HEALTH COMMITTEE

Tuesday 7 June 2005

Session 2

£5.00

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

CONTENTS

Tuesday 7 June 2005

HEALTH COMMITTEE
17th 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)
Carolyn Leckie (Central Scotland) (SSP)

CLERK TO THE COMMITTEE

Simon Watkins

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERK

Roz Wheeler

LOCATION

Committee Room 4

Scottish Parliament

Health Committee

Tuesday 7 June 2005

[THE CONVENER *opened the meeting at 14:02*]

Item in Private

The Convener (Roseanna Cunningham): Good afternoon and welcome to the meeting. We have received apologies from Helen Eadie. I ask Paul Martin to confirm that he is attending as a Labour substitute committee member.

Paul Martin (Glasgow Springburn) (Lab): I confirm that that is the position.

The Convener: Item 1 on the agenda is consideration of whether to take in private item 6, which will allow us to consider provisional options for evidence gathering on the Human Tissue (Scotland) Bill. Does the committee agree to take item 6 in private?

Members *indicated agreement*.

Subordinate Legislation

Mental Welfare Commission for Scotland (Appointment of Medical Commissioners) Regulations 2005 (SSI 2005/261)

Mental Health (Conflict of Interest) (Scotland) Regulations 2005 (SSI/2005/262)

14:03

The Convener: Item 2 on the agenda is consideration of subordinate legislation. Two Scottish statutory instruments are listed for consideration under the negative procedure at today's meeting: SSI 2005/261 and SSI/2005/262. This morning we received notification of the Executive's intention to withdraw SSI/2005/262 and to relay it in the near future in amended form. I ask the minister to confirm that that is the case.

Rhona Brankin (Deputy Minister for Health and Community Care): It is.

The Convener: Therefore, we will consider only SSI 2005/261. The Subordinate Legislation Committee had no comment to make on the instrument, and I have received no comments from any member of the committee. No motion to annul the instrument has been lodged. Do we agree that the committee does not wish to make any recommendation in relation to SSI 2005/261?

Members *indicated agreement*.

Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005 (draft)

The Convener: Item 3 is also subordinate legislation, but in this case the instrument is subject to the affirmative procedure. The draft regulations are made under section 244 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and relate to specific types of treatment that can be given and related safeguards. The Deputy Minister for Health and Community Care is accompanied by Fiona Tyrrell and Shirley Ferguson from the Scottish Executive Health Department's mental health division. The Subordinate Legislation Committee had no comments to make on the draft regulations. I ask the minister to make an opening statement.

Rhona Brankin: The draft regulations will introduce safeguards for certain medical treatments for mental disorder that are given to informal child patients. The regulations under section 244 of the 2003 act specify the conditions that must be satisfied before certain types of medical treatment may be given to informal child patients who are under the age of 16. Informal

child patients are children who are not subject to the compulsory provisions of the 2003 act. The treatments to which the safeguards will apply are electroconvulsive therapy, trans-cranial magnetic stimulation and vagus nerve stimulation. The safeguards that are to be introduced are similar to those that apply to children who are subject to the provisions of the 2003 act.

At present, an informal child patient who does not have sufficient capacity to consent to the treatments on their own behalf can be treated with the consent of a person who has parental responsibilities and rights. Under the draft regulations, when an informal child patient cannot consent on their own behalf, in addition to parental consent, a second opinion will have to be obtained from a designated medical practitioner who has been appointed by the Mental Welfare Commission for Scotland. In addition, either the medical practitioner who is primarily responsible for treating the patient or the designated medical practitioner must be a child specialist. If a child has the capacity to consent to treatment, they may consent on their own behalf, but certification by a child specialist—either the child's doctor or a DMP—will also be required. It will not be possible to give the treatments if a child has the capacity to consent but refuses treatment.

The draft regulations will ensure that informal child patients are fully safeguarded in respect of the treatments. I hope that my short explanation has been helpful for the committee. I am accompanied today by officials, and we will be happy to answer any questions.

The Convener: As members have no questions on the draft regulations and do not wish to debate them, I invite the minister to move motion S2M-2874.

Motion moved,

That the Health Committee recommends that the draft Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005 be approved.—[*Rhona Brankin.*]

Motion agreed to.

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

14:09

The Convener: Item 4 is further consideration of the Smoking, Health and Social Care (Scotland) Bill at stage 2. I remind members that, as we agreed previously, the committee will consider at today's meeting amendments that relate to sections 31 and 32 in part 5, sections 33 to 36 in part 6 and schedules 2 and 3. That means that we will debate only the first eight groupings in the list of groupings.

Section 31—Joint ventures

The Convener: Group 1 is on the governance arrangements for joint ventures. Amendment 89, in the name of Dr Jean Turner, is grouped with amendments 90 and 91.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): In lodging the amendments in the group, I am trying to achieve better governance, transparency and accountability and to ensure that the national health service in Scotland is "the majority share-holder" in all joint ventures.

From the evidence that the committee took, we know that the Royal College of Nursing Scotland was unconvinced by the experience in England and that the Scottish Trades Union Congress and Unison Scotland oppose the policy of joint ventures and question whether it represents value for money for the public. The Convention of Scottish Local Authorities agreed to it in principle, but raised concerns about its practical application. I, too, agree in principle, but I have doubts about how things will work in practice.

For example, I worked in an NHS health centre, which, although it was large, was never large enough for the work that had to be done. The pharmacy, which was the only part of the centre to rent its space, also did not have enough space. It would certainly need to expand to make full use of the new contract. I cannot see how a joint venture company could have solved our problems. Perhaps it could have done so in the short term, but I am not sure how a commercial company would expand to allow the flexibility that all NHS departments require if they are to expand or reshape themselves, as they have had to do regularly over many years. The NHS needs to be a major shareholder if it is to have security, especially if outside contractors come into the NHS working space, as happens in England.

The local improvement finance trust—or LIFT—joint venture model was put before the committee and was much favoured by the private companies

that gave evidence. We heard that, out of the 42 projects that have gone ahead, the oldest is only 18 months old. None of those trusts has been going long enough to throw up problems. We probably need more pilots—let us remember NHS 24.

There is one such joint venture in my constituency, which is in the form of a private company limited by guarantee. There are three partners: the NHS primary care trust, East Dunbartonshire Council and Scottish Enterprise. The model was chosen to help to regenerate a village after the closure of Lennox Castle hospital and the sale of land to build houses.

There are downsides to the LIFT model. Once board members have been appointed, they can reappoint themselves at the end of their term, if they wish to do so. That means that no one from the local community has a chance to stand for office. The community also has no voting powers or input at the annual general meeting. Once set, terms are fixed by the company limited by guarantee.

Many constituents say that the model is not fair and that they would have no involvement. They feel that the model is not transparent and that such companies would be accountable to no one but themselves. Because they lack information, people are even asking about the vested interests of board members and whether there is a possible conflict of interest. For example, if a local builder is on the board, how do people know that he does not have a vested interest?

The amendments in the group would introduce the transparency and accountability that are needed to protect board members and the Scottish Executive and to dispel public fears. The minister has said that a joint venture company would perform its obligations without recourse to Government or public funds. In the case that I have described, a private company limited by guarantee is made up of organisations that are publicly funded. What happens if they fail or have problems? Who will pick up the pieces?

We have not had time to give section 31 the full scrutiny that it deserves. Even the minister's own words implied that although it might be possible to develop alternative models, there would be local and national cost and time implications in doing so. The section requires the public and the private to perform their obligations in a joint venture that is without recourse to Government or public funds. We should not rush into commitments that involve public money without first making use of pilots. As I mentioned, we need only think of NHS 24.

I move amendment 89.

14:15

Shona Robison (Dundee East) (SNP): Like Jean Turner, I share a number of concerns about the provisions in the bill. Scrutiny is one such concern and another is the lack of alternative models. I recall Helen Eadie saying that she would have liked alternative models to have been put before the committee, which we could perhaps have explored had we had more time.

Jean Turner's amendments 89 to 91 try to introduce more transparency and accountability without throwing the baby out with the bath water. Given the lack of experience of such projects, we should support that aim, as we do not know much about how they will work on the ground. If nothing else, amendments 89 to 91 seek to put in place safeguards in case anything should go wrong.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I do not agree. Giving the powers that the amendments suggest to Scottish ministers would perhaps give them too much power, and would not allow the joint ventures to develop in all the ways that are outlined in the bill. Amendments 89 to 91 are too restrictive.

Mrs Nanette Milne (North East Scotland) (Con): I share the sentiment that amendments 89 to 91 are too restrictive. Jean Turner mentioned the need to expand. A commercial company would be more likely to expand in response to need if it is not limited by Scottish ministers. I do not agree with the amendments.

Rhona Brankin: I will address amendments 89 and 91 first. Requiring ministers or health bodies to be majority shareholders would have a number of implications and would present practical difficulties, so I cannot support amendments 89 and 91. The powers that we seek are generic. We want to maintain a position in which alternative models are available. Indeed, the committee raised the importance of having alternate models in its stage 1 report, as Shona Robison said.

Under these restrictive amendments, only models involving a majority shareholding by Scottish ministers or health bodies would be possible. That would prevent the use of mutuals, companies limited by guarantee or contractual joint ventures. For example, it would not be possible for a health body to enter into a joint venture with three public sector partners, such as coterminous local authorities, on an equal partnership basis, because each partner would be able to have only a 25 per cent shareholding.

There would also be serious implications for the sharing of risk. The balance of equity risk would rest with the public sector as the majority shareholder. In the case of the exploitation of novel technologies, the public sector would assume the risk that we want to avoid and the

possibility of further commercial investment would be limited.

While I support the member's motives in seeking openness and sound governance of joint venture companies, I believe that amendment 90 is flawed and unnecessary.

The amendment is flawed because it makes blanket assumptions about the form that joint venture companies will take. As I have pointed out, the provisions have been drafted to ensure that there is the flexibility that already exists in other parts of the public sector. It would be illogical to have in primary legislation provisions that cover only some of the possible joint venture options.

The amendment is unnecessary because there is already adequate provision in relation to suitable governance arrangements and disclosure requirements for public sector bodies. I reassure the committee that the Scottish Executive is fully committed to openness. Within NHS Scotland, there is already mandatory guidance covering the disclosure of business cases and contracts. Joint ventures would be no different in that regard.

The Executive is committed to the preparation and publication of guidance on the appointment and conduct of public sector officials who act as directors on the boards of joint venture companies. Companies that are established as joint ventures will also be subject to statutory requirements on the disclosure of information, such as the publishing of accounts. Scottish ministers and NHS boards are also required to make information available under the Freedom of Information (Scotland) Act 2002.

For those reasons, I invite Jean Turner to withdraw amendment 89 and not to move amendments 90 and 91.

The Convener: I invite Jean Turner to wind up and to indicate whether she wants to press or withdraw amendment 89.

Dr Turner: I would like to think that the minister might consider the matter, because there are loopholes and the bill does not protect the Scottish Executive, the public or those who will be involved in joint ventures companies. I will withdraw amendment 89 and see what the minister brings to the Parliament at stage 3.

Amendment 89, by agreement, withdrawn.

Amendments 90 and 91 not moved.

The Convener: Amendment 83, in the name of Carolyn Leckie, is in a group on its own.

Carolyn Leckie (Central Scotland) (SSP): I participated in many of the stage 1 evidence-taking sessions at which the committee discussed section 31. I am sure that members expect me to disagree in principle with the increased marketisation of health care and health care premises, as that is where I come from politically. However, even by the other parties' political compass, the evidence that Executive representatives and Partnerships UK gave in support of the assertion that the LIFT model demonstrates value for money and of its impact on service delivery was flimsy. The committee agreed that the evidence that was presented was not robust; indeed, it referred to that in its stage 1 report.

In comparison with the lack of robust evidence in support of section 31, the credible case that Dave Watson of Unison, the STUC and the Royal College of Nursing made should set off alarm bells. Given that the witnesses from the public bodies did not expect that they would rush to exercise the powers that are contained in section 31, there is an argument, from whatever political perspective, for taking the powers out of the bill and separating them from the high-profile debate about a ban on smoking in public places in order to scrutinise them on their own and to give us the chance to explore alternative models from all political perspectives. I would include in that exploration a model that is based on public funding, public buildings and public service delivery.

Many concerns were expressed about conflict of interest—Jean Turner made reference to that in speaking to her amendments 89 to 91. The Executive cannot escape from the experience of the private finance initiative, nor can it escape from Allyson Pollock's research on PFI or her dismantling of the case for it. Under companies legislation, it is impossible to reconcile the public service ethos and the obligation on a company that is comprised of shareholders, regardless of the mix of shareholders, to meet the bottom line. Therefore, there is bound to be a conflict of interest for directors who are appointed from public bodies.

I repeat that section 31 at least requires exclusive and robust investigation and a thorough debate. By all accounts, even by the standards of the Executive and of the public bodies who participated in gathering evidence in support of the provisions, enough evidence has not been given. The private companies involved were not able to answer many questions about the impact of LIFT schemes in England and were not able to reassure us about where they would end up in the long term.

I suggest that, in the interests of democracy, the Executive should be making its proposals in the context of a debate that centres on such issues, rather than through high-profile legislation that should be focusing on the pro-health agenda.

I move amendment 83.

Mike Rumbles: Carolyn Leckie ignores the fact that, throughout Scotland, many NHS facilities are currently private. Up and down the country, general practitioner services are provided privately. The fact that the bill provides for ministers to form companies to provide and upgrade facilities and services throughout Scotland is to be welcomed. As far as I can see, the provisions in section 31 are positive, and it would be a mistake to remove the section from the bill, especially if we want to improve NHS services for patients, wherever they are in Scotland.

Mrs Milne: Carolyn Leckie will not expect me to agree with her amendment. The much denigrated PFI about which Carolyn Leckie spoke has provided several very good facilities for the NHS in Scotland that would not exist without it. Like Mike Rumbles, I believe that joint ventures are a positive way forward for the NHS.

The logic of what Carolyn Leckie said about taking section 31 out of the bill and dealing with it in a stand-alone piece of legislation could apply to every section. Some of us said that at the stage 1 debate but I think that we have moved beyond that. I support the inclusion of section 31 and am not in favour of amendment 83.

Rhona Brankin: I reject amendment 83. It seeks to remove the provisions that would allow Scottish ministers and health bodies to form and participate in the formation of companies for the provision of health services or to exploit intellectual property. The removal of the joint venture provisions from the bill was the subject of a motion lodged by Carolyn Leckie during the stage 1 debate on 28 April. The Parliament was given the opportunity to vote on the matter and the member's motion was soundly defeated.

The provisions have been the subject of much debate during the past three years including in a formal consultation exercise from February to May 2004. The Health Committee has considered the provisions closely and has taken evidence from a range of interested parties. The committee's stage 1 report raised several issues on which the Executive has responded.

On joint ventures for the provision of facilities and services, the Executive continues to carry out through the joint premises project board a programme of work to support the development of an appropriate model for Scotland. The NHS, COSLA and Unison are progressing that work. Although the powers that are sought are generic and allow flexibility with regard to the types of commercial model that could be employed, much discussion has focussed on the NHS LIFT model that was implemented in England. Ms Leckie has referred to it again today.

The committee's report expressed the concern that it is too soon to make an objective judgment about the performance of that model. To an extent, it is relatively early days, but Scotland benefits from not starting with a blank sheet of paper or having to reinvent the wheel.

During the stage 1 evidence sessions, and in ministers' response to the committee, reference was made to the impending release of a report by the National Audit Office on the development of NHS LIFT in England. Unfortunately, the publication of the report was delayed until 19 May, due to the general election. In the NAO press release, Sir John Bourn, the Comptroller and Auditor General, said:

"I welcome LIFT as an attractive new way of improving primary health and social care facilities. This is an excellent example of a department doing something different and new to come up with an effective solution to an established problem. I fully support this kind of innovation and the department must carefully evaluate this initiative so that all of government, and especially Building Schools for the Future, a similar initiative, can benefit from the lessons that arise."

We continue to maintain close links with developments in England and with the Department of Health's response to the NAO's recommendations.

It is clear that in Scotland we can learn lessons from experiences in England, but we must also work with stakeholders to ensure that we develop a model that is appropriate to the needs of Scotland. The joint premises project board is undertaking that task.

On intellectual property, credulity would be stretched to the limit if anyone believed that Scotland and the world would be better off if innovations and novel technologies were allowed to gather dust on the shelf instead of bringing benefits to people by delivering better health care through more effective treatments and care regimes, while earning returns that could be reinvested in further improvements to the NHS in Scotland.

Therefore, I invite Carolyn Leckie to withdraw amendment 83.

14:30

Carolyn Leckie: I will press amendment 83. Members of the committee will not be surprised to hear that I reject much of the minister's response, which is just wishful thinking that takes us no further forward from the position that we were in after hearing the evidence at stage 1.

Mike Rumbles said that the effect of the provisions in section 31 would be good as far as he could see, which demonstrates the problem. None of us can see very far, because not much

evidence has been presented. Paragraph 233 of the committee's stage 1 report says:

"it was apparent to the Committee that representatives from COSLA and the NHS Confederation had only limited knowledge of existing NHS LIFT projects in England."

As far as I can see, we are no further forward, and I do not accept that there is a need for urgency in pushing through the provisions without further scrutiny and debate.

It is interesting to learn that the Liberal Democrats are ditching the attempt to pitch their party's policy to the left of Labour. A consensus on privatisation is appearing fast. Indeed, privatisation is the only game in town, because that is the ideological agenda that the Executive and the Westminster Government are driving forward. If the political will to do so exists, it is perfectly possible to build primary care services on a public model and to protect intellectual property and ensure that its benefits are enjoyed throughout the NHS and internationally without creating a company to own the intellectual property.

During the committee's evidence-taking session on intellectual property, I envisaged a horrific situation in which a company that owned a piece of intellectual property that was attached to a specific NHS board or primary care service would in effect sell that intellectual property back to the NHS. Currently, innovations that are developed in the NHS are owned by the entire NHS on the public service model and by all the patients who can benefit from them. It would be abhorrent and unethical if an advance or invention that under the current system would automatically benefit patients throughout the country had to be sold to patients in a transaction between different parts of the NHS. Such an approach would create inequalities.

I hope that the committee will support amendment 83.

The Convener: The question is, that amendment 83 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division. I remind those present that only members of the committee may vote.

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
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 0, Against 9, Abstentions 0.

Amendment 83 disagreed to.

Section 31 agreed to.

Sections 32 to 36 agreed to.

Schedule 2

MINOR AND CONSEQUENTIAL AMENDMENTS

Amendment 64 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 3 is on the ability of Scottish ministers to confer their health functions on health boards and the Common Services Agency. Amendment 29, in the name of the minister, is grouped with amendments 30 to 32.

Rhona Brankin: Amendments 29 to 32 are minor amendments that seek to clarify existing legislation by providing that Scottish ministers may by order confer on health boards, special health boards and the Common Services Agency any of their functions that relate to the health service.

Under the National Health Service (Scotland) Act 1978, ministers have a range of functions in relation to the health service. Ministers may by order provide for those functions to be exercisable by health boards and special health boards. However, there is some overlap between ministers' functions under the 1978 act and their functions under other acts. For example, the functions that are given to ministers under section 63 of the Health Services and Public Health Act 1968, on the provision of instruction for those who are employed in the health service, overlap with their functions under the 1978 act. The Executive does not consider that such overlap makes for clarity in the functions that ministers may confer on health boards and special health boards.

Amendment 29 seeks to clarify the existing legislative position in relation to those overlaps by making it clear that under the powers of the 1978 act any functions that relate to the health service in any legislation can be conferred on health boards or special health boards by Scottish ministers. Amendment 30 does likewise in relation to the Common Services Agency. As amendments 29 and 30 essentially seek to restate existing law, it is considered appropriate for them to come into force without the need for a commencement order. Amendments 31 and 32 therefore provide for amendments 29 and 30 to come into operation on the day after royal assent.

I move amendment 29.

Amendment 29 agreed to.

The Convener: Group 4 comprises a variety of minor and consequential amendments in respect of dental services and bodies corporate. Amendment 36, in the name of the minister, is

grouped with amendments 38, 40, 42 to 44 and 46.

Rhona Brankin: These minor and consequential amendments relate primarily to part 2 of the bill and the provision of dental services. Amendments 36, 38, 40, 42 and 46 seek to amend the National Health Service (Scotland) Act 1978.

Amendment 36 seeks to amend the 1978 act to provide that regulations may allow the Scottish Dental Practice Board to issue directions to bodies corporate as well as to dental practitioners.

Amendment 38 seeks to update the list of those with whom a health board can enter into section 17C agreements for the provision of personal dental services or primary medical services to include dental corporations or their employees.

Amendment 40 seeks to provide that bodies corporate that provide general dental services, like dental practitioners who provide general dental services, may apply for permission to use NHS premises and facilities for providing services to private patients.

Amendment 42 seeks to amend section 17 of the Health and Medicines Act 1988 to ensure that dental corporations are covered by the sanctions that may be provided for with regard to prior approval of treatment.

Amendment 43 seeks to insert a number of minor and consequential amendments to the National Health Service (Primary Care) Act 1997 in relation to the provision of pilot personal dental services.

Amendment 44 seeks to amend the list of persons in respect of whom enhanced criminal record certificates may be obtained under the Police Act 1997 in relation to general dental services, and amendment 46 seeks to simplify the definition of personal dental services in the 1978 act.

I move amendment 36.

Amendment 36 agreed to.

Amendment 30 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 5 concerns exclusion of pharmaceutical care services. Amendment 37, in the name of the minister, is in a group on its own.

Rhona Brankin: Amendment 37 is a minor and consequential amendment that arises from part 3 of the bill. At the moment, pharmaceutical services cannot be included within arrangements for personal dental services under section 17(c) of the National Health Service (Scotland) Act 1978. By providing that pharmaceutical care services remain excluded from such arrangements, the amendment seeks to ensure that the changes that part 3 will introduce to the 1978 act will not alter the current position.

I move amendment 37.

Amendment 37 agreed to.

Amendment 38 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 6 concerns consequential amendments and repeals relating to listing provisions. Amendment 39, in the name of the minister, is grouped with amendments 45, 50 and 51.

Rhona Brankin: Amendments 39, 45, 50 and 51 are consequential amendments and repeals that relate to the listing provisions in parts 2 and 3.

Amendment 39 seeks to provide that dental and ophthalmic practitioners in the first part of the list might be required to have indemnity cover and amendment 45 seeks to update the Scottish public services ombudsman's investigatory remit.

Amendments 50 and 51 are technical amendments from part 2. Amendment 50 seeks to repeal a spent provision in the Health and Social Services and Social Security Adjudications Act 1983 and amendment 51 seeks to repeal a spent amendment to the 1978 act that was made by the Dentists Act 1984.

I move amendment 39.

Amendment 39 agreed to.

Amendments 40, 22, 13 and 41 to 45 moved—[Rhona Brankin]—and agreed to.

Schedule 2, as amended, agreed to.

Schedule 3

REPEALS

Amendments 46 and 14 moved—[Rhona Brankin]—and agreed to.

14:45

The Convener: Group 7 is consequential and miscellaneous amendments. Amendment 47, in the name of the minister, is grouped with amendments 49, 52 to 54 and 56.

Rhona Brankin: These are technical and consequential amendments to schedule 3. They repeal certain provisions in other acts that are spent as a result of the provisions in parts 2, 3 and 4 of the bill.

Amendment 47 repeals wording in the National Health Service (Scotland) Act 1978. Amendment 49 repeals provision in the Health Services Act 1980. Amendment 52 repeals certain provisions in the National Health Service and Community Care Act 1990, which are now redundant. Amendment

53 repeals certain provisions in the National Health Service (Primary Care) Act 1997 and also simplifies the definition of personal dental services in that act. Amendment 54 repeals provisions in the Health Act 1999. Finally, amendment 56 repeals certain provisions in the Primary Medical Services (Scotland) Act 2004, which are spent as a result of this bill.

I move amendment 47.

Amendment 47 agreed to.

Amendments 48 to 55 moved—[Rhona Brankin]—and agreed to.

The Convener: Group 8 is on the removal of the age limit on membership of the Mental Health Tribunal for Scotland. Amendment 65, in the name of the minister, is in a group on its own.

Rhona Brankin: Amendment 65 removes the upper age limit of 69 for the members of the Mental Health Tribunal for Scotland. The limit is currently laid down in the Mental Health (Care and Treatment) (Scotland) Act 2003 and is common practice for tribunals.

Each Mental Health Tribunal for Scotland tribunal must have a medical member and it would be very difficult for the body to operate successfully without a sufficient number of medical members. Removal of the age limit will assist in the recruitment and retention of all members but is particularly relevant for medical members. Amendment 65 will help us not to overload tribunal members who are also working psychiatrists; it will enable us to retain retired psychiatrists who are performing effectively as tribunal members. Removing the age limit will increase the pool of medical members and allow us to retain those who reach 70. Having even a small number of additional members who can work three or more days a month will ensure that members' availability does not delay hearings and will therefore help the tribunal to operate more efficiently and effectively.

I move amendment 65.

Mike Rumbles: Amendment 65 deals with blatant age discrimination and wherever we find such discrimination we should get rid of it. I therefore support what the Executive is proposing.

Amendment 65 agreed to.

Amendment 56 moved—[Rhona Brankin]—and agreed to.

Schedule 3, as amended, agreed to.

The Convener: That ends today's stage 2 consideration of the bill. The target for next week's meeting is to complete consideration of part 1, schedule 1, section 37 of part 6, and the long title. The deadline for lodging amendments to those sections and schedules is noon on Thursday 9 June.

I thank the minister and her officials for their attendance.

Subordinate Legislation

Dentists Act 1984 (Amendment) Order 2005 (draft)

14:50

The Convener: We come to item 5. At its meeting on 21 June—in two weeks' time—the committee requires to consider by affirmative instrument an order to amend the Dentists Act 1984. Members might recall that the committee took evidence on the proposed order last autumn, so we are well ahead. A paper has been circulated proposing that the committee review the consultation responses submitted by a range of organisations whose members will be affected directly by the changes. It is suggested that the Scottish Consumer Council be invited to comment on the proposed changes. As no members wish to comment, do we agree to proceed on the basis of the proposals in the paper?

Members *indicated agreement*.

The Convener: That ends our public business. I ask that the sound system be switched off and that all members of the public leave the room.

14:51

Meeting continued in private until 15:01.

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Thursday 16 June 2005

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