OFFICIAL REPORT
AITHISG OIFIGEIL

# Health, Social Care and Sport Committee

**Tuesday 17 February 2026**

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website—
www.parliament.scot or by contacting Public Information on 0131 348 5000

# Tuesday 17 February 2026

## CONTENTS


Col.

**DECISION ON TAKING BUSINESS IN PRIVATE ....1**
**FOOD STANDARDS SCOTLAND AND THE FIRST NATIONAL GOOD FOOD NATION PLAN....2**
**SUBORDINATE LEGISLATION ....32**
Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2026 [Draft]....32
Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 [Draft] ....37
National Health Service (Functions of the Common Services Agency) (Miscellaneous Amendments) (Scotland) Order 2026 (SSI 2026/20)....49
NHS Education for Scotland and Common Services Agency (Transfer of Staff) Regulations 2026 (SSI 2026/23) ....50
Draft Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026 ....51


**HEALTH, SOCIAL CARE AND SPORT COMMITTEE**
**8th Meeting 2026, Session 6**

**CONVENER**

*Clare Haughey (Rutherglen) (SNP)

**DEPUTY CONVENER**

Paul Sweeney (Glasgow) (Lab)

**COMMITTEE MEMBERS**

*Joe FitzPatrick (Dundee City West) (SNP)
*Sandesh Gulhane (Glasgow) (Con)
*Emma Harper (South Scotland) (SNP)
*Gillian Mackay (Central Scotland) (Green)
*Carol Mochan (South Scotland) (Lab)
*David Torrance (Kirkcaldy) (SNP)
*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)
*Brian Whittle (South Scotland) (Con)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Tom Arthur (Minister for Social Care and Mental Wellbeing)
Professor Mary Brennan (Living Good Food Nation Lab)
Jennifer Gilmour (Scottish Government)
Fiona Hodgkiss (Scottish Government)
Heather Kelman (Food Standards Scotland)
Laura Kennedy (Scottish Government)
Christina McLaren (Scottish Government)
Geoff Ogle (Food Standards Scotland)

**CLERK TO THE COMMITTEE**

Alex Bruce

**LOCATION**

The Alexander Fleming Room (CR3)

# Scottish Parliament

## Health, Social Care and Sport Committee

*Tuesday 17 February 2026*

*[The Convener opened the meeting at 09:15]*

## Decision on Taking Business in Private

**The Convener (Clare Haughey):** Good morning, and welcome to the eighth meeting in 2026 of the Health, Social Care and Sport Committee. I have received apologies from Paul Sweeney.

The first item on our agenda is for the committee to decide whether to take items 9 to 11 in private. Do members agree to take those items in private?

**Members** *indicated agreement*.

## Food Standards Scotland and the First National Good Food Nation Plan

09:15

**The Convener:** The second item on our agenda is to take evidence from a panel of witnesses on the work of Food Standards Scotland and the first national good food nation plan, which was published in December last year. I welcome to the committee Professor Mary Brennan, director of the living good food nation lab at the University of Edinburgh; Heather Kelman, chair of Food Standards Scotland; and Geoff Ogle, Food Standards Scotland's chief executive.

We will move straight to questions, starting with David Torrance.

**David Torrance (Kirkcaldy) (SNP):** Good morning. To what extent has Food Standards Scotland achieved its stated outcomes and statutory objectives over the life of its previous strategy?

**Heather Kelman (Food Standards Scotland):** That is a good opening question. We have been incredibly busy over the period of our previous strategy. As people are aware, we went through a few changes with Covid and so on, but we have managed to do most of the things that we had intended to do.

We have progressed with building up our public health nutrition response, understanding a lot more about diet and putting lots of monitoring and evaluation in place so that we can watch where we are going with those things. We have kept our Scottish food crime and incidents unit going, investigating lots of incidents, and we managed to get a couple of successful prosecutions of people who had failed to follow food law.

We have also built up our ability to answer the things that used to be dealt with by the European Food Safety Authority. When we left the European Union, all the assessment of new products, new foods and novel foods was being done in Europe. That had to be brought back into the United Kingdom and set up between us and the Food Standards Agency in England, Wales and Northern Ireland. The process was set up from scratch and launched, and it has been used to approve products. That has not happened as quickly as we would like, but it is a very intensive programme for one country, whereas we were previously sharing that workload with a team. It has been a bit challenging.

What have I missed, Geoff? I think that I have missed a chunk.

**Geoff Ogle (Food Standards Scotland):** Under the previous strategy, we made good advances in developing digital data capability. For example, we used to take about six months to produce a report on shellfish; it now takes about six minutes. We have done quite a lot around that sort of delivery in terms of data and digital.

The other thing that we have had to do—which I think we have done quite successfully during the period—is deal with the financial situation that we have been left with. Throughout that strategy period, we pretty much had a flat budget. The level of efficiency challenge has been pretty significant during that time.

Without repeating everything that Heather Kelman has said, I would say that we have done pretty well against the strategic outcomes that we set out.

**David Torrance:** You know where I am going now. Could you describe and explain the mission and outcomes of the new strategy? How was the new strategy developed, and how has your outlook on the role and remit of Food Standards Scotland changed over the past five years?

**Heather Kelman:** Everything that we do in the strategy is drawn from the Food (Scotland) Act 2015. This time, because of the tightness of our resources, we have gone back to first principles and looked at what our functions are, as defined in law. That is where we have taken our strategy from: we have gone back to the original purpose of FSSooking and tried to strip out anything that is not absolutely directed at those priority areas.

We are a public health body, and we are very proud of the fact that the whole point of Food Standards Scotland is to protect the public from harms associated with food. That was where we came from, in relation to previous food safety incidents. We are very proud of that, and our responsibilities for public health and protecting the health of Scotland will always be at the forefront, whether that is in the short term, in protecting people from initial harms from food, or in our public health and nutrition leadership role, which involves trying to improve the food environment to protect people from the harms caused by eating the wrong diet.

Do you want to talk about the food safety element, Geoff?

**Geoff Ogle:** The World Health Organization produced a strategy that set out the criteria for an effective food safety authority, and we did an assessment against that as an independent measure of what a successful food safety authority should look like. Our starting point was to consider where we were against that—we did pretty well against it—and building up from that. We used that as a basis to develop our thinking.

Another important point is that the first strategy was knocked out by Brexit and the second strategy was affected by Covid. This time, therefore, we have deliberately built into the strategy as much flexibility and agility as we can. The one thing that we have learned from the other strategies is that what we do is influenced by a lot of external factors that we cannot necessarily shape or influence, but which we have to respond to. For example, the sanitary and phytosanitary—SPS—work that we are having to do just now relates to a UK Government decision that is supported by the Scottish Government. Given its impact on food law, we cannot say, “That work is not in our strategy or plans and so we are not going to do it.” We have had to be deliberately flexible this time.

**Heather Kelman:** Our final principle is about public service reform and demonstrating that, over the next period, we will do everything that we can to make sure that the public service delivered in Scotland is efficient and effective, and that our big transformational programme, which is the Scottish authority food enforcement re-build—SAFER programme—is a major contributor to that.

**David Torrance:** This is my final question. What particular challenges does your organisation face over the next five years?

**Heather Kelman:** I will start with the immediate challenges. The SPS agreement that we are going into with Europe will give us a huge challenge, as the 1,300 pieces of legislation that we have prepared over the past while now have to be closely reviewed again to identify those areas where we have differentiated a little bit from Europe. That will require a number of instruments to be brought back, so I suspect that this committee will also be challenged by that in the months ahead. That challenge is really difficult. We have estimated that we will need anything up to 30 members of staff to help us with that work, given the timetable against which we are likely to be expected to deliver. We have already done internal restructuring with the aim of releasing staff to work on identifying the differentiation between ourselves and Europe, and we have begun doing that work.

The second big challenge relates to our SAFER programme, through which we are looking at the challenges that have been presented across Scotland by the reduction in environmental health capacity in local authorities alongside the need to still deliver an effective food law enforcement system. We are looking at data, digital analysis and intelligence and trying to modernise the whole system, which we estimate will take us about five years in total. We have started that work and have

set the ball rolling on it. That will be a huge transformational programme.

Our programme board has 30-odd members on it, because we have to have representatives from Government, the Convention of Scottish Local Authorities, local authorities, industry and so on. It is a big transformational change programme, but it is very exciting. I think that Scotland will reap the benefits of it, with both internal and external standards being demonstrated to be better.

There is also a budget challenge, as is happening in every part of Scottish public sector life. We are very grateful for the additional funding that we have in next year's budget, but it will still be less than what we have spent this year by about £1 million. We therefore have a challenge in relation to finance, but we are working closely with the Government to see what can be done as we try to deliver our legal functions while having new challenges coming at us. We also still have to keep balanced books at the end of the day and try not to stress our workforce too much by overworking them.

**Geoff Ogle:** Post-election, regardless of the result or the make-up of the Parliament, a serious question needs to be asked about public health—dietary health—and what needs to be done to fix it. It is clear that, whatever the solutions are, the problems cannot be fixed in one parliamentary session. We are talking about a 10 or 15-year cycle, which will naturally involve more than one parliamentary session.

When it comes to dietary health, last year, we published our "Dietary Intake in Scotland's Children (DISH) research report", which represented a serious wake-up call regarding children's diets in Scotland. Has change happened? Yes. Has it been fast enough? No. There is a real question about the pace of change when it comes to dietary health and FSS's role in monitoring progress and pushing an agenda that says that we really need to get very serious about addressing public health and dietary health in Scotland."

**David Torrance:** Thank you. I have no further questions.

**Sandesh Gulhane (Glasgow) (Con):** Good morning. There is a sum of £4.4 million to support local authorities, health boards and the newly established Scottish Food Commission. What is the total administrative cost of the commission?

**Heather Kelman:** We are not the Food Commission. Mary Brennan may know.

**Professor Mary Brennan (Living Good Food Nation Lab):** I am here primarily in my University of Edinburgh capacity. However, as I believe the committee is aware, I am one of the commissioners appointed to the Scottish Food Commission.

The arrangements for and details on the Scottish Food Commission's budget are still being finalised and confirmed between the chair and our new chief executive, who started on 5 January, so we are in the very early stages of the allocation for the Scottish Food Commission. In particular, how support is to go to relevant authorities to support the work of good food nation planning and the local aspect of such planning is still to be confirmed.

**Sandesh Gulhane:** It is not great that we do not have clear monetary figures. What modelling—

**Professor Brennan:** I can certainly come back to you on that. As I explained, I was invited primarily in my University of Edinburgh capacity rather than as a Scottish food commissioner. However, I will go back to our chair and chief executive and we will send in a written statement.

**Sandesh Gulhane:** Thank you. I will just stay with you, Professor Brennan. What modelling has been done on the cumulative regulatory impact on small Scottish food producers?

**Professor Brennan:** By the Scottish Food Commission?

**Sandesh Gulhane:** By anyone.

**Professor Brennan:** Do you mean the cumulative effect of regulation?

**Sandesh Gulhane:** Yes.

**Professor Brennan:** I have not been involved in that through the living good food nation lab, and it is certainly not something that has been undertaken by the Scottish Food Commission, as of yet.

There is a balance between the burden of regulation, the flexibility and agility that are provided to food businesses and the responsibility of those businesses to support our country's food safety, public health and environmental ambitions. We therefore have to be very careful about framing regulation as a burden on businesses. Regulation is there to support businesses to operate in a way that ensures safe, sustainable and fair conditions for the public and for those organisations.

**Sandesh Gulhane:** Are you saying that we do not have safe, sustainable and fair conditions for businesses?

**Professor Brennan:** Of course we have. That is where regulation, legislation and policy play a role, as their use provides us with confidence and enforcement mechanisms to ensure that our food is safe, healthy and sustainable.

**Sandesh Gulhane:** Are you saying that it is those things now?

**Professor Brennan:** Yes.

**Sandesh Gulhane:** What safeguards are in place for rural economies—in particular, for livestock farmers?

**Professor Brennan:** At the heart of the Good Food Nation (Scotland) Act 2022 and other legislation is a vision of better connection across the various outcome areas. Those outcome areas are differentially weighted in relation to the various actors within the system. They matter to them in different ways and are of more interest to them in different ways. As a result, we have to be extremely cognisant of the impact that new legislation might have, but we also have to be aware of what we are trying to achieve through that legislation.

09:30

Rural and island communities are very much at the forefront of our thinking, certainly in the living good food nation lab. We are actively engaging with island and rural relevant authorities, as we are with all our relevant authorities, to understand and meet them where they are currently. Through that engagement, we help and support them to understand what the Good Food Nation (Scotland) Act 2022 and the requirement to undertake and produce good food nation plans mean for them, and how they can use the legislation in a way that enables them to better understand what food means to them and how that relates to the outcomes that are laid out in the act. The relevant authorities—both local authorities and health boards—have flexibility at that level to enable them to understand how they relate to those outcomes, what makes them distinctive and what their priorities are, and how to take forward their good food nation vision in their local communities and regions.

**Sandesh Gulhane:** Staying on that subject, when do you envisage that section 10 will be commenced?

**Professor Brennan:** I can answer that—vaguely. It is my understanding that section 10 is likely to be commenced, or that a decision will be made on section 10—I say this from the perspective of my position at the University of Edinburgh and the interactions that I have with the Scottish Government good food nation team—in advance of the beginning of the pre-election period.

**Geoff Ogle:** To add to that, I suppose that when you look at the regulatory burden, it depends on which lens you are looking through. Counterparts such as David Thomson of the Food and Drink Federation Scotland talk about the cumulative effect of regulation on businesses across a spectrum, whether in food safety, environmental or whatever. The cumulative effect of regulation across Government affects business.

From our perspective, we do not default to regulation as the answer. A good example is that, when we were looking at changes to allergens recently, we were quite clear that regulation at this stage was not the answer. There are certain areas where we think that regulation would be appropriate, but we are conscious that, to be able to put in place regulation, you have to be able to say that it is justifiable, and then you have to undertake business and regulatory impact assessments and those sorts of things.

We are conscious of the cumulative burden of regulation on businesses, but, at the same time, from our perspective, we are looking at what the best mechanism is to protect public health. That will be the primary driver, and the default is not to say that regulation is the answer to a particular question.

**Sandesh Gulhane:** My question was very much centred around modelling. Losing businesses as a result of bringing in regulations would be even worse for our health.

I turn to my final question. Of the 51 high-level indicators, what would you say are the core couple of indicators?

**Heather Kelman:** Do you mean the indicators in the good food nation plan?

**Sandesh Gulhane:** Yes.

**Heather Kelman:** Food Standards Scotland has provided a number of routes by which the indicators can be measured, and both our food science team and our nutrition team have done the work to look at that. They have pulled out the indicators that matter most for our remit around health, children's health and food safety, because good food nation legislation should require food to be safe as well as healthy and of good quality. We have contributed what we feel are the best, most robust indicators. The survey that we do jointly with the Food Standards Agency every two years will gather that data from the public, as will the surveys that we do within the Scottish health survey in every period when it comes round.

We developed Intake24 so that we can look in far more detail at people's diets, including children's diets, for the first time, and we will be able to monitor the diets of children and adults throughout the period to see whether we are actually having an impact on change.

I do not know whether that quite answers the question.

**Professor Brennan:** It is very important to appreciate why there are 51 indicators. I am not saying that they are necessarily all equally

weighted, but the national good food nation plan presents a very complicated systems vision across multiple outcome areas that have huge quantities of scientific evidence underpinning each of them. While 51 may seem a lot, therefore, it is about identifying the range of, and the connection and relationship within and between, those indicators and across the outcomes.

**Sandesh Gulhane:** That is why I was asking about the core ones.

**Professor Brennan:** I am, therefore, very reticent to say that there are some indicators that are more important than others.

**Sandesh Gulhane:** Forgive me—I did not say, "more important"; I asked what the core indicators were.

**Professor Brennan:** I think that those 51 are the core indicators, arising from the way in which the process has been undertaken and the final—and now published—first national good food nation plan has been consulted on and scrutinised. I believe that a consensus or position has been reached, with which the community of practice is in agreement, that helps us to understand the direction of travel, the progress that is being made and whether we are moving collectively towards delivering a good food nation for Scotland.

**Geoff Ogle:** In my view, part of the question is about what the starting point is. Given what I said earlier, I would say that, with regard to our responsibilities around public health, the indicators on children's health should be the primary focus. That is the trajectory that we can actually do something about, and we now have the evidence on the nutritional state of children's diets and the information on levels of obesity in children right the way through from primary 1.

To go back to what I said earlier, there is an opportunity to say that we can start a journey and monitor and measure to see whether progress is being made, and in my view, that would involve the indicators around children's health.

**Professor Brennan:** The data matters, but the ways of working, and the partnership and collaboration, across the relevant authorities and public agencies, within Government and across Parliament, are also central to the success and the driving forward of those key outcome areas and the underpinning indicators.

**Emma Harper (South Scotland) (SNP):** Good morning to youse all. I want to pick up on the issues around regulations and business with regard to the good food nation plan. It is the first such plan. When the Minister for Public Health and Women's Health was before the committee previously, she said that it will change and evolve as science and nutritional advice, and evidence and research, allow us to make and recommend changes.

Public health is a huge concern for me, given the levels of obesity, and childhood obesity, in Scotland. We heard from Dave Thomson of the Food and Drink Federation about where calories have been removed from products. Members all know of my interest in ultra-processed food and ultra-high-processed food—calorie-dense food that is manufactured to be hyperpalatable so that people will consume 1,000 calories before they even think about being satiated.

I would like to hear comments from you about the good food nation plan and how it helps us to focus on the complexity of the food system in order to support the public health approach, with a balance that supports business as well.

**Heather Kelman:** That is a really good point. I reread the good food nation plan; the bits that we have an impact on are obviously the elements to do with food safety and leading on public health and nutrition. However, what I like about the plan is that it goes beyond that to look at ensuring that rural communities are well supported and that people working in the sector have a decent wage, so that we are building an infrastructure that reflects all aspects of public health and food businesses. That is important—it is not just about the food on our plate; it is about the environment that we live in.

There are some clear targets in the plan on children's nutrition, free school meals, improving education on nutrition in schools and that type of thing. However, some are far more generic and relate to income and people's ability to live and to choose to eat a more healthy diet. We know that choosing to eat a less ultra-processed diet is more expensive than choosing to eat one that is easily available and easy to cook and prepare. We cannot do without UPF completely, but we believe that this is a start towards encouraging people to re-engage with fresh food and food that they can grow within communities.

There is quite a depth to it. There is a reason why it is not just us; a whole host of other agencies and departments across Government take into account the environment that people live in and the work and educational experiences that they have. It is a true public health approach, which looks at all the pillars of good public health. We have the opportunity to work across local authorities, health boards, industry and primary producers to consider what we as a nation produce, put on our shelves and, ultimately, eat.

Other things are also weaving in from what is happening in the UK food strategy and in relation to the healthier food standard that is being introduced. I am pleased that that is being talked

about on a four-nations basis, because industry cannot really work in just one of the four nations. That will give us a chance to monitor what is being sold and provided to people in terms of health balance across the width of a diet.

I hope that, with all those individual actions coming together, we will start to see momentum back towards people eating fresher and more sating foods that will better nourish our bodies and look after our children.

**Emma Harper:** As part of all of that, we need to make sure that people are not living in food deserts where they do not have access to food that they can cook quickly and easily. It all intermingles with the cost of living crisis, when it also costs money to turn on the gas burner and cook a meal and all of that. For me, part of the good food nation plan—this is the first plan—is about starting to raise awareness and work together to look at what we can do to shift and address issues such as childhood obesity.

**Professor Brennan:** One of the things that I am excited about is how, through the next period, as relevant authorities engage in developing their local good food nation plans, we can get into the detail about what that means in different localities and regions across Scotland; how we can begin to understand where the common ground is and where we can operate collectively but also what we might need to understand in terms of different geographies and socioeconomic demographics and the different working practices and lifestyle options that people have.

Through the local good food nation plans, we will get a chapter from every part of Scotland that tells us why food matters to it and how, specifically, that relates to dietary and public health, but also tells us about the tensions around how high-processed and ultra-processed food has become so much a part of our everyday food provisioning practices—I include myself in that—and how we feed ourselves.

**The Convener:** Do you want to move on to the next theme, Ms Harper?

**Emma Harper:** Aye, sure, if we are already there. I am glad that these witnesses are here today, because I have a great interest in this subject. I have previously raised issues about the Nova classification and Carlos Monteiro's work in São Paulo in Brazil in relation to how we define ultra-high-processed food, or ultra-processed food, as it is more commonly known. When that work was done—in, I think, 2019—the evidence included that reducing salt, fat and sugar was the way to go, because ultra-high-processed food contains high fat, sugar and salt.

I would be interested in hearing about any recent evidence that supports or refutes the findings of the Nova classification and about what more can be done. I know that there is on-going research, because Nova has been criticised.

**Heather Kelman:** Yes, the categories for Nova were criticised because they are very difficult to categorise the food into; it is a very non-scientific definition of food. Some ultra-processed foods are very healthy, but others are not so healthy.

09:45

We have to be mindful of the debate, discussion and emerging research on UPFs—it is in our strategy that we will monitor them throughout the next period. Part of our role is to look at emerging food patterns and trends, so it is in our strategy that we will continue to monitor that.

I read an interesting review recently. Off the top of my head, I cannot remember which magazine it was in, but I will be happy to have it circulated. It said that some bits of Nova are useful but others are still being criticised by the scientific community. I am not completely confident that I can remember the detail, so I will be happy to circulate the paper to you or ask Gillian Purdon, our head of nutrition, to provide an update.

**Professor Brennan:** As a social scientist, I think that it is important to note that being able to define ultra-processed foods or ultra-high-processed foods strictly from a scientific perspective does not necessarily give us all the understanding and evidence as to what that means for a societal and/or political and/or policy decision in relation to ultra-processed foods and the trade-offs in and tensions between economic, social, health and environmental factors. Part of the journey forward will be to engage in some of those difficult discussions, tensions and trade-offs and make sense of what they mean and how they relate to Scotland's ambitions for a good food nation—specifically, for public health and dietary health.

**Geoff Ogle:** For me, having informed consumers is, in a way, the best mechanism for managing this. It is interesting because, from a public health policy perspective, you can have loads of conversations about whether one classification is right or another is better, whether we should have something else, whether we should change it or whether we should substratify it into 1A, 1B and 1C—you can go for all that—but, at the end of the day, UPFs have helped the debate through your point about high levels of fat, salt and sugar. The strongest public message at the moment is this: if you have a concern about ultra-processed foods, do not eat products that are high in fat, salt or sugar and you will not be eating ultra-processed foods.

We need to do whatever we can to provide clarity and transparency for consumers, but sometimes we just need to be clear about what the advice is—that foods that are high in fat, salt or sugar have very poor nutritional value. We should be telling people, "Don't eat those. Avoid those foods. They are nutritionally poor and calorie dense and will not help your diet." Obviously, the debate about classification can go on in the background, but we should not be distracted by saying that, in order to be able to give consumers good advice, we have to redefine the classification. We can do that, but let us not use it as a reason not to give clear messages now.

**Heather Kelman:** I have a point to add, which is about fibre. If people could eat more fibre, I would be very happy, because it is such an important part of our diet. Good dietary fibre is missing in UPFs. We are revising the Scottish dietary goals at the moment and are even more keen to see an increase in fibre intake because of the impact that that has on bowel health, which has an impact on mental health and so on. If there is one thing that I would love people to do, it is to eat more vegetables, fruit and wholemeal products.

**Emma Harper:** Geoff Ogle, on the issue of high fat, sugar and salt, are you aware of current research to look at the chemicals that are added—for example, stabilisers, emulsifiers, flavourings and colourings—and how those affect people physically and mentally?

I talk about being satiated or not. Some food additives switch off the brain's ability to say, "I'm full—I'm done." People have proposed that some of the chemicals that are added affect our ability to feel satiated.

**Geoff Ogle:** We are not doing any specific research on that, but it is definitely something that we are aware of in the context of the UPF debate. From our perspective, anything that will be added to food—whether it is an emulsifier, an additive or whatever—must go through a safety assessment, must be risk assessed and must have regulatory approval attached to it before it can be added.

The issue with some of these things is also how the science develops. We would not say, "Once we have done an authorisation, that is it—forget about it and move on." We monitor the scientific debate. However, I am not aware of there being any strong evidence about additives at this point. I will check with my team on that and come back to you, but I am not currently aware of there being any evidence that is of such clarity that we would need to decide that there are certain things that must be considered again and re-evaluated. There is nothing on my radar to suggest that that is the case.

**Emma Harper:** I will move on to the recommendation to reduce the consumption of red meat and dairy in the Scottish diet. When I looked further, I found that the recommendation was not just to reduce red meat but to reduce red and processed meat—we need to remember that.

I come from a dairy and meat-producing region. The recommendation is to reduce the consumption of red and processed meat to no more than 70g every day, and I believe that two thirds of people in Scotland already do that. We heard about that in the Rural Affairs and Islands Committee when we took evidence on the good food nation plan and the climate change plan. That means that a third of people are consuming more than 70g, but we need to remember that two thirds of Scottish people are consuming less than 70g.

What advice have you given the Government about the recommendation in relation to 70g of red and processed meat, as well as a reduction in dairy? Some kids out there wouldnae get the calcium or micronutrients that they need if they did not have half a pint of milk each day. That is my concern, given that we live in a world with food banks.

**Heather Kelman:** We have done a fair bit of research. We were commissioned to have a look at the Climate Change Committee's recommendation about reducing the consumption of red meat, red processed meat and dairy. We did a lot of research into the nutritional status of the diets of adults and children and the impact that the recommended reductions would have on them.

The conclusion that we reached was that we should not make any change to the recommendation. There is a balance to be struck between making sure that the public has the right nutritional profile in their diet to sustain health and being aware that consumption of more than 70g of red and red processed meat each day contributes to climate emissions. We stuck with our original recommendation with the focus that those who eat more than 70g each day should perhaps come down to that level.

We are currently reviewing the Scottish dietary goals again. It is possible to reduce the consumption of red meat and red processed meat products further while still maintaining a healthy diet, but more effort needs to be put into thinking about the balance of foods that are eaten. It would not be straightforward to say, "We recommend that you reduce red meat to X amount per day, and the balance will be there." Some people could manage that diet, but there is strong evidence that other people are dependent on those foods for their nutrient intake, especially elements such as iron and selenium.

We can consider the “Eatwell Guide”, which is the recommended diet for the UK. There would be a far greater reduction in emissions if people followed the “Eatwell Guide” and avoided eating foods that are not in the guide. We need to stay focused on encouraging people to follow the “Eatwell Guide” and to try to achieve a dietary balance with more of a focus on fibre, vegetables and fruit and less on highly processed discretionary products that cause emissions to be emitted across the world.

**Emma Harper:** What do you envision Food Standards Scotland’s role to be in helping to support the implementation of the good food nation legislation?

**Heather Kelman:** Our main role is to provide the scientific base for public health nutrition, which we have done right from the outset. We will continue to monitor the good evidence that exists about what should be in diets across Scotland, as well as people’s eating habits. We will also, through the Scottish health survey, continue to monitor what people are eating and the contribution that that is making.

We do not actually do the education bit; we have a relationship with Public Health Scotland and an emerging relationship with the Scottish food commission. We will do the work to provide the evidence base, carry out a lot of monitoring, report back on that, ensure that our partners across agencies are aware of what we can do and contribute to any other aspects when we can.

**Sandesh Gulhane:** Like you, I am worried about the health of our children and want to ensure that our kids have the healthiest possible start in life. You spoke about being able to look at the diets, and Geoff Ogle spoke about how indicators of children’s health should be our primary focus. What is the projected reduction in childhood obesity by 2030?

**Heather Kelman:** I have found that very difficult to identify. One of the problems with the projection to halve childhood obesity by 2030 was that no one organisation or body was made accountable for it. It is hard to find graphs that show where we are. We have levelled out—the rate of increase has steadied—and we saw some changes during Covid, but there is an awful lot of work to do.

If I am totally honest, as an independent lay chair, I do not think that we will halve childhood obesity by 2030. It is too little, too late right now. We have only four years left to do it. That does not excuse us from making the best possible effort to see whether we can have a major impact on children being obese at age five, or on the younger childhood age group. I do not believe that we will halve childhood obesity in that time, and I have not seen any data on current projections of where we will be by 2030.

**Sandesh Gulhane:** Thank you.

**Brian Whittle (South Scotland) (Con):** Good morning. This is my pet topic as well. I want to talk about the food system and population health priorities, which should drive everything that we do in this area. I completely agree with Geoff Ogle about measuring childhood health.

I have a real concern about how the reduction in the consumption of red meat is being discussed and the potential impact on health. I am not even sure what the term “meat” means—you have referred to both “meat” and “processed meat”. Surely we should be reducing the consumption of processed meat rather than the consumption of meat in general. Two thirds of people do not have enough protein in their diet, and I am particularly concerned about young girls, given their need for iron and iodine, which meat provides. Yes, too much red meat is bad for you, but too little is really bad for you as well.

How we discuss the issue concerns me, because we seem to be focused on, as one of my colleagues mentioned, the climate impact, which I also challenge. My fear is that our approach is driving poor diets to become even worse. There must be a better way of discussing the issue.

**Geoff Ogle:** There is an interconnectedness. Our focus is very much on the dietary impact of the recommendations. You are absolutely right that one of the problems that we have in Scotland is that people’s diets are poor, and the impact on nutritional health from implementing the recommendations was a major factor in shaping our own conclusions and recommendations.

The other factor to consider is the behavioural and social-science aspect. It is all very well to say, “We should cut red meat,” but if you do not take steps that change behaviours at the same time, you do not switch off the demand; you effectively ruin your own supply and industry and end up importing it from elsewhere. It means that, in climate terms, you do not actually make any difference.

**Brian Whittle:** Correct.

**Geoff Ogle:** When you look at where we stand on the Scottish dietary goals and the “Eatwell Guide” plate, the meat category is a good example of that. At a macro level, it looks like we are doing okay, but our conclusion was that, once you look at certain demographics—unfortunately, Brian, we are in that over-50 male group that significantly overconsumes red meat—

**Brian Whittle:** I am, slightly.

**Geoff Ogle:** —it becomes clear that the overall figure is not uniform and masks how you get to it.

Young and teenage girls definitely underconsume red meat, so it is clear that there are different demographics with different consumption patterns. Our conclusion was that if you have information showing that you are not meeting the Scottish dietary goals, there is much more you can do to deliver against the "Eatwell Guide" plate. If you do that, it will make a significant impact on climate change without needing to change anything else, other than doing what we say should be done.

For us, it is about the need to understand the nutritional consequences of those recommendations. In the end, the health impact specifically was the fact that influenced our recommendations.

10:00

**Heather Kelman:** There is a second aspect to the reduction in red meat consumption. Before we started talking about climate change and red meat, we already had a maximum recommended intake, due to the association between red meat consumption and colorectal cancer. That evidence is still there, so we are not saying that people should consume unlimited red meat; that is why we have the maximum daily limit. There remains a clear scientific link between red meat consumption and colorectal cancer, and we cannot ignore that.

If we stay focused on saying that the "Eatwell Guide" represents the best balance that we have regarding what people should eat every day to achieve good public health, good individual nutritional health and positive impacts on climate change, that would be the right balance to strike. We are not removing the recommended maximum limit of 70g, because there is a risk associated with red meat and red meat products, which have been directly linked to colorectal cancer. That is the current limit.

There is always a bit of a judgment with nutrition and diet. There is no such thing as one healthy food—you have to eat a healthy diet. Red meat has a role, particularly for our young, growing population who require iron and the other minerals in red meat to help them to grow to their maximum potential. We are already falling behind the rest of Europe on growth predictions for our young people in Scotland and the UK.

**Brian Whittle:** We are kind of agreeing here, I think.

**Heather Kelman:** Yes.

**Brian Whittle:** It is not the 70g limit that worries me. I go back to Geoff Ogle's point about those of us who have crept over 50—some of us have crept over 60. I suggest that the people in this room understand diet a lot better than the majority of the population.

I come from a time when, 50 years ago, the standard diet was meat, veg and potatoes, and there was a lot less obesity back then than there is now. I suggest that we are focusing on the wrong thing. We should be focusing on what has happened in the interim—fast food and the increase in salt, sugar and fat—rather than what we have just discussed.

We are going to have an argument about climate change soon, because I do not agree with that either. It is about getting back to the basics of eating what we grow and produce in our country.

**Heather Kelman:** It is about eating food for health.

**Brian Whittle:** We are very good at producing dairy, beef, root vegetables and fruit. If we can go back to a basic diet, it would solve a lot of the issues.

**Heather Kelman:** I agree, but our social scientist here might add something to that. Part of the problem is that we have a food industry that is really pushing snacking, and a culture among young people—

**Brian Whittle:** I am very good at snacking as well, by the way.

**Heather Kelman:** They are very, very good at it. Young people today are not encouraged to sit down and eat a meal—it is snacking on the go that is recommended. There is an issue with companies trying to grab the nutritional message by promoting high-protein snack bars rather than a meal on a plate.

We have been trying to focus on the food environment and on working closely with industry to try to raise awareness that, in some ways, it has to look to its long-term future. The current approach is not sustainable. If the industry does not want the population dying younger from more diseases, it needs to back down. It cannot promote the expansion and growth of snacks at the cost of people eating a good, healthy diet. I have read the latest "State of Snacking" report by Mondelēz International—it is scary that the industry wants to push these snack products to the point at which we do not eat meals.

**Brian Whittle:** In my view, one of the battlegrounds—for those who are playing buzzword bingo—is public procurement. The Good Food Nation (Scotland) Act 2022 and similar pieces of legislation are, or should be, capable of driving change towards, as you said, people sitting down and eating a decent meal. We have, and the

2022 act has, the ability to do that. East Ayrshire Council used to be five star in that regard, but even its approach is now falling away, at a time when we should be pushing that harder.

Where is public procurement in the 2022 act? I will be honest with you: I think that it is falling short of what it could be. It could have been a lot more powerful than it currently is, and I hope that, in the next session of Parliament, it will become so.

Public procurement applies to the education system, the health system and the prison system. Should we be focusing on that?

**Heather Kelman:** I am going to look to our colleagues at the Scottish Food Commission on that, because the commission gives us a big opportunity to work with local authorities and public authorities such as health boards to push the procurement side in order to get more fish, meat and so on back on to plates, and to meet the aims of the "Eatwell Guide" through the food that we are procuring in public bodies.

**Professor Brennan:** Absolutely. I have been working in this area for many years, and I think that there are huge opportunities, but we have to be cautious. I was reading the committee's excellent "Report on the Proposed National Good Food Nation Plan", which was published last September. Although guidance on food procurement practices is important, investment is needed to deliver on that.

At the heart of what I am hoping for—along with the commission more broadly and the work of the living lab—is to be able to better articulate the investment that public food can deliver across those outcome areas. By investing in better, fairer, healthier and more sustainable public food, and in the workers and supply chain in public food, we can ensure that we are delivering across those outcome areas for Scotland—not only in childhood health, but for businesses, our health service and our workforces.

I come back to your point, Mr Whittle, that we cannot overestimate how different our food environment has become since you were growing up, and since I was growing up back in Ireland. I do not want to use the word "unregulated", because it is not unregulated, but there has been a lot of flexibility for businesses to evolve to become the sort of organisations they are and develop the offerings that they provide. That has completely transformed the way that we think about food and how we incorporate it into our lives, but also how we value food in our day-to-day practices. That includes how we value the school meal and the school lunch time, and how we invest in not only the food and the people, but the space in which that eating takes place.

That is the same in the health service. I am interested in our local authorities and health boards. One of the questions that we have posed to them is about how they really think about food service delivery, which is under their remit, and about how they reimagine and invest in that so that they can support their local economies and communities and lift up the public health and dietary health of their populations. That is hugely important, and I think that they are up for it, but resources and the finances are a major challenge. Public Health Scotland, in its new strategy, talks strongly about trying to prevent future ill health. We really have to think about how we reframe what it is that we are investing in public food and how that can help us to drive forward across our outcomes and transform the Scottish food system.

**Brian Whittle:** I agree 100 per cent. Not investing in that is a false economy.

I do not know whether you agree with me, but I consider one of the issues to be the inability to think across portfolios. The cost with regard to education or the cost to a council is not reflected in the additional costs to the health system, nor in the potential cost of not attaining at school

My concern is that we will need to import food unless we change our diet. There is an argument about adding more fish to your diet, which I absolutely agree with, but we are also cutting quotas for fish because we overfish, so there are a lot of tensions. I come back to the point of eating what you can grow locally, because it speaks to food security, and to my concern about reducing red meat consumption, because what we should actually reduce is processed meat consumption.

**Geoff Ogle:** Increasingly, the discussions about security, sustainability, health and food safety are all interlinked. You cannot talk about one without looking at the other. Security and sustainability are generally the things that catch attention. Safety issues are quite often seen as a given, whereas security and sustainability issues also impact on food safety and health.

On issues such as procurement, you have security of supply. If you do not have that and cannot supply hospitals with food, you have another problem. Those things are all interlinked and work together, but we must consider how we focus on that interlinking. It a bit like splat the rat: you hit something over here, then you have a problem over there.

At FSS, we have been talking about the linkage between all those aspects. We are primarily focused on the safety elements, whereas the Scottish Government leads on security and sustainability, but you cannot look at one without looking at the others—they are all intertwined. We need to get better at making those connections

and understanding the consequences. One of the advantages of a good food nation plan is that it requires the Government to look at the impact across the board and across portfolios, which is an opportunity to put focus on food issues higher up the agenda.

**Brian Whittle:** There is so much to get into, but I will leave it there.

**Gillian Mackay (Central Scotland) (Green):** Good morning. How will the good food nation plan, and the work of Food Standards Scotland align with wider Government strategies on agriculture, food manufacturing and dietary goals, so that production, consumption and emissions reduction are addressed in a consistent policy framework?

**Professor Brennan:** This is a bit of a complicated answer. Central to the Good Food Nation (Scotland) Act 2022 are the Good Food Nation (Specified Functions and Descriptions) (Scottish Ministers) Regulations 2025, which is a piece of secondary legislation that is designed to ensure that different policy areas, portfolios and legislation connect with the 2022 act and subsequently the plan, and that they have regard for the plan and document how they do so.

You might be aware that the secondary legislation was withdrawn and is to be reintroduced to the Parliament after it has been revised. Quite a bit of work is still on-going in that area, although the scrutiny process raised a lot of issues about the importance of being able to ensure that not only are portfolio areas aware, but that we also understand the gaps between them, the relationship between them and how the Parliament undertakes scrutiny across multiple committee remits, as well as how the Scottish ministers could work more collaboratively.

10:15

Moreover, the Scottish Food Commission will, I hope, play a significant part in really scrutinising what is going on and, where necessary, highlighting not only good practice, but less than ideal practice or concerns about disconnects between policy areas and the broader vision. After all, we are all, fundamentally, trying to work towards a way of navigating and negotiating all of this, and to find out how we can get this broad suite of policies and legislation pulling in the same direction, while holding in tension the trade-offs and challenges that doing so poses for us scientifically as well as from a policy perspective, politically and socially.

There is a lot going on, but I am confident that the mechanism that is under revision, as well as our approach to the development and design of the Scottish Food Commission's first strategic plan, has that aim at its centre. I am going to use this opportunity today to make a call to the Parliament and the committees to be as active and engaged as possible with the agenda, so that we can keep the connections between the outcomes and between the areas as strong as the individual outcomes themselves.

**Heather Kelman:** On page 16 of our strategy, we outline our annual delivery plans. We have moved away from three-year plans, because it is impossible to make such judgments when you do not know what is coming at you. The section in question, which is entitled

"Navigating a complex operating environment",

shows that, under this set-up, we will not just report to this committee but try to meet a number of other committees, such as those concerned with the rural and justice portfolios. We are going across a number of areas to link in the bits of intelligence, data and understanding that we have, and to raise awareness of what research is going on. We are also working very closely with Government on the strategic research programme, and we are working with our food institutes across Scotland on new research issues that will help support Scotland in developing a mix of locally grown and sustainable products that will feed our nation in a healthier way. We are trying very hard to navigate that complexity of agreement.

We meet regularly with Public Health Scotland, and now with the Scottish Food Commission, as well as others, including Quality Meat Scotland and the National Farmers Union Scotland. We are just trying to put in place that interlocking Venn diagram, because we all have a role to play, but none of us is an island. We all have to meet the boundaries, to ensure that we are sharing evidence, intelligence, data and monitoring information, and to try to pull together and work towards improving the situation.

Geoff, do you want to add anything?

**Geoff Ogle:** I just wanted to reinforce the point. On page 4 of our strategy, we say:

"We recognise that the food system is not just about safety and standards—it is also about sustainability, equity and resilience. Our strategy takes full account of the Scottish Government's ambitions for a Good Food Nation and the transition to Net Zero. We will work to ensure that our policies and actions support a food system that is environmentally responsible, socially just, and capable of adapting to future challenges."

The other thing that I would add is that, certainly from my perspective as chief executive, we actually have good relationships with the Scottish Government. We maintain our independence, but we also recognise that we need to work with Government, so we have regular airtime with ministers in order to share any issues and concerns that we might have. Equally, though, we

will challenge the Government where we think such challenge is appropriate. It is a healthy relationship, with a healthy tension where that is needed.

**Heather Kelman:** We have a similar relationship with food businesses and industries across Scotland, too. That is the advantage that Food Standards Scotland gives Scotland over the rest of the UK: by keeping public health, nutrition, food labelling and the food safety and standards element together, we can work right across the whole food chain to try to influence things where we can. We are not always successful, but we try to influence beyond our boundaries.

**Professor Brennan:** I am already seeing this happening in the innovative cross-relevant authority groupings that are coming together, but I am 100 per cent confident that, in the development of the national good food nation plan, the hundreds of civil servants involved, including those who led it, have had their thinking about their way of working fundamentally challenged by the journey that they have gone on. Indeed, they have been much more explicit in the final plan about the role of the Scottish Government and the civil servants, who have been so central, and how they have had to evolve their way of working and, to an extent, their way of collaborating and partnering with the wider policy and public agency ecosystem. That hugely valuable outcome of the process of producing a plan is hard to measure, but it is absolutely there.

**Gillian Mackay:** The committee has covered both in this evidence session and in other sessions how we reduce emissions from food, but there is the other side of the coin—that is, increasingly poor weather, with repeated patterns of flooding and so on. Is there anything in the plan to mitigate those sorts of localised flooding issues and other climate change impacts on the food system here? I very much agree with some of my colleagues about eating locally produced food, but if we continue to see some of these patterns, that will become more difficult. What is there in the plan to ensure that we have that secure system and mitigation if some of these impacts begin to increase?

**Heather Kelman:** First, as Geoff Ogle has mentioned, the Scottish Government is responsible for sustainability and food security. However, that does not mean that we are oblivious to it, and we spend a lot of time discussing food security, and food sustainability in particular. Obviously, our strategic research programme has also been looking at that.

That said, it is not something that we drive forward on, and I am not sure whether there are any such elements in the good food nation plan, either.

**Professor Brennan:** The issue does not strictly fall within the Scottish Food Commission's remit, but it is clearly a pillar of the national good food nation plan. What are perhaps more important in this respect are the local good food nation plans, where local authorities, in particular, are able to articulate the impact of climate change on their geographies, their rural businesses and their capacity to produce food securely and consistently. Part of that is about being able to articulate how farming—and, importantly, horticulture—is evolving within local authorities and the impact of climate change in that respect, and it then connects with that wider understanding of how farming, agriculture and crofting are evolving across Scotland.

That work will give us a much better understanding of the impact of climate change on food production, not only from a weather perspective, but from the perspectives of business, security, logistics, infrastructure and the wellbeing of communities. Therefore, it is, in that context, more integrated. However, just as Heather Kelman and Geoff Ogle have been saying, we, too, will work and engage closely with the other agencies and the specialist scientific evidence as it stands. Indeed, we are already beginning to do so.

**Gillian Mackay:** That is great. Thank you.

**The Convener:** I call Elena Whitham.

**Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP):** Good morning. I want to spend a bit of time talking about food processing, food safety and food crime. Is there any synergy between addressing those three issues and the creation of a good food nation, or could any tensions arise as we seek to ensure that we have food safety, address food crime and have safe food processing?

**Geoff Ogle:** The simple answer to that is that there is a legal responsibility to ensure that food is safe. Regardless of why it is being produced, the bottom-line legal requirement is that food must be safe. Are there any potential risks around food crime and production? For example, if you are obligated to meet certain requirements to certain standards, to a certain time and to a certain volume, and you have problems with supply, you might be tempted to take shortcuts, but that is no different to any kind of production, whether it is in a good food nation context or not. If a business is under stress or financial pressure or whatever, that risk might always exist. I therefore do not think that the good food nation plan of itself adds risk or threat to the food system.

If we look at it in terms of aspects of the discussion about localism and the sourcing of food, it could be argued that it helps in some ways. Global food systems have extensive food supply chains. For example, as a consequence of what has happened to Ukraine in recent years, there has been quite a lot of focus on food security and shortening the supply chain to de-risk supply. In such cases, it could be argued that the good food nation will help to drive that. One way or the other, it does not add to the risk; in some ways, it mitigates it.

**Elena Whitham:** You mentioned the shortening of supply chains. We have already heard this morning about localism, and Brian Whittle talked about food security in a local area. Can the good food nation plans start to align with initiatives such as community wealth building? If we think about food processing in a local area, is there a golden thread that could be pulled through all that?

**Geoff Ogle:** Potentially. As I see it, the risk to local supply is in the sustainability and security of that continuing supply. If you are supplying schools, hospitals, prisons and so on, those organisations will want security of supply—they will want to know that the supply is guaranteed, regardless of whatever it might be. The challenge for localism is whether it can produce the volumes necessary for the communities that it wants to supply, and that depends on the scale of what we are looking to accomplish; that is the one issue that we need to be conscious of around localism. The other issue is about continuing to ensure the safety of the food that is being produced.

**Professor Brennan:** Whether the supply is locally secure or not locally secure is not a binary issue. We can go on a journey to increase the proportion of food that is procured locally. When I use the term “local”, I probably mean regional or national, which is quite a contested area. It is not a binary either/or.

Elena Whitham is absolutely right that we are already seeing how relevant authorities are using this planning opportunity to connect with community planning partnerships and community empowerment initiatives in order to address the pinch points that small and medium-sized businesses and/or farmers and producers face in relation to slaughterhouses and local processing, which Geoff Ogle mentioned, and identify the actors in the supply chain—particularly wholesalers—who can help to leverage and consolidate supply from a variety of smaller producers. Through doing that, those actors can increase the proportion of food that is sourced locally, which will have a local economic multiplier effect in local economies by creating jobs, ensuring that money stays in the regions and driving greater economic development activity. Increasing the proportion of locally sourced food would also be good socially, environmentally and from a public health perspective.

10:30

**Elena Whitham:** Thank you. That is very helpful.

Let us stick with the issues of food safety and food processing. I was interested to read in the meeting papers that, according to the most recent lab report data that is available, the detection rates for food-borne pathogens have remained static during the past five years. Is there any information about why that is? Is it because we are getting better at detecting those pathogens, or is there still an issue with food processing that has caused the number of pathogens to remain static over the past five years?

**Heather Kelman:** I am not absolutely sure why the rates are static, but it is good that they are not increasing and that we know what the rates are. We are concerned about some of the pathogens. It would not be the right wording to say that they are becoming more lethal, but there are some coming out that seem to have a greater effect while still being within safe limits. The systems that we have are pretty comprehensive: food producers and local authorities do a lot of monitoring, and then we do some monitoring on top of that.

Now that we can do genome sequencing, we are starting to look at the one-path thing, to work out where the pathogens are originating from in the food chain or in the environment. That will be an interesting area to watch throughout the period of the next strategy, as we try to better understand where these things are coming into the food chain from and whether we can do more to tackle the root causes rather than constantly put out fires.

However, we have not—I will hold on to the desk—had huge issues in recent years, which is a testament to the work that is being done to keep food safe. Geoff, do you want to add anything?

**Geoff Ogle:** I can provide a bit more detail. Campylobacter has started to increase again—that comes after a decrease during Covid in the volume of pathogens that cause food-borne illness. There is also an increasing risk from things such as mycotoxins that are linked to the consequences of climate change.

It is an ever-changing picture. Over the past couple of years, there have been some incidents that were related to E coli, and there have been cases of listeria, although there have not been so many cases of salmonella. The pathogens still pop up now and again, but, fortunately, not at a level that would cause significant risk to big populations.

The other thing that is different is that we, the FSA and the food industry have all become much better at using the recall system. It is pretty slick now with regard to the ways in which food can be recalled and quickly taken off shelves. If a recall is issued, a lot of retailers can put a ban on the system so that, if a product is not moved from shelves and someone tries to buy it, the sale can be stopped. There is now more sophistication in how the risk can be controlled, which is helpful.

**Elena Whitham:** Is there enough resource in the system to address this ever-evolving situation? How do you feel about the resource?

**Geoff Ogle:** How do I feel about the resource? The slightly flippant answer is that I would always like to have more money. There will always be a financial challenge. In many ways, that should be the case—we are a public service and we rely on taxpayer funding, so there is an onus on us to be efficient. We are taking a big opportunity to do that by investing as much as we can in data and digital and by using the wealth of information and data that we have available to do analytics and predictions.

We are much better than we were at the beginning of the strategy period at things such as horizon scanning and anticipating where the risks might come from. We are more sophisticated in that now and are better at prevention, so we can spot where a problem might come up and introduce mitigations before the problem arises. That is down to our use of data and digital and being able to be a bit more forensic about where we focus our attention.

**Elena Whitham:** I have a couple of questions about food crime. When I was reading the meeting papers again, I was struck by the fact that a lot of food crime is undertaken by people who have legitimate roles in the food industry, which allows them to exploit it. How does FSS approach food crime that is facilitated by or organised within the food industry? Is that a key strand of work that you have on your radar?

**Geoff Ogle:** We use a series of mechanisms. Our food crime unit has a relatively big intelligence cell for an organisation of our size, so the work is intelligence led. We have an investigation arm and are heavily involved in a Police Scotland group that brings together a number of agencies. We work closely with the Food Industry Intelligence Network, which was set up after the horse meat scandal, and we also work with Crimestoppers to get information. Last year, all the information on the investigation into illicit vodka initially came from Crimestoppers. We also get intelligence from the industry, although I think that there are opportunities for the industry to be a bit more supportive in coming forward with its concerns. Generally, the approach that we take to intelligence gathering and the level of co-operation that we have with other agencies are significant, as collaboration is key in this area.

At the investigation stage, the relationships that we have with the police and the fiscal are really important. Our team fronts up the food crime element, but there is a whole package of work around that. Local authorities are also important, as are staff on the front line, and the information that they provide is really important.

**Elena Whitham:** I am part of the cross-party group on food, and we are very aware of the big, important issues, such as the capturing of counterfeit vodka and the court case on the misrepresentation of tea.

You have addressed my next question, which was about collaborative working with the Food Standards Agency and others. What are your future priorities for food crime, and are they aligned with those of the Food Standards Agency?

**Geoff Ogle:** We produce a joint strategic assessment every three years, I think, which takes a whole-system approach to identifying the risks. For example, illegal meat has been quite high on the list, as has the adulteration of fish. We worked internationally on operation opson, which found massive fraud in the tuna industry that was worth hundreds of millions of pounds.

We conduct an assessment of where we think the risks and threats to the food chain are, including financial risk, which is harder to pin down. It is hard to equate the assumptions that we make with the risks to businesses. For example, X number of businesses might be under financial stress, but how do we identify them and what do we do about it? You have to be quite cautious about not making broad assumptions that are hard to justify.

We are very good at working collaboratively with the FSA, because we know the integration of the supply chain throughout Great Britain. Mutual support for each other has always been offered if it is needed. From my perspective, we are leading the way internationally in relation to that area of food crime. Certainly, we have had a number of visits from other administrations to look at what we are doing in the area.

**Elena Whitham:** Thank you. That is helpful.

**Joe FitzPatrick (Dundee City West) (SNP):** I will ask some questions about the food hygiene information scheme. There has been a bit of media coverage of the scheme in England, where they have a sticker that goes on the window. Obviously, it relies on the establishment to change that sticker, so that people know whether it is accurate,

and I think that they are looking at moving to an online system.

We have an online system, which sounds good on the face of it—until you actually try to use it. You go to the Food Standards Scotland website and it is great. You can put in the name of a specific business or you can put in a street. I have typed in "Canongate" and asked it to tell me which businesses were assessed as having a requirement for improvement; the options are simply "pass" or "improvement required". There are seven results, which cover a range of different food premises. There is one in particular, which I will not name but which is a pub that I would have eaten in. Edinburgh's pub food scene is great. The inspection date is given as 4 September 2024. However, what was wrong in September 2024? Is it safe for me to eat there now? The site is meant to be about sharing information.

There is a link to the City of Edinburgh Council's food safety website, which takes me to a general page that tells me that, if I want specific information, I have to go back to the Food Standards Scotland website. Without emailing the council's environmental health service, therefore, I do not know whether there is a significant reason why I would not want to eat there, whether it is being fixed or whether several people have had food poisoning.

We have a system that, with modern technology, should work so that people have real choice. I am keen to encourage you to look at how that could be fixed for the future, because it is not an information system just now.

**Heather Kelman:** We are aware of that. I will let Geoff Ogle explain.

**Geoff Ogle:** I knew, from the look that I got from Heather, that I would be answering that question. [*Laughter.*]

Joe FitzPatrick is right in saying that there are a number of issues. Let me offer assurance on the first point. If there was a safety issue or a threat to public health from any business, the local authority should take the necessary action, right through to enforcement, in order to prevent that business from operating. The FHIS does not undermine the point that, if a business should be closed, it should be closed.

There are difficulties with the FHIS because it is binary; it is a case of either "pass" or "requires improvement", which does not share much information. The scheme in Wales, Northern Ireland and England is numeric, so there is some scalability, which helps. Consumer information elements are key to our reforms through the safer programme, which Heather talked about earlier. We want to improve consumer transparency, and reform of the FHIS is, in fact, part of that.

The difficulty that we have—which is one of the reasons why we have the safer programme—is the capacity of local authorities. At the moment, the estimate of resource is something like 46 per cent below what local authorities are saying they need, and there is no doubt that that will have an impact. If I am being quite honest, there are issues with the frequency of visits. However, if a business has been assessed as requiring improvement, local authorities should be following that up. The process is that they will go out and do an assessment, say that a business requires improvement and identify where that improvement is required. There should then be a follow-up visit.

If Joe FitzPatrick gives me the details, I can follow the matter up with the relevant local authority. However, the process should be that a "requires improvement" assessment requires follow-up. That is the way that the system is designed.

**Joe FitzPatrick:** That is fair enough. However, this is meant to be an information scheme. It is great if it is being looked at, but my point is that, if I have taken the bother to go and look it up, in the short term, I should at least be able to see that information. If I am taking my friends out to eat someplace, I do not want them to get food poisoning. If a particular place has been assessed as requiring improvement, surely I should be able to easily access the report. If a care home has an improvement scheme notice, you can go online and see it. Food Standards Scotland and local authorities should surely be able to work together to get that in place pretty quickly.

Right now, there is no penalty for a business, because customers simply do not know. They do not know whether they are going somewhere that has great hygiene or not-so-great hygiene, and they cannot find out what needs improvement. Maybe it was about a wee mistake or something that was fixed almost immediately, or maybe it was about something like a lack of hand washing, which is significant in terms of passing on the pathogens that we talked about earlier.

I would encourage you to have a look and see whether something can be done soon.

**Geoff Ogle:** I will take that away and look at it. If the report was asked for under freedom of information rules, it would be hard to refuse it. The business might try to say that it should be refused on commercial grounds; it could be challenged. However, one of our core values is transparency, and there are other aspects of the food chain on which we publish reports. I will take that issue away and look at it.

**The Convener:** I thank the panel for their evidence this morning. I will now suspend the meeting to allow for a short break and a changeover of witnesses.

10:46

*Meeting suspended.*

10:56

*On resuming—*

# Subordinate Legislation

## Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2026 [Draft]

**The Convener:** The next item on our agenda is consideration of a draft Scottish statutory instrument that has been laid under the affirmative procedure, which means that it requires approval by resolution of the Parliament before it can become law. The purpose of the instrument is to increase the value of payments for personal care and nursing care by 2.23 per cent. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 3 February 2026 and made no recommendations in relation to it.

We will have an evidence session on the instrument with the Minister for Social Care and Mental Wellbeing and supporting officials. Once any questions have been answered, we will proceed to a formal debate on the motion. I welcome Tom Arthur, the Minister for Social Care and Mental Wellbeing, and the following Scottish Government officials: Christina McLaren, unit head for fair work in adult social care; and Ian Turner, deputy director for the adult social care workforce and fair work.

I invite the minister to make a brief opening statement.

**The Minister for Social Care and Mental Wellbeing (Tom Arthur):** Good morning. I thank the committee for the opportunity to speak about a proposed amendment to the Community Care (Personal Care and Nursing Care) (Scotland) Regulations 2002.

The draft regulations will make routine annual increases to the rates for free personal and nursing care. The payments help to cover the cost of those services for self-funding adults in residential care. This year, we are again proposing to apply an uplift based on the gross domestic product deflator, which has been used historically as the inflation measure to increase the rates. That means that the weekly payment rates for personal care for self-funders will rise from £254.60 to £260.30 and that the nursing care component will rise from £114.55 to £117.10.

The most recently available official statistics show that a reported 10,920 self-funding residents aged 18 and above were in receipt of free personal and nursing care payments in 2024-25. Those residents should all benefit from the changes.

**The Convener:** Thank you, minister.

**Sandesh Gulhane:** I have a couple of questions. I declare an interest as a practising national health service general practitioner.

First, have you engaged with providers to see whether the uplift will actually cover the costs?

**Tom Arthur:** As you will understand and appreciate, we have on-going engagement with providers. When taking such decisions, we must balance a range of considerations relating to the overall affordability of public finances. As we have done in previous years, we have taken the approach, through the regulations, of basing the inflation uplift on the GDP deflator. Ultimately, wider considerations are for providers and residents who have a contract with those providers.

**Sandesh Gulhane:** I understand how you have come up with that figure, but my question was not about that. I asked whether you have engaged with providers to see whether the uplift will actually cover the cost of care.

**Tom Arthur:** I appreciate that there will be a range of circumstances, depending on the provider. We have wider engagement, but, in this specific case, we are making a contribution by providing an inflation uplift based on the GDP deflator.

I do not know whether Christina McLaren wants to come in.

11:00

**Christina McLaren (Scottish Government):** A working group works with us every year on the process for such regulations. Scottish Care is part of that group, alongside COSLA and other local authority representatives, so a wide range of interests are represented. We are comfortable with the process that we have gone through and the arrangements that we have made.

**Sandesh Gulhane:** Is the funding increase ring fenced?

**Tom Arthur:** Funding for the uplift will be committed. Ultimately, the level of funding will depend on overall uptake, but funding will be provided to ensure that the uplift can be delivered.

**Sandesh Gulhane:** Could a local authority spend the money on other things, or could it be used only for the uplift?

**Tom Arthur:** I will hand over to Christina McLaren on that technical point.

**Christina McLaren:** The formula is based on analysis of what we expect uptake to be in the coming year. The allocation will cover that, and there is on-going dialogue to ensure that the numbers meet the figures that we transfer to local authorities for the uplift. In all previous years, take-up has been less than the amount that we have allocated.

**Sandesh Gulhane:** Are local authorities obliged to pass on all the money in full?

**Christina McLaren:** They are obliged to use the money for everyone who claims it as part of the financial assessment in relation to the overall picture of how someone pays for their care.

**Sandesh Gulhane:** What has happened to the underspend?

**Christina McLaren:** It is usually a very small amount of money, so we are pretty sure that the funding is accurate. There is on-going discussion with COSLA, but I am not aware that the money goes back to the Scottish Government.

**Brian Whittle:** There have been significant increases in the cost of delivering personal and nursing care, so any increase in funding is valuable and welcome. Minister, you indicated the potential financial constraints on delivering any more funding. My worry is that not delivering more funding is a false economy, because the costs will appear on another page of the ledger if we do not get this right. What work has been done, not just on this specific issue but across the wider portfolio, to assess the impact of not delivering what could be delivered?

**Tom Arthur:** On the broader question about financial viability, there is on-going close engagement with providers and health and social care partnerships. On this specific measure, as well as the inflation uplift this year, there have been above-inflation uplifts in recent years, in recognition of the pressures and challenges that exist. We recognise that there are financial challenges for providers, but we operate in a very pressurised environment regarding public finances, so we must balance a range of priorities. In doing so, we are providing additional funding through the uplift for the coming year.

**Brian Whittle:** Do you agree that, by investing in social care, we could prevent much more costly interventions, including hospital interventions? There is an issue in how we balance funding and how we measure the outcomes from inputs.

**Tom Arthur:** I do not disagree with your point about the value of investment in social care. Investment in social care is of tremendous benefit and value for the individuals who receive social care and for the wider health and social care system. Much of the longer-term strategic work that has been undertaken, and on which I think there is broad political consensus, is in recognition of the value of social care and ensuring that—notwithstanding the significant challenges that we operate under with regard to the public finances—

we are working constructively to ensure that enough resource is going into the system.

In the budget that is making its way through the Parliament, there is an increase in investment in health and social care—specifically social care—and local government. There is broad recognition and shared understanding of the value of social care and the importance of investment in it.

**The Convener:** We move on to agenda item four, which is the formal debate on the instrument on which we took evidence. I remind the committee that officials may not speak in the debate.

I believe that Sandesh Gulhane wishes to make a point before we move to the debate.

**Sandesh Gulhane:** No, not before—during.

**The Convener:** Okay. I call the minister to move and speak to motion S6M-20534.

*Motion moved,*

That the Health, Social Care and Sport Committee recommends that the Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2026 [draft] be approved.—[*Tom Arthur*]

**The Convener:** Minister, do you wish to contribute anything else to the debate?

**Tom Arthur:** I have nothing further to add.

**Sandesh Gulhane:** I declare an interest as a practising NHS GP.

I support the principle behind the instrument. Personal and nursing care are fundamental for dignity in later life and uprating payments is necessary and welcome. However, we must be honest about the pressures that are facing the sector. Care providers are dealing with rising workforce costs, energy bills, insurance premiums and regulatory requirements. The question is not whether an uplift is appropriate but whether it is sufficient. If it fails, the consequences do not sit quietly in our social care sector; they present as delayed discharge, hospital pressures and workforce instability.

The minister said that it was not possible to increase the payments for social care above the GDP deflator because of budgetary pressures, but then £149 million was found for resident doctors, £36 million for rolling out GP walk-in centres that GPs say will not work and £30 million was found for an NHS app that will not be rolled out until 2030 and, as we are talking specifically about social care, £30 million has been spent on a national care service that has not been delivered. Those are concerns. We should be putting money into personal care and ensuring that it is free, because that is what was said.

**Tom Arthur:** As I said earlier, I recognise the importance and value of investment in social care, in and of itself as a good, and a deliverer of high-quality services to individuals, and also because of its importance as part of the overall functioning of our health and social care system.

We operate in a challenging and pressurised environment for public finances. In recent years, across multiple sectors, challenges have ensued from economic and fiscal turbulence. That is well understood and well documented. We are committed to engaging constructively with providers and local partners to ensure that we can maximise the resource that is available in the system.

Ultimately, it is for any member to engage with the budget process in the Parliament if they wish to make representations to the Government for additional resources.

**Brian Whittle:** My concerns are similar to those of my colleague Sandesh Gulhane. At the end of the day, I will vote in favour of approving the instrument because any uplift is crucial. However, what we are discussing is in no way reflective of what is required. As has been rehearsed by my colleague, huge amounts of money have been spent in other areas. If we are going to tackle the issues in social care and the connections with delayed discharge and prevent people from having to go into hospital care, we are going to have to think about it much more seriously than we currently are.

I will vote for the uplift, but I want to put those comments on record, because I do not think that the measures provide nearly what we need to do to tackle the issues that we have at the moment.

**Tom Arthur:** I recognise the points that committee members have made with regard to the financial pressures that we are all operating under, and I welcome members' support for the instrument.

**The Convener:** The question is, that motion S6M-20534 be agreed to.

*Motion agreed to,*

That the Health, Social Care and Sport Committee recommends that the Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2026 [draft] be approved.

**The Convener:** That concludes consideration of the instrument. I suspend the meeting to allow for a changeover of supporting officials.

11:10

*Meeting suspended.*

11:17

*On resuming—*

## Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 [Draft]

**The Convener:** The next item on our agenda is consideration of a second affirmative instrument. This draft statutory instrument requires approval by resolution of the Parliament before it can become law.

The purpose of the instrument is to impose new duties and responsibilities relating to visiting arrangements on providers of care home services for adults. The duties come in the form of regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, as required following modifications made by section 14 of the Care Reform (Scotland) Act 2025.

The Delegated Powers and Law Reform Committee considered this instrument at its meeting on the 10 February 2026 and, while it made no recommendations on the instrument itself, it said in relation to regulation 8 that it welcomed the Scottish Government's intention to publish the code of practice in advance of the requirement coming into force and highlighted to this committee its correspondence with the Scottish Government on that point.

We will now have an evidence-taking session on the instrument with the Minister for Social Care and Mental Wellbeing and supporting Scottish Government officials. Once our questions have been answered, we will proceed to a formal debate on the motion.

I welcome to the committee Tom Arthur, the Minister for Social Care and Mental Wellbeing; Jennifer Gilmour, team leader, social care immediate response and improvement; Fiona Hodgkiss, unit head, social care immediate response and improvement; and Laura Kennedy, solicitor.

I invite the minister to make a brief opening statement.

**Tom Arthur:** Thank you for the invitation to discuss this instrument.

Like everyone, I am sure, I have been profoundly moved by the brave campaigning of the care home relatives group, and I fully acknowledge the emotional harm and trauma experienced by residents, families and others who were unable to see one another for such long periods during the pandemic.

These regulations are about learning from those experiences to ensure that they cannot happen again. They were shaped through engagement with people who live and work in care homes, and I want to acknowledge the vital contributions made by all our stakeholder groups. The regulations deliver on the Parliament's intention as set out in section 14 of the Care Reform (Scotland) Act 2025, and I have been struck by the cross-party collaboration that has brought us to this point.

If approved, the regulations will establish in law that care homes must allow and support visiting. Visiting may be suspended only where it is essential to prevent a serious risk to life, health or wellbeing, but even in those exceptional circumstances, care homes must still facilitate visits for people nearing end of life, or where the harm caused by suspending visits would outweigh the serious risk identified. Our intention is to safeguard residents' ability to maintain family life and meaningful contact, and the regulations achieve that in a way that is compatible with the European convention on human rights, ensuring that any limits are lawful, necessary and proportionate, and that rights are balanced in a carefully considered, person-centred way.

Crucially, the regulations recognise essential care supporters as the people most important to the resident. That, for many, lies at the heart of Anne's law. By establishing a legal presumption that restricting access to an essential care supporter is likely to cause serious harm, the regulations significantly strengthen the position of such a person by providing legal protection for their vital role.

The regulations are the result of extensive engagement, including an online survey; visits to care homes to hear directly from residents, families and staff; and discussions with national organisations and professional bodies. I am pleased that most respondents agreed that the regulations are clear and understandable, particularly with regard to providers' duties to identify an essential care supporter, to enable visiting and to provide for a transparent review process.

I want to thank those who responded to the online consultation and to Parliament's call for views, and I have noted the desire for clear, practical guidance on this matter. Although the regulations establish the duties, the accompanying code of practice, which will be available before the regulations come into force, will set out how they will work in practice.

I commend the regulations to the committee, and I am happy to respond to any questions.

**The Convener:** Thank you for that opening statement, minister. We have a number of questions, and I will go first to Sandesh Gulhane.

**Sandesh Gulhane:** I declare an interest as a practising NHS GP.

Is the designation of an essential care supporter a statutory right for residents, or is it at the discretion of providers?

**Tom Arthur:** That is set out clearly in the regulations. I would draw the committee's attention to the following regulation, which says that

"A provider of a care home service for adults must … identify for every resident of accommodation provided by the care home service at least one individual as an Essential Care Supporter"

and then provides further detail on circumstances in which that would not happen. It is set out in the regulations.

**Sandesh Gulhane:** Who holds the ultimate clinical responsibility for risk decisions—the provider or public health authorities?

**Tom Arthur:** In what regard?

**Sandesh Gulhane:** In saying that an essential care supporter cannot come into a care home.

**Tom Arthur:** Just for clarification, Dr Gulhane, are you talking about a scenario in which no visits at all would be possible?

**Sandesh Gulhane:** Yes.

**Tom Arthur:** In such a situation, there would have to be consideration of the balance of rights. We would be talking about an exceptionally extreme set of circumstances in which there would be conflict with regard to the balance of rights that has to exist between the ability to have access to an essential care supporter and any clear and present risk to life or wellbeing.

Ultimately, such decisions will have to be taken in the context of the overall prevailing circumstances and environment, consistent with what is set out in the regulations and the legislation. In that particular set of circumstances, it would be the provider who would take the decision.

My officials might want to add to that.

**Fiona Hodgkiss (Scottish Government):** Ultimately it would be the provider—the care home—that would take the decision and it would not do that in isolation. It would do it on the advice of the local health protection team and the social work team, which understands the individual's needs.

The code of practice will set out the range of advice that a care home needs to source in order to come to that conclusion. Anne's law advocates an individualised approach—not a blanket approach—that is based on the person's needs and risk assessment. Is that helpful?

**Sandesh Gulhane:** It is, yes. If a resident has dementia and they have designated one child as their ECS and another child disputes that years later after a falling out, who makes the adjudication on that?

**Fiona Hodgkiss:** There does not have to be just one ECS. That is clear in the regulations and the code of practice. A resident may choose more than one.

In that situation, it would always be negotiated. There are sometimes difficult family circumstances, and they would need to be worked through at the time of identification and in any circumstances where it is imperative that a resident sees their essential care supporter. That is the kind of thing that care homes go through every day already, because it is in the health and social care standards that residents get to nominate visitors. Does that answer your question?

**Sandesh Gulhane:** The issue is that family dynamics are liable to change. For example, if one child is away, it is quite reasonable for the other child to be nominated as an ECS, but what happens when the child who was away comes back? Can they then become an ECS if the patient has dementia?

**Fiona Hodgkiss:** The key point is that a flexible approach needs to be taken that is based on the needs and circumstances of the resident. If it is appropriate for somebody else to come because the other person is away, the care home would support that. Jennifer Gilmour will be able to say more about that, because she wrote the code with stakeholders. It emphasises that flexibility is required and it is based on the needs of the individual and what would minimise distress for them.

**Sandesh Gulhane:** Obviously, the legislation has come about through exceptional circumstances, and the concern is that, if such circumstances were to happen again, the protections that are provided to residents and close family members would be needed. We do not want this to be used to say, "We have one ECS and the other child cannot be one". I just do not want to see that happening. If, as you say, a flexible approach is taken, that seems eminently sensible.

**Brian Whittle:** I note that regulation 3 does not define what facilitation is required in practice. Can you clarify the definition of the expected actions that a care provider must take to support visits, particularly external visits? Supplementary to that, what do you mean by external visits? Does it just mean visits to an essential care supporter, or will it include medical appointments and the like?

**Tom Arthur:** I will ask officials to come in on that in a moment. However, I will highlight—this might also come up in subsequent questioning—that a lot of the operational detail is set out in the code of practice. That will be published ahead of time and it will provide answers to many of those questions.

The regulations have been developed through close engagement with a range of stakeholders, including providers, and they include the point about external visits, clarifying the obligations on a provider and what the expectations would be. A lot of work has been undertaken to ensure that the regulations provide the legal framework, but how that is operationalised will be reflected within the code of practice.

My officials can respond to your specific question.

**Jennifer Gilmour (Scottish Government):** That was one of the things that came up during the consultation that we carried out on the regulations. People were looking for a bit more detail on what some of the definitions mean. That is definitely reflected in the code of practice; we picked that up wherever possible.

On the definition of "facilitation", the code talks about a requirement to "support" and "allow" visits. There are examples of the types of things that care homes might do to provide those opportunities for care home residents to receive or make visits themselves. The code also makes it clear that providers do not have to bear the costs of those additional visits as a result of the regulations under Anne's law.

11:30

**Brian Whittle:** We are talking about a future code of practice that will not be legally binding. Are there concerns about how it might be implemented?

**Jennifer Gilmour:** The code of practice has a statutory basis and represents the operationalisation of the regulations, giving it a very strong foundation. The Care Inspectorate will oversee it—it will inspect against the code of practice as part of its routine inspections.

**Brian Whittle:** If the Care Inspectorate is inspecting against a code of practice that is not legally binding, what enforcement powers would it have?

**Jennifer Gilmour:** The code is based in law, which is obviously legally binding. The Care Inspectorate can take enforcement action against care homes. Ultimately, it can alter how they operate. The Care Inspectorate can take a whole range of steps, and that would be the final measure that is available to it.

There will be a three-month grace period after the regulations come into force, during which the Care Inspectorate will support the care home sector to implement Anne's Law, including by disseminating information to care providers, residents, families and friends so that they understand the situation and their rights.

**Emma Harper:** Good morning. We have reviewed information on the suspension of visiting, which was raised in various written submissions. The submission from Dumfries and Galloway health and social care partnership questioned who actually makes the decision to suspend visits and how that aligns with health protection and social work responsibilities. Can you elaborate on how you will ensure consistency in decisions to suspend visiting?

**Tom Arthur:** In those circumstances, it would be for the provider to respond to the specific events and context that led to the decision being made. Regulation 4 says:

"A provider of a care home service for adults may suspend visits (either to and by all residents in the care home or to and by specific residents) only if the provider has reasonable cause to believe that it is essential to do so to prevent a serious risk to the life, health or wellbeing of—

(a) in the case of internal visits, any person at the accommodation,

(b) in the case of external visits, the resident, any other person at the accommodation, or persons at the place where the visit would take place."

I am taking the time to read that out, so that it is set out clearly on the record, but the context is already set out in the regulations. A responsible provider will draw on a range of advice and expertise in taking such decisions.

The code, which will be published ahead of the regulations coming into force, will provide further information on that process. My officials may want to add to that.

**Fiona Hodgkiss:** I will make two points. First, providers have responsibility for taking those decisions. Secondly, they are not doing that in isolation; they are taking advice from health and social work professionals. Does that help?

**Emma Harper:** The suspension of visits arose because of the Covid pandemic. That was an international health crisis, as opposed to a local issue, such as a norovirus outbreak, for which different measures would be put in place for visiting, including a requirement for personal protective equipment to be used. I suppose that it is not an isolated decision; it must be made collaboratively, in recognition of what is going on across the country.

**Fiona Hodgkiss:** Many of the decisions that are taken on a local, day-to-day basis are simply about

what is happening locally. The decision might relate only to that care home and what is happening locally. In the example that you gave, Anne's law is relevant because it means that you cannot take a blanket approach and simply shut a care home; you have to take an individualised approach based on several factors, including the issue at hand, the care home's structure, its staffing, and the needs of the individual residents, including those individuals involved in the issue.

**Emma Harper:** Engagement is required between all the professionals involved, including Public Health Scotland, local authorities and health and social care partnerships, but what is required in that engagement? Is there a formal requirement for a process that will outline how they come to a decision?

**Fiona Hodgkiss:** There are already good processes in place through which care homes operate with local health protection teams, which advise them on a daily basis if there is an issue. The regulations build on that.

Although the focus of the regulations is on the care home providers, who are the ones taking those decisions, there are implications for guidance for other health professionals, such as the public health professionals who advise the care homes. There are already good relationships there, which the regulations will support, but we are also clear that it is everybody's responsibility to ensure that meaningful connection is supported.

**Tom Arthur:** It is important to understand that the regulations do not exist in a vacuum. They exist in the context of long-established legal frameworks, which range from human rights frameworks and the ECHR to public health measures. There is also a context of a culture of established working relationships between a range of relevant bodies and of the expertise that is contained in those bodies. Providers have clear obligations around the health, safety and wellbeing of residents, visitors and those who work in a care home setting. When considering the regulations, it is important to appreciate the wider context in which they are situated.

**Carol Mochan (South Scotland) (Lab):** Good morning. I have some questions around the review process. Regulation 6 requires a care home provider, on receipt of a valid request, to review a decision. Concerns have been raised with us about that. One is about whether there could be proactive rather than reactive reviews. Another concerns the fact that there is no judicial appeal route. Has there been any consideration of that?

**Tom Arthur:** On the first point, the code of practice will provide more detail around expectations in relation to reviews. On the second point, there are currently processes for making complaints directly to a provider or to the Care Inspectorate. Again, we must appreciate the wider context in which the regulations exist, and the importance of the code in terms of providing that operational detail.

I do not know whether my officials have anything to add—I see that they do not.

**Carol Mochan:** You say that the guidance will contain some information about how the Care Inspectorate will be involved if a review is in place. How will that process work?

**Fiona Hodgkiss:** As an example of the process, if a family member asks for a review of a decision not to allow them to come in as an essential care supporter, they can request a review on certain grounds, which will be detailed in the code. If they are not happy with the outcome of that, they can appeal to the care home; and if they are not happy with the outcome of that, they can go to the Care Inspectorate. Often, that happens through a formal complaints process. If they are not happy with the outcome of the Care Inspectorate's review, they can go to the ombudsman. Ultimately, after all that, judicial review is available, but it is not the route that people would normally go down.

Essentially, the regulations are being made in the context of an existing process for people to challenge what is going on in the way that care homes are doing things.

**Carol Mochan:** My initial thought is that I can imagine that, sometimes, a review request might be time sensitive in order to support family members and to get that appropriate access. Will the system allow for that?

**Tom Arthur:** Yes, absolutely. We recognise that some of the decisions that the code of practice covers will have to be taken rapidly. The time sensitivities are very much recognised in the code.

**Carol Mochan:** That is appreciated.

A concern has been raised about the requirement for review requests to be submitted in writing. I just want to be sure about accessibility, because some people may have family members who cannot go down that route.

**Tom Arthur:** Requests could be made via email, a letter in the post, or, for example, an online form that is made available by the provider. Clearly, we want to ensure that the process is as accessible as possible. Again, that is reflected in the code.

**Fiona Hodgkiss:** There are elements in the code about supporting people to make requests in writing, so it is not seen as a separate thing. There is support for somebody doing that in the way that is most suitable for them. Laura Kennedy can say where the definition of "in writing" is taken from.

**Laura Kennedy (Scottish Government):** The definition of "in writing" that applies in these regulations is from the Interpretation and Legislative Reform (Scotland) Act 2010. That allows for other forms of writing, as the minister has said, such as email. The act says that writing includes

"words in a visible form".

It is expected that individuals would be supported in ways that are set out in the code, so that there is a record of the request for that review and the grounds for that request.

**Carol Mochan:** That is helpful. I appreciate that we need a record, but, particularly in those circumstances, there may be people who need a certain level of support to put something in writing.

**The Convener:** I want to turn to the notification process. Regulation 7 requires that, where a care home provider has decided to suspend visits, it must, as soon as practicable, notify the decision to various named people and agencies. However, respondents to the committee's call for evidence raised some concerns and highlighted areas for improvement. For example, the regulations do not specify how quickly notifications must be issued. Can you commit to introducing clear timescales for notifications to ensure consistency and protect residents' rights?

**Tom Arthur:** Again, that will be picked up in the code of practice. My officials might want to say something specific on the timescales.

**Jennifer Gilmour:** I was just checking the draft code of practice. It lays out timescales for ideal scenarios. In keeping with the rest of Anne's law, the code makes clear that the circumstances have to be taken into consideration. If one resident is affected by a suspension of visiting, the expectation is that that notification would be made very quickly. However, in a complex case in which multiple people or families had to be notified, the process could be expected to take longer.

The target timescale in the code of practice is within 24 hours—that is the expectation—but there is some softening of language around it to allow for complex cases and to make sure that Anne's law takes many things into consideration and does not take a blanket, black-and-white approach.

**The Convener:** Is there anything in that part of the draft code about what the maximum time allowed would be?

**Jennifer Gilmour:** The target time is 24 hours. The code is being consulted on with a range of care home providers, care home residents and Public Health Scotland, so the timescales could be subject to change, depending on the feedback. However, that is currently the target time.

We would expect that it would take no more than 24 hours for notifications to be made. In a simple case, we would expect that it would happen much more quickly than that—perhaps even almost as soon as a decision is made. However, as I said, there could be circumstances in which things are extremely complicated and there are dozens and dozens of people to contact, and that would have to be taken into consideration.

**The Convener:** Will the minister comment on calls for the notifications to be extended to include wider multidisciplinary teams and agencies other than those in the regulations?

**Tom Arthur:** Before I answer that, I invite Fiona Hodgkiss to speak about the consultation and engagement process.

11:45

**Fiona Hodgkiss:** In our consultation on the SSI, we got feedback about who else should be notified. The original draft of the SSI said that the Care Inspectorate should be notified when a decision had been taken to suspend visiting. In the consultation, the families were clear that they and the essential care supporter also needed to be notified, so that was added.

Similarly, as a result of engagement with Social Work Scotland and social work professionals, we added the chief social work officer to the list of those who should be notified. In practice, that will mean that the chief social work officer will internally inform other teams in the local authority who have oversight of the care home, such as the commissioning and contracts team, which monitors the delivery of the national care home contract and the standards within the care home from a local authority's perspective. That widens the multidisciplinary team, which you asked about. The public health protection team would already be involved, so they would be aware of the suspension. Does that help?

**The Convener:** Yes. That addresses some of the comments that have been made to the committee about who was to be notified. Will the Government monitor compliance to ensure that notifications are issued properly?

**Tom Arthur:** Yes. There is a requirement for ministers to review the operation of Anne's law after, I think, two years, and to review the code after five years. That work will be on-going. Of course, the Care Inspectorate will also have a role to play, so there will be on-going engagement and scrutiny. Further, it will be for Parliament to decide what it does, but I imagine that it will continue to maintain a strong interest in the matter.

**Elena Whitham:** Good morning. I want to speak about human rights and how we balance them with

other considerations, which you have spoken about in your answers and in your opening statement. The regulations allow the suspension of visits where a provider has reasonable cause to believe that it is essential to prevent serious risk.

What specific human rights criteria will providers be expected to apply when they are determining whether the threshold is met? How will you ensure that visiting restrictions are genuinely a last resort and that they are proportionate and time limited, given the concerns that we have heard about the lack of clarity that there could be about terms, such as “reasonable cause” and “serious risk”?

**Tom Arthur:** The issue involves a number of areas. The balance between the right to private and family life and the right to life is a key issue. That involves a scenario in which there is a clear danger of risk to life, health and wellbeing. These are not easy decisions to take, and that is why the code of practice goes into those matters in some detail and seeks to provide support in that regard.

I would regard a situation in which no visits at all were possible as extremely rare and remote. There would have to be an absolutely extreme set of circumstances, and we have sought to ensure that the rights of essential care supporters are clearly stated in the regulations and in the code.

We could start entertaining hypothetical situations and speculating about what might happen, but, ultimately, it will come down to a judgment that will have to be made. However, there is no ambiguity around the expectations that are set out in the regulations, which will be the law of the land, as passed by Parliament. The code of practice will help, as it will illustrate and flesh out some of the detail around how those regulations will be operationalised. However, I appreciate the sensitivity of the issue, and I want to provide assurance about the intention behind the regulations and why we have taken the approach that we have. That will be further buttressed by what is in the code.

**Elena Whitham:** It is helpful for us to understand that the code will seek to flesh out the scenarios, because we do not want to scenario plan today and think about different instances in which it could be applied. The information should be contained in the guidance and the code to give operators an understanding of how they should balance human rights and look at each situation before they come to conclusions.

**Tom Arthur:** Laura Kennedy, do you want to add anything on the balance of rights?

**Laura Kennedy:** Both the provision in the Care Reform (Scotland) Act 2025 and the regulations were drafted in a way that ensures that they equip providers to apply the human rights principles when making those decisions.

**Elena Whitham:** My final question is about whether you could commit to ensuring that there is greater oversight, which you have already spoken about, and enhanced review mechanisms to limit the discretion of providers so that that the rights of residents are consistently maintained and they are consulted and have a voice in decisions that are being made.

**Tom Arthur:** There is a clear expectation of the utilisation of best practice for communication and engagement, as set out in the regulations. For example, the identification of an essential care supporter is clearly set out in the regulations. The importance of the agency, autonomy and rights of the individual residents and their involvement in the process is implicit. I also note that the 2025 act places duties on the Scottish ministers to report on how some of the new responsibilities that are placed on care home providers have been put into operation. In particular, there is a duty to identify an essential care supporter for every resident, facilitate visits and, following a valid request, review a decision about the suspension of visits. The report would need to be published within two years of the regulations coming into effect.

I hope that that helps to provide some reassurance that the legislation that is coming into effect is not the end of ministerial involvement and engagement. There will be close scrutiny and review, and there will also be on-going engagement and monitoring as part of that.

**Elena Whitham:** Further changes could come forward when you are looking at the review mechanisms and processes.

**Tom Arthur:** Of course. I cannot compel future Governments and Parliaments, but I imagine that the Parliament would want to take a keen interest in how it is operationalised and in the learning that comes from that, notwithstanding the statutory commitments for review. Learning will inevitably emerge from any new provision that comes into operation. The care standards have been in place for some time now and there has already been a significant amount of learning, which is reflected in the consultation and engagement that we had before lodging the SSI. The learning and information will be at the disposal of ministers and the Parliament in considering any future amendments that would be required, either to the regulations or, indeed, to the code.

To summarise, there will be opportunities for the code and regulations to be revisited based on learning, which demonstrates the importance of close engagement and monitoring. For example, if it were to come to the attention of ministers or a future Government that changes were required to

improve operational efficiency or to avoid any unintended consequences, there would be opportunities to make those changes, as there would be with any regulations. Given that this is being done through secondary legislation, it is not something that requires a new act of Parliament and can be done in a relatively quick, efficient and effective manner.

**Fiona Hodgkiss:** The oversight by ministers is formalised in two ways: a progress report will be required within two years, and there is a requirement for a review of the code. The 2025 act specifies what should be considered when reviewing the code. That is about the operation of Anne's law in practice; there should be good practice and information about how it is being delivered. That is a formal process for on-going review.

I think that members of the committee were involved in helping to strengthen the oversight aspect at stages 2 and 3 of the Care Reform (Scotland) Bill. The legislation very much reflects the aspiration to ensure that we are not just putting out something with no oversight. There will be ministerial oversight on an on-going basis.

**The Convener:** We now move to item 6, which is the formal debate on the instrument on which we have just taken evidence. I remind the committee that officials may not speak in the debate. I invite the minister to speak to and move motion S6M-20536.

**Tom Arthur:** I encourage the committee to support the draft regulations.

I move,

That the Health, Social Care and Sport Committee recommends that the Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 [draft] be approved.

*Motion agreed to.*

**The Convener:** That concludes our consideration of the instrument. Minister, you and your officials are free to leave.

## National Health Service (Functions of the Common Services Agency) (Miscellaneous Amendments) (Scotland) Order 2026 (SSI 2026/20)

**The Convener:** The next item is consideration of two instruments under the negative procedure. The purpose of the first instrument is to dissolve NHS Education for Scotland and transfer functions carried out by that body, as well as its property, rights, liabilities and obligations, to the Common Services Agency for the Scottish health service.

The Delegated Powers and Law Reform Committee considered the order on 10 February and drew it to the attention of the Parliament on the basis that the provisions in part 1 of the schedule have been made by what appears to be an unusual or unexpected use of the powers conferred by the parent statute, in the absence of an express power to amend the primary legislation and in the absence of a fuller explanation from the Scottish Government.

No motion recommending annulment has so far been lodged in relation to the order. Do members have any comments?

**Sandesh Gulhane:** I first make a declaration of interests as a practising NHS GP and as someone who went through the NES scheme. Although a reduction in the number of quangos is always welcome, I have a number of questions that I think are worthy of consideration.

How will GP training, specialty training and continuous professional development all be protected during the transition period? What financial savings are expected? When do we expect to see the financial savings? Will the measure result in any measurable workforce improvements?

**The Convener:** How would you wish those questions to be answered?

**Sandesh Gulhane:** An ideal scenario would be to discuss those questions with the minister, but I think that we can write to the minister.

**The Convener:** Thank you for that.

I propose that the committee does not make any recommendations in relation to the instrument. Are members content with that?

**Members** *indicated agreement*.

## NHS Education for Scotland and Common Services Agency (Transfer of Staff) Regulations 2026 (SSI 2026/23)

**The Convener:** We now come to the second instrument. The purpose of the regulations is to provide for the transfer of staff from NHS Education for Scotland to the Common Services Agency on 1 April 2026, and for all members of the management committee of the CSA to be entitled to renumeration for their role as members of that committee, other than executive members, who are also employees of the CSA.

The Delegated Powers and Law Reform Committee considered the instrument on 3 February and made no recommendation in relation to it. No motion recommending annulment has so far been lodged.

As no members have any comments that they wish to put on the record, I propose that the committee does not make any recommendation in

relation to the instrument. Are members content with that?

**Members** *indicated agreement*.

## Draft Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026

**The Convener:** The next item is consideration of a proposed draft order. I put on record that I am a registered mental health nurse and a bank staff nurse with NHS Greater Glasgow and Clyde.

The proposed draft order must be laid before Parliament for a 60-day period, together with a statement of reasons for proposing to proceed by remedial order rather than by other means.

Ministers are proposing to make a remedial order under section 12 of the Convention Rights (Compliance) (Scotland) Act 2001. That power allows the Scottish ministers to make remedial orders to remedy an incompatibility with convention rights.

12:00

The purpose of the proposed draft order is to address the judgment in X v Mental Health Tribunal for Scotland [2022] CSOH 78, which held that the tribunal's lack of power to specify recorded matters for patients subject to a compulsion order amounted to "unjustified discrimination" under article 14 of the European convention on human rights. Following the ruling, the Scottish ministers concluded that amendments to the Mental Health (Care and Treatment) (Scotland) Act 2003 were necessary to ensure compliance with article 14 of the convention.

The statement of reasons accompanying the proposed draft order states:

"Scottish Ministers consider that a Remedial Order under the general procedure is the most appropriate and proportionate means of remedying the legislative defect, ensuring equality of treatment for civil and forensic patients while maintaining safeguards and flexibility within the mental health system."

The Delegated Powers and Law Reform Committee considered the proposed draft order on 10 February and noted a number of points in relation to it.

As members do not have any comments to make, I propose that the committee notes the proposed draft order but does not make any recommendations in relation to it. Are members content with that?

**Members** *indicated agreement*.

**The Convener:** At our next meeting, we will commence stage 2 proceedings on the Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill.

That concludes the public part of this meeting.

12:01

*Meeting continued in private until 12:22.*

This is the final edition of the Official Report of this meeting. It is part of the Scottish Parliament Official Report archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

The Scottish Parliament
Pàrlamaid na h-Alba