

# **HEALTH COMMITTEE**

Tuesday 14 June 2005

Session 2

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## HEALTH COMMITTEE

18<sup>th</sup> 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)

Mr Stewart Maxwell (West of Scotland) (SNP)

Mr Brian Monteith (Mid Scotland and Fife) (Con)

Margo MacDonald (Lothians) (Ind)

### CLERK TO THE COMMITTEE

Simon Watkins

### SENIOR ASSISTANT CLERK

Tracey White

### ASSISTANT CLERK

Roz Wheeler

### LOCATION

Committee Room 1



# Scottish Parliament

## Health Committee

*Tuesday 14 June 2005*

[THE CONVENER *opened the meeting at 14:00*]

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

**The Convener (Roseanna Cunningham):** I welcome everybody to the Health Committee's 18<sup>th</sup> meeting in 2005, which we want to get started quickly as it will be quite long.

I have apologies from Helen Eadie and Kate Maclean, both of whom are attending a joint all-day meeting of the Edinburgh Tram (Line One) Bill Committee and the Edinburgh Tram (Line Two) Bill Committee. They have a statutory obligation to attend, so it is not possible for them to do anything other than absent themselves from this meeting. I understand that, at some point, Paul Martin will attend as a substitute for one of them, so we will deal with that when he comes in.

I also welcome Margo MacDonald, Stewart Maxwell and Brian Monteith to the committee. They each have an interest in certain amendments and we will no doubt hear from them in due course.

There is only one item on the committee's agenda today, which is stage 2 consideration of the Smoking, Health and Social Care (Scotland) Bill, at day 5. I remind members that this is the last opportunity to consider the bill at stage 2 and that every one of the amendment groupings must be dealt with. We have a lot to get through, so I ask members to be sensible with their contributions so that we can get through business as quickly as possible.

I welcome Paul Martin. I ask him to confirm that he is attending in his capacity as a Health Committee substitute and to say which member he is substituting for, as there is a choice of two.

**Paul Martin (Glasgow Springburn) (Lab):** I will make it Kate Maclean; hers is the first name-plate that I saw.

**The Convener:** I remind members that, under rule 12.2A of standing orders, a committee substitute who attends a committee meeting has the right to participate in all proceedings and to vote. The other non-committee members who are here may not vote.

## Before section 1

**The Convener:** Group 1 is on places covered by the smoking prohibition. Amendment 115, in the name of Brian Monteith, is grouped with amendments 116, 118, 122, 125, 127, 130, 132, 133, 139, 141, 144 and 151. I point out that a number of amendments in later groups pre-empt amendments in this group: amendment 122 is pre-empted by amendment 121; amendment 132 is pre-empted by amendment 95; and amendment 151 is pre-empted by amendment 150.

**Mr Brian Monteith (Mid Scotland and Fife) (Con):** The principal criticism that can be made of part 1 of the bill is its failure to be absolutely clear about prohibition in no-smoking places. Members might find that ironic, but we are at the stage at which such matters need to be tidied up.

Amendment 115 seeks to make the terminology clear at the start, so that the bill reads more easily and is clearer thereafter. The bill is particularly confused and confusing in its structure and terminology as they relate to the places where smoking is prohibited. No-smoking premises are not defined until section 4, where they are stated to be

"premises of a kind ... prescribed by regulations"

that

"are wholly enclosed and—

- (a) to which the public or a section of the public has access;
- (b) which are being used wholly or mainly as a place of work".

Much of the confusion arises from the use of the phrase "wholly enclosed", about which there will be further debate later today.

Although the bill will create two significant new criminal offences of smoking and permitting smoking in no-smoking premises, it does not state precisely what no-smoking premises are, explain which premises are to be exempted from the prohibition or define other terms that are essential to an understanding of the prohibition, and it even fails to specify explicitly the enforcement authorities. The purpose of amendment 115 is to make it quite clear at the outset of the bill what premises are covered by the prohibition that follows. It reduces to its bare minimum the meaning of an "enclosed public space".

I turn to the schedule that amendment 116 seeks to insert. We want the exempt places to be listed in the bill because part 1 leaves far too much for determination by regulations, which are not subject to the same degree of scrutiny by the Parliament as primary legislation. We make no claim that the list in our proposed schedule is definitive and, if amendment 116 were agreed to,

we would welcome the lodging of further amendments at stage 3.

The overall purpose of my amendments is to simplify the construction of part 1 and of the draft Smoking, Health and Social Care (Scotland) Act 2005 (Prohibition of Smoking in Certain Premises) Regulations 2005 by imposing a prohibition that applies everywhere—without the need for schedule 1 to the draft regulations—except to the exempt places that are listed in the schedule to the bill that amendment 116 seeks to insert and in those places where smoking may be permitted by virtue of regulations that Scottish ministers make. Smoking is a legal activity and the risks of environmental tobacco smoke to the health of the non-smoker do not mandate an absolute prohibition of smoking, which would be disproportionate. To ensure compliance with the right to respect for private and family life that is enshrined in article 8 of the ECHR, part 1 should exempt—explicitly, not just in regulations—not only domestic premises, but accommodation that, although it may fall outside that definition, is an individual's sole home, either permanently or for the time being, and which is only occasionally a place of work. A total prohibition on smoking in such accommodation could constitute a disproportionate interference with the right in article 8 of the ECHR to respect for private and family life. The draft regulations attempt to respect that, but not comprehensively.

An outright ban on smoking in enclosed places is not proportionate. There should be a wider range of exemptions—for example, prisons should be excluded—and a licensing system that allows permissions to be granted. In the schedule that amendment 116 seeks to insert, I have included exemptions for theatre productions of which smoking forms an integral part and cigar shops, but I will deal with those later, when I speak to the relevant amendments; I do not want to take up the committee's time by repeating my arguments.

I move amendment 115.

**Shona Robison (Dundee East) (SNP):** I notice that one of the exempt places would be

"Any club premises to which the public does not have access as of right."

I take it that that is a reference to private clubs. If that is the case, I am concerned that that would give rise to an unfair situation. Someone who operated a public house could end up having a private club that was able to avoid the ban right next door, which would take away from the level playing field that we are trying to create. That is one of the reasons why I will not support amendment 116.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** When he sums up, I invite

Brian Monteith to tell us in a little more detail about the

"Places where religious ceremonies involving the use of tobacco are taking place."

We seek enlightenment on that.

**Mr Stewart Maxwell (West of Scotland) (SNP):**

It is clear that, in seeking to enlarge the list of exemptions, the purpose of amendment 116 is to reduce the effect of the ban. Lists are normally dealt with in regulations; that is the proper place for lists. Amendment 116 represents an attempt to ring fence exemptions—the fact that the exemptions that it proposes would be contained in primary legislation rather than in regulations would mean that they could not be revisited at a later date. Amendment 116 seeks to undermine parts of the bill.

Amendment 118 and the other amendments that would change the wording from "no-smoking premises" to "enclosed public place" are rather strange. The wording "no-smoking premises" is as clear as we could possibly be about what the premises are. We should stick with that, rather than change the wording to "enclosed public place".

**Dr Jean Turner (Strathkelvin and Bearsden)**

**(Ind):** I agree with members that we would weaken the bill if we went along with the amendments in the group. I am struggling to understand the religious significance of smoking and the significance of the ban to the theatre. We do not need real cigarettes on the stage, given that most theatres have already banned smoking.

**The Deputy Minister for Health and Community Care (Rhona Brankin):** I will speak against all the amendments in the group. The proposed legislation on smoking is comprehensive and is based on the principle of protecting people from environmental tobacco smoke in enclosed public places. The amendments are completely unnecessary, as the bill already makes adequate provision for the definition of no-smoking premises. I fail to understand why Brian Monteith believes that his approach would be any better, although I realise that he is trying to advocate exemptions from the prohibition for tobacco shops and private clubs. I believe that he seeks to undermine this vital piece of proposed public health legislation to further the interests of a relatively small minority. To deliver the health improvements that the country needs, the bill must be as comprehensive as possible. Therefore, I cannot support the amendments and I urge the committee to reject them.

**Mr Monteith:** I will respond to some of the members' points first, before I respond to the minister's argument. Under the proposed schedule in amendment 116, private clubs—not just discos

or dance clubs, but private clubs that people need to be signed into—would be exempt unless the members chose to make them no smoking. That would be an appropriate and proportionate approach to the question of balance. The question is whether we are trying to strike a balance between the rights of individuals—those who smoke, those who may inhale environmental tobacco smoke and the public health considerations thereof—or whether we are seeking a balance between different licensed establishments. If one is concerned about the commercial considerations of the businesses that will be affected by the ban, one must understand that the ban will create a level playing field and will affect all businesses, even though there are different types of businesses. It should be recognised that private clubs are substantially different, operate in a different way and have different rights and responsibilities from other premises. They should therefore be exempted from the ban. They are more private than public houses, for example, and should therefore be entitled to be treated differently when it comes to the balance between people who choose whether to go to such places and those who do not and, therefore, whether they would be able to smoke. Private clubs should be included in the exemptions. Members will be aware that an exemption for private clubs is to be granted in England.

With regard to religious festivals, it is my understanding that there is some tobacco in incense, which may need to be considered in further detail. I do not attend such religious ceremonies, but the issue has been pointed out to me. I have further amendments on theatres, stage productions and tobacco retailers, so I will not explain the issues in detail at the moment.

14:15

The proposed schedule offers guidance about what could be done in the bill, and in saying so I turn to the minister's arguments. I did not hear the minister provide any real reason why the schedules and explanations that I have proposed in amendment 116 should not be in the bill. It is common for us to debate whether the substantive definitions in what we pass as legislation should be in regulations or the bill. That happens time and again and members suggest to the Executive that it would be better to have more specifics in the bill. My amendment 116 seeks to clarify and, in some respects, tighten up the definitions that the Executive is proposing. I would have thought that it would be grateful for that, rather than suggesting that I am trying to undermine the public health benefits that might come with the bill. Let me be honest: I will do that in other amendments and take credit for it there. Amendment 116 simply

flags up that there are two approaches to drafting bills and suggests a different approach from that which has been taken. With that argument in mind, I seek leave to withdraw amendment 115.

*Amendment 115, by agreement, withdrawn.*

*Amendment 116 not moved.*

### **Section 1—Offence of permitting others to smoke in no-smoking premises**

**The Convener:** Group 2 is on the exclusion of theatre performances and rehearsals from the prohibition. Amendment 117, in the name of Brian Monteith, is grouped with amendments 120, 126, 128, 131 and 135.

**Mr Monteith:** In amendment 117 I seek to obtain an exemption for dramatic and lyric performances on stage. Members will be familiar with dramatic performances. Lyric productions cover ballet and opera. I am not particularly au fait with any ballet productions that currently use tobacco products, but then I tend not to go to contemporary dance; productions such as a modern interpretation of "West Side Story" might in future seek to use tobacco. I have been approached by a number of organisations and theatre managers in Scotland and beyond—many international productions tour to Scotland—and there is a strong feeling that there is no need for a ban on tobacco products used in stage productions.

A number of arguments were put forward to support that. First, given the nature of stages in theatres—almost without exception they have high ceilings and large volume—the suggested health problems associated with passive smoking are diluted to some degree. There are also objections to the ban on the basis of how it might affect the artistic freedom of actors, producers and writers. Smoking is in the plays of the Scottish writer David Greig, and of John Byrne, Chekhov and Ibsen. Smoking forms a significant part of the social milieu and period detail of works and is a defining part of the persona of historical figures such as Winston Churchill and fictional characters such as Sherlock Holmes, who might feature in productions. As far as anybody has been able to identify for me, there are no herbal alternatives to cigar smoking. I believe that to prohibit smoking on stage would amount to a restriction on the creative process for professionals working in the theatre. That would go further than is actually required by the bill. I do not believe that smoking on stage for the purposes of productions would make any particular difference to the public health outcomes that the minister seeks. In that sense, the bill would overreach itself.

I move amendment 117.

**Rhona Brankin:** I cannot support Brian Monteith's amendments. When developing the proposed smoking legislation, we carefully considered the scope for exemptions. The Executive's proposals are based on sound reasoning. Only places that are equivalent to a person's home—on either a permanent or temporary basis—may be considered exempt. That has been decided on humanitarian grounds.

Theatres do not by any stretch of the imagination fall into that category. Like many people I enjoy theatre performances on a regular basis, as Mr Monteith knows, but I recognise that those performances take place in enclosed buildings to which the public have access. They are also places of work. In order to ensure that the greatest protection is afforded to the greatest number of people, theatres and other comparable premises must be included within the scope of the prohibition.

One of the key benefits that we hope the legislation will achieve will be to denormalise smoking as an acceptable, sociable activity. I do not think that it is beyond the wit of the dramatic arts and theatres to develop alternatives to smoking lit substances during performances. Where actors deal with topics involving other controlled substances, they do not actually partake of them. Why, therefore, do they need to smoke?

I whole-heartedly oppose the amendments, and urge the committee to do the same.

**Mr Monteith:** I find the minister's reaction disappointing. It suggests a degree of intolerance in the Executive, which cannot identify that smoking during performances, particularly dramatic performances, can even be used to communicate the message that bad people or people who should not be admired smoke, or that smoking is bad for people. It is not necessarily the case that smoking during the performance will glamorise smoking and make it attractive. I am assured by actors that there are difficulties with regard to alternatives, not least the pong of those alternatives. Because the smell is so strong, it is clearly detectable to the audience and betrays the fact that the actor is not smoking a cigarette. Indeed, it creates a different sense of atmosphere—I do not mean that as a pun—and a different sense of artistic and dramatic interpretation.

It strikes me that the issue of artistic freedom is very important. Were the minister and I to sit together on occasion to watch, as we have done, plays such as "Look Back in Anger", which has Jimmy Porter smoking a pipe, we would find that the whole dramatic intensity can change if that is not portrayed accurately. Plays sometimes feature smoke machines billowing out false smoke to look like fog, which is far more likely to cause coughs

and splutters among the audience, as we can hear, than a single person smoking a pipe or cigarette on stage. That ban is disproportionate and wholly unnecessary. However, I seek to withdraw the amendment.

*Amendment 117, by agreement, withdrawn.*

*Amendment 118 not moved.*

**The Convener:** Group 3 is on defences. Amendment 119, in the name of Brian Monteith, is grouped with amendments 121, 123, 124, 129, 136 and 152. If amendment 121 is agreed to, I cannot call amendment 122, which has already been debated.

**Mr Monteith:** I have so many amendments and so many notes.

There is concern about the word "knowingly", which I seek to leave out. It is a key word, because it makes it an offence subject to a substantial penalty to permit others to smoke in no-smoking premises if the person who manages or controls the premises knows or ought to have known that the person was smoking. It is important that we take out "knowingly", because it begins to change the meaning of the defence of the accused. The difficulty is that, as it stands, the bill effectively makes the person guilty until proven innocent, whereas by removing the word "knowingly" it is possible to construe that the body of evidence changes and the person becomes innocent until proven guilty.

That is a simple way of explaining amendment 119. I will leave it at that for the moment, and see whether I need to respond to anything that is raised by the minister or other members.

I move amendment 119.

**The Convener:** If no members wish to comment, I call the minister.

**Rhona Brankin:** I cannot support amendments 119, 121, 123, 124, 129, 136 or 152. As with so many of the amendments that have been lodged by the Opposition today, on the face of it they look like they may be helpful, but they are nothing of the sort—they are nothing short of a full attack on the enforcement of the bill. They seek to undermine the provisions by making it more difficult for those who will enforce them to win a case, should it ever go to court. Part 1 sets out a number of defences that a person may employ. The amendments seek to make those defences even easier to prove, and in doing so move the balance back towards encouraging evasion. I urge the committee to resist amendments 119, 121, 123, 124, 129, 136 and 152.

**Mr Monteith:** The amendments in the group deal with making it an offence to permit others to smoke in no-smoking premises if the person who



manages or controls the premises knows or ought to have known that the persons were smoking. By removing “knowingly” and making associated changes, the balance is better, and the innocence of those who manage or own the premises is protected. I do not see that as an assault on enforcement; I see it simply as trying to retain a balance with regard to our old and admirable tradition of people being innocent until proven guilty. As the bill stands, I am concerned that that tradition is not being maintained.

**The Convener:** Are you pressing amendment 119 or seeking leave to withdraw it?

**Mr Monteith:** I press it.

**The Convener:** The question is, that amendment 119 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

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

**AGAINST**

Hughes, Janis (Glasgow Rutherglen) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)

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 1, Against 6, Abstentions 0.

*Amendment 119 disagreed to.*

*Amendments 120 to 125 not moved.*

*Section 1 agreed to.*

## **Section 2—Offence of smoking in no-smoking premises**

*Amendments 126 to 130 not moved.*

14:30

**The Convener:** We now move to group 4, on the offence of smoking in no-smoking premises. Amendment 84, in the name of Mike Rumbles, is in a group on its own.

**Mike Rumbles:** The reason why I have introduced the amendment is quite straightforward. When we initially considered the evidence at stage 1, the proposals in this part of the bill—section 1 will make it an offence to permit others to smoke in no-smoking premises and section 2 will make it an offence to smoke in those premises—seemed adequate. However, when we took evidence from the would-be enforcers of the bill's provisions, especially those from Edinburgh, they seemed keen to enforce the legislation rigorously—so rigorously, in fact, that we were

given the impression that on a Friday or a Saturday night environmental health officers would be going round late at night slapping fixed-penalty notices on drinkers in pubs and bars up and down the high streets of the land. They seemed to be enthusiastic in their wish to slap those notices on anybody seen smoking where they should not be.

From the evidence that the committee saw in Ireland, I believe that there should be a more relaxed approach to the enforcement process, which should be about education and speaking to people after the event. We should try to create a non-confrontational enforcement process like the successful one that was achieved in the Republic. I lodged the amendment because I thought that it might be more appropriate for a person guilty of a second offence under the section—rather than a first offence—to face an immediate penalty. However, my real reason for lodging the amendment is to prompt the minister to say on record whether there will be any specific guidance to those people who will have the job of enforcing the legislation. I ask the minister whether it is the Executive's intention to ensure that the enforcement process in Scotland is similar to that of other successful regimes, such as the one in Ireland.

I realise the difficulties that stipulating that the offence must be “a second or subsequent” one may create, as there may be no record of the first offence. I understand that that might be an issue, but I would like to hear the minister's response.

I move amendment 84.

**Rhona Brankin:** From what Mike Rumbles has told us, I understand what he is trying to achieve, but I believe that his amendment runs the risk of sending out contradictory signals about the comprehensive nature of the bill. I cannot, therefore, support the amendment either in principle—in my view, an individual must be responsible for their own actions—or on practical grounds, as the effect of the amendment would be to render the fixed-penalty scheme weaker.

Amendment 84 proposes that a person who had smoked in no-smoking premises would be liable for a fine on summary conviction only for a second offence. That does not mean that a person could not be prosecuted and convicted for the first offence, but simply that they could not be fined if they were convicted of that first offence. Under amendment 84, an individual would be issued with a fixed-penalty notice for a first offence. However, if they refused to pay the fine, although they could still be prosecuted and convicted for failure to comply with the fixed-penalty notice, they could not be fined. That would be a total waste of Crown resources.

Amendment 84 would weaken the basis of the fixed-penalty regime for smoking offences under the bill and would send out all the wrong signals on enforcement of the smoking ban. The bill seeks to ensure that smokers and those who own or manage the premises on which people might otherwise smoke have incentives not to smoke or allow smoking in no-smoking premises. Owners or managers of no-smoking premises might have a more difficult job in trying to prevent people from smoking if the individual smoker had no incentive not to smoke on those premises. The amendment would also present significant operational difficulties, as it would require the establishment of a database of offenders to enable the courts to determine whether a person had already committed an offence.

The Executive's view on enforcement of the ban—a view that was echoed by Mike Rumbles during stage 1—is that it should be consistent and non-confrontational. Furthermore, the system should be firm, fair and workable. There will be specific guidance for all environmental health officers in Scotland—the professional body of environmental health officers is currently drafting that guidance. I do not believe that amendment 84 is either fair or workable and I invite Mike Rumbles to withdraw it.

**Mike Rumbles:** I am delighted that the minister has made it clear that there will be specific guidance for a non-confrontational enforcement approach. That is exactly what I sought to achieve. On that basis, I seek the committee's leave to withdraw the amendment.

*Amendment 84, by agreement, withdrawn.*

*Section 2 agreed to.*

### **Section 3—Display of warning notices in and on no-smoking premises**

*Amendment 131 not moved.*

**The Convener:** We move to group 5, on warning notices. Amendment 95, in the name of the minister, is grouped with amendments 134 and 96. If amendment 95 is agreed to, amendment 132, which has already been debated, will be pre-empted.

**Rhona Brankin:** This group of amendments relates to the offence that is created under section 3(1) of failing to display notices in no-smoking premises. Amendment 95 relates to the requirement under section 3(1)(a) for no-smoking notices to be displayed conspicuously both inside and outside premises. Our intention is not that such signs must be physically on the outside of a no-smoking premises but that they must be

“visible to and legible by”

all those who enter the premises from outside. That intention will be achieved by amendment 95, which will affect only the current wording in the bill that would otherwise require signs to be physically outside premises; the amendment will not alter the requirement for signs to be displayed inside no-smoking premises.

Amendment 96 is a technical amendment to section 3(3). The amendment is designed to clarify that failure to comply with additional requirements on no-smoking signage that might be laid down in regulations under section 3(3) will constitute an offence under section 3(1) in the same way that failure to comply with the signage requirements under section 3(1) will be an offence.

Amendment 134, in the name of Nanette Milne, seeks to create a new offence under section 3 in relation to the display of warning notices in and on no-smoking premises. Although the suggestion seems reasonable, the amendment is not necessary, because the removal, defacing or altering of such notices would constitute theft, vandalism or malicious mischief, which would be an offence anyway. It is appropriate that the law in relation to notices should be consistent, so we should not single out notices under section 3 of the bill for different treatment. Therefore, the Executive cannot support amendment 134.

I move amendment 95.

**Mrs Nanette Milne (North East Scotland) (Con):** The intention behind amendment 134 is to give some protection to the manager or other person in control of the premises in a case where others damaged or destroyed a notice that he or she had put up to comply with the bill. Of course, if the owner was guilty of such an offence, he would also be caught by amendment 134. However, I am assured by the minister that the intention behind my amendment would be covered by the bill as it stands, so I will not move amendment 134. I have no difficulty with amendments 95 and 96, so I will not comment on them.

*Amendment 95 agreed to.*

**The Convener:** Amendment 132 is pre-empted, as previously advised.

*Amendments 133 to 136 not moved.*

**The Convener:** Group 6 is about procedures for modifying regulations for no-smoking premises. Amendment 92, in the name of Duncan McNeil, is grouped with amendments 93 and 94.

**Mr Duncan McNeil (Greenock and Inverclyde) (Lab):** Amendments 92 to 94 are technical amendments that are in accordance with the wishes of the Subordinate Legislation Committee. The amendments will require the Executive to consult on future changes to smoking regulations under the bill.

I move amendment 92.

**Mr Maxwell:** As a member of the Subordinate Legislation Committee, I can confirm that that committee was unanimous in agreeing that it would be helpful if future regulations were laid in draft form, as that would enable people to be consulted properly on them. I support the amendments.

14:45

**Rhona Brankin:** I support the amendments and I am aware that the Subordinate Legislation Committee raised the issue during its stage 1 consideration of the bill. Section 4(2) of the bill allows ministers to prescribe, by means of regulations, no-smoking premises for the purposes of part 1 of the bill. Section 4(7) allows ministers to make regulations in order to modify section 4(4) so as to add or remove a kind of premises from the premises that can be prescribed as no-smoking premises under section 4(2). It is accepted by ministers that the use of those two regulation-making powers could have a serious impact on people's lives and livelihoods. It is therefore right that we accept amendments that will bind us to consulting on any future regulations that we make under the powers.

The Executive has undertaken extensive consultation on the smoking provisions in the bill and on the associated regulations. It makes sense that any future changes to the regulations should be subject to further consultation.

The requirements on ministers to consult on any regulations made under sections 3(3), 4(2) and 4(7) are currently set out in section 34(4) of the bill. As a consequence of amendments 92 to 94, section 34(4) will become redundant. The Executive will, therefore, bring forward a further technical amendment at stage 3, which will remove section 34(4) from the bill.

*Amendment 92 agreed to.*

*Amendment 96 moved—[Rhona Brankin]—and agreed to.*

*Section 3, as amended, agreed to.*

### After section 3

**The Convener:** Group 7 is on exemptions for certain places. Amendment 137, in the name of Nanette Milne, is grouped with amendment 33.

**Mrs Milne:** Amendment 137 focuses on air quality. The purpose of the amendment—irrespective of whether the use of the power is envisaged at the time of the commencement of the legislation—is to enable the designation of places in which smoking would be permitted, provided that requirements specified in regulations were

complied with. For example, it would enable some places that were not included in the exemption list, such as certain pubs, to permit smoking if they comply with strict air quality standards.

Amendment 137 would allow a little bit more scope and flexibility than Margo MacDonald's amendment 33. The details would be in the regulations, which is why the text of the amendment does not refer specifically to ventilation systems. That takes into account the fact that new technology might come along that would improve ventilation systems beyond their present state. The amendment would allow more time for further research and consultation to take place and, unlike amendment 33, it would not require primary legislation to be changed if air quality technology were to advance. My amendment would widen the scope for more exemptions, which might be needed in the future, and it would make the bill more flexible.

I move amendment 137.

**The Convener:** Margo, will you speak to your amendment 33 now? I will not be asking you to move it until later in the proceedings, but you may speak to it now and to the other amendment in the group.

**Margo MacDonald (Lothians) (Ind):** I do not have a clue what amendment 137 is, so I will confine my remarks to amendment 33.

I assure the committee that I totally support the Executive's aims. My amendment 33 seeks to probe the rationale, logic and feasibility of the bill and to test its consistency with other legislation. The amendment does not seek to attack the principle of what the Executive hopes to achieve. It does not seek to encourage smokers to continue smoking and it does not seek to minimise the consequences of people being either nicotine dependent or habitual smokers.

My sole intention is to contribute to the Parliament's achievement of good, consistent legislation that will be understood and supported, which will ensure that it is more easily enforced. I remind the committee of what Angus Glennie said about the Protection of Wild Mammals (Scotland) Bill:

"Bad law comes in many shapes and sizes. Poor drafting is often the culprit. The badly drafted law may miss its target or, which is worse, may catch a wider range of activities than parliament ever intended. Being open to different interpretations, it creates uncertainty."

Amendment 33 is a probing amendment with which I hope to eliminate all uncertainty. I query what the primary driver of the proposed law is. Is it the health of the smoker, the cost that industry and the national health service incur because of the smoker's habit, the detrimental health effect of passive smoking or the intention that the bill

should be the first step towards making the purchase of tobacco illegal?

If the rationale is to save the smoker from himself or herself, we must ask whether the bill is inconsistent with our approach to other health-damaging and life-threatening habits, such as drinking or overeating and not exercising.

If smoking is damaging the economy or NHS finances, why do we treat smokers differently from other groups that do similar damage? Some studies show that alcohol-related conditions place public resources under greater strain. I think that Dr Walker of the University of Glasgow—I believe that the committee is familiar with him—has done a study showing that the costs of obesity to the NHS and to the economy in general might outweigh those caused by the detrimental effects of smoking.

If the health effects of passive smoking are the reason for the bill, what is the logic of banning smoking among consenting adults in pubs but permitting smokers to smoke all over children at home? Children are unprotected and we cannot introduce regulations on clean air and ventilation for homes similar to those that we can introduce for commercially operated premises.

If the bill is the first step towards making smoking illegal, has the committee estimated how many smokers would be criminalised because of their habits? The likelihood of extending organised criminality if tobacco is classified as a dangerous drug is great, as is obvious to anyone.

I am simply querying the bill and probing its rationale, although I accept that the questions that I have posed can be difficult to answer and I acknowledge the work that the committee has already done to answer them. However, as long as tobacco is legally sold and purchased, smokers are only exercising a legal right in smoking. Provided that, in exercising that right, smokers do not infringe others' rights, what justification is there for discriminating against tobacco as opposed to alcohol or foods with a high sugar and fat content? Will legislation that makes it difficult to smoke be a prototype for legislation on other aspects of dangerous, resource-consuming behaviour?

If smoking is harmful enough to be treated more harshly than other habits that induce poor health, logic suggests that it should be made illegal to buy or sell tobacco. Short of that ultimate sanction, which would fail my earlier test of feasibility of enforcement, it seems more in keeping with our legislation on other dangerous behaviour that we should allow people to exercise freedom of choice, having provided them with information and education on the undesirability of their habit.

Amendment 33 would simply introduce a measure of consistency by controlling and

licensing a potentially lethal legal substance—tobacco—in a way similar to our method of coping with alcohol, which is another potentially destructive and dangerous substance that is embedded in our culture. The amendment deliberately does not address questions that are properly the province of subordinate legislation, so I leave the committee to consider, should it ever wish to do so, who could apply for a licence to permit smoking, to which body such an application would be made and what environmental considerations would have to be addressed.

I can see the logic in banning the sale or purchase of tobacco, although I would not advocate that because of the extension of criminality that would accompany such a ban. However, if a compromise must be found that limits a harmful habit, should equity of treatment not be sought with other substances and behaviour, unless the social damage that tobacco does is proved to be worse than that from the misuse of alcohol? I say with all due respect that my amendment 33 suggests a way to square the circle.

**Janis Hughes (Glasgow Rutherglen) (Lab):** I will comment on the air quality issues that have been raised. Nanette Milne's amendment 137 talks about exclusions from offences because of air quality requirements that may be specified in regulations. Margo MacDonald's amendment 33 talks about licensing boards granting exemptions to the bill by having regard to the adequacy of ventilation in the licensed premises.

We have taken fairly extensive evidence on that issue during the passage of this bill and Stewart Maxwell's Prohibition of Smoking in Regulated Areas (Scotland) Bill. I understood from that evidence that, although ventilation systems may be fairly sophisticated nowadays and can take away the discomfort of tobacco smoke in the air, they do not remove the carcinogens, which are of most concern. People might sit comfortably and be lulled into a false sense of security while they were breathing in the carcinogens that remained in the air.

Even in the future, if someone came up with a very sophisticated ventilation system that screened out carcinogens, it would still not diminish the point that has arisen during the passage of both bills that a level playing field would not exist between those who have and those who do not have ventilation. That is another aspect that we must take into account. On that basis, I will certainly not support either amendment.

**Mr Monteith:** Amendment 137 would allow an air quality standard to be set in regulations that would allow places to become exempt. In other countries, such as Japan and more recently Italy,

where it is generally assumed that smoking in enclosed spaces has been banned, those bans include exemptions that are determined by strict, tight and high air quality regulations.

It is possible to move not only particulates but carcinogenic gases. Any ventilation system can achieve that effectively, because not to do so would be to suspend the laws of physics. If one understands Boyle's law, one will know that gases mix, so to extract gases is to extract not just one set of gases, but the carcinogens, too. Even with current technology, it is possible to provide facilities in which air quality is high.

It is of course the case that members of the public who go into bars and restaurants have a choice to make. It is more difficult for staff to exercise that choice. Someone who is employed in a bar, club or restaurant may not be deemed to have the same amount of choice, other than the choice to give up their job. I understand the argument that they need protection from passive smoking.

However, that argument can be mitigated by raising air quality to a high standard, as happens in places such as Japan. In that way, the dilution of the potential threat is such that the risk becomes no greater than that in other workplaces where carcinogens exist, such as welding shops and places where spray-painting is undertaken—those are less harmful places in which the Health and Safety Executive still takes an interest. We should be able to achieve a balance through amendment 137.

I will say a few words on Margo MacDonald's amendment 33. Her logic is impeccable. She recognises that, in practice, many places will find that they benefit from the bill. I have never disputed that. In many cases, however, practically all the people who are inside a public house already smoke and will not see why, despite the fact that they can buy and consume alcohol, the public house cannot be licensed to allow all the people who live, work, and breathe there to consume tobacco, which is a legal substance. If Margo MacDonald's amendment is agreed to and its logic is applied, we could strike a balance in society whereby people could still visit the Port O'Leith to have a dram and a fag.

15:00

**Mike Rumbles:** I say with due respect to Margo MacDonald and Brian Monteith that they may not be aware of the evidence that has been presented to the Health Committee showing that the ventilation argument is a red herring. The issue is not about air quality. The scientific and medical evidence has shown the committee that ventilation does not work. Despite what Brian Monteith says,

it does not remove the carcinogens in the atmosphere. Ventilation systems as we know them make the situation worse, because, as Janis Hughes pointed out, they remove the aspects of the smoke that cause discomfort, so that people spend more time in the atmosphere breathing in the carcinogens and the other agents and more damage is done to them. The evidence that the committee has received is that ventilation does not work. A gale would need to blow to produce a complete change of the air and the atmosphere in the premises.

I say to Margo MacDonald that the bill is about public health. It does not prohibit the activity of smoking; it prohibits smoking in certain enclosed public places. We have a duty to protect the public from what people often call third-hand smoke, second-hand smoke or environmental tobacco smoke. That is an important issue. I cannot accept the suggestion that we have now, or will have in the future, ventilation systems that might work to change the laws of physics, as Brian Monteith reminds us, so I will not support either of the amendments.

**Mr McNeil:** Amendments 137 and 33 are at least consistent in the rhetoric that is used, but they are not supported by the evidence. People who spoke to the committee about the business element of a smoking ban demanded a level playing field. They did not want places with ventilation to be treated differently and they did not want licensing boards to make different decisions about different establishments. Amendments 137 and 33 would undermine the comprehensive nature of what we are attempting to do.

We come to the issue that resolved my quandary about where we are going with the bill. The questions of choice—whether we infringe people's rights, whether smoking should be legal and whether people should be able to smoke at home or in the pub—were eventually easily resolved for me in my focus on the thousands of hospitality workers who have no choice about their workplace.

That leads us on to the question of adequate ventilation. The first principle in the control of hazards to health is whether the hazard can be eliminated without dramatically affecting the business. That first principle can be applied in this case. As a consequence, we do not need to engineer out carcinogens or whatever may be in the atmosphere. We can both achieve a level playing field and meet some of our public health objectives.

The people who will benefit most from the bill will be the workers who will be protected from exposure to smoke in their workplace for eight or 12 hours a day, seven days a week. That is the basis on which I have resolved the quandary that

Margo MacDonald has described. The issue is not about choice; it is about workers' protection. In no other industry would we tolerate employers exposing their workers to hazardous substances and chemicals without taking action. We are about to take action, for which I am thankful. I therefore oppose amendments 137 and 33.

**Rhona Brankin:** I, too, cannot support the amendments. Amendment 137 is clearly aimed at permitting exemptions from the prohibition for premises that achieve a certain air quality through some form of ventilation. I agree with members who say that the matter is being revisited—the issue was considered at an earlier stage. It is a myth that there is a safe level of second-hand smoke. Second-hand smoke is a grade A carcinogen that kills and there is no safe level. Only the complete absence of second-hand smoke is acceptable and complete absence can be guaranteed only by the provisions in the bill.

Nanette Milne is pinning her hopes of achieving exemptions on ventilation. However, as the committee accepted in its stage 1 report, ventilation does not provide an adequate alternative to a smoking ban in terms of our health objectives, as it does not remove carcinogens. I reiterate that there is no safe level of exposure to environmental tobacco smoke. On that basis, amendment 137 is fallacious and I invite Nanette Milne to withdraw it.

Margo MacDonald has said that her amendment 33 is not an attack on the bill and that she wishes to have some discussion around the issues that it raises. However, the amendment would change fundamentally the comprehensive nature of the bill's provisions on smoke-free environments. We believe that comprehensive measures will deliver major benefits by helping to denormalise smoking and by taking smoking out of everyday experience in restaurants, cafes, pubs and offices; we believe that that will send a huge message to teenagers and children that smoking is something that people do not want to do. That is the very essence of the bill.

The bill seeks to protect the right of smokers and non-smokers to breathe clean air. More than 70 per cent of all people who are aged 16 and over in Scotland are non-smokers and both they and smokers have the right to breathe clean air in public places. I am proud to say that the bill protects everyone's right to breathe clean air. The ban is not about stopping people smoking, although, as the Deputy Minister for Health and Community Care, I would welcome a reduction in the number of people who smoke. However, the evidence of the health risks of passive smoking is now so strong that we would be failing in our duty to protect the health of people in Scotland if we did not act quickly and decisively. As the committee is

aware, Scotland's poor health record—in which smoking plays a significant role—demands that we do that.

Margo MacDonald has asked why we are introducing a ban on tobacco smoke and compares the situation to the use of alcohol. I think that there is a fundamental difference. If someone drinks alcohol in moderation, it does not kill them, whereas there is no safe limit for tobacco smoke. We are taking measures to reduce alcohol consumption, but there is a fundamental difference between that and smoking.

The bill will have an immediate impact on smoking, but I hope that that impact will be far outweighed by the impact on future generations as they turn away from smoking as an acceptable activity. Amendment 33 would totally undermine the benefit of the bill to our children and grandchildren.

The bill's provisions address serious public health issues and I do not find logic in the proposal that licensing boards be given powers to remove licensed premises from the scope of the bill. Why should licensing boards have such a public health role? Would the boards that are already hard pressed and doing a good job of issuing and reviewing licences welcome the powers that amendment 33 would give them? Amendment 33 would fundamentally undermine the comprehensive nature of the proposed smoking ban, as I hope I have explained, although I recognise that that was not Margo MacDonald's intention when she lodged the amendment.

I cannot support amendments 137 and 33. I invite Nanette Milne to withdraw amendment 137 and I ask Margo MacDonald not to move amendment 33.

**Mrs Milne:** I will not rehearse the arguments that we heard during stage 1 and today. I would like there to be a smoke-free atmosphere wherever that is possible. I agree with Margo MacDonald that the logic of what is being proposed would lead us to ban smoking altogether, but tobacco remains a legal substance and there should be an element of choice for people who want to indulge in that substance, much as I disapprove of it.

I am not convinced that the scientific evidence on environmental tobacco smoke is quite as clear cut as has been suggested. Active smoking is lethal, but we are not certain about the level of environmental tobacco smoke that is lethal. The purpose of amendment 137 was to leave the door open in case technology moves on and better ventilation systems are developed that can eliminate carcinogens—I am sure that such systems will be developed. We are never free from exposure to carcinogens. When we walk down

Princes Street, we breathe in the exhaust fumes of motor cars. We cannot eliminate carcinogens altogether, but good ventilation can make the atmosphere pretty safe and in due course could provide clean air even in pubs in which smoking was allowed. However, I will not press amendment 137.

*Amendment 137, by agreement, withdrawn.*

**The Convener:** That deals with that group. I propose to suspend—

**Margo MacDonald:** Excuse me, but what about amendment 33?

**The Convener:** Amendment 33 will be taken later.

**Margo MacDonald:** I apologise—you said that earlier.

**The Convener:** You would not want to interrupt me when I am about to announce a five-minute suspension.

15:13

*Meeting suspended.*

15:21

*On resuming—*

#### **Section 4—Meaning of “smoke” and “no-smoking premises”**

**The Convener:** Group 8 is on the meaning of “smoke” and substances not including tobacco. Amendment 85, in the name of Stewart Maxwell, is grouped with amendments 86, 87 and 88.

**Mr Maxwell:** When I first read the Executive’s bill, I noticed that the meaning of the word “smoke” in section 4(1) is different from that in my Prohibition of Smoking in Regulated Areas (Scotland) Bill. I was concerned that whereas my bill defined smoke as all smoke from all substances that are smoked, the Executive’s bill defined it as coming from tobacco products that are smoked.

It is clear that health issues are related not only to tobacco smoke, but to other smoke. For instance, so-called herbal or non-tobacco cigarettes—which are sometimes called vegetable-based cigarettes—also produce carbon monoxide and tar. Indeed, research has shown that they produce those materials in equivalent or even greater quantities than do tobacco cigarettes. The research on the dangers of carbon monoxide and tar is clear, and the committee received a great deal of evidence at stage 1 on the health effects of tar and inhaling carbon monoxide. To ensure that the smoke-free legislation is comprehensive, we must go further than the current definition in the bill.

We want to protect the health of adults who are around at the moment, which means protecting them from carbon monoxide and tar, no matter what type of cigarette they come from. As the minister said, we are also trying to denormalise smoking for the health benefit of future generations, which means removing all types of smoking from pubs, clubs, licensed premises, restaurants and other public places. If we agree to the amendments, there will be health benefits for adults who are around now and for future generations.

On enforcement, clearly it would be difficult for an enforcement officer or even a publican or a manager of premises to tell on sight whether a person is smoking a tobacco cigarette. I showed members at stage 1 what I am about to show them again. Nobody here can tell me whether the cigarette that I am holding is a tobacco or a non-tobacco cigarette, or whether it is a hybrid of the two, as many herbal cigarettes contain tobacco. How could an enforcement officer—or anybody else, for that matter—enforce the law if they cannot tell the difference?

Members have talked about ensuring that enforcement officers do not have to confront people face to face on Saturday nights in pubs in Glasgow or anywhere else. However, if the definition is left as it is, that would have to happen. To prove a case, the cigarette would have to be removed and taken away for laboratory analysis to find out whether it contains tobacco. That would not be an acceptable way of enforcing the legislation—it would be confrontational and against the ethos that has been discussed today and earlier. Enforcement would be much easier if all smoking were eliminated from enclosed public places.

Amendments 85 to 88 would also future proof the bill. Although we understand how certain products are smoked at the moment, new inventions or other ways of smoking might be devised in future that would not be caught by the bill because the bill refers only to the smoking of tobacco in a certain way. If we widened the scope of the bill to ban all smoking in enclosed public premises, we would make it difficult for people to get round the ban by arguing about the definition of smoking that is framed in the bill. It is important to future proof the bill so that its opponents do not try to undermine the ban by changing how smoking is done.

The importance of providing a level playing field has been an issue throughout our consideration both of my bill—the Prohibition of Smoking in Regulated Areas (Scotland) Bill—and of the Executive bill that is before us today. Indeed, the committee’s stage 1 report on my bill highlighted how difficult it would be to enforce a partial ban. In

effect, unless we agree to the amendments in this group, that is what we will get because the Executive's bill would ban tobacco smoking but not other types of smoking. That would be a mistake. If we want a comprehensive smoking ban that is easy to enforce and that denormalises smoking in society, the committee should support the amendments.

I move amendment 85.

**Mr Monteith:** Several points require to be addressed by Mr Maxwell when he sums up. He talked about denormalising smoking in pubs, clubs, restaurants and other "wholly enclosed" places—although the next group of amendments might change that phrase to "wholly or substantially enclosed" places—but his amendments would mean that theatres and venues where dramatic and lyric productions take place would be included in the ban. When we debated my amendments in group 2, the committee considered that such productions would have alternatives to smoking. However, the amendments in this group would prevent the use of such alternatives in theatre, opera and ballet. Mr Maxwell should confirm whether that will be the case, so that members and the minister can consider whether, having argued that alternatives would be available, they should agree to amendments that would remove those alternatives.

Furthermore, if the committee is convinced by Mr Maxwell's arguments, it should accept the need for an amendment at stage 3 to provide an exemption for dramatic and lyric productions, as banning all types of smoking in wholly enclosed spaces would otherwise mean that the alternatives would not be available.

For the committee's benefit, I draw attention to the need for clarification on that issue.

**Mr McNeil:** Amendments 85 to 88 are about common sense and consistency. The definition needs to be extended to include the policy thrust of the amendments. Given the actions of tobacco companies in the third world and all over the world, it will not be beyond their imagination to come up with different smoking products that will not fall under the definition of the bill. God forbid that Scotland ever gets itself into the crazy situation of legalising cannabis—I see that Margo MacDonald is no longer present—but if it did so, people would be allowed to smoke cannabis but not tobacco in pubs. The amendments are about common sense and consistency, so they should be supported.

**Rhona Brankin:** I will speak in support of the amendments in this group.

Amendments 85 to 88 are important because they would extend the scope of the bill by

prohibiting in no-smoking premises the smoking of herbal cigarettes and other forms of non-tobacco smoking products. I thank Stewart Maxwell for lodging the amendments, which would make the bill more comprehensive by ensuring that the smoking of both tobacco and non-tobacco smoking products is illegal in premises that are designated as no-smoking premises under the bill.

The amendments would also contribute to achieving a greater denormalising effect by making a more powerful statement about smoking not being socially acceptable. They would also provide flexibility to deal with future changes in smoking products so that such products will fall within the scope of the smoking-free legislation.

Those are all goals that we should support, and the Executive certainly supports them. I thank Stewart Maxwell for lodging his amendments.

15:30

**Mr Maxwell:** I will answer some of the points that have been raised. Brian Monteith has spoken about theatres. The point is that it is unreasonable to expect theatre staff—actors and others—to be forced to breathe in carbon monoxide and tar. Why does their profession mean that they should have to suffer the associated health problems whereas others in pubs and restaurants do not? We are talking about a level playing field and protecting the health of all staff in all places. I think that that is reasonable.

From what I heard, the minister did not seem to argue that non-tobacco cigarettes were the alternative. I think that she said that it would not be beyond the wit of the entertainment industry to come up with an alternative, which is slightly different. Duncan McNeil talked about the imagination that could be used to deal with the issue. Television programmes and theatre productions can take us backwards or forwards in time, out into space or anywhere else if those who create them apply themselves and use pyrotechnics and other types of special effect. It is not particularly difficult to get round the problem.

Duncan McNeil was quite right on the issue of hash or cannabis. If the bill was left unamended and United Kingdom legislation was changed to decriminalise cannabis or to allow it to be smoked, people in Scotland would not be allowed to smoke a tobacco cigarette in a pub, but would be allowed to smoke a joint. That logic seems rather strange.

I hope that the committee will support my amendments.

**The Convener:** The question is, that amendment 85 be agreed to. Are we agreed?

**Members:** No.



**The Convener:** There will be a division.

**For**

Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 Robison, Shona (Dundee East) (SNP)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

**AGAINST**

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

**The Convener:** The result of the division is: For 6, Against 1, Abstentions 0.

*Amendment 85 agreed to.*

*Amendment 86 moved—[Mr Stewart Maxwell].*

**The Convener:** The question is, that amendment 86 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 Robison, Shona (Dundee East) (SNP)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

**AGAINST**

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

**The Convener:** The result of the division is: For 6, Against 1, Abstentions 0.

*Amendment 86 agreed to.*

*Amendment 87 moved—[Mr Stewart Maxwell].*

**The Convener:** The question is, that amendment 87 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 Robison, Shona (Dundee East) (SNP)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

**AGAINST**

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

**The Convener:** The result of the division is: For 6, Against 1, Abstentions 0.

*Amendment 87 agreed to.*

*Amendment 88 moved—[Mr Stewart Maxwell].*

**The Convener:** The question is, that amendment 88 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 Robison, Shona (Dundee East) (SNP)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

**AGAINST**

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

**The Convener:** The result of the division is: For 6, Against 1, Abstentions 0.

*Amendment 88 agreed to.*

*Amendment 93 moved—[Mr Duncan McNeil]—and agreed to.*

**The Convener:** Group 9 deals with the meaning of “no-smoking premises”. Amendment 97, in the name of the minister, is grouped with amendments 138 and 100. Under the rule of pre-emption, if amendment 138 is agreed to, I will not be able to call amendment 100.

**Rhona Brankin:** I will speak first to the Executive amendments 97 and 100. Our approach to the smoking provisions in the bill is simple, and the intent and scope of the provisions must be clear. They should be readily enforceable, and there should be as few loopholes for evasion as possible.

A key concept is the kind of premises that may be prescribed as no-smoking premises under regulations, which are premises that are “wholly enclosed” and that fall into one of four specified categories. Therefore, the phrase “wholly enclosed” is of paramount importance in designating no-smoking premises.

In our consultation on the draft smoking regulations, we indicated that we were continuing to examine whether the given definition of “wholly enclosed” would deliver ministers’ policy intention. We specifically invited consultees’ views on the definition of “wholly enclosed” contained in the draft regulations. A broad range of those who responded to our consultation highlighted the issue and asked for greater clarity on it. The response from the against an outright ban group asked the Executive to be more specific and flexible on the definition of “wholly enclosed”, to allow opportunities to create non-wholly enclosed spaces in line with practices established under the Irish smoking ban.

On the evasion issue, we have recognised that there is a risk that the phrase “wholly enclosed” might be too restrictive and could be undermined. For example, the manager of no-smoking premises could remove a brick from a wall and by doing so claim that the premises were no longer “wholly enclosed”. Ultimately, it would be for the

courts to decide whether such an argument could be pursued. Whatever the courts decided, it would be contrary to our policy intention to allow premises to escape the definition of no-smoking premises so readily.

Amendments 97 and 100 will replace the phrase “wholly enclosed” in section 4 with the phrase “wholly or substantially enclosed”. We intend to define further “wholly or substantially” in the regulations. We have not yet settled on the exact wording but, in common with a range of consultees who responded on the issue, we are attracted by the Irish approach, which may be broadly stated as follows. Where a premises either has no roof, by which I mean that it is possible to see the sky, or has a roof but no walls on 50 per cent of its perimeter, by which I mean that it is possible to see the undergrowth outside, it cannot be considered enclosed. In our view, such a definition makes our policy intention clear, reduces the possibility of evasion and is readily enforceable by environmental health officers on the ground. Our proposed changes will add clarity and will take us towards the level of specificity and flexibility asked of us by respondents to the consultation.

I cannot support amendment 138, in the name of Mr Monteith, which is designed to restrict the places to which the smoking legislation will apply. It draws the definition tightly and defines as a so-called “outdoor part of premises” a place that is so enclosed that there is little chance of environmental tobacco smoke dissipating. The amendment seeks to limit and undermine the comprehensive nature of the bill and thus to reduce its impact on the appalling number of smoking-related deaths in Scotland—13,000 a year, or 35 a day. The Health Committee has already accepted that exposure to environmental tobacco smoke can do damage to a person’s health.

Through subordinate legislation, the Executive will introduce a transparent and easily understood definition of “wholly or substantially enclosed”, with the objective of ensuring that the vast majority of the people of Scotland, who choose not to smoke, are protected from second-hand smoke. I urge the committee to support Executive amendments 97 and 100 and to resist Brian Monteith’s amendment 138.

I move amendment 97.

**Mr Monteith:** I will speak first to amendments 97 and 100, in the name of the minister. As described by the minister, the amendments seem to be worthy of support and to be consistent with my approach, as they seek to clarify in the bill the definition of “wholly enclosed”. I may or may not agree with the sentiment of the minister’s approach, but I understand the enforcement

difficulties were a person to remove a door or a brick. There is no point in having legislation if it is unclear and so abused that people avoid using it.

On the face of it, the minister’s explanation appears wholly acceptable. However, it does not divert me from my approach. Amendment 138 would not undermine the intention behind the bill. The body of the minister’s argument was nothing more than a gratuitous blizzard of assertions and facts about which we will continue to disagree. It was not a legal refutation of the point—which I have made on a number of occasions—that tighter and clearer descriptions should be put on the face of the bill. To do so would not undermine the bill but would aid the process of effecting its provisions.

Concern has been expressed that the drafting of the bill and its reliance on regulations could allow misunderstandings to arise. For instance, although one would expect certain beer gardens to be exempt, that will not be the case. Indeed, if the case is made for the definition of premises to take into account perimeters and boundaries, anyone smoking outdoors at a summit such as the G8 at Gleneagles could become subject to the provisions of the bill—if the bill were enacted when the summit was taking place—because of the new fence that is to be built around the hotel premises.

The minister has lodged amendments 97 and 100, so I am content that she is trying to address some of the points that I have raised. Therefore, I will not move amendment 138.

*Amendment 97 agreed to.*

**The Convener:** Group 10 is on premises used as a place of work and extension of the definition. Amendment 98, in the name of the minister, is grouped with amendment 99.

**Rhona Brankin:** The amendments in the group are intended to make the smoking provisions in the bill as comprehensive as possible. They will extend the protection from environmental tobacco smoke that the bill will provide beyond those in paid employment and draw within the scope of the bill premises in which people work in a self-employed or voluntary capacity. The amendments will ensure that all workers have equal rights in that regard.

I move amendment 98.

**Mr Monteith:** The minister talked about people who work in a self-employed capacity. Given that so many people who work in a self-employed capacity do so in premises that are either part of domestic premises or are adjoined to them, it would be helpful if the minister would clarify the position of self-employed people who have a room at home that is dedicated to, for instance, their self-employment as an accountant. Could the

provisions of the bill creep into the home? Could one room be a no-smoking room, although the rest of the premises would not be so restricted because they are that person's home?

**Rhona Brankin:** If an accountant works in private premises, the premises are not covered by the provisions of the bill.

*Amendment 98 agreed to.*

*Amendment 99 moved—[Rhona Brankin]—and agreed to.*

*Amendment 138 not moved.*

*Amendment 100 moved—[Rhona Brankin]—and agreed to.*

*Amendment 94 moved—[Mr Duncan McNeil]—and agreed to.*

*Amendment 139 not moved.*

*Section 4, as amended, agreed to.*

#### **After section 4**

15:45

**The Convener:** Group 11 is on proceedings for offences under sections 1 to 3. Amendment 101, in the name of the minister, is in a group on its own.

**Rhona Brankin:** Amendment 101 is intended to ensure that any lengthy or extended hearing processes that are consequential to the issuing of a fixed-penalty notice under part 1 of the bill do not result in a subsequent prosecution for that offence being time barred. As the bill is drafted, where a person has been given a fixed-penalty notice in relation to an offence under sections 1 to 3, they may request a hearing under schedule 1 in respect of the offence. In that event, I am mindful that there is a danger that any delay in the hearing process might result in any subsequent prosecution of that person being time barred because there is a fixed statutory maximum period between the date of the offence and the date by which the prosecution must be brought.

The issue arises because the offences under sections 1 to 3 are subject to summary trial only, and that type of trial attracts a time bar. Therefore, delays in the hearings system could result in the option of prosecuting offenders being circumvented. Amendment 101 seeks to remove that risk by linking the start of the time limit for summary proceedings in pursuance of sections 1 to 3 to the point at which the Crown is passed sufficient evidence on the offence to justify bringing a prosecution.

I move amendment 101.

*Amendment 101 agreed to.*

**The Convener:** Members will have noticed that Margo MacDonald is no longer with us. She advised me that she did not intend to move amendment 33, so she was not required to stay on.

*Amendment 33 not moved.*

**The Convener:** We move on to group 12, on local authority enforcement. Amendment 140, in the name of Nanette Milne, is grouped with amendments 142, 143 and 145 to 150. If amendment 150 is agreed to, I will not be able to call amendment 151 as it will have been pre-empted.

**Mrs Milne:** Amendment 140 seeks to clarify something that appears to us to be indistinct in part 1 of the bill. It seeks to make local authorities responsible for enforcing the bill. It moves the definition of "the appropriate council" to after section 4. Amendment 150 is consequential, in that it seeks to delete that definition from section 6. We think that the matter needs clarification, bearing in mind that the police are not too keen on being responsible for enforcing the legislation.

As pubs and clubs are privately owned, section 6 could infringe on the rights of landlords. The use of the term "search" in section 6(1) could mean that inspectors had the right to search the private areas of premises without a warrant. By substituting "inspect" for "search", amendment 143 would secure the rights of landlords to respect for their private lives and homes. The approach that amendment 143 proposes would be less intrusive. The bill provides the power to

"enter and search any no-smoking premises",

to ascertain whether there has been a contravention of the prohibition on smoking. The power to enter and inspect premises for that purpose should be sufficient.

Amendment 142 would require an enforcement officer to obtain a warrant before entering by force and searching premises. Pubs are private premises, although sections of them are public places, so amendments 142 and 143 would provide protection to the people who live in pubs.

Amendment 145 would strengthen proprietors' rights. For example, if a case went to court in which an officer had arrived at a pub at 4 am with a warrant for inspection, when the pub was shut and people were in bed, the onus would be on the officer to say why he thought that 4 am was a reasonable time to carry out the inspection. Amendment 145 might provide protection against the unreasonable and perhaps repeated targeting of specific pubs.

Amendments 146 and 147 would also strengthen proprietors' rights, by giving a person who was accused of breaking the law the right to

refuse to answer questions on the spot or hand over evidence, such as closed-circuit television footage, until a lawyer was present or the case went to court. The amendments would bring the bill in line with other legislation that deals with the rights of the accused. Amendment 148 would set out the basis on which a warrant could be granted.

Under section 6(3), a person who does not provide their name and address when required to do so by an authorised enforcement officer will be committing an offence. Amendment 149 would go further by including other forms of obstruction of an enforcement officer.

The amendments would strengthen the rights of proprietors and individuals. For example, if an employee told their employer that no one had been smoking on the premises and the employer, who believed the employee, subsequently told an enforcement officer that no one had been smoking, but it was subsequently proved through CCTV or other evidence that people had been smoking on the premises, the employer would not have committed an offence.

I move amendment 140.

**Mr Monteith:** I support the amendments and I will be interested in the minister's response. I say simply that it is important that the law on rights of entry for officials such as the police or environmental health officers is consistent. Live-in premises are part of many public houses and the searching of no-smoking premises might lead to an invasion of the privacy of a landlord or landlady who lived on the premises. Amendment 143, which would change the tenor of the approach by substituting "inspect" for "search", would strike a better balance. The amendments try to set out an approach to the rights of the accused that is consistent with that of other legislation, which makes perfect sense. We do not want to create a situation in which the enforcement of the bill leads people to think that there is increasingly a police state. We should ensure that the bill takes the approach to enforcement that is being taken in the Republic of Ireland, which members have discussed, where enforcement has had some success because it has not been regarded as invasive.

The purpose of the amendments in the name of Nanette Milne is to extract an alternative solution from the minister if the amendments are not the solution. Is there an alternative? Can the minister assure us that the bill will not lead to a situation where officials enforce the bill invasively?

**Rhona Brankin:** I speak against the amendments. I believe that, taken in aggregate, the amendments are, in effect, a rather convoluted means of diminishing the enforcement powers provided for in the bill. They do so by placing a

duty on local authorities to enforce the legislation rather than providing, as the bill currently does, for local authorities to be the lead element of a range of possible enforcement agencies. Placing a duty on local authorities ensures simply that they have no discretion whatsoever on how to enforce the legislation.

The bill envisages a flexible approach to enforcement, not the one-size-fits-all approach that the amendments would achieve. Do we really want a situation where environmental health officers have no discretion in applying their knowledge and professionalism? I do not think so.

Furthermore, the amendments seek to limit the power of local authority officers to search premises, reducing it to a power to inspect. In addition, the amendments would create a requirement for enforcement officers to obtain a sheriff's warrant before entering premises to inspect them. With such a delaying tactic, the environmental health officers would be as well to shout, "Coming, ready or not!" before approaching premises where it was thought that an offence was being committed.

We can see that, taken together, the amendments are another attempt by the Conservatives to water down and subvert enforcement of the provisions of the bill. The distinction between a private dwelling and no-smoking premises will be defined in the regulations. I urge members to oppose the amendments.

**Mrs Milne:** I do not intend to press amendment 140, but we feel that it is important that local authorities are the enforcement authorities. That is what I understood was the wish of the people who gave evidence to the committee. With regard to requiring a warrant, we would be asking not for a warrant for inspection but for a warrant for entering and searching, and there is a difference between the two.

*Amendment 140, by agreement, withdrawn.*

*Section 5 agreed to.*

### **Schedule 1**

FIXED PENALTY FOR OFFENCES UNDER SECTIONS 1, 2, AND 3

*Amendment 141 not moved.*

**The Convener:** Amendment 102, in the name of the minister, is grouped with amendments 103 and 104.

**Rhona Brankin:** Amendments 102 to 104 are technical amendments to paragraph 13 of schedule 1, which sets out what ministers may prescribe in relation to fixed penalty notices—for example, circumstances in which such notices

may not be given, payment periods and methods of payment.

Subparagraph (a) of paragraph 13 provides that Scottish ministers may

“prescribe circumstances in which fixed penalty notices may not be given”.

Subparagraph (c) provides that Scottish ministers may

“prescribe the method or methods by which penalties may be paid.”

Those references to “prescribe” in schedule 1 are unnecessary, as the interpretation section of the bill—section 35—already provides a definition of “prescribed” for the bill.

16:00

The overall effect of the amendments is to remove all references to prescribing by regulations in paragraph 13 of schedule 1 and to rely instead on the definition of “prescribed” in section 35 to give meaning to the regulation-making power in paragraph 13. Taken together, the amendments have a neutral effect and will simply tidy the drafting of schedule 1.

I move amendment 102.

*Amendment 102 agreed to.*

*Amendments 103 and 104 moved—[Rhona Brankin]—and agreed to.*

*Schedule 1, as amended, agreed to.*

### **Section 6—Powers to enter and require identification**

*Amendments 142 to 151 not moved.*

*Section 6 agreed to.*

### **After section 6**

*Amendment 152 not moved.*

*Section 7 agreed to.*

### **After section 7**

**The Convener:** Amendment 153, in the name of Duncan McNeil, is in a group on its own.

**Mr McNeil:** I remind the committee that the current law on tobacco sales to children is nearly 70 years old—it was set out in the Children and Young Persons (Scotland) Act 1937. No members will remember it but, back then, the attitude was different. Smoking was seen as glamorous and harmless. Despite that, the act still made the majority of working-class children, who left school at 14, wait two years until they could legally buy cigarettes. Reform is overdue and the law is badly in need of an update.

Amendment 153 would give the Executive the power to vary by order the legal age for tobacco purchase by amending section 18 of the 1937 act. Any order would need to amend three subsections of section 18 of that act—subsection (1), on the general prohibition of sales to underage people; subsection (2), on rules that relate to cigarette machines; and subsection (3), on the seizure of tobacco products from underage people. As I said, the amendment would allow section 18 of the 1937 act to be amended by order, after consultation. I presume that an order would be subject to the affirmative resolution procedure.

I move amendment 153.

**Mike Rumbles:** I understand entirely where Duncan McNeil is coming from in wanting to raise the age at which young people can be sold tobacco. I will concentrate on the amendment that he has lodged to pursue his intention. The amendment would not rigorously achieve his objective. He said that he presumed that an order made under the power that amendment 153 would give to ministers would be subject to the affirmative procedure, but the amendment does not make that clear. The amendment says:

“The Scottish Ministers may make an order under this section only after consulting such persons as they consider appropriate”.

The Scottish ministers would not have to consult the Parliament or the Health Committee.

Nor does the amendment require that the age specified in the 1937 act be changed from 16 to 18; Scottish ministers could change it from 16 to 21 or 14. The amendment is not specific and would not achieve what Duncan McNeil intends it to achieve. It is not good legislation to give ministers such unrestricted power.

The minimum age at which people can buy cigarettes was flagged up at stage 1, but the committee received no evidence on the matter. The convener will correct me if I am wrong, but I understand that under parliamentary procedure we are not allowed to take more evidence on the bill.

**The Convener:** It is too late for us to take evidence on the matter. Of course, if we had been given more notice of the amendment, we could have taken evidence, as we did in relation to other amendments.

**Mike Rumbles:** That means that we have to either take it or leave it. The committee should not be expected to vote for an amendment that is flawed, despite the good intentions behind it. It has been argued that we can agree to a flawed amendment at stage 2 and put it right at stage 3, but that is not the way to proceed. Whatever we think of the merits of the issue that Duncan McNeil raises, we should not vote for amendment 153.

**Shona Robison:** I flagged up the issue at stage 1 after the committee's visit to Ireland, when we learned that the Irish Government is addressing the minimum age at which people can purchase cigarettes as part of a package of measures. I am not convinced that the proposal would do much good on its own, but it could be an important element of a package of measures. ASH Scotland raised issues to do with enforcement and the flouting of the existing law, but that is a different matter. Enforcement must be addressed whatever age is specified.

On what Mike Rumbles said about orders made under amendment 153, I seek the minister's assurance that such orders would come before the Parliament for approval. On that basis, I support amendment 153.

**Mrs Milne:** I cannot give my full support to amendment 153 at this stage, mainly because the amendment has been sprung on us. I foresee major problems with enforcement if the amendment is agreed to, but perhaps that is a side issue. More time needs to be spent listening to opinion and researching the matter.

**Dr Turner:** I look forward to hearing what the minister says about amendment 153. I fully support Duncan McNeil's proposal. The younger someone is when they become addicted to a substance, the harder it is for them to quit and I welcome any measure that might encourage people not to smoke. Many young girls start smoking between the ages of 9 and 13, despite the educational tools that are available. I am sympathetic towards amendment 153, but I will leave the technicalities to members who are more aware of the rights and wrongs of how the proposal can be put into legislation. I support Duncan McNeil's proposal.

**Paul Martin:** Further to what Mike Rumbles said, I do not think that it would be flawed to accept amendment 153 at stage 2. As a member of the Local Government and Transport Committee, I have been advised by the Minister for Transport on a number of occasions that he is happy for us to pass an amendment to a bill at stage 2 that he will consider improving at stage 3. I have no difficulties with Duncan McNeil's suggestion.

An interesting dimension is the proof-of-age card for the purchase of alcohol that is to be introduced through the Licensing (Scotland) Bill. There will be future opportunities to tie in that card to the purchase of tobacco, if the change in the legal age is introduced. Duncan McNeil should be encouraged to ensure that we pursue the matter further at stage 3.

**Rhona Brankin:** It is important that steps are taken to denormalise smoking in our society. A

key part of that is doing all that we can to discourage young people from starting to smoke in the first place. We are aware that there is a range of opinion on the age issue, which is why in our 2004 tobacco action plan, "A Breath of Fresh Air for Scotland—improving Scotland's health: the challenge", we indicated that we will

"commission further research with young people to provide a clearer picture of the factors that lead them to start or resist smoking and track awareness of the dangers of smoking and passive smoking amongst key target groups."

That work will be done by an expert group under the chairmanship of Dr Laurence Gruer of NHS Health Scotland, which is to be known as the Gruer group. As part of the group's remit, we will ask it to consider the significance of the legal age limit in relation to the uptake of smoking and the evidence on that from other countries, and to make recommendations to ministers. The group will meet for the first time in August and is expected to complete its work in nine to 12 months.

Amendment 153 will enable the Scottish ministers to vary the age limit in section 18 of the Children and Young Persons (Scotland) Act 1937, which stipulates, among other matters, the minimum age at which someone may legally be sold tobacco. The amendment will give the Scottish ministers a power to amend primary legislation by means of an order, but any such order could be made only after the Scottish ministers had consulted such persons as they considered appropriate on a draft of the order.

If the committee agrees to amendment 153, the Executive will lodge a technical amendment to section 34 at stage 3 to clarify that the power will be exercised by an order that is made under the affirmative resolution procedure. That will mean that any order that is made under the amendment will come to the committee in draft form and will be subject to ratification by the full Parliament.

**Mr McNeil:** I welcome the minister's reassurance—I hope that it will also give reassurance to my colleagues.

Shona Robison will remember that, when we first heard of the evidence from Ireland, where the legal age was increased from 16 to 18, there was a debate about whether such a change here would be a reserved or a devolved matter. I sought parliamentary advice through the Scottish Parliament information centre, which confirmed, after discussions with the Scottish Executive, that the matter is devolved. I was pleased to hear that and so began to put together an amendment.

I take heart from Paul Martin's rebuttal of Mike Rumbles and his comment that we can improve on the measure. Given the minister's assurances, we should not miss this opportunity. ASH Scotland

has been advised today that Guernsey, an area from which we did not take evidence, had twice the United Kingdom average of teenage smokers in the 1990s but, after the age limit was increased from 16 to 18—among other measures, it is fair to say—it now has half the UK average of teenage smokers. I hope that we will use the coming period for consultation and reflection on how to tackle the issue of young people and smoking.

**The Convener:** The question is, that amendment 153 be agreed to. Are we all agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 Robison, Shona (Dundee East) (SNP)  
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

#### AGAINST

Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

#### ABSTENTIONS

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

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

*Amendment 153 agreed to.*

*Section 8 agreed to.*

#### Section 37—Short title and commencement

16:15

**The Convener:** We move on to group 15, which contains amendments relating to commencement. Amendment 105, in the name of the minister, is grouped with amendments 106 and 107.

**Rhona Brankin:** The current drafting of the bill means that the smoking provisions would come into effect on the day after royal assent is granted, which is currently anticipated for August 2005. Our intention is that the smoke-free legislation should instead come into force in spring 2006. In order to achieve that, amendments 105 and 106 provide that the smoking provisions that are contained in part 1 and schedule 1 will come into force by means of a commencement order, rather than on the day after royal assent. That will allow the smoking provisions to be commenced next year in tandem with the supporting regulations, once those regulations have been agreed to by Parliament.

Amendment 107 means that ministers will also be able to specify within the commencement order the time at which those smoking provisions will come into force. That will allow the Executive flexibility as to the timing of the commencement of

the legislation. We wish to be able to avoid a situation where the legislation comes into effect and has to be enforced from midnight. Commencement will be from a time chosen to avoid unnecessary confrontations.

Overall, this group of amendments will allow the Scottish ministers suitable flexibility as to the date and time of the implementation of the smoking provisions.

I move amendment 105.

*Amendment 105 agreed to.*

*Amendments 31, 106, 32 and 107 moved—[Rhona Brankin]—and agreed to.*

*Section 37, as amended, agreed to.*

#### Long Title

**The Convener:** Group 16 comprises amendments relating to the long title. Amendment 108, in the name of the minister, is grouped with amendments 109 to 114.

**Rhona Brankin:** These amendments are technical amendments to the long title, which describes the provisions that are legislated for in the bill. The amendments are required to reflect the bill's provisions as amended at stage 2.

Amendment 108 updates the reference to “wholly enclosed places” to “wholly or substantially enclosed places”. That is one of the criteria for the kinds of premises that can be prescribed as no-smoking premises under the bill.

Amendment 109 makes it clear that the long title's reference to Scottish ministers establishing a scheme for the payment of persons suffering from hepatitis C as a result of NHS treatment also includes payments to secondary infectees. The extension of the scheme to secondary infectees was introduced at stage 2.

Amendments 110 and 111 insert into the long title a reference to the minimum frequency of inspection of care services by the Scottish Commission for the Regulation of Care, as introduced to the bill at stage 2.

Amendment 112 inserts a reference to the new right of appeal that was introduced at stage 2 for those people with infectious diseases who are detained under the Public Health (Scotland) Act 1897.

Amendments 113 and 114 add “and for connected purposes” to the end of the long title. That brings under the long title the provisions of schedules 2 and 3 regarding the functions of health boards, special health boards and the Common Services Agency under the National Health Service (Scotland) Act 1978 and the amendment to the Mental Health (Care and

Treatment) (Scotland) Act 2003, as introduced to the bill at stage 2.

*Meeting closed at 16:21.*

I move amendment 108.

*Amendment 108 agreed to.*

*Amendments 109 to 114 moved—[Rhona Brankin]—and agreed to.*

*Long title, as amended, agreed to.*

**The Convener:** That ends stage 2 consideration of the Smoking, Health and Social Care (Scotland) Bill. I thank all members of the committee and those who have visited us for their work and forbearance throughout the proceedings, which could have been a great deal longer than they turned out to be. I also thank the Deputy Minister for Health and Community Care and her officials for their attendance.



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