

# **HEALTH AND COMMUNITY CARE COMMITTEE**

Tuesday 11 February 2003  
(*Morning*)

Session 1

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## HEALTH AND COMMUNITY CARE COMMITTEE

### 8<sup>th</sup> Meeting 2003, 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) (Ind)

\*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)

#### COMMITTEE SUBSTITUTES

Brian Adam (North-East Scotland) (SNP)

Ian Jenkins (Tw eeddale, Ettrick and Lauderdale) (LD)

Mr Tom McCabe (Hamilton South) (Lab)

Ben Wallace (North-East Scotland) (Con)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

The Deputy Minister for Health and Community Care (Mrs Mary Mulligan)

#### CLERK TO THE COMMITTEE

Jennifer Smart

#### SENIOR ASSISTANT CLERK

Peter McGrath

#### ASSISTANT CLERK

Graeme Eliot

#### LOCATION

Committee Room 1



# Scottish Parliament

## Health and Community Care Committee

*Tuesday 11 February 2003*

*(Morning)*

[THE CONVENER *opened the meeting at 10:02*]

### Mental Health (Scotland) Bill: Stage 2

**The Convener (Mrs Margaret Smith):** Good morning and welcome to today's meeting of the Health and Community Care Committee. We are again discussing the Mental Health (Scotland) Bill. The Deputy Minister for Health and Community Care, Mrs Mary Mulligan, and her team join us.

#### Section 92—Mentally disordered persons subject to criminal proceedings: assessment and treatment

**The Convener:** Amendment 888 is grouped with amendments 891 and 1034.

**The Deputy Minister for Health and Community Care (Mrs Mary Mulligan):** Amendment 888 will ensure that persons who are charged in a district court with an imprisonable offence and who appear to have a mental disorder must be remitted to a sheriff court. That court can then deal with them in the same manner as though the charge had originally been raised there. That would include, but not be restricted to, the granting of a mental health disposal. That retains the general effect of section 58(10) of the Criminal Procedure (Scotland) Act 1995, which will be repealed by amendment 1034.

Amendment 891 will ensure that a district court shall not be able to make an assessment order. If the case is remitted to the sheriff court, that court may impose an assessment order if it thinks that it is necessary.

I move amendment 888.

*Amendment 888 agreed to.*

**The Convener:** Amendment 889 is grouped with amendments 892 to 894, 920, 927, 930, 931, 937, 940, 942, 966, 967, and 973.

**Mrs Mulligan:** Amendments 889, 892, 920, 930, 931, 937, 940, 942, 966, 967, and 973 are technical amendments that will remove the word 'final' in relation to certain disposals and replace it with the term 'relevant', which is more apt.

Amendments 893 and 894 are technical amendments that will ensure that an assessment order cannot be made in circumstances in which the proceedings have been deserted, with the exception of solemn proceedings that are deserted *pro loco et tempore*—solemn proceedings that are temporarily deserted but which the prosecution may raise again.

Amendment 927 will tidy up the definitions that are used in proposed new section 52F of the Criminal Procedure (Scotland) Act 1995. It will replace the word 'final' with 'relevant' and clarify the reference to the court that made the assessment order.

I move amendment 889.

*Amendment 889 agreed to.*

**The Convener:** Amendment 890 is grouped with amendments 897, 909, 910, 941, 945, 954, 955, 985 and 1033.

**Mrs Mulligan:** This group of amendments will tidy up the provisions regarding who should be informed of an application for, the making of, or the revocation of assessment orders, treatment orders and interim compulsion orders.

Amendments 890 and 897 will ensure that if a prosecutor or the Scottish ministers, respectively, apply for an assessment order, they must, as soon as is reasonably practicable after making such an application, inform the persons who are listed at, respectively, proposed new sections 52A(2) and 52B(4) of the 1995 act.

Amendments 909 and 910 will provide that the court must, as soon as reasonably practicable after making an assessment order and any related restrictions, inform the persons listed.

Amendments 941 and 945 will ensure that if a prosecutor or the Scottish ministers, respectively, apply for a treatment order they must, as soon as reasonably practicable after making such an application, inform the persons who are listed in proposed new sections 52J and 52K, respectively.

Amendments 954 and 955 will provide that the court must, as soon as is reasonably practicable after making a treatment order and imposing any related restrictions, inform the specified persons.

Amendment 985 will require the court that is making an interim compulsion order to notify Scottish ministers and the Mental Welfare Commission for Scotland, as well as the patient and the patient's lawyer.

Amendment 1033 will provide a definition of the Mental Welfare Commission for Scotland for the 1995 act.

I move amendment 890.

*Amendment 890 agreed to.*

*Amendments 891 to 894 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 895 is grouped with amendments 896, 898, 913, 914, 916, 943, 944, 946, 957, 958, and 960.

**Mrs Mulligan:** This group of amendments is intended to simplify the drafting of the provisions without changing their effect.

Amendments 895, 896 and 898 will remove unnecessary text from proposed new section 52B of the 1995 act, which concerns the circumstances in which ministers may apply for an assessment order. Removing that text will allow subsections (2) and (3) to be combined.

Amendments 913, 914, and 916 will do likewise for proposed section 52D, which concerns the power of the court to make an assessment order at its own hand. Amendment 916 also makes clear the definition of “court” that is used in proposed section 52D.

Amendments 943, 944, and 946 do the same for proposed new section 52K, which concerns a ministerial application for a treatment order. Amendments 957, 958, and 960 will do likewise for the power of the court to make a treatment order at its own hand.

I move amendment 895.

*Amendment 895 agreed to.*

*Amendments 896 to 898 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 899 is grouped with amendments 900, 904, 905, 948, 977, 852, and 836.

**Mrs Mulligan:** Amendment 899 will correct proposed new section 52C(3) of the 1995 act so that, before it can make an assessment order, the court must be satisfied

“that there are reasonable grounds for believing ... that it is necessary to detain the person”

to assess whether the conditions—the forensic criteria—in proposed new section 52C(7) apply. Amendment 904 is consequential on amendment 899 and amendment 948 will delete text that is not required.

The other amendments in the group will amend the risk test that applies at various places in part 8 of the bill before an order can be made. They will bring the test’s wording into line with the test that is used in the civil provisions, to require a significant risk to the patient’s health, safety or welfare or to any other person’s safety.

I move amendment 899.

**Margaret Jamieson (Kilmarnock and Loudoun) (Lab):** Given that someone would be sent for assessment, would anything in that assessment disallow treatment that was deemed necessary?

**Mrs Mulligan:** The simple answer is no.

**Margaret Jamieson:** That is a change from current legislation.

**Mrs Mulligan:** The current position is uncertain. The bill clarifies the position.

**Margaret Jamieson:** I wanted clarification because I have a constituent who is in that situation. My constituent has been held for four weeks and cannot commence treatment.

*Amendment 899 agreed to.*

*Amendment 900 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 901 is grouped with amendments 907, 949, 952, 981, 982, 859, 860 and 840.

**Mrs Mulligan:** Amendments 901, 949, 982 and 860 will make references to hospitals refer more precisely to “the specified” hospital. Amendments 907 and 952 will provide that a person who is subject to an assessment order or treatment order can be removed to a place of safety pending admission to hospital.

Amendments 981 and 840 will remove unnecessary references to “any other” specified person.

Amendment 859 will delete text from proposed new section 57A(7) of the 1995 act that concerns the offender’s removal to a hospital or other specified place. That text will now be in a new section that amendment 880 will introduce.

I move amendment 901.

*Amendment 901 agreed to.*

**The Convener:** Amendment 902 is grouped with amendments 903, 912, 950, 983, 861 and 1009.

**Mrs Mulligan:** Amendments 902, 950 and 1009 will clarify the provisions that concern the medical treatment that is authorised while a patient is subject to an assessment order, a treatment order or a transfer for treatment direction. In every case, treatment is authorised if it is given in accordance with part 13.

Amendment 912 will make more precise the definition of medical treatment and amendment 983 will amend proposed new section 53(8)(c), which concerns treatment under an interim compulsion order, to be consistent with the civil provisions.

Amendment 861 will make similar changes to the treatment provisions for compulsion orders and will remove the reference to the duration of the power, which is dealt with in amendment 851.

I am grateful to Shona Robison for lodging amendment 903. We agree with the general aim behind the amendment, but it has some technical difficulties. We are not sure whether the matters that the approved medical practitioner is required to certify are right. It is also necessary to consider whether the amendment should be to part 13, rather than to part 8.

For those technical reasons, we cannot accept amendment 903. However, I am happy to reassure the committee that we intend to lodge a stage 3 amendment that will achieve what amendment 903 seeks to do. On that basis, I hope that Shona Robison will not move her amendment.

I move amendment 902.

10:15

**Shona Robison (North-East Scotland) (SNP):** The minister touched on the purpose of amendment 903, which is to ensure that a person who is transferred to hospital under an assessment order has the benefit of additional protection if medical treatment is required. The bill does not ensure that, but I am happy that the minister recognised that the amendment would add to the bill and I am happy to accept stage 3 amendments.

*Amendment 902 agreed to.*

*Amendment 903 not moved.*

*Amendments 904 and 905 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 906 is grouped with amendments 951, 984 and 998 to 1000.

**Mrs Mulligan:** The amendments will provide for when it might be inappropriate or impracticable for the person to be in court when the court is making an order—for example, because the patient is not well enough to attend court. In that situation, the person's legal representative must be present and have an opportunity to be heard.

Amendment 906 relates to the making of an assessment order and amendment 951 deals with the making of a treatment order. Amendment 984 relates to the making of an interim compulsion order and amendments 998 to 1000 will amend the provisions that allow an interim compulsion order to be extended in the patient's absence.

I move amendment 906.

*Amendment 906 agreed to.*

*Amendment 907 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 908 is grouped with amendments 953, 1013, 1014, 1018 and 1019.

**Mrs Mulligan:** Amendments 908 and 953 will provide that additional restrictions may be imposed when an assessment order or treatment order is granted. Currently, additional restrictions are imposed automatically when a remanded prisoner is transferred to hospital under section 70 of the Mental Health (Scotland) Act 1984, but not when a court commits an accused person to hospital under section 52 of the Criminal Procedure (Scotland) Act 1995.

The amendments will retain the position that accused prisoners whom the Scottish ministers transfer to hospital are always subject to further restrictions. They will allow the court, when making an assessment order or treatment order, to impose an order that adds those restrictions.

The additional restrictions are set out in amendments 1013 and 1014 for assessment orders, and in amendments 1018 and 1019 for treatment orders. Those amendments will provide that temporary suspension of the detention requirement needs the consent of the Scottish ministers, that the Scottish ministers, as well as the responsible medical officer, may revoke such temporary suspension and that the Scottish ministers may request information from the responsible medical officer.

I move amendment 908.

*Amendment 908 agreed to.*

*Amendments 909 and 910 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 911 is grouped with amendment 956.

**Mrs Mulligan:** Amendments 911 and 956 will ensure that the time that the person spends in hospital because of an assessment order or treatment order counts towards the time limits before an indictment is served or a trial must commence. The amendments will retain the position for remanded prisoners who are committed to hospital.

I move amendment 911.

*Amendment 911 agreed to.*

*Amendments 912 to 914 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 915 is grouped with amendments 926, 959 and 1001.

**Mrs Mulligan:** Amendments 915, 926, 959 and 1001 are all technical amendments. Amendments 915 and 959 will clarify that when a court makes an assessment order or treatment order without an

application being placed before it, the references in the appropriate sections should be altered to reflect that fact.

Amendment 926 will make it clear that if the court wishes to make a treatment order following a review of an assessment order, the relevant provisions under proposed section 52L will apply.

Amendment 1001 will amend and clarify the provisions applying to an interim compulsion order that continue to apply if the order is extended under proposed section 53C(4). It will apply the procedures relative to the first extension of an ICO to any subsequent extension.

I move amendment 915.

*Amendment 915 agreed to.*

*Amendment 916 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 917 is grouped with amendments 961, 990 and 991.

**Mrs Mulligan:** The amendments in the group will implement policy on the notification of other persons, should the court or the Scottish ministers make a direction that, because of an emergency or other special circumstances, provides for the patient to be admitted to a hospital other than that which is specified in the original order. They include a requirement that the notice should be given as soon as reasonably practicable. Amendments 917 and 961 will also add provision for notice to be given to the prosecutor when the person has not yet been convicted.

I move amendment 917.

*Amendment 917 agreed to.*

**The Convener:** Amendment 918 is grouped with amendments 962, 964, 988, 992, 993, 1004, 1005, 1008, 885 and 886.

**Mrs Mulligan:** The amendments in this group are technical amendments that will make it clear that, throughout the various sections, the references to “the court” are to the court that made the original order. Amendment 962 will also clarify the drafting of proposed new section 52N of the 1995 act to include “relevant disposal”. Amendment 988 will remove unnecessary wording that repeats the provision that is already made in section 53(1).

I move amendment 918.

*Amendment 918 agreed to.*

**The Convener:** Amendment 919 is grouped with amendments 921, 963 and 995.

**Mrs Mulligan:** Amendments 919 and 995 will make it clear that the report from the responsible medical officer at the expiry of the assessment

order and interim compulsion order respectively should contain any information that the court required on the making of the order.

Amendment 921 will provide that, when a person has been made subject to an order under section 52C(9), the responsible medical officer must send a copy of assessment order report to Scottish ministers.

Amendment 963 is a minor amendment that will improve the drafting of section 52P(1).

I move amendment 919.

*Amendment 919 agreed to.*

*Amendments 920 and 921 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 922 is grouped with amendments 925, 929, 996 and 997.

**Mrs Mulligan:** Amendments 922 and 925 will clarify the workings of proposed new section 52F(3) of the 1995 act. Amendment 922 will pave the way for amendment 925 by inserting some necessary text, and amendment 929 is a technical amendment that is consequential on amendment 925.

Amendment 925 will allow the court to extend the assessment order by seven days once only if it believes that more time is required to complete the assessment of the person. Amendment 925 also provides for a situation in which it might be inappropriate or impracticable for the person to be in court when the court is extending the assessment order—for example, because the patient is not well enough to attend court. In that situation, the person’s legal representative must be present and have an opportunity to be heard. Finally, amendment 925 provides for the notification of other persons if the assessment order is extended.

Amendments 996 and 997 will strengthen the test before an interim compulsion order can be extended. The court must be satisfied that the extension is “necessary” rather than simply “appropriate”. Amendment 996 will also remove provision concerning the final disposal from the responsible medical officer’s report. The evidence that is required before making a final disposal is dealt with elsewhere.

I move amendment 922.

*Amendment 922 agreed to.*

**The Convener:** Amendment 923 is grouped with amendments 924, 1002 and 1003.

**Mrs Mulligan:** Amendments 923 and 924 will pave the way for amendment 925, which was discussed in the previous grouping, by removing the unnecessary text.

Amendments 1002 and 1003 will amend the provisions concerning what happens if the court revokes the interim compulsion order. They are intended to avoid any implication that the court can proceed to make a compulsion order or a hospital direction without having the evidence that is required before such orders can be made. We think that it might be necessary to consider the issue further and we may lodge further amendments at stage 3 to make it absolutely clear how an interim compulsion order links to subsequent disposals.

I move amendment 923.

*Amendment 923 agreed to.*

*Amendments 924 to 927 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 928 is grouped with amendments 965, 1010, 1015 and 1020.

**Mrs Mulligan:** Amendments 928 and 965 will tidy up the definition of responsible medical officer that is used in sections 52F and 52P respectively.

Amendments 1010, 1015 and 1020 will add provisions that a responsible medical officer should be appointed by the relevant hospital managers after an assessment order, treatment order or interim compulsion order is made. That mirrors the provision in section 57 for civil patients.

I move amendment 928.

*Amendment 928 agreed to.*

*Amendments 929 to 931 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 932 is grouped with amendments 933 to 936 and 968 to 972.

**Mrs Mulligan:** Amendments 932, 934, 935, 968, 970 and 971 are all minor amendments that will improve the drafting of the relevant sections.

Amendments 933 and 969 will clarify that an assessment order or a treatment order will cease to have effect if the person subject to the order is given a deferred sentence. Amendments 936 and 972 are technical amendments to reflect more accurately the wording in section 230 of the 1995 act.

I move amendment 932.

*Amendment 932 agreed to.*

*Amendments 933 to 937 moved—[Mrs Mary Mulligan]—and agreed to.*

10:30

**The Convener:** Amendment 938 is grouped with amendments 939, 974, 975, 1006 and 1007.

**Mrs Mulligan:** Amendments 938, 974 and 1006 are minor drafting amendments that will replace “other” with “otherwise”. Proposed new section 52H of the Criminal Procedure (Scotland) Act 1995 will provide for the court’s powers where an assessment order ceases by simple operation of time. It will do that by excluding from its scope the other means by which an assessment order will terminate. Amendment 939 will add the provision that proposed new section 52H will not apply where the court revokes an assessment order. That is necessary because proposed new section 52F of the 1995 act will provide for the court’s powers in that eventuality. Amendment 975 will achieve the same result for treatment orders under proposed new section 52S of the 1995 act.

Amendment 1007 is a technical amendment in a similar vein. It will provide that the provisions of proposed new section 53E of the 1995 act—concerning the powers of the court when an interim compulsion order ceases—will not apply when the order ceases because the court has made a disposal under proposed new section 53C(8), which already provides for what should happen in that event.

I move amendment 938.

*Amendment 938 agreed to.*

*Amendments 939 to 946 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 947 is grouped with amendments 976, 979, 850, 854, 855, 1029 and 1032.

**Mrs Mulligan:** Amendments 947, 976 and 850 are technical amendments that deal with the doctors whose evidence is required before treatment orders, interim compulsion orders and compulsion orders can be made. The requirement that at least one of the medical practitioners who gives evidence to the court be an approved medical practitioner is now to be dealt with in section 61 of the Criminal Procedure (Scotland) Act 1995. Section 61 makes a number of general provisions regarding medical evidence in relation to mental health disposals and amendment 1029 will broaden its effect to cover the new disposals that are being introduced by the bill.

Amendment 979 is consequential on amendment 976, amendments 854 and 855 are consequential on amendment 850 and amendment 1032 is consequential on amendment 1029.

I move amendment 947.

*Amendment 947 agreed to.*

*Amendments 948 to 975 moved—[Mrs Mary Mulligan]—and agreed to.*

*Section 92, as amended, agreed to.*

**Section 93—Mentally disordered offenders:  
interim compulsion orders**

*Amendments 976 and 977 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 978 is grouped with amendments 853 and 870.

**Mrs Mulligan:** Amendment 978 is a technical amendment to interim compulsion orders that will make clear the statutory basis of the disposal that is referred to in proposed new section 53(6)(a) of the 1995 act. Amendments 853 and 870 are technical amendments to compulsion orders. They make it clear that the reference to detention in a hospital is to detention that is authorised by the measure in proposed new section 57A(7)(b) of the 1995 act.

I move amendment 978.

*Amendment 978 agreed to.*

*Amendment 979 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 980 is grouped with amendments 856, 839 and 887.

**Mrs Mulligan:** Amendments 980, 856 and 839 will amend the criteria that must be met before a patient who is to be subject to an interim compulsion order, a compulsion order or transfer for treatment direction may be detained in a state hospital. The amendment will make that provision consistent with earlier amendments to section 89.

Amendment 887 is a technical amendment to schedule 3, which will update section 59 of the Criminal Procedure (Scotland) Act 1995.

I move amendment 980.

*Amendment 980 agreed to.*

*Amendments 981 to 985 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 986 is grouped with amendments 987, 989, 874 and 875.

**Mrs Mulligan:** Amendment 986 will remove a reference to “an order for detention”, which will instead be inserted into the definition of a “sentence of imprisonment” by amendment 989.

Amendment 987 will add compulsion orders and guardianship orders to the list of orders that cannot be made at the same time as an interim compulsion order and amendment 874 will expand the list of orders that cannot be made at the same time as a compulsion order.

Amendment 875 is a drafting amendment that will delete proposed new section 57A(12) of the 1995 act. Amendment 1036, which was lodged yesterday, will make similar provision in a more appropriate place—within section 59 of the

Criminal Procedure (Scotland) Act 1995. Amendment 1036 will probably be considered next week.

I move amendment 986.

*Amendment 986 agreed to.*

*Amendments 987 to 993 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 994 is in a group on its own.

**Mrs Mulligan:** Amendment 994 will remove proposed new section 53B of the 1995 act, which concerns patients who abscond. Provision for absconding patients is generally dealt with elsewhere in the bill and it is intended that part 16 be extended to interim compulsion orders. Amendments to that effect will be lodged at stage 3.

I move amendment 994.

*Amendment 994 agreed to.*

*Amendments 995 to 1008 moved—[Mrs Mary Mulligan]—and agreed to.*

*Section 93, as amended, agreed to.*

*Section 94 agreed to.*

**Section 95—Mentally disordered offenders:  
compulsion orders**

*Amendment 850 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 851 is grouped with amendment 857.

**Mrs Mulligan:** Amendment 851 is a technical amendment. It clarifies that, once a compulsion order without an accompanying restriction order is made, the compulsory measures in proposed new section 57A(7) of the 1995 act are authorised for six months.

Amendment 857 will implement the policy that, when an offender is made subject to a compulsion order and restriction order, it is done without limit of time. That will not mean that the offender will not have any right of appeal or that there will not be regular reviews by the tribunal. It will mean simply that, for the offender to be discharged from the order, a positive action from the tribunal—and only the tribunal—will be required to effect that change. Part 10 of the bill sets out the legislative framework for offenders who are subject to compulsion orders and restriction orders, which we will probably deal with next week.

I move amendment 851.

*Amendment 851 agreed to.*

*Amendments 852 to 857 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 858 is grouped with amendments 862, 863, 864, 871, 872, 873 and 880.

**Mrs Mulligan:** Amendment 858 is a drafting amendment to section 95 that will more clearly link proposed new section 57A(7) of the 1995 act to proposed new section 57A(2) of the 1995 act.

Amendment 862 will bring the community-based measures that can be authorised under a compulsion order into line with the equivalent civil set in sections 54(1)(c) to (h) of the bill.

Amendments 863 and 873 are technical amendments that will move to a more logical place the provision that deals with the requirement to reside in a care home. The amendments will also make some minor drafting changes as a consequence of amendment 862.

Amendment 864 provides that Scottish ministers can make regulations to add to the measures that can be authorised under a compulsion order. Amendment 864 seeks to introduce to the 1995 act proposed new section 57A(7D), which would ensure that any such regulations must be subject to the affirmative procedure of the Parliament. The amendment will have the same effect as the equivalent provision at section 54(2) for civil compulsory treatment orders.

Amendments 871 and 872 seek to extend proposed new section 57A(9)(b) of the 1995 act so that persons who are required to reside at a specific place—as well as those who are detained in hospital—can be removed to a place of safety pending their admission to that place.

Amendment 880 is a technical amendment that will move the provisions concerning the removal of the offender to hospital or other specified place into their own section and would bring that section into line with the equivalent civil section.

I move amendment 858.

*Amendment 858 agreed to.*

*Amendments 859 to 864 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 865 is grouped with amendments 866, 867, 868, 869, 843 and 844.

**Mrs Mulligan:** Amendments 865, 866 and 867 will clarify the drafting of proposed new section 57A(8) of the 1995 act to make it clear that a compulsion order cannot be made unless the medical practitioners who are giving evidence have specified the same type, or at least one of the same types, of mental disorder from which the offenders suffers.

Amendments 868 and 869 seek to ensure that the type of mental disorder that is specified in the

compulsion order is by reference to the definition of mental disorder given in the bill.

Amendments 843 and 844 similarly seek to provide that Scottish ministers may make a transfer for treatment direction only if they are satisfied that the relevant medical reports each have in common at least one type of mental disorder, as specified in section 227.

I move amendment 865.

*Amendment 865 agreed to.*

*Amendments 866 to 875 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 876 is grouped with amendments 877, 878 and 879.

There is an error in amendment 878 as printed in the marshalled list. It will be corrected if the amendment is agreed. It should read “section 95”, not “section 97”.

**Mrs Mulligan:** Amendments 876, 877, 878 and 879 are drafting amendments that will add to proposed new section 57A of the 1995 act definitions of “community care services” and “relevant service”, and remove definitions that are no longer necessary.

I move amendment 876.

*Amendment 876 agreed to.*

*Amendments 877 to 880 moved—[Mrs Mary Mulligan]—and agreed to.*

10:45

**The Convener:** Amendment 881 is grouped with amendments 882, 883 and 884.

**Mrs Mulligan:** Amendments 881, 882, 883 and 884 seek to clarify policy in relation to proposed new section 57B of the 1995 act, concerning the mental health officer's report that is necessary before a compulsion order can be made.

Amendments 881 and 882 will bring the proposed new section 57B of the 1995 act into line with the equivalent section in part 7 of the bill. They will add the proviso that if it is impracticable to interview the offender, the mental health officer need not do so.

Amendment 883 will remove the need for the mental health officer to comment on the medical reports that are provided to the court because the bill makes no specific provision for those.

Amendment 884 seeks to insert some required definitions into the section.

I move amendment 881.

*Amendment 881 agreed to.*

*Amendments 882 to 886 moved—[Mrs Mary Mulligan]—and agreed to.*

*Section 95, as amended, agreed to.*

*Section 96 agreed to.*

**Section 97—Transfer of prisoners for treatment for mental disorder**

**The Convener:** Amendment 834 is grouped with amendments 835, 837, 838, 845, 846, 847, 848 and 849.

**Mrs Mulligan:** Amendments 835 and 837 seek to implement the policy that Scottish ministers must, before they make the decision to authorise a transfer for treatment direction, be satisfied by written reports, not oral evidence, from two medical practitioners.

Amendment 838 will clarify that the two medical practitioners who are giving evidence that admission to a state hospital is appropriate should be the same ones who supplied to the Scottish ministers the written reports recommending a transfer for treatment direction.

Amendments 845, 846 and 847 will clarify the drafting of section 97(9), which details who falls under the criteria of

“a prisoner serving a sentence of imprisonment”

in terms of the bill.

Amendment 848 will delete section 98, which we now consider to be unnecessary. A change in the specified hospital can be achieved by making a new direction rather than by amending the original one.

Amendment 849 will delete section 99, which was to provide for a restriction direction to be added to a transfer for treatment direction. We have reviewed the arrangements for transferred prisoners and have concluded that it is unnecessarily complicated that there are two different forms of transfer for treatment direction. Instead, we intend that all transfer for treatment directions should have the same effect, which will be similar to that of a hospital direction that is made by a criminal court.

We have consulted the Mental Welfare Commission for Scotland and the Law Society of Scotland, which have accepted the logic behind our revised approach. The intended effect of a transfer for treatment direction will be set out in part 12 of the bill, which the committee will consider next week.

Amendment 834 is a consequential amendment that will be required following agreement to amendments 848 and 849.

I move amendment 834.

*Amendment 834 agreed to.*

*Amendments 835 to 840 moved—[Mrs Mary Mulligan]—and agreed to.*

*Amendment 1009 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** Amendment 842 is in a group on its own.

**Mrs Mulligan:** Section 97(6) of the bill details the measures that can be authorised in a transfer for treatment direction. Amendment 842 will delete section 97(6)(d), which would have given Scottish ministers the power by way of regulations to impose requirements on a transferred prisoner who was under a direction. That power has been removed following an undertaking that was given to the Subordinate Legislation Committee.

I move amendment 842.

*Amendment 842 agreed to.*

*Amendments 843 to 847 moved—[Mrs Mary Mulligan]—and agreed to.*

*Section 97, as amended, agreed to.*

**Section 98—Transfer for treatment direction: supplementary**

*Amendment 848 moved—[Mrs Mary Mulligan]—and agreed to.*

**Section 99—Restriction direction**

*Amendment 849 moved—[Mrs Mary Mulligan]—and agreed to.*

**The Convener:** That concludes stage 2 consideration of the Mental Health (Scotland) Bill for today.

*Meeting closed at 10:50.*

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