

HEALTH COMMITTEE

Tuesday 10 May 2005

Session 2

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HEALTH COMMITTEE

13th Meeting 2005, Session 2

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)

*Kate Maclean (Dundee West) (Lab)

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

*Mrs Nanette Milne (North East Scotland) (Con)

*Shona Robison (Dundee East) (SNP)

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

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

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)

Paul Martin (Glasgow Springburn) (Lab)

Mr Stewart Maxwell (West of Scotland) (SNP)

Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED :

Rhona Brankin (Deputy Minister for Health and Community Care)

Shirley Ferguson (Scottish Executive Legal and Parliamentary Services)

Moir Milligan (Scottish Executive Health Department)

CLERK TO THE COMMITTEE

Simon Watkins

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERK

Roz Wheeler

LOCATION

Committee Room 4

Scottish Parliament

Health Committee

Tuesday 10 May 2005

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

Item in Private

The Convener (Roseanna Cunningham): Under agenda item 1, the committee must consider whether to take item 6—our approach to the post-legislative inquiry into care legislation—in private. It is standard procedure to take such items in private, because we are still at the stage of discussing possible witnesses, the subject matter of the inquiry and so on. Is the committee agreed that agenda item 6 be taken in private?

Members *indicated agreement.*

Subordinate Legislation

Mental Health (Medical treatment subject to safeguards) (Section 234) (Scotland) Regulations 2005 (draft)

Mental Health (Medical treatment subject to safeguards) (Section 237) (Scotland) Regulations 2005 (draft)

14:01

The Convener: Agenda item 2 is subordinate legislation. The committee is asked to consider two affirmative instruments that deal with medical treatment subject to safeguards. I welcome the Deputy Minister for Health and Community Care, Rhona Brankin, who is accompanied by Moira Milligen from the mental health division of the Scottish Executive Health Department and Shirley Ferguson from OSSE—no doubt she will explain what that stands for.

Shirley Ferguson (Scottish Executive Legal and Parliamentary Services): The office of the solicitor to the Scottish Executive.

The Convener: Thank you.

The Subordinate Legislation Committee had no comment to make on either instrument. I invite the minister to make an opening statement in which she deals with both instruments.

The Deputy Minister for Health and Community Care (Rhona Brankin): I ask the committee to consider the two sets of draft regulations, which apply safeguards to certain medical treatments for mental disorder in the Mental Health (Care and Treatment) (Scotland) Act 2003. The regulations allow us to extend existing safeguards to new treatments that are in the near future likely to be available and helpful to patients with a mental disorder.

I will deal first with the regulations that we wish to put in place under section 234 of the 2003 act, which provides for safeguards for treatments that involve surgical operations that destroy brain tissue or the functioning of brain tissue. Those treatments are commonly known as neurosurgery for mental disorder or NMD. The safeguards apply to any patient who is being considered for such treatments, whether or not they are subject to compulsion under the act. The safeguards comprise second opinions from a designated medical practitioner and two lay commissioners who are appointed by the Mental Welfare Commission for Scotland. When the patient is incapable of consenting, an order from the Court of Session is required.

Section 234(2)(b) allows for other types of surgical treatments that require the same safeguards to be specified in regulations. The purpose of the regulations that we propose under section 234(2)(b) is to specify that the treatment known as deep-brain stimulation, which is an invasive procedure that involves the destruction of some brain tissue when it is used as a treatment for mental disorder, will be subject to the same authorisation, conditions and safeguards as NMD.

Section 237 provides for safeguards to apply when a patient is given electroconvulsive therapy and for regulations to specify other treatments that should carry the same level of safeguards. The purpose of the regulations that we propose under section 237 is to specify vagus nerve stimulation and trans-cranial magnetic stimulation, as they are treatments that have effects akin to ECT, as appropriate treatments to attract the same safeguards as ECT when they are given as treatments for mental disorder. The safeguards are that the patient must consent or, when the patient is unable to consent, that a second-opinion certificate must be obtained from a designated medical practitioner. As with ECT, the treatments will not be able to be given when the patient has the capacity to consent and refuses treatment.

I hope that the explanation has been helpful for the committee. As the convener said, I am accompanied by officials and we are happy to answer any questions that the committee might have about the regulations.

The Convener: Thank you. Does any member want to seek clarification from the deputy minister and her officials with regard to either of the instruments?

Mrs Nanette Milne (North East Scotland) (Con): Are the treatments established? You said that they were new treatments. Have they been used, recommended and approved by specialists in the field?

Moir Milligen (Scottish Executive Health Department): Vagus nerve stimulation has been used for mental disorder; it has been used on very few patients—only six to date—at the Dundee neurosurgery for mental disorder service.

The two other treatments—deep-brain stimulation and trans-cranial magnetic stimulation—have not as yet been used for mental disorder. Deep-brain stimulation is used for physical disorders in the involuntary muscle movement of Parkinson's disease, but it has not yet been used in Scotland for mental disorders, although it has been used for that elsewhere. Trans-cranial magnetic stimulation has not yet been used as a treatment for mental disorder or physical disorders in Scotland or elsewhere.

Mrs Milne: The last one concerns me a little. How has trans-cranial magnetic stimulation been tested?

Moir Milligen: It is currently being tested, but the evidence base is not yet wide enough for it to be used as a treatment for mental disorder.

Mrs Milne: Are we at liberty to approve part of the instrument without approving it all? Can we postpone a decision?

The Convener: You are seeking clarification from the deputy minister. When members have exhausted any questions that they wish to ask, I will ask if any member wants to debate either of the instruments. Subsequent to that, the motion will be moved and members can vote in whatever way they want.

Does any other member of the committee seek clarification or have further questions at this stage?

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): What results have followed in the few cases in which the surgery has been executed? As a doctor, I sometimes wondered what the outcome would be with ECT. I was amazed on many occasions when someone's mental health improved greatly. There was no doubt that that was the case. What results do you have to prove that the treatment is worth while?

Moir Milligen: We do not yet have the results. That is why we want to put the safeguards in place. We have been told by the Mental Welfare Commission and the NMD team in Dundee, which is where such operations are done, that further clinical research is necessary before those treatments would be used widely on patients. The likelihood is that they will be used more widely as a treatment for mental disorder in the next two to five years, as the evidence base builds up.

Dr Turner: Will they be used once all else has failed?

Moir Milligen: Yes. Deep-brain stimulation is an invasive surgical operation on the brain, which requires the highest level of safeguards that we can possibly give. The draft regulations try to ensure that patients will be fully safeguarded if, as seems likely, the treatments that I described are to be used for patients suffering from mental disorder.

Dr Turner: Do patients give their permission for the treatments to be used?

Moir Milligen: Yes.

The Convener: Will you clarify a matter? If the draft regulations are not approved, could the treatments go ahead, without the safeguards that the regulations would put in place? By recommending that the draft regulations be

approved, the committee would be safeguarding patients in the event that the procedures were to be used, rather than sanctioning the use of those procedures.

Moira Milligen: Yes, that is right.

Shona Robison (Dundee East) (SNP): I was going to ask the question about safeguards that the convener asked. For clarification, would a person have to consent to the treatments?

Moira Milligen: Yes.

Rhona Brankin: We took advice from the Mental Welfare Commission for Scotland, which recommended that the treatments be included in the regulations, to safeguard the rights of patients.

The Convener: That was useful clarification. If no members want to debate the draft instruments, I ask the minister to move the motion on each instrument in turn, because they deal with different matters.

Motions moved,

That the Health Committee recommends that the draft Mental Health (Medical treatment subject to safeguards) (Section 234) (Scotland) Regulations 2005 be approved.

That the Health Committee recommends that the draft Mental Health (Medical treatment subject to safeguards) (Section 237) (Scotland) Regulations 2005 be approved.—*[Rhona Brankin.]*

Motions agreed to.

The Convener: I thank the minister and her officials for attending.

Miscellaneous Food Additives Amendment (Scotland) Regulations 2005 (SSI 2005/214)

Smoke Flavourings (Scotland) Regulations 2005 (SSI 2005/215)

Food Labelling Amendment (Scotland) Regulations 2005 (SSI 2005/222)

The Convener: The committee is asked to consider three Scottish statutory instruments that are subject to the negative procedure. The Subordinate Legislation Committee commented on all three instruments and its report was circulated to members. No member of the Health Committee has commented on the instruments. Does the committee agree that it does not wish to make any recommendation in relation to the instruments?

Members indicated agreement.

Hepatitis C

14:13

The Convener: Item 4 is consideration of infection with hepatitis C as a result of national health service treatment. Witnesses were invited to the meeting and I ask them—*[Interruption.]* I understood that the witnesses would be here, but I am advised that they are not. Members might be aware that we face a difficulty in relation to this agenda item. In an action against the Scottish ministers and the Lord Advocate, a petition for judicial review has been lodged in connection with the alleged failure of the Scottish ministers to hold an inquiry into the deaths of persons infected with hepatitis C. The subject matter of that action would, in essence, be the same as that of this agenda item. According to rule 7.5.1 of the standing orders of the Scottish Parliament,

“A member may not in the proceedings of the Parliament refer to any matter in relation to which legal proceedings are active except to the extent permitted by the Presiding Officer.”

The committee received legal advice that it is technically arguable that we could proceed with the agenda item—but only technically, because we have no idea whether a date for a hearing has been fixed. In any case, the Minister for Health and Community Care has indicated that he has been advised that he should not attend the meeting to answer questions, specifically because of the court action that has been put in place.

The circumstances change markedly the atmosphere and climate in which we would proceed with the item. Members of the committee might wish to comment, but my view is that it would be unwise of the committee to proceed with any part of the agenda item. If we were to proceed, we would be in danger of being in breach of the standing orders of the Parliament. In any case, we would achieve only half of what we wanted to achieve and there is no guarantee that we will be in a position to question the minister on the matter in the foreseeable future. In view of the circumstances, I recommend that we do not proceed with the agenda item and I invite comments or questions from members.

14:15

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I agree with the convener's recommendation. It is perfectly clear that if legal proceedings are active—as far as we are aware, it is very likely that they are—it would not be appropriate to proceed.

Helen Eadie (Dunfermline East) (Lab): I agree with the convener and Mike Rumbles. The

committee would be in breach of standing orders if it proceeded with a matter that is being considered by the court and is therefore sub judice—I assume that that would be the case and I ask the convener for clarification. We ought not to discuss the matter further.

The Convener: If a hearing date has been fixed, we would be in breach of standing orders if we proceeded—there is no question about that. Do members agree to the recommendation that we postpone the evidence-taking session until the position has been clarified or settled one way or the other and the matter can be dealt with in a more proper fashion?

Members *indicated agreement.*

Smoking, Health and Social Care (Scotland) Bill

14:18

The Convener: We move to item 5. A paper that proposes the order in which the committee will consider the Smoking, Health and Social Care (Scotland) Bill at stage 2 has been circulated to members. The paper also sets out proposed arrangements for taking oral evidence on the Executive's intended amendment to alter the Scottish Commission for the Regulation of Care's obligations to carry out annual inspections. I invite members to comment on or question the contents of the paper, if they want to do so.

Motion moved,

That the Health Committee considers the Smoking, Health and Social Care (Scotland) Bill at Stage 2 in the following order: sections 9 to 36, schedules 2 and 3, sections 1 to 5, schedule 1, sections 6 to 8, section 37 and the long title.—[*Roseanna Cunningham.*]

Motion agreed to.

The Convener: Does the committee also agree to hold an oral evidence session on 17 May, on the Executive's proposal to remove the requirement for annual inspections by the care commission?

Members *indicated agreement.*

The Convener: Thank you. That concludes the committee's public business.

14:19

Meeting continued in private until 14:46.

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