

HEALTH AND COMMUNITY CARE COMMITTEE

Wednesday 23 January 2002
(Morning)

Session 1

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2002.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Wednesday 23 January 2002

	Col.
ITEM IN PRIVATE.....	2341
COMMUNITY CARE AND HEALTH (SCOTLAND) BILL: STAGE 2	2342
TOBACCO ADVERTISING AND PROMOTION (SCOTLAND) BILL.....	2355

HEALTH AND COMMUNITY CARE COMMITTEE 2nd Meeting 2002, Session 1

CONVENER

*Mrs Margaret Smith (Edinburgh West) (LD)

DEPUTY CONVENER

*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)
*Dorothy-Grace Elder (Glasgow) (SNP)
*Janis Hughes (Glasgow Rutherglen) (Lab)
*Mr John McAllion (Dundee East) (Lab)
*Shona Robison (North-East Scotland) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)
*Nicola Sturgeon (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Health and Community Care)

WITNESSES

Maureen Moore (ASH Scotland)
Tanith Muller (ASH Scotland)
Dr John Wrench (Highland NHS Board)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Peter McGrath

ASSISTANT CLERK

Graeme Elliott

LOCATION

Committee Room 1

Scottish Parliament

Health and Community Care Committee

Wednesday 23 January 2002

(Morning)

[THE CONVENER opened the meeting at 09:30]

The Convener (Mrs Margaret Smith): Good morning, everybody. Welcome to this morning's meeting of the Health and Community Care Committee. Before we start on today's agenda, I want to mention reports in this morning's press about requests to be made on the committee's behalf for Robin Cook MP to attend a meeting in relation to the Tobacco Advertising and Promotion (Scotland) Bill. I want to clarify that the committee has taken no such decision to date.

It has been the committee's normal practice to make decisions and then for any requests to ministers or anyone else to be put in my name, as convener, on behalf of all committee members. It has certainly not been normal practice for me or any other committee member to announce such matters to the press in advance of decisions being taken by the committee. We will return to the matter later.

Item in Private

The Convener: The question is, that we take item 4 in private. The reason for doing so is that the item involves consideration of the outcome of the recent committee debate on hepatitis C and possible action, and individuals may be named in our discussions. Are we agreed?

Members indicated agreement.

Community Care and Health (Scotland) Bill: Stage 2

The Convener: Item 2 is stage 2 consideration of the Community Care and Health (Scotland) Bill. The Deputy Minister for Health and Community Care, Hugh Henry, joins us.

Section 4—Accommodation more expensive than usually provided

The Convener: Amendment 59 is grouped with amendment 69.

The Deputy Minister for Health and Community Care (Hugh Henry): Amendments 59 and 69 are purely technical. Together, they allow references in the bill to the National Assistance Act 1948 to be referred to as the "1948 Act". Such references are made in sections 2 and 4.

I move amendment 59.

Amendment 59 agreed to.

Section 4, as amended, agreed to.

Section 5—Local authority arrangements for residential accommodation outwith Scotland

The Convener: Amendment 60 is grouped with amendments 61 and 62.

Hugh Henry: Amendment 60 clarifies section 5 and was lodged in response to a request by the Subordinate Legislation Committee, which the Health and Community Care Committee noted in its stage 1 report. The amendment makes it clear that any arrangement for a care home place outwith Scotland that is made following a direction under section 5 must comply both with the regulations that govern the making of such placements and with any conditions of that direction.

Amendments 61 and 62 apply to section 6, which deals with deferred payment agreements. Amendment 61 aims to ensure consistency with the change to section 5 that is proposed by amendment 60. It clarifies that a deferred payment agreement made following a direction under section 6 must comply with the conditions of that direction as well as with any regulations made under that section.

Amendment 62 ensures that a deferred payment agreement may cover either normal payments due under section 87 of the Social Work (Scotland) Act 1968 or top-up payments due under section 4 of the bill—or a combination of both. The proportion of each type of payment that may be deferred will be calculated in accordance with regulations to be made under section 6(3).

Amendment 62 has been lodged to ensure that regulations that are made under section 6 can deal separately with normal and top-up payments. We consider that it is important that the deferred payment agreement facility should not be limited in its availability. If the facility must always cover top-up payments and cannot be defined so as to cover normal payments, people may be excluded if their top-up payments are too high to be secured against the value of the home. The power needs to be sufficiently flexible to cover a range of situations and to set separate rules for normal and top-up payments.

The deferred payment scheme will provide people with greater choice on how to pay for their care. In doing that, we need to set rules that help people in a range of different circumstances while ensuring the proper use of public funds. Amendment 62 allows us to do that. I ask the committee to support the amendments to sections 5 and 6.

I move amendment 60.

Amendment 60 agreed to.

Section 5, as amended, agreed to.

Section 6—Deferred payment of accommodation costs

Amendments 61 and 62 moved—[Hugh Henry]—and agreed to.

Section 6, as amended, agreed to.

Section 7—Direct payments

The Convener: Amendment 63 is grouped with amendments 64, 65, 66, 67 and 68. I ask the minister to speak to the amendments and to move amendment 63.

Hugh Henry: Independence is not necessarily about doing everything for yourself. It is about being able to choose what to do when, and if, you need help and about being able to choose who should provide that help. It is about having choices and about exercising control over the choices that you make.

We believe that whether you have such control over your life should depend not on where you live, or on whether you are a wheelchair user rather than someone who suffers from dementia, or on whether you are under a certain age. That kind of control should be everyone's right. We know that direct payments can help to improve independence as well as aid social inclusion. However, they can do so only if people know about them.

Section 7 will make it a duty on local authorities to offer money so that people can arrange their own services instead of having them provided by

the local authority. We hope that the section will address some of the difficulties that exist in certain localities. We want to put it beyond doubt that it is the responsibility of the local authority to ensure that eligible people are made aware of their entitlement to receive direct payments.

People should be given time to consider the full implications of using direct payments. We recognise that the choice is sometimes not easy and has responsibilities associated with it. Therefore, people must be given the time and the necessary support, advice and information to help them reach the right decision.

That support role should be provided independently of local authorities. It might come either through friends or family or through a supporting organisation that is experienced in encouraging and advising on aspects of independent living. We recognise that such a service is available only in certain areas in Scotland, but the Direct Payments Scotland project is helping to develop effective support services throughout the country. We hope that more people will soon be able to make that choice with the proper support.

We recognise that direct payments will not be everyone's cup of tea and that many will be happy for their local authority to arrange services for them. The most important thing is that people have the right to make that choice for themselves. Amendment 63 will ensure that people have that right by amending, in section 7, section 12B(1) of the Social Work (Scotland) Act 1968. The amendment will mean that the bill is explicit about a local authority's duty to offer direct payments.

It is important that local authorities provide equity of treatment for those who accept direct payments and for those who accept services arranged by the authority. For financial arrangements, that means that, if any personal contribution is due, there must be the opportunity for payment to be made after the services have started. Requiring the authorities to make gross payments will mean that there is equity of treatment between those who receive direct payments and those who receive services but do not receive direct payments. It will enable the recipient to contest an assessed contribution without holding up payments. It will also give care managers the security of knowing that the person has the means to purchase the services that are required.

Section 87 of the Social Work (Scotland) Act 1968 gives a local authority the power to charge for the services that it provides under that act and also provides local authorities with powers to recover that charge. The powers do not extend to direct payments because the local authority will no longer arrange or provide the services.

The bill gives local authorities the powers they require to recover any personal contributions where gross payments have been made. No duty will be placed on local authorities to make gross payments, nor will recipients be forced to accept them. There should, however, be flexibility about whether payments are made on a gross or net basis. The outcome should be determined by the wishes of the service user, who will have discussed the matter with the authority.

We would all agree that, when a local authority agrees to make gross payments, it must have a means of recovering the assessed contribution. Amendments 64, 65, 66 and 67 make it clear that payments can be made on a gross basis. When that happens, the local authority will have the power to seek recovery of a person's contribution—whether the assessment of that contribution is made before or after the direct payment is made.

Amendment 64 will enable a local authority to make a gross payment after assessing the person's ability to contribute to the cost of the services. Amendments 65 and 66 are minor technical changes. Amendment 67 will ensure that, prior to recovery of the contribution, an assessment of the person's ability to pay will take place. That assessment will take place either before or after the gross payment begins. Amendment 68 will give people who receive gross payments the same recourse as recipients of net payments have in order to satisfy the authority that they cannot meet the balance to secure the services that they need. Net recipients already have that avenue of appeal under section 12B(2) of the Social Work (Scotland) Act 1968; it is only fair that gross recipients should have the same facility.

The amendments are minor, but they remove any doubt about equality of treatment and ensure that people are given real choice. They also demonstrate our commitment to making direct payments more widely available.

I know that members of the committee have been concerned about practice in their areas. We hope that our proposals will address their concerns. I ask members to support amendments 63 to 68.

I move amendment 63.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): What mechanisms will be put in place to ensure that local authorities offer the choice that you have spoken about? In my area, the level of direct payments is abysmal. I want my constituents to be offered choice. How will the Executive ensure that individuals are aware that they have a choice? If people are made aware only through their local authority, things may

continue as they are. How will the Executive monitor whether choice is offered?

Hugh Henry: We will certainly try to monitor what develops in practice. We are now talking about a duty rather than discretion in section 7. We hope that local authorities will respond to that. If anyone has concerns about their local authority, or disputes what the authority is doing, the complaints and disputes mechanisms for local authorities will be available to them.

It would be wrong for the Executive to try to exert central control over every individual decision taken in local authority areas. However, the point that Margaret Jamieson raises would be of concern if local authorities were blatantly trying to avoid their duty. That duty will be a duty in law, so local authorities will be open to legal challenges if they fail to implement it. We will keep a close eye on the situation.

Margaret Jamieson: But how will the Executive ensure that the public is aware of the options that are available to them? Recently, good publications in relation to the Regulation of Care (Scotland) Act 2001 have let people know exactly what choices and what level of service they will have. I wonder whether the minister would consider making similar information available on this bill before 1 July so that people know what choices they will have.

Hugh Henry: We have already made a substantial amount of money available to the Direct Payments Scotland project, which will be engaged in publicity. Beyond that, I am not aware of specific proposals to engage in the kind of publicity of which you speak. We will reflect on what you have said and, if appropriate, try to respond, but we believe that the money given to Direct Payments Scotland is significant and can be put to good use.

Shona Robison (North-East Scotland) (SNP): Can the minister think of any exceptional circumstances in which the Executive might intervene with a local authority that consistently appeared to be out of step with the direct payments scheme by not promoting it or not making the system available to local people?

Hugh Henry: I do not propose to start engaging in speculation at this stage. We developed the proposals that are before you and believe that the fact that local authorities will have a duty is significant progress. We hope that the duty will work well in practice. I am unsure of the benefits of speculating idly, which could set hares running all over the place.

09:45

Shona Robison: We would not want you to speculate wildly. What I am getting at is where the

lines of accountability are. You seem to be indicating that there are none. What sanction is there? What is the bottom line for addressing concerns when a local authority is consistently out of step with direct payments or other elements of the bill? I hope that that does not occur, but where is the ability for you to intervene if that is required? At what stage would you do so?

Hugh Henry: You know that we operate on the principle of subsidiarity, which you and your party support strongly. In this case, we believe that the local authority should have the obligation and duty to carry out certain functions. Indeed, it is local authorities' responsibility to carry out other delegated functions. We do not have the power to intervene directly. We are changing the law in the bill to impose a duty on local authorities.

As with other duties in which we do not interfere directly—for example, those under the Social Work (Scotland) Act 1968—the local authority is open to challenge by normal legislative means. I doubt that the purpose of the bill is to seek more and more central powers and to impose diktats on local authorities. I hope that the bill will be taken in the spirit in which it is intended. A duty is a significant move forward from where we were.

Shona Robison: I am a little confused because, when she tried to clarify something that she said to the committee that she seemed to have got wrong, your colleague Mary Mulligan said in a letter:

"Scottish ministers have very limited powers to intervene and may do so only in very exceptional circumstances."

I am struggling with the definition of "very exceptional circumstances". I think that the committee is entitled to a bit of clarification, given that Mary Mulligan outlined a position that is clearly not the case. You now seem to be saying that you cannot identify any of the exceptional circumstances that Mary Mulligan has said could possibly arise. I am a bit confused about what the position is.

Hugh Henry: I think that you are referring to something entirely different. We can correspond with the committee on the general powers that ministers have to intervene in various aspects. I reiterate the point that we work on the basis of subsidiarity. We do not seek to centralise powers so that we dictate to and instruct local authorities. We seek to create a legislative framework within which local authorities can properly carry out their functions. I think that that is the right way to move forward.

I would be hesitant to create a framework in which the Executive or the Parliament can intervene directly and start instructing local authorities. I am sure that you and your colleagues would also be concerned about that. The duty is a duty on local authorities. The bill says clearly that

the responsibility is a local authority duty, not an Executive duty.

Mary Scanlon (Highlands and Islands) (Con):

I very much support the encouragement for the greater uptake of direct payments, but I seek clarification. I was involved in a case in the Highlands in the early days of direct payments in which the carer was told that she had to become the employer. She has since come to an arrangement with the council, so that it remains the employer and she buys in the care services. Can you confirm who employs the care worker when a carer uses direct payments to buy in services?

Hugh Henry: That would depend greatly on the individual's circumstances. In some cases, where an individual buys in a service from the local authority, the local authority will continue to be the employer. Similarly, if the individual buys in a service from a voluntary or charitable organisation, that organisation would be the employer. I am not an expert on employment law, but it is conceivable that an individual could seek to employ someone to work directly and exclusively for them, which might have legal implications. It would be foolish of me to speculate on that, but I will try to get further information. The principle is that if someone buys in services from another organisation, that organisation remains the employer.

Mary Scanlon: I would welcome any further clarification. The carer that I referred to was initially put off because of the onerous responsibility of dealing with sickness payments, maternity leave, tax forms and whatever else.

Hugh Henry: The provision is not intended to authorise or instruct the local authority to become the employer of someone who is currently not employed by them, or indeed instruct any other organisation. If someone exercises their choice to take on someone who, for legal definitions of employment, becomes an employee, that person would have a duty towards the individual. However, if we can do anything to clarify that, we will.

Mary Scanlon: I understand that, but if someone buys in their care services from an organisation, the employment of the care worker is the responsibility of the organisation. Is that correct?

Hugh Henry: That is my understanding.

Dorothy-Grace Elder (Glasgow) (SNP): I appreciate that Hugh Henry does not want to seem to be bossing around local authorities, but he seems to be giving the public no recourse other than a judicial review. Very few people would want to engage in that tortuous process. Cannot the Executive create a halfway house or at least declare its right to powers of supervision? The

Executive also has the power to audit the situation in Scotland to ensure that there is fairness. If a council is not being co-operative, the Executive can investigate the council to a certain extent. Am I right?

Hugh Henry: Yes, some of those things pertain. However, I do not think that the situation is very different from what it was previously under the Social Work (Scotland) Act 1968, under which the local authority had a duty under section 12 to assist people in individual circumstances. It could not be the responsibility of central Government to instruct the local authority how to carry out that duty.

I remember controversial circumstances in which Strathclyde Regional Council social work department interpreted its obligation under the Social Work (Scotland) Act 1968 to help single miners during the miners strike. The situation was subsequently clarified legally. It would not have been right for central Government to instruct the local authority on what to do. Similarly, in cases involving homeless people, children and families, local authorities in different areas interpreted their duty in different ways. It would be dangerous for us to impose a duty on local authorities and then say that every time someone disagrees with their decisions we will come in and tell them how to implement the duty.

There are certain checks and balances on how local authorities perform generally. There is a right to judicial review and there are other legal processes for people to challenge performance if they are not satisfied. The provision is not about introducing control mechanisms for local authorities; rather it seeks to empower local authorities and individuals. That is the context in which it should be considered.

Dorothy-Grace Elder: Would the Executive have the authority to conduct an audit if it received persistent complaints about a particular authority?

Hugh Henry: If there were persistent complaints about an authority, any action would be taken under existing powers and we would respond in the way that we do at the moment; the situation would be no different.

Amendment 63 agreed to.

Amendments 64 to 68 moved—[Hugh Henry]—and agreed to.

Section 7, as amended, agreed to.

Section 19—Interpretation

Amendments 69, 9, 48 and 49 moved—[Hugh Henry]—and agreed to.

Section 19, as amended, agreed to.

Section 20—Regulations

Amendments 50 to 53 moved—[Hugh Henry]—and agreed to.

Section 20, as amended, agreed to.

Section 21 agreed to.

Section 22—Minor and consequential amendments

The Convener: Amendment 28 is grouped with amendments 30, 31, 32, 33, 34, 35, 36, 37 and 40.

Hugh Henry: This group of amendments will make changes to the NHS tribunal provisions in the National Health Service (Scotland) Act 1978. The major proportion of the amendments will complete the extension of the jurisdiction of the NHS tribunal to general practitioners whose names do not currently appear on health board lists. Before I go any further, it might be helpful if I remind committee members of the means by which GPs may be referred for discipline; that is, the listing system. Currently, GPs who own practices must be on the medical list that is held by the health board for the area in which they provide general medical services. Once a GP is on the list, he or she may be referred to an NHS discipline committee for minor breaches of his or her terms of service, and to the NHS tribunal for more serious matters.

Section 15 of the bill provides for GPs who are not currently listed to come within the listing system, and therefore within the disciplinary arrangements. Those GPs are general medical services non-principals, GPs who work for GP principals, including locums, and GPs who perform personal medical services. Most of the amendments that are required to the National Health Service (Scotland) Act 1978 to bring those GPs within the tribunal regime are already included in the schedule of the bill, which is given effect by section 22, but some further amendments were identified that would complete the extension of the tribunal's jurisdiction to GPs who perform personal medical services. Those amendments are included in this group, which are technical and clarifying.

Amendments 28, 36 and 40 are interlinked. They will correct a cross-reference to a section in the National Health Service (Scotland) Act 1978 that appeared in the amendments that were made to that act by paragraph 52(b) of schedule 4 of the Health Act 1999. The section to which cross-reference is made in paragraph 52(b) of the 1999 act is the wrong section. The original paragraph will therefore be repealed by amendment 40, which will also extend the schedule to one that lists both amendments and repeals.

The repealed paragraph will be substituted by amendment 36, which contains the correct text that cross-refers to the section that was originally intended. Amendment 36 seeks to amend the National Health Service (Scotland) Act 1978 as it reads without paragraph 52(b) of schedule 4 of the Health Act 1999 having been brought into force, rather than to amend the words that paragraph 52(b) of schedule 4 of the 1999 act was to insert. We can do that because paragraph 52(b) has not been commenced. Amendment 36 also seeks to correct in section 32B of the National Health Service (Scotland) Act 1978 an incorrect cross-reference to another section of that act. The correction is needed because the section to which cross-reference is made does not exist.

Amendment 30 is entirely technical. It will delete the definition of pilot scheme from new section 17EA to allow that term to be included in the definitions in section 108 of the National Health Service (Scotland) Act 1978, which is the interpretation section of that act.

Amendment 31 will extend to services lists the lists from which a GP may be disqualified from inclusion by direction of the NHS tribunal.

Amendment 32 will clarify the reference in section 30(4) of the NHS (Scotland) Act 1978 to correspond with disqualification provisions in England, Wales or Northern Ireland.

Amendment 33 will clarify that the GP who is disqualified from inclusion in family health service lists in England, Wales or Northern Ireland will be disqualified from inclusion in similar lists in Scotland.

Amendment 34 will amend section 31(2) of the NHS (Scotland) Act 1978 to add to the reference to services personal medical services arrangements and pilot schemes.

Amendment 35 will amend section 32A of the NHS (Scotland) Act 1978 to include those GPs who perform personal medical services—including those under pilot scheme arrangements—in the group of GPs who may be suspended from providing services to patients by direction of the NHS tribunal.

Amendment 37 will extend the lists in Scotland from which a GP will be disqualified from inclusion when he or she has been disqualified from inclusion in a list in England, Wales or Northern Ireland, by virtue of the fact that he or she has been made subject to interim suspension in any of those countries.

I move amendment 28.

10:00

Mr John McAllion (Dundee East) (Lab): The minister referred to several cross-references to the

wrong sections of other legislation and even to sections that do not exist in any legislation.

Given that parliamentary draftsmen drew up the bill in the first place, when and how did the mistakes come to light?

Hugh Henry: They came to light when we were preparing for stage 2 of the bill. When the relevant sections were being reviewed, they were recognised to be wrong. Much of that took place pre-devolution. However, I do not blame John McAllion or his Westminster colleagues in any way, shape or form.

The Convener: That does not get him off the hook.

Mr McAllion: I withdraw any criticism that was implied in my remark.

Dorothy-Grace Elder: Were you short of draftsmen during the process? An enormous amount of potential legislation is being worked on and I suspect that we are sometimes short on numbers in our very good civil service.

Hugh Henry: It would not be appropriate for me to comment on staff levels. That can be taken up elsewhere.

Dorothy-Grace Elder: The matter is relevant to processing bills.

The Convener: That will be noted in the *Official Report*.

Do you wish to wind up, minister, or have you covered everything that you wanted to say?

Hugh Henry: I have said enough, convener. I do not want to embarrass Mr McAllion any further.

Mr McAllion: I was kept off the Westminster committees by the whips; it was not my fault.

Amendment 28 agreed to.

Section 22, as amended, agreed to.

Before the schedule

The Convener: Amendment 55, in the name of the minister, was already debated with amendment 41.

Amendment 55 moved—[Hugh Henry]—and agreed to.

Schedule

Amendments 29,30 and 31 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 70, in the name of the minister, is grouped with amendments 71 and 72.

Hugh Henry: When Malcolm Chisholm appeared before the committee on 19 December,

he informed members of further discussions that the Scottish Executive had held with the British Medical Association and the Scottish General Practice Committee on the question of listing requirements. As a result of those discussions a modification was agreed to, which would allow a GP who was already on a list within a health board area to provide other primary care medical services within that area without, in most cases, joining a second list. However, under the modified arrangements we must ensure that it will continue to be possible to subject a GP to a disciplinary referral and for a disciplinary sanction to be imposed where there is reason to do so.

On 19 December, Malcolm Chisholm undertook to lodge an amendment at stage 3 to ensure that the rules about NHS tribunals would continue to operate under the altered arrangements, after consultation with the Council on Tribunals. In the event, three consequential amendments will be required to enable the tribunal regime to continue to operate. The Council on Tribunals has given an early response indicating that it is content with those amendments. Consequently, the amendments are being lodged now rather than at stage 3.

Amendment 70 is the first of those consequential amendments. It will allow the NHS tribunal to impose the sanction of local disqualification on a GP who is referred to it by a health board, even where the case against that GP relates to medical activity within a health board area that is not associated with a particular list on which the GP's name appears.

Amendments 71 and 72 relate to the tribunal sanction of national disqualification. Where that sanction is imposed, a practitioner will not be permitted to practise in any area of Scotland. Amendment 71 distinguishes ophthalmic medical practitioners from other medical practitioners, given the way in which national disqualification will now be imposed on those other medical practitioners.

Amendment 72 will allow the tribunal to continue to direct the national disqualification of family health service practitioners, including ophthalmic medical practitioners, from lists that are similar to that which is mentioned in a case that is before the tribunal.

The amendments will ensure that the NHS tribunal may continue to impose the sanctions of local and national disqualification on GPs and on other family health service practitioners, where such sanctions are warranted.

I move amendment 70.

Amendment 70 agreed to.

Amendments 71, 72, 32 to 38, 10, 39 and 40

moved—[Hugh Henry]—and agreed to.

Schedule, as amended, agreed to.

Section 23 agreed to.

Section 24—Short title and commencement

The Convener: Amendment 54 is in a group of its own.

Hugh Henry: Amendment 54 is a technical amendment. The bill currently provides that only section 24 will come into force on the bill's receipt of royal assent. Section 24 provides that the other provisions of the bill might be brought into effect on such days as ministers may appoint by order.

However, section 20, which makes provision for the making of orders, would not yet be in force. That would mean that the section 24 power to commence other sections of the bill would not be clearly defined. Amendment 54 will therefore bring the order and regulation-making powers in section 20 of the bill into force at the same time as the commencement provisions in section 24.

Amendment 54 moved—[Hugh Henry]—and agreed to.

Section 24, as amended, agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Community Care and Health (Scotland) Bill. I thank the minister for his attendance today and in previous weeks.

At this point, I will call a short adjournment for members to take a comfort break.

10:08

Meeting adjourned.

10:16

On resuming—

Tobacco Advertising and Promotion (Scotland) Bill

The Convener: Good morning, Dr Wrench.

We move to agenda item 3, which is the Tobacco Advertising and Promotion (Scotland) Bill. As colleagues know, the bill is being promoted by Nicola Sturgeon. I think that it is the first time that the committee has taken evidence on a non-Executive bill. The first person to give evidence is Dr John Wrench, the director of public health and health policy at Highland NHS Board. Do you want to start by making a short statement to the committee or shall we just go to questions? We have your written submission, which is very helpful, and for which we thank you.

Dr John Wrench (Highland NHS Board): I would like to make a short statement.

Thank you for the opportunity to give evidence to the committee. I should state that I am representing my own views and those of my colleagues in public health and health promotion in Highland NHS Board, of which I am director of public policy.

The key point that I would like to make is that tobacco is the largest cause of preventable ill health in Scotland. It contributes to approximately 13,000 deaths per year, when we take into consideration coronary heart disease, lung cancer, other malignant diseases, respiratory disease and so on. We are trying to tackle a major problem.

Another key point is that the evidence that I have reviewed suggests that banning of tobacco advertising works. Various international studies have suggested that there are levels of reduction—there are consistent results that show an overall reduction in tobacco consumption.

Another key point is about the effect of tobacco advertising on children and young people. Despite the companies' claims about brand loyalty, we know that their advertising targets young people. Ninety per cent of smokers are recruited into smoking under the age of 19. That is a huge problem and children are vulnerable. There is evidence that children are influenced by advertising and by different brands and that is a major issue. There is no doubt in my mind that delaying or preventing children from being recruited into smoking will have major implications for public health in the longer term, through the reduction of ill health, morbidity and mortality.

Smoking is possibly one of the biggest causes of health inequalities in Scotland—consider the high rates of smoking in deprived communities. For

example, we know that women in deprived communities are 10 to 12 times more likely to smoke than are women in affluent communities. Evidence suggests that almost 50 per cent of single mothers in the most deprived communities smoke. We feel that tobacco advertising is often targeted at the most vulnerable groups and at those who live in the most deprived communities. We hope that any restriction or ban on advertising would have a major impact on health inequalities.

Nicola Sturgeon (Glasgow) (SNP): Thank you for your submission, Dr Wrench. Although you express support for the principles of the bill in your submission, you also support action at UK level. That is something on which we would all agree. However, if there continues to be no guarantee of UK legislation, would it still be worthwhile to proceed with separate Scottish legislation to ban as much tobacco advertising as possible?

Dr Wrench: I would support such an approach, given that there has already been a delay in implementing the UK legislation. From a public health point of view, I would support a separate Scottish bill. Evidence from international studies shows that the more complete and comprehensive a ban is, the greater will be its effect in the long term. I realise that there are difficulties if a ban is not UK-wide. However, given its potential impact, my colleagues and I would support a separate Scottish ban.

Nicola Sturgeon: Do you agree with the view of many experts that, although a completely comprehensive ban—which could probably be achieved only at European level—is the most desirable outcome, removal of any advertising would have a beneficial effect?

Dr Wrench: Yes. It is clear that the degree of the impact is proportional to the completeness of the ban. However, it would still be worthwhile to go ahead with a Scottish bill.

Nicola Sturgeon: You have some concerns about the defences that are outlined in section 4 of the bill. Could you expand on those views, particularly on how some of the defences might be too easy to get round?

Dr Wrench: We have not gone into the legal implications in detail but, on reading the bill, it seemed to us that the number and degree of defences raised the possibility of loopholes. Generally, the evidence shows that when legislation and restrictions have been introduced previously, the tobacco companies have found loopholes and ways of getting round the restrictions. Our point is that it would be important to monitor that closely. Much will be learned in the practical implementation of the bill, particularly about how easy some of the defences will be to abuse. We wanted to express some concerns

about the number of possible defences.

Janis Hughes (Glasgow Rutherglen) (Lab): In your submission you talk about the monetary cost of smoking. Given that this week there has been much publicity about children living in poverty, particularly in Glasgow, can you tell us of any research into the impact of smoking on household income in deprived communities? You mentioned that many lone parents are smokers. Has any research been done on the impact on family finances?

Dr Wrench: Yes. I cannot quote specific research, although I know that general research supports what is in my submission.

People have expressed the concern that if there is a ban and people in deprived communities stop buying tobacco, that might have a knock-on effect on local economies. I cannot quote chapter and verse, but I have read some evidence to suggest that that would not be the case. When people do not spend money on tobacco they spend their money in other ways—local businesses and retailers are not adversely affected.

Janis Hughes asked about the effects on individual families. I am not sure about that. The evidence suggests that if a ban prevents younger children and teenagers from being recruited into smoking, that will have beneficial economic effects for the child and possibly for their family. Evidence shows how powerful is the effect of advertising on children, who often go for the brands that are seen to be the sexiest, the best, or which are associated with motor racing—irrespective of cost. Such brands often cost the most. There is an issue about what young people spend their money on. If we can reduce their spending on tobacco I expect that there would be positive spin-offs for the economics of a household, particularly in more deprived communities.

The Convener: Nicola Sturgeon made the point that many people take the view that a UK ban would be preferable, that a European ban would be even better, but that we might end up with only a Scottish ban. Perhaps I did not understand your answer, but you seemed to say that impact is proportional to the completeness of the ban. How would we quantify the impact of the ban? If I remember correctly, in relation to the Tobacco Advertising and Promotion Bill that was published in December 2000, the Department of Health said that if there were a UK-wide ban, smoking would be reduced by 2.5 per cent. Two questions stem from that. First, do you think that that figure is a reasonable estimate of the impact of UK ban, given that bans in other countries seem to have had a markedly higher effect? Secondly, if you accept that 2.5 per cent is the reasonable figure for a UK ban, do you have a ballpark figure of what the impact of a Scotland-only ban might be?

Dr Wrench: It is difficult to say. It is true that international research in Norway, Finland, New Zealand and France shows that national bans have a greater impact. However, it is important to emphasise that those bans were part of a wide strategy to discourage tobacco use and formed an integral part of an overall strategy. The figures from international studies vary quite a bit—from 7 to 10 per cent all the way up to reductions of almost 25 per cent, over a certain period.

My impression is that the UK figures from the Department of Health are rather pessimistic. I would consider 2.5 per cent to be at the lower end of what we could expect. The situation in Scotland would be different because the ban would be partial—there would certainly be contamination because the ban would not be UK-wide. It is difficult to assess, but I estimate that there would in 10 to 15 years be an overall reduction in tobacco consumption of between 5 per cent and 10 per cent.

The Convener: Do you mean if the ban applied only to Scotland?

10:30

Dr Wrench: Yes, I think so, but I am giving you an empirical answer. It is difficult to base an answer on objective evidence.

The Convener: Do you think that the Department of Health's 2.5 per cent estimate is pessimistic?

Dr Wrench: I think that, compared to studies that I have seen and discussed with other people, its estimate would be considered to be low.

The Convener: The word "low" is probably a better word to use. I wrote down that it was a "conservative estimate," but I do not want to get my parties mixed up.

Mary Scanlon: In your written submission you mentioned that recent research confirmed that in four countries—Norway, Finland, New Zealand and France—in which a ban on tobacco advertising was introduced as part of a comprehensive tobacco control strategy, consumption of cigarettes dropped by between 14 and 37 per cent.

The Health Education Board of Scotland's written submission used the example of four countries to indicate that where there was a complete ban on tobacco advertising, consumption of cigarettes fell by between 4 and 9 per cent. The ASH Scotland submission quotes the Department of Health's estimate of a 2.5 per cent reduction in tobacco consumption from such a ban. Having read those figures, I was shocked by our parliamentary research that compares tobacco consumption in countries where there is an advertising ban to consumption in non-ban

nations. We find that in Norway, where there has been a tobacco advertising ban since 1975, tobacco consumption is equal to that in non-ban nations. However, in Iceland, Finland, Italy and Portugal, where there is a ban on tobacco advertising, tobacco consumption is greater than in the non-ban countries that are outwith the Organisation for Economic Co-operation and Development. Could you explain that?

Dr Wrench: The first question I ask is whether the ban in the countries from which you quoted the not-so-good figures is part of a wider tobacco-control strategy. The evidence, as I understand it, is that banning or restricting advertising has an effect when it is part of a wider strategy, such as that which is outlined in the UK document "Smoking Kills." That document presents a comprehensive approach to smoking in communities. There are also wider public health messages from such bodies as HEBS.

Mary Scanlon: I want to ask about that. I find the different figures confusing to look at. I would support anything that would reduce smoking and improve women's and children's health and so on. However, I wonder whether that can be done on the basis of the figures that you quoted. You cited Finland as an example, but consumption of cigarettes in Finland is greater than in the non-ban OECD countries. That fact comes from our parliamentary research unit.

I presume that you know what other measures have been introduced in Finland. However, the parliamentary paper that members have shows that in many countries where a ban has been introduced, those countries have only kept pace with the reduction in the consumption of cigarettes in non-ban nations.

Dr Wrench: To focus on Finland for a minute, I am surprised by the figures that you have quoted for that country, not only in relation to the ban on tobacco advertising, but to smoking reduction. There has been a sustained community initiative in north and east Karelia in Finland—which has spread to other areas of Finland over the past 25 years—to focus on coronary heart disease. A major plank of that initiative is related to smoking reduction. I cannot quibble with the figures that you or your researchers produced, but I am somewhat surprised by them.

Mary Scanlon: It is not my research, but the Scottish Parliament's.

Dr Wrench: Because we are dealing with a moving scenario, it is very difficult to measure a specific output or outcome from advertising bans or restrictions. We need to take account of loopholes and brand stretching, which tobacco companies use to get round bans. In one Scandinavian country—I am not sure whether it

was Finland or Norway—the strategy was revised a few years after the introduction of the initial ban, as it was felt that regulation needed to be tightened up in some areas. Brand stretching and direct marketing to children were issues of particular concern.

I accept that there is variation in percentage reductions over time. We are not talking about a standard type of intervention, so it is inevitable that there will be great variation in the comprehensiveness of the bans that are introduced, how they link in with wider strategies, and how often they are reviewed and updated to take account of potential loopholes and issues such as brand stretching. However, from my reading of the literature, I believe that even a single figure percentage reduction in the number of smokers—a reduction of between 2 and 5 per cent—over 10 years would be a significant achievement. In the Highlands, we have calculated that there are about 50,000 adults who smoke—roughly one third of the population. Reducing that number by 5 per cent over five to 10 years would mean that 2,500 people had given up smoking. I regard that as very significant in public health terms.

Mary Scanlon: I would be very happy with a reduction in the number of people smoking. However, the figures before me suggest that there has been an increase in tobacco consumption in countries where tobacco advertising has been banned, as compared with nations where no such ban exists.

The Convener: If we require further clarification of that issue, we can return to it.

Nicola Sturgeon: For the record, it may be useful for Dr Wrench to know that the figures that Mary Scanlon is citing are 12 years out of date—they cover the period up to 1990. That puts them in context.

Do you agree that the evidence suggests that in all countries where a ban on tobacco advertising has been introduced there has been a fall in tobacco consumption? There has been a reduction of 9 per cent in Norway, 6.7 per cent in Finland, 4 per cent in Canada and 5.5 per cent in New Zealand. Everyone accepts that there is no one solution to the problem of smoking. However, do you agree that any measure that can play a role in reducing tobacco consumption should be adopted as part of that wider strategy?

Dr Wrench: That is my view. It is very important to stress that any ban would be part of a wider tobacco-control strategy.

Bill Butler (Glasgow Annie'sland) (Lab): Would you care to elaborate on the point that you made in paragraph 4 of your submission about brand sharing or brand stretching? Do you know of

any evidence or research regarding the effect of that form of advertising on smoking trends?

Dr Wrench: There is evidence of companies latching their brand name on to other products that children and young people may be interested in buying. I am sure that there is marketing research to suggest that brand stretching, as well as the direct advertising of tobacco products, has an effect on smoking trends. I know that certain countries that introduced bans at an early stage felt that the brand-stretching tactics of companies were slowing down the reduction in smoking among their populations and that they took steps to counter that. I cannot quote it chapter and verse, but there is evidence from marketing research that brand stretching and direct marketing—over and above the marketing of the product itself—have an effect.

Bill Butler: Dr Wrench might wish to submit written information on brand stretching. The assertion in his submission must be based on evidence. He has made some general points, but it would be helpful to receive specific details. Is that possible?

Dr Wrench: Yes.

Mr McAllion: I will clarify the point that Mary Scanlon made about the researchers in Parliament coming up with the data that she mentioned. In the section of the Scottish Parliament information centre research note that deals with international data, the researchers refer to a study that was carried out by someone else. Another research study that is mentioned supports Dr Wrench's case that the incidence of smoking reduces following a ban on advertising.

The study to which Mary Scanlon referred was carried in the *International Journal of Advertising*. Tobacco companies have an interest in putting across the idea that advertising bans do not reduce smoking, but so too do advertising companies. I suspect that the *International Journal of Advertising* would be seen as being opposed to any ban on advertising tobacco.

Dr Wrench: Yes.

Mr McAllion: We must be sceptical about those figures, which are not the Scottish Parliament's figures but figures from a journal of the advertising lobby that are quoted in the research prepared by the Scottish Parliament. They do not represent the views of the Scottish Parliament. It is important to get that point across.

The Convener: I will pick up on another point in Dr Wrench's submission. You were asked to comment on omissions from the bill. You mentioned brand stretching and picked up on another issue. Your submission states:

"The other area where we thought action might be required would be in relation to banning cigarette vending machines and associated advertising in areas, which are frequented by teenagers and young people."

Will you expand on that comment? Would such a ban be workable? What constitutes an area frequented by teenagers and young people? People cannot smoke in cinemas, for example. What areas are you thinking about?

Dr Wrench: The suggestion was made by my colleagues in health promotion, who say that there are cigarette machines and associated advertising in a range of places where teenagers go, such as hotels, other places where alcohol is sold and amusement areas. It is difficult to know whether it would be possible to introduce a meaningful restriction in a bill. It is a matter that we thought worth considering. Our experience suggests that kids are exposed to cigarette vending machines in many different outlets and areas.

The Convener: Your submission states:

"There is evidence to suggest that the tobacco companies have deliberately undermined voluntary regulations on tobacco advertising, and attempted to expand the market for cigarettes by recruiting new smokers and targeted vulnerable groups such as the young and the socially/economically deprived."

We have touched on that issue before. How have tobacco companies undermined the voluntary regulations? What have they done to get round them?

Dr Wrench: I am sorry, I cannot give you specific examples.

The Convener: Can we lump that matter in with the brand stretching? You can quiz your colleagues and inform the committee in writing of any specific examples.

In your submission and comments, you have highlighted the effect that tobacco advertising has on young people. One of the most startling comments that you made in your opening statement was that you believe that 90 per cent of smokers are recruited under the age of 19.

Shona Robison: Dr Wrench, you said that the effect of tobacco advertising is greater on children than on adults. Will you elaborate on that, particularly on whether there is any research that establishes that children are aware of tobacco and cigarettes before they start to smoke? Are children aware of cigarette advertising?

Dr Wrench: Professor Gerard Hastings of the University of Strathclyde has done a lot of research on that. In particular, he has studied children's awareness of different brand names. There is a strong and direct correlation between brands that have the heaviest promotion, and what children know about cigarettes and the brands that they use. Gerard Hastings has undertaken a lot of

research on the effects of advertising and marketing and there is no question about its effects. All the studies and research of which I am aware show that the major impact of tobacco advertising is on children and teenagers.

10:45

Shona Robison: Perhaps we can get hold of that research—it would be useful.

Dorothy-Grace Elder: I thank Dr Wrench for coming—he has travelled a considerable distance. In his submission, he argues that there is

“systematic targeting of women”,

which is

“reflected in increasing levels of lung cancer and heart disease among Scottish women”.

What evidence is there to suggest that the link between the two is causal?

Dr Wrench: Dr Amanda Amos of the University of Edinburgh has done a lot of research that specifically examines the correlation between consumption and advertising, magazines and literature that are targeted at women. As with most things, it is difficult to show a definite correlation and to say that one thing definitely causes another. However, smoking has increased among younger women and teenage girls over the past 10 to 15 years and there has certainly been an increase in lung cancer rates among women. Among men, lung cancer rates have decreased slowly but, among women, the opposite has happened. We cannot say that that is definitely a case of cause and effect, but there appears to be a correlation in the figures.

Dorothy-Grace Elder: Why does the tobacco industry target women? Is there a link with the fact that children are more likely to be around women? Is the industry attempting to recruit a new generation?

Dr Wrench: I can only speculate on that point, but I think that it is important. Women, particularly young mothers, have a marked influence on children in the parental home. The figures show that a high proportion of women, including young mothers, smoke—particularly in deprived areas, as I mentioned. The tobacco industry's market research might suggest that women in deprived areas are particularly vulnerable for a variety of reasons.

Dorothy-Grace Elder: Stress.

Dr Wrench: I am speculating. There is evidence that, for one reason or another, older adult males have taken on the message about smoking—smoking levels among that group have reduced. For one reason or another, the message seems to have got through to men—certainly older adult

men—in relation to fitness activity, coronary heart disease and so on. However, the position is different with younger women, who we know perceive the threat of coronary heart disease as a lesser one. If they are aware of a threat of coronary heart disease, cardiovascular disease or cancer, it is well down the list and is considered to be a concern for much later in life. For a variety of reasons, that group may be more susceptible and vulnerable.

Dorothy-Grace Elder: Roughly how much is the budget that you receive to oppose the tobacco industry and its advertising and to target tobacco consumption?

Dr Wrench: We have money for that from the health improvement fund. Off the top of my head, I think we have somewhere between £100,000 and £200,000 per year for that purpose, but that sum may partly cover other initiatives. From a total budget of about £700,000 per year for health promotion in the Highlands, perhaps only a fifth or less—£100,000 or £150,000—is directed specifically at anti-smoking or anti-tobacco initiatives. It is a small amount in relative terms.

Dorothy-Grace Elder: Particularly if we consider the amount raised through tobacco tax. Are you aware of the amount of revenue that the Government takes in tobacco tax?

Dr Wrench: Yes—that is why the health improvement fund money was very welcome. Some of that money was fed back to health boards, and the fund resources have been used in a variety of areas, in relation not just to tobacco, but to diet and physical activity. That money was welcome.

Dorothy-Grace Elder: You are not just up against the tobacco industry. There is also the question of funding, as the amount of tobacco tax taken by the Treasury is up to £10 billion a year. Are you aware of the sum gained from children buying cigarettes illegally?

Dr Wrench: I am not aware of the specific sum.

Dorothy-Grace Elder: It is estimated to be about £10 million a year for Scottish child smokers alone. There is a lot to consider about finance on both sides: in relation both to what the tobacco companies are spending and to what the NHS is not getting. Did you say that £150,000 or so was being used to combat cigarettes?

Dr Wrench: The figure is somewhere in that region.

Mr McAllion: If your contention is true that a ban on advertising works, in that it reduces the incidence of smoking, the opposite must also be true: the absence of a ban on advertising must work for the tobacco companies, in that it helps them to recruit new victims to replace the victims

who die every year from coronary heart disease and cancer.

In paragraph 5 of your written evidence, you say:

"Sports sponsorship is also a highly cost effective form of advertising for the tobacco industry."

You go on to say:

"popular events ... attract a largely youthful audience."

Given the fact that advertising on radio and television is reserved to Westminster and comes under UK broadcasting legislation, how do you suggest that the committee and the Tobacco Advertising and Promotion (Scotland) Bill should address

"the prohibition of sports and other types of sponsorship within Scotland",

which you call for in your submission? How can we do that if we do not have control over advertising on radio and TV?

Dr Wrench: I take the point—that is a difficult issue. The key measures that can be taken involve working with local sporting and other events. I am thinking particularly about football. I know that some clubs have adopted an anti-smoking stance on advertising and have highlighted the dangers of tobacco. We could do a lot with locally organised events, including major sporting events, if we reach agreements with major sports such as football and rugby. That might involve not only banning advertising, which is an important measure to take, but giving out health promotion or anti-smoking messages. There is scope for that approach.

The issue that Mr McAllion raises is difficult because it will be years before an effective ban is put in place for international motor racing. We must accept that, not only in the UK and Europe but internationally, children and youngsters will be exposed to that advertising. On a pragmatic basis, I argue that we can work with key local groups and sporting associations that organise events to use those events to pass on specific messages.

Mr McAllion: Do you accept that action is needed at a level higher than the Scottish Parliament to make any ban on tobacco advertising effective in Scotland, given the recent internationalisation of sport? For example, tobacco companies sponsor snooker championships that are broadcast and watched live across Scotland. They also sponsor darts championships at which the combatants are shown smoking before they throw the darts. You mentioned international motor racing, and there is no control over the English premier league football matches that are broadcast every night in Scotland.

Dr Wrench: I refer back to the point that was made earlier. We would support UK action, but in

the absence of UK action, I would still argue strongly for the bill and for a Scottish approach of working on a local basis. That argument is pragmatic, but I feel so strongly about the public health issues that surround the use of tobacco products that I believe that tackling those issues on a local basis is justified.

Mr McAllion: Is there an argument for saying that a ban should go beyond the British level? For example, during the summer, the world cup will be broadcast to Britain from Korea and Japan and I am sure that tobacco advertising will be to the fore. International events are broadcast by satellite all the time. Should the United Nations or the European Union be involved in trying to impose a ban?

Dr Wrench: I agree that to make any ban effective, the wider and more complete the restriction, the better.

Mr McAllion: This is one area of globalisation that most new politicians are not interested in taking on board.

Nicola Sturgeon: I agree with Dr Wrench's comments on the scope of limiting tobacco advertising through sponsorship in Scotland. For example, if the world snooker championships were held in Scotland, I presume that tobacco sponsorship could be banned, even if that competition were to be televised elsewhere.

Do you agree with the criticism that we cannot have a Scottish piece of legislation on the grounds that we cannot de-internationalise sporting competition? Would those criticisms not be equally valid if we were discussing a piece of UK legislation? The UK is no more able to prevent broadcasts in England that show motor racing sponsorship than the Scottish Parliament would be to prevent such broadcasts in Scotland. It is important that action is taken at the European level. Do you agree that such action is being taken and that the important point about the bill is that it will give Scottish ministers the power to introduce a ban at the first possible and practical opportunity? That is what we should be trying to achieve.

Dr Wrench: I agree. I re-emphasise the point that was made about taking an integrated approach. I realise that there is a European directive that will affect motor racing in a few years' time. We would all like there to be a UK, European and global approach, but the problem is such that we have to start with a local approach in Scotland. I strongly support starting with that approach.

Mary Scanlon: Paragraph 5 of your submission says that consumption fell by between 14 and 37 per cent in the four countries in which a ban has been introduced. I repeat the request that other

members have made, as it is important that the committee has accurate figures. It will be helpful if you send us the information on which that statement is based.

11:00

Dr Wrench: I will certainly do that.

The Convener: I thank Dr Wrench for his evidence.

The next witnesses are Maureen Moore and Tanith Muller from Action on Smoking and Health Scotland.

I welcome you to the Health and Community Care Committee's first evidence-taking session on the Tobacco Advertising and Promotion (Scotland) Bill. You may open with a short statement, after which we will come at you with questions.

Maureen Moore (ASH Scotland): ASH Scotland thanks the committee for inviting us to speak. We are delighted to give you the opportunity to hear our views on the bill.

There can be little doubt that a tobacco advertising ban is vital. Scotland has the highest rates of deaths caused by tobacco in the United Kingdom and some of the highest in the world. Tobacco kills at least 13,000 people each year in Scotland. That is more than five times the total number of Scots killed by alcohol-related illness, illegal drugs, AIDS and accidents combined. Lung cancer is the biggest cancer killer for men and women. More Scottish women have died of lung cancer than breast cancer annually since 1987.

Tobacco use exacts a disproportionate toll on Scotland's most deprived communities and makes the biggest single contribution to health inequalities in Scotland. It accounts for two thirds of the deaths that are due to health inequalities in Scotland. Treating tobacco illness costs national health services in Scotland at least £140 million a year.

Reducing tobacco use must be a major public health priority. ASH Scotland has campaigned for tobacco advertising bans for many years. We know from the evidence from countries in which tobacco advertising bans have been introduced that they reduce tobacco consumption, especially where additional tobacco control policies are in place, as they are in Scotland.

The evidence is clear: tobacco advertising targets children and young people and those who live in areas of deprivation. Voluntary agreements have failed to regulate the tobacco industry. Legislation is required to control tobacco advertising to protect public health. That is why the Labour party promised a tobacco advertising ban in its manifesto in 1997 and again in 2001. We

should not forget that, without a tobacco advertising ban, the cancer prevention strategy that is outlined in "Cancer in Scotland: Action for Change" has a major hole in it.

ASH Scotland supports the general principles of the bill because we believe that it will have a positive impact on public health in Scotland: it will reduce tobacco consumption overall and help to address the extent to which smoking is perceived as a social norm by children and people who live in areas of deprivation.

We stress the fact that there is no such thing as a comprehensive tobacco advertising ban. All such legislation must be reviewed to determine its effectiveness in practice. We also emphasise that the bill covers many of the most important forms of advertising. Although we have concerns about the omission of brand stretching and free distribution, it is possible that those loopholes could be tightened through appropriate legislation at the UK level at a later date.

In addition to the measurable health impact of reducing tobacco consumption, it is important that the Scottish Parliament send a message that tobacco advertising is unwelcome in Scotland and that its continuing presence is hindering the battle against Scotland's endemic ill health. In the absence of a timetable to implement the UK Government's UK-wide ban on tobacco advertising, ASH Scotland believes that Scottish legislation must be considered. That is particularly the case in the face of an EU directive that requires member states to effect strong legislation. There is no guarantee that a UK-wide ban will be introduced in Westminster in the near future. We urge MSPs to demonstrate that protecting Scotland's health is a priority. MSPs can do so by banning tobacco advertising in Scotland.

Mary Scanlon: Your submission states that evidence shows that a ban on tobacco advertising would reduce the consumption of tobacco. For the committee's benefit, will you give further detail of that evidence?

Maureen Moore: We have collected evidence from different countries that we can send to the committee. It is clear that a ban on tobacco advertising would reduce consumption. I was shocked to hear Mary Scanlon say that consumption is going up.

Mary Scanlon: I was not saying that. I was—

Maureen Moore: It was said.

Mary Scanlon: It would be helpful for the committee to have the information.

I would like to do something to reduce tobacco consumption, but I have to know that a ban on tobacco advertising is the right measure. We have heard about a reduction of anything from 1 to 37

per cent. However, we can also look at figures from Iceland where, at the end of a 20-year ban on tobacco advertising, there is more smoking than in other OECD countries where there are no bans.

Maureen Moore: I do not know when Iceland introduced the ban, but things change over time. The tobacco industry looks constantly for loopholes. In 1967, when we banned TV advertising, we did not repeal it because it was not working. We said that we need to toughen it up. If tobacco advertising bans are not constantly monitored and reviewed to look for the loopholes that the tobacco industry will seek to find, consumption will increase. The industry is out to hook new people into smoking cigarettes.

Mary Scanlon: I appreciate that. I know that ASH Scotland has undertaken considerable research. If the advertising ban is imposed, what is your estimate of the percentage reduction in the consumption of cigarettes in Scotland? Where would it be on a scale of 1 to 37 per cent?

Maureen Moore: I cannot say, as a ban on tobacco advertising is not in place. We want a ban on tobacco advertising in the UK because the European ban on tobacco advertising fell. The Scottish Parliament has had a Sewel debate in which a ban on tobacco advertising was supported. I cannot understand why we are now talking about whether it will be effective. MSPs have said that there must be a ban on tobacco advertising. It is odd to ask whether a ban will bring down consumption, when members have argued for a ban.

Mary Scanlon: I am looking for guidance from you, on the basis of the research that I know you have carried out, for a rough guide to what we could expect in the reduction in consumption and the saving of lives.

Maureen Moore: Mary Scanlon will note that the World Bank figure is 7 per cent.

Mary Scanlon: That figure is for a global ban.

Maureen Moore: Yes, for a ban on tobacco advertising. The Department of Health figure is 2.5 per cent. Those figures are Government figures and they are on the low side.

The issue is not just about achieving a reduction in consumption and the saving of lives; it is about society denormalising images. The tobacco industry is clever. It segments populations to target women and young people. One example is the Regal "Reg" campaign from the 1980s. I am not sure how many people remember that campaign, which was run on big billboards in Scotland. It was targeted at areas of deprivation and young people. The campaign had to be banned as young people started to buy Regal cigarettes. Sales went through the roof. We have

evidence of campaigns that had to be stopped. If billboard and point-of-sale advertising were to be banned, there would be an effect.

Nicola Sturgeon: You raise an important point that, on a previous occasion, all members of the Scottish Parliament supported the principle of a ban on tobacco advertising. Much of what we are debating on the bill is how best to begin to introduce a ban effectively and as quickly as possible.

I am interested in your view that there can be no such thing as a comprehensive ban on tobacco advertising. Arguably, it might be possible if there were a worldwide ban, but even a UK ban would be open to contamination from outside the UK. You also say that, having accepted that fact, you still think that it is important to do what we can to denormalise tobacco advertising and tobacco use. How could this bill begin to do that in Scotland?

Maureen Moore: If billboard and point-of-sale advertising were banned, images that normalise tobacco use would be removed from people's communities. When Gerard Hastings comes to the committee to give evidence, you can ask him about tactics that the tobacco industry is starting to use such as offering to tile a shop's floor with tiles that bear tobacco advertising in order to extend the advertising to other parts of the shop. There is a dose effect in that each area of advertising that is banned has an effect.

Go to areas of deprivation and look at the billboards. We know that people in areas of deprivation spend more of their money on cigarettes than other people do. The tobacco industry is aware of that and wants to put reassuring images in areas of deprivation so that the people who live there will continue to smoke. Tobacco advertising is about normalisation, glamorisation and reassurance.

For every pound that is spent on health education, the tobacco companies spend £10 on advertising. That makes a nonsense of what we are trying to do.

Nicola Sturgeon: I assume that you would say that the argument that one legislature—the Scottish Parliament—should wait for another legislature to take action just because its ban might be a wee bit more comprehensive than ours is a bogus argument, and that we should just get on with doing what we can.

Maureen Moore: Yes. Of course, what the World Bank means by comprehensive is more than one medium.

Nicola Sturgeon: That would suggest that the ban in the bill that we are discussing would be considered to be comprehensive.

Maureen Moore: Yes.

Nicola Sturgeon: It has been put to us by the tobacco industry that tobacco advertising is not designed to encourage people to take up smoking but to encourage smokers to switch brands. Is that a credible argument?

Maureen Moore: No. The tobacco industry's documents make it clear that the advertising targets young people. We lose 13,000 Scots each year through tobacco-related diseases. That means that the tobacco companies have to get new customers and, logically, they use advertising to do that.

In tobacco industry papers, an executive of R J Reynolds Tobacco Holdings, who was asked the age of the kids that were being targeted, was reported as saying, "They got lips? We want them." This is an industry that wants new customers and it uses advertising to get them. Toilet roll advertising is designed to make us switch brands. It is a nonsense to say that tobacco companies do not advertise to get new customers.

Bill Butler: On page 4 of your submission, you detail various estimates of the reduction in the number of people smoking that would result if there were a Europe-wide ban on tobacco advertising. What specific reduction in those figures do you think there would be if only Scotland introduced a ban? I note that you say that it would have a significant impact.

11:15

Maureen Moore: I am just looking at the figures. The Department of Health estimates that a UK-wide advertising ban would reduce consumption by 2.5 per cent. However, evidence from other countries suggests that that estimate is conservative.

Bill Butler: In that case, what would be your best guesstimate?

Maureen Moore: It could be anywhere between 7 and 37 per cent.

Bill Butler: You have based those figures on specific evidence from other countries.

Maureen Moore: Yes.

Bill Butler: And you do not think that the situation in Scotland would be significantly different. The reduction in consumption would be within the range that you mentioned.

Maureen Moore: I do not see why it should not be.

Bill Butler: Okay.

Maureen Moore: I can only give the committee my view on the matter.

Bill Butler: Indeed.

Maureen Moore: It is not based on anything.

Bill Butler: It is not based on anything?

Maureen Moore: Our estimate is based on specific evidence. However, you are asking me to make an assumption.

Bill Butler: I am obviously asking you to speculate, as there is no ban at the moment.

Maureen Moore: But that is what you are asking me to do. We have submitted to the committee our evidence on percentages.

Bill Butler: So you are saying that the reduction in consumption because of a ban could be anywhere between 7 and 37 per cent.

Maureen Moore: Well, that is what the evidence suggests.

Bill Butler: And that is your view—your organisation's view.

Maureen Moore: You are asking my view.

Bill Butler: Yes.

Maureen Moore: I am taking an organisational view on the matter. Our organisation presents evidence-based research, which is what I am doing today. You are asking me to make an assumption.

Bill Butler: Because you are the chief executive of your organisation.

Maureen Moore: Well, I am not happy to make an assumption as the chief executive. We present evidence-based research.

Tanith Muller (ASH Scotland): Perhaps, as the parliamentary, press and public relations manager for the organisation, I could make an assumption. We should bear it in mind that when people have estimated the effect of bans, they have examined a very complicated model of tobacco use in countries or situations where a ban has been modelled. As we do not have the expertise to create such a complicated model, we can only consider evidence from countries where bans have been introduced.

We should also consider the fact that when the Department of Health issued its 2.5 per cent estimate, it added that it expected the figure to fall within a 5 per cent range and therefore simply took the middle point. Even with the benefit of its statisticians, the department went for a best-fit estimate. That is all that Maureen Moore and I can do on behalf of ASH Scotland, given that we are not statisticians and do not have such expertise.

Bill Butler: I am obliged for that.

Janis Hughes: Your submission says that there is evidence that the tobacco industry actively targets low-income communities. Will you

elaborate on that point?

Maureen Moore: Did you say low-income communities?

Janis Hughes: I specifically mentioned low-income communities. Dr Wrench told the committee about the high incidence of smoking in deprived communities.

Maureen Moore: The Acheson report says that more than 70 per cent of two-parent households on income support buy cigarettes and spend about 15 per cent of their disposable income on tobacco. The tobacco industry actively targets low-income communities, using aspirational ideas to promote cheaper brands. We are citing that only as anecdotal evidence, as we have not carried out any research into the issue.

Tanith Muller: There is evidence of what is called aspirational branding, with cheaper brands targeted in low-income communities and the various markets saturated with advertising. That practice has been clearly documented in one of the Centre for Tobacco Control Research studies. There is also anecdotal evidence about the placing of billboards in lower-income communities. Let us face it: a busy road with tobacco billboards along it will not be in a middle-class area, it will be where poorer people live. We can see where the industry is targeting brands.

Maureen Moore: We can supply that evidence to the committee.

Janis Hughes: That would be helpful. Is there any research that shows that the legislation that forced tobacco companies to put health warnings on their billboards or other forms of advertising had an impact on the health statistics?

Maureen Moore: There might be some research on the short-term impact of that measure. We can go back and check for you. However, I should point out that people are used to such warnings now. For example, in Canada, they are considering extending the health warning over the whole pack with perhaps a picture of cancerous lungs on the front of it. An evaluation on the proposal has gone very well; however, there has been only one of those. Because people are so used to the warnings, they pay no attention to them any more.

Janis Hughes: I accept that, but it would be interesting to know whether there was any major shift when that measure came into effect.

Maureen Moore: We can go back and research that for you.

Nicola Sturgeon: We have already received a lot of statistical evidence, which is useful and helpful. However, do you agree that sometimes, with advertising, the best evidence is that which

one sees with one's own eyes? Do you also agree that anybody who doubts that tobacco companies target their message at people in deprived communities would only have to drive through Glasgow, for example, and look at where billboard adverts are sited to see that case proved conclusively?

Maureen Moore: That is why I said that the evidence is anecdotal. I have seen that evidence. We have done a lot of work in deprived areas. We have a women on low income and smoking project, which we have run for four years. We have now started a tobacco and inequalities project, which listens to the women talking about the way in which they are targeted by the tobacco industry. They see it every day. We have a voluntary agreement whereby tobacco companies should not situate billboards within a certain distance of a school, but the women tell us constantly that there are billboards near their schools. Committee members might want to pay a visit and see that for themselves.

Nicola Sturgeon: Do you know of any other examples of voluntary agreements with the tobacco industry being ignored?

Maureen Moore: The evidence that I have received has been about the siting of billboards—that is what the complaints have been about. The tobacco industry is clever and looks for loopholes instead of getting into trouble. It continues to change the way in which it advertises, from direct mailing to the handing out of cigarettes in Edinburgh. Every year we complain about the Lighten Up comedy festival, where cigarettes are handed out as young people are going in. That is against the agreement. I think that we have that agreement in the organisation and we can send it to the committee, along with more detail.

Dorothy-Grace Elder: You have dealt with the question of the targeting of children. We would welcome any specific examples in writing of the distance of those billboards from schools. There is some sort of regulation governing that.

Maureen Moore: That is right.

Dorothy-Grace Elder: You also mentioned that you get only £1 to spend in opposing advertising for every £10 that the tobacco lords have for advertising their wares. How much does ASH Scotland have to spend, overall, on anti-tobacco publicity?

Maureen Moore: I was not talking about ASH Scotland. The figure that I cited refers to the Health Education Board for Scotland. The tobacco industry spends 10 times as much on tobacco promotion as the Government spends on smoking prevention. The HEBS smokeline cost £550,000 in its first year, whereas £5.6 million was spent on above-line tobacco advertising in Scotland. A

recent Westminster parliamentary answer described a similar ratio of £10 spent on promotion to every £1 spent on prevention.

Dorothy-Grace Elder: There is another side to this, as I was saying to an earlier witness. Can you please give me your updated figure for the amount of tobacco tax that is earned in Scotland and Britain?

Maureen Moore: I have not got it with me. I can give you it.

Dorothy-Grace Elder: We know that it is billions of pounds.

Maureen Moore: We should separate out the issues. The reason that tobacco tax goes up is to send out an important public health message. We know that smoking rates go down as tobacco tax goes up.

Dorothy-Grace Elder: Yes, but it also means that the state is largely financed by tobacco tax and that the Government is happy to take the money that is earned in that way.

Maureen Moore: For the first time, the Government has ring-fenced some of that money back into health.

Dorothy-Grace Elder: About £24 million of it.

Maureen Moore: Yes, through the health improvement fund.

Dorothy-Grace Elder: A couple of years ago, ASH told me that it estimated that children who buy or are sold cigarettes illegally were putting £10 million in tobacco tax into the British Treasury. Is that still the figure?

Maureen Moore: I would have to check that information. At one point the figure was £10 million. However, that is a separate issue from the one that we are discussing today. Tobacco was being sold to children under the age of 16 because the law was not being enforced properly. I am delighted that the Lord Advocate's review means that we will be able to pilot-test purchasing in Scotland. That is part of a wider tobacco control strategy. A ban on tobacco advertising is another component of that strategy.

Dorothy-Grace Elder: I am trying to make it clear that you are up against billions of pounds that are going into the British Treasury and that your resources are peanuts compared with those of the tobacco lords whom you are fighting and who have at least millions to spend.

Maureen Moore: That is why it is paramount that we get a ban on tobacco advertising.

Dorothy-Grace Elder: You are really up against it.

They may be wrong about this—please advise

us as to whether that is the case—but people are worried that, if the tobacco lords are deprived of their normal forms of advertising such as billboards, they will turn increasingly to movies. For the first time in 20 to 30 years, movie stars are again being shown smoking on screen. Will that not affect the young even more directly than tobacco advertising?

Maureen Moore: The tobacco companies are already pursuing the strategy that the member has outlined—it is called product placement. The wee aliens in the film "Men in Black", which appeared a while ago, took their Marlboros with them on to their spacecraft. The tobacco companies will continue with such product placement. That is why we are advocating a comprehensive advertising ban. Any ban that is introduced needs to be reviewed. If tobacco advertising is banned in Scotland, the tobacco companies will look for loopholes. That should not stop the Scottish Parliament introducing a ban; rather, it should seek to close down those loopholes. We know the death rates from smoking in Scotland. The argument for a ban on tobacco advertising has been won. We should be debating what we can do in Scotland if we do not get a UK-wide ban.

Dorothy-Grace Elder: Under the proposed legislation, we would not be able to tackle product placement or to counteract the influence of Julia Roberts smoking in a film.

Maureen Moore: That is an issue that needs to be considered. Besides product placement, we need to address the issues of direct mailing, brand stretching and the setting up of branded coffee shops. The tobacco companies are seeking not just to target people, but to normalise tobacco. They are saying, "It is okay—don't worry about it". In Scotland we are up against a disgraceful death rate from tobacco.

The Convener: My question is similar to that which Dorothy-Grace Elder asked. You express concern that only Scottish-registered websites would be prevented from advertising tobacco. Given the difficulty of policing a medium such as the internet, do you think that such a ban would be effective or that it could be policed? We have already touched on the issue of globalisation and the effect of sports sponsorship by tobacco companies. Dorothy-Grace Elder has made a point about product placement in movies. Are you saying that we should proceed step by step and do what we have the power to do to tackle the effects of globalisation and the imbalance that exists?

Maureen Moore: We have concerns about the effectiveness and policing of a ban on tobacco advertising on Scottish-registered websites. The tobacco industry will continue to use the internet to advertise its products. We should do what we can

in Scotland to prevent that. We would like the whole internet to be covered, which could be done at UK level. Measures that are missing from the bill could be taken at UK level.

We are still waiting for the bill to be passed; there is no guarantee that that will happen. If Scotland does not do anything to stop tobacco advertising, what does that say to the Scottish people about Parliament and what it can do to protect the health of the people of Scotland? There are some things that you will not be able to do, but there are other things that you will be able to do effectively. We will get eventually a UK-wide ban that can cover those loopholes, but that should not stop you trying to do what you can.

On globalisation, we have the Framework Convention on Tobacco Control that is considering matters with the World Health Organisation; we will get a European ban, albeit it will be much weaker than we wanted; and we must have UK-wide legislation. Tobacco companies do not sponsor football, so we do not need to worry about that. We know that in 2006 we are going to get rid of tobacco sponsorship of motor racing. However, dealing with tobacco advertising is not just about legislation, but about educating and working with companies to encourage them also to move away from tobacco advertising. That needs to go alongside legislation.

11:30

The Convener: I would be happy for there to be less tobacco sponsoring of darts. However, I cannot think of anything that would be more likely to put me off smoking a cigarette than the thought that I would end up looking like a male darts player—but perhaps that is just me.

I presume that in the countries in which there are bans, there are also rolling programmes to monitor the effectiveness of the ban and to assess whether there are any loopholes, which are then closed over a period of time.

Maureen Moore: I think that Finland had to go back to its legislation and tighten up on brand stretching.

Tanith Muller: Yes. Finland had to do that for brand stretching. Sweden and, I believe, France did the same thing. That seems to be the pattern. The Republic of Ireland, in fact, took an incremental approach to its ban on tobacco advertising. Tobacco advertising on television has been banned there for several years, but tobacco advertising on billboards was banned separately. In 2000, an advertising ban that affected the media was introduced. Only now is the Republic of Ireland dealing with point-of-sale advertising in the bill on tobacco control that is going through the Dáil.

The Republic of Ireland's model of introducing a ban is incremental, in that it tries to deal with issues as they come up, rather than to do everything at once. However, even countries that have tried to do everything at once seem to have to revise their legislation as the tobacco companies come up with new strategies.

Maureen Moore: We have a UK white paper, which suggests other strategies, and we are increasing cessation services in Scotland. We have a cancer plan that said we would have a ban on tobacco advertising. We pour money into cessation services in Scotland to help people to stop smoking, but at the same time we allow tobacco advertising to continue to target people. We are going round in circles and ending up with people with tobacco-related diseases in NHS hospital beds.

There must be a cut-off. We must give out the message that tobacco advertising is not acceptable in Scotland. We should not be prepared to wait forever on an issue on which we have the power to take action.

The Convener: You said that some countries—I think that it was Sweden and Finland—had to revise their legislation to include brand stretching. Your written evidence mentions the fact that brand stretching is omitted from the Tobacco Advertising and Promotion (Scotland) Bill. Should we suggest that brand stretching be covered in the bill? Are we in a position to do that? What was the impact in those countries that revisited their legislation to include brand stretching? Did they succeed?

Maureen Moore: Yes. They included brand stretching in their legislation and they continue to monitor that legislation. Introducing legislation is not a one-off act, but a continuum. Once we have legislation to ban tobacco advertising, we must continue to add to it. Banning tobacco advertising brings down smoking rates when it is part of a broader strategy on tobacco control. We have such a strategy in Scotland, but we do not have a ban.

The Convener: Should brand stretching be included in the bill?

Maureen Moore: Yes, but I think that brand stretching might be a reserved matter.

The Convener: Should we have the power to ban brand stretching?

Tanith Muller: That is a question for people who, unlike us, are experts on the Scotland Act 1998. However, if there is any way in which the Scottish Parliament could address the issue, we urge the committee to consider whether brand stretching can be finessed into the bill. Brand stretching is an important area and its omission is a flaw in the bill.

Dorothy-Grace Elder: Even if the bill is passed, companies will be able to export magazines to Scotland as long as they are produced overseas. Would you like there to be a ban on that too, bearing in mind that tobacco advertising in magazines targets women?

Maureen Moore: Yes.

Dorothy-Grace Elder: Do you view that as an addition to the provisions of the bill, as might be the case for brand stretching?

Maureen Moore: It is an on-going matter, in that there is a start point and then a continuing process. Reserved and devolved matters are involved. We have pointed out what we think needs to be examined. Whether that has to be done on a UK-wide level or a Scottish level also has to be considered.

Mr McAllion: I accept entirely the argument that, in the global economy that we now inhabit, any national ban can only ever be partial, but it is much better to have a partial ban than no ban at all. In the absence of a UK bill, I think that everybody on the committee would support the Tobacco Advertising and Promotion (Scotland) Bill becoming law.

I take the witnesses' point about the tobacco industry always looking for loopholes; the industry will also seek opportunities to counter-attack. I am a bit concerned about the prohibition of sponsorship, particularly in relation to sporting events. I am not concerned so much about football, which is not really involved, but more about such sports as snooker.

If, as Nicola Sturgeon says, the UK snooker championship, which has for years been sponsored by tobacco companies, could go anywhere in Britain except Scotland, could not the tobacco industry use its links in the press to counter-attack the ban and say that the puritans in the Scottish Parliament are denying Scottish fans the chance to see their heroes? That is the sort of attack that we could expect. Should we be conscious of that and seek to avoid such a counter-attack against a Scottish ban?

Maureen Moore: It is a matter of encouraging people to get sponsorship from elsewhere and of persuading people who run events and secure sponsorship that they should not get sponsorship from the tobacco industry. We all accept that it is not possible to legislate for everything.

Mr McAllion: Is there not a danger that, if the industry can use sponsorship everywhere in the UK except Scotland, it will use that against the Scottish ban and to try to mount opposition to any ban elsewhere in the UK?

Maureen Moore: The Tobacco Manufacturers Association accepts the fact that a ban will be

introduced, and the tobacco industry may not go to court as it normally would. Tobacco industry representatives would have tried to take the UK Government to court for certain aspects of any UK ban. They will always be considering different ways of doing that, and we cannot change some things. We cannot cover everything, but that should not stop us introducing a ban on tobacco advertising.

People ask me what the tobacco industry has to do with public health, and suggest that the industry is interested only in getting its cigarettes to the customer. Tobacco companies will always seek ways around bans, but things can be done at the Scottish level, at the UK level, at the European level and worldwide. We work at all those levels, and we have to continue with that. Changes are taking place.

People in Scotland are starting to ask why they should take this seriously. Young people are saying to me, "Och, it's a load of rubbish. They wouldn't advertise cigarettes if they were that dangerous." Do you appreciate the message that we are giving to the young people of Scotland?

Mr McAllion: Absolutely. I am personally appalled by the messages that we are giving them, not just on smoking but on diet. McDonald's is sponsoring children's hospitals in Scotland. We really have to ask why we should accept such sponsorship in the national health service. We do, however, and that is a problem.

Nicola Sturgeon: It is important that we have some clarity on the issue of sponsorship. We would all agree that, because of television, a ban on sponsorship will be effective only when it is Europe-wide. There will probably be a European ban on tobacco sponsorship by 2006. The bill gives Scottish ministers the power to apply that ban to Scotland as soon as it is implemented. The bill does not necessarily imply that we should move more quickly than the rest of Europe on a sponsorship ban; it ensures that we do not get left behind. Do you agree that that is important?

Maureen Moore: Yes, it is important.

Shona Robison: You said that there is evidence of a direct correlation between childhood brand awareness and smoking. Did the research establish whether brand awareness exists prior to the onset of smoking?

Maureen Moore: Children who smoke are more aware of brands than those who do not smoke. I think that you are talking about the research by Gerard Hastings.

Shona Robison: My question was about children who have not had their first cigarette. Is there evidence to suggest that such children are aware of tobacco advertising?

Maureen Moore: Yes, they are particularly aware of sponsorship. For example, cigarettes are associated with fast cars. There is detailed evidence that links sports sponsorship and children's awareness of brands—we can find that evidence for the committee. Obviously, smokers are more aware of sponsorship.

Dorothy-Grace Elder: Unless I did not hear properly, you did not give a figure for the grant or income that ASH Scotland receives from the Government every year.

Maureen Moore: The Scottish Executive funds ASH Scotland's core running costs, which allows us to do our work on inequalities and on influencing policy. Our educational work is done in conjunction with HEBS, which funds us for specific areas of work. Our core grant is separate from grants for work in specific areas of education.

Dorothy-Grace Elder: Roughly how much is your core running grant?

Maureen Moore: It is about £120,000 a year.

Dorothy-Grace Elder: Is there anything on top of that through state-related funds?

Maureen Moore: No.

Dorothy-Grace Elder: So that is your lot. It is not much compared with the might of the tobacco barons and HM Treasury with its billions from tobacco tax.

Maureen Moore: We are only a small organisation. If you can change that, I will thank you.

The Convener: I thank the witnesses for their written and oral evidence and for their agreement to give us a sizeable amount of extra written evidence. The clerks will remind them exactly what they promised.

I want to clarify a few points for members. Representatives from HEBS were supposed to give evidence this morning, but unfortunately one of them is ill. They are now pencilled in to give evidence on 6 February, which is the same day that the minister, the chief medical officer and Nicola Sturgeon will give evidence.

The Enterprise and Lifelong Learning Committee is taking evidence on the bill from the tobacco and advertising industries. Unfortunately, that committee's meeting on 13 February is at the same time as ours, so perhaps one member of the committee should go to the Enterprise and Lifelong Learning Committee meeting either simply to hear the evidence or to ask questions. We are likely to receive the Enterprise and Lifelong Learning Committee's report at the end of February, and we will not be able to complete our stage 1 report until we receive that one.

In the past few days, we have been informed that there is a delay with the proposed mental health bill. Members might recall that the timing for our evidence-taking sessions on the Tobacco Advertising and Promotion (Scotland) Bill was constrained because we had to finish the Community Care and Health (Scotland) Bill and were about to start work on the proposed mental health bill, which was to be completed before the summer recess. That now seems very unlikely, and if members want to take further evidence or to do other work on the bill, there is scope for that because of the slippage with the proposed mental health bill.

Nicola Sturgeon: If my reading of opinion is correct, all of us, bar perhaps one, agree in principle with a ban on tobacco advertising. However, I do not want to prejudge that issue. There are, perhaps, disagreements on how we can best and most effectively introduce such a ban. We all also agree that a UK-wide ban would be more desirable, but some of us think that if there is no guarantee of a UK ban, we should press ahead with Scottish legislation. Some of the witnesses echoed that view this morning.

In the circumstances, it is crucial that we know the exact intentions of the UK Government in relation to a UK bill. We must have that information during stage 1 and before members are asked to vote. For that reason, I suggest that we invite the Leader of the House of Commons to give evidence to the committee to indicate whether a UK ban is likely to proceed in a reasonable time scale. That will influence how some of us view the bill when we get to the end of the stage 1 process.

11:45

The Convener: We cannot compel a UK minister to give evidence, but a precedent has been set by Peter Hain MP, who was relaxed and happy to give evidence to the European Committee. However, when approaches have been made to UK ministers on other occasions, the responses have been negative. Other options are available to us. We might want to get the information in writing, or we might be happy to accept evidence from officials who are working on the matter at Westminster.

There is an argument for monitoring the UK situation. A private members' bill is going through the House of Lords. My understanding is that committees will consider that bill in the middle of February, but there is a strong possibility that it will progress to stage 3 not long after that. That is contemporaneous and might give us a clearer picture of what will happen down there.

What do other members of the committee think the way forward should be? As far as precedent is

concerned, there is no barrier to inviting a Government minister to give evidence. There is no barrier of time. It is entirely up to the committee to say what the best and most effective use of our time would be.

Dorothy-Grace Elder: From what you said, I was not clear how much extra time we might have. We have pressing subjects to consider, such as multiple sclerosis.

The Convener: We could take further evidence on 13 February, when we were expecting to start work on the mental health bill.

Dorothy-Grace Elder: The evidence that we heard this morning was useful and the addition of someone from Westminster to be held accountable would also be valuable. However, on this subject, I feel that evidence will be similar. People will come before us and say the same thing, but with added extras. I am concerned about committee time on the MS and beta interferon situation and other matters that are piling up.

The Convener: Is that a yes or a no to inviting a UK minister to give evidence?

Dorothy-Grace Elder: I back the suggestion of a UK minister or representative updating us on what they are doing, if they can do so at present. At the same time, I do not think that we should expend a vast amount of time on the subject when we are saving time for the mental health bill.

Unusually, we will have a long run of people—we have already had that—saying virtually the same thing.

The Convener: Nicola Sturgeon might want to wind up on this after everyone has contributed.

The omission from the bill of brand stretching has been mentioned. I confess that I am not an expert on the subject. As Dorothy-Grace Elder said, we may get the same evidence time and again that the bill does not cover brand stretching. However, we might have an opportunity to ask an expert on brand stretching how we could close that loophole. Closing loopholes before we pass the bill would be a more effective use of our time than waiting until the legislation has been in place for a year or so and revisiting it, as the Finns and others have had to do.

Dorothy-Grace Elder: Are you saying that the entire time that we have been allotted for the mental health legislation—

The Convener: No—not at all. I am saying that we have a week or two. We were on a tight time scale because we thought that the committee would receive and start work on the mental health bill in mid-February, but the latest estimate is that we are unlikely to receive the bill until the end of April. Therefore, we have at our disposal a week

or two during which we could tease out some of the points that have been raised in evidence, such as the UK legislation. Both our witnesses considered that the lack of a provision on brand stretching was an omission from the bill. All I am saying is that we have scope to do a little more investigation of that issue. Let us say, for the sake of argument, that the UK legislation does not go ahead, although I hope that it does. It would be for us to ensure that the bill that goes through the Scottish Parliament is as effective as possible. We have reached an important stage and we should not let matters go.

Dorothy-Grace Elder: When you say that we have two weeks, do you mean that we have two committee meetings at which to discuss the matter?

The Convener: No. We can ask someone to give evidence on a particular date, but they might not be available then. I am saying that we have a little scope. I am not religious about the timetable, but when we set it, we based it on the premise that the Executive would introduce legislation by a certain time. The legislative programme has slipped, which has nothing to do with the committee—we have simply been informed that that is the situation. Members should not think that we are not meant to consider the Tobacco Advertising and Promotion (Scotland) Bill beyond a certain date. If members want to take evidence on specific issues, or pursue an investigation of the UK dimension, there is scope within our work programme to do so. That would be useful if we find that UK legislation will not be pursued.

Mary Scanlon: If I had a choice between taking evidence from Robin Cook and taking evidence on cancer care and hospital acquired infections, I would definitely choose the latter, as those issues are of serious concern in Scotland. I would think that the information that we require from Robin Cook could easily be obtained through correspondence.

Mr McAllion: Does anyone know when the stage 1 debate on the Tobacco Advertising and Promotion (Scotland) Bill is to take place? I certainly do not and, in any case, I do not agree that it is absolutely essential that, in advance of the debate, we take evidence from Robin Cook on what the UK Parliament is doing. It might be beneficial for the Scottish Parliament to support the general principles of the bill. That might act as an incentive for progress to be made on the private member's bill that is going through Westminster, as people might get the idea that the Scottish Parliament's legislation is going to go ahead anyway. Surely the Parliament does not absolutely need to know what is happening with the private member's bill at Westminster until stage 3, which is some time away.

In the meantime, before we reach a conclusion on whether to ask someone from the Westminster Government to come before the committee, we should do them the courtesy of writing to ask them to set out the position in writing. We could review the position if we were not satisfied with the response.

Shona Robison: I prefer to ask Robin Cook to attend the committee. We could write to him, but we could also write his reply, which will say, "There is an intention to introduce legislation but, at this moment in time, we do not have a time scale for it." That would leave us no further forward. I would prefer to send a polite request to the UK minister to attend the committee.

Bill Butler: My view coincides with John McAllion's. Shona Robison seems to presuppose that if we invited Robin Cook, and he spoke at the committee, we would get a lack of clarity from him. The best way forward is, as John McAllion suggests, to write a letter. There is nothing wrong with that. That would be a clearer and more rational approach at this stage.

Shona Robison: I suggested that the committee should see Robin Cook in person because it is easier to probe and get information that way than it is from a stock reply in writing, which would state the current position. Robin Cook is unlikely to give us information in writing that we do not already know. We could probe his intentions more deeply if he came before the committee.

Mr McAllion: If the committee takes the view that we will be brushed off in a written reply, what on earth does it expect to get in response to an invitation for Robin Cook to come before the committee? The committee must think that he would also brush us off in response to that. We should find out what his response is first and then review the situation. Until we have written formally to invite Robin Cook to tell the committee what the intentions are in the UK Parliament, we cannot jump to any conclusion. We must give him the chance to respond. If every committee in the Parliament starts to demand that Westminster MPs come up here before writing to them, we will not get many Westminster MPs coming to give evidence. We must show them the courtesy that we would expect them to show us. The first thing to do is to write to them.

Janis Hughes: I agree that, before we go any further, we should elicit from Robin Cook in writing whatever he wants to tell us. Shona Robison has suggested one possible response that he might give, but until we write to him, we will not know. We should wait until we have completed taking evidence from the people that we agreed to take evidence from, have the stage 1 debate in Parliament and then make a decision on the UK

legislation. Depending on Robin Cook's response, we might want to seek further information in writing. That is the best way forward.

The Convener: On balance, I favour the correspondence route at this stage. I do not know whether Robin Cook would be in a position to say much more to us if we were to have him before the committee now, because of the stage that the bill has reached in the process. It is likely that the Government will make its view known at the end of February, once the bill has gone through the parliamentary procedure in the House of Lords, so we will have a clearer view then, when we will be pulling together our stage 1 report. The dates relating to the process in the House of Lords are the dates I have been given by Tim Clement-Jones's office.

We should remember that the last time the committee was unhappy about the amount of evidence that had been taken at stage 1, on the Adults with Incapacity (Scotland) Bill, we took evidence from witnesses at stage 2. The bill contained such fundamental differences when it came for consideration at stage 2, because the Executive had listened to what was said at stage 1, that we took evidence from parents groups.

I suggest that we write to seek clarification of the UK Government's position and the time scale in the House of Lords. We should state in our letter that we see it as the first stage in clarifying the UK position and that we may well, in the fullness of time, want to return to the UK Government once we see the written evidence that it gives the committee. If we want to take evidence from anybody else at stage 2, we would still be able to do so.

12:00

As far as I am aware, we do not have a date for a debate on the stage 1 report in the chamber. I think that the date for that and the date for the bill at Westminster having gone through the parliamentary procedure in the House of Lords will be contemporaneous.

Another issue is whether we want to hear further evidence. I am keen that we take expert evidence on brand stretching, to investigate whether we could close a potential loophole before further progress is made on the legislation. If we cannot do that at present, one option might be to come back to that at stage 1. That is just my view.

Nicola Sturgeon: I do not want to push the Robin Cook issue because I do not want any request to be seen as a political confrontation—it is more a request for information. It is important to establish the intentions of the UK Government at stage 1 rather than at stage 3, as John McAllion suggested, because some members have indicated that the UK Government's intentions will

be a factor in their decision about whether to support the bill at stage 1. The information is material; we need to have it at an early stage.

If the consensus is to write to Robin Cook then I will go along with that. My reservations are that, as the proposer of the bill, I have had correspondence with Westminster and the replies have not been helpful. They repeat the Labour party manifesto commitment but do not put a time scale on that commitment. That does not help us. My preference would be to skip that stage and to try to get more meaningful information. If the committee wants to start with a letter, that is fair enough, but I would like it placed on the record that we reserve the right to probe further and to call for oral evidence if we do not feel that we are getting the appropriate information.

On what further information we require, brand stretching specifically has been raised. I do not want to go too far at the moment because, at some stage, I will give evidence to the committee, but brand stretching is an issue that I would like to see in the bill. The legal advice that I received when the bill was drafted is that the matter would be reserved and would not be within the powers of the Parliament because it impacts on the sale of goods, which is reserved under the Scotland Act 1998. For a number of reasons, I would be interested to take evidence on brand stretching and to see whether the committee could challenge that position and come up with a different view. I would be interested to have somebody give us a technical and/or legal opinion on brand stretching at stage 1.

The Convener: I suggest that we progress in the following way. We will write a helpful and courteous letter to Robin Cook and suggest that it would be useful if we received a helpful and courteous response, telling us exactly what the position is. We will seek clarification on the progress of the UK bill through the House of Lords. We will reserve our right to go back to seek clarification or to ask for further information, whether oral or written. Our letter will also note that our response will depend on whether there is to be a UK bill. The committee has to come to that decision and can do that only as events unfold.

It is probably as well for the committee to seek clarification from Westminster on its views on brand stretching and whether it is a reserved matter. We will also seek clarification from the Scottish Parliament lawyers on whether we have an option on that. I would also like to instruct the clerks to find out whether it would be possible for the committee to take evidence from someone who might be in a position to clarify that point for us. If we are given to understand that we might have scope to include brand stretching in a Scottish bill, we would have to take evidence,

because I do not think that we have enough information so far. If there is not a UK bill, and if we agree with the general principles of the Scottish bill, the committee would be beholden to cover all the options to make any ban in Scotland as effective as possible. I would not want to feel that the committee had not covered all the issues at the right time.

Mr McAllion: I have a question about the letter to Robin Cook. Would it be possible to ask the Parliamentary Bureau to give us an idea of when the stage 1 debate on the bill will be? That would give Robin Cook a time scale within which we expect a reply.

The Convener: The provisional date is April.

Dorothy-Grace Elder: Will you add magazines that are produced overseas to the list of questions? That touches on the reserved issue of customs and excise. We need to find out whether it is possible to impose a ban on such magazines if they carry the sort of cigarette advertisements that we are seeking to ban.

The Convener: I will pass that question back to Nicola Sturgeon. Is it worth while seeking clarification on whether imported foreign magazines are a reserved issue, and possibly on the whole issue surrounding magazines? Does the bill cover only magazines produced in Scotland?

Nicola Sturgeon: I will give evidence, so I do not want to become too involved in discussion just now. That issue is not so much about legislative competence as it is about practicality and what can be banned in a Scottish context. A UK ban would face some of the same difficulties in dealing with foreign publications that are available in the United Kingdom. I will be able to answer more fully when I give evidence but, from memory, it is not an issue of legislative competence.

Dorothy-Grace Elder: It is a customs issue.

The Convener: We want our letter to focus on exactly what we want from Westminster. We will return to the issue of magazines in future, but initially we will go with brand stretching and the request for information. Is that acceptable?

Members indicated agreement.

The Convener: That brings us to the end of the public part of the meeting.

12:06

Meeting adjourned until 12:18 and thereafter continued in private until 12:35.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 1 February 2002

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers