HEALTH COMMITTEE

Tuesday 31 May 2005

Session 2

£5.00

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

CONTENTS

Tuesday 31 May 2005

HEALTH COMMITTEE
16th Meeting 2005, Session 2

CONVENER

Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)
*Kate Maclean (Dundee West) (Lab)
*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)
*Mrs Nanette Milne (North East Scotland) (Con)
*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)
*Mr Stewart Maxwell (West of Scotland) (SNP)
Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Rhona Brankin (Deputy Minister for Health and Community Care)

CLERK TO THE COMMITTEE

Simon Watkins

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERK

Roz Wheeler

LOCATION

Committee Room 2

Scottish Parliament

Health Committee

Tuesday 31 May 2005

[THE DEPUTY CONVENER *opened the meeting at 14:01*]

Subordinate Legislation

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Order 2005 (SSI 2005/260)

The Deputy Convener (Janis Hughes): Good afternoon. I welcome committee members, the Deputy Minister for Health and Community Care and members of the public to the 16th meeting this year of the Health Committee. Apologies have been received from the convener, Roseanna Cunningham, who is in South Africa as part of a parliamentary delegation.

Item 1 is subordinate legislation. The committee is asked to consider under the affirmative procedure an instrument dealing with amnesic shellfish poisoning. We have with us Rhona Brankin, who is accompanied by Chester Wood of the Food Standards Agency Scotland. The Subordinate Legislation Committee has no comments to make on the instrument. Minister, do you wish to make some opening remarks?

The Deputy Minister for Health and Community Care (Rhona Brankin): There are currently no reports of ASP in the United Kingdom. It is important to say that the current action limit may well protect against major outbreaks, but we have to recognise that food poisoning incidents are underreported. It has been suggested that there is a lesser risk of ASP from scallops. Although research is under way on that, there is currently no scientific justification for the claim or for raising the current action limit for ASP. It is imperative in the meantime that public health continues to be protected as at present. The alternative is absolutely unacceptable.

The Deputy Convener: Do members wish to seek clarification on the order from the minister and her official?

Mrs Nanette Milne (North East Scotland) (Con): I understand that the method of testing for scallops that are affected by amnesic shellfish poisoning is likely to change in the near future, so I will not oppose the order.

The Deputy Convener: As no members wish to debate the order, I invite the minister to move motion S2M-2850.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No. 4) (Scotland) Order 2005 be approved.—[*Rhona Brankin*.]

Motion agreed to.

The Deputy Convener: Thank you for your attendance, Ms Wood. Minister, you are staying with us for the next item.

Smoking, Health and Social Care (Scotland) Bill: Stage 2

14:04

The Deputy Convener: Item 2 is consideration of the Smoking, Health and Social Care (Scotland) Bill at stage 2. I remind members that, as previously agreed, at today's meeting we will consider only those amendments relating to sections 24 to 30, in part 5 of the bill. That means that the first 11 groupings on the groupings lists will be debated today.

Section 24—Payments to certain persons infected with hepatitis C as a result of NHS treatment

The Deputy Convener: Amendment 74, in the name of the minister, is grouped with amendments 75 to 78.

Rhona Brankin: The Skipton Fund scheme recognises that there is a risk that people who were infected with hepatitis C as a result of national health service treatment with blood, tissue or blood products might pass the infection on to close family members or partners. The scheme makes provision for ex gratia payments to secondary infectees who meet the eligibility criteria. However, we believe that provision for that important group of people should be enshrined in the bill. The bill as introduced does not make provision for secondary infectees and amendments 74 to 78 will correct that position. If the amendments are not agreed to, the Scottish ministers will be unable to pay eligible secondary infectees who claim under the scheme. That is clearly unacceptable.

The amendments will allow claims against the Scottish ministers from claimants in respect of individuals who were infected through contact with an individual who was infected with hepatitis C as a result of NHS treatment. The Skipton Fund scheme was set up to alleviate the hardship of people who are alive and were infected with hepatitis C as a result of NHS treatment through blood, tissue or blood products. In some cases, the infection might have been transferred to a partner or close family member and the scheme acknowledges that by giving eligible secondary infectees the right to claim ex gratia payments from the scheme. A number of conditions must be satisfied if claims are to be met and the amendments set out those conditions.

Amendment 74 is a technical amendment to prevent confusion over paragraph numbering from arising as a result of the insertion of a new paragraph in section 24 by amendment 75. Amendment 75 will provide a statutory basis on which the Scottish ministers can make payments to secondary infectees through the Skipton Fund. Eligible secondary infectees will have acquired hepatitis C through contact with a person who was infected as a result of NHS treatment before 1 September 1991; they will have a specified relationship with the primary infectee—for example, the infection might have been passed from mother to baby or from partner to partner; and they will not have died before 29 August 2003.

Amendment 76 sets out who is eligible to claim and specifies the relationships that will confer eligibility to claim from the scheme. Amendment 77 is a technical amendment that is required to introduce amendment 78. Amendment 78 will establish two key requirements: the secondary infectee must be infected with the hepatitis C virus; and the person from whom the secondary infectee acquired the virus must have acquired the virus through NHS treatment prior to 1 September 1991.

I move amendment 74.

The Deputy Convener: We have been joined by Stewart Maxwell MSP. Will you indicate whether you are here as an observer or as a committee substitute?

Mr Stewart Maxwell (West of Scotland) (SNP): I am here as a committee substitute for Roseanna Cunningham.

The Deputy Convener: Thank you.

If no member wants to comment on amendments 74 to 78, I ask the minister to wind up.

Rhona Brankin: I emphasise that the amendments are required to enable the Skipton Fund scheme to meet the policy objective of ensuring that ex gratia payments can be made to all eligible people to help to alleviate their suffering. I do not think that any member of the committee will disagree with that objective.

Amendment 74 agreed to.

The Deputy Convener: Amendment 57, in the name of Shona Robison, is in a group on its own.

Shona Robison (Dundee East) (SNP): Amendment 57 would remove the arbitrary start date for claims, to allow the dependants of people who died before 29 August 2003 to make a claim. Currently, the family and dependants of a person who died on 29 August 2003 can make a claim, whereas the dependants of someone who died 24 hours earlier cannot do so. That is unfair and unjust.

I do not believe that amending the bill by removing the date to create a level playing field for everyone would have huge financial consequences. As we heard in evidence from

Frank Maguire and others, the number involved would be very small. I remind members that the Skipton Fund has an underspend because fewer claims than expected have been lodged to date.

Deaths from hepatitis C must be referred to the procurator fiscal, so the minister and her officials may well have the figures and will be able to determine the number of people who would be affected should the date be removed from the bill. I am confident that only a small number of people are involved and that the change would not have a huge financial impact on the Skipton Fund.

The amendment would right a wrong. We cannot have an arbitrary date that discriminates against the dependants of some people who are deceased. That is unjust. The amendment would remove that injustice.

I move amendment 57.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I agree with Shona Robison. We are dealing with a matter of conscience. The date does not really matter. The issue comes down to where and how someone acquired the infection. A considerable time can elapse between someone acquiring an infection and showing signs and symptoms of it, so it might be very difficult for them to make themselves known to the authorities in time to comply with a date.

The most important issues are where someone got the infection and how they got it. If they can prove all the things that are required, I do not think that the date is necessary. I have spoken to people who have acquired the infection and those connected with them and I know that not a large number of people would be affected. We would not be opening the floodgates, because, to be able to apply, people would have to be in the appropriate category.

Helen Eadie (Dunfermline East) (Lab): I am not inclined to support amendment 57, although I will listen to the points of view of other members. I am persuaded by the minister's argument that the fund is intended for people who are alive as opposed to the families of people who have died. It was always intended that the money should make life easier for people who were living with hepatitis C. It was on that basis that the money was passed on.

My other reason for taking the view that I have arrived at is that throughout the discussion, both in formal meetings of the committee and in our informal discussions round the table, we have been at pains to try to establish the exact number of people involved. Responsible politicians must always ensure when they take decisions that the resources will be available to make payment to the people concerned.

One intention behind the amendment is to expand the number of people who will receive money from the fund, but it is not clear to me that we can take such a decision today, as we do not have sufficient information. The best guesstimate that I have heard is that we could face a fivefold increase in the number of people who would be paid. I would like to get firm information from the minister before we take a decision. I am not in the business of writing a blank cheque that might place an intolerable strain on other parts of the health service. I must be sure that money will come to my area to deliver all the key services that are needed.

I am not unsympathetic to the families of people who have died, but the fundamental point that the ministers have made throughout is that the payments are intended to make the lives of people who are suffering from hepatitis C much easier. There is no doubt that the disease has care implications. However, if the amendment were agreed to, people might argue that we were switching to a compensation scheme, although that is not what the amendment says.

14:15

Kate Maclean (Dundee West) (Lab): I will agree with one of Helen Eadie's points and disagree with another. I disagree that the fund will be used only for people who are alive, because, if people died between 29 August 2003 and 5 July 2004, their estate will receive compensation. The Executive is already saying that money will be given to the estate or the families of a certain number of people who have died. The problem is that the date that has been set is arbitrary—it was set according to the announcement of the scheme. I have difficulty with that inconsistency.

Although I am sympathetic to Shona Robison's amendment 57, I agree with Helen Eadie that we do not have enough information about what the costs would be. I hope that the minister will be able to give us more details about how many people we are talking about, how that figure has been arrived at and what the cost implications are. I am interested in that information.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): I, too, would like more information, so perhaps the minister can give us some today. If we agreed to amendment 57, would the Skipton Fund or the NHS in Scotland pay? If it was the Skipton Fund, would we be running a risk that, in effect, other victims would have to pay? I am interested in the extent of the liability, which has not been described clearly. In our evidence sessions on the issue, we requested information from witnesses on the number of people who are, if you like, in the queue, but I do not think that that was followed up, although perhaps we could check.

The minister may or may not be able to assist us with another issue in which I am interested. Would amendment 57 change the Skipton Fund payments fundamentally? The payments come with the assurance that they are ex gratia. Many of the people who will receive the payments will be on benefits, but there is the assurance that those benefits will be unaffected by the ex gratia payment and that there will be no tax liabilities. If we accept amendment 57, would that change the fundamental principle? If we moved to something outwith the Skipton Fund, the system could perhaps be defined as more akin to a compensation fund, which would raise questions about tax and benefits.

My final question is for my fellow committee members who support amendment 57. If the current date is changed, what date would apply? It is important that, as legislators, we try to set a date so that we can make calculations about the overall costs and impact of the amendment on either the Skipton Fund or the NHS.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Amendment 57 is the most important amendment to the bill that we will consider. It affects real people deeply—we do not know exactly how many people it affects, but it certainly affects people. Shona Robison outlined a moral case; she said that the current proposals are unfair and unjust and that the amendment aims to right a wrong. As Jean Turner mentioned, the amendment is about a matter of conscience.

I listened carefully to Helen Eadie, who said that the scheme was always intended to help people who are alive, which I accept. However, if that is the case, what about those people who died between 29 August 2003 and the start of the operation of the Skipton Fund on 5 July 2004? As it stands, the bill is neither just nor fair.

Duncan McNeil asked what date should apply. Amendment 57 would remove the reference to 29 August 2003, so ex gratia payments would be available to those who were infected before 1 September 1991. The date is quite clear. Alternatively, the Executive could have come forward with another date. For example, the start date for ex gratia payments could have been 5 July 2004, which would have made it clear that the Executive's intention was to benefit only those who are alive.

Unfortunately, we have several criteria in the bill. It is only right that we amend the commencement date of the ex gratia payment, but how best should we do that? Should we accept Shona Robison's amendment 57? My preference is for the minister to make it clear in her summing up that she will take the issue to stage 3. If she commits to re-examining the issue, I hope that Shona Robison will withdraw her amendment. One thing is sure: the date in the bill is not the right one. Unless the minister makes a commitment to review the matter, I am minded to support Shona Robison's amendment 57, on the basis that that will ensure that the issue is considered again at stage 3.

Mr Maxwell: Most of the issues have been covered by other members, so my comments will be brief. Helen Eadie and Duncan McNeil made valid points, but the issue is relatively straightforward—it is a matter of justice for all those who have suffered. It is particularly unjust to exclude some dependants on the basis of an arbitrary date in the bill.

Helen Eadie made the point that the scheme is for those who are alive, but I hope that she accepts that there is an inconsistency in her argument, given that the dependants of those who died between the two dates in 2003 and 2004 can benefit.

I hope that members will support amendment 57, because, if the Parliament is about anything, it should be about justice and compassion. Amendment 57 is an example of what we are here to do.

Mrs Milne: I reserve judgment. I fully accept Shona Robison's point about unfairness. My concern is the number of people involved. The number of those who were infected with blood products must be finite, but we do not have that number. If the minister also does not have it, I would be happier not to take a decision today, but instead to address the issue at stage 3, when I hope that the information will be available to us to enable us make a reasoned judgment.

Rhona Brankin: I cannot support amendment 57 without further consideration of the costs that could be involved. I have listened to members' comments and I agree with many of them. I begin by pointing out, as members have done, that payments from the Skipton Fund are not compensation, but ex gratia payments to relieve the hardship and suffering of those alive today who contracted hepatitis C through NHS treatment with blood, tissue or blood products.

Of course, we all have great sympathy with those who have been infected with hepatitis C through NHS treatment. That is not under debate. However, the amendment would allow relatives to make claims in respect of individuals who died before the scheme was announced on 29 August 2003. That date was agreed by all four United Kingdom Administrations as the start date.

As has been said, the amendment would open up the scheme to a much wider group of people who died prior to that date. That would be costly, but it would also change the nature of the scheme. The cost estimates for the scheme do not make any provision for those who died before 29 August

2003. We and the other UK Administrations would have to find major extra resources to meet any further costs and that could be at the expense of patients and the delivery of health services generally.

The scheme that we propose was carefully costed to offer a fair package for those who contracted hepatitis C from NHS treatment and to balance that with the wider interests of NHS patients. To depart from it could give rise to serious additional costs and difficulties. It would involve changing key aspects of a scheme that is already in operation and is benefiting large numbers of people in Scotland and throughout the UK.

As has also been pointed out, changing the system to a compensation scheme could put at risk the social security derogation, so Skipton Fund payments in future could be means tested. In the present scheme, Skipton Fund payments do not affect social security payments. I am concerned about anything that would damage or undermine the operation of the existing scheme.

As I said, meeting claims in respect of those who have died would not reflect the main purpose of the scheme, which is to help those who are alive today with the extra difficulties and expenses that they face. It would also mean significant additional costs to the Executive. Along with the other three UK Administrations, we developed a scheme that we believe is fair and affordable. It makes payments to relieve the suffering and hardship of the individuals involved, but it does not impact on the NHS's ability to deliver on its other obligations.

The scheme has been successful in helping more than 400 people in Scotland. To date, more than £10 million has been paid out to Scottish claimants. The work that was carried out by Lord Ross's expert group in 2002 suggested that 4,000 people in Scotland had been infected with hepatitis C through blood products or blood transfusion. It was estimated that about 1,200 of those people were still living at that time. That indicates the large scale of the cost increases that we might face if the scheme was extended. It is clear that there would not be claims in respect of all the deceased people who would be eligible, but there could be a large number of additional claims.

If the committee supports amendment 57, that will mean additional costs at the expense of the delivery of health services to the people of Scotland today. We do not believe that that would represent the best use of the limited resources that are available in the health budget, which have to meet many important priorities throughout Scotland.

In view of the lack of information at this stage, and having heard the arguments, I invite Shona Robison to withdraw amendment 57. That would enable us to look further into what could be difficult cost issues and to return to the matter at stage 3.

14:30

Shona Robison: There are a number of questions that I would like to ask the minister, but I do not know whether I am in a position to do so. She cited the figure of 1,200, but I do not know where that comes from or what the breakdown is. I find it surprising, because the figures that are cited by those who are involved with the relatives are nowhere near that figure. I would certainly like to see more detail on the figure that she gave.

I would have liked to have heard more of a commitment from the minister that she is genuinely prepared to look at the date again. However, her comments suggest that she does not want to do that. She seems already to have decided that cost would be a barrier in that respect. I should also add that changing the date would not put the scheme of financial assistance at risk by somehow transforming it into a compensation scheme.

The minister was also inconsistent when she said—three times—that the scheme is for those who are living, not for their dependants. However, the scheme is for dependants of a relative who died between 29 August 2003 and 5 July 2004. We need some consistency on the matter. If the minister really believes what she said, no relatives would be allowed to claim under the scheme. That is not the case. Her comments are inconsistent and unfair to the relatives who cannot claim.

I am prepared to acknowledge that more work needs to be done on the numbers. I am also prepared to meet the minister halfway if she can give a genuine commitment to reconsider the date instead of simply coming up with evidence on why she will not support amendment 57.

The Deputy Convener: Shona, will you indicate whether you intend to press or withdraw amendment 57?

Shona Robison: Well, if the minister is not prepared to come back—

The Deputy Convener: I do not think that at this stage in the debate there is scope to ask the minister any further questions. I am afraid that that opportunity has gone.

Shona Robison: That is a pity, because I think that there is room for negotiation. I am afraid that, given the minister's comments, I will have to press amendment 57.

The Deputy Convener: The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Maclean, Kate (Dundee West) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)

ABSTENTIONS

Milne, Mrs Nanette (North East Scotland) (Con)

The Deputy Convener: The result of the division is: For 5, Against 2, Abstentions 1.

Amendment 57 agreed to.

Amendments 75 to 78 moved—[Rhona Brankin]—and agreed to.

The Deputy Convener: We move to group 3. Amendment 58, in the name of Shona Robison, is grouped with amendments 59 and 79.

Shona Robison: Amendments 58 and 59 would make it possible for people who now live outwith the UK, but who lived in Scotland immediately before they left, to claim under the Skipton Fund. As the bill stands, a person has to be resident in Scotland to claim under the fund, which means that someone who was infected with hepatitis C as a result of NHS treatment in Scotland and then went to live abroad would be denied any financial assistance. Surely that cannot be right and is adding insult to injury. As only a small number of people will be in that position, I do not think that such a move will have major financial implications.

I move amendment 58.

Dr Turner: Shona Robison has explained her amendments clearly but amendment 79 goes a bit further. If someone has lived in Scotland and then gone on to live anywhere else outside Scotland or the UK they should be able to apply to the Skipton Fund, because they could have been in hospital in Scotland when they got their infection and then gone off to wherever. As I said earlier, what is important is where someone is when they get their infection and how they get it. The fact that someone can say that they got an infection in an NHS establishment in Scotland means that where they live thereafter is almost irrelevant. They should be able to apply. I therefore support amendments 58, 59 and 79.

Helen Eadie: I am not minded to support amendment 79 but I am persuaded by Shona Robison's amendments.

I am not minded to support Jean Turner's amendment because it could cover anyone who has lived in Scotland at any time irrespective of their nationality—the amendment does not make that clear—and I wonder if Jean has thought that through. It could open up all sorts of possibilities so I am not happy to support amendment 79.

Rhona Brankin: I support Shona Robison's amendments 58 and 59. They will ensure that in terms of Scottish residency requirements, people who contracted hepatitis C from NHS treatment and then left the UK to live abroad will be eligible to claim from the Skipton Fund, provided they were resident in Scotland before they left the UK. The amendments will clarify the residency qualification aspects of the scheme and will provide useful transparency for applicants. The committee brought to our attention the need to extend the residency qualification to include that group and we believe that amendments 58 and 59 will achieve that.

I cannot support Jean Turner's amendment 79 as it goes further than amendments 58 and 59. It would permit claims to be made of the Skipton Fund if a person had ever resided in Scotland. That could give rise to an anomalous situation where an individual would be entitled to claim payments from Scottish ministers and another UK Administration simultaneously and that would be illogical. It would extend the scope of the scheme beyond what is necessary to ensure that all those who are entitled to payments under the scheme are eligible to receive them. Amendments 58 and 59 are clearer about who qualifies for the scheme and that is why I cannot support amendment 79. I ask Jean Turner not to move it.

Shona Robison: I am pleased that the minister supports my amendments. They are just common sense.

Amendment 58 agreed to.

Amendment 59 moved—[Shona Robison]—and agreed to.

The Deputy Convener: I ask Jean Turner if she wishes to move amendment 79.

Dr Turner: I will move the amendment because I feel strongly about it. In all conscience, if someone was living in Scotland when they got their infection that is the important thing. It should not have anything to do with where they eventually live. I think that the amendment is very clear but it might well be that it could be improved upon legally.

Amendment 79 moved—[Dr Jean Turner].

The Deputy Convener: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

ABSTENTIONS

Maxwell, Mr Stewart (West of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)

The Deputy Convener: The result of the division is: For 1, Against 5, Abstentions 2.

Amendment 79 disagreed to.

The Deputy Convener: Amendment 60, in the name of Shona Robison, is in a group on its own.

Shona Robison: Amendment 60 would mean that the Skipton Fund would have an appeals procedure. It is important that anyone who is refused assistance by the fund at any stage of their illness, whether it is for the initial claim or for the higher-rate claim, should be entitled to appeal that decision. That is in line with natural justice.

I move amendment 60.

Rhona Brankin: I support the principle of having a right of appeal, and I believe that Shona Robison's amendment 60 is well intended. The details of an appeals process are currently being developed by all the United Kingdom Administrations. The policy intention has always been for the scheme to include a right of appeal. The right of appeal will allow those whose claim is rejected by the Skipton Fund to appeal against a decision and that should be based on the balance of probabilities.

We expect appeals mainly to concern issues around whether an individual acquired hepatitis C infection through NHS treatment and whether a stage 2 payment should be made on the basis of evidence of advanced liver disease. The key point is that an appeal should relate to the decision that was taken by the Skipton Fund on a claim, to the evidence and to the reasons for rejecting that claim and not to wider aspects of how the claim was determined.

Amendment 60 is very general, and it could allow for appeals to be made on grounds that are not intended under the scope of the Skipton Fund scheme. For example, one dependent could appeal against a payment being made to another dependent of an eligible person who had died. I ask Shona Robison to withdraw her amendment on the understanding that the Executive will introduce an amendment at stage 3 to ensure that the right of appeal is relevant to the scheme as established, and that it benefits those individuals who are eligible to claim. Shona Robison's amendment is too wide in scope. If she chose to press it at this stage, the Executive would be required to amend the provision further at stage 3.

Shona Robison: Given the minister's assurance that the Executive will lodge a stage 3 amendment to establish a right of appeal, I seek leave to withdraw the amendment.

Amendment 60, by agreement, withdrawn.

The Deputy Convener: Amendment 61, in the name of Shona Robison, is grouped with amendment 80.

Shona Robison: In some ways, amendment 61 relates to amendment 57, which was about the date of 29 August 2003. Amendment 61 would remove the current Skipton Fund rule under which claims may not be made posthumously for someone who died after 5 July 2004. That is yet another arbitrary date to preclude claims for those who have died. The rule states that, if the person who is affected with hepatitis C died after 5 July 2004 but did not make a claim while alive, their dependents will not benefit. That is inconsistent with the fact that the relatives of someone who died between the dates of 29 August 2003 and 5 July 2004 can claim against the scheme, irrespective of when the case was lodged. I cannot understand why the minister would seek to place an additional hurdle before the relatives of those who died after 5 July 2004. I see no difference between their right of claim and that of relatives of those who died between the two dates. It is another inconsistency in the rules.

I move amendment 61.

14:45

Rhona Brankin: Amendment 80 clarifies that a claim must be submitted when a person is alive. That is intended to reinforce the basic principle of the scheme that the fund exists to help those alive and suffering. The only exception to that is the period between 29 August 2003 and 5 July 2004 when the mechanics of the scheme were being developed. As I said previously, payments from the Skipton Fund are not compensation but ex gratia payments to relieve the hardship and suffering of those living today who contracted hepatitis C through NHS treatment with blood, tissue or blood products.

I believe that our approach strikes a fair balance between helping to alleviate the suffering of those who have been infected by hepatitis C through NHS treatment and meeting the wider needs of health care in Scotland today. I do not believe that Shona Robison's amendment 61 achieves that balance. Extending the scope of the scheme in the manner that she proposes will not alleviate hardship for current sufferers of hepatitis C;

instead it will add to the costs of the scheme. The additional costs will have to be met from the existing health budget and will be at the expense of services and patient care in Scotland. I cannot support an amendment that would cause a fundamental conflict in the way that the UK-agreed Skipton Fund scheme is operated in Scotland. I invite Shona Robison to withdraw amendment 61.

Mike Rumbles: I am not happy with what I have just heard. As far as I am concerned, if a wrong is done to one person because of the bill, a wrong is done to one person. It seems that it is for administrative convenience that all the four Administrations of the United Kingdom use the same date, rather than doing what is the right thing to do. For that reason I am minded to support amendment 61, because it is in line with amendment 57, which we agreed to earlier.

Shona Robison: There might be a good reason why someone did not make an application before they died. They might not have known about the fund, they might not have been in a fit state to make an application or they might have died suddenly. One can think of a host of scenarios. It is about fairness and consistency. The arbitrary dates are not fair or consistent. Surely it is up to us to ensure that the scheme, as it is administered in Scotland, is fair and just and does not discriminate against anyone because of arbitrary dates that are used for one reason or another. I will press amendment 61.

The Deputy Convener: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Maclean, Kate (Dundee West) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)

ABSTENTIONS

Milne, Mrs Nanette (North East Scotland) (Con)

The Deputy Convener: The result of the division is: For 5, Against 2, Abstentions 1.

Amendment 61 agreed to.

Amendment 80 moved—[Rhona Brankin]—and agreed to.

The Deputy Convener: Amendment 62, in the name of Shona Robison, is in a group on its own.

Shona Robison: Amendment 62 would remove the provision that Skipton Fund payments may be taken into account in awards made under other proceedings. As the bill stands, if someone claims under the Skipton Fund they could de facto be prevented from taking legal action for compensation, as the Skipton Fund financial assistance could be put at risk. That runs counter to assurances given by the minister that that would not be the case. If the provision is not removed it will be a barrier to some claiming under the Skipton Fund who believe that they have yet to receive true justice for being infected with hepatitis C while undergoing NHS treatment and might wish to seek recourse elsewhere. We should not be putting barriers in the way of people who want to do that. Amendment 62 would ensure that that does not happen.

I move amendment 62.

Rhona Brankin: I am aware that the Health Committee raised the issue during its stage 1 deliberations. I support the principle that ex gratia payments made to a person under the Skipton Fund scheme should not affect compensation or other payments that that person receives. Therefore, I support amendment 62.

Shona Robison: I thank the minister for supporting the amendment.

Amendment 62 agreed to.

Section 24, as amended, agreed to.

Section 25 agreed to.

Section 26—Implementation of certain decisions under the 2001 Act

The Deputy Convener: Amendment 69, in the name of the minister, is in a group on its own.

Rhona Brankin: Amendment 69 is one of a number of technical amendments to the Regulation of Care (Scotland) Act 2001 that have been identified as necessary following implementation of that act. Under part 2 of the act, local authorities that seek to provide certain care services must apply to the Scottish Commission for the Regulation of Care to register those services and the care commission may impose certain conditions on a local authority's registration of such services. It is open to the local authority to make representations to the care commission regarding the imposition of conditions and to apply to the commission for variation or removal of any conditions.

Amendment 69 is similar to the amendments that the bill already makes to section 16 of the 2001 act. The change that it would make to section 37 of the act would make it clear that the care commission is required to consider any representation that the care service provider—in this case, the local authority—makes on conditions that are placed on the registration of care services

before it decides whether to impose, vary or remove those conditions. The current wording of section 37(2) of the 2001 act does not allow the care commission to take account of representations that the local authority makes. Amendment 69 will rectify that and ensure that the act accurately and consistently reflects the Executive's policy intention.

I move amendment 69.

Amendment 69 agreed to.

Section 26, as amended, agreed to.

After section 26

The Deputy Convener: Amendment 1, in the name of the minister, is in a group on its own.

Rhona Brankin: Amendment 1 will give the Scottish ministers the power to vary the minimum frequency of the care commission's inspection of care services. The Executive's vision for care service regulation is continuous improvement in users' experience of care services through transparent, proportional, accountable, targeted and consistent regulation. I stress the word "users" as the amendment is ultimately about them.

The current statutory arrangements make it difficult to fulfil that user-centred vision, as they require the care commission to inspect care services at a specified minimum frequency and the commission has no scope for inspecting at a lower frequency regardless of the circumstances. That means that the commission's resources are not being used to best effect to drive up the quality of care.

The powers in amendment 1 would apply to the whole range of care services that the care commission regulates. I am aware that the committee was particularly interested in the amendment's effect on services that currently receive a minimum of two annual inspections—in particular, care homes—and I am happy to repeat that we have no plans to change the minimum inspection frequency for care homes. However, it is worth remembering that the services that are inspected twice a year represent less than 14 per cent of the total number of care services that the commission regulates. The remaining 86 per cent covers a wide range of other care services, such as nurseries and childminders, care at home, adult day care services, child care and nurse agencies. At present, those services are all subject to the same minimum requirement of one inspection a year, despite the wide diversity of provision that they represent. It would be surprising if the current one-size-fits-all approach was the right one for all the services concerned.

The proposed new power will enable ministers to give the care commission the flexibility to target its regulatory activities on the areas of greatest concern. It is capable of being exercised for particular types of care services where it can be demonstrated that the quality of care will not be affected by a change in the level of inspections. It will also enable the care commission to redirect resources committed to inspections to other things, such as consulting service users and advising and supporting providers. That will help to drive improvements in care services.

We are not proposing to do away with the concept of a statutory minimum for the frequency of inspections but want to enable ministers to specify new, lower minimum frequencies for specified categories of care services. That would enable the regulatory framework to move away from the one-size-fits-all model. The statutory minimum frequencies could be tailored to suit the particular circumstances of the wide range of care services that the care commission regulates.

Before making an order under the proposed new power, ministers would be required to consult the care commission in order to ensure that they had an informed, risk-based assessment of the needs of the care services in question. Before proceeding to consult, we would take into account, for example, the vulnerability of the client group, the type of service, the number of complaints and their outcomes across a particular care service sector, and workforce-related issues such as staff turnover or levels of qualified staff across the relevant sector. If we were satisfied that there was enough evidence to support a change to the inspection frequency, ministers would be required to go out to public consultation, which would, of course, include users and providers of the services concerned. Finally, any order that was made by ministers would be subject to the affirmative resolution procedure. That means that Parliament would, rightly, have the last word. If ministers cannot persuade Parliament to approve a proposed change, it will not happen.

The new regulatory framework for care services is settling down. The care commission has gained valuable experience of the operation of the framework and is developing a good understanding of the balance of risks that are inherent in the many services that it regulates. The current requirements, however, constrain the care commission from capitalising fully on that experience. Now is the time to introduce a useful measure of flexibility that will benefit service users and providers.

I move amendment 1.

Shona Robison: I am pleased that the minister has, again, put on the record the fact that it is not the Executive's intention to reduce the frequency of inspections for care homes, which was a matter of concern to me, and that any changes would

have to be approved by the Scottish Parliament. On that basis, I am happy to support the amendment.

Mrs Milne: I agree with Shona Robison and think that the safeguards that have been included are sufficient.

Amendment 1 agreed to.

Sections 27, 28 and 29 agreed to.

Section 30—Amendment of Adults with Incapacity (Scotland) Act 2000: authorisation of medical treatment

The Convener: Amendment 70, in the name of the minister, is grouped with amendments 72, 73 and 71.

Rhona Brankin: Amendment 70 is a technical amendment to new section 47(1A) of the Adults with Incapacity (Scotland) Act 2000, as it will be amended by the bill. That section defines the categories of persons who may issue section 47 certificates and authorise medical treatment. Amendment 70 will ensure that those who are prescribed by Scottish ministers in regulations that are made under new section 47(1A) must be individuals; therefore bodies corporate or partnerships may not issue section 47 certificates and authorise medical treatment.

Amendment 71 clarifies some of the categories of additional health care professionals who will be able to issue certificates of incapacity under section 47 of the 2000 act by inserting definitions for dental practitioner and ophthalmic optician into section 47 of the act. The amendment clarifies the existing policy intention.

15:00

Amendments 72 and 73 will ensure that only relevant health care professionals who have undergone prescribed training will be able to issue certificates of incapacity under section 47 of the 2000 act. Members of the committee noted their concerns during stage 1, and the committee's stage 1 report recommended that the bill be amended to ensure that the extended range of health care professionals who will be allowed to issue certificates of incapacity must have undergone relevant training in assessment of capacity. The Executive agrees with the recommendation and would like to thank the committee for highlighting the issue. Amendments 72 and 73 will therefore amend the wording of section 30 of the bill to the effect that only additional health care professionals in the specified groups who have undergone such training as may be prescribed will be able to sign certificates of incapacity under section 47 of the 2000 act. I move amendment 70.

Amendment 70 agreed to.

Amendments 72 and 73 moved—[Rhona Brankin]—and agreed to.

The Deputy Convener: Amendment 81, in the name of Nanette Milne, is grouped with amendment 82.

Mrs Milne: Amendments 81 and 82 would remove the provision to extend the maximum length of mental incapacity certificates from one year to three years. The extension of the maximum duration of an incapacity certificate was supported by the professional bodies that gave evidence to the committee; however, the patient representative bodies that gave evidence had a number of concerns about the provision. The committee felt that any proposed extension could diminish the importance of regular and comprehensive reassessment of ongoing treatment and that lengthening the period of certification might be seen to encourage long-term use of medication without review.

The British Medical Association believes that regular reviews of treatment should continue, irrespective of the duration of incapacity or the duration of a certificate. It agrees with the committee that it is the individual's level of capacity that is being assessed and not the need for treatment. However, Alzheimer Scotland was concerned that extension of a certificate's duration would diminish the importance of regular and comprehensive reassessment of on-going treatment.

There is also significant concern about inappropriate prescribing of psychotropic medication to people with dementia in care homes. Those people might well be subject to longer-term incapacity certificates. The fear is that to lengthen the period of certification might encourage very long-term use of medication without review, which is why the committee agreed—I think we were unanimous—that changes in legislation should be governed by patient welfare. The committee felt that even with tight regulation there is a real risk that a three-year certificate would be used more extensively than intended, with a consequent reduction in patient care. We felt that if good practice points to an annual review, assessment of capacity and resulting certification should remain part of that annual review.

I move amendment 81.

Dr Turner: I have changed my mind since the committee's scrutiny of the bill at stage 1. I was one of the people who were concerned about care and incapacity being lumped together. However, it is incapacity that is being assessed, and that should not interfere with regular care of a patient. I have been reassured by what I have read that

they are two separate things and that if checks and balances are in place, that should mean that no patient should be worried about the three-year certificate.

Rhona Brankin: It is the Executive's policy to make the patient the focus of health care provision, in order to ensure that the patient obtains the best and most appropriate treatment. During the early operation of part 5 of the Adults with Incapacity (Scotland) Act 2000, which is concerned with authorisation of medical treatment, it became clear that improvements could be made. I am pleased that the committee is minded to support the Executive's proposal to widen the range of health professionals who can authorise medical treatment by completing a section 47 certificate, and I hope to be able to persuade the committee that the Executive's proposal to extend the duration of a certificate for up to three years, and then only for certain prescribed conditions and circumstances, will be of benefit to that group of adults with incapacity.

The general consensus among respondents to the Executive's consultation in March 2004 was that the maximum lengths of certificates of incapacity could be extended subject to various qualifications. For example, it was felt that extended certificates should not be used when it is likely that the adult might regain capacity or when an adult has, or might have, fluctuating capacity. In addition, it must be clear that vulnerable patients should have their clinical needs reviewed annually and that the maximum duration of the certificate should be extended only for certain conditions.

The evidence that was provided to the committee at stage 1 did not oppose the issue of certificates for up to three years, provided that they would apply to people whose conditions were not going to improve, and that the clinical needs of those patients would be subject to regular review. The regulations that we will introduce and the best practice guidance for general practitioners, which will be reflected in a revised code of practice, will address the points that were raised in evidence on those issues. The regulations and the code of practice will be fully consulted on with key stakeholders, including patient representative groups, carers and professionals.

The final regulations will make clear the specific conditions and circumstances for which it will be appropriate to issue a certificate of incapacity for up to three years. Health care professionals will not have discretion to widen the conditions or circumstances. Any proposed changes to the regulations will be subject to consultation, agreement by Scottish ministers and approval by Parliament.

A certificate of incapacity is the culmination of a process that assesses whether or not a patient is capable of understanding the intervention that a health care professional intends or proposes to carry out—it is not in and of itself a course of treatment. The benefits of an extended certificate of incapacity are that patients who have permanent incapacity will not have their health care delayed by having to undergo assessment for incapacity every year. For some patients, the process can be distressing; indeed, two responses to the Executive's consultation made the point that recertification might actually be harmful to the adult with incapacity, so reduction of frequency will benefit that group of patients. I stress that that will not mean a reduction in care for those patients.

Health care professionals will not be required to assess annually the capacity of patients who have permanent incapacity. They will therefore be able to commit more time to meeting the clinical needs of such adults with incapacity and of other patients. The requirement for all health care professionals to comply with all existing requirements for relevant, appropriate and timely interventions remains. The code of practice will explain the need for GPs to review their patients' medication annually in line with best practice. In addition, the new pharmaceutical care services contract will allow patients to have their medication supplied, monitored and reviewed regularly as part of the shared care arrangements between community pharmacists and GPs. That will add to the regular monitoring of patients on repeat medication.

Health care professionals care about their patients. Our proposals will certainly not lessen patient care, but will help to ensure that those professionals continue to deliver the best possible service to their patients. I therefore ask Nanette Milne to withdraw amendment 81 and not to move amendment 82.

The Deputy Convener: I invite Nanette Milne to wind up and to say whether she wishes to press her amendments.

Mrs Milne: I find myself in a slightly difficult situation because I can follow what the minister is saying and the intention behind the extension of the period of certification, but I am concerned that there are still imponderables. Jean Turner said that if the checks and balances are in place there should be no worries about the matter. The minister said that there were no regulations yet, but there will be a code of practice. I am concerned that there are still a lot of grey areas. I am reluctant to withdraw amendment 81 without having received more concrete assurances.

The Deputy Convener: I am afraid that I have to ask you for a decision. You must either press the amendment or seek leave to withdraw it.

Mrs Milne: If further information is likely to be forthcoming before stage 3, I will withdraw the amendment with the proviso that I could raise the issue again at stage 3. I would prefer to do that.

The Deputy Convener: So—you wish to ask for the committee's agreement to withdraw the amendment.

Mrs Milne: Yes. I seek to withdraw amendment 81. If the committee agrees, I might raise the matter again at stage 3.

Amendment 81, by agreement, withdrawn.

Amendment 82 not moved.

Amendment 71 moved—[Rhona Brankin]—and agreed to.

Section 30, as amended, agreed to.

After Section 30

The Deputy Convener: Amendment 63, in the name of the minister, is grouped with amendment 64.

Rhona Brankin: Amendments 63 and 64 provide for a right of appeal against removal to hospital, detention in hospital or continuing detention in hospital for anyone who suffers from an infectious disease, under powers that are contained in the Public Health (Scotland) Act 1897. The provision of a right of appeal against the use of those powers will ensure that the relevant provisions comply with paragraph 4 of article 5 of the European convention on human rights, which provides that

"Everyone who is deprived of his"

or her

"liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

Without the provision of a right of appeal, the powers may be difficult to enforce in some cases, with a consequent risk to public health. Provision of a right of appeal will ensure that public health may be protected where necessary while the human rights of the individuals concerned would still be protected. That is because courts, knowing that a right of appeal exists, would be more willing to countenance detention orders for people who have infectious diseases when the detention can be overturned if it is inappropriate; for example, if an individual who is thought to have an infectious disease that poses a risk is found on further testing not to be suffering from that disease.

I move amendment 63.

Amendment 63 agreed to.

The Deputy Convener: That ends today's business. I thank members for their co-operation.

Meeting closed at 15:13.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 10 June 2005

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron