HEALTH AND SPORT COMMITTEE

Wednesday 21 May 2008

Session 3

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HEALTH AND SPORT COMMITTEE
15th 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:

Ken Macintosh (Eastwood) (Lab)
Shona Robison (Minister for Public Health)

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 21 May 2008

[THE CONVENER *opened the meeting at 10:03*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the 15th meeting in 2008 of the Health and Sport Committee. I remind members and everyone in the public gallery to ensure that their mobile phones and BlackBerrys are switched off. No apologies have been received.

Under item 1, the committee is invited to take in private item 5, which is consideration of European matters, in line with its usual practice of considering its work programme in private. The committee is also invited to take in private item 6, which is consideration of a draft response to the Finance Committee's consultation, as is our usual practice when considering draft reports. Is that agreed?

Members *indicated agreement*.

Subordinate Legislation

Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2008 (SSI 2008/166)

Guar Gum (Restriction on First Placing on the Market) (Scotland) Regulations 2008 (SSI 2008/176)

10:03

The Convener: Item 2 is subordinate legislation. We have before us two negative instruments for consideration. The first is the Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations—I read that out just to annoy Ross Finnie. Have I passed the test, Ross?

Ross Finnie (West of Scotland) (LD): Yes. Dr McKee suggested that whether a person uses a hard or a soft "c" depends on where they were educated.

The Convener: Being a Scot, I think that I prefer a hard "c". We are brought up that way—on Irn-Bru.

The regulations are rather gruesome. They increase from 24 months to 30 months the age at which bovine vertebral column material is considered to be specific risk material. The regulations also revoke the Beef Bones (Scotland) Regulations 1999 (SSI 1999/186) and require that exporters of cattle heads—I told members that the regulations were gruesome—or unsplit carcases should obtain the agreement of the importing member state before delivery. The Subordinate Legislation Committee drew the regulations to the attention of the Health and Sport Committee on the ground that an explanation was sought from and provided by the Government, with which the Subordinate Legislation Committee is satisfied. The relevant extracts from that committee's report are reproduced in our papers.

The second set of regulations implements European Commission decision s008/352/EC, which states that products that contain at least 10 per cent Indian guar gum should be analysed for dioxin and other contaminants before being placed on the market. The Subordinate Legislation Committee drew the regulations to the attention of the Health and Sport Committee and the Parliament on the ground that an omission from the application of part 2 of the Official Feed and Food Controls (Scotland) Regulations 2007 (SSI 2007/522) had been identified. The Food Standards Agency has undertaken to resolve that, and it is not thought to affect the operation of the regulations in giving effect to the Commission decision.

No comments on either set of regulations have been received from members and no motions to annul have been lodged. Do members agree that the committee does not wish to make any recommendation in relation to the instruments—apart from the recommendation on pronunciation?

Members *indicated agreement*.

Public Health etc (Scotland) Bill: Stage 2

10:06

The Convener: Item 2 is the last day of the committee's consideration of the Public Health etc (Scotland) Bill at stage 2.

I welcome to the committee Ken Macintosh and the Minister for Public Health and her team, who are back for round three.

Before section 90

The Convener: The first group of amendments is on regulation of the provision of sunbeds. I intend to allow some flexibility in this debate, particularly to Ken Macintosh. I will follow the usual protocols, but if he wants to come back in after the minister has summed up, I will allow him to do so, given that the subject of these amendments is his baby, as it were.

Amendment 202, in the name of Helen Eadie, is grouped with amendments 202A, 202B, 1, 203 and 2 to 17.

Helen Eadie (Dunfermline East) (Lab): The purpose of my amendments is to introduce a regulatory framework and licensing regime that will ensure much better control of sunbeds throughout Scotland. In written and oral evidence, we have heard that there is general support throughout Scotland for such a regime. The Convention of Scottish Local Authorities, the Royal Environmental Health Institute of Scotland, the British Medical Association, the Society of Chief Officers of Environmental Health in Scotland and many others support the introduction of a licensing scheme. We appreciate that others take a contrary view. However, we have seen the headline in the *Daily Telegraph* expressing the moderate opinion that "Sunbed tan 'can double the risk of cancer'", and, in a headline in *Health News*, the unequivocal statement "Sunbeds Cause Skin Cancer, Warns WHO". Given that expert opinion, I really believe that we should introduce a regulatory framework in a way that leaves no dubiety at all.

I am grateful for the latest submission that we have had from the Society of Chief Officers of Environmental Health, which states:

> "While not a matter for the Health & Safety Executive, the point the Society was trying to make in its submission is that a licensing route, based on a desire to secure public health protection, offers a simpler, more readily enforceable and pragmatic alternative. It could establish clear standards based on a precautionary approach with the added advantage of requiring prior approval for operations."

Given that we have heard from various experts that there are shortcomings in the way in which

the European Union declaration has been introduced and enforced, a licensing regime offers Scotland an opportunity to be among the leaders in the United Kingdom, if not Europe. France and other countries have made good progress, and we should consider the work that they have done.

I move amendment 202.

The Convener: Rhoda Grant will speak to amendment 202A and the other amendments in the group.

Rhoda Grant (Highlands and Islands) (Lab): I support Helen Eadie's amendment 202, on licensing, for which she has just made a good case. My amendments 202A and 202B to that amendment seek to strengthen it; they are based on the evidence that the committee heard last week. Amendment 202A would allow for "mandatory conditions" rather than guidance. Last week we heard that, although sunbeds comply with regulations when they are sold, they can be modified soon after. No means exist in law to prevent that from happening. Adding mandatory conditions to the licensing regime would mean that the Scottish Government could make it mandatory that sunbeds were not modified.

Amendment 202B is a normal provision that would allow ministers to provide guidance. Indeed, provisions elsewhere in the bill allow ministers to provide further information and guidance. The evidence last week made it quite clear that some issues would have to be dealt with through guidance. Amendment 202B would also make provision for ministers to consult before issuing guidance—consultation would be important.

The Convener: Ken Macintosh will speak to amendments 1 to 17 and to the other amendments in the group.

Ken Macintosh (Eastwood) (Lab): At stage 1, the committee supported the general principle of regulating tanning salons, and I hope that it supported my proposals. I will therefore crack on and describe each of amendments 1 to 17 in turn, rather than making general points.

Amendment 1 sets an age restriction of 18 for the use of sunbed parlours. I believe that evidence given to the committee last week questioned whether that age threshold was appropriate. I will therefore reiterate a couple of points.

First, 18 is the threshold recommended by most of, if not all, the scientific and health organisations that have looked into the effects of sunbed use, including Cancer Research UK, the British Medical Association and—as Dr Richard Simpson pointedly emphasised last week—the World Health Organization.

Secondly, the age restriction is in alignment with other public health legislation and other legislation that is specific to Scotland, including the controls on drinking and smoking.

The reasoning behind amendment 1 is not just to do with the age of majority. Skin cancer is a young persons' disease: youth is a factor in an increased risk of developing skin cancer. Young people—not just children—specifically require the additional protection that the amendment would provide.

As members can see, amendment 2 is new to the committee. It was not discussed or outlined at stage 1. It proposes extending the regulatory framework so that it covers not only sunbed parlours but the sale and hire of sunbeds. The proposal emerged from discussions with the Executive and stakeholders as the bill progressed. The fear was expressed that, rather than simply raising public awareness, the introduction of controls on sunbed parlours might shift the market away from tanning salons and towards domestic use and the sale and hire of machines.

That was a gap, or a potential loophole, in my original licensing proposals. The gap had always niggled me, but I shied away from full-scale licensing of the market. However, the Executive pointed out that it would be relatively straightforward to apply public health legislation, rather than licensing, to deal with the issue—especially if it were limited to the question of a restriction on age. There is logic in that approach, and I hope that the committee, like me, will acknowledge it.

The sale and hire market in Scotland is very small at the moment. Executive civil servants asked the National Library of Scotland for a list of all commercial operators that were involved in the sale or hire of sunbeds and were listed in "Yellow Pages". The total was 17—and only between seven and 10 of them appear to be active. They were contacted directly for their comments on the application of an age limit.

10:15

Amendment 3 covers the particular circumstances in which trading for sale or hire takes place over the phone or the internet or from some other remote location. It applies the legislation to the point of dispatch rather than the point of sale, should only the point of dispatch be based in Scotland. It also clarifies that the local authority covering the point of sale is the responsible body for enforcement in most other cases.

Amendment 4 relates to one of the most important steps that the committee can take today, which is to ban the use of coin-operated or unstaffed machines. Members are aware of the high-profile accidents that have occurred through

the misuse of such machines, and I believe that it is essential that we send out a clear signal that sunbeds are too risky to be left unattended for anyone to use without a thought. They are not harmless vending machines, and sunbed users need to know the seriousness with which the public authorities view the risk to public health.

Amendment 5 is essentially a safety net that would avoid sunbeds being reclassified or remarketed as medical or therapeutic devices. I will expand later on my alarm, or at least concern, at some of the dubious health claims that are made by sunbed operators and others. I believe that, currently, those are just claims and that few—if any—sunbed operators sell themselves primarily as clinicians. However, it is easy to imagine that happening and sunbeds being sold as so-called ultraviolet therapy in an attempt to get around the law. Amendment 5 would give ministers the power to address that problem, should it arise, through subordinate rather than primary legislation. I believe that the French already have such a measure.

Amendment 6 is arguably the most important of all the amendments that are before us today in terms of changing public behaviour and raising awareness of the health risks that are involved in tanning. The amendment would place a duty on operators to provide users with health information each time that they used a sunbed. The nature of that information and the form and manner in which it would be provided to sunbed users would be prescribed by ministers in regulations. The subordinate legislation would be drawn up in consultation with all interested parties. I believe that it is right that the detail that that would entail—some of which may change over time, with changes in technology or medical knowledge—should be in secondary legislation.

However, the committee may be interested—I certainly would be—to hear from the minister about the process that would lead to the development of those regulations and her initial thoughts on their content. For instance, they could include essential stipulations—on the supply of goggles to users, for example—and cover more controversial issues, such as the importance of staff training. I hope that such matters would be covered in the regulations. Furthermore, it is my understanding and strong hope that the minister would use the powers in amendment 6 to make it obligatory for all users to sign a consent form on each visit to a salon before they used a sunbed. Not only would that provide a clear record of individual sunbed use; it would be an active rather than passive method of delivering the health risk and skin cancer message.

I ask the minister, in responding to the committee's discussion of the amendments, to reaffirm her commitment to a public health campaign. I do not presume the committee's consent to the amendments; nevertheless, if the bill is to be implemented successfully, it must be accompanied by a public education message.

Amendment 7 would not only impose a further duty on operators to provide information to sunbed users, but specify the form and manner in which that information was to be displayed. I will return to that point later, but it is crucial that essential health information is not overshadowed by more glamorous marketing material that is displayed by the operators.

Amendment 8 brings us to the potentially more controversial issue of enforcement. At one stage, I imagined that my amendments would draw on other powers, which would be outlined elsewhere in the bill, to allow environmental health officers to enter premises for the purposes of inspection. However, given the fact that the bill proposes extensive—robust, in some cases—powers of that kind, I am content, as I hope other members are, that the amendment proposes a more modest and proportionate approach to the regulation and inspection of sunbed parlours.

Section 9—

The Convener: Do you mean amendment 9?

Ken Macintosh: Yes—sorry.

Amendment 9 covers the proposals that regulate sale or hire from a dwelling-house. In some circumstances, a sunbed parlour may be a business that is operated from home, so the powers are very circumscribed indeed. Officers would have to give two days' notice and the homeowner could refuse entry.

Amendment 10 would ensure that the operator of a sunbed salon was correctly identified. There will undoubtedly be instances in which it is unclear to inspectors who the owner is, but it is important that the operator, and not some junior member of staff, is named. That might matter, for instance, where an operator has a chain of shops, several of which are repeatedly found wanting. In such a case, more rigorous action may need to be taken against the operator.

Amendment 11 outlines the fixed penalties that would be the main enforcement tool at the disposal of environmental health officers. Amendment 12 would allow local authorities to withdraw fixed penalties where appropriate. I was particularly attracted to the fixed-penalty approach not just because of its success in enforcing the smoking ban but because ultimately the bill is about changing the behaviour of sunbed users and not about trying to criminalise businesses or operators. Having said that, there may be more cynical or serious breaches of the law, when a

tougher line needs to be taken. Amendment 13 specifically applies to offences under the proposed new provisions in part 8, and relates to the power of local authority officials to inspect premises and demand or require information from operators. The amendment sets out the penalties for breaching the proposed new provisions in part 8. My understanding is that the maximum fine would be £2,500.

Amendment 14 defines some of the terms used in the proposed new sections on sunbeds—I use the word "sections" appropriately here—including, for instance, sunbed operators and which local authority officials may inspect or enforce the regulations.

I mentioned earlier that although fixed-penalty notices would be the most common method of enforcing the legislation, there may be more cynical or persistent breaches of the law, such as continually allowing children to use sunbeds, that would require tougher action. In such circumstances, the local authority would have discretion to apply the more rigorous regime of fine and imprisonment under the general powers in the bill and in section 101 in particular. Amendment 15 would specifically preclude from that regime offences under part 8. As I outlined earlier, under my proposals, part 8 would provide for a specific range of penalties. That is covered in amendment 13. I hope that members can follow my logic.

Amendment 16 would give ministers the power to amend the fixed-penalty regime by affirmative instrument, and amendment 17 would amend the long title of the bill to reflect accurately the changes that I have proposed to the committee.

That is a substantial list of amendments, but I hope that the proposals accurately reflect the seriousness with which all members view the rising problem of skin cancer in Scotland.

Ross Finnie: When Kenneth Macintosh initially lodged the amendments, I did not generally favour a licensing regime. I still have some reservations. However, after last week's evidence, which repeated evidence that we had heard previously, I am in no doubt in that there are real difficulties in relation to matters of health and safety that are not covered by codes of practice and which cannot be enforced. That is confirmed in the letter to the committee from the Society of Chief Officers of Environmental Health in Scotland, which says that UV tanning is the subject of guidance rather than an approved code of practice and that compliance is discretionary rather than compulsory. The evidence persuades me that we need some form of licensing regime in the bill that would bring to bear a compulsory element. Excellent though Kenneth Macintosh's amendments are, they would not have the effect that they seek to achieve unless we were able to enforce the machines' output.

Although those comments might suggest that I favour Helen Eadie's amendments, I believe that, with one or two exceptions, the way in which the powers have been defined in Kenneth Macintosh's amendments would have a greater effect. That is not to be unkind about Helen Eadie's amendments; I just happen to believe that, in the round, most of the provisions set out in Kenneth Macintosh's amendments would give better effect to the proposed controls.

Furthermore, as drafted, parts of Helen Eadie's amendment 202 encompass some of—but not all—Kenneth Macintosh's amendments. Therefore, if we agreed to amendment 202 as it stands and failed to agree to the first three or four of Kenneth's amendments, we would be left with an unhappy mix of regulation. That is not an easy position for the committee to be in at stage 2.

I therefore make what I hope is a constructive appeal, which might or might not gain favour. My inclination would be to support the thrust of Kenneth Macintosh's amendments but to look to the minister to give an undertaking to return to the critical issues, particularly the health and safety aspects, with amendments at stage 3. Such amendments should provide for a form of licensing that enables us to enforce the provisions and give effect to the main thrust of Kenneth's amendments.

I am sorry if that contribution is unhelpful. I discussed some of these matters with committee clerks to see whether it was possible to lodge a further amendment. However, given the timing not only of when the proposals were made but of the confirmation of the evidence from the Health and Safety Executive, the committee has been placed in some difficulties. It is imperative that we deal with the threat and danger of cancers that can arise from sunbeds. I do not want to go back on the decision that we made at stage 1, but the detail of how the aim of the proposals is to be implemented appears to give rise to some real difficulties.

I accept some of the principles that Helen Eadie enunciated; I also accept the thrust of Kenneth Macintosh's amendments. However, I suggest that, if we were simply to agree to amendment 202, we would not encapsulate some of the important provisions that are proposed in Kenneth's amendments. I may be placing the minister on the spot, but if committee members share my reservations, we might find that Government amendments at stage 3 would be a way forward to try to give effect to good law.

My comments so far have dealt with the main thrust of the amendments, but I would like to comment further, particularly in relation to section 9.

The Convener: You mean amendment 9. You should deal with it now.

Ross Finnie: Amendment 9 is the one amendment in the group with which I profoundly disagree. I take a strong view that entry into a person's private dwelling-house has to be for a very specific reason. I appreciate, as Ken Macintosh clarified when he introduced amendment 9, that the proposal is a light touch and that authorised officers would require consent and to give 48 hours' notice. However, I am bound to say, as a Liberal, that it would be illiberal to give local authority officers fishing rights, under whatever pretext they chose, to enter a private dwelling-house.

I am grateful to the Law Society of Scotland, terse though its response may be. It makes it clear that, if we are going to grant someone the power to enter a private dwelling-house, we must ensure that the minimum standards for obtaining a warrant granted by a sheriff are met. It should not be a fishing exercise. Authorised officers must be explicit about the causal link—the connection between the crime that they are investigating and the circumstances of the individual concerned—and the reason why they believe that the premises contain the evidence that they are seeking. I believe fundamentally that that is the minimum standard that anyone should adhere to in entering a private dwelling-house. I understand that the law currently provides for such a power.

If we do not agree to amendment 9 and the proposed new section that it would insert, people who conduct such criminal activity will not be left at liberty to do so. The police could still go to a sheriff to seek a search warrant. If the minister is uncomfortable with the way proposed in amendment 8 of controlling sunbed operators and wishes to support the views of the Law Society of Scotland, I would be open to accepting an undertaking from her that she will lodge an amendment at stage 3. Of course, it is not for me but for the committee to agree to that approach.

10:30

I am sorry to take so long, convener, but I am greatly puzzled by the definitions in amendment 2. When someone defines something, they normally describe it and then define it. For example, in relation to subsection (1) of the section that amendment 2 seeks to insert, I would normally expect to see a person who sells sunbeds defined as the seller. In other words, the person who sells sunbeds is the seller. However, the amendment refers to "A person"—any person; they do not have to be doing anything, never mind selling sunbeds—who is defined as "the 'seller'".

Likewise, in subsection (2) of the section that amendment 2 seeks to insert, "A person"—it does not matter what they are doing, and they do not have to be hiring sunbeds—is defined as "the 'hirer'". Surely that cannot be right. Normal definitions describe and delineate what the person does and then the definition is ascribed to that description. It is extraordinary.

Ken Macintosh rightly drew our attention to amendment 14, which provides us with the definition of an authorised officer as

"an officer of a local authority".

I am therefore puzzled to know why subsection (1) of the sections that amendments 8,10 and 11, respectively, seek to insert repeats the phrase

"An authorised officer of a local authority".

That seems like sloppy drafting to me. If a term is defined, the definition that is provided should be used consistently throughout.

The Convener: Thank you for that very thorough journey through the amendments. I am sure that members will take your points on board. Most of all, thank you for calling the lawyers' submission "terse", rather than "verbose"—that has made my day.

Ross Finnie: It is the first time that I have done so.

The Convener: Yes, and probably the last.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Is voting for Helen Eadie's and Rhoda Grant's amendments incompatible with voting for Ken Macintosh's amendments? Do any of them fall if others are agreed to?

The Convener: No, but the point has been made that the outcome would be cumbersome and messy and not very good drafting.

Dr Simpson: I understand.

I concur with much of what Ross Finnie said. I began the journey believing that a light touch was appropriate, and that a licensing scheme might be too heavy-handed. However, on the basis of the evidence, particularly the verbal evidence about inspection that we heard last week, I do not now believe that we can take a light approach that requires someone to notify that there is a sunbed parlour somewhere before an inspection might occur, if someone believes that that is appropriate. That is not appropriate. We must have a licensing system.

I would be comfortable with the minister undertaking to go away to work on combining Ken

Macintosh's amendments with a proposal for a licensing scheme. If the minister cannot give such an undertaking today, I will vote for Helen Eadie's amendments and the bill could then be amended at stage 3.

My other points will be in the form of questions and comments. Subsection (3) of the section that amendment 2 seeks to insert refers to a defence for the seller being that

"the seller or hirer believed the person to be 18 or over".

I find that unacceptable. The provision that the seller or hirer sought to obtain documents and that those documents

"would have convinced a reasonable person",

which is in subsection (4) of the proposed new section, is appropriate. I hope to hear a satisfactory explanation of the vague subsection (3), because it would mean that any seller or hirer could simply say as their defence that they thought that the person was over 18, and that would be that. It is about as cogent a defence as the one that was offered last week of a closed-circuit television camera or market research demonstrating that people under 18 do not use the machines. That is not acceptable.

The other omission in Ken Macintosh's amendments—although he mentioned it under amendment 6—is a requirement for training of the supervising agent. I would like him or the minister to comment further on what training will be required under the guidance and whether the force of primary legislation is necessary to require that there shall be training, which shall be laid out by the minister.

Ross Finnie has covered entry to dwelling-houses, which I was going to mention. As the Law Society of Scotland has indicated, there are problems with that. There must be a clear reason for gaining access to a dwelling-house and it should be laid before a sheriff before entry is gained, even with consent. An invitation to have one's machine inspected or to be given advice is one thing; we are talking about an action by the local authority that requires additional protection.

The Convener: I have a question on what you just said about the defence under amendment 2 that

"the seller or hirer believed the person to be 18 or over".

Is that not covered by "without reasonable excuse" in subsections (1) and (2) and by subsection (4), which states:

"For the purposes of subsection (3)(b), the seller or hirer is to be treated as having taken reasonable steps to establish the person's age if (and only if)—

(a) the seller or hirer was shown any of the documents mentioned in subsection (5); and

(b) that document would have convinced a reasonable person"?

That qualifies subsection (3). The seller or hirer cannot just say that they believed the person to be 18; they have to have seen identification.

Dr Simpson: But the reference is to subsection (3)(b), not subsection (3)(a).

The Convener: However, subsection (3) contains an "and"—it is a combination—not an "or":

"(a) the seller or hirer believed the person to be 18 or over; and

(b) the seller or hirer had taken reasonable steps to establish the person's age."

The amendment then refers to identification. I ask you to consider that.

I have done Ken Macintosh's job for him—I have to earn my money somehow.

Mary Scanlon (Highlands and Islands) (Con): I have some sympathy with the points that Ross Finnie made but, to return to general principles, the provisions that we are considering today are about protecting people from skin cancer. I am minded to support Kenneth Macintosh and my gut instinct is not to support a licensing regime. I feel quite firm about that but, nonetheless, I need some assurances from the minister.

In particular, we have often heard that four out of five tanning salon machines in Scotland do not comply with health and safety standards or the CE standards—the European standards. My concern is about amendment 4, which prohibits the unsupervised use of sunbeds. We had evidence last week from Consol Suncenter plc, which—I am speaking from memory—said that there were something like 35 coin-operated or unsupervised sunbed salons in Scotland, of which it operated 23. According to the evidence that we heard, all of its sunbeds comply with all the health and safety standards and all the EU standards.

Although I want to support my colleague Ken Macintosh and rule out the unsupervised use of sunbeds, we are ignoring the 80 per cent of sunbeds that are, allegedly, dangerous and we are penalising operators who state that they are using equipment that is well up to standard and complies with all the health and safety checks. Minister, how can the public be protected from using machines that do not comply with health and safety and EU standards? I do not wish to bring in a licensing regime to address that but, as our reason for examining this issue is to protect the public from skin cancer, I would like an assurance from the Government on the matter.

Amendment 11 deals with the amount of the fixed penalty. Ken Macintosh drew a comparison

with the smoking ban. I would like a light touch to be taken, but I would also like there to be a disincentive for non-compliance. Subsection 4(a) of the section that amendment 11 seeks to insert states that the amount of the fixed penalty is £100

"in the case of an offence under section (Prohibition on allowing use of sunbeds by persons under 18)"

and £50

"in the case of an offence under section (Prohibition on allowing unsupervised use of sunbeds), (Duty to provide information to sunbed users) or (Duty to display information notice)".

Why have the fixed penalties been set so low? Has any thought been given to raising them? To me, such fines could easily be ignored, as people would be quite happy to pay them.

The Convener: My intention is to allow the minister to speak, then invite Ken Macintosh to speak, before allowing Helen Eadie to wind up on her amendment, and also to allow Rhoda Grant to speak to her amendment. However, if issues arise that need to be addressed I will be quite flexible, as this is an unusual stage 2.

The Minister for Public Health (Shona Robison): First, I will speak in favour of Ken Macintosh's amendments, which take a pragmatic approach to improving health protection at minimum cost to business and local authorities.

It is important that we consider the concerns that were raised in the discussion last week and earlier today. Mary Scanlon touched on the issue of non-compliance with health and safety standards and how that can be addressed. Obviously, the European standards and the low voltage directive are reserved to Westminster. I am happy to explore with the committee and the Health and Safety Executive what practical measures can be undertaken to ensure stricter enforcement by environmental health officers, as enforcement is the crux of the matter. As you will be aware, I have already written to Lord McKenzie at the HSE to explore what can be done in practical terms about the problems of enforcement by environmental health officers. I know that the committee is awaiting evidence in that regard. I will suggest a way forward on this issue once I have dealt with Helen Eadie's amendments.

Leaving aside the arguments for and against licensing, there are some technical problems with Helen Eadie's amendments. The introduction of a licensing scheme, as per her amendments, effectively would rule out the use of fixed-penalty notices, which is on offer under Ken Macintosh's amendment 11. Fixed penalties offer local authorities a quick and effective way of dealing with offences. I hear what Mary Scanlon is saying, but a fixed penalty would be the first stage. If there were continual breaches, the court action could lead to prosecution, which could result in a fine of £2,500. The situation would ratchet up if breaches continued, and that is not minor in anybody's judgment.

10:45

Amendment 202 is flawed, because it seems to place the prohibitions on the sunbed user rather than the premises operator. That does not fit in with the approach in the Civic Government (Scotland) Act 1982, under which only the operator of a premises can be penalised for an offence.

As I said earlier, Ken Macintosh's amendments 1 to 17 take a pragmatic approach and deliver improved health protection, which strikes the right balance.

Ross Finnie made an important point about giving effect to good law. I got the sense, particularly from what committee members said last week, that there has not been an opportunity to take comprehensive evidence on licensing. As a way forward, I suggest to the committee that there is room to explore with the Health and Safety Executive the issue of whether it can do more. It is currently undertaking a consultation to examine its role, which ends on 24 June. Given that we are discussing specific issues that lie within its competence, there must be a dialogue about whether it intends to do more to give environmental health officers—with their health and safety hat on—more enforcement powers.

I am happy to continue a discussion with the committee about whether, having considered all of that, licensing still needs to be on the table. I suggest, however, that it would be better to take evidence on the need for licensing under the Civic Government (Scotland) Act 1982, rather than as part of the process of amending the bill. I do not feel that the amendments on a licensing scheme have been given enough scrutiny, and we have not heard enough evidence for and against the proposal. Such matters are part of a wider bill that deals with a number of other issues.

My suggestion for a way forward is, therefore, to hold discussions with the Health and Safety Executive. That might throw up a suitable way forward if the HSE is so minded, but if not, we can have further discussions about how we could proceed under the more appropriate legislative vehicle—the Civic Government (Scotland) Act 1982—rather than by trying to cobble something together for stage 3. In the meantime, I urge the committee to support Ken Macintosh's amendments, because that will put a better health protection regime in place, and allow us to have further discussion about what else needs to be done.

The Convener: I note that Helen Eadie's amendment 202 would actually amend the Civic Government (Scotland) Act 1982. It would be helpful if the minister gave us some idea when there would be an opportunity to amend the 1982 act, if doing so became the way forward for the committee or local government, subject to what comes from the Health and Safety Executive following the end of the consultation on 24 June.

Shona Robison: I am being told that it could be done with subordinate legislation, but we would want to ensure that enough evidence was taken on that—

The Convener: I understand that; I want clarification on what the process would be if one went down that route.

Shona Robison: It could be done at the earliest opportunity, which gives me some scope to discuss it with business managers and others. The door is open for further discussions, but any action must be pursued properly and in a focused way, rather than being part of a wider bill that offers only a limited opportunity for me to hear the evidence and the detail that I would like to hear. Also, I am conscious that we still have unfinished business with the Health and Safety Executive, which might come forward with a solution, although at this stage we do not know.

The Convener: I wanted clarification on the mechanics, minister, which I thought would be helpful. I will let Ken Macintosh respond.

Ken Macintosh: Thank you for the opportunity, convener. I will address the practical points before returning to some of the big issues, such as whether the committee should take a licensing approach.

Ross Finnie objects to the drafting of amendment 9. In theory, the amendment seeks to grant powers to enter dwelling-houses, although one could say that the powers are not that great in practice, given the requirement for two days' notice to be given and that the owner can refuse to give permission. Although I lodged amendment 9, I hesitate to put up a robust defence. When I first saw its wording, my reaction might not have been as strong as Ross Finnie's, but it was similar. That said, there is a drafting logic—if I can put it that way—in having the powers to enforce the prohibition on sale or hire match the enforcing restrictions on sunbed parlours.

I am conscious that I am not putting up much of a defence for an amendment that I have moved—

The Convener: You have not moved it yet.

Ken Macintosh: But I feel obliged to move it, convener. The amendments are in my name, and I have agreed them with the Executive, but I take note of the points that Ross Finnie and Dr Simpson made.

The Convener: Before we move on, I think that the minister wants to come back in on amendment 9.

Shona Robison: In my earlier remarks, I meant to say that I hear what Ross Finnie is saying on the matter. If committee members share his concerns, we are happy to look again at amendment 9 before stage 3. We want to address the concerns that have been raised, if we can. Amendment 9 represents an attempt to make a proportionate response, not one that involves a warrant, which might be seen as heavy-handed. Some of the points are well made. We are happy to re-examine the matter.

The Convener: That is helpful.

Ken Macintosh: I thank the minister for rescuing me from myself.

Ross Finnie raised points on the definition of "the seller or hirer" in amendment 2, and the Executive might re-examine the drafting, but neither affects the substance of the amendment. The questions were on the definition of the term, not the effectiveness of the provision. The points that were made are open to debate. That said, I hope that the concerns do not detract from the purpose and effect of amendment 2, which seeks to place an age restriction on "the seller or hirer", or whatever we call them.

Ross Finnie is concerned about the use of the term "authorised officer" in amendment 14. I note his comments and say to him that we will re-examine the drafting, although, once again, I do not think that the drafting detracts from the purpose or effect of the provision.

Dr Simpson expressed concern about the defence under amendment 2 that a seller

"believed the person to be 18 or over".

I thank the convener for clarifying the position. My understanding, too, is that the provision has to be read in conjunction with subsections 3(b), 4(a) and 4(b) of the proposed new section that amendment 2 seeks to insert. The demands that the provisions place on the seller are rigorous. It is important that people are given that defence, which is in keeping with the defence in other legislation.

The Convener: I am grateful to the deputy convener for pointing out the matter to me.

Ken Macintosh: It is useful to have a couple of lawyers on the committee.

Dr Simpson also raised concerns about training. The point is an important one. I do not think that I am giving away the game if I say that it was an item of discussion between me, the Executive and

others. It is important that members of staff in sunbed premises know what they are talking about and give appropriate advice to users, but it is clear that it is not easy to enshrine that in primary legislation. Issues such as what the appropriate qualification is and who provides it arise. There are numerous qualifications and numerous bodies—which might or might not be inspected robustly—that set themselves up to provide so-called qualifications. Training is a tricky issue to address in primary legislation, but it could be addressed through licensing. I am not sure whether it could be addressed in the regulations for which my amendments provide. I flag up the fact that it is important that staff are present in premises and that the public can have confidence in what those staff tell them.

The minister addressed Mary Scanlon's point about fixed-penalty levels. The proposed enforcement regime is flexible and has been applied successfully in other contexts. Given that local authority officers will dish out the fines, it is not desirable to set them too high. However, section 101 lays out a stronger regime of fines and imprisonment, which could be used to deal with repeat offenders.

It is important to understand what we are trying to do. We have not decided to ban sunbeds or sunbed parlours, nor do we wish to lock up people who operate sunbed parlours; that is not the intention. The idea is to provide legislation that protects young and vulnerable people, that makes it clear that a risk is associated with the use of sunbed machines and that drives up standards in the industry. The issue is how we go about achieving those aims.

I will now address the proposal to introduce a licensing system, as opposed to the system that I propose. The power of bulbs has dogged the committee's discussions. I hesitate to bring it up, given that it has caused such—

The Convener: But you have.

Ken Macintosh: I have, indeed. I have a fantastic ability to put my foot in my mouth.

Mary Scanlon said that we are ignoring the 80 per cent of sunbeds that are dangerous. That was a reference to the danger that is presented by bulbs whose emission levels are outwith those that are recommended by manufacturers. The point is that the recommended levels have been approved for the manufacture of bulbs, but there is no safe level. All sunbeds and all sunbed bulbs are dangerous. Although 80 per cent of sunbeds are more dangerous than the remaining 20 per cent, all of them are dangerous, so we should not get too hung up on the power of the bulbs. Using a sunbed is dangerous. The public should be aware that some are more powerful than others, but if we focus too heavily on that fact we might go down the wrong avenue.

If we devote all our energies to setting and enforcing an approved standard, there is a danger that we might be seen to be saying that it is safe to use sunbeds that meet that standard. We might set a recommended—

The Convener: It is not an either/or situation. We want to ensure not only that there is a proper regime and that premises are properly operated, but that the equipment complies with what ordinary people think is the British standard.

Ken Macintosh: I appreciate that point. I fully agree that all sunbed operators should operate to the highest standards and that the public should be secure in the knowledge that those standards are being met. However, I do not think that we should obsess unduly—

The Convener: The committee is not obsessive.

11:00

Ken Macintosh: Ultimately, the message is that all sunbeds are dangerous. The question then arises of whether we should follow one enforcement route or another. I was not going to comment on the licensing scheme; for various reasons, I am not sure how helpful that would be. However, as I have promoted such a scheme for four years, it would be wrong of me to pretend that I do not support it.

I have examined the matter in great depth. The ultimate aim is not to establish well-run sunbed parlours but to protect the public and to try to change public behaviour—to associate sunbeds with danger and risk in the public's mind. That can be achieved in different ways. I am confident that the measures that the Executive has agreed to and supported, and to which I hope the committee will agree, will be effective and will send out a clear message.

An inspection regime has advantages. It would be supported by regular inspections, which would be built into the system. It would provide the power to close sunbed parlours, whereas my proposals would not allow them to be closed, although the operators could be fined or have other action taken against them. Licences could refer to health and safety guidance, compliance and training.

It is for the committee to make up its mind on the issue. I have no doubt that the route to which the Executive agreed and which I have laid out in 17 amendments will be effective and will send a clear signal to all users. It will start to tackle the increase in the number of people who develop skin cancer and it will not prevent local authorities from introducing licensing schemes. Whether to go further is a question for the committee to decide

on.

The Convener: Indeed it is.

Helen Eadie: I was taken by Ross Finnie's criticisms and constructive comments. I wholly accept that any amendments that are proposed to any bill are bound to have imperfections. That is why we have stages 2 and 3. If the minister took Ross Finnie's points much more seriously and if she were willing to consider our comments and to propose, as a product of all our deliberations, a licensing scheme that complied with the wishes of the members who have spoken, I would be minded not to press amendment 202.

Much of what Ken Macintosh said is profoundly important. He and I have worked with the Skin Care Campaign Scotland for several years and we are both members of the cross-party group on cancer. Through that work, we know that obtaining evidence is difficult and has been a major problem. The World Health Organization has stated unequivocally that sunbeds cause death, no matter what the bulb strength is.

Each year, 66,000 deaths are attributed to malignant melanoma. That is the big message, above all. If my licensing amendments are not agreed to, I hope that the big message of today's debate to the public is that what matters is not the bulb strength but the sunbed use. There is no doubt that sunbeds are killers, especially if their use is unsupervised and if good information is not provided to young people.

I listened to what Mary Scanlon said. I accept and understand that the Conservative party does not like more bureaucracy and more red tape. However, all the professional opinion that we have heard from throughout Scotland has been compelling. The fact that eight local authorities have licensing schemes is powerful testimony that the licensing approach is important.

I rest my case, minister. I appeal to you to take away Ross Finnie's constructive proposal. I will not press amendment 202 if you assure us that you will consider that proposal, but if your mind is set firmly against a licensing scheme, I will have no alternative but to press my amendment.

The Convener: The minister may have something to add, but the clear message that I heard from her was that we should await the outcome of work with the Health and Safety Executive and that any amendment procedure might be more appropriate in the—

Helen Eadie: If I could just say, convener—

The Convener: I think that that is what the minister said, but she may want to add something.

Helen Eadie: There is a problem with the subordinate legislation route, as I understand it from being a member of the Subordinate Legislation Committee—Ian McKee suffers in silence with me on that committee. The minister spoke of the need for more scrutiny, but I am not convinced that the subordinate legislation route would give us the degree of scrutiny that she has talked about. We have had a lot of written and oral evidence. What more evidence do we need that sunbeds kill people?

Shona Robison: I remind members that a licensing system was introduced for skin piercing through an order under the Civic Government (Scotland) Act 1982. That is a helpful precedent for what could be done with sunbeds. The committee could take as much evidence as it wanted to on a draft order under the 1982 act. It could explore some of the important points that Ken Macintosh made well about the balance in a licensing regime and what it is trying to achieve. It could also explore the health and safety issues, which Ken Macintosh expressed concerns about. A draft order would give scope to consider some of those issues in more detail. That is my preferred option, rather than try to pull something together hastily for stage 3. A draft order can be introduced reasonably speedily, as happened for skin piercing. That is a better approach, as it would give us time to consider all the issues, rather than try to put something together quickly for stage 3.

The Convener: Ken Macintosh wants to speak. He has indicated that it will be short, but I am used to that meaning that it will be long. However, as it is his patch, if short really means short, I will let him speak. I want to move on, because we have an awful lot to do and we have yet to come back to Rhoda Grant.

Ken Macintosh: It is just a helpful point—at least I hope that it is helpful. Amendments 1 to 17, if agreed to, will include powers for ministers to make regulations. The minister will have to come back to the committee with draft regulations that cover many of the points that would probably be in a licensing scheme. I do not know whether that is helpful, but the issue will come back on to the committee's agenda in a year.

The Convener: We are being given two pictures—one about draft regulations coming back and one about an alternative route.

Shona Robison: Draft regulations will come back anyway under Ken Macintosh's amendments, which I hope will be supported today. However, I get the sense that there is unfinished business on the issue and that members want me to give an undertaking to have further discussions with the committee about how that unfinished business can be addressed. A way forward is for us to focus on a draft order under the Civic Government (Scotland) Act 1982 to consider what more needs to be done if the issues

are not addressed by Ken Macintosh's amendments or if the Health and Safety Executive has not made progress. I am leaving the door open to discuss further with the committee a licensing system under a draft order under the 1982 act. We can have further discussions beyond the bill. I do not believe that it would be best to tackle the issue at stage 3; it would be better to do so under a separate draft order, so that we can have a full discussion on the issue.

The Convener: We all want to make good law and I appreciate the difficulties for members and the minister of considering the issues in such detail at this stage. However, that is a matter for the committee. I think that we have exhausted the issue—we are perhaps going round in circles—and I want us to move on. I therefore ask Rhoda Grant to wind up on amendment 202A and to move or not move it.

Rhoda Grant: I agree with a lot of the comments that Helen Eadie made about pressing for the licensing scheme. The minister has seen the evidence that the committee took previously when Ken Macintosh pushed for a licensing scheme. It became clear before last week—and even clearer last week—that a licensing scheme is the only way in which the committee's concerns can be addressed. Mary Scanlon has said clearly that she is not keen on a licensing scheme, but the issues that she highlighted can be dealt with only through licensing. The evidence that we have received is that no penalties can be imposed for the use of equipment that has been modified—the penalties apply at the point of sale of the equipment. That means that the Health and Safety Executive cannot get involved.

Ross Finnie commented on Helen Eadie's proposal for a licensing scheme. My amendments to Helen Eadie's amendment 202 would deal with his comments and address Mary Scanlon's concerns.

Many local authorities have proposed their own licensing schemes because they see that licensing is missing from the legislation. If we pursued a licensing scheme in the bill, we would prevent a myriad of different licensing schemes from appearing throughout Scotland, which would be beneficial for users and suppliers. I therefore support Helen Eadie's amendment.

Amendment 202A moved—[Rhoda Grant].

The Convener: The question is, that amendment 202A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

AGAINST

Finnie, Ross (West of Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Falkirk West) (SNP)
McKee, Ian (Lothians) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 202A disagreed to.

Amendment 202B moved—[Rhoda Grant].

The Convener: The question is, that amendment 202B be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

AGAINST

Finnie, Ross (West of Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Falkirk West) (SNP)
McKee, Ian (Lothians) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 202B disagreed to.

The Convener: I ask Helen Eadie whether she intends to press or withdraw amendment 202.

Helen Eadie: I will press the amendment.

The Convener: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

AGAINST

Finnie, Ross (West of Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Falkirk West) (SNP)
McKee, Ian (Lothians) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 202 disagreed to.

Section 90—Provision of information on the effects on health of sunbed use

Amendment 1 moved—[Ken Macintosh]—and agreed to.

Amendment 203 moved—[Helen Eadie].

The Convener: The question is, that amendment 203 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

AGAINST

Finnie, Ross (West of Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Falkirk West) (SNP)
McKee, Ian (Lothians) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 203 disagreed to.

Section 90, as amended, agreed to.

After section 90

11:15

Amendments 2 to 7 moved—[Ken Macintosh]—and agreed to.

The Convener: Group 2 is on prohibiting the provision or display of certain information relating to sunbeds. Amendment 266, in the name of Ken Macintosh, is grouped with amendment 267.

Ken Macintosh: I make it clear that I lodged amendments 266 and 267 without the support of the minister or the Executive.

My aim is simple: to make the legislation as effective as possible in changing our attitudes towards sunbeds and skin cancer, and to beef up the regulatory framework within the limits that public health legislation will allow.

One of the headline measures that the committee agrees on is the statutory provision of information to sunbed users that warns them of the health risks that are involved in using sunbeds. Amendments 266 and 267 approach the same subject from a different standpoint. Sunbed operators should provide a health warning and be forbidden from making positive health claims. My inspiration comes from France. As members know, other jurisdictions around the world are introducing similar controls over sunbeds for the same reason that we want to: to tackle the rise in the incidence of skin cancer. In France, regulations set out the information that must be provided to sunbed users and further state:

"No reference to any beneficial effect on health may be made."

Unless we take the same approach, there is a danger that sunbed users will receive a mixed message when they enter a salon.

We need only check the websites of Consol Suncenter plc and the Sunbed Association, for example, to see the claims that are already being made. Consol Suncenter's website contains a section on frequently asked questions, which I printed off this morning. That section contains the question:

"What are the benefits of tanning on a sunbed?"

The company states:

"There are a … range of known physical and psychological benefits."

It claims that a tan protects a person's skin when they are outdoors. A key claim is that ultraviolet rays

"provide an important source of Vitamin D which is essential for the body's absorption of calcium. It regulates the growth and repair of bones and strengthens the immune system. Sensible tanning can alleviate the effects of skin disorders such as acne, eczema and psoriasis. It is an excellent mood-enhancer. There is also evidence that UV rays can help prevent certain cancers."

So there we have it: sunbeds do not give people cancer—they prevent it.

I am worried that, unless we are careful, we could end up, despite our best intentions, with the 21st century equivalent of the worthy but dull health and safety notices that look as though they were first written in the 1950s and have not been changed since. I am worried that we will have unreadable public health notices next to glamorous posters that make spurious health claims about the benefits of tanning.

The matter is simple to address. I have given two options for the committee's consideration. Amendment 266 is limited to preventing sunbed parlours from making positive health claims. Amendment 267 is more broadly drafted; it would prohibit operators making beneficial health claims, but it extends beyond the physical boundaries of such premises.

Sunbed users should receive one clear and simple message when they enter a salon—that tanning is inherently dangerous. We must ensure from the start that that message is not contradicted or undermined by claims of dubious worth.

I move amendment 266.

The Convener: For the sake of clarity, are you saying that amendments 266 and 267 are alternatives and do not pre-empt one another?

Ken Macintosh: I lodged two amendments because—apart from anything else—the committee did not have an opportunity to discuss

the issue at stage 1 and I would welcome members' views.

The Convener: I just wanted to clarify that two alternative amendments are before us.

Ken Macintosh: Members could support either amendment 266 or amendment 267.

Ross Finnie: I understand why Kenneth Macintosh is worried that operators might obviate the provisions of amendment 6, but it is not clear to me that setting out in legislation a means of preventing their doing so will improve the law. The new section that will be inserted by amendment 6 will require operators to provide information on

"the effects on health of sunbed use",

and allow the Scottish ministers to prescribe the nature of the information. The provision of information about sunbed use will therefore come within the mischief of that new section. If an operator, by describing the health benefits of sunbed use, fails to comply with ministerial prescriptions on the information that should be provided, they will be in breach of the new section.

I know where Kenneth Macintosh is coming from, but I need to be persuaded that amendments 266 and 267 are not a sledgehammer—perhaps the minister can help us on that. Given the provisions in subsection (2) of the section that will be inserted by amendment 6, it is difficult to envisage how anyone who provided information that alluded to a health benefit would not be failing to comply with ministerial requirements and therefore in breach of the law.

Dr Simpson: I do not agree with Ross Finnie. Amendment 267 would be useful and helpful. I am no lawyer, so I stand to be corrected by the convener—again—but under the new section that will be inserted by amendment 6 the Scottish ministers will be able to prescribe

"the information which is to be provided",

but not what information must not be provided. Sunbed operators could, for example, say that it is important to acquire vitamin D from natural sunlight for bone building—which is quite correct—but then suggest that tanning is therefore in some way helpful and healthy. I support amendment 267.

In the 1930s, tobacco firms were promoting smoking as a health benefit. Brands such as Marlboro were marketed as helping people to breathe more easily. Indeed, until the Richard Doll report came out in 1952 people believed that smoking was at least not harmful and might be beneficial. Sunbed use is a comparable issue. There is an explosion in the incidence of melanoma and we need to take powers. It would be rational and reasonable to preclude the promotion of sunbeds as being healthy. Amendment 267 is far from being a sledgehammer.

Mary Scanlon: I think that amendment 6 covers the issue, but I seek clarification from the minister on that. Subsection (2) of the new section that will be inserted by amendment 6 provides:

"The operator must provide a person who proposes to use a sunbed on sunbed premises with … information regarding the effects on health of sunbed use".

It is obvious that that means detrimental effects on health, so if anyone said that there was a positive effect they would surely be in contravention of that section. Subsection (5) of the new section that will be inserted by amendment 6 provides:

"The Scottish Ministers may prescribe—

(a) the information which is to be provided;

(b) the form and manner in which that information is to be provided",

so although I agree with the points that Kenneth Macintosh made, I am not sure that amendments 266 and 267 are necessary.

The Convener: I am of the view that it is using a sledgehammer to crack a walnut. Amendment 6 states:

"The Scottish Ministers may prescribe—

(a) the information which is to be provided".

Perhaps that should say, "and that is all the information that is to be provided." That would avoid the need for a whole new section. Perhaps if section 6 were tweaked so that it contained more clarification, other sections would not be needed.

Rhoda Grant: Someone could have a poster up in a tanning salon, giving the information that Ken Macintosh talked about. The information might not be physically handed to the person who was using the sunbed, but it could give them a general impression. I think that we need to cover that as well.

The Convener: That could be the case if Ken Macintosh's amendment 6 were tightened up. I think that that amendment was supported by the Government. I call the minister to speak to amendments 266 and 267.

Shona Robison: I oppose amendments 266 and 267, as I believe that they are unnecessary. I also have concerns that the amendments may not be within the legislative competence of the Parliament because the general subject of misleading advertising is a reserved matter and there could be unintended consequences for the bill if that view were upheld. I leave that thought with the committee.

Ken Macintosh read out some claims from Consol Suncenter. If those were to be found to be

misleading they could already be dealt with under the Control of Misleading Advertising Regulations 1988. The regulations were established to protect consumers and traders from the effects of misleading advertising, so there is already a route for dealing with such issues. If a sunbed operator were to make a false claim, including unsubstantiated health claims, that would be covered.

Amendment 267 would make it an offence for the operator of a sunbed premises to provide anyone anywhere at any time with information referring to the beneficial effects on health of sunbed use. My concerns about the amendment are that it is not proportionate and that it could be open to challenge. The committee has already agreed amendment 5, which exempts the medical use of sunbeds—which infers that they have a medical use. Amendment 267 contradicts amendment 5 and would be vulnerable to challenge.

Mr Macintosh's amendment 6, which has already been agreed to, provides sufficient cover, in that sunbed operators

"must provide a person who proposes to use a sunbed on sunbed premises with such information regarding the effects on health of sunbed use as may be prescribed"

by the Scottish ministers. Therefore, we can give appropriate information to the consumer that would highlight the damaging effects of tanning.

We could also go further. Amendment 7, which has already been agreed to, requires a notice to be displayed on sunbed premises that could state, for example, "Sunbeds seriously damage your health". It could be a stark, clear warning that would send out a strong message to users about the dangers of sunbeds.

There is sufficient scope to address Ken Macintosh's concerns in the amendments that have already been agreed to. On that basis, I ask him to withdraw amendment 266 and not to move amendment 267.

11:30

The Convener: I invite Ken Macintosh to wind up the discussion on this group of amendments, and to say whether he will press amendment 266 or seek leave to withdraw it.

Ken Macintosh: I will go through the points raised. Members asked whether the powers sought under amendments 266 and 267 do not already exist in amendment 6. Amendment 6 is about information and amendment 7 is about the duty to display that information. Operators will have to provide information on health risks but, as Rhoda Grant pointed out, that information could be contradicted by posters placed next to it. In other words, the information mentioned in amendment 6 is not the only information that sunbed operators could provide. They must provide clear information to users about health risks, but users could also see all around them strong messages that sunbeds are good for them. That is the contradiction that amendments 266 and 267 seek to tackle. As Dr Simpson said, amendment 6 says what information is to be provided, but not what information is not to be provided.

The minister suggested that existing legislation on advertising controls might already cover the points that I am trying to raise. We can challenge claims of dubious worth and we can challenge the false logic of equating sunbeds with vitamin D and with reducing the risk of developing cancer; but there is a world of difference between challenging such claims and actually preventing such claims from being presented in the first place.

If regulations already exist, and if advertising controls are already in place, how come I was able to access such false claims easily from a website, without even looking very far? How many prosecutions have there ever been? I think that the Advertising Standards Authority has raised only a couple of prosecutions. I am therefore not sure that existing controls are effective.

The convener asked whether amendment 6 could be amended. I had originally lodged an amendment to amend amendment 6 so that it included a prohibition on the making of positive health claims. However, after talking to the Executive, I realised that it would prevent only the minister, and not the operator, from making positive health claims. That was clearly not the intention. I therefore abandoned that amendment.

The convener's suggestion was that amendment 6 could be amended with the addition of a phrase along the lines of, "and this is the only information that can be displayed." That was a very useful suggestion.

I believe that committee members are unanimous in their view of the message that they wish to send out. I also believe that our views are similar on the issue of health claims. I therefore wonder whether I could ask the minister to consider the convener's suggestion.

I will not press amendment 266 and I will not move amendment 267.

Shona Robison: We always try to be helpful. We are certainly willing to consider this issue again. However, it is not without its difficulties. I cannot give a cast-iron guarantee that we will come up with something that does not fall foul of, for example, the European convention on human rights. That is an issue that the legal advisers have already come across.

If we can find a way, within our devolved competences, of capturing the thrust of what Ken Macintosh wants to achieve, we will certainly consider the issue again.

The Convener: That would be helpful.

Amendment 266, by agreement, withdrawn.

Amendment 267 not moved.

Amendment 8 moved—[Ken Macintosh]—and agreed to.

The Convener: Amendment 9 has already been debated with amendment 202. Do you intend to move the amendment, Ken? I do not wish to tell you what to do, but it would be quite helpful to have something to go to stage 3 with. It would then be open to you or the minister to tweak it. That would be preferable to having nothing.

Ross Finnie: The law is there. A warrant can be applied for. Anyone can apply for a warrant.

The Convener: Sorry. I am on the wrong one. I beg your pardon. I was thinking about the amendment that we have just been talking about.

Ken Macintosh: Would it be all right if I did not move amendment 9? Other committee members may move it if they wish. I will leave it to the committee. The Executive could bring it back at stage 3.

The Convener: It is your decision. You are not moving the amendment—is that right?

Ken Macintosh: I am not moving amendment 9.

Helen Eadie: I am happy to move it, convener.

Amendment 9 moved—[Helen Eadie].

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Eadie, Helen (Dunfermline East) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Finnie, Ross (West of Scotland) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 9 agreed to.

Amendments 10 to 14 moved—[Ken Macintosh]—and agreed to.

Section 91—Insect nuisance

The Convener: Group 3 is on statutory nuisances. Amendment 247, in the name of the minister, is grouped with amendments 249, 250, 254 and 255.

Before inviting the minister to speak to the amendments, I will let the teams of officials change round. There is a special statutory nuisances team, I see—we live and learn. They are now revealing themselves.

We are all settled now, so I call the minister to speak.

Shona Robison: Amendments 247, 249 and 254 were lodged in response to recommendations from the Subordinate Legislation Committee and this committee regarding the need to consult before introducing any regulations emanating from the new powers that are introduced in part 9 of the bill. The Scottish Government has considered its position in light of those recommendations. Consulting stakeholders before making regulations is normal practice in the Scottish Government, and I expect that to continue. Strictly speaking, there is no need to include a provision to consult stakeholders in primary legislation. However, we have listened to the views of both committees and propose, through our amendments, to provide that

"Before making regulations"

under part 9,

"the Scottish Ministers must consult, in so far as it is reasonably practicable to do so … such associations of local authorities; and … such other persons … as the Scottish Ministers consider appropriate."

The committee may wish to note that we will be producing detailed procedural guidance for all existing statutory nuisance provisions, as well as the proposed new provisions, with first drafts scheduled to be ready for consultation in June. There will be further consultation later in the summer on the revised draft guidance, as well as workshop seminars with all local authorities to explain the new provisions once the bill is enacted.

The combined effect of amendments 250 and 255 is to introduce affirmative procedure for all regulation-making powers introduced into the Environmental Protection Act 1990 by part 9 of the bill, except for the power to exclude places or types of place from insect nuisance. That goes further than the recommendation of the Subordinate Legislation Committee, which recommended affirmative procedure for the new power introduced by section 95 to alter the period for payment of a fixed penalty. By expanding that approach to all bar one of the new powers in part 9, the Scottish Government acknowledges that the full parliamentary scrutiny that is afforded by the affirmative procedure is appropriate. The one

exclusion relates to the power to exclude places or types of place from the insect nuisance provisions. The Subordinate Legislation Committee considered that the negative procedure was appropriate for that power, and we agree.

I move amendment 247.

The Convener: We were just resolving whether "insects" includes the Scottish midgie, but I think that it does not. The statutory nuisance team may be able to advise us on that. I think that it is a wild animal.

Shona Robison: Apparently, it does in theory.

Amendment 247 agreed to.

Section 91, as amended, agreed to.

Section 92 agreed to.

Section 93—Statutory nuisance: land covered with water

The Convener: Amendment 248, in the name of the minister, is in a group on its own.

Shona Robison: I lodged amendment 248 to replace the existing text of section 93 to clarify what the Government intends to cover through the provisions and to avoid duplication with other legislation. The new section places equal emphasis on "water covering land" and "land covered with water". The existing formulation refers only to "land covered with water", and it is thought that that might encourage undue emphasis on the land when it is more often the water covering it that causes the nuisance.

The amendment specifically includes structures within the definition of land. That is designed to capture facilities that may lead to nuisances, such as outdoor swimming pools and culverts. Buildings are not included in the definition, as we do not think that water indoors, such as in indoor swimming pools, is likely to cause a risk to health or nuisance to the community. The amendment also contains a specific list of exclusions for matters that are adequately covered by other legislation or where we are not aware of nuisances ever having occurred in practice.

Amendment 248 defines the new nuisance as thoroughly as possible. Any points of detail that may subsequently arise in relation to the description of water nuisance can be remedied through guidance.

I move amendment 248.

Amendment 248 agreed to.

The Convener: We are all safe, as none of us has an outdoor swimming pool.

Section 93, as amended, agreed to.

Section 94—Power to make further provision regarding statutory nuisances

Amendments 249 and 250 moved—[Shona Robison]—and agreed to.

Section 94, as amended, agreed to.

Section 95—Enforcement of statutory nuisances: fixed penalty notice

The Convener: Amendment 251, in the name of the minister, is grouped with amendments 252 and 253.

Shona Robison: Amendment 251 clarifies that any fixed penalties that are collected accrue to the local authority.

Amendment 252 provides an enabling power to allow the Scottish ministers to make provision for different amounts of fixed penalty in different circumstances. That could include, for instance, the provision of tiered fixed penalties in the event of persistent non-compliance.

Amendment 253 is a drafting amendment that changes a reference in new section 80ZA(11) of the 1990 act.

I move amendment 251.

Amendment 251 agreed to.

Amendments 252 to 254 moved—[Shona Robison]—and agreed to.

Section 95, as amended, agreed to.

After section 95

Amendment 255 moved—[Shona Robison]—and agreed to.

Sections 96 and 97 agreed to.

Section 98—Disclosure of information

11:45

The Convener: Amendment 215, in the name of the minister, is grouped with amendments 216 to 221.

Shona Robison: The committee is aware of our view, which was discussed at stage 1, that it is necessary in some public health situations for agencies to share personal information between them in order to try to contain a public health risk. Fortunately, in the vast majority of circumstances, a person whose information might need to be shared is only too willing to consent to it. However, there might be circumstances—for example, if someone is too ill to consent—in which it will be necessary to share information without someone's consent in order to help to contain a serious public health risk. We have concluded that section 98, as currently drafted, might not fully achieve that policy

objective. Amendment 220 therefore removes subsection (5), which provides that information relating to an individual may be disclosed only if the individual consents.

However, we have been conscious of the views of the information commissioner with regard to the processing of sensitive data. Therefore, although new subsection (3C), which will be introduced by amendment 218, makes it clear that information may be disclosed despite any prohibition or restriction on such disclosure imposed by or under any enactment or rule of law, we have made it clear, in new subsection (3D), that that does not affect the application of the Data Protection Act 1998. I would like to reassure the committee that the 1998 act has not been disapplied with regard to any aspect of the bill and that any sharing of information under the bill must comply with the terms of that act. We are satisfied that that provides the clarification that is required. We will, of course, provide detailed guidance to the relevant authorities on this issue as part of the implementation process.

I move amendment 215.

Amendment 215 agreed to.

Amendments 216 to 221 moved—[Shona Robison]—and agreed to.

Section 98, as amended, agreed to.

Sections 99 and 100 agreed to.

Section 101—Penalties for offences under this Act

Amendment 158 moved—[Shona Robison]—and agreed to.

Amendment 15 moved—[Ken Macintosh]—and agreed to.

Amendments 222 and 159 moved—[Shona Robison]—and agreed to.

Section 101, as amended, agreed to.

After section 101

Amendment 190 moved—[Shona Robison]—and agreed to.

Section 102—Regulations and orders

The Convener: Amendment 223, in the name of the minister, is in a group on its own.

Shona Robison: Section 102 sets out how the regulation-making powers in the bill must be exercised, and the parliamentary procedures that should be used. Consulting stakeholders before making regulations is normal practice in the Scottish Government, and I expect that to continue. Strictly speaking, there is no need to include a provision to consult stakeholders in primary legislation. However, we have listened to stakeholders' concerns and the views of the committee on this issue and therefore propose, through amendment 223, to provide that

"The Scottish Ministers must, before making regulations under this Act, consult, in so far as it is reasonably practicable to do so, such persons as they consider appropriate."

I move amendment 223.

Amendment 223 agreed to.

The Convener: Amendment 204 is in the name of Jamie Stone—who is not present—and has already been debated with amendment 198. Jamie Stone did not press his previous amendment, but anyone in the committee can move an amendment if they want to.

Amendment 204 not moved.

The Convener: Amendment 191, in the name of Helen Eadie, is in a group on its own.

Helen Eadie: The purpose of amendment 191 is to provide that no statutory instrument containing regulations under section 3(4) may be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament. That would ensure that regulations made by Scottish ministers under the powers contained in section 3(4) to prescribe the qualifications and training of those who may be designated as health board competent persons would require to be made by affirmative procedure.

I move amendment 191.

Shona Robison: I oppose amendment 191. Section 102(3) provides that statutory instruments containing regulations under the bill are generally subject to negative procedure. The exceptions in subsection (4) are subject to affirmative procedure.

In the bill, regulations made by the Scottish ministers under the powers contained in section 3(4) to prescribe the qualifications and training of health board competent persons can be made by negative procedure. Amendment 191 would make those regulations subject to affirmative procedure. Such regulations will be technical in nature and will not impact on the functions of health board competent persons. It is therefore considered that negative procedure is appropriate for any order made under the provision, balancing speed and flexibility of passage with the need for scrutiny. The Subordinate Legislation Committee is content with that approach.

I would also question why the amendment provides for affirmative procedure for regulations on the qualifications and training of health board

competent persons but not for regulations on the qualifications and training of local authority competent persons, as provided for in section 5(4). That does not seem logical. I therefore oppose amendment 191.

Helen Eadie: Being a member of the Subordinate Legislation Committee and having heard the explanation from the legal advisers and the minister, I am happy not to press the amendment.

Amendment 191, by agreement, withdrawn.

Amendment 16 moved—[Ken Macintosh]—and agreed to.

Amendment 224 moved—[Shona Robison]—and agreed to.

Section 102, as amended, agreed to.

Sections 103 to 105 agreed to.

Schedule 2 agreed to.

Section 106 agreed to.

Schedule 3

REPEALS AND REVOCATIONS

The Convener: Group 9 is on consequential appeals. Amendment 256, in the name of the minister, is grouped with amendments 257 to 265.

Shona Robison: The bill repeals legislation that goes back to 1889. The amendments will remove obsolete references to that repealed legislation from elsewhere in the statute book.

I move amendment 256.

The Convener: Nobody is leaping to the defence of ancient legislation.

Amendment 256 agreed to.

Amendments 257 to 265 moved—[Shona Robison]—and agreed to.

Schedule 3, as amended, agreed to.

Section 107—Crown application

The Convener: Group 10 is on Crown application: national security. Amendment 225, in the name of the minister, is the only amendment in the group.

Shona Robison: Section 107(1) sets out the general principle that the bill, and any regulations and orders made under it, bind the Crown. However, in line with similar legislation, it is advisable to provide for the exclusion of the use of certain powers—in this case, powers of entry—when it is necessary or expedient in the interests of national security.

Although there is precedent for the approach that we have taken, the committee questioned at stage 1 whether it was the most appropriate route and suggested following the precedent set in the Land Reform (Scotland) Act 2003, in which an exemption on the ground of national security was made by way of an order under section 104 of the Scotland Act 1998, on the basis that the United Kingdom ministers have a greater breadth of knowledge on matters of national security. Furthermore, since the bill was introduced, in addition to the existing exemption in the bill, the Ministry of Defence and the Home Office have requested that specific provision be made for the exclusion of defence, which is of course reserved. That would reflect the position in public health legislation in England and Wales.

Given the committee's views, earlier precedent and the request for an exemption relating to defence that requires an order to be made under section 104 of the Scotland Act 1998, we consider that a pragmatic approach is required. Rather than having two separate provisions for exemptions in similar circumstances, which could be confusing and misleading, the best way forward is to provide for both exemptions by a section 104 order.

We have been reassured by colleagues at Whitehall that they will work with us to ensure that, at a working level, in the event of a site requiring to be designated as exempt on the ground of national security or defence, public health priorities can be achieved. Therefore, amendment 225 should not compromise the aims of the bill in any way.

I move amendment 225.

Amendment 225 agreed to.

Section 107, as amended, agreed to.

Section 108 agreed to.

Long Title

Amendment 17 moved—[Ken Macintosh]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the Public Health etc (Scotland) Bill. I thank committee members, Ken Macintosh and the Minister for Public Health and her team for their diligence of application.

Annual Report

11:56

The Convener: We have one more item in public before we have a short break. Item 4 is consideration of our draft annual report, which is paper HS/S3/08/15/5 in the papers that members have before them. Before anyone leaps to Liz McColgan's defence to complain about the misspelling of her name, I should say that the clerks have spotted the typographical error, which will be corrected before publication. Do members have any comments on our draft annual report?

Members: No.

The Convener: We are content with the draft.

That concludes formal business in public. We will now move into private session.

11:57

Meeting continued in private until 12:19.

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