

# **HEALTH COMMITTEE**

Tuesday 21 June 2005

Session 2

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# CONTENTS

Tuesday 21 June 2005

Col.

<b>ITEMS IN PRIVATE</b> .....	2077
<b>SUBORDINATE LEGISLATION</b> .....	2078
Dentists Act 1984 (Amendment) Order 2005 (draft) .....	2078
Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (draft) .....	2080
Contaminants in Food (Scotland) Amendment Regulations 2005 (SSI 2005/277) .....	2081
Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (Scotland) Regulations 2005 (SSI 2005/294) .....	2081
Honey (Scotland) Amendment Regulations 2005 (SSI 2005/307) .....	2081
Mental Health (Social Circumstances Reports) (Scotland) Regulations 2005 (SSI 2005/310) .....	2081
Regulation of Care (Social Service Workers) (Scotland) Order 2005 (SSI 2005/318) .....	2081
National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/326) .....	2081
National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2005 (SSI 2005/327) .....	2081
National Health Service (Primary Medical Services Performers Lists) (Scotland) Amendment Regulations 2005 (SSI 2005/333) .....	2081
National Health Service (Service Committees and Tribunal) (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/334) .....	2081
National Health Service (Tribunal) (Scotland) Amendment Regulations 2005 (SSI 2005/335) .....	2081
<b>“BUILDING A HEALTH SERVICE FIT FOR THE FUTURE”</b> .....	2082
<b>PETITIONS</b> .....	2086
Organ Retention (PE406) .....	2086
<b>PETITIONS (CONSIDERATION)</b> .....	2087

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## HEALTH COMMITTEE

### 19<sup>th</sup> 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:

Stephen Arthur (Department of Health)

Rhona Brankin (Deputy Minister for Health and Community  
Care)

#### CLERK TO THE COMMITTEE

Simon Watkins

#### SENIOR ASSISTANT CLERK

Tracey White

#### ASSISTANT CLERK

Roz Wheeler

#### LOCATION

Committee Room 2



## Scottish Parliament

### Health Committee

*Tuesday 21 June 2005*

[THE CONVENER *opened the meeting at 14:00*]

### Items in Private

**The Convener (Roseanna Cunningham):** Item 1 on the agenda is consideration of whether to take agenda items 8, 9, 10 and 11 in private. Items 8 and 9 are discussions about witness selection in respect of the Human Tissue (Scotland) Bill and the Abolition of Prescription Charges (Scotland) Bill. It is normal practice for the committee to discuss such matters in private. Item 10 is a discussion of the relative merits of various venues for the committee's care inquiry launch event. Item 11 is to consider updated information and advice about the postponed Scottish Haemophilia Forum evidence session. Committee members will remember that the reason for that postponement was a question about whether we could proceed, given that legal proceedings were being set in train. We have had further advice on that, so I thought that it would be worth discussing it this afternoon.

Do members agree to discuss those items in private?

**Members** *indicated agreement.*

**The Convener:** Apologies have just come in from Helen Eadie. She is unable to make today's meeting.

## Subordinate Legislation

### Dentists Act 1984 (Amendment) Order 2005 (draft)

14:01

**The Convener:** Item 2 is subordinate legislation. The committee is asked to consider an instrument that is subject to the affirmative procedure and which deals with regulation of dentists by the General Dental Council. I welcome the Deputy Minister for Health and Community Care. She is accompanied by Ray Watkins, the chief dental officer, and Stephen Arthur, who is the deputy project manager for professional standards in the Department of Health.

The Subordinate Legislation Committee has commented on the instrument and that committee's report has been circulated to members. Submissions from a range of organisations that responded to the Department of Health's consultation on proposals for reform have been circulated to members, as have submissions to the Health Committee from the Scottish Consumer Council and the Scottish Commission for the Regulation of Care. Members might recall that the committee took evidence on the matter some time ago when the order was at the draft stage and we knew that it would be coming up.

I invite the deputy minister to make an opening statement.

**The Deputy Minister for Health and Community Care (Rhona Brankin):** Thank you. The committee will be aware that regulation of certain health professions is reserved to Westminster, including regulation of dentists and the professions that are complementary to dentistry—dental hygienists and dental therapists. The order is before the Scottish Parliament because it contains a provision to give the General Dental Council the power to specify other PCDs and the regulation of those PCDs is devolved.

The order will have the effect of allowing the GDC to strengthen its role in protecting patients and protecting good oral health and high standards of dentistry. It will modernise the GDC's fitness-to-practise procedures for dealing with misconduct and ill health among dental professionals, it will introduce new procedures to tackle poor performance and it will establish a new private complaints system and introduce compulsory indemnity for dentists and PCDs before registration. The order will safeguard patients by giving the GDC the power to extend regulations to PCDs, including dental technicians and dental nurses, and it will give such PCDs the freedom to develop new skills. It will also create a

mechanism for people to appeal against refusal of registration or restoration to the register, and make changes to the GDC's governance procedures. The order will require the GDC to co-operate with other bodies that are involved in regulation and it will remove the restriction on the number of corporate bodies that may practise dentistry, which will introduce greater competition.

The United Kingdom health departments are united in their determination to improve services and to protect patients, so the order will play a vital role in helping to achieve the first-class service that we all expect. A draft of the order was the subject of extensive consultation from April to October 2004 and it attracted broad support. A small number of changes—mainly technical—have since been made to the order.

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

**(Ind):** I will ask about the period of erasure, about which the explanatory memorandum almost says two different things. Its pages are not numbered, so I cannot say exactly to what page I refer, but it states:

“The consensus was that the period of erasure should be directly related to the seriousness of the case and this should be left to the GDC to set.”

The next paragraph hints that the GDC will stick with five years, but it also says that

“In addition, the GDC will have the option of suspension for a shorter period should they consider erasure for five years too severe.”

On one reading, the GDC will stick with five years as the minimum suspension period in order to be in line with the medical profession, but it is hinted that that could be changed. When I read the memorandum, I was confused about the procedure. I remember that even dentists thought that five years might in some cases be too long if one wanted to retain one's abilities and to keep up to standard to return to the profession.

**Stephen Arthur (Department of Health):**

“Erasure” and “suspension” are different penalties. The minimum term of erasure will still be five years, in line with that for doctors, but the GDC has an alternative range of penalties short of erasure, including suspension or conditional registration, which might say that a dentist could not undertake a particular procedure but could continue with other dental practice. We are sticking to five years for erasure, in line with doctors, but a provision allows the GDC to impose the lesser penalty of suspension.

**The Convener:** Thank you.

*Motion moved,*

That the Health Committee recommends that the draft Dentists Act 1984 (Amendment) Order 2005 be approved.—[Rhona Brankin.]

*Motion agreed to.*

**Mental Health (Care and Treatment)  
(Scotland) Act 2003  
(Consequential Provisions) Order 2005  
(draft)**

**The Convener:** Agenda item 3 is on an order that is to be made under the Scotland Act 1998. The Deputy Minister for Health and Community Care notified the committee that the order was laid before the UK Parliament on Tuesday 7 June. The committee is not required to take action in relation to the draft order, but it has been brought to members' attention in recognition of the fact that they may have an interest in the policy that it covers. The deputy minister is in attendance to answer any questions. She is accompanied by Mike Murray, who is a policy manager in the Health Department, and Edythe Murie, who is from the office of the solicitor to the Scottish Executive. Members appear to have no questions to ask of the deputy minister, so I invite them to note the draft order. I thank the deputy minister and her officials for attending for items 2 and 3.

**Contaminants in Food (Scotland)  
Amendment Regulations 2005  
(SSI 2005/277)**

**Food (Chilli, Chilli Products, Curcuma and  
Palm Oil) (Emergency Control) (Scotland)  
Regulations 2005 (SSI 2005/294)**

**Honey (Scotland) Amendment Regulations  
2005 (SSI 2005/307)**

**Mental Health  
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**Regulation of Care  
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**National Health Service (Charges for  
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2005/326)**

**National Health Service  
(Pharmaceutical Services) (Scotland)  
Amendment Regulations 2005  
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**National Health Service (Primary Medical  
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Amendment Regulations 2005  
(SSI 2005/333)**

**National Health Service  
(Service Committees and Tribunal)  
(Scotland) Amendment (No 2) Regulations  
2005 (SSI 2005/334)**

**National Health Service (Tribunal)  
(Scotland) Amendment Regulations 2005  
(SSI 2005/335)**

**The Convener:** The committee is asked to consider 10 instruments that are subject to the negative procedure, as shown on the agenda. The Subordinate Legislation Committee commented on SSI 2005/277. Its report was circulated to members and no comments have been received from members. Do members agree that the committee wishes to make no recommendation on the instruments?

*Members indicated agreement.*

**“Building a Health Service Fit for  
the Future”**

14:10

**The Convener:** Agenda item 5 is a brief discussion about our evidence session with Professor Kerr. The Kerr group's report, “Building a Health Service Fit for the Future”, was published on 25 May. At a previous meeting, the committee agreed to invite Professor Kerr to give oral evidence session. As is explained in the paper, Professor Kerr has offered Tuesday 20 September as the earliest date on which he will be available. I appreciate that some committee members may be disappointed that he cannot give evidence sooner, but we are entirely in his hands on that matter.

I invite the committee to agree to hold an oral evidence session with Professor Kerr on 20 September and to consider whether it wants to take evidence solely from Professor Kerr on that occasion or to consider inviting other witnesses as well. Let us first agree to have an oral evidence session with Professor Kerr on 20 September. Is everyone happy with that?

*Members indicated agreement.*

**The Convener:** The next question is whether we wish the evidence session to be solely with Professor Kerr or whether we wish to invite other witnesses. I open the matter to discussion.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Might it be a good idea to keep things tight by also taking evidence from the Minister for Health and Community Care on that day? After our evidence session with Professor Kerr we could get an immediate response from the minister, who would be able to comment on any issues raised in the session with Professor Kerr.

**Janis Hughes (Glasgow Rutherglen) (Lab):** I concur with that. It would be helpful to take evidence from the minister, but at this stage we should not widen the session to include other people. We need to see what comes out of the evidence session with Professor Kerr before we decide where we want to go.

**Shona Robison (Dundee East) (SNP):** I am happy to go along with that, on the proviso that we bear in mind the need for an opportunity to include people in a broader discussion. In particular, we should get feedback from people who took part in the event in the chamber. I hope that we can do that at a later stage.

**Dr Turner:** I agree. I also agree that we should have Professor Kerr by himself and then Professor Kerr with the minister.

**The Convener:** I am not sure what you are proposing. Is your proposal that we should take

evidence from Professor Kerr on his own and then ask him to stay on while we take evidence from the minister?

**Dr Turner:** Yes. If there were any immediate problems, we could deal with them then.

**The Convener:** We would first need to get the minister to agree to attend on 20 September. I cannot guarantee that he will be available on that date. We have Professor Kerr's agreement to give evidence on 20 September, but that does not mean that the minister will be available. We will need first to establish whether the minister is prepared to come along on that basis.

Do members feel that it would be helpful to hear from Professor Kerr first and then to have the minister join Professor Kerr for an evidence session? I am not quite clear how that would work. Perhaps Jean Turner can explain her proposal a bit more.

**Dr Turner:** We will definitely go ahead with hearing evidence from Professor Kerr on 20 September.

**The Convener:** We have already agreed to that.

**Dr Turner:** Are you suggesting that, if the minister could not attend on that day, we might need to change that date?

**The Convener:** No. I am asking you to clarify your proposal. We have agreed that we will take evidence from Professor Kerr on 20 September. We have also agreed that we would like to take evidence from the minister. However, your suggestion seems to involve hearing from Professor Kerr first and then inviting the minister to sit with Professor Kerr for the second part of the meeting. I am not quite clear what you expect to get out of that second part.

**Dr Turner:** Although we could have both Professor Kerr and the minister together as part of an open discussion, it might be good to have a session with Professor Kerr on his own, given that he has headed up all the hard work. I do not think that we should have the minister waiting at the side to come in during that discussion.

**Janis Hughes:** As we have all received copies of Professor Kerr's report, we will be able to read it at our leisure; we will have time to digest its contents. After we have read the report, we might find it helpful to have Professor Kerr and the minister present at the same time so that we can address our questions to either of them. That would allow some dialogue, almost like a round-table discussion.

**The Convener:** The proposal is that we have a kind of mini round table for the whole session and that we do not take evidence from Professor Kerr on his own for any part of it. Are members happy with that? I am not sure that I am.

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

**(Lab):** I am not sure that I am happy with that suggestion. We are dealing with someone else's agenda. It is unfortunate that we could not get Professor Kerr before the date that he specified.

Given that we have an opportunity to discuss the matter, I want to hear about the experiences of the many people who worked for Professor Kerr. The Kerr report is based on other people's work and if we are considering having a round-table discussion it might be more appropriate to invite Professor Kerr and some of the people who chaired subgroups, rather than Professor Kerr and the minister. Such an approach would generate a different set of questions than would a meeting at which we pitted Professor Kerr against the other Kerr—Kerr versus Kerr. I would like to hear how the subgroups came to their conclusions, which would be an important first step before we question the minister.

14:15

**Shona Robison:** I thought that we had agreed to hear from Professor Kerr and then speak to the minister.

**The Convener:** That is what I thought, too.

**Shona Robison:** We would have a different set of questions for Professor Kerr if he was on his own. There is a danger that if the minister also attends we might not have as free a discussion as we had when Professor Kerr last gave evidence to the committee, which was helpful. If Professor Kerr was on his own, we could probe his thinking in a way that might not be possible if the minister was there answering questions on matters about which we would rather hear Professor Kerr's view. I would like the committee to have a dialogue with Professor Kerr and then to discuss some of the issues with the minister and ascertain what he wants to take forward. The minister might not agree with all Professor Kerr's recommendations and it would be good to thrash that out. We need two different evidence sessions.

**The Convener:** It is clear to me that Professor Kerr should come before the committee on his own to answer our questions. However, subsequently, at the meeting on 20 September or at a different meeting, should we ask the minister to respond to our questions about Kerr? We should give Professor Kerr the courtesy of a session on his own to answer questions.

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

**(Con):** I agree with Shona Robison. We should hear from Professor Kerr. The minister should come on his own, so if he cannot come on 20 September it will not matter; he can come on another date.



**Mr McNeil:** I would rather hear from the minister on another day.

**The Convener:** The consensus appears to be that we invite Professor Kerr to give evidence and reserve consideration of how we deal with the matter subsequently. As Duncan McNeil said, a great many subcommittees reported to the main Kerr report and many individuals and issues were involved in discussions, the detail of which did not make it into the report. We will want to consider inviting the minister at some point, but our discussions with Professor Kerr might suggest other areas that we want to consider.

**Dr Turner:** For example, the centralisation of neurological services is being considered.

**The Convener:** We might also want to consider the subcommittee on care. We will take evidence solely from Professor Kerr on 20 September—this is getting very complicated; we have had two Kerrs and a “care”.

## Petitions

### Organ Retention (PE406)

14:18

**The Convener:** The committee is asked to consider PE406, from Margaret Doig, on post mortem examinations. When we considered the petition on 1 February we agreed to suspend consideration until after the introduction of the Human Tissue (Scotland) Bill, which has now been introduced. A background note on the petition, which has been circulated to members, makes a number of recommendations at paragraphs 7 and 8. If members have no comments, are they happy to proceed on the basis of those recommendations?

**Members** *indicated agreement.*

## Petitions (Consideration)

14:20

**The Convener:** Item 7 on the agenda is consideration of petitions generally. A paper that proposes criteria for the consideration of new petitions has been circulated. I invite the committee to examine the paper and to consider whether to take into account some or all of the criteria in considering petitions that are referred to the committee in the future and, as standard, to conclude consideration of a petition at the point at which the committee agrees to undertake specific work on the petition. Another paper that will reflect the discussion will be drafted for agreement at a later date, should that be required.

The paper contains recommendations and a series of criteria for the consideration of petitions, which take up a considerable part of the paper. As the committee is being invited to take into account some of or all the criteria, I wonder whether we might go through the suggested criteria to ensure that committee members are content that each of the suggested criteria is valid.

The criterion of existing workload is an absolute must. We cannot do otherwise than consider our existing workload when we decide on what to do with petitions. The criterion of existing priorities concerns whether the petition would, in effect, reorder any priorities that we have already set out. The criterion that we should avoid duplication is sensible and the criteria of avoiding repetition and identifying strategic issues came out of our deliberations a few weeks ago, when we closed discussion on a number of petitions. It seemed that there were some common themes to those petitions; if we can identify common themes, it is better for the committee to consider those strategic ideas, if possible. The final criterion, of identifying outcomes, suggests that we should be clear right at the beginning what we wish to achieve instead of starting on an open-ended basis with none of us being very sure about what we want to achieve.

Does any member wish to comment? Should we not include any of the criteria?

**Mr McNeil:** The criteria are all pretty sensible. It is a matter of practicality. When we receive a petition, would it be ranked against the criteria?

**The Convener:** Yes. The plan is that a petition will come to us with a recommendation on the basis of the criteria that we have agreed in advance.

**Mr McNeil:** Fine—I am happy with that.

**The Convener:** It is important that we all agree on the criteria. If there is any strong feeling that

any are not appropriate, we need to make that clear now. Is everybody happy?

**Members indicated agreement.**

**The Convener:** Okay. Do members also agree to conclude consideration of any petition having agreed the approach based on the criteria?

**Members indicated agreement.**

**The Convener:** Thank you. That ends the business in public. I ask members of the public please to leave the committee room.

14:23

*Meeting continued in private until 15:01.*

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