-up research going on, but it also appears that we are taking an easy way out by going for a blanket ban; I suspect that, in many respects, the EU is not actually asking for that, but is merely raising precautionary issues. I believe that we need a more appropriate answer to the problem, which does not close down the industry and does not send out bad news, but which still gives us the benefits of reinforced end-product testing. The Food Standards Agency should be completely involved in such a regime, along with the marine laboratory in Aberdeen, where much work is being done. If we go down that route, there would be no need to take the approach that is being proposed. On the basis that we have not yet reached that stage, I believe that the orders that are before us today should not be supported, because they do not actually solve any specific problems.

Mike Rumbles: David Davidson has in the past made his position on the matter quite clear and only one other committee has voted against such measures on previous occasions. I do not agree with his position, which I believe is highly irresponsible. He talked about a blanket ban on shellfish fishing, as if the orders would impose such a ban. In fact, the orders propose the reverse of a blanket ban. As I see it, the alternative to agreeing to the 12 orders that are before us would

be a blanket ban, which would ruin the industry and would take us absolutely nowhere. Unless I misunderstood David Davidson, I do not know where he is coming from—one cannot argue, on the one hand, that the Food Standards Agency is a great agency that is doing grand work and has the right idea and, in the same breath, argue that that is not the case here.

The Convener: I am content to let David Davidson answer that point before I move on to Helen Eadie.

Mr Davidson: There may be a bit of misunderstanding there. I am looking to the future; we have another batch of instruments coming up in two weeks' time.

We do not have a robust system that is controlled by an independent agency within Scotland which, with the industry, will address public health requirements. Not even the EU insists that we accept all the measures. We already have a blanket ban approach in an area. If there is a blanket ban on the islands on which one works, that is a blanket ban no matter what people want to call it. It is a blanket ban whether it applies only to one island or to the whole east coast.

The problem is that we are reliant on an approach that has, as the convener pointed out, holes in it. The problem might be over by the time an order becomes active, because the problem is seasonal. That is not a grown-up way to go about dealing with such an important economic issue. There is a health issue involved, but in the whole of Europe no deaths have been reported as being the result of this problem. The problem is being overstated by the Executive, which is simply putting up the orders instead of putting in place a more robust and accurate system.

Helen Eadie (Dunfermline East) (Lab): I do not agree with David Davidson. I do not know on what basis he says that there have been no deaths in Europe. There has been cause for concern throughout Europe, which is why the EU directive has been introduced. We are part of that harmonisation process.

I agree strongly with the view that we need to take precautionary measures before problems arise, rather than wait until tragic deaths occur and follow on from that. I have not researched the matter, but if pushed to do so I think that we would be able to pull down the information from the EU sites that tell us what research has been done at EU level. We need to remember that there is not just a Scottish dimension, but a bigger EU dimension to the issue. The EU will have knowledge that we can draw upon.

It is much safer, and much more in the interests of the public and of our constituents, to take the appropriate precautions.

The Convener: If I may just pick up on those comments, let me quote from what my colleague Stewart Stevenson said in a previous debate. No doubt the minister will answer this. Mr Stevenson said:

"There has been no incidence of any kind of illness from scallops in Scotland. Two illnesses can arise from the consumption of scallops that are contaminated by domoic acid"—

I hope that I said that properly—which are

"gastrointestinal difficulties and loss of memory ... perhaps there is a real problem after all—perhaps the minister can tell us whether he eats scallops and from where he got them."—[*Official Report*, 28 May 2003; c 123-4.]

I do not know what that remark was about, but I want to ask the minister about that assertion, which was made by a member of the former Rural Development Committee, that there has been no instance in Scotland of any kind of illness resulting from scallops. We have heard that there have certainly been no deaths. Has that ever been refuted?

Like others, I have some concerns about whether the instrument is draconian and whether it is required in the circumstances. It seems to be based on evidence that appears to be somewhat iffy. As has been explained, there are even gaps because of the mechanics of the way in which the measures are brought in. Even when interventionist measures are introduced, it takes two or three days before they take effect. In the meantime, people might be eating scallops that come from an affected box, irrespective of whether or not the scallops have been end tested. As far as I know, nobody has become ill from eating such scallops.

Those are the only comments that I want to make before the minister responds. Sorry, I did not notice Mike Rumbles.

Mike Rumbles: We are missing the point here. The scientific test says that the level of toxins must be below a certain level. To go back to the words that I used previously, it would be highly irresponsible for the committee to say that it is okay to throw out the orders on the basis that the experts tell us that nobody has died so far from eating scallops that contain that level of toxin. I find that logic indefensible and I am astounded that we are hearing it.

By all means, if we are really concerned about the issues, we should approve the instruments and ask for more research to be done. However, there should be no question of our not recommending today that the instruments be approved.

The Convener: I was quoting from the debate, in which a member said:

"There has been no incidence of any kind of illness from scallops"—[*Official Report*, 28 May 2003; c 123].

I was taking illness, rather than something more extreme, as the test. These appear to be draconian measures. I wait to be persuaded that they are necessary.

14:30

Mr McCabe: A tenfold safety margin is built into the action levels that Europe sets. We must bear it in mind that that is designed to protect public health as much as possible. We must also bear it in mind that there is no debate about the impact of domoic acid on human beings. If a human being consumes enough domoic acid, that can have pretty catastrophic consequences. There is no debate about the fact that a concentration of domoic acid is being discovered in scallops. No one on any side of the argument questions either of those facts.

It is generally accepted that instances of food poisoning are in large measure under-reported. Many people experience episodes of food poisoning and spend a few days in bed feeling unwell, but never report that to their general practitioner.

At the start of today's debate, it was stated that we are complying with our obligations under EU law. There is no debate about that fact. This country has certain obligations under EU directives, which we are required to fulfil. We are doing that by having the Food Standards Agency implement the testing regime and, where necessary, by placing closure orders on specific boxes.

I hope that it is of some reassurance to the committee that the Food Standards Agency is in correspondence with the European Commission about the methodology and science behind the testing regime. The agency has requested an on-going review of the methods that are employed, to ensure that there is constant reappraisal of the science and that we are not being unnecessarily heavy-handed.

It is important to put the issue in context. More than 150 boxes are designated. This year we have closed 27 boxes at different times. Although I do not underestimate the severity of the inconvenience that closure orders cause and their impact on people involved in the industry, over the summer I took the opportunity to meet industry representatives in the Western Isles to discuss the matter with them. They recognised the benefits to them and the industry of our taking a precautionary approach. They are not always happy that they are severely inconvenienced and that they have to move their fishing grounds, depending on which boxes are closed, but they

recognise the rationale behind closures. They would much rather have the industry protected from a catastrophic loss of reputation than see the adoption of a laissez-faire attitude to the matter that might have the same impact on the scallop industry as it had on the British meat industry.

Year on year since 1997 there has been a reduction in the number of boxes that are closed. In 2000, 43 boxes were closed. In 2001, 35 boxes were closed. In 2002, 24 boxes were closed. So far this year, 27 boxes have been closed. Not all those boxes were closed at the same time. Once the testing in an area reveals a lack of toxins and levels fall below those set by the European Union, fishermen are free to return to that area to fish. Although boxes may be closed, alternative fishing grounds are available. That has always been the case. I recognise fully that closures are an inconvenience to the industry. However, we must recognise that these fishing stocks are not lost for ever. When toxin levels in boxes drop, fishermen are free to fish them.

Shona Robison: Can the minister furnish the committee with any correspondence of note about the testing regime that the Food Standards Agency has received from the EU?

Mr McCabe: That is correspondence between the Food Standards Agency and the European Union. I see no reason at all why you should not be able to see the exchanges that have taken place, although I will take advice on that. The vast majority of, if not all, the Food Standards Agency's work is immediately published on its website. As part of its rationale and the way it goes about its business, the FSA is committed to openness. I do not think that there will be a problem, but if there is any difficulty, I will let the committee know.

The Convener: That closes the debate. I ask the minister to move motion S2M-236.

Mr McCabe: I move,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast)—

The Convener: You have the wrong coast, minister.

Mr McCabe: I thought that you said—

The Convener: I have motion S2M-236 down as being for the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) (No 3) Order 2003.

Kate Maclean (Dundee West) (Lab): Does the minister have to read the whole motion out? Can he not read the motion number only?

The Convener: I am afraid that he does have to read the motion out. I have clarified that. Take it up with the Procedures Committee.

Mr McCabe: I apologise. We have the motions in a different order from you.

The Convener: I hope that the numbers are right.

Mr McCabe: Yes, they are.

I move,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) (No. 3) Order 2003 (SSI 2003/365) be approved.

The Convener: The question is, that motion S2M-236 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (Scotland) Order 2003 (SSI 2003/366) be approved.—[Mr Tom McCabe.]

The Convener: The question is, that motion S2M-237 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

Mr Davidson: On a point of order, convener. In the chamber, we read out only the motion number. If we do that every time that the Parliament meets, can we not do that in the committee?

The Convener: I have already been through that. I will take the matter up again. I keep repeating my advice—I have to do the same as the minister. My best advice at the moment is that the motions must be read out in full. I will pursue the matter to find out whether that procedure can be changed. Believe me, if there was another way of doing it, Mr Davidson, I would be doing that.

Mr Davidson: Yes, teacher.

The Convener: I am not enjoying it any more than you or, I am sure, the minister.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (Scotland) (No. 2) Order 2003 (SSI 2003/369) be approved.—[Mr Tom McCabe.]

The Convener: The question is, that motion S2M-238 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Kate Maclean: Can we not take all the motions in the same vote? Are we allowed to do that.

The Convener: No, we cannot, I am afraid. I repeat that, if there was another way of doing this, I would be following that. I will find out whether the rules can be changed, but we must follow the rules that exist for the moment.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No. 5) (Scotland) Order 2003 (SSI 2003/381) be approved.—[Mr Tom McCabe.]

The Convener: The question is, that motion S2M-259 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No. 3) (Scotland) Order 2003 (SSI 2003/380) be approved.—[Mr Tom McCabe.]

The Convener: The question is, that motion S2M-262 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No. 2) (Scotland) Order 2003 (SSI 2003/321) be approved.—[Mr Tom McCabe.]

The Convener: The question is, that motion S2M-318 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)

Maclean, Kate (Dundee West) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No. 4) (Scotland) Order 2003 (SSI 2003/374) be approved.—[Mr Tom McCabe.]

The Convener: The question is, that motion S2M-319 be agreed to. Are we agreed?

Members: No.

FOR

Eadie, Helen (Dunfermline East) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No. 6) (Scotland) Order 2003 (SSI 2003/392) be approved.—[Mr Tom McCabe.]

The Convener: The question is, that motion S2M-320 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No. 5) (Scotland) Order 2003 (SSI 2003/394) be approved.—[*Mr Tom McCabe.*]

The Convener: The question is, that motion S2M-321 be agreed to. Are we agreed.

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

The Convener: Why do I think that the result will be the same in the next vote?

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No. 7) (Scotland) Order 2003 (SSI 2003/397) be approved.—[*Mr Tom McCabe.*]

The Convener: The question is, that motion S2M-322 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No. 8) (Scotland) Order 2003 (SSI 2003/402) be approved.—[*Mr Tom McCabe.*]

The Convener: The question is, that motion S2M-323 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

The Convener: I am tempted to say something different, but that would be frivolous.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (No. 4) (Scotland) Order 2003 (SSI 2003/393) be approved.—[*Mr Tom McCabe.*]

The Convener: The question is, that motion S2M-336 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Motion agreed to.

The Convener: I thank the minister. I understand that we would need to discuss some way of dealing with such a batch of motions with the official report, as the *Official Report* must be clear about what has happened in meetings. There can be something of a farce with the results of so many votes being repeated.

Mr McCabe: Thank you.

The Convener: I thank the minister for his forbearance.

Kate Maclean: When amendments to bills are discussed in the chamber, they are moved and voted on en bloc, which does not affect the work of the official report. There must be another way of proceeding.

The Convener: I can say no more about the matter, but I agree. I have gone through the same hoops as the minister. We will investigate whether the *Official Report* could be clear without such a procedure.

Mike Rumbles: When Euan Robson was the Deputy Minister for Parliamentary Business, he was famous for uttering only two words in the chamber in two years: "Formally moved."

The Convener: I know, but we will not go there.

Hepatitis C

14:44

The Convener: We proceed early to agenda item 4 on hepatitis C. Members have a paper from the clerks in front of them. I remind members that we are still in public session and ask their views on how we should proceed. Possible future actions are suggested at the bottom of the paper.

Shona Robison: I endorse the future actions that are suggested by the clerks, which are that we should take further evidence from the petitioners and Lord Ross. We need to hear their views on what is being proposed by the minister, the missing bits—in particular, payments to the relatives of the deceased—and what should happen next. We must find out whether they think that there are sufficient outstanding issues for a public inquiry. I would be open to suggestions for others from whom we might take evidence. However, as a minimum we should hear from Lord Ross and the petitioners.

The Convener: Can somebody remind me who the petitioners are? Did the Health and Community Care Committee take evidence from petitioners, and who were they?

Mr Davidson: It was the Scottish Haemophilia Groups Forum.

Shona Robison: Yes, but were there not others as well? There were a number of individuals.

The Convener: We can look back.

Shona Robison: There is a judgment to be made whether we want to invite just the forum or the individuals as well. We should certainly invite the forum.

Mr Davidson: We must get up to speed with the previous committee's work. Two members of this committee have direct knowledge and experience of that. However, there are other issues. The committee needs to get legal advice about whether there should be a public inquiry or a court action. The payment is an ex gratia payment; it is not a recognition of fault. The finding of fault is a separate issue. We must also tie in what the petitioners are looking for, which takes us back to the questions that I raised last week about the roles of the Department for Work and Pensions and the Benefits Agency. Those are Westminster issues, but they will affect the net value of any settlement to any individual.

Also, we could do with some evidence about whether some kind of tribunal was going to be set up to judge cases and claims, which would have been recognised by all parties concerned. I am not sure whether we need to speak to the Minister for Justice about that or whether we need just a piece

of legal advice about the role of the Scottish legal system in this case. Certainly, people outwith the committee to whom I have spoken seem to be of the view that there is a requirement for a test case if the fault-finding route is to be pursued rather than a settlement based on what the committee agreed in the past, which is what the expert group recommended.

The Convener: On a point of clarification, the committee can take legal advice on the matters of tribunals and public inquiries.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): Have the petitioners or Lord Ross made any representation to the committee that they wish to return to give further evidence?

The Convener: No, I am told that they have not.

Mr McNeil: Last week, we requested some information from the minister. Is that information available?

The Convener: I am advised that the *Official Report* shows that we did not state that we were going to write to the Minister for Health and Community Care on that issue. We wrote to the minister on other issues. The committee has seen the letter about the Primary Medical Services (Scotland) Bill, which we wrote to him about.

Mr McNeil: I think that the minister said that he would get back to the committee on some questions that were left hanging in the air.

The Convener: Can the clerk double-check that in the *Official Report* of last week's meeting? While that is being double-checked I will move on to the next point that was raised.

Mr McNeil: The points that I have raised relate to what was said at our away day about patronising people and inflating their expectations of what can be done for them. If we are serious about addressing the issue, we must get further input from the minister. It would have been expected that the petitioners and Lord Ross would make representations through the committee. There are complex issues that are not necessarily for this committee to solve.

The Health and Community Care Committee devoted a lot of time and energy to the issue. I am concerned that we do not detract from the big issues that affect the vast majority of people who receive care in the health service. We should not detract from our ability to address those matters in our work programme by encouraging people to come to the committee when we are uncertain about the reason for doing so and about what the outcome might be.

The Convener: I say for clarification that at last week's meeting I raised a point about an article in *The Sunday Times* that referred to further

documentation. The Minister for Health and Community Care said that he was not aware of that. I sent him a link to the documentation—it is a website link—so that he could get it for himself. He now has that link to the journalist and to the provider of the information—who was a source to the journalist—so he can find out whether he was already aware of that documentation. We will formally write to the minister now and send members a copy of the letter.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I emphasise that I think that it is very sad that people have had to wait for so long when some people in other places have already received compensation. There is a great difference between the sum of money offered in Ireland and the sum being offered in Scotland. People will probably be desperate to take whatever money comes their way, but it might be that if they follow a legal route they will get a larger sum of money. However, some people might be deprived of a payment for much longer if they go down the legal route.

I am not convinced, after last week's committee meeting, that it is a straightforward matter of whether people will fall into the category of £20,000 or are sick enough to receive £25,000 or more. The issue is more complicated than that. Although we were waiting for an answer at last week's committee meeting, I came away more confused than I was before the meeting.

Perhaps the people who suffer from the illness—it was not of their choosing; it was inflicted upon them—deserve to receive a payment as soon as possible. They need to get legal advice and so do we. We need more information. We should invite witnesses to come to the committee so that we can get further information.

Janis Hughes (Glasgow Rutherglen) (Lab): Jean Turner has highlighted a point that David Davidson mentioned—new members of the committee do not know what has gone before in the previous parliamentary session. Those of us who were on the committee in the previous session and were involved in the previous investigation understand the situation.

Jean Turner highlights a point that I have been concerned about in some of the correspondence that the committee has received on the matter this week from the various interest groups. They compare the £20,000 that they say the Minister for Health and Community Care has offered with the £300,000 that is being offered in Ireland. We are not talking about compensation and we have never been talking about compensation. We are talking about an entirely different matter. A fundamental point that has not got across to people is that the minister is not offering compensation.

What we talked about at last week's meeting—the convener referred to this—was examining information that has come to light that may perhaps be new evidence. We can write to the minister and ask whether, in his opinion, it is new evidence. The committee can decide whether we think that that provides sufficient scope to open up a further investigation.

I am concerned about our raising people's expectations if we start to consider the whole matter again. Given that, under the next agenda item, the committee will shortly decide on its priorities, we must now decide whether enough evidence is available to allow us to open up the matter again. The only way in which the committee can make such a decision is if we are briefed on the issue. Perhaps that could take the form of a private briefing—the committee has received such briefings on other issues—which would allow new committee members to be brought up to speed on the full, thorough and comprehensive investigation that took place in the previous session of Parliament. Until we do that, the situation will be difficult for members such as Jean Turner and David Davidson, who do not know what happened in the past. We should not decide how to proceed until we receive such a briefing.

Dr Turner: The situation is difficult for the people who have been afflicted, who might be considering whether to accept the offer or to take the legal route. We must take that into account.

The Convener: I would like to hear what Lord Ross has to say about the offer. I take the point about raising expectations, although I would like to debate the issue of whether the offer is compensation or simply a payment. However, the main issue is how the amount has been calculated. From the committee's report, it seems that Lord Ross's proposals were different in many respects from the offer. I would like to hear Lord Ross's reaction to the proposals, as he is independent. I am not sure whether that is appropriate, but it would take the emotion out of the issue—although the emotion is rightful—and allow us to hear what the man who chaired the expert group has to say about the offer.

Janis Hughes: I have no objection to bringing Lord Ross before the committee, assuming that he wishes to come. That would, in part, brief the other members of the committee. The committee's report is fairly lengthy and it would be good to have clarity on the issue. However, we should do that only if we are to have a private briefing, following which we can make a decision in the full knowledge of what has gone before. We should not take any other action at this stage.

The Convener: The only problem with that suggestion is that committees are constantly accused of not discussing issues in public.

Mr McNeil: We are about to go into private session.

The Convener: There is a good reason why the next agenda item is to be taken in private—it is simply a piece of housework and is about our forward work programme. However, the problem with Janis Hughes's suggestion is that the issue involved is a matter of substance. Lord Ross was appointed by the minister to chair the expert group.

Kate Maclean: Janis Hughes's suggestion, which is sensible, is that new members should be briefed on the committee's previous work on the subject, which, I imagine, is a matter of public record. We should ask somebody to brief us on what has happened previously and to bring us up to date so that we can decide how to proceed with the matter, which is a serious one. As a new member, I would find such a briefing useful.

The Convener: I simply read the previous committee's report.

Mike Rumbles: I did not disagree when the convener asked whether we should take agenda item 5 in private, although I do not really agree that we should. As other members wanted to take the item in private, I saw no reason to make a fuss. I am fed up of making a fuss about discussing work programmes in private. I do not like discussing such matters in private, partly because of the type of discussion that we are having now. How can we possibly decide what to do on the issue of hepatitis C in isolation from decisions on the other major pieces of work with which we will deal? We are being asked to decide on the hepatitis C issue separately, which is not logical.

In the next agenda item, we should consider what we want to do in the coming period. I am conscious that the previous committee spent a huge amount of time on hepatitis C. I agree with Duncan McNeil that the committee is in danger of raising expectations about what we can achieve. It is all very well coming to a decision on hepatitis C in public session, but we might then go into private session to discuss the work programme and say, "Actually, I'm glad we are in private session because we have not really got much time to devote to hepatitis C after all." The situation is completely illogical. We should defer the decision to the next agenda item.

Shona Robison: I have nothing against Janis Hughes's suggestion—it is a good one—but we are talking about unfinished business, whereas the future work plan is very much about the new issues that this committee will consider. Given that the issue was raised by the petitioners, who wanted us to do something, it would seem odd not to, at the very least, hear what they have to say

about the outcome. If we do nothing else, surely we have to hear their view on what is on the table. We have not done that.

This is unfinished business. Whether we go beyond that is a matter for debate. I accept that there are issues to be addressed. I am happy to take part in a private briefing and to have that debate. However, we owe it to the petitioners to at least have their views on the package on the record.

15:00

Mr Davidson: Janis Hughes picked up the point that new members made. There is an issue about getting the committee up to speed. The content of the committee's report did not cover all the aspects, options and choices that were discussed in the many sessions prior to the publication of the report. It is important that we receive a briefing on that.

I asked for legal advice because there is confusion about the difference between an ex gratia payment and what somebody could achieve by legitimately going to court and proving their case—even with legal aid, I might add. Those are two distinct things. It must be said that an ex gratia payment is not the same thing as compensation, which backs up the point that others have made about expectations. This committee may not be in a position to do anything more than expose a particular set of facts. We need to know, from legal people who are external to the Parliament, what the Scottish legal system does when it comes to compensation. What are the issues? That is not our issue. We are looking at the ex gratia payment that the minister offered, which is quite separate from any other payment. There is a lot of confusion in our minds.

I have no difficulty with holding a private briefing session on the facts that have already been covered, because that would just be a catch-up session, which would be done behind the scenes anyway if somebody new came to the committee. Shona Robison is right that we should bring back the petitioners to tell us their current view, because that would be moving on.

We have heard a bit from the minister. The minister has to come back, as does Lord Ross, to give us an idea of where he was at. However, we need to have explained to the committee the ground rules of what we can and cannot do, so that we are not in the position of saying to people that we will deliver, because we do not know what we can deliver. We have to get that support.

Janis Hughes: I agree with most of Mike Rumbles's comments. Our suggestions are not mutually exclusive. The bottom line is that we have live petitions that we have to address. I do

not feel that the committee will be in a position to address those petitions until it is in full possession of the facts.

I suggested a private briefing, not because I thought that we should do it without people hearing, but because it would not be necessary for previous committee members to attend if they did not want to. It could be done outwith committee time, which would preserve our committee time for some of the other pressing issues that we need to deal with. However, we need that information to be given to all committee members so that, in the context of the work programme, we can consider whether we wish to proceed with any further action in the area.

That is where we stand. I accept that we cannot discuss the work programme properly without having the briefing, but we have to address the petitions, as they are still on-going, and the issues will come up again at a future date.

The Convener: I will try to sum up. I have noted requests to have a briefing, take legal advice, see the minister after he has had the chance to look at documentation and other issues, possibly take evidence from Lord Ross, and take evidence or responses from the petitioners. Those are the five matters that have come up. I have not put them in any order.

Mr McNeil: Those are just the issues that have been raised.

The Convener: That is all that I am saying. I suggest that the committee would wish first to have a briefing, and thereafter decide where to go with the other matters that I have just put into the pot, such as whether to take evidence from the petitioners, Lord Ross or both.

Mr McNeil: But I would still want to hear the minister's response, as part of the information process.

The Convener: I was coming to that. Concurrent with that, we could take legal advice on our position and request a response from the minister if he has had the opportunity to examine fresh documentary evidence. Those last two items are the written stuff. We will put the briefing into the schedule, and the other two issues will be dealt with afterwards. Is that fair enough?

Members indicated agreement.

The Convener: We have finished the public business, and we move on to item 5.

15:05

Meeting continued in private until 15:35.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Thursday 25 September 2003

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0870 606 5566 Fax 0870 606 5588

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

RNID TYPETALK calls welcome on
18001 0131 348 5412
Textphone 0131 348 3415

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers