# HEALTH AND SPORT COMMITTEE

Wednesday 14 May 2008

Session 3

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## Wednesday 14 May 2008



## HEALTH AND SPORT COMMITTEE
**14th 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)

**THE FOLLOWING GAVE EVIDENCE:**

Kathy Banks (Sunbed Association)
Ron Culley (Convention of Scottish Local Authorities)
Lene Priess (Consol Suncenter plc)
Alastair Shaw (Society of Chief Officers of Environmental Health in Scotland)

**CLERK TO THE COMMITTEE**

Tracey White

**SENIOR ASSISTANT CLERK**

Douglas Thornton

**ASSISTANT CLERK**

David Slater

**LOCATION**

Committee Room 2

# Scottish Parliament

## Health and Sport Committee

*Wednesday 14 May 2008*

[THE CONVENER *opened the meeting at 10:00*]

## Public Health etc (Scotland) Bill

**The Convener (Christine Grahame):** Welcome to the 14th meeting in 2008 of the Health and Sport Committee. I remind members to switch off their mobile phones and BlackBerrys.

Joe FitzPatrick is attending the meeting as a committee substitute, as he has previously done. Apologies have been received from Ian McKee and Ken Macintosh, who has a great interest—that is an understatement—in our evidence on sunbeds. Ken has an Education, Lifelong Learning and Culture Committee commitment; such things often happen. He will no doubt read the evidence in the *Official Report*.

Agenda item 1 is the Public Health etc (Scotland) Bill. In its stage 1 report on the bill, the committee said that it may seek further evidence on the regulation of sunbeds once the anticipated amendments had been lodged. As members know, Ken Macintosh and Helen Eadie have now lodged amendments, which are scheduled to be disposed of at next week's meeting. The committee has received written evidence on the amendments from several organisations—I refer members to paper HS/S3/08/14/1, which was circulated yesterday. It is expected that additional evidence from the Law Society of Scotland and the Scottish Retail Consortium will be submitted ahead of next week's meeting.

We thank our witnesses for taking the trouble to come to the meeting and for their written evidence, which we were given at very short notice but which has been extremely useful to committee members.

I welcome Kathy Banks from the Sunbed Association, Ron Culley from the Convention of Scottish Local Authorities, Lene Priess from Consol Suncenter plc, and Alastair Shaw from the Society of Chief Officers of Environmental Health in Scotland. Each witness may make a short opening statement if they wish to, although they should not feel obliged to do so.

**Ron Culley (Convention of Scottish Local Authorities):** Further to a meeting of the Health and Sport Committee in February, COSLA was asked to communicate its views on sunbed licensing. We undertook to communicate with our politicians on the matter, and have also communicated with professional advisers, including Alastair Shaw and his colleagues. We then engaged COSLA's health and wellbeing executive group for a view, as detailed in our written submission. In general, our elected members are in favour of stronger regulation and would support any licensing scheme that was introduced.

**Kathy Banks (Sunbed Association):** Obviously, I have seen Ken Macintosh's amendments and Helen Eadie's amendments, on national licensing. The amendments seem to duplicate one another, and it is obvious that both sets are not needed. In that context, we prefer Ken Macintosh's amendments. The only issue that we have with them relates to the proposed age restriction on the use of sunbeds. There has always been an age restriction in the Sunbed Association's regulations. We would support a restriction on people under 16, not 18, using sunbeds.

**Lene Priess (Consol Suncenter plc):** I will make a short statement, if I may. Consol Suncenter is the leading tanning salon business in Europe. We operate 350 tanning salons throughout Europe, 23 of which are in Scotland. We are at the forefront of fully automated, self-service tanning centres. We brought the concept to the United Kingdom in the mid-1990s. The majority of our salons are partially supervised, allowing customers to choose and pay for their sunbed sessions themselves. Therefore, we have an interest in the amendments that seek to outlaw the operation of unsupervised sunbeds.

As members may have noticed from my written submission, our concern focuses on two main points. First, outlawing partially supervised premises will not reduce malignant melanoma rates as intended. Secondly, an opportunity to protect consumers is being missed.

On the first point, the role of partially staffed premises needs to be put into perspective. Partially staffed premises account for a recorded 32 salons out of 730 in Scotland. Those numbers are from January 2008 and were obtained under the freedom of information legislation. We operate 23 of those 32 salons. Absolutely no evidence has come forward to show how that small number of premises could be a factor in the increase of malignant melanoma. Indeed, despite our repeated requests, no evidence that fully staffed studios are safer than partially staffed ones has been forthcoming. We believe that our studios are among the safest in the country. We voluntarily comply with the latest European Union safety standards, which strictly limit the output of or emissions from sunbeds, making it extremely difficult for someone to burn in a Consol salon—and it is repeated burning, not exposure to

ultraviolet radiation, that increases one's risk of developing malignant melanoma.

On the second point, the proposals in the amendments would close modern salons such as ours, but premises that use outdated, high-emission sunbeds, which pose a risk of skin damage, would remain perfectly legal. There is an opportunity to protect consumers that the legislation, as drafted, is completely missing. Consol has, therefore, called on the Scottish Government to implement the July 2007 EU declaration, which would limit the maximum output of all new sunbeds. Consol believes that, to minimise the risk of burning in any salon, those safety standards should be extended to cover all sunbeds, irrespective of age.

In summary, we would be deeply concerned if legislative changes were passed the effect of which would be to close the safest, most modern salons in operation while leaving operators that use high-emission equipment free to carry on regardless. In our view, that would defeat the aim of the bill.

**Alastair Shaw (Society of Chief Officers of Environmental Health in Scotland):** Throughout the progress of the bill, when asked, the society has consistently expressed a preference for a national licensing scheme. I have no particular issue with the responses from Consol Suncenter and the Sunbed Association, both of whose written submissions emphasise strongly the importance of high quality in relation to the running of premises or facilities. Our view is that a national licensing scheme would achieve that aim. The view that is expressed in the written submission from the Royal Environmental Health Institute of Scotland clearly—and, perhaps, more eloquently than our submission—suggests that a combination of Ken Macintosh's proposed provisions and Helen Eadie's proposed provisions would give us the best balance.

**Mary Scanlon (Highlands and Islands) (Con):** I want to focus on Lene Priess's written submission, which goes to the heart of the matter. I cannot understand why you are calling on the Scottish Government to implement the July 2007 EU declaration, which is about the safety of salons. As you say, the problems are caused by repeated burning and outdated equipment.

My reading of the declaration is that it should have been applied six months after its publication, so the recommendation should have been implemented in Scotland in January. I am not sure whether I am asking the right people about this, but I am concerned that we might pass legislation that bans people from salons but does not attempt to deal with the outdated equipment that might lead to an increase in malignant melanomas. Is the Government planning to implement the declaration? If we pass this legislation, can we be assured that tanning salons will have up-to-date equipment that is safe for use?

**Kathy Banks:** The EU declaration, which sets a maximum irradiance level for sunbeds, was published in January 2007. However, it is not legally binding; it simply makes a recommendation. The Electrical Equipment (Safety) Regulations 1994 are applicable to the whole of the UK and basically stipulate that any electrical equipment placed on the market must be safe. Any sunbed that is traded must be deemed safe under those regulations; if its irradiance level is above that set out in the EU declaration, it is, under the terms of the declaration, regarded as unsafe. As far as the UK Government is concerned, the relevant regulations are already in force. The EU declaration, which will become a legal document through the revised and soon-to-be-published European manufacturing standard, will provide a means for prosecuting a manufacturer who trades a sunbed with an irradiance level that is above that set out in the EU declaration and is therefore deemed to be unsafe.

Have I explained that clearly enough?

**The Convener:** You have, for me.

If I heard you correctly, the declaration precedes a recommendation.

**Kathy Banks:** No, no, no—the EU declaration is not a legally binding document.

**The Convener:** I know that. My question is whether an EU declaration precedes a recommendation rather than a directive. My understanding is that a directive is binding, whereas the implementation of a recommendation is at one's discretion.

**Kathy Banks:** The EU declaration is basically a recommendation. It has no legal status.

**The Convener:** I know the difference between a recommendation and a directive.

**Lene Priess:** The intention behind the recommendation was to limit burning from sunbeds.

**The Convener:** We are trying to establish the force of the declaration. Mary Scanlon's question suggested that the UK or Scottish Government was obliged to implement the declaration. Is that the case?

**Lene Priess:** No.

**The Convener:** I simply wanted to clarify its legal status.

**Lene Priess:** Other European countries are imposing the standards that are set out in the declaration on all old and new sunbeds.

**Mary Scanlon:** I should say that one of the footnotes in the Consol Suncenter submission says:

"The recommendations shall be applied with effect six months from the publication of this Declaration."

However, I understand the point.

In light of Kathy Banks's comments about equipment that is potentially unsafe, has high UV levels and can cause malignant melanomas, and given that some local authorities have introduced licensing schemes, have environmental officers prosecuted anyone in Scotland for having unsafe equipment? Have they banned the use of certain equipment? Indeed, are they aware of what an unsafe sunbed might be?

**Alastair Shaw:** Thank you for all those questions.

**Mary Scanlon:** Not at all. That is what we are here for.

**Alastair Shaw:** I am not aware of any authorities that have prosecuted premises, although I believe that improvement notices might have been issued under the Health and Safety at Work etc Act 1974.

Authorities that have introduced licensing feel that the schemes work very well, because they allow any risks to be assessed before premises are opened. On the other hand, most authorities do not know that such premises have started operating and, indeed, only find out about what is happening in them quite a while after they have opened.

With regard to the strength of the beds, there is a terrific variation in the quality of provision throughout Scotland. However, I suspect that members of the Sunbed Association and Consol Suncenter branches—certainly those that are staffed—do not figure particularly high on our concern list. The premises that are of concern are those in which beds that have been supplied with a CE mark have subsequently been retubed with stronger bulbs.

10:15

**The Convener:** I am sorry, but what kind of mark did you refer to?

**Alastair Shaw:** A CE mark, which is a manufacturing mark. Sometimes beds are retubed with stronger bulbs. An issue that slightly concerns us relates to the provisions on fixed-penalty notices for under-18s using sunbeds and on the provision of information. My understanding is that once beds or stand-in facilities have been retubed using higher-rated tubes, the manufacturer's instructions will effectively be thrown away and people will not have guidance on the strength of the beds. That has been an issue in some premises.

**Mary Scanlon:** You talked about assessing risks. When you assess risks, retubing will obviously be looked at, as it causes greater danger, but do you also assess the potential risk of malignant melanoma? Do you assess the risks in tanning salons that do not achieve safe limits? What is your evidence base for assessing risks?

**Alastair Shaw:** The evidence base is the available guidance from manufacturers. Tables on cutting exposure times can be obtained if a bed is retubed, but our general view is that operators do not understand the effect of retubing, and arguing about such things can be a long and arduous process. My preference is that they should not deviate from operating beds as supplied. However, it is not a simple matter of saying that they must operate in that way, as risk assessments can be argued about. There can be quite a bit of debate, and there is not a single piece of clear guidance on the matter.

**Mary Scanlon:** Given that you do not have clear guidance and that I certainly do not understand the guidance that exists, would it be helpful if guidance was given about what is and is not safe as far as melanoma is concerned? Does such guidance exist?

**Alastair Shaw:** If we went down the licensing road, I would be amenable to the suggestion that guidance should limit the output of beds. I think that it is assumed that information could be provided that would be relevant to all people in all premises, with failure to provide that information resulting in a fixed-penalty notice. However, I am not sure how a member of the public would make a judgment if ratings were not comparable from one premises to the other.

**The Convener:** I would like to move on.

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** I want to continue on the same theme before I move on to another issue. According to the BMA Scotland submission, studies—including one by Oliver, Ferguson and Moseley, which was published in the *British Journal of Dermatology* in 2007—have shown that

"sunbed parlours were falling far short of the mark in achieving safety guidelines, with four out of five sunbeds emitting UV levels that exceed the maximum British Standard".

If four out of five sunbeds exceed that standard, why do we not already have in place an inspection system that stops that practice and protects the public? We might not need licensing if such a system were in place. Without such a system, I cannot see any alternative to licensing.

I would like Mr Shaw and Mr Culley to elucidate. I think that COSLA supports licensing. What prohibits you from acting now? If we decide not to go for licensing, can you guarantee that the four out of five sunbeds that were reported in 2007 as exceeding the maximum British standard for emitting UV levels will be taken out of service, thus protecting the public?

**The Convener:** I want to clarify something. Are we talking about four out of five sunbeds in Scotland or the United Kingdom?

**Dr Simpson:** The UK, I think. The Oliver, Ferguson and Moseley study, which was entitled "Quantitative risk assessment of sunbeds: impact of new high powered lamps" and published in the *British Journal of Dermatology* in 2007, was a UK study.

**Lene Priess:** Two counties in Scotland were measured, and the results applied to the United Kingdom. Dundee was one of the counties, but I cannot remember the other.

**The Convener:** Do we know how many appliances—

**Helen Eadie (Dunfermline East) (Lab):** I believe that 794 premises were investigated.

**The Convener:** UK-wide?

**Helen Eadie:** In Scotland.

**The Convener:** Let us get some figures down, so that we know where we are.

**Alastair Shaw:** The quantification of the risk is problematic because it is difficult to extrapolate an individual's exposure over time.

**Dr Simpson:** The point is that if there is a British maximum standard, what on earth does it mean? Is it irrelevant to have such a standard? If it is relevant, how do we apply it?

**Alastair Shaw:** The maximum standard applies to the manufacturer and to the machine as manufactured. It ceases to apply when someone modifies a machine. That is my understanding. In relation to enforcement in premises, it is problematic for us to recalculate the risk if a sunbed is modified. Personal risk is related to a person's ultimate exposure. A single exposure, even if it is excessive, may not lead to any long-term risk.

**Dr Simpson:** I understand all that. The British Medical Association says that a person who uses sunbeds has a risk of developing skin cancer that is two and a half times that of someone who does not use them, but defining the risk for an individual is nevertheless difficult. However, that is not your job, and it is not the job of the Parliament. The job of the Parliament is to ensure that sunbeds do not expose the public to an unknown risk that they are unable to quantify. If there is a British standard, it should be applied. If someone modifies a machine in a way that exceeds the British standard, I would have thought that that was almost a criminal offence. If we do not have the proposed provisions in the bill, how will you, as local authorities and as environmental health officers, protect the public? How are you protecting the public at the moment from the four out of five machines that the study reports have been modified and now exceed the British standard?

**Alastair Shaw:** Somewhat patchily. Many premises only come to light as complaints or incidents arise.

**Dr Simpson:** If we give you powers under a licensing arrangement that ensures that the British maximum standard and the European declaration are followed, that would allow you to enforce them.

**Alastair Shaw:** I think so.

**Dr Simpson:** I wanted to clarify that because it is important.

I turn to the submission from Consol Suncenter. My first concern is how you ensure that unstaffed machines are not used by underage people, who are not able to decide what the machines are about. Secondly, how do you ensure that there is not repeated use? Are people entitled to use unstaffed machines without having proper counselling? They might for example have a skin condition—that is the third group about whom I am concerned—that might render them particularly sensitive to UV light. That would be dangerous for them, but how do you ensure that they are given counselling before they use the machines? Someone might be suffering from a disease or have just had an illness that might involve immunosuppression. How are they protected from using machines that could cause further immunosuppression? People with cancer, for example, might feel that they are getting pale, and might want to use the machine to look well or better, but that would be entirely the wrong time to use the machine. In an unstaffed situation, how do you ensure the protection of the public? I need to be convinced about that.

**Lene Priess:** Information and education are key. We go to great lengths to educate our customers. We have done that for a number of years and we take it seriously. An array of information is available to our customers. We invest in high-spec equipment and technology, such as touch-screens that provide customers with information. We believe that, by obtaining information and educating themselves, customers will make informed choices. We also believe that investing in technology is a better way of safeguarding the consumer than having a person behind a reception desk.

We make it very clear in all our studios that customers should always use the skin tester. We have a digital skin tester that is connected to a touch-screen, which measures the type of skin on someone's underarm, where they are palest. On the basis of that measurement, the computer gives exact advice about how long a person can tan on any individual bed.

With proper education and information, people will realise why they should not go from one salon to another to take session after session. A person behind a reception desk cannot prevent a customer from going to the next tanning salon. That is why information and education are key. If we tell people about responsible tanning—if I can call it that—indoors as well as outdoors, they will realise what the best choice is. That is our position.

**Dr Simpson:** Do people have to sign a consent form, accepting the terms and conditions of using your tanning salons, to indicate that they have read those and that they have used the skin tester? Are those processes ticked off, with the person acknowledging that they have gone through that process, have read the information and are, therefore, making an informed choice?

**Lene Priess:** They cannot sign anything on the touch-screen, but there is a screen on which—before they choose their sunbed—they confirm that they have read and understood the information that is available in the studio and that they have used the skin tester.

**Dr Simpson:** Thank you. That is very helpful.

**The Convener:** I want to go back to the principle—which rather surprised me—that the British standard applies to sunbeds at the manufacturing stage but not if they are thereafter modified. Does that apply to other equipment that is used elsewhere?

**Alastair Shaw:** Sorry—I missed the end of your question.

**The Convener:** You said that the British standard applies when equipment is manufactured, purchased and distributed. However, if the equipment is thereafter modified, the British standard need not apply. You said that salons put in stronger tubes and so on. Is that correct?

**Alastair Shaw:** In essence, yes.

**The Convener:** Does the principle apply to other equipment across the piece—not just sunbeds, but any other equipment that the public may be using?

**Alastair Shaw:** It can apply, I guess. If people buy anything and modify it themselves, they stand to move outside the—

**The Convener:** That does not matter, as there is an element of personal liability in that situation. I am talking about a person going into premises—a tattooist, a hairdresser, or whatever—in which equipment is used that at one time complied with the British standard but which no longer does. That is not a breach of trading standards.

**Alastair Shaw:** In practice, to control that we would have to prove the risk rather than say that there was a risk just because the equipment was outside the British standard.

**The Convener:** I want to get away from the risk. I am just a member of the public, and when I see that something complies with the British standard, I think that that is it. My car has to pass its MOT every year—that is about compliance with standards. By law, certain things need to be tested. I am not blaming you; I just want you to explain the position to me. When people go into commercial premises, they expect the equipment there to comply with the British standard, but you are saying that it is not a trading standards offence for equipment to have been modified so that it no longer complies.

**Alastair Shaw:** That would not be an offence in itself, but in order for the premises to comply with the Health and Safety at Work etc Act 1974 it would have to be demonstrated that no risk arose from that specifically.

**The Convener:** Thank you very much. I did not know that.

**Ross Finnie (West of Scotland) (LD):** I am about to ask the same question in a different way. I am sorry, but I think that this is an important area to all of us. Is Alastair Shaw telling me that it is not an offence for a person who operates a sun parlour—it could be some other premises—and who presents to a member of the public a piece of equipment whose lamp that member of the public knows is governed by an EU regulation wilfully to change the standard?

**Alastair Shaw:** Not in itself, but—

**Ross Finnie:** Sorry, but I could not care less about the risk. I am interested in someone wilfully changing a standard. Are you telling me that that is not an offence?

**Alastair Shaw:** Not in itself, unless it leads to a provable problem.

10:30

**Ross Finnie:** The point is that the standard—the EU regulation—is set: the standard says that if a piece of equipment meets it, that equipment is safe, but if it does not meet the standard, by implication, the equipment is not safe. However, you are telling us that as a trading standards

officer you would not accept that conclusion, but would go further and determine yourself whether those who set the EU regulation were right or wrong, and that you would reach your own opinion as to whether something caused a risk. What on earth, then, is the point in having a European standard?

**Alastair Shaw:** Perhaps an easier analogy would be the MOT example that the convener used. You have your car tested to a standard; you could personally modify the car shortly after that, and it might or might not be—

**Ross Finnie:** If I were involved in an accident, I would be criminally liable for interfering with equipment that has been measured against set standards. The police will not say, "Let's see whether that adjustment to the brakes might have contributed to an additional risk." I would be in a sheriff court facing a pretty damned serious charge.

**Alastair Shaw:** In this context, if modification led to a serious accident, that would be used as evidence, but we are not really talking about—

**Ross Finnie:** We are talking about someone getting cancer. Are you trying to tell me that that is any different?

**Alastair Shaw:** The risk is not as easily quantifiable as in the accident analogy that you used. When people have been severely burned, as happened in Dundee a couple of years ago, the circumstances have been actionable because an incident occurred that led directly from the modifications. There is a point between the two positions, and it is not easy to quantify the risk to an individual, particularly if it is only a minor burn and is not reported.

**Ross Finnie:** So you are telling me that deliberately interfering with a standard is a perfectly legal activity. Obviously, trading standards officers are not interested in ensuring that people comply with a standard—they are on a different plane where they assess the risk themselves. As a member of the public, I think that I am protected if I use equipment bearing a mark that sets a standard. You are now telling me that that does not really matter, and that a person who is operating commercial premises is entitled wilfully to change the standard. The only redress that I have is if you assess over a period of time that I might be exposed to risk.

**Alastair Shaw:** Yes.

**Ross Finnie:** Absolutely useless. Not you—the standard.

**Alastair Shaw:** Thank you.

**The Convener:** Mr Shaw is relieved to know that, Ross.

**Ross Finnie:** The standard is not worth a row of beans. Indeed, all the trading standards are not worth a row of beans, because everyone in every premises in the whole country can wilfully interfere with standards, and nobody will bring enforcement to bear on them.

**Alastair Shaw:** It is one of the problematic areas that we face.

**Ross Finnie:** It is not problematic—it is pretty fundamental.

**The Convener:** We have explored the issue, and we have now established that, so we will move on. The point is pretty well exhausted.

**Ross Finnie:** It is serious. There is no protection for the public on the matter. We will pursue it elsewhere.

I have a question for Mr Shaw and the representative from COSLA. Both your submissions indicate a degree of enthusiasm for a licensing regime, which I know that my colleague Helen Eadie feels strongly about. However, some of COSLA's evidence in particular mentions meetings that were held in February. I do not see the relevance of that because, in February, you could not possibly have known the form and substance of the amendments that Mr Macintosh has lodged.

It would be useful for the committee to hear your views—I can predict the COSLA view—on a regime that was intended not to involve too much bureaucracy but to declare the wilful sale or hire of, or exposure of persons under 16 to, such equipment to be an actionable criminal offence, as opposed to the perfectly legitimate, but different, view of having a licensing regime in which you regulate premises. A licensing regime would presumably involve additional costs in monitoring and getting people signed up to that.

Your positions are not clear to me. You say that you would like to have a bit of both, but can you help the committee by telling us why we need a bit of both and what the advantages of that would be, given the proposals that Mr Macintosh has laid before us in his amendments?

**Ron Culley:** You are right that the discussion that we had at our health and wellbeing executive group was not based on the amendments—that is absolutely true. The committee asked us to discuss the broader issues around any licensing regime that might apply to sunbed parlours. From that discussion, the elected members on COSLA's executive group came to the view that COSLA would support any move towards further regulation and, potentially, national licensing. We then had a look at the amendments and, in so far as we felt that they supported the conclusions that were drawn at COSLA's executive group, we felt that

we could support both the proposed measures. More than that, we felt that they were mutually reinforcing. That was the view articulated by politicians, based on evidence that was provided by the Society of Chief Officers of Environmental Health in Scotland. We feel that we have articulated a consistent position on the issue.

**Ross Finnie:** That is helpful, although we are still in a rather elaborate position with the two proposed measures—they are not mutually exclusive, but there is a bit of a belt-and-braces approach. I ask Mr Shaw the same question, because he used not dissimilar language about wanting both an offence and a licensing regime. I understand that, because some local authorities that do not have the power to make law might have found it advantageous if a national licensing scheme was instigated, but that was in the absence of legislation in the first instance to address the issue. It is not entirely clear from the submissions what the interplay between the regimes might be.

**Alastair Shaw:** You are right that, when we were asked earlier for our views, we had not seen the details of the amendments. However, you may recall that, in one of the committee's meetings in January, my colleagues Fraser Thomson and Robert Howe said that the society would prefer a licensing control regime. That was based on the experience with the skin piercing and tattooing legislation, which works fairly well and which has certain similarities in relation to risk and user groups. A quarter of Scotland's local authorities already have licensing in some shape or form, but there are inconsistencies from authority to authority, depending on how the schemes are implemented. Arguably, that creates a slightly unlevel field in Scotland.

On the amendments, we welcome the proposals for control of use of sunbeds by under-18s and the proposals on the provision of information to allow adults to make an informed choice. However, as you will have gathered, concerns arise about the day-to-day operation of premises and the supervision and training of staff—we feel that those issues might in practice slightly undermine the ability to make an informed decision.

On our suggestion for the best way forward, some provisions in Ken Macintosh's amendments, relating to the sale and hire of sunbeds, would not be contained in a licensing scheme. Although we advocate a licensing scheme for premises control, that would offer no provision whatever in relation to the sale and hire of sunbeds. That element from Ken Macintosh's amendments should be introduced.

**Ross Finnie:** My final question is about licensing. If I heard Mr Shaw correctly, he said that the difficulty that we have rehearsed ad nauseam because of me—the deliberate modification of equipment—could be controlled through a licensing regime. I am intrigued to know how, by what means and under what authority a criminal offence for the deliberate modification of equipment could be brought into force and effect by a licensing regime. If it can be, that still begs the question as to why the existing law does not permit it to be declared an offence.

**Alastair Shaw:** That question would stand some scrutiny from lawyers, I have to say. However, my view is that it would be possible for a set of standard conditions in national guidance to contain a condition that sunbeds had to be operated as per their manufacturer's instructions, which would include operating at the rating that they had and, potentially, the issues that Consol raised on sunbeds' ultimate rating. The offence would simply be not to operate a sunbed as manufactured.

**Ross Finnie:** I understand that and it is helpful, but you will understand my confusion that an operator who deliberately breaches an EU regulation does not commit an offence but someone who breached some licensing regulation of the Scottish Parliament would commit one. I am not saying that you are wrong, but we need to pursue the point, which seems to me somewhat strange.

Convener, we should pursue the point with lawyers. We need some guidance on it.

**The Convener:** Yes. We could pursue it with the Law Society of Scotland.

I have a brief question for Mr Culley about the consultation with local authorities. In his opening remarks, he said that COSLA consulted its elected members generally on licensing. How many members did that represent? Was it all the councils that are members of COSLA?

**Ron Culley:** Yes. Our executive groups in COSLA draw representation from all 32 councils. It is unlikely that all 32 will be represented at any given meeting, but the meeting at which we discussed the issue was certainly quorate. I would have to go back and check the number of representatives that were there.

**The Convener:** For completeness, I would like to know how representative the meeting was, how many were there and how the response was split. I have conducted a consultation of my own, for which I got lots of individual responses from councils and a mix of opinions, so I would be interested to know the split. It would be useful for us to know before next week how it worked out. It was rather vague of you to say that elected members generally were in favour. We need something a bit tighter if we are to proceed with licensing and place burdens on local authorities as well as trading standards officers.

**Rhoda Grant (Highlands and Islands) (Lab):** I will ask some supplementary questions on some of the evidence that was given earlier. I hesitate to go back to the modification of sunbeds, but I will ask one question for clarification. The witnesses said that, if an operator modified a sunbed, it would no longer meet the standards. There must be manufacturer's instructions on replacing the tubes in sunbeds to ensure that they still adhere to the same standards. That would not be considered a modification, would it? It would just be the replacement of a tube that had blown.

**Alastair Shaw:** As the operators know, bulbs are replaced regularly in sunbeds because they have a shelf life and their efficacy deteriorates over time. All sunbeds routinely have their tubes replaced, but the issue is whether they are replaced with the manufacturer's tubes or with something different and outside what was supplied. The Sunbed Association might be better placed to answer, because its members are some of the trade, but I imagine that it would always recommend a like-for-like replacement as supplied.

10:45

**Kathy Banks:** The Sunbed Association's code of practice includes a manufacturing code as well as an operation code. Manufacturers supply sunbeds to salons with instruction manuals. The manuals that I have seen state clearly that, when a sunbed needs to be retubed, the tubes that have reached the end of their service life must be replaced by the same type of tube. Our code of practice also stipulates that tubes cannot be replaced by a different type of tube. I am not saying that it is impossible for someone to do that, but the manufacturer's instructions and our code of practice state that tubes must be replaced by the same type of tube.

**Rhoda Grant:** Can you confirm that changing the tubes would be seen as a modification of the sunbed only if the new tubes were stronger than or different from those stipulated by the manufacturer?

**Kathy Banks:** All tubes have a service life of between 400 and 800 hours. The tubes must be replaced at the end of their service life, or the people using the sunbed will not tan. They are replaced by the same type of tube.

**Lene Priess:** An array of tubes is available. One tube that can be bought and put into existing sunbeds is a 0.3W per square metre tube, which corresponds exactly to the European Union declaration. If you put low-emission tubes into sunbeds, as we do, you get low-emission beds.

**The Convener:** Let us move on.

**Rhoda Grant:** I have another question.

**The Convener:** I was suggesting not that we move on from you but that we move on to another subject.

**Rhoda Grant:** I am delighted to hear that. I want to explore issues relating to coin-operated or unmanned sunbeds. How do you stop children using those beds? How do you know the age of the people who use them?

**Lene Priess:** Thank you for asking that question, which I expected. As a major, long-standing operator, we have no evidence of children using or abusing our sunbeds, or even of their wanting to do so. That was confirmed by an independent youth omnibus into which we bought last year. The real risk to young people comes from holidaying abroad and overexposing their skin for short periods. We monitor the use of our tanning studios via both closed-circuit television and regular staff visits. That monitoring and the result of the aforementioned youth omnibus show that Consol sunbeds are not used by children. We have always made it clear in all our studios and information, as well as through an array of warning signs, that no one under the age of 16 should use a sunbed. In our experience, they do not.

**Rhoda Grant:** I do not know how you can make that statement, because at the moment you are unable to prove that no one under the age of 16 uses your sunbeds. It is recognised that some teenagers look very grown up. It is difficult enough to tell how old they are from looking at them, let alone from CCTV. People who are involved in selling tobacco and alcohol argue that, without a proof-of-age card, it is difficult to tell whether folk are eligible to buy alcohol or tobacco, because it is not clear just from looking at them how old they are. You have no way of proving that people under the age of 16 do not use your sunbeds, as you have no one checking their age.

**Lene Priess:** I say that children do not use our sunbeds because we do not see it happen. We have seen no evidence of under-16s using our sunbeds. To prove that, we bought into an independent youth omnibus, the results of which show that there is no use of our studios by under-16s. That is how I can prove it.

**The Convener:** What is a youth omnibus?

**Lene Priess:** Carrick James Market Research has 20 years' experience in the area. It asks under-16s various questions and presents the results. It is possible to buy into a segment of the study, which is established market research. That is how we prove that children do not use our sunbeds. We have seen no evidence that children using sunbeds is a problem. It seems that we are legislating to tackle a problem that does not exist.

**Rhoda Grant:** We have received evidence that suggests that children do use sunbeds. Cases of young people being badly burned from repeat sessions and the like have been reported in the news. We have to propose legislation to cut that risk as much as humanly possible. It is never possible to be 100 per cent sure of anything but, without somebody at the premises to ask people for proof of their age, I do not see how we can stop people under 18 using sunbeds.

**Lene Priess:** You said that you have seen proof; we have not seen any such documentation whatever. It is anecdotal evidence that is being put forward—it is stories and hearsay. No documentation to prove that children use sunbeds has been presented. Mr Macintosh has been referring to an incident in Stirling a number of years ago, in which two boys used a sunbed and one of them got burned, had to go to hospital and got sent home with after-sun lotion. That is the one incident to which Mr Macintosh has been referring. We would be very interested to see any substantial, documented evidence to show that children use Consol sunbeds. If that was the case, we would be concerned. We have not seen that, however. Such evidence has not been presented to us.

**Dr Simpson:** May I ask a supplementary question?

**The Convener:** You can certainly come in again at the end, but other people would like to contribute. We will move on. Helen Eadie may wish to continue on this subject. I am sorry—Rhoda Grant is not finished.

**Rhoda Grant:** I have a further question. You spoke about touch screens and screen tests. Do the sunbeds that you operate work without someone going through the process with the touch screen?

**Lene Priess:** No.

**Rhoda Grant:** So there must be a skin test, and it must come up on the screen.

**Lene Priess:** It is all connected.

**Rhoda Grant:** And that test tells the machine that it should not operate for longer than what is shown by the skin test.

**Lene Priess:** No, it does not prevent a person from choosing more minutes. It is a recommendation. However, we have chosen to allow a maximum 16-minute session in our salons, which I believe is well below industry standards. The average session time is nine to 10 minutes.

**Rhoda Grant:** So even if a skin test says that someone is in an at-risk group and should not be using a sunbed—

**Lene Priess:** It can be overruled, yes. It is a recommendation. Information and education are key to ensure that people do not overexpose themselves.

**The Convener:** In fairness to you, there is a bit of personal liability there if people override what they have read.

**Helen Eadie:** If, as you say, there is no instance of children under the age of 16 using sunbeds, you should not have a problem with the notion of increasing the age-limit by a couple of years, up to 18. Let that one stick to the wall for a moment—we will probably make up our own minds on the matter. You are welcome to return to that point after I have got to my other questions.

Would any of you like to express your views on the causal relationship between sunbeds and skin cancer?

**Lene Priess:** You wish us to comment on it?

**Helen Eadie:** Yes.

**Lene Priess:** When people tan, use a sunbed or go out in the sun, it is imperative that they do it responsibly. Repeated burning is a risk factor. Overexposure is a risk factor. Going out in the sun and behaving responsibly does not carry a risk factor. The largest environmental factor for malignant melanoma is overexposure and burning, but the highest risk factor lies in a person's genetic make-up. It is to do with family history of malignant melanoma and skin type. That is why people with skin type 1 should never go on a sunbed and should take extreme precautions in the sun.

**Helen Eadie:** You did not comment on the specific causal relationship with sunbeds.

**Lene Priess:** Moderate tanning on a sunbed, in a non-burning fashion, does not increase people's risk of malignant melanoma.

**Helen Eadie:** What do you say, then, to the fact that

"The International Agency for Research on Cancer (IARC) recently concluded that there is convincing evidence to support a causal relationship between sunbed use and skin cancer, particularly with exposure before the age of 35 years"?

**Lene Priess:** That particular piece of research is called a meta-analysis, which is a term with which members may be familiar. A meta-analysis combines a number of studies into one study. By combining data from different studies that had different methods and different designs, the results become a bit more shaky. Basically, the same study also concluded:

"The association with ever-use of such equipment … prior to diagnosis of melanoma, was weak, and evidence regarding a dose–response relationship was scant."

In fact, the study does not strongly show or even suggest any type of relationship between indoor tanning in a non-burning fashion and malignant melanoma. In addition, the study by American scientists shows that, if we remove people of skin type I—those who should not go on a sunbed or be out in the sun—there is no connection between sunbed use in a non-burning fashion and malignant melanoma. That study is an often-quoted and often-misused piece of research.

**Helen Eadie:** The research took place over the past 10 years in a range of different countries, not just in America or in any one country. The study was produced by the International Agency for Research on Cancer.

**Lene Priess:** I know what the International Agency for Research on Cancer is. I also know that a number of different studies went into that meta-analysis. Those studies were primarily from Scandinavia, northern Europe and North America—

**Helen Eadie:** The British Medical Association's research found that

"sunbed users are 2.5 times more likely to develop skin cancer."

**Lene Priess:** That piece of research was commissioned by the British Medical Association. I am not a scientist, but—

**Helen Eadie:** The BMA is a professional body that is giving a professional opinion. Two or three years ago, a food product was removed from the shelves because of the likelihood that it would cause cancer. Why do we allow unregulated and unlicensed products that are likely to give people skin cancer and kill them?

**Lene Priess:** To say that sunbeds kill people is an overstatement by far—

**Helen Eadie:** The statement was made not by me but by the British Medical Association and the International Agency for Research on Cancer.

**The Convener:** Helen, Ms Priess is obviously not going to agree with your point. Do you want to move on?

**Helen Eadie:** I will move on to another issue.

Further to Rhoda Grant's questions about supervision of premises, I point out that the Royal Environmental Health Institute of Scotland undertook a survey of 794 cosmetic sunbed premises in all 32 Scottish local authorities. The survey identified a number of unstaffed and unsupervised premises and salons that were failing to check the age of customers or to inquire about their skin type or medical conditions. Another study showed that 89 per cent of premises exercised no administrative control of the number of sessions per customer, 81 per cent failed to give adequate advice to customers, 59 per cent maintained no customer records and 33 per cent displayed no guidance to users. Given those studies, how can Lene Priess and Kathy Banks continue to maintain that there is adequate protection? Members of the Sunbed Association might observe best practice—which I applaud, if that is the case—but undoubtedly not everyone does so. That is not just my opinion, but the evidence that we have received about what is happening in Scotland.

**Kathy Banks:** Let me quickly comment on the earlier point about the relationship between sunbed use and skin cancer. I draw the committee's attention to a 2002 Luxembourg Health Institute study, which found no evidence for an association between sunbed use and melanoma. In fact, the study concluded:

"the results indicate if an association between sunbed use and melanoma truly existed, then it must be marginal."

On the point about tanning salons in general, members of the Sunbed Association certainly operate to good practice. They are obliged to comply with the sunbed code of practice, which requires that trained staff be on duty, that records be kept and so on.

However, we believe that a lot of tanning facilities that are not members of the association also operate good practice, because they are legally obliged to operate under the terms of the Health and Safety at Work Act 1974. If they have insurance, their policy will say that they have to keep records. I do not believe the results of the study that you mentioned; I think they are exaggerated.

11:00

**Helen Eadie:** Will you comment on the study on tanning devices by Wang L in the *Journal of the National Cancer Institute*, the study on the risk of malignant melanoma by Westerdahl and Masback, and the cancer statistics registrations for 1998 in England? Will you comment on the fact that malignant melanoma increased by 45.5 per cent in men and 20 per cent in women between 1994 and 2004? The prediction is that that rate will have doubled by 2020.

**The Convener:** It is good to put that on the record, Helen, but I do not think we are going to resolve this. The witnesses are not going to say that they agree. You have made your point.

**Helen Eadie:** I was giving Kathy Banks the chance to contradict the evidence that we have heard. She quoted evidence, but other evidence—such as the reports that I just cited—needs to be put on the record.

**The Convener:** Yes—but I would prefer that you return to the statistics on unattended salons.

**Helen Eadie:** Some 89 per cent of salons exercised no administrative control over the number of sessions per customer.

**The Convener:** That is a point that the committee would like to hear about.

**Helen Eadie:** That statistic relates to the 794 salons that were surveyed.

**The Convener:** May we focus on that?

**Lene Priess:** As far as I know, that percentage relates to all sunbed parlours, not just unstaffed ones.

**Helen Eadie:** I will read you the precise words that we got—

**Lene Priess:** Please let me finish.

**The Convener:** It is holding jackets time, which I have always wanted.

**Lene Priess:** Under the Freedom of Information (Scotland) Act 2002, we asked all the councils in Scotland how many premises were in their areas and whether they were staffed or unstaffed. We discovered that, of the 730 premises in Scotland, 32 were unstaffed. We operate 23 of those premises to what we perceive to be a very high standard. We invest a huge amount of money in technology and in giving our customers information. We applaud any initiatives that would raise industry standards; we just disagree on—

**The Convener:** I am sorry to interrupt, but I want to move the discussion along, because we have other business on the agenda. The point is that if we accept that there are 32 unstaffed premises—

**Helen Eadie:** It is important to make the point that the study to which I referred was conducted by the University of Dundee and Perth and Kinross Council, in conjunction with the Royal Environmental Health Institute of Scotland. You are challenging their integrity by saying that the figures that they have given us are not valid.

**Lene Priess:** I am not saying that. It is exactly the same study to which Richard Simpson referred some minutes ago, which shows that four out of five sunbeds in Scotland emit higher levels of radiation than the UK standards.

**The Convener:** I am sorry, Helen. I know that you have lots to ask, but I am trying to move on. Some members have not asked any questions yet.

**Helen Eadie:** Convener—

**The Convener:** I will let you back in in a minute, but I want to try to move on, because other members have been waiting a long time.

**Michael Matheson (Falkirk West) (SNP):** I have a couple of questions for Mr Shaw. Unfortunately, I want to return to standards. Would the proposed amendments give officers who deal with licensing of premises the powers to inspect whether UV tubes comply with the British or EU standards, and to take enforcement action if they do not?

**Alastair Shaw:** I envisage that the licensing provisions will be accompanied by separately prepared guidance that will set standards covering such matters.

**Michael Matheson:** Will the intended enforcement provisions be sufficient in that respect?

**Alastair Shaw:** The advantage of a licensing scheme is that when premises breach their licence, the matter will come before the appropriate council committee, which will decide whether the licence should be suspended. Such a procedure is simpler than mounting a prosecution, with all that that entails.

**Michael Matheson:** That is helpful, because the guidance for a licensing scheme will be crucial in application of the standards. Have you been involved in any discussions about that guidance?

**Alastair Shaw:** No.

**Michael Matheson:** In the discussions that the Convention of Scottish Local Authorities has had on the matter, did its elected representatives envisage a licensing scheme that would involve regular inspections of premises by council officers to ensure that the premises comply with British standards?

**Ron Culley:** I am not sure that we reached that level of detail. At the end of the discussion, the view generally was that the health and wellbeing executive group would support further regulation and, potentially, a national licensing scheme. That point was not discussed at the meeting.

**Michael Matheson:** You will admit, however, that it is pretty crucial. It is fair enough for COSLA to come out in favour of a licensing scheme but, as we have already heard, if there is no good enforcement regime, particularly with regard to safety standards, the licence will not be worth the paper that it is written on. I am surprised that COSLA has not considered the matter in that kind of detail.

If the guidance states that appliances are to be regularly inspected and tested to ensure that they meet British and EU standards, will that have a financial implication for your members?

**Ron Culley:** We hope that the new regulations or any new licensing scheme will be financially neutral for local authorities. In other words,

authorities would be able to charge a fee that would enable any regime to become self-funding.

**Michael Matheson:** That is helpful. Has COSLA discussed with the Government the content of any guidance that might accompany the bill?

**Ron Culley:** No.

**Michael Matheson:** As the guidance will be key to the effectiveness of the proposals in the amendments, the committee will need a better idea of its exact contents if we are to have a feel for how a licensing regime might be introduced.

**The Convener:** I ask the witnesses not to take this personally, but the fact is that at this stage a broad-brush approach is not much use to us. At stage 2, we have to nail things down and ensure that the bill that goes before Parliament at stage 3 is subject only to minor tinkering—if I might put it like that—and not to major upheavals and amendments. I have to say that this feels more like a stage 1 evidence-taking session. For example, in response to the questions about the consultation that had taken place, you have used terms such as "generally" and "potentially". I know; I wrote them down. It is all a bit too vague, and in the end the burden will fall on trading standards and environmental health officers in local authorities.

**Joe FitzPatrick (Dundee West) (SNP):** Can I—

**The Convener:** I want to let Michael Matheson finish his point.

**Michael Matheson:** Given the importance that the witnesses have placed on the guidance, the committee needs to understand clearly how the licensing regime will be implemented and operated and whether it will enforce the British and EU standards. We have to ensure on behalf of the Government and other parties that might lodge amendments that these issues will be addressed in the guidance. To date, we have had absolutely no evidence that they will.

**The Convener:** I am aware that time is moving on. I will let Joe FitzPatrick in and then Rhoda Grant, Richard Simpson and Helen Eadie. At this rate, we are going to be here until teatime, but that is not my fault.

**Joe FitzPatrick:** I will be as brief as possible—Michael Matheson covered many of the points that I was going to make.

When I was a member of an alcohol licensing board, I found the fit and proper person test to be very useful. It would clearly be irresponsible to replace the tubes in a sunbed with much higher-rated tubes, so under that test, a person who did so would not be considered to be fit and proper. If someone is deemed not to be a fit and proper person, the sanction is that they never get to hold a licence again. That is a strong sanction. Do you envisage the proposed licensing scheme having a similarly wide-ranging test?

**Alastair Shaw:** Yes—I think so. One issue that arises repeatedly with such premises is the lack of training of staff. I have fears that the measures on information provision as envisaged in the bill could be undermined by staff not knowing what they are doing. In my authority, we have had one or two instances in which folk have said, "I don't bother using eye protection, so you don't need to."

We have not discussed issues other than the long-term cancer risk, but practical day-to-day problems arise. I envisage that a licensing scheme would cover general issues of maintenance of premises and equipment, and of cleanliness and hygiene in the premises, which we have not really discussed. Ventilation is often an issue, because premises can become hot and the air around the tubes can become very hot, so users sweat more because of the heat and may faint. The general standard of supervision should also be covered by a licensing scheme. The reason why the society favours the licensing option is because it will cover all those issues in the round.

We favour a licensing scheme over the simpler provisions that Ken Macintosh proposes, although they would deal with the issues of user choice and would limit use to people of a certain age. The reason is that, unlike under the smoking legislation—which has certain parallels, such as in the fixed-penalty notice provisions—there is not simply one issue that officers must deal with when they go into premises. Inevitably, other issues will arise, such as a lack of information. The society feels that a licensing scheme would provide better, more reasonable and more focused control. As I said, both the submissions from the trade strongly emphasise good management of premises—it is critical.

**The Convener:** We must get through the business of the day, so I will have to stop this discussion at 11.15. I will allow members to ask very short questions, with short answers. I am beginning to sound like the Presiding Officer—perhaps I have plans. We have an awful lot of business to get through: we must get through all the amendments today.

**Dr Simpson:** The Sunbed Association and Consol Suncenter oppose increasing the minimum age for use to 18. The World Health Organization recommends that the minimum age should be 18. It is difficult for the committee to go against that. I ask the trade organisations to give us further written evidence on that, if there is time, because we need to understand the issues better. If we introduce a minimum age of 18 and agree to the amendment that sets out three or four types of

identification, how will non-staffed premises manage that?

**Helen Eadie:** I return to photosensitivity in people who are taking medication. I ask the industry representatives how unstaffed salons, which we heard about in evidence, will deal with that.

**The Convener:** Mary Scanlon has a question, too. If it is terribly short, she can ask it. I will ask the witnesses to write to the committee with the answers, because I will stop this discussion at 11.15.

**Mary Scanlon:** What is the role of the Health and Safety Executive in the matter? I know that it issues guidance, but it is not being followed.

**The Convener:** The clerks will write to all the witnesses with the questions and they can e-mail the responses to committee members, so that we will know what the answers are. I thank the witnesses for their time—we have had brave performances all round.

11:14

*Meeting suspended.*

11:25

*On resuming—*

# Public Health etc (Scotland) Bill: Stage 2

**The Convener:** We will now deal with amendments to the Public Health etc (Scotland) Bill. I welcome the Minister for Public Health and her team.

### Section 54—Duty to keep quarantine orders under review

*Amendments 124 to 126 moved—[Shona Robison]—and agreed to.*

*Section 54, as amended, agreed to.*

### Section 55—Duty to keep hospital detention orders under review

*Amendments 127 to 129 moved—[Shona Robison]—and agreed to.*

*Section 55, as amended, agreed to.*

*Sections 56 and 57 agreed to.*

### After section 57

**The Convener:** Group 1 is on recall of part 4 orders. Amendment 130, in the name of the minister, is grouped with amendment 134.

**The Minister for Public Health (Shona Robison):** In the bill as introduced, a person who is subject to a quarantine, detention or exceptional detention order can appeal to the sheriff principal against the decision of the sheriff who made the order. I know that some members of the committee, following advice from the Law Society of Scotland, were concerned that the provision did not represent a speedy or effective enough route of appeal for those who were not represented when the order was made.

We have listened to members' concerns and have lodged amendments 130 and 134, which provide that, where a person is subject to a quarantine, detention or exceptional detention order and the order has been made without the person to whom it applies being present or represented, that person may apply to the sheriff for recall of the order within 72 hours of the order being made. A person who does not apply for recall of an order and a person who has that order confirmed by the sheriff on recall will still be able to appeal to the sheriff principal.

I move amendment 130.

*Amendment 130 agreed to.*

*Amendment 131 moved—[Shona Robison]—and agreed to.*

**Section 58—Appeal against exclusion orders and restriction orders**

*Amendments 132 and 133 moved—[Shona Robison]—and agreed to.*

*Section 58, as amended, agreed to.*

**Section 59—Appeal against quarantine and hospital detention orders**

*Amendments 134 and 135 moved—[Shona Robison]—and agreed to.*

**The Convener:** Group 2 is on the period for appeals against quarantine and hospital detention orders. Amendment 136, in the name of the minister, is the only amendment in the group.

**Shona Robison:** Section 59(4) states that an appeal to the sheriff principal against a quarantine or detention order must be made within 21 days. All other appeal provisions in the bill either are silent on the time limit that is to apply—in which case court rules will impose a limit of 14 days—or provide for an appeal to be made within 14 days. To ensure consistency, it is intended that a 14-day time limit should also apply to section 59(4).

I move amendment 136.

*Amendment 136 agreed to.*

*Section 59, as amended, agreed to.*

**After section 59**

**The Convener:** Group 3 is on exclusion and restriction orders: appeal to sheriff principal. Amendment 137, in the name of the minister, is grouped with amendments 138 to 148 and 150.

11:30

**Shona Robison:** The bill currently provides for a person to appeal against an exclusion and restriction order, first to the sheriff and then to the Court of Session. Appeals against quarantine and detention orders go first to the sheriff principal and then to the Court of Session. There is a slight inconsistency in that approach and it is more normal for appeals that result from a sheriff's decisions to be heard by the sheriff principal. Amendment 137 rectifies that, and provides for a second-level appeal in respect of exclusion and restriction orders to be made to the sheriff principal rather than to the Court of Session. That appeal is to be final.

Amendments 138 to 148 are consequential on amendment 137, removing references to Court of Session appeals against a sheriff's decisions in respect of exclusion and restriction orders from section 60. Amendment 150 is a consequential amendment to section 61.

I move amendment 137.

*Amendment 137 agreed to.*

**Section 60—Appeal to Court of Session**

*Amendments 138 to 148 moved—[Shona Robison]—and agreed to.*

**The Convener:** Group 4 is on the effect of appeals. Amendment 149, in the name of the minister, is grouped with amendments 151 and 242.

**Shona Robison:** A quarantine or detention order may be appealed to the sheriff principal and then further appealed to the Court of Session. Amendment 149 provides for the second-level appeal to the Court of Session against a quarantine or detention order to be final, and mirrors similar provision elsewhere in the bill.

Amendment 151 addresses a minor drafting issue. Section 61 states:

"Despite the making of an appeal under"

the relevant sections of the bill,

"the order, modification or decision appealed against has effect".

There is no need for the further words

"pending determination of the appeal",

which are superfluous. Amendment 242 will clarify that the appeal to the Court of Session under section 80 against local authority notices will be a final appeal.

I move amendment 149.

*Amendment 149 agreed to.*

*Section 60, as amended, agreed to.*

**Section 61—Effect of appeal under section 58, 59 or 60**

*Amendments 150 and 151 moved—[Shona Robison]—and agreed to.*

*Section 61, as amended, agreed to.*

*Sections 62 and 63 agreed to.*

**Section 64—Obstruction**

**The Convener:** Group 5 is on offences under parts 4 to 6. Amendment 152, in the name of the minister, is grouped with amendments 153 to 156, 238, 243, 246, 158 and 159.

**Shona Robison:** The amendments seek to plug gaps in the offence provisions in the bill. They will create three new offences. The first is obstructing a person who is authorised to take someone to a

place of quarantine, and the second is breaching any conditions that are imposed in a quarantine order. The third offence will apply where a child is subject to an exclusion order, a restriction order or a quarantine order. It is the parents or the person with day-to-day care and control of the child who is responsible for ensuring that the child does not go to the place from which they are excluded.

Amendment 156 therefore makes it an offence for the parent or the person with day-to-day care and control of the child to fail, without reasonable excuse, to ensure that the child does not breach the order. However, because clearly there could be circumstances in which a parent had exercised all due diligence and taken all reasonable steps to avoid the child breaching the order and yet the order was still breached, we have included a defence along those lines in the provision. In addition, for consistency with other offence provisions in the bill, and to ensure fairness, a reasonable excuse defence is being included against prosecution in relation to obstruction and breach of part 4, 5 and 6 order offences. Amendments 152, 154, 238, 243 and 246 will do that. Amendment 156 has implications for section 101, which sets out the level of penalties that will be associated with offences that are committed under the act.

I move amendment 152.

**Dr Simpson:** I want to be clear about this. The offence as proposed in amendment 156 will be committed by the parent if the parent

"fails, without reasonable excuse, to ensure that the child does not breach the order".

It appears that, under subsection (5) of the new section that the amendment inserts, that will include

"a volunteer for a voluntary organisation".

Have I got that wrong? I do not quite follow it. Subsection (5) states:

"The person referred to in subsection (4) is a person who … is 16 or over; and … has (otherwise than … as a volunteer for a voluntary organisation),

day-to-day care or control of the child."

Does that mean that volunteers are excluded?

**Shona Robison:** Yes, they are excluded.

**Dr Simpson:** That is fine. I just wanted to be clear about that.

*Amendment 152 agreed to.*

*Amendment 153 moved—[Shona Robison]—and agreed to.*

*Section 64, as amended, agreed to.*

**Section 65—Offences arising from breach of orders under this Part**

*Amendments 154 and 155 moved—[Shona Robison]—and agreed to.*

*Section 65, as amended, agreed to.*

**After section 65**

*Amendment 156 moved—[Shona Robison]—and agreed to.*

**Section 66—Applications and appeals**

*Amendment 157 moved—[Shona Robison]—and agreed to.*

*Section 66, as amended, agreed to.*

**Section 67—Provision of facilities for disinfection etc**

**The Convener:** Group 6 is on minor amendments to part 5. Amendment 226, in the name of the minister, is grouped with amendments 227, 228 and 234.

**Shona Robison:** Section 67(5) sets out that premises and things in or on them are infected or infested if they have been

"exposed to … an animal or insect which has or carries a disease or organism which is a risk to human health".

That wording is slightly ambiguous. The issue is not that the organism itself is a risk to human health; the risk to human health arises from the disease that the organism causes. Amendment 226 will make that clear for the definition of "infected". Amendment 227 makes a similar change to the definition of "infested".

Amendment 228 brings the wording in section 68(2)(c) into line with the rest of section 68(2). Amendment 234 inserts the word "infested" into section 71(1)(a) so that it is consistent with the other sections in part 5.

I move amendment 226.

*Amendment 226 agreed to.*

*Amendment 227 moved—[Shona Robison]—and agreed to.*

*Section 67, as amended, agreed to.*

**Section 68—Notice on occupier or owner of infected etc premises or things**

*Amendment 228 moved—[Shona Robison]—and agreed to.*

**The Convener:** Group 7 is headed "Disinfection etc. of premises and things: forms of notice". Amendment 229, in the name of the minister, is grouped with amendment 235.

**Shona Robison:** Sections 68 and 71 require local authorities to serve notices—for example, on a person to disinfect his premises—"in the form prescribed". As that means "in the form prescribed by regulations", it would be compulsory for local authorities to serve notices in that form. We now consider that that might place an unnecessary bureaucratic burden on local authorities, particularly in light of their experience in serving notices under other legislation. We therefore intend to cover the issue in guidance. Local authorities can use the form of notice that is set out in the guidance or, if they prefer, their own form, provided, of course, that it contains the information that is set out in sections 68 and 71.

I move amendment 229.

*Amendment 229 agreed to.*

*Section 68, as amended, agreed to.*

**Section 69—Inspection of premises in relation to which notice served**

**The Convener:** Group 8 is on powers of entry under parts 5 and 6. Amendment 230, in the name of the minister, is grouped with amendments 231 to 233, 236, 237, 244 and 245.

**Shona Robison:** Members will recall that several amendments in relation to the powers of entry of authorised officers under parts 3 and 5 were discussed last week. The amendments in group 8 make similar amendments to sections 69, 70, 71 and 88 to ensure consistency on who may accompany an authorised officer of a local authority who is entering premises. The amendments allow a constable to attend if the officer has reasonable cause to expect serious obstruction in obtaining access to premises.

I move amendment 230.

*Amendment 230 agreed to.*

*Amendments 231 and 177 moved—[Shona Robison]—and agreed to.*

*Section 69, as amended, agreed to.*

**Section 70—Failure to comply with notice**

*Amendments 232 and 233 moved—[Shona Robison]—and agreed to.*

*Section 70, as amended, agreed to.*

**Section 71—Power of local authority to disinfect etc premises or things**

*Amendments 234 to 237 moved—[Shona Robison]—and agreed to.*

*Section 71, as amended, agreed to.*

*Section 72 agreed to.*

**Section 73—Warrant to enter and take steps**

*Amendments 178 to 184 moved—[Shona Robison]—and agreed to.*

*Section 73, as amended, agreed to.*

**Section 74—Use of powers in emergencies**

*Amendments 185 and 186 moved—[Shona Robison]—and agreed to.*

*Section 74, as amended, agreed to.*

**Section 75—Obstruction**

*Amendment 238 moved—[Shona Robison]—and agreed to.*

*Section 75, as amended, agreed to.*

**Section 76—Recovery of expenses**

**The Convener:** Group 9 is on recovery of expenses by a local authority. Amendment 239, in the name of the minister, is grouped with amendments 240 and 241.

**Shona Robison:** Section 76 provides that a local authority may recover any reasonable expenses that it incurs in doing anything that it is entitled to do under sections 68, 70, 71 and 73 from a person on whom a notice is served for disinfection, disinfestation or decontamination of premises as appropriate. Expenses for action that is taken under the emergency powers in section 74 had been omitted from that provision because action under that section was to be taken by virtue of powers in other sections. However, amendment 185, which was debated last week, changed the approach to setting out the powers, which are now contained in section 74. Amendment 239 is a consequential amendment to ensure that expenses that are incurred in taking emergency action under the powers that are set out in section 74 may be recovered under section 76.

Amendments 240 and 241 clarify the text on the recovery of expenses by local authorities and how the sums that are recoverable may be paid.

I move amendment 239.

*Amendment 239 agreed to.*

*Amendments 240 and 241 moved—[Shona Robison]—and agreed to.*

*Section 76, as amended, agreed to.*

**Section 77—Compensation**

*Amendment 187 moved—[Shona Robison]—and agreed to.*

*Section 77, as amended, agreed to.*

**Section 78—Appeals against notices under this Part**

*Amendment 188 moved—[Shona Robison]—and agreed to.*

*Section 78, as amended, agreed to.*

**Section 79—Appeal to sheriff principal**

*Amendment 189 moved—[Shona Robison]—and agreed to.*

*Section 79, as amended, agreed to.*

**Section 80—Appeal to Court of Session**

*Amendment 242 moved—[Shona Robison]—and agreed to.*

*Section 80, as amended, agreed to.*

*Sections 81 to 84 agreed to.*

**Section 85—Restriction on release of infected etc bodies from hospital**

*Amendment 243 moved—[Shona Robison]—and agreed to.*

*Section 85, as amended, agreed to.*

*Sections 86 and 87 agreed to.*

**Section 88—Power of sheriff to order removal to mortuary and disposal**

*Amendments 244 to 246 moved—[Shona Robison]—and agreed to.*

*Section 88, as amended, agreed to.*

**Section 89—International Health Regulations**

11:45

**The Convener:** Group 10 is on international health regulations. Amendment 205, in the name of the minister, is grouped with amendments 206 to 212, 214 and 224.

**Shona Robison:** When the bill was introduced, the committee was made aware that section 89 would be amended at stage 2, following the outcome of work between the Scottish Government and the other Administrations in the United Kingdom to ensure that similar powers—and, therefore, a similar level of health protection—are available at points of entry into our countries. That work has now been completed. The powers that are proposed in amendments 205 to 212, 214 and 224 will ensure that there is consistency of approach between this bill and the Health and Social Care Bill, which is currently progressing through the Westminster Parliament, providing a comprehensive system of health protection regulations throughout the UK.

I recognise that these are broad powers. They will enable us to update the Public Health (Ships) (Scotland) Regulations 1971, as amended, and the Public Health (Aircraft) (Scotland) Regulations 1971, as amended, which broadly implemented the international health regulations of 1969. Those regulations are confined to dealing with a limited number of diseases and are ineffective in dealing with diseases such as severe acute respiratory syndrome or threats from contamination.

We have talked before about the increased risk to health protection from modern-day travel and trade. That risk is heightened at places of arrival in and departure from the country. New or rare diseases may travel quickly from other parts of the world, and health protection professionals may have limited time on the arrival of persons in Scotland to identify persons at risk, any vessels and so on that might cause risk and the action that may be required to protect both individuals and the wider population in Scotland.

Swift action at a point of entry has the potential to deliver significant health protection benefits, justifying the availability of the powers that can be used on such occasions. Those powers are separate from the general powers that are available in the rest of the bill, which apply, more appropriately, to domestic situations. We also have an international obligation to do what we can to protect people in other countries from those planning to leave the UK who may be a risk to health.

I reassure the committee that regulations made under the powers in section 89, which are being developed with officials and stakeholders, will be the subject of comprehensive consultation, including consultation on draft regulations. They will, of course, be subject to the affirmative procedure in the Parliament. Where Scottish ministers consider that regulations need to be made as a matter of urgency, those regulations will be subject to emergency affirmative procedure in the Scottish Parliament. That means that they will be laid in Parliament and will cease to have effect at the end of 28 days unless they are approved by a resolution of the Parliament.

I move amendment 205.

**Dr Simpson:** Although single cases make for bad law, I wonder whether section 89, as amended, would have prevented the case—were it to occur in Scotland—of the Canadian with multiresistant tuberculosis who travelled on a plane after having been advised that tests were being done and that there was a possibility that they had tuberculosis. Would the powers that are now being taken allow for a person to be quarantined or restricted until tests are completed, thereby preventing the possible spread of disease to people on a plane?

**Shona Robison:** They make it more likely that that would be the case.

*Amendment 205 agreed to.*

*Amendments 206 to 212 moved—[Shona Robison]—and agreed to.*

**The Convener:** Group 11 is on penalties for offences. Amendment 213, in the name of the minister, is grouped with amendment 222.

**Shona Robison:** Amendment 222 amends section 101 so that the maximum imprisonment penalty for a person who is convicted on indictment of an offence under the bill is reduced from five to two years. Amendment 213 makes the same change in respect of offences under regulations made under section 89.

The effect of the amendments is that any person who commits an offence under the bill or under regulations made under section 89 will be liable, on summary conviction, to imprisonment for a period not exceeding 12 months, a fine not exceeding the statutory maximum, or both; or, on conviction on indictment, to imprisonment for a period not exceeding two years, a fine, or both. Exceptions to the provision are penalties for the sunbed offences in part 8 and penalties for breach of exclusion or restriction orders, which are liable only to summary conviction.

I move amendment 213.

*Amendment 213 agreed to.*

*Amendment 214 moved—[Shona Robison]—and agreed to.*

*Section 89, as amended, agreed to.*

**The Convener:** I am pleased to say that we have completed consideration of stage 2 amendments for today. We have rattled through them and made up time. I thank the minister and her team for their attendance. That concludes the committee's formal public business. I remind the committee that next week, at our third session dealing with stage 2 amendments, we will address the issues that were raised with us in evidence today.

11:51

*Meeting continued in private until 12:32.*

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