HEALTH COMMITTEE

Tuesday 28 September 2004

Session 2

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CONTENTS

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HEALTH COMMITTEE

21st Meeting 2004, Session 2

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Mr David Davidson (North East Scotland) (Con)
*Helen Eadie (Dunfermline East) (Lab)
*Kate Maclean (Dundee West) (Lab)
*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)
*Shona Robison (Dundee East) (SNP)
*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)
Paul Martin (Glasgow Springburn) (Lab)
Mrs Nanette Milne (North East Scotland) (Con)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Mr Stewart Maxwell (West of Scotland) (SNP)
Mark Richards (Scottish Parliament Directorate of Legal Services)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERK

Roz Wheeler

LOCATION

Committee Room 6

Scottish Parliament

Health Committee

Tuesday 28 September 2004

[THE CONVENER *opened the meeting at 13:58*]

Items in Private

The Convener (Roseanna Cunningham): We start with consideration of whether to discuss items 4, 5, and 6 in private. Item 4 is the taking of evidence from Stewart Maxwell to allow the committee to discuss options for completing stage 1 of the Prohibition of Smoking in Regulated Areas (Scotland) Bill.

Shona Robison (Dundee East) (SNP): The comments that I made last week apply equally this week, partly for the same reason—there is huge public interest in the issue—but also because we will have a witness for item 4. It is most unusual for witnesses not to be heard in public, so there must be good reason for that happening. In addition to expressing again my comments of last week, I suggest that it is even more important that the item be held in public because we will have a witness before us.

The Convener: Shona Robison is saying that the item is distinct from discussion of the stage 1 report because we will have a witness before us. Is the committee agreed that item 4 should be held in public?

Members *indicated agreement*.

The Convener: I am sure that Mike Rumbles is happy about that.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I am delighted.

The Convener: A decision was made last week to take item 5 in private. To make the decision again and again is probably not appropriate. Can we agree that, on all subsequent occasions when a draft stage 1 report is being discussed, the item will be taken in private, as is the normal committee procedure?

Mike Rumbles: According to standing orders, we are not allowed to do that. We are supposed to treat each agenda item separately. There is a presumption in Parliament's standing orders that every item will be discussed in public and that, if we want to discuss something in private, we must decide that case by case.

The Convener: I am advised by the clerk that there is precedent for the committee's discussing such items in private; however, if members want to have a separate vote on the item at every committee meeting, we can do that. The question is that item 5 be taken in private. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)

AGAINST

Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0. Item 5 will be taken in private.

Item 6 is consideration of the 2005-06 budget process. We will discuss potential committee advisers, and the practice has been that such items are discussed in private. Does anyone have a different view?

Members: No.

The Convener: Okay. Item 6 will be taken in private.

Subordinate Legislation

National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2004 (SSI 2004/369)

General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Amendment Order 2004 (SSI 2004/372)

Mental Health Tribunal for Scotland (Delegation of the President's functions) Regulations 2004 (SSI 2004/373)

Mental Health Tribunal for Scotland (Appointment of Medical Members) Regulations 2004 (SSI 2004/374)

Mental Health Tribunal for Scotland (Appointment of General Members) Regulations 2004 (SSI 2004/375)

Regulation of Care (Scotland) Act 2001 (Commencement No 5 and Transitional Provisions) Amendment Order 2004 (SSI 2004/377).

14:05

The Convener: We have six instruments that are subject to the negative procedure, as shown on the agenda. The Subordinate Legislation Committee has no comments on any of the instruments, no member of the committee has made any comment and no motions to annul have been lodged in relation to the instruments. I therefore recommend that the committee make no recommendation on any of the instruments. Is that agreed?

Members *indicated agreement*.

The Convener: This is really good going, folks—I hope we can keep it up.

Public Petitions

Chronic Pain Management (PE374)

Myalgic Encephalomyelitis (PE398)

Organ Retention (PE406)

Autistic Spectrum Disorder (PE452)

Heavy Metal Poisoning (PE474)

Aphasia (PE475)

Psychiatric Services (PE538)

Multiple Sclerosis (Respite Homes) (PE572)

Autism (Treatment) (PE577)

14:05

The Convener: Item 3 is consideration of public petitions. There are some issues arising from the petitions, so this item will perhaps take a little bit longer. Members have in front of them a cover note that identifies several petitions on which additional information is awaited, as well as current and new petitions that require to be considered today and which are listed on the agenda. All members should have annex A to paper HC/S2/04/21/1, which gives an update on nine petitions.

I am happy enough with all the suggested recommendations, with the exception of the one on the petitions that relate to autism—PE452, PE538 and PE577. The relevant page is not numbered. If we could have the pages—or at least the paragraphs—numbered in future, that would be useful.

I note that we have been awaiting a response to the Executive's announcement on funding from Mr James Mackie, who is one of the petitioners. We continue to await a response from Mr Mackie; he said that he would give information over the summer, but we have still received nothing, although I know that there have been some verbal exchanges with him about when he might submit a response. I am not happy about our continuing to leave the matter open ended and therefore ask that the committee consider imposing a time limit on Mr Mackie. We could write to him to say that if he does not respond within 28 days, we will assume that he is no longer pursuing his petition. We can then deal with the other petitions in the group. Does anybody have any comment to make on that?

Mr David Davidson (North East Scotland) (Con): I am very concerned. I have known Mr Mackie very well for many years. He has submitted loads of petitions to Parliament over the past five years and, to be quite frank, I think that you would be rather generous to allow him 28 days. I would prefer you to stiffen up that time limit to 14 to 21 days, because I know that people have given him evidence and bits and pieces to work with. It is not for us to carry on that work; it is for him to deal with.

The Convener: Are members in favour of that counter proposal, that we reduce the time limit from 28 days to 21 days?

Kate Maclean (Dundee West) (Lab): Shall we say that he has to respond by the end of the October recess?

Helen Eadie (Dunfermline East) (Lab): That is 21 days.

The Convener: I need a clear suggestion. Does his having to respond by end of the October recess amount to 21 days? Are there any advances on a time limit of 21 days? Do members agree to the 21-day suggestion?

Members *indicated agreement*.

The Convener: If Mr Mackie does not respond, we will be able to continue our consideration of the other autism petitions. The clerk has just pointed out to me that petition PE474 from Mr Mackie is in the same position—we await a response from him. Again, we should invite him to respond within 21 days; if he does not, we will assume that he is no longer interested. Are members happy with that and with the recommendations that are contained in annex A for dealing with all the other petitions?

Members *indicated agreement*.

Epilepsy Service Provision (PE247)

The Convener: That allows us to move on to consideration of petitions PE247, PE609 and PE756, two of which are current petitions and one of which is new. PE247 is from Epilepsy Scotland and calls for the provision of services to benefit people with epilepsy. Paper HC/S2/04/21/2 includes a note of possible action in paragraph 15, which members have no doubt read with interest. We are invited to note the replies from the Executive and the data on epilepsy nurses from the data collection on clinical nurse specialists.

We can write to the Executive on any specific points that have not already been addressed in correspondence, or we can simply note the Executive's position on the issues that the petitioners have raised and conclude our consideration of the petition.

Shona Robison: Is there a summary of the points that have not already been addressed in correspondence? Such a summary might be among the papers, but I cannot see it. Perhaps we could get a steer from the clerks on whether there are outstanding issues.

The Convener: I am advised that we would, before our next meeting, have to involve the Scottish Parliament information centre in pulling together any unresolved issues. Does the committee want to do that before we dispense with the petition?

Janis Hughes (Glasgow Rutherglen) (Lab): I do not disagree with that suggestion, but I thought that when we got to this stage, we normally asked the petitioners for their views on the Executive's response.

The Convener: We think that that has been done.

Janis Hughes: I just wanted to check on that.

Mr Davidson: I would like to turn to the letter in annex A of paper HC/S2/04/21/2.

The Convener: Can you be a bit more specific?

Mr Davidson: It is on page 3 of the bundle of papers.

The Convener: Are you talking about the letter from the Scottish Executive Health Department?

Mr Davidson: Yes. The second paragraph contains the comment that NHS Quality Improvement Scotland does not appear to have any responsibility for implementation of Scottish intercollegiate guidelines network guidelines. Can we get some background on why that statement has been made? According to the minister, NHS QIS's role is—

The Convener: Can you identify where you are getting that information from? Are you talking about the letter from the Health Department?

Mr Davidson: The letter starts:

"Dear Graeme,

PE 247"—

The Convener: Which paragraph are you talking about and which page is it on?

Mr Davidson: It is in the second paragraph.

The Convener: On the first page?

Mr Davidson: Yes. The gist of that paragraph is that the Executive is not monitoring the work of clinical governance committees. It goes on to say:

"NHS-QIS will not be enquiring into the implementation of individual SIGN guidelines"

and that such implementation

"must be led at local level."

I am not sure where the long stop is if something goes wrong locally. I thought that NHS QIS's role concerned the generality of such matters. Perhaps we could get a definitive answer on the role of NHS QIS.

The Convener: If SPICe is going to examine some of the unresolved issues, it could also provide us with a note on the precise role of NHS QIS and, in light of that paragraph, what—if anything—we should expect to get from NHS QIS on a regular basis.

Mr Davidson: The Health Department appears to be saying that NHS QIS does not have a locus in the matter, but I thought that it had a locus in all matters that relate to standards in the health service, because the minister said so early on when NHS QIS was first formed and has said so since.

The Convener: That might be an additional matter that SPICe can advise us about.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I want simply to emphasise the importance of early diagnosis, especially in epilepsy, which is well known about. I thought the same as David Davidson when I read the paper. There is no indication of how we can find out whether there is early diagnosis in primary care or by specialist nurses. There is no feedback on whether we are improving a service. The answer from the petitioners is obviously that we are not improving a service, but the committee ought to be trying to do so.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): There are issues in the last paragraph on the first page of the letter, which states:

"There are no plans for such an audit".

We are dealing with matters that are much more significant and much broader than simply epilepsy. We have been told that clinical networks are the future and that they are, in many cases, being set up through the good will of people who are prepared to work together in the interests of patients. Therefore, we should have an indication of best practice. The letter states that reports

"will be made available to participating NHS Boards".

It would be interesting to know which boards are and are not participating and what sort of detailed information is passing through.

The Convener: It is obvious from the discussion that there are unresolved issues and that it would be premature to close consideration of PE247. When we ask SPICe to do what we want it to do, we might direct its attention to the specific issues in the letter relating to NHS QIS and to the managed clinical networks, and to an audit of their effectiveness as they have spread; that is, who is doing what and where and where the models of best practice are, as Duncan McNeil mentioned. Perhaps SPICe can produce a paper to kick us off. We can then reconsider petition PE247. Are members happy with that proposal in the meantime?

Members *indicated agreement*.

Eating Disorders (Treatment) (PE609)

The Convener: The next petition is PE609, from Mrs Grainne Smith, on behalf of North East Eating Disorders Support Group and the Scottish Eating Disorder Interest Group. A paper has been prepared subsequent to a discussion that the committee apparently had on 14 September. The conclusions of the paper are contained in paragraph 19. It is clear that we will attempt to have an inquiry into the matter.

Before we proceed, I want to draw attention to paragraph 13, which states:

"The Committee discussed possible contents for the remit of its inquiry at its awayday."

The first three bullet points in the paragraph ought to involve fairly factual information. I wonder whether there is a means by which to circumvent some work by attempting to obtain the factual information rather than simply have witnesses in front of the committee. I wonder whether the level of service provision that is currently available for diagnosis and treatment of eating disorders, and the funding that is currently available to support those services should be ascertained separately and whether we should ask witnesses to discuss directly with us areas of improvement and barriers to implementation. What do members think about that proposal?

14:15

Mike Rumbles: That would be a sensible way of proceeding. It would save the committee and the petitioners a great deal of time.

The Convener: I thought so.

Mr Davidson: I declare a family interest in the matter.

On the second bullet point, which is on the level of service provision that is currently available for the treatment of eating disorders, written answers to parliamentary questions have suggested that certain hospitals consider that they offer a service.

We need clarity, which can be provided by factual research into levels of service and the descriptions of services. A hospital in Glasgow claims to have a dedicated unit, but it does not: it simply uses a general psychiatric ward. We need clarity about such claims.

Dr Turner: We should also ask the Royal College of General Practitioners to give evidence, because—let us face it—many people with such disorders turn up in the first instance at GPs and get no help at all. Perhaps the college could give us an idea about training in diagnosis of such disorders at general practice level.

The Convener: Let us start by agreeing the remit of the inquiry. Do we want the remit to cover the four bullet points in paragraph 13 in the paper?

Members *indicated agreement*.

The Convener: Right. Do we want to issue a call for written evidence?

Janis Hughes: Paragraphs 15 and 16, which are about the timescale for the inquiry, mention oral evidence-taking sessions. Given that some of the information that we seek is factual and can be gathered in advance, and given that it will not be particularly easy to fit in the inquiry—although we have agreed to do it for the right reasons—we should have two oral evidence-taking sessions and we should issue a call for written evidence from those from whom we may not be able to take oral evidence.

The Convener: Jean Turner made a specific recommendation. I presume that she wants the Royal College of General Practitioners to give oral evidence.

Dr Turner: Yes—but it might be good to get written evidence in advance because time is scarce and the written evidence would allow us to ask the right questions.

The Convener: Can members think of other organisations that we should approach for written evidence?

Mike Rumbles: In the past, we have made a policy decision to send out for written evidence and then to decide who to call as oral witnesses on the basis of the written evidence, which informs us whether we want to pursue an issue.

Helen Eadie: That is a reasonable request.

The Convener: The issue is whether the request for written evidence should be drawn to the attention of particular organisations, rather than just publicised. We need to ensure that the request is flagged up to organisations that we want to include, but which otherwise might not realise that the inquiry is taking place. The interest groups will know about it, but some other organisations might not necessarily be aware of it.

Mr Davidson: As an addition to the list of recommended witnesses in paragraph 17, we ought to write to the health boards to allow them to offer input and explain what they do. Some health boards may work with other boards, but we would miss that in the trawl. Perhaps we should also write to the Institute of Psychiatry, which has done work in the field. Given that GPs refer to regional psychiatric services as a first stop, it would be helpful to get some professional input from the institute.

The Convener: We have on the list representatives from the three Scottish regional planning groups. I do not know whether members read the letter from Dr Harry Millar, but on page 3, in the paragraph that is a response to a letter from Trevor Lodge in the Health Department, he comments on the efficacy of the north of Scotland planning group. It might be useful for us to note that, not just for this inquiry, but perhaps for our work force planning inquiry—I think that the regional planning groups are also on the list for that inquiry. Dr Millar makes some fairly trenchant criticisms of the planning groups.

Mr Davidson: I thought that he was remarkably polite.

The Convener: It is worth flagging that up.

We need to agree on a timescale, which is where the issue gets difficult. We will not be able to take oral evidence at least until December, but given that even that target might be ambitious, it might be safer to say that we will do it in the new year. We still have no firm dates for the proposed health bill.

Mike Rumbles: Parliament gets a lot of criticism for having short intervals between calling for written evidence and proceeding with oral evidence, so it would be better to start taking oral evidence in 2005.

The Convener: Are we agreed on January 2005?

Members *indicated agreement*.

The Convener: At the moment, we are planning two or three oral evidence-taking sessions. There is quite a long list of possible witnesses already, with an extra one added on, so it is beginning to look as if we will have three evidence-taking sessions rather than two, to be realistic. We will put that aspect of the decision off until the written submissions have given us an indication of interest and we will delay the start of the oral evidence taking until January, which will give those who want to make submissions plenty of time and allow time for the information to go round.

Is everybody content with that?

Members *indicated agreement*.

Maternity Services (PE756)

The Convener: Petition PE756, from Dr Federica Warnock, is on the provision of maternity

services in remote areas. There is a paper on the petition that suggests, at paragraphs 5 and 6, possible action. It seems to me that it would be most sensible to include the petition in the evidence for our inquiry into workforce planning.

Shona Robison: I am happy to do that, but should we also keep an eye on ensuring that we deal with the issues that are raised in numerous other petitions, including PE756, in the workforce planning inquiry. It would be easy to overlook such issues in the course of the inquiry; we need to keep an eye on specific issues to ensure that they are covered.

The Convener: It is important that we get a summary of the issues that are common to the different petitions. Where the petitions agree, they all argue pretty much the same thing. We should ensure that we have a check list so that when we deal with the workforce planning inquiry, the issues are raised.

Mr McNeil: It is important to keep an eye on things. There is an opportunity to consider such issues in the workforce planning inquiry, but there is also an opportunity to consider them under the work that David Kerr's advisory group on service change is doing. Whatever comes out of that work might give us an opportunity to discuss the various issues. I presume that the advisory group's report will come to the committee.

The Convener: That report will come to us.

Are we happy with that?

Members *indicated agreement*.

Prohibition of Smoking in Regulated Areas (Scotland) Bill: Stage 1

14:25

The Convener: Item 4 concerns the Prohibition of Smoking in Regulated Areas (Scotland) Bill. We will take evidence from Stewart Maxwell, who will be accompanied by David Cullum from the Scottish Parliament non-executive bills unit and Mark Richards from the Scottish Parliament directorate of legal services.

Do all committee members have copies of the correspondence? There should be an additional letter from Stewart Maxwell and a letter from the Deputy Minister for Health and Community Care.

I thank Stewart Maxwell for coming along and for his letter and its attachment. We have not discussed any lines of questioning, but we hope that we will not keep him terribly long. Stewart's letter and its attachment are relatively clear on the potential future remit of the bill and its ability to be amended to widen its provisions. Does any committee member have a question about that aspect?

Shona Robison: The letter and the advice are helpful, but it might be useful for the record if Stewart Maxwell were to say whether he feels that the scope of his bill could be extended to cover a ban on smoking in all public places and if he could suggest the number of amendments that would be required to do that.

Mr Stewart Maxwell (West of Scotland) (SNP): As I said in my evidence on 29 June, the bill's scope allows it to be amended to include a wider area of Scotland in any ban. The letter that the committee has received contains a quote from my evidence session and a legal opinion from the directorate of legal services about the fact that the parliamentary authorities clarified and cleared the bill's scope before it was published.

The letter describes the amendments that would be required, but not in detail. We estimate that only six amendments would be required to take the bill from its current position to a full ban on smoking in enclosed places in Scotland. I presume that you do not want me to go through the six amendments. If an intermediate ban that covered some areas but not others was required, that would have to be considered, but to go from where we are to a complete ban would take only six amendments.

Dr Turner: That more or less covers what I wanted to ask about. I would like the bill to be extended.

The Convener: We will not go into that at the moment. We are just dealing with whether, according to the legal advice, the bill can be extended, because that is germane to our consideration. We all have our different views about whether the bill should be extended, but we do not want to go there.

Dr Turner: I assume that the bill can be extended. I accept that.

Mike Rumbles: I would like to know Stewart Maxwell's view; I do not know whether to make my point into a question. He says that the legal advice is that the bill could be extended by stage 2 amendments. However, the point is that the committee has spent much time taking written and verbal evidence at stage 1 on the bill's general principles, which do not relate to an outright ban on smoking in public places—the bill concerns a ban on smoking in places where food is served. If the proposed amendments are lodged at stage 2, how should the committee proceed? Should we take more evidence, or will the Executive's evidence be sufficient?

14:30

Mr Maxwell: The bill's purpose is not just to ban smoking in places where food is consumed. Its singular purpose is to ban smoking in regulated areas. The definition of those areas can be as narrow or wide as the Parliament decides, and the bill defines one type of area. The bill's purpose—to create regulated areas—has always been clear.

It is up to the committee to decide how to proceed. If the committee thought that further evidence was required, I am sure that the parliamentary authorities would be happy to allow it to take evidence at stage 2. It is quite usual for that to happen. I was a member of the Justice 1 Committee, which is about to take stage 2 evidence on the Emergency Workers (Scotland) Bill. Taking evidence at stage 2 on my bill might be appropriate.

The Executive's consultation is producing much evidence. In addition to submissions from the public, the Executive has told us about research that has been undertaken and about an international conference that it has held. It is not for me to say how the committee should deal with that evidence.

Mike Rumbles mentioned the written and oral evidence that was submitted to the committee in the run-up to the end of June. I wondered about an issue in which I thought members might be interested and I spent some time studying all the evidence that was submitted to the committee. My analysis, which I am sure that members could confirm if they did it themselves, is that every committee member at some stage and sometimes several times in the four evidence sessions discussed a full ban. All but two witnesses discussed a full ban. Therefore, it is not correct to say that the discussions were about a ban only in certain places. The evidence shows clearly that a full ban was discussed widely in every evidence-taking session by every committee member and by almost every witness.

The Convener: Do either of your officials wish to comment at this stage? No.

Kate Maclean: There was never a question about whether the bill could be amended; it is obvious that any bill can be amended. If Parliament agrees amendments to a bill, that is how the bill progresses. However, I was under the impression that the bill was put together in the way that it was because that would make it less open to possible legal challenge. Is that the case? Or am I remembering wrongly evidence from some time ago? I thought that, if the bill was amended to include all public places rather than just places in which food was served, it would be more open to legal challenge.

Mr Maxwell: I will answer that briefly and perhaps the lawyer from the legal directorate can help. What you said is not the case. Before the bill's publication, we were careful to ensure that its scope would include the possibility of amending it to include a ban in all public places, if Parliament decided that it wanted that. The evidence was that Parliament wanted that. We checked the bill closely and clarified its scope with the parliamentary authorities prior to its publication.

There was never any doubt in my mind about the bill's scope. I have now given you the legal advice about that and information about the amendments that would be required to widen a ban. I do not think that the bill has ever been open to legal challenge on that basis. It is very much within the bill's scope to extend a ban to all public places. There may have been discussion previously in the committee about whether the bill's scope included such a ban, but the committee obviously did not have the evidence before it early on that it now has about the legal opinion and the documents about what amendments would be required, which have recently been supplied. The bill team, the legal advisers and I have been clear about the bill's scope from the beginning. Mark Richards may be able to help on that.

Mark Richards (Scottish Parliament Directorate of Legal Services): The decision to include the initial limitations to the bill's scope was a policy one rather than a legal one. However, there is a power in section 2(1) to enable the defined areas to be amended to include other areas. Therefore, the legal advice on that provision's width is that a ban can be extended to include all enclosed public places.

Dr Turner: I thought that, except in a few exceptional circumstances, all the evidence that we gathered—particularly the medical evidence, including Mac Armstrong's—pointed to the fact that everybody wanted the bill to go for a complete ban. From the point of view of people who may have to go to the expense of ventilation systems, it would be fairer if we could extend a ban.

The Convener: You are straying into stage 2 again, Jean.

Dr Turner: It is just that the evidence that was gathered—

The Convener: I appreciate that.

Dr Turner: Is that not relevant at this stage?

The Convener: No. The issue is whether, within the context of the current bill, we could accept amendments that would extend the ban to a full ban. The policy argument about whether we should or should not do that is a different issue.

Dr Turner: We have legal evidence that says that the bill can go to a full ban and we took evidence that pushed us towards considering making such amendments. I thought that that was relevant at this stage.

The Convener: Strictly speaking, it is not.

Dr Turner: I am a learner—sorry.

The Convener: We will decide on the amendments issue. This discussion is part of the process of informing us how to deal with the stage 1 report. We must clarify this important issue, about which we have had clear legal advice.

Mr McNeil: The matter is confusing. We are all learners in this process because we are dealing with something that does not happen every day of the week. It is not only the politicians round the table who are confused; the private briefing paper that we have states:

"The Prohibition of Smoking in Regulated Areas (Scotland) Bill seeks to prevent people from smoking in public places where food is supplied".

It is not a case of our being mistaken or confused—that is what we took evidence on. Going by some of the public statements that Stewart Maxwell made at the time, he did not seem to be pursuing a total ban. To return to Mike Rumbles's point, what do we need to do now in terms of evidence taking to broaden a ban to include all public areas?

The Convener: That is not in Stewart Maxwell's gift; how we deal with any such amendment at stage 2 is a matter for the committee. If we consider it appropriate to take evidence at stage 2 on specific amendments, we can do so, but that is not a decision for Stewart Maxwell to make; it is for us.

Mr McNeil: I accept that, but I am genuinely confused about where we are going and what we took evidence on. People who came to give us evidence would have given different evidence if we had been talking about a total ban. There is a wee bit of shifting sand here and the committee has to be very careful.

Mr Maxwell: The long title of the bill is:

"An Act of the Scottish Parliament to prohibit persons from smoking in regulated areas; and for connected purposes."

That is the scope of the bill. Part 1 of the bill talks about particular regulated areas where food is served, but the purpose of the bill is given in the long title. There has never been any doubt about that.

Shona Robison: I understood from Stewart Maxwell's analysis of the evidence that we took—perhaps we should also analyse that evidence—that almost every witness expressed the view that there should be a ban on smoking in all enclosed public places. Is that what you said?

Mr Maxwell: It is. I did the analysis because I wondered whether that matter would be raised as a problem. If members also want to do that, please go ahead. You will find that that was the view of all but two witnesses, I think. A couple of witnesses did not speak; for example, Mr Cullum from the non-Executive bills unit, who accompanied me when I gave evidence, did not speak. However, of all the witnesses who gave oral evidence, only two did not discuss introducing a full ban; all the rest did.

Mike Rumbles: Who were they?

The Convener: Sorry, Mike, Helen Eadie is next after Shona Robison.

Helen Eadie: The main issue for me concerns the call for evidence and the policy memorandum that was published when the bill was introduced. We received evidence from those people who wanted to give evidence on the basis of the policy memorandum as it stood at that time. Now that the sands have shifted in that regard, I am left feeling uncomfortable until we can have more consultation with the public to find out their views about whether we should go to the next stage.

The Convener: That is a reasonable point to make, although it might have more strength had it not been standard procedure over the past five years to introduce quite major changes to bills at stage 2 that have not been part of the stage 1 evidence-taking process. It comes back to whether, if such amendments were to be lodged, the committee would want to take further evidence. We could do that.

Helen Eadie: With respect, convener, two wrongs do not make a right. I feel strongly that, if we are to have consultation, it has to be meaningful and we have to be clear about what the consultation proposals are. If, in fact, the ground has shifted in that regard, that gives me a problem.

The Convener: I look forward to discussions on future legislation when substantive issues are introduced at stage 2. What we have at the moment is a clear indication on the key point that it is perfectly possible to amend the Prohibition of Smoking in Regulated Areas (Scotland) Bill at stage 2.

Mr Davidson: I do not argue with the technical point. One can change anything one likes apart from the long title of the bill—I am not even sure that one cannot change that. However, I find it strange that we are encouraging people not to use subterfuge—I would not go as far as to say that—but to test the water with a member's bill and then to change tack after they have introduced it. If we were to do that, we would have to go back and invite all those who gave evidence to confirm what they said or ask them whether they now have a different view. It is almost as though Stewart Maxwell is starting the bill again. It is not that we have not had chats about that, but I felt that he was a little disingenuous at the introduction of the bill.

Janis Hughes: I accept David Davidson's point, but I return to a point that Kate Maclean made earlier. It was my understanding, too, that it was because of a technicality that the bill was introduced to propose a ban in regulated areas. Stewart Maxwell looks puzzled, so perhaps I should ask a direct question. Why did you draft a bill that would prohibit smoking only in regulated areas, rather than introduce a total ban? I take David Davidson's point: we took evidence on the proposal to ban smoking in regulated areas in which food is served, but now you want to change the substance of the bill.

Mr Maxwell: A number of points have been raised. As far as I am aware, the committee took evidence on the bill, rather than just on the specific provisions about food. Section 2(2) would require Scottish ministers to consult before amending the meaning of "regulated area", so consultation in the event of an extension of the bill's scope was built into the bill.

Janis Hughes asked why we did not call for a full ban in the first place. Members should remember that I indicated my intention to introduce a member's bill well over a year ago and I think that everyone would agree that since then there has been a tremendous amount of debate and argument and a tremendous amount of evidence has come forward. Things have moved on considerably and at quite a pace. The bill was drafted on the basis of the evidence and public opinion at the time, but I understood that the situation might move on; that is why we drafted the bill in a way that would leave its scope open to amendment if the evidence indicated that that would be necessary.

I have copies of all the written submissions that the committee received and I attended all the evidence sessions that the committee held, as did members. It was clear that the debate had moved on and that the evidence showed a move towards support for a full, rather than a partial, ban. I do not refer only to witnesses who supported anti-smoking measures; the representative from the British Hospitality Association stated clearly that the association would prefer there to be a level playing field, so it would prefer a full ban. When I gave evidence to the committee on 29 June, I said that given the evidence that had been received at stage 1, it seemed reasonable to conclude that a full ban would offer a simpler approach and would be supported not only by those who gave evidence to the committee but by the wider public.

Janis Hughes: I accept what you say about the evidence that we received and I am pleased to hear you say that, as time has passed since you introduced the bill, much more evidence has come to the fore. That is why there has been such a response to the Executive's consultation on a total ban on smoking in public places. You acknowledge that a lot of new evidence is being received, so would it make sense to wait and hear that evidence, which is being received in response to proposals for a total ban?

14:45

The Convener: Janis Hughes's point really belongs to the next item on the agenda. It is for the committee, not Stewart Maxwell, to decide how to proceed.

Mike Rumbles: I do not know whether my question to Stewart Maxwell is appropriate, but his answer might inform the decision that we make under the next agenda item. What would you think if the committee were to decide today to recommend that the Parliament suspend consideration of the bill until the Executive comes forward with the material that it receives, on the ground that the committee and the Executive should not do the same work at the same time?

Mr Maxwell: This might be a semantic point, but for clarification, when you say "suspend", do you mean "extend" consideration of the bill?

The Convener: We cannot suspend consideration; we can only extend consideration.

Mr Maxwell: I am open minded on the matter. I understand that the Executive's consultation has

attracted something like 10 times as many responses as any other consultation has received and that the Executive has conducted research and held an international conference. It is for the committee to decide what to do, but I can understand why the committee might decide to extend stage 1 consideration, and I would not throw up my hands in horror at that prospect. The most important point is that we should have a clear, transparent parliamentary process that is open to all and accountable.

Throughout Scotland, there is a huge amount of interest in this issue. People on both sides of the debate have strong opinions. It would be better for the committee to dot all the i's and cross all the t's than simply to jump in while it is unsure about the position. It would be preferable for us to go through the stage 1 process and to take evidence from all the sources, as that would allow us to take a solid decision at the appropriate time. The Executive has said that it will take a decision by the end of the year. If that means the committee delaying stage 1 consideration of the bill until January, I can understand why it might decide to do so. That would not be an unreasonable decision to take.

The Convener: That is clear. As members have no other questions, I thank Stewart Maxwell and the two other witnesses for their attendance. We will let you know what our decision is.

That ends our business in public. I ask all those who are not members of the committee to leave.

14:48

Meeting continued in private until 15:07.

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