



**Health and Community Care Committee**

**5th Meeting, 2001 (Session 1)**

**Wednesday 7 February 2001**

The Committee will meet at 10.00 am in Committee Room 2

- 1. Items in Private:** The Committee will consider whether to take items 4 and 5 in private.
- 2. Subordinate Legislation:** The Committee will consider the following negative instrument—

The Feeding Stuffs (Scotland) Regulations 2000 SSI **(2000/453)**

The Specified Risk Material Amendment (Scotland) Regulations **(SSI 2001/3)**

The Specified Risk Material Amendment (Scotland) regulations **(SSI 2001/4)**

The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations **(SSI 2001/6)**

- 3. Regulation of Care (Scotland) Bill:** The Committee will take evidence on the general principles of the Bill at Stage 1 from—

Community Care Providers Scotland:

Annie Gunner, Annie Gunner – Community Care Providers Scotland

Jim Jackson, Alzheimer Scotland – Action on Dementia

Nigel Henderson, Penumbra

Scottish Care:

Joe Campbell – Chairman

Jim Proctor – Vice Chairman

Mrs Doreen Stephens

John Shearer

- 4. Increasing the Effectiveness of Committees:** The Committee will consider the Conveners' Liaison Group paper "Increasing the effectiveness of Committees".

**5. Committee Business in the Chamber:** The Committee will consider the terms of the motion for Committee business in the Chamber.

Jennifer Smart  
Clerk to the Committee  
Room 2.5  
email [jennifer.smart@scottish.parliament.uk](mailto:jennifer.smart@scottish.parliament.uk)

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The following papers are attached for this meeting:

Agenda Item 2

The Feeding Stuffs (Scotland) Regulations 2000 SSI **(2000/453)**

**HC/01/5/1**

The Specified Risk Material Amendment (Scotland) Regulations **(SSI 2001/3)**

**HC/01/5/2**

The Specified Risk Material Amendment (Scotland) regulations **(SSI 2001/4)**

**HC/01/5/3**

The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations **(SSI 2001/6)**

**HC/01/5/4**

Abridged 3rd report from the Subordinate Legislation Committee

**HC/01/5/5**

Abridged 4th report from the Subordinate Legislation Committee

**HC/01/5/6**

Agenda Item 3

Submission from Community Care Providers Scotland

**HC/01/5/7**

Submission from Scottish Care

**HC/01/5/8**

HC/01/5/A

Agenda Item 4

Increasing the Effectiveness of Committees

**HC/01/5/9**

Agenda Item 4

Committee Business in the Chamber

**HC/01/5/10**

**Agenda item 2**

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**Subordinate Legislation Committee**

**3<sup>rd</sup> Report, 2001**

**ABRIDGED  
Subordinate Legislation**

The Committee reports to the Parliament as follows—

1. The Committee met on 16<sup>th</sup> January 2001 and determined that the attention of the Parliament need not be drawn to the instruments listed at Annexe A.
2. The report is also addressed to the following committees as lead committees for the instruments specified:

Health and Community Care	SSI 2001/3
	SSI 2001/4
	SSI 2001/6

## Negative Instruments

**The Specified Risk Material Amendment (Scotland) Regulations 2001, (SSI 2001/3)**

**The Specified Risk Material Order Amendment (Scotland) Regulations 2001, (SSI 2001/4)**

**The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2001, (SSI 2001/6)**

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**Subordinate Legislation Committee**

**4<sup>th</sup> Report, 2001**

**Subordinate Legislation  
ABRIDGED**

The Committee reports to the Parliament as follows—

1. The Committee draws the attention of the Parliament to the instruments listed at Annexe B.
2. The report is also addressed to the following committees as lead committees for the instruments specified:

Health and Community Care

SSI 2000/453



## Negative Instruments

### **The Feeding Stuffs (Scotland) Regulations 2000, (SSI 2000/453)**

1. The Committee noted that there is one provision of Directive 97/57/EC still to be implemented. With regard to the need for Scottish Ministers to comply with Community Law, the Committee asked the Executive for more information on the expected timescales for implementation.
2. In its response, reprinted at Appendix A, the Food Standards Agency stated that, as indicated at paragraph 5 of the Executive Note, a provision relating to prohibiting the use of additives through non-feed routes had not been implemented. This provision is contained in Article 9k of Directive 96/51/EC. A typing error in that Note gave an incorrect reference for which the Executive apologised.
3. The proposal to ban non-feed use of additives attracted very considerable opposition in the consultations as likely to have an adverse impact on animal welfare and the viability of a range of agricultural operations. The Executive is giving further consideration to the detail of how this could sensibly be implemented in Scotland; the activities which would be prohibited, those which could still be permitted within the scope of the Directive and what transitional or recall arrangements might be necessary in bringing in such a measure.
4. The Regulations have been brought forward at this stage without the non-feed measure, because of practical concerns and potential infraction proceedings directed principally to new controls on materials in feeding stuffs – Directives 96/25 and 98/67.
5. The Agency fully recognises that it continues to be necessary to deal with the outstanding non-feed provision by means of a further Scottish SI. The Agency considers that this should await clarification of the overall pattern of relevant EU legislation from the discussions already in train in Brussels in relation to further legislative provision at a Community level on non-feed use of additives.
6. The Agency does not know when the present discussions will reach a conclusion, but will, in any event, continue to prepare its policy on the basis of existing Community legislation. It is presently intended that the position be resolved before June this year.
7. The Agency has confirmed that, in failing to implement the obligation in question, it is in breach of Community law. There are clearly practical difficulties in doing so, as indicated in the response. Unfortunately, under the Scotland Act the Scottish Ministers have no powers to defer implementation as proposed if to do so is incompatible with Community law. Unavoidably, therefore, insofar as the Regulations fail to implement a Community obligation, they appear to raise a devolution issue.



**8. The Committee therefore draws the instrument to the attention of the Parliament and lead committee on this ground. The Committee also draws the Regulations to the attention of the European Committee for its interest.**

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## **The Health and Community Care Committee**

**7 February 2001**

### **COMMUNITY CARE PROVIDERS SCOTLAND**

#### **REGULATION OF CARE (SCOTLAND) BILL: KEY ISSUES**

##### **Introduction**

CCPS is an independent charitable association representing the interests of care providers in Scotland's voluntary sector. It has 33 members at January 2001. CCPS members are responsible for community care expenditure in excess of £150 million per year.

CCPS has been actively involved in developments and consultations leading up to the publication of the Regulation of Care (Scotland) Bill, including representation on the National Care Standards Committee and the Aiming for Excellence Reference Group.

CCPS also commissioned Professor Stewart Black of the Centre for Public Policy at The Robert Gordon University to conduct a survey assessing the anticipated impact on CCPS members of the new regulatory arrangements outlined in the Bill. The findings of this independent study inform the present briefing paper, although all interpretations of the findings are CCPS's own.

This short paper outlines some of the key initial points that CCPS members wish to make about the Bill. CCPS members are examining the detail of the legislation and there may be additional points to be made in relation to specific sections of the Bill. CCPS will be pleased to furnish the Committee with this information as appropriate.

##### **Support for the Bill**

The research commissioned by CCPS found considerable support among voluntary organisations for the key proposals in the Bill:

- The Scottish Commission for the Regulation of Care will be an independent body, regulating all care services even-handedly regardless of which agency provides them. At the moment, regulation is the responsibility of local authorities, which are also providers and purchasers of care. Although local authorities should inspect their own directly-provided services, those services do not have to be registered and are not subject to the same rigorous standards as services provided by the voluntary sector. The new body will eliminate these differences.
- The Commission will regulate on the basis of national standards. At the moment, each registration and inspection unit draws up its own set of standards, leading to variations in service quality in different parts of Scotland. This is a particular problem for national care providers.

- The Commission will extend the regulatory system to encompass care provided in people's own homes, which is currently only regulated through contract compliance arrangements agreed between individual providers and purchasers. This should introduce greater consistency of service quality and afford greater protection to service users. This measure should also lead to fewer supported accommodation projects needing to be registered as 'care homes', thus promoting greater independence for service users.
- The Scottish Social Services Council will regulate the workforce and set standards in relation to training and qualifications, again providing greater protection to service users.

### Areas of concern

Although CCPS members support the general principles of the Bill, the survey findings point to a number of serious concerns in relation to its specific proposals.

#### (a) Principles

It is disappointing that the Bill does not spell out, in its introductory passage, the purpose of the legislation, what it is intended to achieve, and the principles that underpin it. In this respect, it differs considerably from the Standards in Scotland's Schools etc. Act 2000.

Earlier documents relating to the legislation, including the White Paper *Aiming for Excellence*, set out the 'vision' for care services, shared by CCPS members, which the legislation is intended to bring about; CCPS members would wish to see this on the face of the Bill itself.

#### (b) Resources

As at present, providers will be required to pay fees to the regulatory authority (**Section 20**). However, unlike the present arrangements, under which approximately 20 per cent of the costs of regulation are met by fees, the financial memorandum published alongside the Bill makes it clear that by 2004 the Commission will be expected to be entirely self-financing through fees. This will lead in some cases to a 500% increase in fees.

The Executive states that providers will deal with this, variously, by 'absorbing' the extra cost; by increasing their fees to purchasers; and/or by increasing their charges to service users. CCPS members have very serious doubts about how appropriate such methods are in relation to public services, and about how effective they are likely to be in practice.

A similar issue arises from the powers to be given to the Scottish Social Services Council to make rules as to the course of training or specific qualification required by particular categories of worker. CCPS members have serious concerns about how the training or re-training of currently employed staff will be resourced and are anxious about their ability to comply with the requirements envisaged by the Bill.

A further resource issue arises from the Bill's provisions on registration. A provider will require to register, variously, itself as an agency; its services, separately; and its premises, where these are used to deliver services. There is a

risk that such bureaucratic burdens, particularly for national providers, will overshadow the emphasis on service quality which CCPS members believe should be driving the legislation.

**(c) Definitions of services**

CCPS members are not clear which services are encompassed within the definition of ‘support service’ (**Section 2**), and in particular whether it includes services such as befriending, advice, and supported employment. CCPS appreciates that definitions must be flexible enough to allow for innovation, however the present wording leads to confusion as to how far the regulatory system will extend.

A further issue of definition relates to the distinction between a ‘care home’ and other forms of care which include a residential element, for example sheltered housing or supported accommodation. There are fundamental differences for service users, providers and funding authorities, depending on whether a service with a housing element is registered as a ‘care home’ or not; the Bill does not address these differences. CCPS’s research shows that there is a wide variation between authorities at present as to what is registered as a care home and what is not, depending on the number of hours of care provided, the degree of disability or vulnerability of the service user, and the preference of the authority for a particular form of funding. These variations are likely to continue without a much clearer definition of what constitutes a ‘care home’ for regulatory purposes.

**(d) Registration and inspection**

CCPS members have welcomed the draft national care standards in that they concentrate on the quality of experience of the service user, rather than the fabric of the accommodation in which the service is provided. It is disappointing to note, therefore, that **Section 24** of the Bill confers upon the Commission the power to make regulations in relation to a significant range of other areas relating to provider organisations, including for example a provider’s management arrangements and the keeping of accounts. These matters are already dealt with at a local level through the ‘approved provider’ systems operated by purchasing authorities, and placing these powers with the Commission may result in a significant risk of over-regulation, with attendant burdens and costs on voluntary organisations.

More fundamentally, CCPS members feel that the registration and inspection provisions of the Bill are too similar to the arrangements which are currently in place locally in respect of registered residential accommodation. Yet the Bill is meant to usher in a new regulatory regime which will encompass a much greater range of services, not all of which will be amenable to ‘inspection’ in the traditional sense. There is a sense of a ‘one size fits all’ approach which CCPS members feel is not appropriate.

**(e) Consultation**

The Bill commits Scottish Ministers, the Commission and the Council to continue to consult on arrangements for the new system as they are developed. CCPS supports this, but feels that the commitment could be made stronger. In **Section**

5, for example, **subsection 2** states that Ministers must, before publishing new or amended care standards, 'consult any person they consider appropriate'. CCPS would wish the Bill to state categorically that Ministers must consult voluntary care providers (and others, including service users). Similar commitments to voluntary organisations should appear under **Section 6, subsection 3; Section 24, subsection 10; and Section 40, subsection 4**; in accordance with the Scottish Compact.

We are also concerned that the duty of the Commission and Council to consult each other (**Section 44**) is not strong enough.

## Summary

CCPS members support the key proposals in the Bill and the principles that underlie it. Nevertheless, they have some significant concerns about the likely impact that the legislation will have on them and on their capacity to continue to deliver quality services to the people of Scotland. CCPS would thus wish to see the Bill address:

- the need for Scottish Ministers to fund the Scottish Commission for the Regulation of Care adequately from the centre, rather than rely on fees;
- the need for Scottish Ministers to fund adequately the training or re-training of social services workers within the voluntary sector, to comply with the provisions of the Bill;
- the need to define and specify the services which will be encompassed by the new regulatory system, and in particular how those services will be distinguished from one another for the purposes of regulation;
- the need for the Commission to employ more innovative methods than current registration and inspection arrangements in relation to its work with providers;
- the need for the Commission to focus on standards of care, rather than the internal or structural arrangements within independent provider organisations; and
- the need for Scottish Ministers, the Commission and the Council to consult fully with voluntary organisations, in accordance with terms set out in the Scottish Compact.

### **Agenda item 3**

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## **The Health and Community Care Committee**

**7 February 2001**

### **Submission by Scottish Care on the Regulation of Care (Scotland) Bill**

In making the following comments relating to the proposed Regulation of Care (Scotland) Bill, we have to preface them with our concerns as the largest organisation ever to represent the independent care sector in Scotland. These concerns relate, almost exclusively, to the financial vulnerability of that sector at the present time.

Scottish Care has been at the forefront in calling for and assisting in the establishing of continually improving standards of care both at home and in long stay establishments, but our members have been severely handicapped and extremely disadvantaged by inadequate funding which is seriously restricting the process. **Local authorities should not have suffered the same constraints given the extraordinarily high costs to the taxpayer of them managing their own homes.** We believe that our recently published, independently audited, report “**ELDERLY CARE – RHETORIC OR REALITY**” proves conclusively that “best value” principles are being ignored by local authorities in the placement of men and women assessed for care in their own homes, or in long stay care in residential homes and nursing homes, and it is against that background that we make our comments which we hope are constructive.

1. We would seek clarification on the funding of the Commission and the Council. Are the costs of setting up and maintaining these two bodies to be financed from the existing care budget or from another source?
2. Are they to be self-funded?
3. What level of registration fees will they require to charge?
4. Will there be exemptions of registration fees for voluntary and/or “not for profit” agencies as at present?
5. If so, will these agencies receive exactly the same level of remuneration per resident as the independent sector, and why?
6. Local authorities will be enabled to employ nurses in their own residential homes. Given that local authorities will continue as paymasters for care services, we would contend that they should not be permitted to provide any care services at all. If, however, they are, we would seek clear evidence that they will be regulated by the provisions of the Bill.
7. Section 39 (b): we would suggest that copies of entries in the Council register should be provided free of charge.
8. Section 6 (3): we would seek assurance that any agreed complaints procedure should apply equally to local authorities. We would assume that the independent sector would be included in the consultation process.
9. Section 24 (i): we seek clarification on what “imposed requirements” are envisaged. We would accept that financial viability has to be established by any provider, but we are extremely sensitive about releasing information which might be of interest to our competitors. (eg: local authorities).
10. Section 29 : we seek clarification as to the circumstances in which a part of the register may be closed.

11. Section 45: we presume that because the Complaints Procedure is to be exercised by the Commission and Council, there will be recourse to arbitration in case of dispute.

In conclusion, we welcome the Bill as it may begin to end certain conflicts of interest which have not served those for whom we care to best advantage. We are naturally concerned that the implementation of the legislation should not increase the burgeoning cost pressures on an independent sector already in grave peril.

Joe Campbell  
CHAIRMAN

2<sup>nd</sup> February 2001