HEALTH AND SPORT COMMITTEE

Wednesday 7 May 2008

Session 3

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

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HEALTH AND SPORT COMMITTEE
13th Meeting 2008, Session 3

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Ross Finnie (West of Scotland) (LD)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)
*Rhoda Grant (Highlands and Islands) (Lab)
*Michael Matheson (Falkirk West) (SNP)
*Ian McKee (Lothians) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)
*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

COMMITTEE SUBSTITUTES

Joe FitzPatrick (Dundee West) (SNP)
Jamie McGrigor (Highlands and Islands) (Con)
Irene Oldfather (Cunninghame South) (Lab)
Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Shona Robison (Minister for Public Health)
Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

CLERK TO THE COMMITTEE

Tracey White

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

David Slater

LOCATION

Committee Room 6

Scottish Parliament

Health and Sport Committee

Wednesday 7 May 2008

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

Decision on Taking Business in Private

The Convener (Christine Grahame): I welcome everyone to the 13th meeting in 2008 of the Health and Sport Committee. I remind all members and all present in the public gallery to ensure that their mobile phones and BlackBerrys are switched off. I hope that committee members are looking pretty today because the Parliament's photographer will be present to take shots of us for the Parliament's annual report. No apologies have been received.

Under agenda item 1, the committee is invited to agree to take items 4 and 5 in private. Item 4 is consideration of further evidence on the Public Health etc (Scotland) Bill. Item 5 is consideration of our approach to our one-off evidence-taking session on mental health services for deaf and deafblind people. Is that agreed?

Members *indicated agreement*.

Subordinate Legislation

Specified Products from China (Restriction on First Placing on the Market) (Scotland) Regulations 2008 (SSI 2008/148)

10:03

The Convener: Agenda item 2 is consideration of a negative instrument. The regulations implement a European Commission decision to introduce emergency measures to prevent rice and other products from China from being first placed on the market unless they have been tested for the unauthorised genetically modified organism Bt 63—nothing to do with British Telecom, I hope.

The Subordinate Legislation Committee drew the instrument to our attention. That committee raised a question with the Scottish Government and was satisfied with the response. The Subordinate Legislation Committee also queried a relatively minor failure to follow normal drafting practice.

No other comments have been received from members and no motion to annul has been lodged. Are we agreed that the committee does not wish to make any recommendation on the regulations?

Members *indicated agreement*.

Public Health etc (Scotland) Bill: Stage 2

10:04

The Convener: Agenda item 3 is the first day of the committee's consideration of the Public Health etc (Scotland) Bill at stage 2. I welcome the Minister for Public Health. I refer members to the marshalled list and the groupings of amendments. Amendments will be debated according to their groups and disposed of in the order on the marshalled list. In case there is a tied vote, I advise members that the convener has a casting vote and that the Conveners Group has taken the view that there should be no protocol. Therefore, whereas the Presiding Officer goes with the status quo, that is not the rule for conveners. The Conveners Group has taken the view that the committee convener should use his or her discretion. That goes for all conveners of all committees. I hope that we do not need to deal with the situation, but I wanted to make that plain from the start in case it arises.

There are no amendments to sections 1 and 2.

Sections 1 and 2 agreed to.

Section 3—Designation of competent persons by health boards

The Convener: Amendment 160, in the name of Michael Matheson, is grouped with amendments 161 and 168.

Michael Matheson (Falkirk West) (SNP): Amendments 160, 161 and 168 are interlinked and relate to the regulations that ministers will be able to introduce in dealing with issues about competent persons and other matters. Section 3 is on the designation of competent persons by health boards and section 5 is on the designation of competent persons by local authorities. Subsection (4) of sections 3 and 5 will enable the Scottish ministers to make regulations about the people who can be considered as competent persons, including the qualifications and training that they should have. When the committee took evidence on the bill, professional bodies raised issues about that element. The principal purpose behind amendments 160 and 161 is to ensure that, in introducing such regulations, the Scottish ministers duly consult interested parties and stakeholders on the designation of competent persons.

Section 19 makes further provision on information in respect of various other sections. Again, my amendment 168 would ensure that ministers consult stakeholders properly when regulations are introduced on information provision.

I move amendment 160.

The Minister for Public Health (Shona Robison): The Scottish Government opposes amendments 160, 161 and 168, which would require the Scottish ministers to consult appropriate persons before making regulations under sections 3, 5 and 19. Those regulations will prescribe the qualifications and training of health board and local authority competent persons under part 1 and the way in which information is to be provided under the duties to notify in part 2. The Scottish Government's amendment 223 will place a general duty on the Scottish ministers to consult appropriate persons before making regulations. That duty will apply to all the powers to make regulations under the bill, so there is no need for specific consultation provisions in sections 3, 5 and 19. On that basis, I oppose amendments 160, 161 and 168.

Michael Matheson: My amendments are probing amendments that were lodged prior to the Government lodging amendment 223, which will deal with the issue. Therefore, I seek to withdraw amendment 160.

Amendment 160, by agreement, withdrawn.

Section 3 agreed to.

Section 4 agreed to.

Section 5—Designation of competent persons by local authorities

Amendment 161 not moved.

Section 5 agreed to.

Section 6 agreed to.

Section 7—Joint public health protection plans

The Convener: Amendment 192, in the name of Dr Richard Simpson, is in a group on its own.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Amendment 192 arises primarily from evidence given by the Society of Chief Officers of Environmental Health in Scotland, which pointed out that with their current joint health improvement plans health boards go far beyond simply consulting local authorities. It was felt that, with joint public health protection plans, the bill should contain more than a requirement to consult. As a result, the amendment seeks to replace "consult" with "agree that plan with", which would strengthen the partnership between the local authority and the health board while allowing the health board to remain in charge of drawing up plans.

I move amendment 192.

Shona Robison: Section 7(2) states that, when preparing a plan under section 7(1), a health board must consult the relevant local authority. Amendment 192 would mean that a health board could not publish a plan unless the local authority entirely agreed with it.

The policy intention is for the health board to have lead responsibility for preparing joint public health protection plans. As health board staff usually chair outbreak and incident control teams, they have experience of taking the lead in health protection at a local level. We consider that the duty on health boards and local authorities to co-operate in exercising functions under the bill and the duty on health boards to consult local authorities on joint public health protection plans are sufficient to ensure good joint working.

We believe that amendment 192 goes too far, as it could make it impossible for a health board to comply with its duty under section 7(1). For example, if a local authority refused for whatever reason to agree to a plan, the health board would through no fault of its own fail to fulfil its duty. In any case, I understand that the Convention of Scottish Local Authorities is not pursuing the issue.

I oppose amendment 192 and hope that the member will withdraw it.

Dr Simpson: I still think that the reference to "consult" in section 7(2) is too weak, but the most appropriate course of action might be to withdraw amendment 192 and to consult COSLA further to find out whether an amendment should be lodged at stage 3.

Amendment 192, by agreement, withdrawn.

Section 7 agreed to.

Section 8—Power to direct health boards and local authorities

The Convener: Amendment 162, in the name of Michael Matheson, is grouped with amendment 163.

Michael Matheson: Under sections 8 and 9, ministers may not only direct health boards and local authorities if they fail to carry out their public health functions in what they consider to be an acceptable manner but direct other persons to carry out those functions. Concerns have been expressed about the use in both sections of the phrase "from time to time" in relation to varying or withdrawing such directions, so it was felt that the Government's intentions required some clarification.

I move amendment 162.

Shona Robison: Sections 8 and 9 give Scottish ministers powers to direct health boards and local authorities if they fail to carry out public health functions

"in a manner which Ministers consider acceptable".

Ministers may also direct other persons to carry out those functions.

Amendments 162 and 163 seek to remove ministers' ability to vary or withdraw directions "from time to time". The fact is that a power to make directions does not imply a power to vary or withdraw a direction, so we have provided expressly for the ability to do so in sections 8(4) and 9(5).

The form of words found in sections 8 and 9 is commonly found in Scottish acts. I know that the Law Society of Scotland believes the phrase to be superfluous, but it clarifies that ministers can vary a direction more than once. Although a power to vary or withdraw a direction carries with it the implied ability to do so "from time to time", as occasion requires, it is helpful to the reader if the legislation mentions it when it sets out that power. That is what the bill does.

I oppose amendments 162 and 163.

10:15

Michael Matheson: The minister's clarification is helpful, given that amendments 162 and 163 were probing amendments. I seek leave to withdraw amendment 162.

Amendment 162, by agreement, withdrawn.

Section 8 agreed to.

Section 9—Power to direct that functions be exercised by other persons

Amendment 163 not moved.

Section 9 agreed to.

Sections 10 to 12 agreed to.

Schedule 1

LISTS OF NOTIFIABLE DISEASES AND NOTIFIABLE ORGANISMS

The Convener: Amendment 18, in the name of the minister, is grouped with amendments 19 to 24.

Shona Robison: Part 1 of schedule 1 lists the notifiable diseases that are referred to in part 2 of the bill. From stakeholder feedback at stage 1 of the parliamentary consultation process, we identified that West Nile fever should be included on the list because the incidence of West Nile fever is required to be reported to the World Health Organization.

Part 2 of schedule 1 lists the notifiable organisms, which is where this gets interesting,

convener, as some of the names are hard to pronounce. We have identified the following organisms for inclusion on the list: clostridium perfringens, which causes food poisoning; corynebacterium ulcerans, the toxogenic form of which can cause diphtheria; the mycobacterium bovis, which primarily causes bovine tuberculosis, but which can pass to humans and cause tuberculosis; and the West Nile fever virus, which causes West Nile fever, a disease that is required to be reported to the WHO, as I said. Also, we seek to leave out "Varicella" and insert "Varicella-zoster", which is the correct name of the organism that causes chicken pox. I bet you did not know that.

The Convener: I am looking at my medical team, but they look reasonably content with your pronunciation, minister.

Shona Robison: The committee knows the rationale for the inclusion on the list of notifiable organisms of

"Any other clinically significant pathogen found in blood".

The matter was discussed at some length in committee. We have become convinced of the arguments of committee members and others that the item is too vague and that, as a result, it may catch organisms that do not require to be notified for public health reasons. Therefore, we are content to remove the item from the list of notifiable organisms. Amendment 24 does that.

We are satisfied that a new or emerging disease or condition can be incorporated into the list of diseases using the powers in sections 12(2), 12(3) and 12(4) to amend schedule 1 to add items to the list where

"the Scottish Ministers are satisfied that the … organism is likely to give rise to a significant risk to public health."

I move amendment 18.

The Convener: Thank you, minister.

The question is—

Dr Simpson: Convener—

The Convener: I am sorry, I was distracted by the medical discussion that was going on, but we are getting used to that—

Dr Simpson: I am sorry; that is our fault. Ian McKee and I were discussing something.

Minister, what you said is relevant to an amendment that we will discuss at a later stage. I refer to the deleting of general practitioner fees because GPs will have smaller numbers of cases to deal with, chicken pox having been removed from the list. Chicken pox is a relatively common disease. If it has to be notified, it will place a significant burden on GPs, so I am slightly surprised at what you have just said. Why do you propose to include varicella-zoster?

Shona Robison: A distinction needs to be made between notifiable diseases and notifiable organisms. The provision relates to the organism that causes chicken pox and not to—

Dr Simpson: So, if a test is done, only the laboratory is required to notify. I am trying to see the purpose of the amendment. When would a laboratory undertake a test for chicken pox?

Shona Robison: If a doctor felt that it was required.

Dr Simpson: I slightly fail to see the purpose of that particular condition being notified, but I will discuss the issue further and perhaps come back to it at stage 3.

Rhoda Grant (Highlands and Islands) (Lab): I cannot understand why the doctor does not have to notify the relevant agencies of a case of chicken pox, but, if the doctor refers something that they are not sure about to the laboratory and the laboratory discovers that it is chicken pox, the laboratory must notify. Why would one person have to do so and another not have to?

Shona Robison: The best thing would be for us to get clarification to the committee on that point.

Dr Simpson: That would be helpful.

The Convener: I have become distracted by all the long names. Is the amendment that you will consider further amendment 22?

Shona Robison: Yes.

The Convener: In that case, I know where we are.

Amendment 18 agreed to.

The Convener: I was going to call amendments 19 to 24 and invite you to move them en bloc, minister, but I take it from what you are saying that you are not going to move amendment 22.

Shona Robison: I seek the committee's guidance. My preference would be to move amendment 22 and then seek clarification on the matter, with an assurance that we could deal with any problematic issues at stage 3.

The Convener: I think that we are content with that undertaking.

Amendments 19 to 24 moved—[Shona Robison]—and agreed to.

Schedule 1, as amended, agreed to.

Section 13—Notifiable diseases: duties on registered medical practitioners

The Convener: Amendment 25, in the name of the minister, is grouped with amendments 25A, 26, 27, 27A and 164 to 167.

Shona Robison: Section 13 places a duty on registered medical practitioners to notify the relevant health board with information concerning a patient who has a notifiable disease. Subsection 6 lists the information that is required in the written notification to the health board.

Amendments 25 and 27 seek to include the address of a patient's place of work or education in the information that is notified to a health board. That would be helpful in providing an early indication of the location of an incident, in the event that an incident arises at a place of work or education, which could gain some time for those who would need to take public health action. Feedback from stakeholders during stage 1 supports that view.

Amendments 25A and 27A seek to add the name of the place of work or education to the information that is notified by a registered medical practitioner to a health board, and are unnecessary. The address of a place of work or education would usually include the name of a school or office. In the light of that, I ask Dr Simpson to withdraw amendments 25A and 27A.

The information to be notified by registered medical practitioners, health boards and directors of diagnostic laboratories includes a person's national health service identifier. Section 13(8) lists the types of identifiers that are acceptable for inclusion in the notification to the relevant agencies, and includes the NHS identification number and community health index number.

During stage 1, Dr Simpson pointed out that the most commonly used number, the CHI number, did not appear first, and suggested reordering the NHS identifiers in section 13(8). We have taken his suggestion on board. Amendment 26 puts the CHI number first in order of priority, followed by the NHS identification number. Amendment 26, which includes proposed new section 13(8)(b), also provides an alternative in cases in which the CHI number and NHS identification number are unknown.

Section 15(3) sets out the detail of the information to be passed on to the Common Services Agency from a health board following notification by a registered medical practitioner of a notifiable disease or health risk state. The information does not need to be consistent with that received from registered medical practitioners, because it will be used for a completely different purpose. The Common Services Agency does not need to know a person's name for statistical purposes. In the light of that, I invite Michael Matheson not to move amendments 164 and 165.

Section 16(6) sets out the information to be notified by a diagnostic laboratory to the local health board and the Common Services Agency. Amendment 166 and amendment 167 do not take into account the practicalities of reporting by laboratories, which forward to health boards and the Common Services Agency the information that they receive with samples for testing. That varies to a great extent and, in some cases, it may include only a person's NHS identifier. There is no need for additional information to be included for statutory notification purposes. I ask Michael Matheson not to move amendments 166 and 167.

I move amendment 25.

Dr Simpson: I welcome amendment 26 and thank the minister for providing for the CHI number to be the first number. On the important question of inserting the name of the place of work or education, the minister made the point that the address itself would normally give a sufficient clue to or evidence about the place of work, but it would not always do so. For example, the address of a shop might simply be 14 High Street. That would not necessarily give the name of the grocer or butcher in question. Butcher's in particular have been involved in past incidents. On reflection, I am not certain that "name" is the correct word to use. We really need an identifier that indicates the type of work that is being done, and I am not sure that the address, postcode and so on would cover that. I am in a quandary as to whether to pursue my amendment 25A. Perhaps I will move it and then invite the minister to amend it at stage 3. That is my preferred option. I wish to pursue the point. We need to understand the nature of the place of occupation as well as knowing its address and postcode.

The Convener: I will let the minister come back on that point in due course. It is important that we get clarification and hear whether she will give an undertaking to reconsider the issue.

Michael Matheson: I note the points that the minister has raised. There is a different approach to statutory notification in section 15 from that in section 16. My amendments 164 to 167 sought to probe whether it was necessary to have consistency, but I am satisfied with the minister's explanation of why a different approach is taken in each section.

Shona Robison: I will focus on the issue raised by Richard Simpson, if that is okay, convener.

The Convener: Absolutely.

Shona Robison: I do not think that this is a major issue. If the committee feels that amendments 25A and 27A would add value to the

bill and leave nothing in doubt, we are quite relaxed about accepting them. The committee might feel that the circumstances to which Richard Simpson alluded might arise. We do not believe that they would, but if Richard Simpson and the committee think otherwise, we are relaxed about accepting the amendments.

Amendment 25A moved—[Dr Richard Simpson]—and agreed to.

Amendment 25, as amended, agreed to.

Amendment 26 moved—[Shona Robison]—and agreed to.

10:30

The Convener: Amendment 193, in the name of Richard Simpson, is grouped with amendments 195 to 197.

Dr Simpson: Amendment 193 was lodged because of good evidence that was given by the Information Commissioner's Office, which suggested that it would be appropriate to undertake a privacy impact assessment on all aspects of the bill. On first examining the bill, I had some concerns about the procedures—paper and electronic—for transmission of data from the patient through the general practitioner to the health board and the Common Services Agency, and I had concerns about how the data would be accumulated. I appreciate that the bill specifies that data will become increasingly anonymised, but in the light of the advice from the Information Commissioner's Office, I still feel that it would be appropriate to introduce the principle of having a privacy impact assessment.

I move amendment 193.

The Convener: Is the Data Protection Act 1998 insufficient? All legislation must comply with it.

Dr Simpson: Amendment 193 would make it clear that the impact assessment had been undertaken for the transmission of information. Clearly, the Data Protection Act 1998 applies to the bill, as it applies to all legislation. However, a privacy impact assessment would make it clear to those who will use the legislation precisely what the impact is expected to be.

It is important—from a public interest point of view and a public health point of view—that, on occasion, individuals are identified. In an incident in Lanarkshire, a butcher was identified. It is inevitable that that will sometimes happen, but the inclusion of privacy impact assessments in the bill would help us to understand the Government's intentions on when information should become public and when it should not. The Information Commissioner's Office suggested that it would be appropriate for the bill to refer to such assessments.

Shona Robison: I oppose amendments 193, 195, 196 and 197 for the following reasons. Sections 13, 14, 15 and 16 of the bill will place duties on registered medical practitioners, health boards and directors of diagnostic laboratories to notify health risk states, notifiable diseases and notifiable organisms to health boards and the CSA. Amendments 193, 195, 196 and 197 would place a requirement on Scottish ministers to

"(a) undertake; and

(b) have regard to the outcome of,

a privacy impact assessment in line with guidance issued by the Information Commissioner's Office"

before issuing any guidance on the implementation of sections 13, 14, 15 and 16. It is not at all clear that a full privacy impact assessment would be necessary or appropriate in those circumstances.

As set out on the Information Commissioner's Office website, 11 points have to be considered before a privacy impact assessment is either undertaken or not undertaken. A requirement for a PIA would remove from ministers the discretion that all other bodies and organisations have when considering whether such an assessment is required for a change in process based on the facts and circumstances of each case. There is insufficient reason to remove from ministers the flexibility of being able to determine whether a PIA is appropriate.

When considering what we had to include in the bill, we did so carefully against the terms of the Data Protection Act 1998. We feel that the right balance has been struck between providing sufficient and necessary information to the right organisations and not providing unnecessary information. Amendment 193 would set a really unhelpful precedent and something similar would almost certainly have to be inserted into every single piece of legislation. On that basis, I oppose amendments 193, 195, 196 and 197.

Dr Simpson: I understand what the minister is saying. I would have been slightly happier if the Government had said that it was prepared to undertake privacy impact assessments, even if the provision for such an assessment were not included in the bill. It is difficult for me to decide whether to press amendment 193, because it may not be appropriate for the requirement for a privacy impact assessment to be undertaken to be included in every bill.

However, in this case, balancing public interest against privacy is unusually, if not uniquely, important, because the bill makes provision for the imposition of restrictions, exclusions and other

measures that involve considerable interference with individuals' liberty. The transmission of information is also likely to be greater than would normally be the case with patient information. Later sections state that the patient's consent must be obtained before that occurs, but it would be helpful both to the public and to users if patients were aware that a privacy impact assessment had been undertaken and that the bill included the provision. That said, I am prepared at this juncture to seek the committee's permission to withdraw amendment 193 and to give further consideration to whether to lodge a similar amendment at stage 3.

The Convener: That is helpful.

Mary Scanlon (Highlands and Islands) (Con): I would like the minister to clarify an issue. I have sympathy with Richard Simpson's comments, but in proceedings such as those that the amendments would apply to, time is of the essence, and the minister said that 11 points need to be considered before a privacy impact assessment is undertaken. How long would it take to process such an assessment? What would be the likely impact of building such an assessment into the proceedings for dealing with a public health risk?

Shona Robison: That is a difficult question to answer, because the impact would be different for each part of the bill. The privacy impact assessment advice was issued only in November. PIAs are required to be undertaken when legislation is being developed, so in the case of the bill there was a timing issue that made that difficult. I hope that members will take that point on board in considering the amendments.

The Convener: I do not want to open the debate up further. I take it that Richard Simpson intends to withdraw the amendment.

Ian McKee (Lothians) (SNP): I would like to make a suggestion.

The Convener: I am so liberal. Richard Simpson has wound up on the amendment, but I will let Ian McKee in quickly.

Ian McKee: In view of the case that Richard Simpson has made, could the minister consult the information commissioner before stage 3 to see whether a resolution of the issue can be achieved?

The Convener: I am sure that she will.

Shona Robison: We have already consulted the information commissioner.

The Convener: We have opened up an issue that can be re-examined later.

Amendment 193, by agreement, withdrawn.

Section 13, as amended, agreed to.

Section 14—Health risk states: duties on registered medical practitioners

Amendment 27 moved—[Shona Robison].

Amendment 27A moved—[Dr Richard Simpson]—and agreed to.

Amendment 27, as amended, agreed to.

The Convener: Amendment 28, in the name of the minister, is grouped with amendments 29 and 194.

Shona Robison: Feedback from the Health and Sport Committee and from stakeholders during stage 1 of the bill suggested that the definition of "health risk state" was not as clear as we would wish it to be. We have considered the issue further. I still believe that it is extremely important to retain the flexibility to monitor new illnesses and conditions in line with our European and international health regulations obligations. Knowledge of new cases of unknown conditions needs to be fed into the monitoring system to enable public health professionals to respond before a definitive diagnosis is made. Defining "health risk state" too tightly could limit our capacity to respond to new threats to public health. Amendments 28 and 29 will make a minor change to the definition of "health risk state" in section 14(7), so that it is exhaustive rather than inclusive. The meaning of the phrase "health risk state" will encompass only those things that are listed in paragraphs (a) and (b).

Amendment 194 would make the existing definition of "health risk state" vague and less clear, so I am unable to support it. "Unforeseen" and "unexpected" really mean the same thing, and it is not clear how "out of the ordinary" would be interpreted legally. In some instances, health risk state might be anticipated. For example, it could have been anticipated that the epidemic of severe acute respiratory syndrome—SARS—could reach the UK, but it was still not known what the infection was. Pre-warnings may be given by Health Protection Scotland in anticipation of cases of new infections. Amendment 194 would make the definition of "health risk state" unclear and unworkable. With that in mind, I hope that Richard Simpson will be happy not to move amendment 194, which I oppose.

I move amendment 28.

Dr Simpson: Amendment 194 arises out of the evidence that was given by Rob Carlson from the University of Edinburgh. He felt that

"health risk state should be defined as something that must be unexpected, unforeseen or out of the ordinary."—[*Official Report, Health and Sport Committee*, 30 January 2008; c 544.]

I had been aware of the example that he gave: in the United States, restrictions are placed on the entry of unvaccinated children into the school

system. That is a public health matter, and it could be determined to be a health risk state, because unvaccinated children entering the school system create a public health risk to children who have been vaccinated. It is clearly not the intention of the Government or Parliament to introduce such a measure at this point, but introducing the terms

"unexpected, unforeseen or out of the ordinary"

would mean that a situation such as the one that I have just described could not arise from the bill, because it could in no terms be seen to be an

"unexpected, unforeseen or out of the ordinary"

occurrence. That is the reasoning behind amendment 194.

Shona Robison: If it is helpful to the member, and if it satisfies his concerns on the issue, we could provide further amplification of the point in guidance, rather than amend the bill.

Dr Simpson: That undertaking is very welcome, and it allows me not to move amendment 194.

Amendment 28 agreed to.

Amendment 29 moved—[Shona Robison]—and agreed to.

Amendments 194 and 195 not moved.

Section 14, as amended, agreed to.

Section 15—Notifiable diseases and health risk states: duties on health boards

Amendments 164, 165 and 196 not moved.

Section 15 agreed to.

Section 16—Notifiable organisms: duties on directors of diagnostic laboratories

Amendments 166 and 167 not moved.

The Convener: Amendment 30, in the name of the minister, is grouped with amendments 31 to 34.

10:45

Shona Robison: Section 16 will place a duty on the director of a diagnostic laboratory to notify an organism to the relevant health board and the Common Services Agency. As drafted, section 16(1) will impose a duty to notify only where the diagnostic laboratory has identified a notifiable organism. However, in some circumstances, a sample may need to be sent elsewhere for more detailed identification, such as typing of an organism. Amendment 30 will ensure that the laboratory that sent the sample elsewhere for further investigation, either within or outwith Scotland, will retain the duty to notify. The effect of the amendment is that identification will include both the direct identification by the diagnostic laboratory and the indirect identification by another laboratory with which it has an arrangement that covers either formal contracts or less formal ad hoc arrangements. Amendment 30 also clarifies the day of identification in this instance, for the purposes of section 16(2).

Amendments 31 and 32 will extend the list of persons who may be in charge of the diagnostic laboratory so that the role of director can be fulfilled by a person other than a person from the professions that are currently listed. That will include persons with a non-medical background, which reflects the current practice in some laboratories, wherein the person in charge of the laboratory may be a manager rather than a medically qualified individual.

Amendments 33 and 34 will amend section 17 so that a separate defence of due diligence is provided to each of the directors of the diagnostic laboratory and the company operating the diagnostic laboratory. The single subsection to provide the same offence for both the director of the laboratory and the company operating the laboratory has been removed, and separate and different provision made for each. The wording of amendments 33 and 34 will bring section 17 into line with other due diligence defences in the bill.

I move amendment 30.

Amendment 30 agreed to.

Amendments 31 and 32 moved—[Shona Robison]—and agreed to.

Amendment 197 not moved.

Section 16, as amended, agreed to.

Section 17—Notifiable organisms: offences

Amendments 33 and 34 moved—[Shona Robison]—and agreed to.

Section 17, as amended, agreed to.

Section 18—Electronic notification

The Convener: Amendment 35, in the name of the minister, is grouped with amendment 36.

Shona Robison: Section 18(1) provides for the information that requires to be provided in writing under sections 13 to 16 to be satisfied by a document in electronic form. Section 18(2) provides that a document in electronic form used for the purpose of section 18(1) is to contain an electronic signature. The term "electronic signature" is defined in section 18(4). There is no requirement in sections 13 to 16 for the notifications to be signed. It therefore seems unnecessary and unduly burdensome to require electronic notifications to be signed, particularly

when notifications in any other form would not require a signature. Amendment 35 proposes to remove the requirement for an electronic signature.

I move amendment 35.

Amendment 35 agreed to.

Amendment 36 moved—[Shona Robison]—and agreed to.

Section 18, as amended, agreed to.

Section 19—Notifiable diseases etc: further provision

Amendment 168 not moved.

The Convener: Amendment 169, in the name of Michael Matheson, is in a group on its own.

Michael Matheson: Section 19(2) provides that regulations under section 19 can be amended by statutory provision. However, section 19 is silent in relation to matters relating to common law. It is possible that section 19(2) could be interpreted as excluding amending provisions or rulings under common law. Amendment 169 would allow regulations to amend any rule of law, including statutory and common law. The amendment is, in effect, a probing amendment to establish whether it is necessary to extend the provisions in the bill to include any rule of law, which would expressly include common law matters.

I move amendment 169.

Shona Robison: I will give the reason why I oppose amendment 169. Part 2 of the bill makes provision for the notification of diseases, organisms and health risk states, and section 19 contains the power to make more detailed provision on how that notification is to be done. I think that the Health and Sport Committee and the Subordinate Legislation Committee agree that it is important that it is possible to amend the way in which notification is made to take account of, for example, changes in how information might be provided, or changes relating to the structure of health-related organisations and their personnel.

As the bill already contains provisions on how the system is to work, the power in question, if it is used, may need to be used to make changes to the bill, but there is no need for the power to be extended to modify the common law. The law on that matter is contained entirely within the bill. There is a statutory regime. Adding the ability for the regulations to modify any rule of law is simply unnecessary. Therefore, I oppose the amendment.

Michael Matheson: As I said, amendment 169 is a probing amendment to establish how to deal with common law matters if they should arise. I am satisfied with the minister's response.

Amendment 169, by agreement, withdrawn.

Section 19 agreed to.

Section 20 agreed to.

Section 21—Public health investigations

The Convener: Amendment 37, in the name of the minister, is grouped with amendments 38 and 39.

Shona Robison: Part 3 of the bill deals with public health investigations. Section 21 states who may appoint persons for the purpose of carrying out a public health investigation. Nothing in the bill as drafted will prohibit a competent person from appointing persons as investigators or from being appointed as an investigator. However, we noted the concern that the committee raised at stage 1 that that was not entirely clear. I have therefore lodged amendments 37 to 39 to put matters beyond doubt.

Amendments 37 and 38 provide for competent persons to appoint investigators. Amendment 39 provides that nothing in section 21(2) prevents a competent person from being appointed as an investigator. In most cases, a health board competent person would appoint someone else as an investigator, including a local authority competent person, but in exceptional cases, the competent person might need to appoint himself or herself as the investigator if there was no one else in the area to carry out that role.

I move amendment 37.

The Convener: I see that Ross Finnie wants to say something. He has been pursuing the matter.

Ross Finnie (West of Scotland) (LD): I am grateful to the minister for lodging helpful amendments 37 to 39, which will not only put matters beyond doubt, but will bring consistency with respect to the role of competent persons and preclude the slight dysfunction whereby a competent person can be competent to do certain things but not, apparently, to be involved in an investigation.

Amendment 37 agreed to.

Amendments 38 and 39 moved—[Shona Robison]—and agreed to.

Section 21, as amended, agreed to.

The Convener: I warn members that I will let us have a little break at 11 o'clock, as we are rattling along. I see desperation slipping in—with me, anyway.

Section 22—Powers relating to entry to premises

The Convener: Amendment 43, in the name of the minister, is grouped with amendments 44, 45, 47 to 49, 170, 50 to 53, 177 and 179 to 187.

Shona Robison: The amendments in the group are intended to clarify, and provide consistency between, related sections of parts 3 and 5. For example, amendments 43 to 45 provide clarity by ensuring that powers relating to entry to premises are contained in section 22, and that references relating to examination and investigation are contained in section 23.

Amendments 177 and 184 provide for the duty in sections 69 and 73 to ensure that premises are left as effectively secured against unauthorised entry as they were when they were found by an officer.

Amendments 52 and 185 provide that powers of direction that are applicable during an emergency under section 28, in part 3, will also apply to emergency situations under section 74, in part 5.

Collectively, the amendments provide clarification regarding the powers of investigators, consistency in the application of the wording in similar sections, and consistency of powers in related sections of parts 3 and 5.

I move amendment 43.

Dr Simpson: As amendment 52 will, amendment 48 will insert a provision about the involvement of a constable when access is obtained. Given the fact that paragraph (i) of amendment 48 begins with the words

"any other person authorised by the investigator",

I wonder why it is necessary to specify that that may be a constable. In doing that, is not the bill limiting the powers of the investigator to being able to involve someone who could overcome an obstruction? A constable may not be the person who could obtain access. The investigator may, for example, need to involve the fire service if there was a biohazard. A constable may not be the most appropriate person; therefore, I wonder whether the amendment is necessary in its current form. Does it not restrict the investigator's powers? I do not propose to oppose the amendment; I merely invite the minister to consider the matter.

Ross Finnie: The minister prefaced her remarks by saying that the amendments are designed to add clarity; however, I find the wording of amendment 181, which seeks to amend section 73, rather odd. The amendment will insert the words:

"to remove any thing from the premises for the purpose of taking any such step at any other place."

That seems to me quite the most vague instruction that anyone could get. In the purpose and effect notes that you have circulated to the committee, you say:

"Amendment 181 gives a sheriff or JP power to authorise by warrant an officer of the authority or a person authorised by the officer the power to remove anything from the premises for the purpose of taking any such step at any other place."

I cannot think of a less specific direction to be included in a warrant. It seems to be an absolute blank cheque and is not consistent with the good practice of being specific in the terms on which a warrant is granted.

The Convener: I do not think that sheriffs are in the habit of writing blank cheques.

Ross Finnie: But the words seem to have the imprint of a blank cheque on them.

The Convener: My observation was a comment rather than a response to your question.

Shona Robison: I will deal with Ross Finnie's point first. The steps to which he refers are outlined in section 68(2). They are disinfection, disinfestation or decontamination

"of the premises or of a thing in or on the premises".

Those are the steps to which the provision in amendment 181 refers.

The thinking behind the specification of a constable in amendments 48 and 52 is that a constable would be the first person on the scene, although others could be brought in as required. The provision would not preclude others being brought in. Given that there could be a personal obstruction to entry to the premises, we felt that that specification was important. I can certainly write to the committee with further information on Dr Simpson's point, if he so wishes.

11:00

Dr Simpson: That would be very helpful. It would be especially helpful if you could provide clarification on what would happen in the event of a biohazard or some other hazard that would automatically involve the fire service, which has specialist equipment for dealing with biohazards and terrorist risks. I may return to the issue at stage 3.

Shona Robison: The constable will deal with personal obstruction issues, but the bill also refers to

"any other person authorised by the officer",

which would include the fire service or anyone else required to be involved in that situation.

The Convener: We can return to the issue at stage 3 after we have reflected a bit more on it.

Ross Finnie: I am grateful for having my attention drawn to the specific provisions in section 68. However, does section 73 refer specifically to section 68 to ensure that the warrant granted by the sheriff specifically relates to it?

Shona Robison: Section 73(2)(c) refers to taking

"any step mentioned in section 68(2)".

Ross Finnie: I apologise. I am grateful for the clarification.

Amendment 43 agreed to.

Amendment 44 moved—[Shona Robison]—and agreed to.

Section 22, as amended, agreed to.

The Convener: At this happy point, I suspend the meeting for eight minutes.

11:02

Meeting suspended.

11:15

On resuming—

The Convener: I heard at some point a naughty beeping of somebody's mobile phone or BlackBerry. If it belonged to anybody who is sitting in the public seating, I ask them to ensure that all electronic devices—except those that are medically required—are switched off.

Ian McKee: It was Richard Simpson's pacemaker.

The Convener: I do the gags.

Dr Simpson: That was slanderous.

Ian McKee: I withdraw the remark.

The Convener: Right, gentlemen—I do not know what was in the tea and coffee, but we are all refreshed and reinvigorated, so off we go. I warn all members that we will keep going for another hour on stage 2.

Section 23—Other investigatory powers

Amendment 45 moved—[Shona Robison]—and agreed to.

Section 23, as amended, agreed to.

Section 24 agreed to.

Section 25—Supplementary

The Convener: Amendment 198, in the name of Jamie Stone—whom I welcome to the meeting—is grouped with amendment 204.

Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): As the Subordinate Legislation Committee's convener, I am here to speak on that committee's behalf. I may or may not press amendment 198; the opportunity to dispose of amendment 204 will occur on day 3 of stage 2.

At stage 1, the Subordinate Legislation Committee was concerned that the power that allows ministers to confer on investigators any power that they consider necessary for the purposes of public health investigations appeared to have no restrictions. In the light of that power's width, coupled with the power in section 25(4) to modify any enactment—including the bill—in conferring additional functions by regulations that are made under section 25(3), it was unclear to the Subordinate Legislation Committee whether the intention was that such powers could conflict with or undermine powers that sections 22 to 24 confer. We took the view that the power's scope was too broad, as it could alter the substance of the investigatory powers in a manner that was inconsistent with the powers that the Parliament conferred in the bill.

As the power might be used to amend primary legislation, we were also concerned that its exercise was to be subject to the negative procedure. As with previous cases in which the Parliament has determined the scope of investigatory powers in primary legislation, we consider that it should be actively consulted on any proposed changes to such legislation. Accordingly, we consider that when the power is used to modify primary legislation, it should be subject to the affirmative procedure.

We reported those concerns in our stage 1 report, which the committee has seen, but as far as we can see, the Government's position has not changed.

Amendment 198 would insert into section 25(3) the word "supplementary", to make it clear that ministers' powers to confer additional enforcement powers are restricted to conferring powers on investigators for the purposes of public health investigations that are supplementary to the powers that are set out in the bill. The amendment would ensure that any additional powers that regulations made under section 25(3) conferred on investigators did not undermine or cut across the investigatory powers that are set out in sections 22 to 24, which I mentioned and which Parliament has agreed are appropriate and proportionate. Some flexibility will be required to address failings in provisions that are identified over time, but ministers should not be able to use the power to overturn the bill.

Amendment 204 relates to section 102, which contains general and miscellaneous provisions on regulations and orders. The amendment will come as no surprise to the minister or the committee. It would amend section 102(4) to provide that regulations that are made under section 25(3), to which I have referred, and which would modify an act of Parliament or an act of the Scottish

Parliament, should be subject to—surprise, surprise—the affirmative procedure.

As I have said, the presumption is that any subordinate legislation that amends primary legislation should be subject to the affirmative procedure. That is because Parliament, as the author of primary legislation, should have a role in approving any changes that are made to primary legislation.

We considered whether there was a sound reason for departing from that principle in this case, but we are not persuaded that ministers should be given the power to usurp Parliament's function here. Given the potentially intrusive nature of investigatory powers, we consider that the Parliament should provide the appropriate check and balance, through the use of the affirmative procedure, on the exercise of ministerial powers to modify investigative powers.

I move amendment 198.

Shona Robison: We oppose amendments 198 and 204 for the following reasons. First, section 25(3) enables Scottish Ministers "by regulations" to give such powers to investigators

"as Ministers consider necessary for the purposes of public health investigations."

I anticipate that any new powers provided by regulations would not conflict with or undermine existing powers but would supplement them. However, I cannot rule out the possibility that it might be necessary for a new power to replace an existing power. Amendment 198 is unnecessary, and what it proposes could limit the powers available to Scottish Ministers to respond to a public health emergency.

Secondly, on the regulations referred to in section 25(3), section 25(4) clarifies that

"Regulations under subsection (3) may modify any enactment (including this Act)."

It seems prudent to me that the regulations should be able quickly to amend the enacted bill or other enactments relating to these issues, should it become clear that investigations on the ground were being hampered because the bill's provisions had not anticipated a particular set of circumstances. It is considered that the negative procedure is appropriate for any regulations made under the provision in section 25(3), thus balancing speed and flexibility of passage with the need for scrutiny.

What amendment 204 proposes would mean, for example, that regulations amending the enacted bill could be approved only under the affirmative procedure, which could lead to unnecessary delay. I ask the committee to reflect on what we would do, for example, should such procedures require to be brought forward during the summer recess. I therefore oppose amendments 198 and 204.

Jamie Stone: I thank the minister for her comments. However, section 25(4) states:

"Regulations under subsection (3) may modify any enactment (including this Act)."

The Subordinate Legislation Committee feels that a principle is at stake here because the power conferred by section 25(4) could sweep back into earlier parts of the bill, which would not be consistent with the bill's logic as seen elsewhere. For example, section 23(5) provides a kind of comfort clause, stating:

"Nothing in this section compels the production by any person of a document subject to legal privilege."

There are also many examples in earlier sections of the use of the word "reasonable".

I hear what the minister says, but I remain worried that the intent of section 25(4) could fundamentally alter what the bill sets out to do elsewhere. At this stage, I want to press amendment 198. We are only halfway through the bill's passage, so we will see what comes out as we progress towards stage 3. However, to test the water, I will press amendment 198.

Shona Robison: I want to say a little bit more about the issues around the concept of "supplementary", as proposed in amendment 198. I have real concerns, but I can perhaps suggest a way forward.

Members will appreciate that a public health investigation is potentially a multi-agency and multidisciplinary investigation. A public health investigator's powers are set out in part 3 of the bill. The investigator may have other powers, too, such as the power under food safety legislation to impose emergency prohibitions on food businesses. However, the key point is that the person appointed as an investigator might not, in fact, have other powers under other enactments. Experience may show that the best way for an investigation to be carried out is for the investigator to have some or all of the powers that are available in other legislation. Section 25(3) would allow ministers to confer such powers on investigators generally.

Adding the word "supplementary" to section 25(3) would restrict ministers' ability to respond to how public health investigations were developing, perhaps in an emergency, by limiting the kind of powers that could be conferred. We could only add powers that supplemented the powers that are available under part 3. I will give an example. The powers in section 12 of the Food Safety Act 1990, which deals with the imposition of emergency prohibitions on food businesses, could not be said to be supplementary to any power in

part 3, so we would not be able to confer them on investigators if amendment 198 were agreed to. In other words, the proposed change has serious repercussions.

If the committee is not persuaded by our arguments and remains concerned about the issue, we could consider whether there is a way of achieving the desired limitation, other than by inserting "supplementary" in section 25(3), that would still give ministers the required degree of flexibility. I take Jamie Stone's point about the principles that the Subordinate Legislation Committee seeks to uphold, and I do not dispute their importance. However, it is necessary to consider how they apply to a bill that is about dealing with public health emergencies. Given that we might not know exactly what we were dealing with, ministers must have flexibility. I urge him to reflect on that and to consider allowing us to find a different way forward.

Jamie Stone: I accept that conciliatory offer. Providing that we can work together to reflect the view of the Subordinate Legislation Committee and take account of the requirements of Scottish ministers, I think that the minister's proposal is workable. In view of that reassurance, I seek to withdraw amendment 198.

Amendment 198, by agreement, withdrawn.

Sections 25 and 26 agreed to.

Section 27—Public health investigation warrants

The Convener: Amendment 46, in the name of the minister, is grouped with amendments 157, 178 and 188 to 190.

Shona Robison: Part 3 of the bill provides, in section 27(2), that

"The sheriff or a justice of the peace may, on the summary application of the investigator, by warrant authorise the investigator (and any other person authorised by the investigator)"—

The Convener: Excuse me, minister. Mr Stone is leaving, but I think that he has another amendment. [*Interruption.*] The matter has been resolved.

I am sorry for halting you midstream, minister. Panic set in, but Mr Stone's amendment 204 does not appear until much later in the marshalled list.

Shona Robison: As the committee is aware, summary application procedure does not apply in a district court. A sheriff or justice of the peace may grant a warrant without any procedure being specified. Amendment 46 seeks to clarify that the formal summary application procedure will not be used by an investigator to apply to a sheriff or a JP for a public health investigation warrant. Amendment 178 will make the same change to section 73(2) in part 5, the terms of which are nearly identical to those of section 27(2).

Section 66(1) sets out that any reference to an application to the sheriff is a reference to a summary application and that any reference to an appeal to the sheriff or the sheriff principal is a reference to an appeal by summary application. Amendment 157 will remove section 66(1) and its references to summary application and will replace them with a reference to the Court of Session's power under section 32 of the Sheriff Courts (Scotland) Act 1971 to set out the procedure for any application or appeal that is made under part 4 of the bill.

Section 78(4) in part 5 provides that any person on whom a notice is served may appeal to the sheriff against the notice or any requirement in it through the formal summary application procedure. Section 79 provides that a person who appealed under section 78 may, with the leave of the sheriff, appeal to the sheriff principal using the same procedure. I now consider that the use of the summary procedure is inappropriate for appeals that are made under those sections, and amendments 188 and 189 will remove from them the references to that procedure.

Amendment 190 provides that

"Scottish Ministers may, by regulations, prescribe the form of any application or order under this Act."

Although it could be left to court rules to set out the forms of application that are to be used under part 4, for example, I feel that it is more appropriate—given the nature of those forms of application, the fact that mainly health boards and local authorities will use them and the fact that the person who receives them may not have access to legal advice—for the detail of them to be set down by ministers.

For similar reasons, the various orders should be drawn up in as user-friendly a fashion as possible, especially for the benefit of the persons to whom they will apply. It is appropriate for ministers to prescribe the orders.

I move amendment 46.

Amendment 46 agreed to.

Amendments 47 to 49, 170, 50 and 51 moved—[Shona Robison]—and agreed to.

Section 27, as amended, agreed to.

Section 28—Use of powers in emergencies

Amendments 52 and 53 moved—[Shona Robison]—and agreed to.

Section 28, as amended, agreed to.

Section 29—Public health investigation offences

11:30

The Convener: Amendment 40, in the name of the minister, is grouped with amendments 41 and 42.

Shona Robison: The reasonable excuse defence applies to offences in other parts of the bill. For consistency in the bill and for fairness, we decided that the defence should apply to all of section 29(1) and not just to section 29(1)(a). Amendments 40 and 41 will apply the reasonable excuse defence to the whole of section 29(1). Amendment 42 will add a few words to the existing defence of exercising all due diligence and taking all reasonable steps, so that it is clear that those things relate to avoiding committing the offence.

I move amendment 40.

Amendment 40 agreed to.

Amendments 41 and 42 moved—[Shona Robison]—and agreed to.

Section 29, as amended, agreed to.

Section 30—Public health investigations: compensation

The Convener: Amendment 54, in the name of the minister, is grouped with amendments 55 to 57.

Shona Robison: Section 30 specifies the circumstances in which compensation may be paid by persons who appoint investigators to carry out a public health investigation. During stage 1, stakeholders raised concerns about a lack of clarity on the issue. Together, amendments 54 to 56 clarify who is to pay. Amendment 56 will make clear where such responsibility lies—namely with the employer of the investigator or the employer of any person who is authorised by the investigator.

Amendment 57 will make a small consequential change to the appointment of the arbiter, to accommodate circumstances in which compensation may be payable by more than one person.

I move amendment 54.

Amendment 54 agreed to.

Amendments 55 to 57 moved—[Shona Robison]—and agreed to.

Section 30, as amended, agreed to.

Section 31—Duty of health boards to give explanation for need for action

The Convener: Amendment 171, in the name of Michael Matheson, is grouped with amendments 58 to 61, 63, 64, 72, 74, 80, 81, 86, 92 and 93.

Michael Matheson: Amendment 171 would ensure that, under section 31(3), any information that is given to a person must be in a language that he or she understands. Members will be aware that section 31(4) contains a range of provisions on transmitting information to a person who is affected by an order under sections 33, 37 to 39, 41 or 44.

Given the importance of the powers in those provisions, we should ensure that the people who are affected fully understand the importance of orders that are applied for. The purpose of amendment 171 is therefore to ensure that the explanation is translated into a language that is understandable to the person.

I move amendment 171.

Shona Robison: I oppose amendment 171. It is clear that health professionals would make all efforts to explain proposed action in a person's language if the person did not understand English. However, as we said when we gave evidence to the committee, in circumstances of significant risk to public health, it might not be possible to delay action until an interpreter was available.

Under section 31(5),

"The board need not comply with subsection (3) or (4)",

which require the board to provide an explanation to a person before proposed action—that is, an application to the sheriff for an order for medical examination, quarantine, detention, or removal and detention, or for an exclusion or restriction order—is taken,

"where it considers that the risk to public health is such that the relevant action must be taken as a matter of urgency."

Section 31(5) will be removed by Government amendment 61, and amendment 58 will insert new section 31(3A), which will place a duty on health boards, in circumstances in which it was not reasonably practicable to provide an explanation under subsections (3) and (4) before action was taken, to explain matters

"as soon as reasonably practicable after taking the proposed action and in so far as it is reasonably practicable to do so".

Amendment 58 will have consequences for the sections that deal with applications and orders for medical examination, quarantine, detention and removal and detention, which refer to the explanation provision in section 31.

The Government amendments strike the right balance between the need to take urgent action in certain circumstances to protect public health and the need to protect as far as possible the individual's right to an explanation.

Dr Simpson: I welcome the amendments in the minister's name. Section 31(5) was inappropriate,

so I particularly welcome its deletion. I am glad that the Government amendments clarify the position and will make it easier for medical practitioners and other people to follow the procedure ethically. Section 31(5) would have caused difficulties in that regard.

In this debate on amendment 171 and the other amendments in the group, the word "reasonably" keeps appearing. How do we define what is reasonable? I presume that ultimately the court will define the term when there are prospective and retrospective appeals about matters in the bill. I am concerned about interpretation, because boards have failed to provide interpreters timeously and helpfully to patients who sought medical advice. I know that it can be difficult to provide interpreters, but we are talking about circumstances in which a person could be subjected to a medical examination that they had refused because they did not understand its nature. In that context, the interpretation of "reasonable" is difficult.

Whether or not Michael Matheson presses amendment 171, can the minister assure me that "reasonable" will be clearly defined in guidance, to ensure that the authorities make significant attempts to obtain interpreters for individuals who are affected by the bill?

Shona Robison: I am happy to undertake to provide a definition in guidance. Much work is going on in health boards to improve interpreting services and clear guidance will be provided on interpretation in the context of the bill. I would expect health boards to meet as quickly as possible the interpreting needs of a person who was subject to the provisions in the bill.

Michael Matheson: That is very helpful, minister, as was Richard Simpson's contribution. I also support the deletion of section 31(5) because its tone has not been helpful from the outset. The minister's amendments have provided greater clarity.

I am conscious that there is an issue around the definition of reasonableness. The term is commonly used in legislation and I respect the need for a level of flexibility in dealing with public health emergencies. I was about to make the point that Richard Simpson made when he said that it would be useful if further clarification could be provided in guidance on how the term should be considered.

I therefore seek to withdraw amendment 171.

Amendment 171, by agreement, withdrawn.

Amendments 58 to 61 moved—[Shona Robison]—and agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

Section 33—Application to have person medically examined

The Convener: Amendment 62, in the name of the minister, is grouped with amendments 172, 71, 173, 79, 174, 91, 175, 103 and 108. I draw members' attention to the pre-emption information on the groupings list, which means, for example, that if amendment 62 is agreed to, amendment 172 cannot be called.

Shona Robison: Convener, I will speak to amendments 62, 71, 79, 91, 103 and 108.

Sections 33(2), 39(2), 41(2) and 44(3) provide that a health board may apply to the sheriff for the area within which the board has its principal office for an order for medical examination, quarantine, detention in hospital and exceptional detention in hospital, respectively. That might be inconvenient and cause unnecessary delay, as the person in relation to whom the action is to be taken and the relevant health board competent person—who must be satisfied that the criteria for orders have been met—might not be located close to the board's principal office. The amendments provide for a health board to apply to any sheriff in the health board's area, thus allowing it to choose the most appropriate sheriff to consider the application in each case.

Amendments 103 and 108 are consequential to the sections on extensions and variation of orders.

Although Rhoda Grant's amendments 172 to 175 have a similar purpose, we consider that the Government amendments provide greater flexibility.

I move amendment 62.

Rhoda Grant: I welcome the Government's amendments, but I feel that mine go further and redress the balance. One of my concerns about the bill is the balance between individuals' rights and those of the public and the organisations that will have powers under the legislation, such as health boards.

My amendment 172 seeks to redress the balance in favour of the person who is subject to the court action so that the court action takes place in a court close to the person, not one that is convenient to the health board alone. For instance, the Highlands reach from Argyll to Caithness and the competent person might find it more convenient to go to a sheriff in Thurso when the case involves someone in Campbeltown. I want to ensure that the sheriff court is convenient for the person involved rather than the authority.

Shona Robison: That would happen in practice. The Government amendments argue that there needs to be a degree of flexibility rather than restrictions, which Rhoda Grant's amendments would introduce. The amendments are similar in

purpose, but the Government amendments provide that little bit of flexibility, which might be required on occasion. In practical terms, some common sense should be applied to the situation that Rhoda Grant describes.

11:45

Dr Simpson: I support Rhoda Grant's amendments. I welcome the Government's amendments, because they move forward from the rather restrictive original proposals, which would have meant that applications could only be sought from the sheriff for the area where the health board has its principal office. We are all agreed that that is an unnecessary—but understandable—restriction. It is important that when a medical examination is to be imposed on an individual—which is an unusual set of circumstances—we focus more on the person than the authority carrying it out. The balance should therefore be towards the person, not the authority.

Other sections give the authorities considerable powers to impose orders on individuals, and Rhoda Grant's amendments provide the necessary respect for individuals' great uncertainty in the situation. We do not expect many people to refuse a medical examination, but such individuals will already be distressed, perhaps because it is not possible to give them an explanation, or because they are unable to understand the explanation that is given. A person can have many reasons for refusing a medical examination—they need not be doing so just out of cussedness—therefore I will support Rhoda Grant's amendments if she is prepared to press them.

Shona Robison: Amendment 62 will allow the health board to go to any sheriff within its area. I do not understand why that would pose a great difficulty for any individual concerned. All we are asking for is a degree of flexibility as to who that sheriff might be, although it has to be one from within the health board area.

The Convener: Could there be practical difficulties if there was a constraint? I accept Rhoda Grant's point about the balance between the individual and the larger power of the board, but from my experience—Rhoda knows where I am coming from—I know that the sheriff in the area might already be engaged in proceedings from which he or she cannot detach themselves. Could that not be the case? That might be an unintended consequence of Rhoda's amendments. Minister, will you address that?

Shona Robison: That is why we want a degree of flexibility, namely, flexibility to go to any sheriff within the health board area. That takes account of the circumstances that you outlined—if a particular sheriff is not available, other sheriffs within the health board area will be required to assist. It is a practical consideration.

Rhoda Grant: I understand the practical implications. I do not think that anything the minister said—

Shona Robison: Would it be helpful to provide additional guidance to the effect that the sheriff should be the sheriff closest to the person concerned? Would that help to address Rhoda Grant's point about health boards that cover a wide geographical area?

Rhoda Grant: That would be helpful. It is clear that the guidance must indicate to health boards and other such bodies the need to have to the fore not their convenience but the best interests of the person. I would be satisfied if that were laid down in guidance. I will not move my amendments.

Shona Robison: We are happy to provide that assurance.

Amendment 62 agreed to.

Amendment 63 moved—[Shona Robison]—and agreed to.

Section 33, as amended, agreed to.

Section 34—Order for medical examination

Amendment 64 moved—[Shona Robison]—and agreed to.

The Convener: Amendment 65, in the name of the minister, is grouped with amendments 131 and 201.

Shona Robison: The bill does not provide for an appeal against an order for medical examination that is authorised by a sheriff. The policy rationale is that a decision to examine someone without their consent will be taken only when it is crucial to obtain evidence on whether an individual or group of individuals has an infectious disease that could have a significant impact on public health. Such an examination is preferable to instigating wide-scale quarantine arrangements, which might not be necessary if the person is not infectious.

We listened to the concerns of stakeholders, who voiced broad support for an appeal mechanism, and we note the concerns that the committee expressed in its stage 1 report. However, we need to ensure that public health continues to be protected.

Amendment 65 provides that an order for medical examination has effect for seven days or until

"the carrying out of a medical examination authorised by the order".

New section 34(4A) allows the medical examination to be suspended if an appeal is made under the new section that is provided by amendment 131. That will allow an appeal to be made to the sheriff principal within seven days of the order being made. We have been assured by court officials that, in the rare circumstances of such an order being made and appealed against, a hearing would be held as a matter of urgency.

In addition, the guidance on implementation will advise stakeholders to apply for a quarantine order when a medical examination is applied for. That will protect public health in the event of an appeal against the medical examination.

Amendment 201, in the name of Richard Simpson, provides for a retrospective review of medical examination orders. We do not see what the amendment would achieve that is not achieved by the new section on appeals. It is unnecessary and would be disproportionate to go straight to the Court of Session for a review of a short-term order long after the order had expired. It is not clear what the Court of Session could reasonably do in such a review or to whom it would report. We also question how appropriate it would be for the Court of Session to review a short-term order that had been granted by a sheriff, and what purpose such a review would serve.

The legal secretary to the Lord President of the Court of Session commented that, when the Scottish Government considers legislation that confers responsibilities on the Court of Session, it is usual practice for the Government to consult the court regarding the technical workability of the proposals and how the proposed responsibilities would fit with the court's other responsibilities. It has not been possible to get detailed views on amendment 201 from court officials, but the first impression is that they are not sure what is meant by asking the Court of Session to review and report on an order rather than to carry out the more usual function of deciding on questions of law in relation to it. Court officials would welcome clarification of how the amendment is intended to operate.

I move amendment 65 and ask Richard Simpson not to move amendment 201.

Dr Simpson: I thank the minister for lodging her amendments 65 and 131. I lodged my amendment 201 before I saw her amendments.

As she knows, the committee stated in its stage 1 report:

"The Committee is not satisfied with the Minister for Public Health's position that there would be no practical purpose in appealing a sheriff's decision to authorise the medical examination of a person other than to enable the individual to obtain compensation".

The committee's view was that, when such unusual circumstances occur—we hope that they will be unusual—there should be a process by which the approach can subsequently be reviewed without interrupting the vital process of protecting public health.

We seek to establish a balance between the individual's interest and the public interest. In seeking a retrospective review, we sought to establish that medical examinations would be used appropriately—not in legal terms, but more in terms of how the individual is treated and whether the approach does, in fact, protect public health.

I accept that my legal knowledge is totally inadequate. It might not be the Court of Session that should undertake such reviews. I took advice on that, but I did so quickly and without detailed consideration.

I am prepared not to move my amendment 201, although the committee might wish to consider whether the new right of appeal, which is greater than that sought by the committee, unnecessarily swings the other way. In other words, let us say that there is a delay of seven days, which is the maximum time before an appeal can be lodged—given the weekend, that could mean delays of up to 10, 12, 13 or 14 days. Despite the minister's assurance that a quarantine order will be put in place at the same time, there might be difficulties if the same right of appeal applies. Although I accept the minister's amendments as a welcome step forward and I am prepared to not move amendment 201, I invite the committee to consider whether the minister has been more generous than we were seeking in giving such rights. She might wish to consider that before stage 3.

The Convener: I also welcome the introduction of the appellate procedure, because it is a good belt-and-braces way of making the legislation comply with the European convention on human rights. I raised concerns before about the right to a fair hearing, which was not included originally.

Shona Robison: We had the same deliberations about the rights of the individual and protecting public health, but we took the pragmatic view that if it is right to have such a mechanism, it has to be meaningful. We therefore feel that we are taking a belt-and-braces approach to protecting public health by putting in place quarantine orders, which will be applied for at the same time as medical examination orders. We have been assured that medical examination appeals will be heard as a matter of urgency and will be given top priority. The circumstances that we are discussing will happen very rarely, but we will make it clear in the guidance that quarantine orders should be applied for at the same time as applying for medical examination orders, to ensure that on the very rare occasions on which they will be used, there is a clear process that balances the need to protect public health with the rights of the individual.

Amendment 65 agreed to.

The Convener: Amendment 66, in the name of the minister, is grouped with amendments 67 to 70, 76 to 78, 83 to 85, 88 to 90, 95 to 97, 100, 101, 176 and 113 to 115.

Shona Robison: Other amendments in a later group will provide that orders for medical examination, quarantine, detention and exceptional detention and orders extending or varying those orders come into effect when they are made by the sheriff, rather than when they are served on the person to whom they apply. The amendments in this group aim to reflect that change of policy in the provisions.

Exclusion and restriction orders, because they are made by health boards, will continue to be served on the person to whom they apply. To be consistent with other provisions in the bill, the orders should be notified to others, rather than copied to them.

In addition, I take the opportunity in amendment 176 to set out the detail of what should be specified in an order extending a quarantine or detention order to ensure consistency with other similar provisions in part 4.

I move amendment 66.

Amendment 66 agreed to.

Amendments 67 and 68 moved—[Shona Robison]—and agreed to.

Section 34, as amended, agreed to.

Sections 35 and 36 agreed to.

Section 37—Exclusion orders

12:00

The Convener: Amendment 199, in the name of Helen Eadie, is grouped with amendment 200.

Helen Eadie (Dunfermline East) (Lab): The amendments in the group pick up on the concerns that the committee expressed in its stage 1 report. Amendment 199 seeks to move the specification of the place or type of place from section 37(4) to section 37(2). Amendment 200 would remove the requirement for the exclusion order to specify the place or type of place from which a person is excluded. The effect of amendment 199 on section 37(2)(a) would provide that a health board competent person could make an exclusion order prohibiting a person from entering or remaining in—subject to section 37(5)—any place or type of place specified in the order.

Amendment 200 would mean that section 37(4) would no longer contain provision requiring orders to specify the place or type of place from which a person is excluded; they would only specify the person to whom the order applied and any conditions that were imposed on them. The bill's order-making measures follow a standard and clear pattern—one of the committee's key objectives is to ensure that there is consistency. In the case of exclusion orders, section 37(2)(a) sets out in general terms what they may cover, and section 37(4) specifies what they must contain. The key point is that the committee was concerned that orders should specify places rather than refer to "any place", which could be confusing.

I move amendment 199.

Shona Robison: I oppose amendments 199 and 200 for the following reason. All order-making sections of the bill follow a standard and clear pattern: first, what an order may cover is set out, and secondly, what a particular order must contain is specified. That can be seen in section 37(2)(a), which sets out in general terms what an exclusion order may cover, and in section 37(4), which sets out the detail of what a particular exclusion order must contain.

Amendments 199 and 200 do not work. The effect of amendment 199 would be that section 37(2) would refer to a place specified in the order, but the effect of amendment 200 on section 37(4) would be that the order would no longer have to specify the place or type of place, so it would be unclear how the place would be specified. If agreed to, the amendments would probably need to be addressed and fixed at stage 3. On that basis, I hope that the member will withdraw amendment 199 and not move amendment 200.

Helen Eadie: I hear what the minister says. My concern was about the references to a place and a specified place. I still have a slight concern that there is a degree of ambiguity. Perhaps I will take further advice and revisit the issue at stage 3.

Amendment 199, by agreement, withdrawn.

Amendment 200 not moved.

Amendment 69 moved—[Shona Robison]—and agreed to.

Section 37, as amended, agreed to.

Section 38—Restriction orders

Amendment 70 moved—[Shona Robison]—and agreed to.

Section 38, as amended, agreed to.

Section 39—Application to have person quarantined

The Convener: I point out that if amendment 71 is agreed to, amendment 173 will be pre-empted.

Amendments 71 and 72 moved—[Shona Robison]—and agreed to.

Section 39, as amended, agreed to.

Section 40—Quarantine orders

The Convener: Amendment 73, in the name of Shona Robison, is grouped with amendments 98, 105 to 107, 110 and 111.

Shona Robison: The amendments seek to ensure greater clarity for the reader and consistency of drafting approach throughout part 4, in consequence to other amendments to part 4.

I move amendment 73.

Amendment 73 agreed to.

Amendment 74 moved—[Shona Robison]—and agreed to.

The Convener: Amendment 75, in the name of the minister, is grouped with amendments 82, 87, 94 and 112.

Shona Robison: Sections 40, 42, 43 and 45 do not currently stipulate when orders for quarantine, removal and detention, detention and exceptional detention come into effect, because the bill provides for orders to be served on the person to whom they apply and, unless stated otherwise, orders come into effect when they are served on the person.

Section 51 provides that a quarantine or detention order modified by virtue of section 51(1) has effect from the day on which the order is served on the person to whom it applies. However, since the bill was introduced I have considered whether service is the right point in time for those orders to have effect. I have concluded that from the point of view of protecting public health, the orders should come into effect as soon as the sheriff makes them. The amendments will achieve that.

Obviously, it is still important that people who are subject to those orders are informed that they have been made. Amendments in an earlier group made the necessary changes to the bill to provide for that.

I move amendment 75.

Amendment 75 agreed to.

Amendments 76 to 78 moved—[Shona Robison]—and agreed to.

Section 40, as amended, agreed to.

Section 41—Application to have person detained in hospital

The Convener: Amendment 79, in the name of the minister, has already been debated with amendment 62. If amendment 79 is agreed to, amendment 174 is pre-empted.

Amendments 79 and 80 moved—[Shona Robison]—and agreed to.

Section 41, as amended, agreed to.

Section 42—Order for removal to and detention in hospital

Amendments 81 to 85 moved—[Shona Robison]—and agreed to.

Section 42, as amended, agreed to.

Section 43—Order for detention in hospital

Amendments 86 to 90 moved—[Shona Robison]—and agreed to.

Section 43, as amended, agreed to.

Section 44—Application where long term detention in hospital necessary

The Convener: Amendment 91, in the name of the minister, has already been debated with amendment 62. If amendment 91 is agreed to, amendment 175 is pre-empted.

Amendments 91 and 92 moved—[Shona Robison]—and agreed to.

Section 44, as amended, agreed to.

Section 45—Exceptional detention order

Amendments 93 to 97 moved—[Shona Robison]—and agreed to.

Section 45, as amended, agreed to.

Sections 46 and 47 agreed to.

Section 48—Variation of exclusion and restriction orders

Amendment 98 moved—[Shona Robison]—and agreed to.

The Convener: Amendment 99, in the name of the minister, is grouped with amendments 102, 119 and 123.

Shona Robison: The bill provides that a health board competent person may make exclusion and restriction orders. However, as currently drafted, only the competent person who made an order may vary, review or revoke it. The amendments will ensure that any competent person in the same health board area as the competent person who made an order is able to undertake those functions, in case the competent person who made the order is unavailable.

I move amendment 99.

Amendment 99 agreed to.

Amendments 100 to 102 moved—[Shona Robison]—and agreed to.

Section 48, as amended, agreed to.

Section 49—Extension of quarantine and hospital detention orders

Amendment 103 moved—[Shona Robison]—and agreed to.

The Convener: Amendment 104, in the name of the minister, is grouped with amendments 109, 116 to 118, 120 to 122, 124 to 129, 132, 133 and 135.

Shona Robison: The amendments clarify further the role of the health board competent person. The committee is aware that the policy is that action that is taken to deprive a person of his liberty should be undertaken by a person with the appropriate qualifications—a health board competent person. The role of the health board competent person is clear in relation to applying to the sheriff to medically examine, quarantine, detain, and detain under an exceptional detention order. However, the role is less clear in relation to reviewing, extending and varying, and revoking orders. We therefore propose the amendments in this group to ensure that the role of the competent person is explicit and clear throughout part 4.

For exclusion and restriction orders, which are made by health board competent persons, the amendments will ensure that any health board competent person in the health board, rather than just the person who made the order, must review and, where necessary, revoke it.

I move amendment 104.

Amendment 104 agreed to.

Amendments 105, 106 and 176 moved—[Shona Robison]—and agreed to.

Section 49, as amended, agreed to.

Section 50—Application for variation of quarantine and hospital detention orders

The Convener: You will all be glad to know that we have only another three minutes of this.

Amendments 107 to 109 moved—[Shona Robison]—and agreed to.

Section 50, as amended, agreed to.

Section 51—Variation of quarantine and hospital detention orders

Amendments 110 to 115 moved—[Shona Robison]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Duty to review exclusion and restriction orders

Amendments 116 to 119 moved—[Shona Robison]—and agreed to.

Section 52, as amended, agreed to.

Section 53—Duty to keep exclusion and restriction orders under review

The Convener: We will deal with this last set of amendments and then we will stop our stage 2 consideration for today.

Amendments 120 to 123 moved—[Shona Robison]—and agreed to.

Section 53, as amended, agreed to.

The Convener: I think that we should stop there, as it is close enough to 12:15. Are members content that we stop there?

Members *indicated agreement*.

The Convener: Thank you. We have rattled through our consideration of amendments, but we still have another two items on our agenda.

12:14

Meeting continued in private until 12:34.

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