



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Health, Social Care and Sport Committee

**Tuesday 13 June 2023**

**Session 6**



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**Tuesday 13 June 2023**

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**HEALTH, SOCIAL CARE AND SPORT COMMITTEE**  
**21<sup>st</sup> Meeting 2023, Session 6**

**CONVENER**

\*Clare Haughey (Rutherglen) (SNP)

**DEPUTY CONVENER**

\*Paul Sweeney (Glasgow) (Lab)

**COMMITTEE MEMBERS**

\*Stephanie Callaghan (Uddingston and Bellshill) (SNP)

\*Sandesh Gulhane (Glasgow) (Con)

\*Emma Harper (South Scotland) (SNP)

\*Gillian Mackay (Central Scotland) (Green)

\*Carol Mochan (South Scotland) (Lab)

\*David Torrance (Kirkcaldy) (SNP)

\*Evelyn Tweed (Stirling) (SNP)

Tess White (North East Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Jackie Baillie (Dumbarton) (Lab)

Katy Clark (West Scotland) (Lab)

Jenni Minto (Minister for Public Health and Women's Health)

Sue Webber (Lothian) (Con) (Committee Substitute)

**CLERK TO THE COMMITTEE**

Alex Bruce

**LOCATION**

The Robert Burns Room (CR1)



**Scottish Parliament**  
**Health, Social Care and Sport**  
**Committee**

*Tuesday 13 June 2023*

*[The Convener opened the meeting at 09:00]*

**Decision on Taking Business in**  
**Private**

**The Convener (Clare Haughey):** Good morning, and welcome to the 21st meeting in 2023 of the Health, Social Care and Sport Committee. I have received apologies from Tess White; Sue Webber will join us as a substitute.

The first item on our agenda is to decide whether to take item 3 in private. Do members agree to do so?

**Members indicated agreement.**

**Patient Safety Commissioner for**  
**Scotland Bill: Stage 2**

09:00

**The Convener:** Our second agenda item is consideration of the Patient Safety Commissioner for Scotland Bill at stage 2. I welcome the Minister for Public Health and Women's Health, Jenni Minto, and her officials.

I will explain the procedure briefly for anyone who is watching.

All members should have a copy of the bill as introduced, the marshalled list of amendments, which was published on Thursday 8 June, and the groupings of amendments paper, which sets out the amendments in the order in which the groups will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. Given that we have other business this morning, I encourage members to ensure that contributions are concise and to the point.

If members who have not lodged amendments in the group wish to speak, they should indicate that by catching my attention. I will conclude the debate on the group by inviting the member who moved the first amendment in the group to wind up. If the minister has not already spoken to the group, I will invite her to contribute to the debate.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press it to a vote, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, we will immediately move to the vote on the amendment.

If a member does not want to move their amendment when called, they should say, "Not moved." Please note that any other member may move the amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in any division is by a show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote. Once voting has been completed, the clerks will check the result and pass it to me to read out. If any member considers that their vote has been

incorrectly recorded once I have read out the result of the vote, they should let me know as soon as possible, please. I will pause to provide some time for that.

The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put a question on whether each section is agreed to at the appropriate point.

### **Schedule 1—The office of Patient Safety Commissioner for Scotland**

**The Convener:** Amendment 11, in the name of Tess White, is in a group on its own.

**Sandesh Gulhane (Glasgow) (Con):** I draw members' attention to my entry in the register of members' interests, which states that I am a practising national health service general practitioner.

Amendment 11, in the name of Tess White, is a probing amendment to facilitate debate about the length of time that a commissioner should serve in a single term. The amendment would reduce that period from eight years, which is currently in the bill, to five years. As a point of comparison, the Patient Safety Commissioner for England is appointed for a term of three years, with the possibility of a second term.

I note from the bill's policy memorandum that the period of appointment was chosen because it is in line with the terms and conditions of other parliamentary commissioners. Those were standardised 13 years ago by the Scottish Parliamentary Commissions and Commissioners etc (Scotland) Act 2010. In the intervening period, the commissioner system has not been substantively evaluated. Meanwhile, as the Finance and Public Administration Committee and the Scottish Parliamentary Corporate Body have highlighted, the number of commissioners could rise from seven to as many as 14. That would be a significant and expensive extension of the public sector. It should follow that the tenure in office is considered as a question of good governance.

I recognise that the bill includes provision for early termination and gives the SPCB some flexibility in the area. Nevertheless, the period in post that is provided in statute matters, because commissioners need to consistently demonstrate that they are serving the public interest as well as the public purse. I will welcome input from the minister and other members on that point.

I move amendment 11.

**The Convener:** Before I go to the minister, I need to check that the committee agrees to section 1.

*Section 1 agreed to.*

**Jenni Minto (Minister for Public Health and Women's Health):** I do not support amendment 11. The commissioner will need sufficient time in post to understand the patient safety landscape, gather sufficient information, carry out any investigations that they feel are necessary and see their recommendations lead to change. Eight years is the standard period of office for all Scottish parliamentary commissioners. A commitment has been made to the Presiding Officer that the patient safety commissioner will be as consistent as possible with existing procedures to reduce the burden on the Scottish Parliament. I therefore ask Sandesh Gulhane not to press amendment 11.

**The Convener:** I call Sandesh Gulhane to wind up and press or withdraw amendment 11.

**Sandesh Gulhane:** I am keen to see whether we can facilitate a discussion between now and stage 3 about where the issue might sit but, for now, I seek to withdraw amendment 11.

*Amendment 11, by agreement, withdrawn.*

**The Convener:** Amendment 12 is grouped with amendments 13, 20 and 32.

**Sandesh Gulhane:** Amendments 12, 13 and 20, on reviewing the commissioner's work, are all related. The main amendment is amendment 20, which would insert a new section on performance monitoring. It would require the commissioner to consult the Scottish Parliamentary Corporate Body, the advisory group that is outlined in the bill, as well as the most appropriate parliamentary committee, on a set of performance standards against which the commissioner believes their performance should be judged. Amendment 12 requires that a review of the commissioner's performance as assessed against those standards be included in the annual report that is to be laid before the Scottish Parliament.

Amendment 13 requires that the most appropriate parliamentary committee must propose a debate on the annual report.

When the minister's predecessor came before the committee to give evidence on the bill, I inquired how the commissioner will be evaluated to ensure that the office-holder is doing what we expect them to be doing. Let us not forget that it came across loud and clear during stage 1 that the public will have high expectations of the commissioner. The minister and her official said that

"There will be a strong role for Parliament in scrutinising what the commissioner does"

and that Parliament will be

"the primary means of holding the commissioner to account through its responsibility to the people of Scotland."—

[Official Report, Health, Social Care and Sport Committee, 14 March 2023; c 3-6.]

I welcome that the commissioner will be independent of Government, and that the line of accountability for the role will be to the Scottish Parliament. However, I would like to see a tangible set of standards to better facilitate scrutiny of the commissioner's performance by parliamentarians. In so doing, we will not just be ensuring that the patient safety commissioner serves the public interest to the highest possible standard; we will be looking at the effectiveness and value of the commissioner as part of a system that is likely to expand in the future.

Amendment 32 requires that an appropriate parliamentary committee must examine how the commissioner and the existing patient safety landscape are working together. As Baroness Cumberlege emphasised in her evidence to the committee during stage 1, the patient safety commissioner is supposed to be the "golden thread" running through a patient safety landscape that is already saturated. That is the intention, but is it possible to deliver that? Organisations such as the Scottish Public Services Ombudsman have raised concerns about the potential for duplication.

Once the office-holder has had time to bed in, it will be appropriate to review how the relationship is working in practice. I should add that the proposed new section includes a provision that examines how patient safety organisations have implemented the commissioner's recommendations, which is an issue that was highlighted during stage 1.

Very little evaluation or research has been carried out on commissioners. The Scottish Conservatives support the creation of a patient safety commissioner, but we also want to consider the detail carefully, especially that which relates to the relationship between the commissioner and the Scottish Parliament. I would be happy to work with the minister and her team to ensure that we get the approach right.

I move amendment 12.

**Jenni Minto:** I do not support the amendments in this group. Amendments 12 and 20 would require the commissioner to set performance standards for their own office and then to report against those standards in their annual report. Although I agree entirely that there is a need for a robust system to monitor the commissioner's performance, I am not convinced that those amendments add anything—apart from a burden of more paperwork—to what is already in the bill.

The bill already obliges the commissioner to produce a strategic plan of activity and to include a review of their activities in their annual report. It seems right to me that it is against that plan of

activity, as well as against feedback from patients and from this committee, that the commissioner's performance should be assessed. I find the idea that the commissioner should have to come up with a separate set of performance standards to be assessed against to be an odd one, which is likely only to muddy the waters regarding what the true expectations of the commissioner should be.

It seems to me that the time and resource that the commissioner would have to spend coming up with further standards and then consulting on them, as amendment 20 would require, would be better spent in getting on with the job of speaking up for patient safety. The bill as drafted already contains an element of annual reporting, but it must be remembered that some of the commissioner's work will take time to achieve and might become apparent only outwith an annual reporting cycle.

Amendment 13 would require the committee to propose a debate in Parliament, about the commissioner's annual report, every year. The committee is already free to propose a debate about the commissioner at any time. There is no requirement for legislation to create that right and using the law to tell Parliament, ourselves and our successors what to spend time on risks setting an unwelcome precedent. We should trust those who are elected to this place to know which issues matter to their constituents.

The same point can be made about amendment 32, which would require Parliament to arrange a review of the commissioner within three years. If dissatisfied with the commissioner, the committee would be able to carry out an investigation into their work and to report on that to Parliament. However, Parliament already has scope to review the commissioner's work and role in whichever way we deem appropriate, which includes looking at the commissioner's place in the pre-existing patient safety landscape. It seems to me that amendment 32 would serve only to tie the commissioner's hands regarding the approach that they might want to take and might break the golden thread that Dr Gulhane spoke about. I therefore urge members not to agree to the amendments in the group.

**The Convener:** No other member has indicated that they wish to speak, so I invite Sandesh Gulhane to wind up.

**Sandesh Gulhane:** I disagree. What we have in the bill at the moment is a strategic plan, which looks at where the commissioner wants to go, and we have some annual reporting. It seems to me to be very sensible that a public body should say what its plan for a year is, and that it should then report against that plan. That is what I would expect most public bodies to do, and I think that the public expect public bodies to do that, so that

people are aware of where their money is being spent and how the body—in this case, the commissioner—is going about their job.

I therefore press amendment 12.

**The Convener:** The question is, that amendment 12 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

**Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 12 disagreed to.*

*Amendment 13 moved—[Sandesh Gulhane].*

**The Convener:** The question is, that amendment 13 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

**Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 13 disagreed to.*

*Schedule 1 agreed to.*

## Section 2—Functions

09:15

**The Convener:** Amendment 14, in the name of Jackie Baillie, is grouped with amendments 15, 29 to 31 and 34.

**Jackie Baillie (Dumbarton) (Lab):** I am grateful to the committee for allowing me to come along to

move amendment 14 and to speak to the other amendments in the group. I believe that they will go some way towards righting past wrongs and, if agreed to, will ensure that patients who have been seriously injured or harmed in a healthcare setting and—even more tragically—those families who have lost a loved one in such circumstances are never again left struggling to get answers and justice. In effect, this set of amendments is the basis for putting Milly's law into effect.

The scandal at the Queen Elizabeth university hospital shows in all too obvious a way how families have to battle simply in order to get answers to what has happened. Even in recent days, we have heard horrifying stories of health boards spying on bereaved families who are seeking justice for their loved ones. I am sure that all of the committee will agree that that is absolutely shameful.

However, it is not the first time that there has been major injury or harm in a healthcare setting. Perhaps I can take as an example for the committee my own experience, with the Clostridium difficile scandal that we had at the Vale of Leven hospital and where having a patient safety commissioner would have been so valuable. I am minded—as we all are—that an independent inquiry is under way, and I do not wish to interfere with that process. However, with the Patient Safety Commissioner for Scotland Bill, we have an opportunity to ensure that families such as those of Milly Main and Andrew Slorance—and, indeed, the C diff families—will never again be left crying out for help, for answers, for support and, yes, for justice.

Let me address the amendments in turn. Amendment 14 would add to the duties of the patient safety commissioner for Scotland, meaning that they would be required

“to advocate for those affected by a major incident”,

while amendment 34 defines the term “major incident” itself.

Amendment 30 would introduce a new section to the bill relating to the commissioner's role in becoming aware of a major incident, including their contacting

“patients affected by ... and the families of patients who died”

because of a major incident and providing

“relevant information including ... sources of support ... information on accessing legal advice and representation ... details of any investigations or inquiries relating to the major incident”

and advice to whistleblowers. Significantly, the amendment would also require the commissioner to consider initiating “a formal investigation” into



an incident within one year of their becoming aware of it.

Amendment 31 would require the commissioner to

“produce and publish a charter for those affected by major incidents”.

The charter, which would be consulted on, would

“include ... the obligations of public bodies in relation to affected patients”

and their families, which will be critical in holding such public bodies to account. As an illustration, we know, for instance, that although the duty of candour may exist in principle in Scotland’s NHS, that is not the lived experience of those who have had to fight for answers.

Under amendment 29, where the commissioner completes a formal investigation, they would be required to provide a copy of their report into the incident to both the police and the Crown Office and Procurator Fiscal Service. The amendment also confirms that the report could be used in legal proceedings.

Although, under the bill as it stands, the patient safety commissioner does not have the power to “make ... redress”, “assist” those “seeking redress” or “opine on” actions that should be taken in relation to individuals, amendment 15 would ensure that major incidents, specifically, are exempt from that. That will, of course, be critically important.

The amendments would empower the patient safety commissioner for Scotland to be an advocate for people who have been let down by the system in a healthcare setting and ensure that the people who are affected by such scandals are supported in knowing their rights and getting the appropriate help. We must ensure that those people are listened to and that thorough investigations that can be used in legal proceedings are undertaken. Most important, this is about getting answers.

I move amendment 14.

**Jenni Minto:** I thank Jackie Baillie for her powerful words. None of us should ever forget in these discussions that the bill is about ensuring that people and their families can benefit from safer care in the future. That is at the forefront of my mind every day and I know that the same will be true for everyone around the table. I know how much of an advocate Jackie Baillie has been for patients and I thank her again for that.

We all want the patient safety commissioner to amplify the voice of patients and drive improvements in safety, and it is important that they have the freedom to do that however they see fit. I would absolutely expect that the

commissioner would wish to hear from bereaved families as well as affected patients when they wished to raise an issue relating to patient safety, including in the sorts of circumstances that Jackie Baillie has mentioned.

It is critical that we do not inadvertently tie the commissioner’s hands in that respect. Everything that we are doing with the bill is intended to ensure that the commissioner has the freedom, scope and authority to set their own agenda without fear or favour, to speak up for patients and to drive improvements. Writing very specific steps for the commissioner into the bill would risk getting in the way of their doing that kind of work and working to prevent major patient safety issues from developing in the first place.

The key functions of the commissioner’s role are set out in section 2(1) of the bill. In particular, they are:

“(a) to advocate for systemic improvement in the safety of health care, and

(b) to promote the importance of the views of patients and other members of the public in relation to the safety of health care.”

I am concerned that the amendments in this group would limit the commissioner’s ability to do that. They risk clouding the public’s understanding of the commissioner’s role and would represent a significant departure from the extent of their current remit and from what was agreed at stage 1. Indeed, the committee agreed at stage 1 that it was appropriate for the commissioner not to become involved in resolving individual cases, as avenues for that already exist. It is critical to let the commissioner be guided by patients and families, not by politicians, on what action they need to take.

Following a major incident, the commissioner would have an important role in gathering information from people who were affected and investigating whether a systemic issue had led to it. There is nothing to prevent the commissioner from doing that through the powers and functions that exist in the bill. I therefore urge members not to agree to the amendments.

**Jackie Baillie:** I am surprised at the minister’s response, given the fact that the First Minister issued warm words on accepting the need for Milly’s law. Clearly, wires have got crossed somewhere.

My experience of what has happened for a lot of bereaved families is that public inquiries have been fought for; they have taken years to set up and conclude; and, meanwhile, families have had to live every day with the pain of justice delayed in relation to the loss of their loved ones. Making legislation clear is something that the Parliament should be about. Leaving things at such a high

level that they are entirely open to interpretation is not helpful in cases such as the one that we are discussing. I was going to say that I would be happy to work with the minister and bring something back at stage 3, but, given the absolute nature of her response to me, I will press the amendments to a vote.

**The Convener:** The question is, that amendment 14 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

**Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 14 disagreed to.*

**The Convener:** Amendment 1, in the name of the minister, is grouped with amendment 28.

**Jenni Minto:** I have lodged amendment 1 in response to calls from stakeholders, and an emphasis by the committee in its stage 1 report, on the need for a co-operative approach to patient safety. I whole-heartedly agree with that principle, and therefore I am keen to clarify, with this amendment, that we expect such a co-operative spirit to extend to all public authorities that have functions relating to healthcare, as well as to healthcare providers.

I do not feel able to support Carol Mochan's amendment 28, because, although we are all hopeful and expectant that a spirit of collegiate working to improve patient safety will extend as far as possible, I am mindful that we cannot propose to Parliament an amendment that is outside its competence. We are just not able to impose a duty on the Patient Safety Commissioner for England.

I move amendment 1.

**Carol Mochan (South Scotland) (Lab):** I lodged amendment 28 in response to the stage 1 report, which highlighted the Scottish Public Services Ombudsman's comments with regard to clarity on the relationship between the patient safety commissioner for Scotland and the broader landscape.

My amendment puts the necessary requirements on

"Each person named in section 15(2)(d)"

to

"co-operate with the Commissioner in the exercise of their respective functions"

and on the commissioner to

"co-operate with each person named in section 15(2)(d) in the exercise of their respective functions."

I believe that that would be a positive step towards ensuring strong working relationships between the patient safety commissioner and the relevant individuals listed, in order to meet statutory obligations. It also acts on the recommendations that the Scottish Public Services Ombudsman made in evidence.

As was mentioned in the stage 1 report, the manner of dealings can vary, but I urge the minister to reconsider amendment 28 as an initial step towards ensuring that the parameters of the relationship are set out and that there is co-operative working across the board in the exercise of statutory obligations. Again, I ask the minister to reconsider her previous comments.

**Jenni Minto:** In respect of amendment 1, our aspiration for the patient safety commissioner is that they work in a co-operative way as much as possible. Although I am unable to support Carol Mochan's amendment 28, due to its seeking to impose a duty that is outwith our competence, I do not disagree with the spirit in which it has, I think, been lodged. In the event that the member moves the amendment, though, I urge members not to support it, on account of the competence issues that it presents.

*Amendment 1 agreed to.*

**The Convener:** Amendment 15, in the name of Jackie Baillie, has already been debated with amendment 14. Ms Baillie, do you wish to move or not move the amendment?

**Jackie Baillie:** I definitely move amendment 15, convener.

**The Convener:** The question is, that amendment 15 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)

**Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Gulhane, Sandesh (Glasgow) (Con)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)

Mackay, Gillian (Central Scotland) (Green)  
 Torrance, David (Kirkcaldy) (SNP)  
 Tweed, Evelyn (Stirling) (SNP)  
 Webber, Sue (Lothian) (Con)

**The Convener:** The result of the division is: For 2, Against 8, Abstentions 0.

*Amendment 15 disagreed to.*

*Section 2, as amended, agreed to.*

### Section 3—Principles

**The Convener:** Amendment 16, in the name of Paul Sweeney, is grouped with amendments 17 to 19, 3 to 5, and 21.

09:30

**Paul Sweeney (Glasgow) (Lab):** Amendment 16 would require that the commissioner's statement of principles included a commitment to involving underrepresented groups in the commissioner's work.

In committee evidence, the patient safety issues that were raised, such as valproate and mesh, were issues that disproportionately impacted on women. The mesh scandal is perhaps one of the most commonly known examples of an issue regarding which a group—in this case, a group of brave and unrelenting women, many of whom had to seek recourse through the Citizen Participation and Public Petitions Committee—had to try exceptionally hard to have their voices heard.

Dr Arun Chopra of the Mental Welfare Commission for Scotland told the committee that, despite marginalised groups being predominantly affected by patient safety events, groups such as ethnic minorities are not well represented in patient safety data. By including underrepresented groups in the statement of principles, amendment 16 would ensure that marginalised groups remain visible in consideration of patient safety issues, and would, I hope, give everyone equal recourse to advocacy, so that having their voice heard was a right and not a privilege.

Amendment 16 proposes to insert, at the end of line 11 on page 2:

"The statement of principles must include the principle that the Commissioner will seek to involve categories of people that the Commissioner considers to be under-represented in health care in the Commissioner's work."

I move amendment 16.

**Sandesh Gulhane:** Amendments 17, 18 and 19, in the name of Tess White, relate to the statement of principles, which is currently not clearly defined, in section 3 of the bill.

Amendment 17 would require that the commissioner must include the principle that they

"will seek the views of staff working in the National Health Service Scotland on ... safety concerns".

That responds to the point that was raised by the Royal College of Nursing that, even though pathways are already established for NHS staff to raise concerns about safety within their health board, they do not always feel that those concerns are heard or addressed. The Scottish Government undertook to review the bill to ensure that the commissioner could hear from staff, but it is not clear from the minister's amendments that that has been carried out. I would appreciate some clarity from the minister on that specific point.

I note that amendment 16, in the name of Paul Sweeney, includes the principle that people who are underrepresented in healthcare will be involved in the commissioner's work. The Scottish Conservatives fully support that amendment.

Amendment 18 provides more detail about what the statement of principles should include. It does not seek to be prescriptive, as I agree that the commissioner should have the freedom to establish their own principles. That is reflected in the drafting of amendment 18. Amendment 18 would provide more detail in the bill about the areas that the commissioner should consider when drafting those principles.

Amendment 19 would create a duty to consult on the principles with

"stakeholders ... the Parliamentary corporation ... the advisory group"

and, crucially, the relevant committee of the Scottish Parliament. I note that the Scottish Government has lodged a similar amendment about consulting on the principles, which covers the strategic plan as well. I do not have an issue with that approach, but the minister's amendment 5 does not include in its list of consultees a parliamentary committee. I would like clarity from the minister as to whether she would consider including that in the bill ahead of stage 3.

Amendment 21 creates a duty on the commissioner to have an annual work programme. That is not designed to be onerous, as I appreciate that the commissioner must also produce a strategic plan and the statement of principles. The key point, though, is that the principles will inform the way that the commissioner works and the strategic plan will set out objectives and priorities for a period of as long as four years. The work programme is intended to be far more agile—an agile document that is produced every year—and to give the commissioner the opportunity to consider the resources that are required for carrying out their work. It is worth reflecting on the Patient Safety Commissioner for England's recognition, after a

short period in post, that more resources will be required to support her work.

I have shared with the minister the possibility of pooling human, financial and legal resources among commissioners to mitigate the costs of office-holders, where possible. As we look at the underpinnings of the commissioner at stage 2, and as we move into stage 3, it is worth considering how we can facilitate value for money in the commissioner system.

**Jenni Minto:** I am keen to ensure that patients who are underrepresented are sought out for greater involvement. I have listened carefully to what Paul Sweeney has said about amendment 16 and about the importance of focusing the commissioner on hearing from those who, too often, are not heard from. I agree with that. I cannot support his amendment, however, because the way that it is expressed might not quite capture what is intended. Being “underrepresented in health care” is not necessarily the same as being underlistened to. It is very much part of the problem that some groups are overrepresented in the amount of healthcare that they need and those are precisely the groups with the softest voices. I invite Paul Sweeney not to press amendment 16 and to work with us to bring this important issue back at stage 3.

Amendments 3 to 5 in my name will impose the same consultation requirement on the commissioner in relation to the principles as apply to the strategic plan, including in particular a requirement to consult those whom the commissioner considers appropriate, to ensure that the principles in the strategic plan reflect patients’ concerns. The amendments give effect to a recommendation in the committee’s stage 1 report. The Government agrees with the committee that it is important for stakeholders’ voices to be taken account of when formulating the principles as well as the strategic plan.

Amendment 19, in the name of Tess White, shares some common ground with my amendment 5, as Sandesh Gulhane noted, in that it would require the commissioner to consult on the statement of principles. It also adds an explicit requirement for them to consult with the relevant parliamentary committee. I cannot support amendment 19 because, if amendment 5 is agreed to—as, I hope, it will be—the bill would end up with a duplicate consultation duty. I ask Sandesh Gulhane, on behalf of Tess White, not to move amendment 19, and ask Tess White, if she is willing, to work with us to bring an amendment back at stage 3.

I am also unable to support Tess White’s amendment 17. Although I agree that, as part of investigating and monitoring potential patient safety issues, the commissioner will wish to hear

from staff, they are already empowered to do so. Placing a requirement on the commissioner by way of a principle that they will seek the views of staff risks cutting across their focus on patients’ voices.

Amendment 18, in the name of Tess White, would add a number of things that the statement of principles must include. A few of the items that are listed could be described as principles, but some would more appropriately sit within the strategic plan that is required by section 5 and, indeed, already do. An example is how the issues to be investigated will be identified. The commissioner’s purview is already defined in section 2(1). Amendment 18 refers to the setting of a

“threshold for opening an investigation”.

The varied nature of concerns that the commissioner may investigate means that trying to define a threshold that would be appropriate in all cases will be difficult. The Government’s view is that the commissioner should be trusted to exercise independent judgment about when to instigate an investigation within the framework of the commissioner’s strategic plan and principles. The Parliament can then hold the commissioner to account for those decisions. Therefore, I ask members not to support amendment 18.

For a similar reason, I cannot support amendment 21 in the name of Tess White. Producing a work programme, much of the content of which is already covered in the strategic plan, would use up the commissioner’s resources. The additional requirement to set out the work that the commissioner intends to undertake in the next year would not leave adequate space for them to react to new and emerging issues of patient safety. For those reasons, I ask members not to support amendment 21.

I request that Paul Sweeney, and Sandesh Gulhane on behalf of Tess White, do not press amendment 16 or move amendment 19, and that members do not agree to amendments 17, 18 and 21.

**The Convener:** I call Paul Sweeney to wind up.

**Paul Sweeney:** I thank the minister for her response. I am heartened by her indication that she is willing to co-operate on the wording of an amendment to be lodged at stage 3. On that basis, I am content to rest and I will not press amendment 16 to a vote.

*Amendment 16, by agreement, withdrawn.*

**The Convener:** Amendment 17, in the name of Tess White, has already been debated with amendment 16.

**Sandesh Gulhane:** Given the minister's reassurance, I will not move the amendment.

*Amendment 17 not moved.*

*Amendment 18 moved—[Sandesh Gulhane].*

**The Convener:** The question is, that amendment 18 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

**Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Clare (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 18 disagreed to.*

**The Convener:** Amendment 19, in the name of Tess White, has already been debated with amendment 16.

**Sandesh Gulhane:** We are happy to work with the minister, so I will not move amendment 19.

*Amendment 19 not moved.*

*Section 3 agreed to.*

**After section 3**

*Amendment 20 moved—[Sandesh Gulhane].*

**The Convener:** The question is, that amendment 20 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Gulhane, Sandesh (Glasgow) (Con)  
Webber, Sue (Lothian) (Con)

**Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Clare (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**Abstentions**

Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)

**The Convener:** The result of the division is: For 2, Against 6, Abstentions 2.

*Amendment 20 disagreed to.*

**Section 4—Inclusive communication**

**The Convener:** Amendment 2, in the name of the minister, is in a group on its own.

**Jenni Minto:** I lodged amendment 2 in response to the committee's recommendation to remove section 4 of the bill as drafted on the basis that it is already provided for in the Equality Act 2010.

I move amendment 2.

**The Convener:** There is no indication that anyone else wishes to speak. Do you wish to wind up, minister?

**Jenni Minto:** Although I have moved an amendment to drop section 4, recognising that there is existing legislative provision in the Equality Act 2010, I whole-heartedly encourage any steps by the commissioner to embrace the spirit of such communication in their public-facing activity.

*Amendment 2 agreed to.*

*Section 5 agreed to.*

**Section 6—The planning process**

*Amendment 3 moved—[Jenni Minto]—and agreed to.*

**Section 7—Frequency of planning**

*Amendment 4 moved—[Jenni Minto]—and agreed to.*

*Section 7, as amended, agreed to.*

**After section 7**

*Amendment 5 moved—[Jenni Minto]—and agreed to.*

*Amendment 21 moved—[Sandesh Gulhane].*

**The Convener:** The question is, that amendment 21 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Gulhane, Sandesh (Glasgow) (Con)  
Webber, Sue (Lothian) (Con)

**Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Clare (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 2, Against 8, Abstentions 0.

*Amendment 21 disagreed to.*

*Sections 8 to 11 agreed to.*

#### After section 11

09:45

**The Convener:** Amendment 22, in the name of Paul Sweeney, is in a group on its own.

**Paul Sweeney:** Sections 10 and 11 of the bill as drafted outline the requirement for the commissioner to prepare a report following any formal investigation, as well as the requirement for a person to respond to any recommendations made to them in a commissioner's report.

Amendment 22 would give the commissioner the power to make a special report if it were to appear that recommendations made in their initial investigation report had not been, or would not be, implemented. A special report would be sent to the persons to whom the formal investigation report was sent in the first instance, and a copy would be laid before the Scottish Parliament. Further, the report could also be made public if the commissioner considered that to be appropriate.

In committee evidence, patient groups cited a need for accountability. Marie Lyon, from the Association for Children Damaged by Hormone Pregnancy Tests, said that, up to now,

"people have tended to get away with it. There has never been accountability and there have never been consequences."—[*Official Report, Health, Social Care and Sport Committee*, 7 February 2023; c 22.]

Where there is a concern about patient safety, and where changes need to be made, bodies cannot be left to mark their own homework. The commissioner can be effective only if they have the ultimate option of escalating matters if recommendations are dismissed or ignored by the relevant authorities, and I believe that my proposed amendment would give the commissioner the teeth that they need in order to ensure that necessary changes are implemented. I believe that that would be a proportionate enhancement of the commissioner's powers.

I move amendment 22.

**Jenni Minto:** I do not support amendment 22, which would allow the commissioner to make a special report on any recommendations from a previous report that they felt had not been, or would not be, implemented. The bill expressly gives the commissioner power to publish information on the implementation, or not, of their recommendations. The amendment is therefore superfluous.

I am also concerned that requiring the commissioner to lay before Parliament a report about actions that they felt would not be implemented could leave them open to defamation actions, as it anticipates or speculates about wrongdoing by others.

I urge members not to vote for amendment 22.

**Paul Sweeney:** I note the minister's comments, but a critical point of discussion at stage 1 was about the fundamental principle that reports are often simply ignored because there is no method for sanction or accountability. Amendment 22 was lodged in that spirit. Other public sector bodies—most notably, the Health and Safety Executive—have powers of compulsion to ensure that recommendations are implemented, and therefore have the capacity to sanction organisations or authorities that do not comply.

Although that might be thought to be overly onerous in this instance—perhaps it would have a chilling effect on health boards and others co-operating with the commissioner—my amendment 22 is an effort to strike a balance. It would not provide the commissioner with the sort of punitive powers that the Health and Safety Executive might have to shut premises down, for example, but it would give the commissioner the capacity to highlight areas in which the recommendations were merely ignored or simply noted by authorities and not actioned. By offering a method of naming and shaming authorities that do not comply or co-operate with the commissioner, my amendment would give the commissioner some degree of leverage to ensure that recommendations are implemented.

I note the minister's point about the risk of defamation actions. That is a judgment that would be made on a case-by-case basis, based on legal advice. I do not think that the commissioner would knowingly prejudice or expose themselves in that way, so it is an unnecessary overreach to suggest that my amendment 22 would create such a liability. We are all subject to that liability because of the lack of parliamentary privilege in the Scottish Parliament. Improvement across the board is necessary in that respect.

Therefore, I press amendment 22, which I think is entirely reasonable.

**The Convener:** The question is, that amendment 22 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

### Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
 Harper, Emma (South Scotland) (SNP)  
 Haughey, Claire (Rutherglen) (SNP)  
 Mackay, Gillian (Central Scotland) (Green)  
 Torrance, David (Kirkcaldy) (SNP)  
 Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 22 disagreed to.*

**The Convener:** Amendment 23, in the name of Katy Clark, is in a group on its own.

**Katy Clark (West Scotland) (Lab):** I lodged amendment 23 having worked with campaigners who are suffering from debilitating chronic pain and life-altering injury after undergoing a mesh procedure.

Members will be aware of previous debates about transvaginal mesh and the detrimental impact that it has had on many lives. The mesh that is used in procedures such as hernia operations is different, but a significant number of people who have had hernia mesh procedures are experiencing health issues that are similar to those that were faced by women who were implanted with transvaginal mesh.

I have been contacted by a number of women and men who are affected. However, the lack of data means that we cannot establish the true scale of the issue. I have tried to gather data on the issue by submitting freedom of information requests to every health board in Scotland. I wanted to know the number of patients with a hernia who were treated with surgical mesh and who were subsequently readmitted to hospital because of complications arising from the mesh. Most health boards did not provide that information, but those that did supplied data that is concerning. NHS Ayrshire and Arran revealed that 8 per cent of all patients with a hernia who were treated with surgical mesh were subsequently readmitted to hospital because of complications arising from the mesh. In NHS Lanarkshire, that figure rose to 10 per cent.

Campaigners such as my constituents Roseanna Clarkin and Lauren McDougall have sought meetings with successive ministers to discuss an independent review of the use of surgical mesh and fixation devices in the national health service. So far, ministers have refused to meet those campaigners or to recognise the need for an independent review. I hope that my probing amendment will enable the minister to reconsider the issues and the need for a meeting, and to look at the case for an independent review.

Amendment 23 would require the patient safety commissioner to undertake an investigation into the use of surgical mesh within the first year of

their appointment. The purpose of the investigation would be threefold: it would establish the scale of use of surgical mesh to treat hernias; it would provide data on the number of patients with a hernia that was treated using mesh who have subsequently been readmitted to hospital because of complications arising from the mesh; and it would outline the number of complaints that health boards have received from patients about complications arising from mesh and the details of those complications. The patient safety commissioner would then be expected to reach a conclusion on whether NHS Scotland should suspend the use of surgical mesh to treat hernias.

I do not intend to press amendment 23 to a vote today, but I will listen carefully to what the minister says. I hope that she will engage with people who have been affected, look into the issues further and explore the need for an independent review.

I move amendment 23.

**Jenni Minto:** I am very sorry to hear that some patients have reported complications after having received a hernia mesh implant. I am grateful to Katy Clark for all her efforts in this area and to the patients who have raised concerns, including those who have petitioned the Parliament. Officials and ministers, including the former First Minister, have heard directly from patients, and we have listened carefully and taken their concerns very seriously.

In the chamber a couple of weeks ago, Katy Clark asked me for a meeting. I believe that my officials have been in touch about their meeting her. Once that has happened, we can review the situation.

As a result of what patients have told us, the Government commissioned the Scottish Health Technologies Group to produce two reports on use of hernia mesh. The reports, which are based on current published evidence, support the continued use of mesh in abdominal wall and groin hernia repairs. The reports stress the importance of shared decision making and informed consent, and they emphasise the importance of choice and the availability of alternative treatments for people who want them. We have discussed the findings with professional bodies, including the relevant royal colleges and the British Hernia Society. We will continue to work with them on this important issue.

The chief medical officer has asked medical directors to consider the development of local clinical groups and broader clinical networks for the management of complex cases. Furthermore, there is work on-going with regard to establishing registries to encourage better data collection, which will provide important surveillance and outcome information in the future.

It is therefore clear that the Government is listening and acting on the concerns that have been expressed. However, it is important that the action that we take is proportionate. There seemed to be broad consensus on that point when the Parliament debated the issue in January. The Government is thus of the opinion that further review is not warranted.

I am unable to support amendment 23, but I am happy to discuss the issue further, perhaps in the lead-up to stage 3. By legislating for a particular strand of work, the amendment risks undermining the independence of the commissioner. The commissioner should be able to decide their own priorities based on the concerns that patients raise with them. It is important that the commissioner is forward facing and uses their time to gather information and horizon scan for potential patient safety issues.

I urge members not to vote for amendment 23.

**Katy Clark:** As I have indicated, I do not plan to press amendment 23 to the vote. However, I fear that this is not an issue that will go away, because the injuries that are suffered by the people who are affected are significant. The minister is, of course, the decision maker in this matter. I look forward to engaging further with her on the issue, and I strongly urge her to meet campaigners and to give further consideration to these matters.

*Amendment 23, by agreement, withdrawn.*

### Section 12—Power to require information

**The Convener:** Amendment 6, in the name of Jenni Minto, is grouped with amendments 7 to 9, 24, 25, 10, 26 and 27.

**Jenni Minto:** Amendments 6 to 9, in my name, are intended to ensure that the commissioner can require relevant information from all relevant health bodies, and not only those that directly provide healthcare services to patients.

I am not able to support amendment 24. The regulation of medicines and medical devices is a reserved matter, and it is complex. I agree that it would be desirable to bring manufacturers and suppliers of medicines and medical devices into information-gathering provisions. I have asked my officials to look into that further, with a view to lodging an amendment at stage 3, and to keep Paul Sweeney informed of progress. I therefore ask Paul Sweeney not to move amendment 24.

I support Carol Mochan's amendment 25. Transparency and information sharing are crucial to the success of the commissioner's role, and I do not think that the amendment would place an unreasonable burden on the commissioner, health boards, the Common Services Agency or NHS National Services Scotland.

Amendment 10 is a technical amendment that clarifies that an offence is committed recklessly or knowingly by a person. The amendment will bring the offence into line with offences in data protection legislation, recognising that information may contain sensitive personal data relating to healthcare treatment, which must be treated with the utmost confidentiality.

10:00

I cannot support amendments 26 and 27. As my predecessor Maree Todd said in her evidence to the committee, professional regulators such as the General Medical Council are not like the patient safety commissioner, taking action against individuals instead of promoting learning and improvement. I do not want, with this bill, to create a situation that might impede healthcare professionals' willingness to be frank and open with the commissioner. It is that spirit of openness and co-operation that I feel will drive improvement, and I do not want to risk that.

I therefore urge members not to vote for amendments 24, 26 and 27, and I move amendment 6.

**Paul Sweeney:** Amendment 24, in my name, would ensure that private companies supplying medicines and medical devices are captured in the category of person who would be required to provide information under section 12 to inform investigations undertaken by the commissioner. There is a lack of clarity over whether the commissioner's proposed powers to require organisations to provide information will apply to private companies, given that section 12 refers only to "persons" or "healthcare providers". Amendment 24 seeks to insert a definition that ensures that, for the purposes of this section, the term "health care provider" also includes companies in the private sector that provide medicines and medical devices. I think that that is a reasonable definition.

I should also say that we will support the Government's technical amendments to the language in section 12. We would therefore be eager for the minister to at least consider revising her position on amendment 24, as I think it entirely reasonable that we clear up the definition.

**Carol Mochan:** I have lodged amendment 25, because I am firmly of the view that patient safety and staff safety go hand in hand, and I thank the minister for her comments in support of the amendment.

We must take all the steps at our disposal to optimise co-operation between this legislation and the Health and Care (Staffing) (Scotland) Act 2019, which has yet to be implemented. We know from recent evidence and media coverage that our



healthcare workforce is feeling overworked and underresourced, and the challenges across the board with recruitment and retention are putting additional pressure on the existing workforce. We know that if high safety standards are not being met for our staff it becomes challenging to achieve the same standards for patients. As I have said, the two go hand in hand.

I am therefore of the view that we ought to amend the 2019 act to incorporate a necessary information-sharing function that will allow the patient safety commissioner, when appointed, to be fully briefed on the progress of the safe staffing legislation and to be cognisant of the impacts on patients of its implementation, or lack thereof. Sharing that information annually will reaffirm the commitment of the Parliament and the Government to ensuring that both pieces of legislation work well in the interests of patients and staff. Indeed, incorporating this amendment into the 2019 act will give the position of patient safety commissioner further credibility, and the commissioner themselves will be in a stronger position to carry out their duties, supported by strong information sharing and transparent co-operation.

I thank the minister for agreeing to amendment 25. With the introduction of a bill on patient safety, we must remember the importance of implementing legislation to ensure safe staffing, too, and we need to see both pieces of legislation working well together.

As amendment 26, also in my name, seeks to act on some of the recommendations in the stage 1 report, I intend to move it. The Scottish Public Services Ombudsman and the General Medical Council offered suggestions for broadening the list of individuals whom the commissioner would expect to partake in the sharing of information, with the Health and Safety Executive and professional regulators being highlighted. I certainly found such suggestions to be reasonable, and I encourage the minister to think again and broaden the scope of the provision by including those listed in my amendment. The SPSO stated that the current list “is fairly narrow”. It is not our intention to broaden it significantly beyond a manageable level, but I believe that acceptance of the amendment would be positive for the bill and future co-operation and working.

**Sandesh Gulhane:** I will speak briefly on amendment 27, and I thank the General Medical Council for its input on this subject.

Amendment 27, in the name of Tess White, would amend section 15, which deals with the confidentiality of information, and permits a disclosure of information to “professional healthcare regulatory bodies”. That would further enhance patient safety, because there might be

circumstances in which such information points towards a potential risk but in which it is only through further investigation and/or correlation with other information that is held by the regulator that the scale of the risk becomes apparent.

I note that Carol Mochan’s amendment 26 takes a similar approach to Tess White’s amendment 27 in adding the Health and Safety Executive to the list of bodies. Our amendment 27 uses the term “professional healthcare regulatory bodies”, which is a phrase that includes all regulators that are overseen by the Professional Standards Authority for Health and Social Care, including the Health and Safety Executive. Our amendment therefore covers the Health and Safety Executive.

**The Convener:** I call the minister to wind up.

**Jenni Minto:** In moving my amendments, I want to ensure that the commissioner can access the data that is needed to do their job. Where I oppose amendments, that is so that we can try to protect the spirit of openness and frankness and not threaten the improvements that we all strive for.

*Amendment 6 agreed to.*

*Amendments 7, 8 and 9 moved—[Jenni Minto]—and agreed to.*

*Amendment 24 moved—[Paul Sweeney].*

**The Convener:** The question is, that amendment 24 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)

#### Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

#### Abstentions

Gulhane, Sandesh (Glasgow) (Con)  
Webber, Sue (Lothian) (Con)

**The Convener:** The result of the division is: For 2, Against 6, Abstentions 2.

*Amendment 24 disagreed to.*

*Section 12, as amended, agreed to.*

#### After Section 12

**The Convener:** Amendment 25, in the name of Carol Mochan, has already been debated with amendment 6.

*Amendment 25 moved—[Carol Mochan]—and agreed to.*

*Sections 13 and 14 agreed to.*

### **Section 15—Confidentiality of information**

**The Convener:** Amendment 10, in the name of the minister, has already been debated with amendment 6.

*Amendment 10 moved—[Jenni Minto]—and agreed to.*

**The Convener:** Amendment 26, in the name of Carol Mochan, has already been debated with amendment 6.

*Amendment 26 moved—[Carol Mochan].*

**The Convener:** The question is, that amendment 26 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

#### **Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 26 disagreed to.*

*Amendment 27 moved—[Sandesh Gulhane].*

**The Convener:** The question is, that amendment 27 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

#### **Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 27 disagreed to.*

*Section 15, as amended, agreed to.*

### **After section 15**

*Amendment 28 not moved.*

**The Convener:** The question is, that amendment 29 be agreed to. *[Interruption.]* Apologies; I skipped over a page. I call Jackie Baillie to move amendment 29, which was debated with amendment 14. How could I possibly forget you?

*Amendment 29 moved—[Jackie Baillie].*

**The Convener:** The question is, that amendment 29 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

#### **Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 29 disagreed to.*

*Amendment 30 moved—[Jackie Baillie].*

**The Convener:** The question is, that amendment 30 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

#### **Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 30 disagreed to.*

*Amendment 31 moved—[Jackie Baillie].*

**The Convener:** The question is, that amendment 31 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

**Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 31 disagreed to.*

*Sections 16 and 17 agreed to.*

#### After section 17

*Amendment 32 moved—[Sandesh Gulhane].*

**The Convener:** The question is, that amendment 32 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

**Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 32 disagreed to.*

*Sections 18 to 20 agreed to.*

*Schedule 2 agreed to.*

#### Section 21—Interpretation

10:15

**The Convener:** Amendment 33, in the name of Paul Sweeney, is in a group on its own.

**Paul Sweeney:** This proposed amendment applies to the definition of “health care” in section 21 and seeks to include social care services as part of that definition in the text of the bill. We know that the social care system is facing a crisis in relation to workforce and rising costs. As a

result, capacity is stretched, with social care workers stressing the difficulty, under the current circumstances, of providing the level of care that they would like to provide.

Amendment 33 would not seek to widen the commissioner’s remit to include social care as a whole. Instead, it would merely enable the commissioner to consider the interface with social care as part of their investigation only where those services “intersect with” the defined elements of healthcare in the commissioner’s remit, in relation to

“services provided ... in connection with ... illness, and ... forensic medical examinations”.

Amendment 33 is in line with the committee’s recommendations in its stage 1 report, and I encourage the minister to support it.

I move amendment 33.

**Jenni Minto:** I am not able to support the amendment. The committee, in its stage 1 report, called on the Government to confirm that the commissioner will be able to address matters arising at the intersection of health and social care. I am happy to confirm on the record today that the commissioner’s role is about safety in healthcare, and there is nothing in the bill that would prevent the commissioner from dealing with healthcare that is provided in a social care context or any other context.

I hope that Paul Sweeney will accept that confirmation and will not press amendment 33, which, rather than clarifying matters, might create some doubt about whether the bill’s reference to “health care” includes healthcare that is provided in contexts other than social care. I therefore ask Paul Sweeney not to press amendment 33.

**The Convener:** I ask Paul Sweeney to wind up and say whether he wishes to press or withdraw amendment 33.

**Paul Sweeney:** I welcome the minister’s comments to clarify that point. The clarification is welcome with regard to amendment 33’s intention, which is in line with the committee’s recommendations. With that assurance, I am content not to press the amendment.

*Amendment 33, by agreement, withdrawn.*

**The Convener:** Amendment 34, in the name of Jackie Baillie, has already been debated with amendment 14. I ask Jackie Baillie to say whether she wishes to move the amendment.

**Jackie Baillie:** Although I am disappointed at the outcomes on my other amendments, God loves a trier, so I will move an amendment one last time, and I indicate to the committee that I will be bringing back all the amendments at stage 3.

*Amendment 34 moved—[Jackie Baillie].*

**The Convener:** The question is, that amendment 34 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Gulhane, Sandesh (Glasgow) (Con)  
Mochan, Carol (South Scotland) (Lab)  
Sweeney, Paul (Glasgow) (Lab)  
Webber, Sue (Lothian) (Con)

**Against**

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Haughey, Claire (Rutherglen) (SNP)  
Mackay, Gillian (Central Scotland) (Green)  
Torrance, David (Kirkcaldy) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 4, Against 6, Abstentions 0.

*Amendment 34 disagreed to.*

*Section 21 agreed to.*

*Sections 22 to 25 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill.

At our meeting next week, we will continue our scrutiny of front-line NHS boards, with sessions with NHS 24 and the Scottish Ambulance Service.

That concludes the public part of our meeting today.

10:20

*Meeting continued in private until 10:58.*

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.

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