HEALTH COMMITTEE

Tuesday 20 February 2007

Session 2

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HEALTH COMMITTEE
3rd Meeting 2007, 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)
Euan Robson (Roxburgh and Berwickshire) (LD)
*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Mr Kenneth Macintosh (Eastwood) (Lab)
Dave Petrie (Highlands and Islands) (Con)
Margaret Smith (Edinburgh West) (LD)
Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Councillor Theresa Gunn (Fife Council)
Kenneth Leinster (Fife Council)
Lewis Macdonald (Deputy Minister for Health and Community Care)
Jacquie Roberts (Scottish Commission for the Regulation of Care)
Fiona Tyrrell (Scottish Executive Health Department)

CLERKS TO THE COMMITTEE

Karen O'Hanlon
Simon Watkins

ASSISTANT CLERK

David Simpson

LOCATION

Committee Room 1

Scottish Parliament

Health Committee

Tuesday 20 February 2007

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

Subordinate Legislation

Adults with Incapacity (Ethics Committee) (Scotland) Amendment Regulations 2007 (SSI 2007/22)

Contaminants in Food (Scotland) Regulations 2007 (SSI 2007/29)

Notification of Marketing of Food for Particular Nutritional Uses (Scotland) Regulations 2007 (SSI 2007/37)

The Convener (Roseanna Cunningham): I welcome everyone to this afternoon's meeting of the Health Committee. I have received apologies only from Euan Robson, so I assume that other folk will join us.

Agenda item 1 is subordinate legislation. We will first consider three negative Scottish statutory instruments. The Subordinate Legislation Committee has raised no issues on the instruments, no comments have been received from members and no motions to annul have been lodged. Are we agreed that the committee does not wish to make any recommendations on SSI 2007/22, SSI 2007/29 and SSI 2007/37?

Members *indicated agreement*.

Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2007 (draft)

The Convener: Item 2 is also subordinate legislation. We will take evidence on the draft order, which is subject to the affirmative procedure.

During stage 2 consideration of the Smoking, Health and Social Care (Scotland) Bill, the committee agreed to an amendment that allowed the regularity of inspections by the Scottish Commission for the Regulation of Care, which was previously stipulated as once per annum, to be varied. The draft order will provide the first such variation under the act. The order proposes that housing support services should be inspected a minimum of once every three years and that day care for children aged three and over and child care and nursing agencies, should be inspected a minimum of once every two years.

The purpose of item 2 is to allow the committee to hear evidence before I invite the Deputy Minister for Health and Community Care to move the motion. Therefore, I welcome to the meeting Councillor Theresa Gunn, who is chair of Fife Council's adult services committee, and Kenneth Leinster, who is a senior manager of Fife Council's older people's services. Fife Council is one of the bodies that were consulted by the Executive, but the council opposes the proposal. A copy of Fife Council's response to the consultation is included in members' papers for today's meeting. I invite Councillor Gunn to make a short opening statement of perhaps four or five minutes. After that, we will proceed to questions.

Councillor Theresa Gunn (Fife Council): Fife Council is a provider of a large number of services to vulnerable people. Those include services that we provide directly and services that we purchase from the private and voluntary sectors on behalf of the residents of Fife. The council strongly supports the care commission and recognises the importance and value of the commission's role in ensuring the delivery of high-quality services to vulnerable people. We do not treat inspection lightly, either as a provider or as a purchaser of services.

We have concerns that the proposed reductions in the frequency of inspections will mean that the length of time between inspections will be too long. The proposed change would mean that day care services for children aged three and over could, instead of being inspected every 12 months, go for up to two years without a regular inspection visit. Within the two-year period between inspections, an establishment could undergo a change of staff, a change of manager or a change of owner. That could be the case whether the establishment is run by a local authority, by a voluntary organisation or by the private sector. Given that the quality of care that is provided can deteriorate very quickly, the proposed gap of two years between inspections is far too long for services that are provided to vulnerable people.

It is proposed to increase the time between inspections of housing support services provided by registered social landlords from 12 months to three years. I understand that other regulatory housing bodies might be involved with housing services, but the care commission is concerned not with the quality of housing provision but with the quality of the care provided to frail and vulnerable people in their own homes. For providers of such care, the proposed three-year gap between inspections is too long.

We want to improve the quality of care to frail and vulnerable people in Fife. We are committed to the care commission and do not underestimate the important work that it does to help to improve services. The inspection process is vital to that objective and we are concerned that a reduction in inspection services might have a detrimental effect on the quality of the care services that are provided to people who need them.

In its consultation paper on the proposals, the Executive suggests that increasing the period between inspections to up to two years would allow the care commission to

"target its resources on those services where the need for improvement is greatest."

However, we are concerned that a two-year or even three-year gap between inspection visits would increase the likelihood of services deteriorating and lead to a significant increase in the number of services needing improvement. Increased time between inspections might also mean that there is greater deterioration in services than happens under the current system, in which services are inspected annually.

Evidence in support of the proposals is included in the body of the consultation paper and the annexes to that paper. I ask members to consider the information in detail before they make a decision on the proposal to reduce care commission inspections. We are concerned that if the proposal is accepted, there will be further reductions in the inspection process. Fife Council does not want vulnerable people to experience a reduction in the mechanisms that protect and safeguard them. Through the inspection process, the care commission provides a safeguard for vulnerable people. A reduction in the process would be a reduction in safeguards for some of the most vulnerable people in society.

The Convener: Thank you. I understand that Kenneth Leinster will respond to members' questions—you did the easy bit and he will do the hard bit; that is the kind of division of responsibilities that I like. I know that Helen Eadie wants to comment, because Fife is her patch, but I will bring in other members first.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): Councillor Gunn's comments were sensible, but I remember that the care commission told us that it will inspect a service if it receives a complaint about it or if changes have been made. I was concerned about that, because staff are low paid and many establishments have high staff turnover. Should the commission always be informed about changes in staff?

Councillor Gunn: The commission said that it will investigate if a complaint is made, but often complaints are not made, because the people who are looked after and their relatives are frightened to complain. People let things go for a long time before they make a formal complaint. If, during a two-year gap between inspections, the care commission inspected only if it received a complaint, there would be a problem. That is one of the reasons why Fife Council's adult services committee felt strongly about the matter.

Dr Turner: Age Concern supports you on that. It highlighted the problem in its evidence.

The Convener: There is no reason why Councillor Gunn or Kenneth Leinster should know the answer to this question—in which case, fair enough—but is there a minimum period between school inspections? MSPs receive copies of inspection reports, but we do not know how long the inspection cycle is.

Kenneth Leinster (Fife Council): I know that school inspections are not annual, but I do not know how long the gap is between inspections. School inspections are different—

The Convener: I appreciate that, but I am thinking about the frequency of some other inspections that take place.

Kate Maclean (Dundee West) (Lab): That information is in paragraph 6 on page 11 of paper HC/S2/07/03/05, which mentions the proportionate model of inspection. The date of the next visit is determined on the basis of the inspection report, so it might be decided that an inspection will be made a year or two years later. That is mentioned under "Caveats" in the submission from the Convention of Scottish Local Authorities.

The Convener: It is on page 13 on the copies that have been circulated at the meeting—do not ask me why. There is some information there about inspection frequency.

Janis Hughes (Glasgow Rutherglen) (Lab): The witnesses mentioned that they are concerned that, under the draft order, the frequency of inspection would reduce even further. I understand that the point of the order is that the frequency is laid down and, therefore, any further reduction would be subject to a further order. Does that not alleviate the witnesses' concerns?

Councillor Gunn: This could be the thin edge of the wedge. If you allow a reduction in the frequency of inspections to happen for day care of children aged three or over and for housing support services, that could be extended to inspections for other vulnerable people. That is also a concern.

Kate Maclean: I assume that Fife Council is in the minority on the topic. The COSLA submission says:

"Councils opposed to a reduction … feel that … they themselves might have to ensure that the current minimum frequency of inspections is maintained".

In other words, the councils feel that if the care commission does not maintain the frequency of inspections, they will have to increase their inspections. Is that Fife Council's view?

Kenneth Leinster: Councils do not have responsibility for inspections as such, because that duty was given to the care commission in 2002. However, given that local authorities are ultimately responsible for the care of anybody whom they place in any establishment, they have the right to assess the quality of care. We might do that if we had concerns, but we do it as a matter of course anyway, alongside advising the care commission if we have any concerns. Maintaining the minimum would be a combination of both: we would want to assure ourselves, but we would advise the care commission if we had any concerns and would expect it to inspect as it would normally.

The Convener: You will probably also have new powers under the Adult Support and Protection (Scotland) Bill, which was passed recently. It will allow you to go in on individual issues if you choose to do so.

Kenneth Leinster: Yes, I think that that is the case. We always wish to identify services with which we have concerns and examine them in particular. That might be in relation to one person or more, but we would do it as a matter of course because we place many people in many different establishments.

Mrs Nanette Milne (North East Scotland) (Con): I know that it is difficult to generalise, but what level of staff turnover would you expect in three years, particularly in housing support services?

Councillor Gunn: I could not give you those figures off the top of my head.

Kenneth Leinster: If there is a change in manager in an establishment of whatever description, the establishment has a responsibility to advise the care commission of that change. However, establishments have no responsibility to advise the care commission if there is a turnover of staff below that level.

Helen Eadie (Dunfermline East) (Lab): I ask the witnesses to expand on their written submission, relate their experiences and tell us why Fife Council is making the case that it is. I note that, although Fife Council is in the minority in its opinion, practically all the other organisations that have made submissions have made it clear that, if the committee recommends today that the draft order be agreed to, they want certain caveats to be in place. Will the witnesses comment on those two aspects?

14:15

Kenneth Leinster: There are two elements to this. First, Fife Council is a very strong supporter of the care commission. We always support what the care commission does and we recognise the value and importance of the inspection process. Therefore, we do not want to see any diminution of that process.

Secondly, the consultation paper indicates that the number of upheld complaints in relation to day care services for children over the age of three rose by 80 per cent between 2004-05 and 2005-06, from 45 to 78. Also, the number of requirements following inspection has increased from 599 to 779. Those figures are in annex A of the consultation paper. Having read the paper in detail, I felt that it was important to bring those figures to members' attention.

The Convener: I have been advised that council nursery schools, which are also covered by Her Majesty's Inspectorate of Education, are inspected every three years. The proposal in the consultation paper is that day care for children aged three and over and child care and nursing agencies should be inspected a minimum of once every two years. That is still a higher standard than currently applies for nursery schools. Does that sound right?

Councillor Gunn: Yes, that sounds about right. However, an HMIE inspection is different.

The Convener: Yes, that is an HMIE inspection and nursery schools will still also be inspected by the care commission. Is your concern that, although the proposal is expressed as a minimum, it will become the standard?

Councillor Gunn: Yes. Such an approach could also be extended to other vulnerable groups.

The Convener: You are worried that the proposal might be extended to other groups and that the minimum frequency will turn out to be the standard.

Councillor Gunn: Yes.

Dr Turner: If it could be proved that the frequency of inspections would not fall below one, would the witnesses be in agreement with the proposal and would they be in agreement if the inspections were unannounced?

The Convener: What do you mean by "fall below one"?

Dr Turner: The minimum of one inspection in three years.

The Convener: That is what the order says.

Dr Turner: If the minister guarantees that the frequency of inspections would never fall below that level, would the representatives of Fife Council still be concerned?

Councillor Gunn: Yes, I would still be concerned because that is too long.

The Convener: In any case, as the minister cannot bind future ministers, he could not give such a guarantee. All that he could say is that as long as the order subsists, the number of inspections would not fall below that level, because that is what the order says. He cannot bind anybody in the future. Any proposals for change in the future would have to be dealt with on a case-by-case basis.

That has exhausted our questions. Thank you very much. You are welcome to sit in the public gallery and listen to the minister.

I welcome the Deputy Minister for Health and Community Care to the committee this afternoon. He has with him Linda Gregson and Jacquie Roberts, who is the chief executive of the care commission.

I ask the deputy minister to make an opening statement before we move to questions.

The Deputy Minister for Health and Community Care (Lewis Macdonald): Thank you for the opportunity to make an opening statement.

In your introductory remarks, you outlined the background to the issue and explained that the committee agreed two years ago to the principle of having a more flexible approach to the implementation of the Regulation of Care (Scotland) Act 2001 in relation to frequency of inspections in order to give ministers the power—subject to the affirmative resolution procedure and consideration by the committee and by Parliament—to change the minimum frequencies.

As has been mentioned already, there are four groups of services for which we seek to exercise the power of variation for the first time since the committee agreed to the power in 2005. The four groups of services to which the proposed changes relate are children's day care services that are provided solely for children aged three and over; nurse agencies; child care agencies; and housing support services that are provided by registered social landlords that are registered with Communities Scotland—typically, that means sheltered housing services.

In making the proposed changes, we have taken the view of the care commission. Having regulated services for some four years, the commission is well placed to give a view based on its experience of the regulatory process and on the information that it has collected over that time. Given the importance of using the power only on the basis of evidence, we sought information from the commission on issues such as the level of enforcement action against providers, the volume of outstanding and unresolved requirements that have been placed on providers and the number of upheld or partially upheld complaints. That information is the evidence on which we have proceeded.

As members will know, the commission regulates a wide range of care services and, for the most part, the evidence confirms that many good-quality services are being provided. Nevertheless, the commission has taken a cautious approach to reducing the number of inspections and has suggested that the current minimum frequency requirements should remain in place in the majority of care sectors.

However, the evidence supports the proposal to reduce the minimum inspection frequency for the particular sectors to which I referred from 2007-08 onwards. For example, in the case of day care services for children in 2005-06, the percentage of complaints that were upheld or partially upheld was 3.5 per cent whereas, by comparison, the percentage for care homes for older people was 28.5 per cent. Within the children's day care sector, a marked difference also exists between the level of complaints about services that deal only with children who are three years or older and those that also deal with children who are under the age of three.

Following the consultation with the care commission, we consulted publicly on the basis of that evidence. Overall, the responses to the consultation were broadly supportive of the proposed changes.

It is important to stress what the proposed changes will mean in practice. They will mean that the minimum frequency of inspections for such services will change; they do not mean that all the services that are affected will be inspected less frequently. That is an important but clear point. Some service providers will continue to be inspected annually because they are subject to enforcement action or because they need to meet specific requirements. A number of service providers will be inspected annually to validate the self-assessment process.

Ultimately, the commission will retain the right to inspect any care provider more frequently so that inspection resources are targeted according to the level of risk. In any case, where a service undergoes a change of manager, the care commission must be notified of that and it will consider whether to carry out an inspection of the service and what other steps need to be taken to ensure that the service continues to be delivered safely and effectively.

The draft order will make a change only to the minimum frequency. It does not mean that all those service providers will be inspected less frequently. It simply means that the commission will be able to reduce its inspection intensity for providers that have had no significant changes and have given no cause for concern.

The point of the exercise is to reduce the effort that the commission devotes to the many providers in those sectors that have given no cause for concern during the inspection process. The change will allow the commission to focus its regulatory effort on the few problem providers in sectors that give more cause for concern. The care commission will thereby be able to focus its attention where it is needed most while remaining vigilant across the whole range of its responsibilities.

For the record, I ask members to note that the proposals are not about saving money. It goes without saying that I will continue to press the commission to achieve cost efficiencies as part of the on-going process of limiting costs to service providers and taxpayers, but the order is about using the powers that we have to ensure that the commission's efforts deliver the best possible outcomes for service users and the best possible standards for service providers. That is the basis on which we have introduced the proposals.

The Convener: To pick up on the fact that a management changeover triggers an inspection, does the care commission monitor staff turnover in establishments, and does it consider the percentage of staff turnover as a potential trigger as well?

Lewis Macdonald: Jacquie Roberts may like to answer that.

Jacquie Roberts (Scottish Commission for the Regulation of Care): Yes, we do. We conduct an annual assessment of all services, so we are in touch with all services at least once a year. Part of that annual assessment involves staff turnover levels. That would be one trigger that would make us more likely to inspect a service than not.

The Convener: So if you saw huge staff turnover in a particular institution, an alarm bell might go off about what is happening.

Jacquie Roberts: Absolutely.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): What percentage would trigger an inspection? Would it be 5, 10 or 20 per cent? Staff turnover would not be taken on its own, would it?

Jacquie Roberts: No, it would not. It would be taken in conjunction with information such as disciplinary action, a change of manager, the nature of the client group—whether it is a group of more vulnerable people—and other information such as whether the service had had complaints or requirements in the past year. A number of factors would be taken into account.

Dr Turner: This question is for Jacquie Roberts. If the hours of trained nursing staff were cut by half an hour so that they did not communicate with one another in the changeover from the morning to afternoon sessions, would that trigger an inspection?

Jacquie Roberts: Forgive me, but I think that your question relates more to care homes for older people, and there is no proposal to change the minimum frequency of inspection in care homes. That information is important, but following it up could mean giving care homes, which already have two inspections a year, even more scrutiny than that.

Dr Turner: There are responsible trained staff in all the establishments in question, and their hours could be cut so that they did not overlap at changeovers.

Lewis Macdonald: Are you thinking about nursery education, for example?

Dr Turner: Yes, something like that.

Jacquie Roberts: It is rare that there would be nurses in nursery education, but if there were significant staffing changes, they would definitely be taken into account in making a risk assessment and deciding how much scrutiny to give the service.

Dr Turner: Providers would need to notify you of that change.

Jacquie Roberts: Yes, if there was a change of manager or other significant changes. However, we will routinely assess every single registered service at least once a year for a number of factors. They have to complete an annual assessment form with us.

Mrs Milne: Will you still do unannounced inspections?

Jacquie Roberts: Yes. Indeed, for day care services for children, it is routine to make the inspection unannounced.

Janis Hughes: We talked with the previous witnesses about the HMIE inspections that currently take place in nurseries and pre-school education establishments. They are done on a three-yearly basis or more often if felt necessary. Will there be a link between the care commission and HMIE to ensure that such inspections do not happen at the same time?

Jacquie Roberts: Absolutely. The proposal requires a sophisticated programme with HMIE for the years in which we would go into establishments together, the years in which HMIE

might not have an inspection, and the years in which we would go in without it. The whole system is built in an integrated way, and we have an integrated team in which people from HMIE and the care commission work together to go into the establishments.

Lewis Macdonald: The same principle applies to sheltered housing providers. There are other inspection regimes, and the dovetailing will continue in the same way.

Helen Eadie: I note that when you appeared before us in 2005 you discussed a pilot of lay inspectors. How has that inspection pilot gone?

Jacquie Roberts: It is going very well. We have an increasing number of lay inspectors, the majority of whom are users of care services. We are gradually building up the number of inspections; the lay inspectors are becoming a valuable resource to the care commission because they see things in a different and enlightening way.

14:30

Helen Eadie: When you gave evidence in 2005, we talked about the idea that an inspection of a residential unit in which children are cared for provides a valuable opportunity for young people to speak to another adult who is not directly involved in the home. Will that be threatened in any way?

Jacquie Roberts: No. The proposals for lay assessors will almost be enhanced by the draft order because it will give us the chance to redeploy resources for promoting the work and ensuring increased service-user involvement in the regulation process.

Helen Eadie: The discussion in 2005 centred on Annie Gunner's point that services that self-assess will have to pay for self-assessments and therefore feel that they are not getting any return for the fees that they have to pay. That was related to the debate about the care commission's need to be self-financing. Will the order impact on that at all?

Lewis Macdonald: I do not think that it will directly impact on it.

Jacquie Roberts: We expect services to self-assess because that is a way of promoting quality assurance within an organisation. In addition to that, we will validate those assessments and turn up unannounced. A service might be meant to have an inspection only once every two years but, because we will inspect a sample of services more frequently than the minimum that is set out, we could turn up the following week to validate the information that a service had submitted to us.

Helen Eadie: Is it fair to say that the main thrust of the draft order is to enable you to do more unannounced inspections?

Lewis Macdonald: Basically, the proposed changes will free the care commission to do more inspections of providers for which there is, or appears to be, a greater need for inspection, as well as to develop and spread best practice. In essence, they will allow the care commission to do its job positively and to address concerns with providers.

The Convener: Jacquie Roberts talked about going into services to validate self-assessments. Are such validation inspections separate from the inspection cycle under the draft order that we are discussing?

Jacquie Roberts: Yes, they are in addition to that cycle. We built that in as a protection.

Lewis Macdonald: Self-assessment is an annual process.

The Convener: So you will go out and validate a certain percentage of the self-assessment reports, but that process will not, under the draft order, count as part of the inspection cycle.

Jacquie Roberts: No, it will not; it will be carried out in addition to the inspection cycle.

Mrs Milne: Have you any sense that the proposals in the draft order could lead to more inspections by councils?

Jacquie Roberts: That is certainly not the intention behind the proposals. It is important to say that the care commission spent a lot of time considering the minister's proposals when he first wrote to us. We responded about where we thought there was less risk and how we could build in the additional regime of calling in unannounced in order to validate information. Our response was that we should try the changes in a careful and planned way in services in which we think there is less need for annual inspections. It would be a mistake and a shame if local authorities were to fill that gap by going in to check those services. The Health Committee noted that in its regulation of care inquiry.

Mrs Milne: That is why I asked.

Mr McNeil: Are the self-assessment reports available to relatives or local authorities on request? Are they published?

Jacquie Roberts: The self-assessments are not published, but we could consider doing that, as we are in the middle of enhancing our care services register. The self-assessments are being returned to us electronically or on paper. We would have to look into publishing them. All the inspection reports and information about upheld complaints and any enforcement action are available on the

public register for any member of the public to see.

Mr McNeil: I appreciate that. I do not know whether the convener agrees that the care commission could consider making the self-assessments publicly available so that the people who compile them take them seriously. If that information were to be shared with relatives or a local authority, there would be a baseline.

Lewis Macdonald: The proposal is interesting and we will certainly discuss how to develop it.

I will return briefly to Nanette Milne's question simply to emphasise that the fundamental regulatory regime that the care commission operates in all the sectors that we are discussing remains in place. That means that a power will continue to be available to the care commission to inspect at any time, for any reason, if it judges that an issue exists, but that does not mean that a vacuum exists that others need to fill. Other agencies have statutory inspection duties and must continue to adhere to them. No other public agency should interpret the fact that care commission inspections will be less frequent as an invitation to increase its inspection regime for providers that the care commission has judged need fewer inspections than is the case in general.

Helen Eadie: The submission from Community Care Providers Scotland says that measuring all the national care standards could take several years. That is cause for concern: if it takes several years to measure all the standards, we need reassurance. My impression is that Community Care Providers Scotland wants a caveat that that issue will be addressed in your plans and policy proposals. That organisation is concerned that local authority activity could step up, as other members have said.

Lewis Macdonald: Before Jacquie Roberts addresses that point, I will take the opportunity to say that there is no way the draft order will lead to any reduction in the minimum frequency other than in the four sectors that are specified. The powers that the committee agreed in 2005 mean that any proposed reduction in the minimum frequency—for community care services, for example, which have not been addressed today—would have to come back to the committee and be approved by Parliament under the affirmative procedure. That point is important. There is no thin end of the wedge. Every proposal to reduce the minimum frequency must be subject to approval by affirmative resolution.

Jacquie Roberts: It was said that examination of standards takes years. We have examined all the standards in quite a proportion of the services, because we have been operating for more than four years. We are moving to the concept of a grading scheme, whereby each year we will consider batches of standards that meet different concerns. We need the flexibility to focus on the matters about which we have most concerns. Community Care Providers Scotland made its submission in 2005 and it strongly supports the way in which we are going.

I make the general point that inspection is only one part of what we do. We can at any time investigate a complaint about any registered service. That includes the services for which the minimum frequency of inspection might change. A complaint is likely to trigger quite a lot of attention.

The Convener: We move to agenda item 3, for which Ms Roberts is welcome to stay at the table. The clerk has reminded me that you cannot speak from now on, but you are welcome to stay.

We have taken evidence on the draft Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2007, on which the Subordinate Legislation Committee had no comment to make. Does any member wish to debate it?

Members: No.

Motion moved,

That the Health Committee recommends that the draft Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2007 be approved.—[*Lewis Macdonald*.]

Motion agreed to.

Mental Health (Safety and Security) (Scotland) Amendment Regulations 2007 (draft)

The Convener: Agenda item 4 is consideration of a second instrument that is subject to the affirmative procedure. We will take evidence from the minister before I invite him to move the motion. He is joined by David Herd and Fiona Tyrrell, who are Scottish Executive officials.

The purpose of the instrument is to amend the Mental Health (Safety and Security) (Scotland) Regulations 2005 in order to add the Rowanbank unit in Glasgow to the list of medium-secure units.

I invite the minister to make an opening statement of four to five minutes.

Lewis Macdonald: Thank you, convener. I will endeavour to take even less time than you have suggested.

I welcome the opportunity to introduce the draft Mental Health (Safety and Security) (Scotland) Amendment Regulations 2007. The Rowanbank unit, which is due to open in April, will be the medium-secure unit for the west of Scotland. The first patients are expected to be admitted to it in June.

The regulations will simply add the Rowanbank unit at 133C Balornock Road, Glasgow to the list of hospitals and units that are specified in the Mental Health (Safety and Security) (Scotland) Regulations 2005 (SSI 2005/464). The current list consists of state hospitals that have high-security conditions and the Orchard clinic in Edinburgh. The Rowanbank unit will be the second medium-secure unit after the Orchard clinic. All patients in it will be covered by the restrictions that are set out in the 2005 regulations, which allow for restricting the items that patients may have, and for searches to be carried out, when necessary, of patients and their belongings.

The Convener: I expect that Jean Turner has questions on the regulations, but I invite other members to ask questions first. Will you confirm that we are talking about the unit at Stobhill?

Lewis Macdonald: Indeed.

The Convener: I wanted that confirmation in order to remind members why the regulations could be controversial.

Do members have any questions about the regulations?

Dr Turner: I do not think that there is any controversy surrounding the need to rehouse people in medium-secure units, although there is controversy about Carstairs, which is, I gather, bulging at the seams.

How many patients will be contained in the Rowanbank unit? What type of patients will they be? Does the attached low-secure unit come into the same category as the medium-secure unit?

Lewis Macdonald: The regulations relate to the medium-secure unit at Rowanbank, which requires greater security conditions than those in low-secure units around the country. When the unit opens later this year, it will have a capacity of up to 60 beds. We expect half dozen or so of the patients from the west of Scotland who are currently in the Orchard clinic in Edinburgh to transfer pretty much straight away to Rowanbank. We expect a similar number—or perhaps slightly more—from the west of Scotland who are in Carstairs and for whom an appropriate level of security would be closer to medium-secure than to high-secure to transfer. At the moment, 15 such patients in Carstairs are simply waiting to be transferred to conditions of lower security such as those in a medium-secure unit. Approximately half those patients are from the west of Scotland and would therefore go to Rowanbank. Those are the numbers that we are talking about in the first instance.

14:45

Dr Turner: Will patients be moved into the low-secure unit before being allowed out into the community? I thought that was the whole idea.

Lewis Macdonald: I think that is right. There is a process in that regard, which is to do with the fundamental proposition that recovery is possible for many people with mental illness who in the past were regarded as suffering from permanent conditions that would prevent their return to the community. However, before any patient from the state hospital or elsewhere can return to the community, the paramount consideration is that there should be no significant risk to public safety—that test will apply whatever level of security is attached to the patient. Fiona Tyrrell might comment on how patients are assessed.

Fiona Tyrrell (Scottish Executive Health Department): The Scottish ministers retain the right to supervise transfers of restricted patients, who are people who have committed serious offences. Ministers are particularly concerned to ensure that risk is taken into account in plans for transfer and care. Multidisciplinary care planning would be part of any proposal to transfer a patient from the state hospital to a medium-secure unit or from a medium-secure unit to another location, whether that was Stobhill hospital, a unit in another health board or the community.

Dr Turner: I assume that a patient who left hospital would not necessarily be housed in the area near the hospital. Could the person be housed anywhere on the west coast?

Fiona Tyrrell: Yes, because the person might have come from Ayrshire and Arran, Dumfries and Galloway, Glasgow or anywhere on the west coast. It is more likely that the person would go back to their home area, unless there were particular reasons why they should not.

The Convener: Minister, am I right in thinking that the approach is part of a reconfiguration of services across Scotland? I understand that there is to be a medium-secure unit to serve the north of Scotland in Perth—which is not very far north.

Lewis Macdonald: I imagine that the convener has an interest in that matter. The intention behind the organisation of forensic mental health services is that the state hospital will continue to provide a single unit for high-security requirements and that, on completion of the network, three medium-secure units will serve the west, the east and the north. The unit in the north will be at the Murray royal hospital in Perth and will have about 32 medium-secure beds. We expect it to open in 2009, which will complete the network of medium-secure units. Currently, the Orchard clinic is providing that service for the whole of Scotland, so the creation of the units, first at Stobhill hospital and then in Perth, will allow the Orchard clinic to concentrate on the south-east. As I said, a number of people in Carstairs ought to be housed in a medium-secure unit, so our approach will allow that to happen, too.

The Convener: Members have no further questions, so we move on to item 5. The Subordinate Legislation Committee made no comment on the draft Mental Health (Safety and Security) (Scotland) Amendment Regulations 2007. Do members want to debate the regulations?

Members: No.

The Convener: I invite the minister to move motion S2M-5560.

Motion moved,

That the Health Committee recommends that the draft Mental Health (Safety and Security) (Scotland) Amendment Regulations 2007 be approved.—[*Lewis Macdonald.*]

Motion agreed to.

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

14:49

Meeting suspended.

14:54

On resuming—

Legacy Paper

The Convener: Item 6 on the agenda is discussion of the draft legacy paper. I draw the committee's attention to the covering document that was circulated with the papers for today's meeting. The recommendations are in bold print.

We need to consider and agree the legacy paper, and we should really go through it paragraph by paragraph to allow for proper discussion and points to be raised. Are you just going to see how fast we can go through it, Duncan?

Mr McNeil: How slow can we go? I have a meeting at 5.

The Convener: So you have a vested interest in dragging it out—you will be very popular with your colleagues.

I remind members that we are not in private session, so everything is on record.

Mrs Milne: If we are going through the paper bit by bit, how will we slot in any additions?

The Convener: We will go through it paragraph by paragraph. If we raise any points, the revised draft will return to the committee on 20 March. This is not the final discussion.

Perhaps we can move to the paper. Paragraphs 1 to 5 on page 1 are an introduction. Is everybody happy with them?

Members *indicated agreement*.

The Convener: Paragraphs 6 to 8 simply describe the work that we have done. Under the second heading, "Strategies to Manage Workload", we make a point in paragraph 9 about the overall volume of work that has come to us.

Mr McNeil: I do not know whether we should complain about what is essentially our job.

The Convener: The point is more about balance, because we are also meant to fulfil the select committee function. I remind members that there are two justice committees because of the workload on the justice agenda. It is a pointer to possible structural changes at committee level, depending on the workload. I think that that is a fair and worthwhile point to make because it is what led to the decision to create two justice committees.

We are not necessarily making a complaint; the paragraphs are simply about how much work we have done and the ways that we have devised to handle that workload.

Mr McNeil: Yes, but I am unsure about how that takes us to two health committees or whether that would be desirable.

The Convener: We are not suggesting two health committees. My point is that committees should say what their workload has been because it would be useful for any future review of committees to be based on what they had done.

Mr McNeil: I am not being picky.

The Convener: You are being picky.

Mr McNeil: No, I like to be convinced of these things. I do not know whether it is appropriate for that to be in an annual report or legacy paper.

The Convener: As I understand it, the annual report is not designed to carry such information—it is a more constrained structure than a legacy paper. After all, we are not required to produce a legacy paper. This is something that we choose rather than have to do.

Mr McNeil: I may be taking it too seriously then.

The Convener: I think that we should take it seriously.

Paragraph 9 simply makes a statement about the workload that we have had. Paragraph 10 deals with legislation and, in a sense, leads on to the fact that we have chosen to do things slightly differently in order to deal with the workload.

Paragraphs 11 to 14 deal with members' bills, and we note some key points about them, including a recommendation at paragraph 14 specifically about members' bills. It is something that we have discussed before.

15:00

Mr McNeil: I take the issue seriously, because the paragraph lets members off the hook. The idea that members do not understand the rules—when it is appropriate for them to introduce members' bills and whether, when introducing bills, they expect them to go the full course through to legislation—is too simplistic. Members cannot expect a bill to be enacted if they come along with it six months before the end of a parliamentary session, when time is limited and everyone else is showcasing.

The Convener: That is a legitimate point. I suggest that we add another paragraph that states firmly that, when members introduce bills that they truly intend to become law, they have a responsibility to make themselves cognisant of the legislative process and to ensure that bills are introduced timeously, in order that they may get through that process.

Mr McNeil: There should be some reference to the wider problem that the Parliament must resolve of whether it is appropriate, sensible and realistic for all members to have the right to introduce a bill. We are dealing with the symptoms of that major problem. Something needs to be said about that.

The Convener: We need also to include the recommendation in paragraph 14, because the current standing orders stipulate a final deadline that is far too late. Members can present themselves as having complied with standing orders but not be in a position to progress a bill much further. That provision must be changed.

Mr McNeil: Would that have the desired effect?

The Convener: It would pull back the final deadline to before the summer recess prior to an election. I take on board the point that you make—that it is members' responsibility to be realistic about what is and is not possible with members' bills. In my view, that includes thinking about them earlier, rather than later, in a four-year session. I am not sure that it is for the committee to make a point about the bigger issue of the number of members' bills. We must deal with the overall position as it stands.

Mr McNeil: That is my basic problem. We are dealing with a symptom that cannot be addressed simply by moving the deadline. I may be wrong about that, but I suggest that Simon Watkins considers the point. If it has substance, he can include it in the final draft of the paper.

The Convener: Paragraph 14 would make a difference to a committee's handling of its workload. I am not unhappy about inserting some lines that reinforce the point that members have a responsibility to be realistic about how long it will take them to introduce bills, and that highlight the fact that the sudden rush of members' bills late in the day is not particularly helpful, although we know that many of those bills were introduced by members who were fully aware that they were not going to run to term. We will re-examine the issue on 20 March, once the changes that have been suggested have been made.

The next section of the paper deals with inquiries. Paragraph 15 refers to some of the different things that we have done and to the one-off inquiry meetings that we have held. Members have indicated that they are content with paragraph 16. Paragraph 17 is a simple recommendation noting the importance of post-legislative scrutiny. We are moving into a time when post-legislative scrutiny will become increasingly important in the Scottish Parliament.

Paragraphs 18 to 24 are in connection with subordinate legislation. Paragraph 18 is fairly straightforward. Paragraph 19 is a simple description of the way in which we have handled subordinate legislation. Does any member wish to comment on paragraph 20?

Mr McNeil: That part of the draft report mentions the discussions that we have had on the issue and it states, although not particularly clearly, that there has been an improvement, in that the problem seems to have resolved itself. It would be useful to point out that discussions have taken place and that there has been an improvement, if that is the case.

The Convener: Does anybody feel that there has been a particular change in the way in which subordinate legislation is presented to the committee?

Mrs Milne: I do not find the Executive notes to be any better.

Mr McNeil: The draft report says that subordinate legislation has not been a problem lately, but we give the Executive no credit, although I may be reading the report wrongly. There were some discussions with the committee.

The Convener: To which paragraph are you referring?

Mr McNeil: I am referring to my notes, as I scan through the report. It states:

"The Health Committee raised these issues with the Subordinate Legislation Committee as part of its inquiry into the Subordinate Legislation Committee process."

The Convener: That paragraph is about timing, not about the supporting information.

Mr McNeil: The report says somewhere that the situation has not been—

The Convener: Paragraph 21 is about the timing of subordinate legislation coming through and the fact that we have occasionally considered instruments that were already in effect. We state that that

"has happened less frequently more recently."

That might be one of the points to which you are referring. That is in the last part of paragraph 21, which is on the timing.

Mr McNeil: Yes. It states:

"this has happened less frequently more recently."

My question is whether that is the case and, if so, whether that is a result of the Health Committee raising the problem with the Subordinate Legislation Committee.

The Convener: That issue is about timing. It is now quite a while since we have had to deal with an instrument that was in force before we considered it. That is why that comment was included.

Mr McNeil: Should we say that that is good?

The Convener: That is what we are saying—that it

"has happened less frequently more recently."

Dr Turner: No—all that we are saying is what has happened. Duncan McNeil wants to add that that is good.

The Convener: The situation occurred in the past, but it is happening a lot less frequently now, which is acknowledged in paragraph 21. That issue is about the timing of subordinate legislation. There may still be an issue about the information that comes with subordinate legislation and how it is presented.

Mr McNeil: Have we raised that with the Executive? The draft report makes a stark claim, when it states:

"However, the effective scrutiny of Subordinate Legislation is often hindered by the poor quality"

of work by other officials.

The Convener: I remind you that the Subordinate Legislation Committee has had an extensive inquiry into the subordinate legislation process. Our comments are part and parcel—

Mr McNeil: Is that the way in which our officials have reported the matter to us? If somebody said that about our officials—

The Convener: Just hold on, Duncan. We will ask the clerk about the issue.

Simon Watkins (Clerk): The points were all taken from the submission that we made to the Subordinate Legislation Committee's inquiry into the process.

The Convener: Which was agreed by the committee.

Simon Watkins: Yes.

Mr McNeil: I am asking whether there has been any improvement.

The Convener: What we have just said is that there has been no improvement in the quality of the Executive notes that accompany Scottish statutory instruments, but that there has been an improvement in the timing of instruments coming to us. On some aspects, there has been improvement but, on others, there has been none. It may be regarded as early days, because the Subordinate Legislation Committee has not long completed its examination of how subordinate legislation is handled. There is a moving picture.

Mr McNeil: So, to move to paragraph 24, you are saying that we still need improvement in the information.

The Convener: Can we deal with paragraph 22?

Mrs Milne: I just want to say that I agree totally with paragraph 20. The Executive notes often simply repeat what is in the instrument.

The Convener: Paragraph 22 states that, by agreement, we raised those issues with the Subordinate Legislation Committee. Paragraph 23 suggests that any new committee should continue to deal with subordinate legislation in the way in which we have done. We have taken evidence and treated some aspects of subordinate legislation more seriously. In paragraph 24, we suggest that the new committee should continue

"to work with the Executive to bring about a qualitative improvement in the standard of"

the accompanying information.

Paragraphs 25 to 28 are on petitions. Paragraph 25 mentions the number of petitions with which we have dealt. Paragraph 26 details some of the different approaches that we have taken to dealing with petitions. Paragraph 27 sets out further approaches to petitions, including that of absorbing them into the main part of our work.

Paragraph 28 contains the recommendation to our successor committee about

"absorbing petitions into work that it is undertaking"

as a suitable way of handling them. Are members happy with that?

Paragraphs 29 to 31 are under the "Budget Scrutiny" heading. Paragraph 29 is on

"The time available to subject committees ... to allow in-depth scrutiny",

which we have frequently expressed concerns on. It mentions the fact that much health board expenditure is "not broken down", and goes on to say:

"the budget definitions have changed year on year."

Again, we have frequently raised that point.

Paragraph 30 covers some of the things that we have done to get round those issues. We recommend to any successor committee that it continues to

"give consideration to the appointment of budget advisers and the commissioning of research, and a focus on specific aspects of the budget",

as we have done.

Mr McNeil: Despite our having done that, I think that we would all agree that our quest for more focused information has not been satisfied.

The Convener: Would you like to reinforce that at paragraph 31?

Mr McNeil: We could discuss how that could be done better. I know that other committees such as the Audit Committee feed into the process, but I am not sure if we actually come together when it comes to budget scrutiny. In the past, people would come along to committees, and members would examine certain sections of the budget with them. It seems that the Conveners Group, the Parliament or this committee need to take a fresh look at how we conduct budget scrutiny. We have tried using advisers and various other means, taking individual sections of the budget, looking at it in a wide sense or focusing on parts. We never really get satisfaction out of the process. It has always been frustrating.

I do not know whether it should be a matter of continuing to work in the same way or of working more effectively with other committees in narrowing things down. I have no solutions. However, simply having what has been written in the draft paper under "Budget Scrutiny" seems a wee bit of a cop-out, because the approach that we have taken has not got us the results that we have wanted.

The Convener: Indeed. It is saying how we have managed to work around that, but it is still not satisfactory. Perhaps we need to reinforce paragraph 31 by saying that, although we still consider the whole process to be unsatisfactory, we have managed, in certain ways, to deal with some aspects of the budget. We could say that we still believe that there should be a complete and strategic examination of how budget scrutiny is conducted in the Scottish Parliament.

Mr McNeil: It is one of our most important jobs. It might be the most boring, but—

The Convener: We will come back with amended, slightly strengthened, wording. In taking that point on board, I will highlight with the Conveners Group the way in which budget scrutiny should be done as something that it might wish to consider at an early stage in the new session.

European issues are covered in paragraphs 32 to 35. It is fair to say that that is something else that we have struggled with.

Helen Eadie: I am delighted to see European issues in the legacy paper, at any rate.

The Convener: Yes—we wanted to flag them up. Members will note the recommendations in paragraphs 33 and 35. It is fair to say that we have still not dealt with European issues completely to our satisfaction either.

Mr McNeil: Yes, there is work to be done. There are some issues around what has been suggested. There are issues of budget and competition between committees in respect of how we interact with Europe. If one committee secures a budget for travel early on, for instance, another committee will have lost out.

I suggested one thing some time ago, but it was never really followed up. It concerned how we relate to the Westminster Health Committee and the work of the National Assembly for Wales and

the other devolved assemblies. There are common agendas, which—

The Convener: We did follow that idea up. We got a report on what the Health Committee at Westminster was looking into. At the time when we checked its work, there was nothing that really ran alongside our work programme.

Mr McNeil: That may be, but we could still take that up, in relation not just to Europe but also to the work that is being done at Westminster. As far as a work programme is concerned, I would have thought that we might be able to feed into what is happening about particular matters in Wales and, hopefully soon, in Northern Ireland. There is work that could be done in that regard, despite our limited resources.

15:15

The Convener: There is a spelling mistake in line 2 of paragraph 34. Unless it is expected that people are going to be gazing at submarines and destroyers, I suggest that we change the spelling of the word "naval".

We agree substantially with the wording, but perhaps we ought to make a slightly stronger statement about the fact that we still do not think that the approach to European issues is completely satisfactory—we still struggle just a bit with that.

Part 3 is "Innovative Approaches". Paragraphs 36 to 38 are introductory. Paragraphs 39 to 44, which are on round-table meetings, explain what we have been doing. I know that not everybody on the committee is particularly happy with round-table meetings. I know that they work better when the witnesses engage in the discussion. There is no doubt that some of them have gone very well, but with others it was a little like getting blood out of a stone. We have found that, when we are short of time, having a round-table meeting can be a way of having the maximum number of witnesses and taking the maximum amount of evidence relatively quickly. Sometimes the decision to have a round-table meeting is driven by that consideration as much as anything else. I know that Janis Hughes has a view on that.

Janis Hughes: I would not be as gushing about round-table meetings as the draft paper is. I do not disagree with the first few paragraphs, which say that we have used the technique successfully in different contexts. Paragraph 43 says that round-table meetings have been "very beneficial". I would take the "very" out. In paragraph 44 I would say, "The Health Committee would recommend to its successor that it considers the use of round-table evidence sessions in appropriate circumstances" rather than just saying that they are wonderful and that the successor committee should have them.

Mr McNeil: I do not disagree with that. Round-table meetings can work well. I do not know whether we need to review whether we are inviting too many people who present the same argument. They are as good a way of organising an evidence session as having three witnesses at the top of the table, followed by another three—

The Convener: Then another three and another three. It all depends on whether the witnesses buy into the whole idea. Sometimes round-table meetings work and sometimes they do not.

Dr Turner: They work quite well in so far as we get different people around the table. Some folk are more inclined to argue than others. The round-table discussion on the drugs issue revealed some hidden problems between the different witnesses. It is fair enough to have round-table meetings, but it all depends on the people who are around the table. How much information do they get beforehand about the fact that they have to participate and that we do not get a higher profile because we are MSPs? Are they encouraged to interact with other people around the table?

The Convener: Some round-table meetings have not worked as well as others. In every case, we probably got more evidence out in a shorter time than we would have got otherwise, so, to that extent, they have worked. As events, some worked better than others. It would be worth asking the clerks to review the round-table meetings to assess the extent to which certain witnesses did not really participate and whether there was a common thread in all that. Perhaps we are not yet fine-tuning who we invite to participate. We need to have people who want to participate actively, rather than people who are just there to make up the numbers. I suspect that we sometimes invite people so as not to be seen to be leaving them out, rather than because we think that they will contribute actively to the discussion.

Mrs Milne: Overall, I get the impression that witnesses are more relaxed in a round-table situation than they are in the almost confrontational situation that we sometimes have.

The Convener: On the whole, the experience has been good. Round-table meetings allow a lot of evidence to be taken in a shorter space of time, so they have a beneficial impact on our working timetable. However, they probably need to be fine-tuned for them to work as effectively as possible. Perhaps we should amend slightly the sense of paragraphs 39 to 44 to reflect that. We will consider them again on 20 March.

Paragraphs 45 to 49 deal with stakeholder events. Those who attended the big forum that we held to launch the care inquiry thought that it was successful. Events of that sort are quite useful, but

they take up a lot of resources and require a bit of organising, so they cannot be held frequently. However, we can recommend to our successor committee that it considers holding stakeholder events when it seems appropriate to do so. It is difficult to see how such an event could be managed more than once or twice in a four-year session, but they still represent an appropriate way in which to move forward.

Mr McNeil: They are certainly useful as part of any major inquiry.

The Convener: Yes.

Paragraphs 50 to 52 relate to the public debate in the chamber. Again, the same comments apply as applied to the stakeholder events. Public debates cannot be held every three months, but they are useful at appropriate times.

Paragraphs 53 to 55 are about commissioning research. I remind committee members that we have commissioned research as a way of progressing an aspect of our work that we would otherwise not have had time to fit in. That has meant that we have been able to cover a broader range of issues. The research budget that is available to committees has not been particularly well used, but the Health Committee was one of the committees that saw possibilities for its use. I want to recommend to our successor committee that it commission research as a way of handling some of its workload.

Paragraphs 56 and 57 deal with single-meeting inquiries. We have had one or two of those recently to address topics for which we had only limited time. The recommendation in our paper, which is that our successor committee consider using single-meeting inquiries, is reasonable.

The paragraphs on external meetings are fairly straightforward. We recommend that our successor committee thinks about leaving Edinburgh about twice a year, which seems to be a reasonable target. Again, the cost of doing so must be considered, which means that it is not something that can be done every month.

Paragraphs 61 and 62, which deal with case-study visits, are fairly straightforward.

Paragraphs 63 and 64 deal with launching committee reports and flag up the fact that we have occasionally invited inquiry witnesses to the launch of major reports, which we think maximises publicity for the committee's work, as it brings together on the day the report is launched many of the people to whom the press would want to speak. Obviously, we would not invite witnesses to the launch of every report, but it has worked quite well when we have launched major reports.

The next part of the paper is entitled "Potential Selection Criteria for Inquiries". We will have to go through it paragraph by paragraph. Paragraph 65 relates to the difficulties of selecting inquiry topics when the committee is pressed for time and when it is difficult to assess how much time we have. It explains that we have adopted a set of principles in that regard.

Paragraph 66, "Portfolio Balance", deals with our attempt to balance our work across our remit, so that we can to some degree scrutinise most areas.

Paragraph 67 deals with the need to avoid duplicating the work that other committees are doing.

Paragraph 68, "Making a Difference", and paragraph 69, "Scale", deal with the criteria that we consider when we are selecting subjects for inquiries. If you remember, we had to ensure that the remit of the care inquiry was manageable because it would have been almost impossible to have covered everything.

Paragraph 70 is on "Condition-specific Issues". There are any number of ailments and conditions into which people want the Health Committee to conduct inquiries. We have to take care, because we cannot conduct inquiries into everything that is suggested to us. I think our inquiry into eating disorders emerged from a petition.

We move on to paragraph 71, which is on local matters. The committee has resisted attempts to draw it into the many local debates about health boards. I strongly recommend that our successor committee also resist attempts to draw it into local controversies.

Paragraph 72 is entitled "Potential for Committee Legislation". The facility to introduce committee legislation is used rarely in Parliament—it has been used just once or twice. We have not considered an approach in detail. We suggest that if our successor committee wants to introduce a bill it should start its consideration in the first year of the new session in order to allow the time that will be required. The issue relates to our discussion about members' bills and the need to be realistic about how long it takes to get legislation through.

The final criterion is timing. On which paragraph 73 provides a straightforward explanation.

The next part of the paper is entitled "Potential Activity in the Third Session", which will obviously be a matter for a subsequent committee. In paragraph 75 we flag up the proposal to introduce a public health bill in the next session of Parliament and we suggest potential subjects for inquiry. Our successor committee might choose not to take up any of those suggestions—we have no idea.

Mr McNeil: Many suggestions are relevant and deserving of support, but I do not know whether a

legacy paper should go as far as to suggest subjects for inquiry. The other comments in that part of the paper, for example about what we did on workforce planning, will be relevant for our successor committee—

The Convener: Let me explain the reason for including suggestions. When the new committee meets for the first time it will have no agenda, so it will find it useful to be able to discuss certain matters, such as potential subjects for inquiry, to let it get out of the starting box quickly. We are not trying to give the new committee a mandate; we are simply providing a tool that it can use at the very beginning of the session. We suggest subjects that we might have considered if we had had more time or if the timing had been right.

It is fine to include suggestions that will facilitate discussion, so I recommend that we keep the suggestions in. Who knows? When the successor committee meets we might find that it is we who are sitting here again—although I know that a few faces will not be here.

In the final part of the paper we recommend that the committee organise an away day.

Members have suggested changes to the paper, which will be made. I take it that the committee agrees that we produce the legacy paper on that basis.

We must also consider what we should do, if anything, as a result of our one-off evidence-taking meeting on 23 January, on the treatment of drug abusers, which arose out of Rosemary Byrne's member's bill, the Treatment of Drug Users (Scotland) Bill. We must decide how to deal with the requirement for us to report to Parliament in some way on what we did with it. A draft report will come before the committee on 6 March.

15:30

Helen Eadie: Is it not possible for us to retain the bill for information—to let it hang, in a sense? It is one of the items in the legacy paper that could be picked up in the next session.

The Convener: The problem is that, having had the Parliamentary Bureau refer the bill to us, we must respond to the bureau officially on what we are doing with the bill. We can choose to say simply that the bill was referred to us with no time limit for action. A variety of practice is developing. Is not it the case that some committees are not reporting at all?

Simon Watkins: Some are unlikely to report.

The Convener: We could choose to take that approach, because we were given no time limit. Alternatively, we could tell the bureau that we were unable to deal with the bill as would be expected at stage 1, but that we had a one-off discussion about some of its subject matter. We could indicate where the *Official Report* of that discussion is to be found. A third option would be for us to come to a view on the evidence that we heard on that one day, although I do not think that that would be appropriate.

I recommend that, at most, we should say that we were unable to progress the bill at stage 1 as a committee would normally do and that we decided separately to hold one meeting on the subject matter of the bill, at which we debated matters that would have arisen during consideration of the bill. We should refer the Parliamentary Bureau to the *Official Report* of that meeting. Are members happy with that suggestion?

Kate Maclean: There is no reason why we should not do both things separately. We could report simply that we decided not to proceed with the bill because of lack of time. I do not see why the member's bill has to be linked to the round-table meeting that we held. That would look like we had made a half-hearted attempt to start taking evidence on the bill, which I do not think was the case. We should say that we decided not to proceed—full stop.

The Convener: It does not really matter one way or the other, because we are not proceeding with the bill.

Helen Eadie: It amounts to the same thing.

The Convener: There might be virtue in saying that we had had a separate one-off meeting that happened to be on the broad subject to which the bill relates.

Mrs Milne: Will our successor committee pursue the matter? Some controversial points were made at the meeting.

The Convener: It is on the list of potential inquiry topics. Do we agree to report that we will not report on the bill?

Members *indicated agreement*.

The Convener: Members will have to consider the draft report on the bill at our next meeting, but it will not be very long. Does the committee agree to take that item in private, as is our normal practice?

Members *indicated agreement*.

Annual Report

15:34

The Convener: Agenda item 7 is the committee's annual report, which is separate from the legacy paper—I remind members that annual reports follow a set format. The draft annual report has been provided and it follows the layout and style of all previous annual reports. Some gaps are yet to be filled; for example, on the final numbers of Scottish statutory instruments and meetings, which we will not know until the last minute.

I invite the committee to consider and agree to the annual report. We can look through it quickly. Paragraphs 1 and 2 form the introduction. The section on inquiries and reports begins at paragraph 3. It gives a factual report of what we did on care in Scotland and car parking charges, and it mentions the one-off meetings on treatment of drug users and on Scotland's smoking ban one year on. Another reference has to be added, because by the end of the parliamentary session, we will have held a one-off meeting about care in Scotland.

On legislation, members can see that we dealt with the Adult Support and Protection (Scotland) Bill and the Health Board Elections (Scotland) Bill. The report is annual, so it covers only what we have done in the past year and not what we did in all four years of the session. The report also refers to the Scottish budget.

The section on subordinate legislation will be completed at the end of the year. The paragraph on petitions is fairly straightforward and we will fill in the number of meetings when we know it at the end of the year. There is nothing else to the document. Annual reports are fairly standard.

Mr McNeil: Why are the items in paragraphs 7 and 8 included in the big list of things that we did? The meeting and conclusions on treatment of drug users were not our finest hour. We will not produce a report on that, but it appears to merit a mention in our annual report. Why?

The Convener: It is mentioned because we did it. The annual report is a slightly different animal to a legacy paper, which is about our feelings about what we did and what we think a new health committee might do. The annual report follows a preset format. For example, another item will have to be added under the care inquiry.

Mr McNeil: The legacy paper lists a whole lot of stuff that took place over the four years.

The Convener: That is right. The annual report covers one year only. It is a little confusing to discuss at the end of four years an annual report that covers only activity from September last year.

Mr McNeil: That skews the document a bit.

The Convener: It makes the report look a bit odd. Members will remember that we produced an annual report last year.

Mr McNeil: At the end of a parliamentary session, we want to highlight the substantial work that we have done in the four years, rather than just bits and pieces.

The Convener: The report is annual, but this year's annual report is being produced much earlier than before. Normally, our annual report would not be published until the end of June. We are losing April to June, so the annual report covers only nine months, rather than 12 months. I agree that the document looks a little odd after we have considered what we did in the four years, but that's the way it goes.

Does everybody agree to the annual report?

Members *indicated agreement*.

The Convener: That ends today's business. I will not see committee members next week, because there is no meeting next week.

Meeting closed at 15:38.

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