

HEALTH COMMITTEE

Wednesday 28 March 2007

Session 2

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HEALTH COMMITTEE

6th 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 ALSO ATTENDED:

Patrick Layden (Scottish Executive Legal and Parliamentary Services)
Lewis Macdonald (Deputy Minister for Health and Community Care)

CLERKS TO THE COMMITTEE

Karen O'Hanlon
Simon Watkins

ASSISTANT CLERK

David Simpson

LOCATION

Committee Room 3

Scottish Parliament

Health Committee

Wednesday 28 March 2007

[THE CONVENER *opened the meeting at 11:01*]

Subordinate Legislation

National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment (No 2) Regulations 2007 (SSI 2007/259)

The Convener (Roseanna Cunningham): I open the committee's final meeting of the session. Given that we had thought that last week's meeting was our final meeting, I am beginning to feel like Frank Sinatra. We hope that today's really is our final meeting.

The only item on the agenda is subordinate legislation. We have convened the meeting at short notice to consider Scottish statutory instrument 2007/259, which is subject to negative procedure. The fact that the regulations, which were laid only last Thursday, will come into effect on 1 April means that they break the 21-day rule. Although the Subordinate Legislation Committee raised no issues, I asked the Deputy Minister for Health and Community Care, Lewis Macdonald—who is accompanied by Patrick Layden from the office of the solicitor to the Scottish Executive and Dr Jonathan Pryce of the Scottish Executive Health Department—to the meeting to say a few words about the regulations and, more to the point, to explain why the 21-day rule has been broken and why the committee has had to be convened at such short notice. As the minister will realise, that has resulted in our being short of members. It would be helpful if the minister could take a few minutes to explain the position to the committee.

The Deputy Minister for Health and Community Care (Lewis Macdonald): Thank you for convening the meeting at such short notice—I apologise for the fact that it has been necessary for you to do so.

The regulations relate to the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Regulations 2003 (SSI 2003/460)—the TERC regulations—which, among other things, provide for circumstances in which a person is eligible for the remission or repayment of all or part of certain charges that are payable under the National Health Service (Scotland) Act 1978, notably prescription charges, which are

covered by the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2001 (SSI 2001/430). As was discussed at last week's meeting, SSI 2001/430 has been consolidated and slightly amended; the updated version—the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2007 (SSI 2007/139)—was laid on 8 March. A consequence of that consolidation is the need to make amendments to other, dependent NHS regulations so that, where applicable, they contain references to SSI 2007/139, rather than to the previous version of the regulations.

New TERC regulations were laid on 9 March. Unfortunately, because of an administrative error, they did not include comparable consequential amendments to reflect the changes to the charges regulations. To ensure that the new TERC regulations are properly constituted, it has been necessary for them to be amended so that they refer to the 2007 version, rather than to the 2001 version, of the charges regulations. Had we not pursued the course of further amendment, the TERC regulations would have continued to refer to the 2001 charges regulations, which would have meant that the regulations could not operate as intended on a secure legal basis. Although claims could continue to be processed, doing so would technically have been *ultra vires* and not founded on specific statutory provision.

The administrative error, which was made in this case as part of the drafting of a series of consequential regulations, came to light too late for further amendment regulations to be laid in time to avoid breaching the 21-day rule. Our concern is to provide absolute legal certainty, to protect the authority of Parliament so that no public money is being spent other than subject to that authority and to avoid any risk—however small—to the interests of claimants. Amending regulations, which will come into force on 1 April, have therefore been laid. I regret that we have had to do that outwith the Health Committee's planned schedule of meetings and in a way that breaches the 21-day rule, but I assure the committee that we have laid the regulations at this time only because it was necessary to do so for the reasons that I have given.

The Convener: Thank you. As other committee members have no questions, may I ask when the error happened, as opposed to when it was detected?

Lewis Macdonald: It would have happened during the preparation of the regulations that were laid on 9 March. Those regulations were discussed at the previous meeting of the Health Committee.

The Convener: When would those regulations have been prepared?

Lewis Macdonald: I will ask Patrick Layden to respond.

Patrick Layden (Scottish Executive Legal and Parliamentary Services): A large number of regulations were being prepared at that time, all at fairly short notice. The reason why they were being prepared at short notice does not lie entirely within our control. For very good reasons, our financial adjustments to travel expenses regulations are in line with those for England and Wales. We do not get the figures until relatively late in the current financial year, so we cannot prepare our regulations until relatively late. That is why there is haste at the end of the process to get our regulations in shape for the beginning of the new financial year.

The Convener: Have you had any discussions with your Westminster counterparts to explain the difficulty that arises because we are not working on the same parliamentary timetable as Westminster? I seek an assurance that something is being done to sort the matter out, so that this does not keep happening year after year.

Patrick Layden: When sums are changed, and the effect that that has on the parliamentary year, is more a matter of policy than of law. However, in this, as across a wide range of other issues, we are deeply conscious that the differing parliamentary timetables cause problems at both ends of the country in keeping legislation, when it is considered appropriate to do so, on all fours. Discussions are continuing, but the parliamentary facts of life are as they are at either end of the country. We are sometimes out of kilter with them and they are sometimes out of kilter with us. I do not think that there is a perfect solution.

The Convener: I would want to hear that at least some effort was being made to ensure that the likelihood of the situation arising again was minimised. I know that the problem does not arise only with this committee—it potentially affects several other committees. We might have to return to the matter in the new session of Parliament. I say on behalf of my colleagues that it is not a satisfactory situation for any of us to be in—yourselves, ourselves and the Parliament. I hope that robust discussions are taking place to bring that home to your counterparts at Westminster—at ministerial level and at civil service level.

Lewis Macdonald: We can certainly undertake to take the issue away and ensure that we do whatever we need to do to ensure that the situation does not recur.

The Convener: In the absence of other comments from members, and given that no motions to annul have been lodged, is the committee agreed that it does not wish to make any recommendations in relation to SSI 2007/259?

Members indicated agreement.

The Convener: That ends today's meeting. Thank you.

Meeting closed at 11:09.

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