

HEALTH COMMITTEE

Tuesday 15 November 2005

Session 2

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HEALTH COMMITTEE

† 28th 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

Mr Kenneth Macintosh (Eastwood) (Lab)

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

Euan Robson (Roxburgh and Berwickshire) (LD)

Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Sarah Davidson (Scottish Executive Health Department)

Joanna Keating (Scottish Executive Legal and Parliamentary Services)

Lewis Macdonald (Deputy Minister for Health and Community Care)

CLERKS TO THE COMMITTEE

Lynn Tullis

Simon Watkins

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERKS

Merrin Thompson

Roz Wheeler

LOCATION

Committee Room 2

† 27th Meeting 2005, Session 2—held in private.

Scottish Parliament

Health Committee

Tuesday 15 November 2005

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

Item in Private

The Convener (Roseanna Cunningham): I welcome everybody to this afternoon's meeting. As our guests arrive, I ask Stewart Maxwell to confirm that he is attending the meeting in place of Shona Robison in his capacity as Scottish National Party committee substitute.

Mr Stewart Maxwell (West of Scotland) (SNP): I am.

The Convener: Item 1 on the agenda is to ask the committee whether to take agenda item 6 in private to allow us to consider and conclude a draft report on the Human Tissue (Scotland) Bill. Are we agreed?

Members *indicated agreement.*

Subordinate Legislation

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 14) (Scotland) Order 2005 (SSI 2005/529)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 13) (Scotland) Order 2005 (SSI 2005/520)

Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (No 2) (Scotland) Order 2005 (SSI 2005/548)

14:01

The Convener: Item 2 on the agenda is subordinate legislation. The committee is asked to consider under the affirmative procedure three instruments relating to amnesic and paralytic shellfish poisoning. I welcome again the Deputy Minister for Health and Community Care and Chester Wood.

As is indicated in committee papers, the Subordinate Legislation Committee previously considered the first two instruments and made no comment on them. The remaining instrument was considered this morning and I am advised that that committee has made no comment on it, either.

As no member wishes to seek clarification about the instruments from the deputy minister or his official, and as no member has expressed a wish to debate the instruments, I invite the minister to move the motions.

Motions moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 14) (Scotland) Order 2005 (SSI 2005/529) be approved.

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 13) (Scotland) Order 2005 (SSI 2005/520) be approved.

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (No 2) (Scotland) Order 2005 (SSI 2005/548) be approved.—[*Lewis Macdonald.*]

Motions agreed to.

**Tryptophan in Food (Scotland)
Regulations 2005 (SSI 2005/479)**

**Food Hygiene (Scotland) Regulations 2005
(SSI 2005/505)**

**National Health Service
(Superannuation Scheme, Injury Benefits
and Compensation for Premature
Retirement) (Scotland) Amendment
Regulations 2005 (SSI 2005/512)**

**Mental Health Tribunal for Scotland
(Practice and Procedure) (No 2) Rules
2005 (SSI 2005/519)**

**National Assistance (Assessment of
Resources) Amendment (No 2) (Scotland)
Regulations 2005 (SSI 2005/522)**

The Convener: Next is consideration of five instruments that are subject to the negative procedure.

The Subordinate Legislation Committee previously considered the instruments and commented on three of them—SSI 2005/479, SSI 2005/505 and SSI 2005/522. Comments on the first two are reproduced in the abridged Subordinate Legislation Committee report. We have now received comments on SSI 2005/522 and an extract from the report has been published today. It includes the following information:

"The SLC asked the Executive why this instrument breached the 21-day rule and was informed that it became clear shortly before the October recess that payments made by the UK Government to older care home residents would be lost in charges under the current rules. As a result the decision was taken to breach the 21-day rule to ensure that such residents were not disadvantaged.

The SLC has accepted the explanation of the breach and therefore draws this point to the Health Committee's attention for information only."

No comments have been received from any member and no motion to annul has been lodged in respect of any of the instruments. Are we agreed that the committee does not wish to make any recommendation in relation to the instruments?

Members *indicated agreement.*

**Prohibition of Smoking in Certain
Premises (Scotland) Regulations
2006 (draft)**

14:03

The Convener: We move, earlier than scheduled, to consider the draft Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006, made under the Smoking, Health and Social Care (Scotland) Act 2005.

The deputy minister is already in his seat. Members will recall from consideration of the Smoking, Health and Social Care (Scotland) Bill that a number of important aspects of the ban on smoking in public places remained to be dealt with by regulation. I understand that a final version of the regulations, which are before us in draft form today, will be formally laid before Parliament next year. It is likely that the committee will be asked to deal with the regulations under the normal affirmative procedure, so we will return to consider them next year. Today, the committee has the opportunity to take evidence from the deputy minister and his officials on the issues that are covered by the regulations. I thank his officials—Sarah Davidson and Joanna Keating—for their attendance.

I invite the deputy minister to make a brief opening statement; we will move thereafter to members' questions.

The Deputy Minister for Health and Community Care (Lewis Macdonald): Thank you for the opportunity to provide an update. I have no doubt that questions will follow.

I thought that it would be useful briefly to lay out where we are in the regulation-making process. We invited comments on a set of draft regulations in March and received 126 responses during the consultation period in the summer. Andy Kerr wrote to you on 29 June with a copy of the regulations as updated in the light of comments that were received during the consultation. I need not rehearse the detail of that update, but I know that members particularly welcomed the redrafting of the exemption for adult care homes and psychiatric facilities to strengthen the protection of staff and non-smoking residents of such premises.

Following royal assent of the 2005 act, we notified the European Commission of the regulations under the technical standards directive. We did that because we took the view that the signage requirements in the regulations could constitute a technical specification under that directive, so notification was a safe precaution. The three-month standstill period that must follow notification under that directive has

elapsed without comments being made, so we are free to proceed with the final steps to laying the regulations before Parliament. We expect the regulations to be laid early in the new year. As members will know, the relevant provisions of the Smoking, Health and Social Care (Scotland) Act 2005 and the regulations will come into force at 6 am on 26 March next year.

We have one or two details to conclude before the regulations are finalised, which it might be helpful to mention. One issue is a possible exemption for laboratories that test tobacco products. The University of St Andrews has approached the Executive about its testing of tobacco for the presence of heavy metals. I understand that similar work may be conducted at the University of Edinburgh and, in due course, perhaps elsewhere. That is important research that we want to enable to proceed, so we are inclined to grant that exemption where it occurs. However, we need to do so in a way that captures what we seek to capture, and which is limited to accredited research institutions. We need to ensure that we do not inadvertently create a loophole in the law. Joanna Keating and other solicitors are considering forms of wording for an exemption that can be included in the final regulations.

At the same time, we are having another look at the definitions of the terms “vehicle” and “vessel”, to ensure that they are right before we lay the regulations. Finally, the Ministry of Defence has contacted us about possible exemptions for submarines while at sea and for refuelling vessels. We are inclined to agree to those requests, as we understand that the Ministry of Defence is moving towards having a completely smoke-free policy in due course. However, we need to bottom out the precise issues and find the right wording so that we can achieve what we seek to achieve and that alone.

I expect those outstanding issues to be resolved in the next couple of weeks. If they are, we will lay the regulations early in December. We will of course keep the committee fully informed of the process.

The Convener: I advise members that we have allocated roughly 40 minutes to discussion of the regulations.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Hotels are on the list of no-smoking premises in schedule 1, but designated hotel bedrooms are on the list of exemptions in schedule 2. Do you have more detail on the Executive’s thinking about whether a particular proportion of hotel bedrooms should be allocated in the regulations?

Lewis Macdonald: I do not think that we intend to specify that. The regulations are structured to lay out such places as an exception to the list of no-smoking premises. I do not know whether we have had thoughts about such a provision, which I have not regarded as being necessary.

The underlying principle is that where smokers are resident—such as in their domestic private residence—the law does not apply. Because we seek to remove the culture of smoking in public areas in hotels and similar premises, allowing the designation of bedrooms will achieve the same purpose.

Mike Rumbles: I fully understand the Executive’s reasoning, but what is there to stop an hotelier from designating all his hotel bedrooms as exempt from the regulations? In schedule 2, the fifth exemption is “Designated hotel bedrooms”. You did not put “Hotel bedrooms”, so the implication is that you do not expect all hotel bedrooms to be designated.

Lewis Macdonald: That is correct—there is a requirement for designation. The answer to the question is that the regulations will not prevent an hotelier from designating the bedrooms but the market might. Even now, hoteliers who fail to provide no-smoking sleeping accommodation might find that some customers are less likely to use their premises.

Mike Rumbles: I understand that fully, but will you confirm that the regulations will not stop an hotelier from designating all his hotel bedrooms as exempt?

Lewis Macdonald: That is broadly correct.

Sarah Davidson (Scottish Executive Health Department): You will see from the definition of a designated room in the regulations that it is not a light matter to designate a room. Such a room would be required to have external ventilation that did not feed into any other part of the hotel, guest house or whatever. We see that as being a significant safeguard against the situation that Mike Rumbles describes—although it will remain open to a hotelier to ventilate all of his rooms in that way and to designate them as exempt if he so wishes.

Mike Rumbles: I want to pursue another point. The legislation is intended to encourage people not to smoke and to forbid smoking in enclosed public places, so I am perplexed as to why the Executive has included as an exemption “Private vehicles”. Surely private vehicles do not come within the scope of the legislation.

Lewis Macdonald: That was done for the removal of doubt. During the consultation, a number of questions were raised about vehicles such as taxis. We were asked to clarify precisely

which vehicles were to be covered by the legislation. That exemption has allowed us to do that.

Sarah Davidson: Private vehicles may be regarded as a subset of

“Vehicles which one or more persons use for work”

as mentioned in schedule 1. In other words, someone may have a private vehicle that they use for work, but in so far as it is a private vehicle it is exempt.

Mike Rumbles: You are confusing me slightly. Schedule 1 lists “Public transportation vehicles”, which I take to mean taxis. If they are listed in schedule 1, I do not understand why “Private vehicles” are listed in schedule 2. That reference should not be there. If it is, private homes could also be listed.

Joanna Keating (Scottish Executive Legal and Parliamentary Services): I can explain. We started out with “Public transportation vehicles” so that any vehicle that was available to the public as a means of transport would be caught by the bill. We then considered, for example, travelling salesmen and people who work from home and use their cars for work purposes. Such people would be using their own private cars for work purposes. We wanted to ensure that we covered the generic cases but then we removed the exemption.

Mike Rumbles: I understand the logic of that but, if you follow the same logic, you could add another item to the list of exemptions and include private homes. People use their private vehicles for work, but they also use their homes for work. To avoid any confusion, you should surely remove “Private vehicles” from the list. You have already made the point clearly at paragraphs 21 and 22 of schedule 1.

Lewis Macdonald: We have made it clear at paragraphs 21 and 22 of schedule 1 that no-smoking premises include

“Public transportation vehicles”

and

“Vehicles which one or more persons use for work”.

However, primarily from the latter case, we exempt, in paragraph 8 of schedule 2,

“Private vehicles”.

The Convener: If I understand the minister correctly, the concern is that, if a person was using their private vehicle for work, you would have to be careful that the regulations could not be interpreted in such a way that that person would be caught by them.

Lewis Macdonald: We do not want a situation in which two private cars are travelling along the

road and, if the drivers happen to be smoking, one is breaking the law while the other is not.

14:15

Kate Maclean (Dundee West) (Lab): People use private vehicles in a voluntary capacity to drive adults to day centres or for hospital visits or to take children to contact visits or to school. Those people work for voluntary organisations. Would their vehicles fall under the exemption even though they carry members of the public, albeit in a voluntary capacity?

Joanna Keating: Under the definition of a private vehicle, if a car is used for any private purposes, it will be exempt. So if a person carries out volunteer duties by carrying people in a car that they also use for normal private purposes, the car will come within the definition of a private vehicle and it will be exempt.

Kate Maclean: So, under the exemption, a child who is in the care of a local authority could have to sit in a vehicle with a volunteer driver who is smoking.

Joanna Keating: That depends on the local authority’s guidance. However, the exemption is drafted to ensure that any car that is used for private purposes as well as for voluntary or remunerated work will be exempt.

Kate Maclean: I do not find it acceptable that a child or vulnerable adult may have to sit for a couple of hours a week in a car in which somebody is chain-smoking. That is not in the spirit of the legislation, which aims to protect public health. Maybe it is just me, but I do not find that acceptable.

Lewis Macdonald: It is not just you—the issue is genuinely difficult. Where people use their private property for public purposes, that will clearly create a difficulty. The guideline or criterion that we seek to create is that, for private homes, places of residence or private vehicles, the law that prohibits smoking in enclosed public spaces should not apply. I appreciate your point, but the issue is difficult.

The Convener: Would the concern be that if we did not exempt private vehicles, people who smoke in their cars and, from time to time, use them in the voluntary capacity that Kate Maclean described, would still have a large amount of smoke in their car even if they undertook not to smoke during those journeys? In effect, if private vehicles were not exempt, we would remove all capacity for smokers to do that kind of voluntary work.

Lewis Macdonald: If we did not make an exemption, the risk would be that some people

who currently provide a voluntary service using their vehicles would cease to do so.

The Convener: Is that what was in the Executive's mind when it considered the matter?

Lewis Macdonald: Yes. It is worth saying that we will provide guidance to local authorities. Many of the cases that Kate Maclean has in mind involve local authority or associated services and we will ensure that guidance is produced for them.

Sarah Davidson might have a comment on the guidance.

Sarah Davidson: Guidance will be produced on people who work in private homes to provide domestic care services. The problem is when people who provide or receive services come up against a person in their private realm. The difficulty is in getting the balance right.

Kate Maclean: I am talking specifically about children, although voluntary drivers carry adults, too. A person who smokes is not allowed to adopt a child, but a child will be allowed to sit for hours a week in a smoke-filled car. I am not saying that that will necessarily happen, but I am concerned about it.

The Convener: It may be worth exploring the issue further. If the Executive has information on work that has been done on that, the committee will want to see it in order to satisfy us about the situation.

Lewis Macdonald: I would be happy to come back to the committee on that. I accept that the issue is difficult.

The Convener: For the record, does "Public transportation vehicles" include taxis?

Lewis Macdonald: Yes.

The Convener: Does it include private hire vehicles?

Lewis Macdonald: Yes.

The Convener: So taxis and private hire vehicles are public transport.

Lewis Macdonald: Yes. The category includes trains, buses, taxis and private hire vehicles.

Mike Rumbles: On that point—

The Convener: Stewart Maxwell is waiting to come in as well, Mike.

Mike Rumbles: Sorry.

Joanna Keating said that, if a car is used for any private purposes, it will be exempt. According to that logic, private hire vehicles and taxis will be exempt.

The Convener: Yes. I think it—

Lewis Macdonald: Perhaps this is where confusion arises—

The Convener: If they are licensed private hire vehicles—

Lewis Macdonald: A private hire vehicle is licensed to be used commercially for private hire.

The Convener: Therefore it is public transport.

Lewis Macdonald: That is different from a private vehicle that is used on a voluntary basis.

Joanna Keating: To clarify, the definition of "private vehicle" in the regulations is qualified by the words:

"provided always that such right to use a vehicle does not ... include a reference to any public transportation vehicle."

Therefore a private hire car or a taxi that is normally a car cannot be considered to be a private car. For the purposes of the regulations, they are public transportation vehicles.

Mr Maxwell: I think I understood that.

I have a question on enforcement. I am quite clear about enforcement by environmental health officers—and perhaps by enforcement officers, particularly in big cities—in bars, restaurants and the more obvious places that they visit. However, what about enforcement in places such as airport terminals and large, enclosed railway stations? Environmental health officers do not normally visit such places. What is the scope for enforcement of the legislation in such areas? Is it up to the employer or the owner of the property, such as First ScotRail?

Lewis Macdonald: The responsibility will lie with local authorities, through their environmental officers, and the employer and operator of the premises.

Mr Maxwell: So you expect environmental health officers to visit such places as well.

Lewis Macdonald: Absolutely.

Mr Maxwell: I have two more quick questions. You mentioned the possible exemption of university laboratories that test tobacco. Did you mention the University of Edinburgh?

Lewis Macdonald: It was the University of St Andrews.

Mr Maxwell: Was your comment specifically about that university or would it also apply to others? I am thinking of the forensic science laboratory at the University of Strathclyde, which does a lot of work on testing substances such as cannabis mixed with tobacco.

Lewis Macdonald: Of course, we want to draft the regulations such that they will capture all the areas in which we want the exemption to apply.

Mr Maxwell: My third and final question is on Ministry of Defence premises. You mentioned that you are minded to exempt certain MOD premises, such as submarines. Will you give a further explanation of that? The legislation clearly applies to all employers and all vehicles apart from certain obvious exceptions, so I do not understand why the MOD should be exempted.

Lewis Macdonald: We propose the exemption not because the MOD is a special case but because of the nature of the vessels in question. As with offshore oil and gas installations, we do not want to prohibit people from smoking indoors if that would create a risk that they will smoke far more hazardously outdoors. Likewise, it is difficult to go on deck for a fly puff if one is on a submarine at sea.

Mr Maxwell: I can understand the difficulty in respect of submarines. I assumed that that was the thinking about MOD vessels, but paragraph 7 in schedule 2—the list of exemptions—is:

“Designated rooms in offshore installations.”

You do not include designated rooms in vessels. I wonder whether you intend to extend the definition in item 7 to include vessels.

Lewis Macdonald: We are not at that point yet. We hope to write up the regulations in the next couple of weeks in a way that captures our intention. Again, I suspect that the answer will be that there will be a designated room in such vessels in order to put them under the same degree of legislative control.

The Convener: We are envisaging a sort of smoke periscope.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I have a point about voluntary cars that take people to and from hospitals for appointments. A lot of people have asked me about situations involving chronic obstructive airways disease. The last thing that people suffering from that disease want is to be in a car that is saturated with smoke or in which somebody is smoking. I go along with what Kate Maclean was saying about children—it can be a bit unfair on them sometimes.

The exemptions in schedule 2 include

“Designated rooms in adult care homes ... Adult hospices ... Designated rooms in psychiatric hospitals and psychiatric units.”

People smoke quite heavily in psychiatric hospitals. Constituents have raised with me the issue of the health of people who work in such hospitals. Are you thinking about having an expiry date for allowing smoking in designated rooms in such places, for the sake of the people who work there?

Lewis Macdonald: The same applies in such cases as to the Ministry of Defence: we want to see progress towards smoke-free premises in some of the cases where exemptions are being created now. Mental health and psychiatric establishments are among those facilities for which I have portfolio responsibility. I am very aware that people in psychiatric institutions are often heavy smokers and that many of them will have other physical health challenges resulting from inactivity and so on.

To accompany that legislative provision, which provides an exemption for

“Designated rooms in psychiatric hospitals”,

we would like further work to be done—indeed, more work is planned—to support people in such institutions in stopping smoking.

Dr Turner: My other question is about transport. I take it from what I have read that railway stations such as Waverley station would be non-smoking areas. There is an awful lot of open space there, despite the roof over the station. If it was established that the space was more than 50 per cent open—or whatever the threshold is—could it work out that Waverley station, for example, will be exempt?

Lewis Macdonald: I expect that the answer to that will vary from station to station and, in some cases, from platform to platform. The test under the regulations will be the 50 per cent test. If a station has a roof and if the space is 50 per cent enclosed or more, it is an enclosed public space, and smoking will be prohibited there. If the extent of enclosure is less than 50 per cent, smoking will not be prohibited. Some major railway stations have a roof that effectively covers their whole area. Therefore, they are clearly enclosed. Others, especially small stations, might have very little enclosure, and are therefore open. It is open to transport providers to prohibit smoking in areas where they operate that are not covered by the law. That is something that they have room to do.

Mrs Nanette Milne (North East Scotland) (Con): My question does not quite follow from that, but it almost does. Having seen the ingenious ways in which smoking has been permitted in certain buildings in Ireland, I am intrigued by the definition of “substantially enclosed”, and about how that will be enforced in practice.

Lewis Macdonald: It will be for local authorities to make visits and to make judgments on the degree of enclosure. From my own observation, I can vouch for the fact that there are already places in Scotland where some fairly ingenious structures are beginning to appear. However, the law is the law, and the law will require that any structure that is more than 50 per cent enclosed, and that has a roof, will be captured as no-

smoking premises. A line has to be drawn somewhere, and 50 per cent seems to us to be a good place.

The Convener: I have two points of clarification to raise, starting with additional possible exemptions. When speaking about submarines, you also mentioned refuelling vessels. I am bound to say that I would have thought that a no-smoking ban would apply to refuelling vessels for quite separate safety reasons to those that we are discussing today. I was a little surprised when you said that you were considering such an exemption. Could you clarify that point first? I will then come on to another point.

Lewis Macdonald: That comes under the discussion that we were having about Ministry of Defence vessels. Some MOD vessels provide a refuelling facility for other vessels while at sea. The principle here is perhaps closer to that which will apply to offshore oil installations than to that which will apply to submarines. It is safer for there to be a designated space within the vessel where crew members may smoke, rather than having them smoke on deck.

14:30

The Convener: My other point of clarification is about paragraph 18 of schedule 1, which lists

"Premises used for, or in connection with, public worship or religious instruction".

It is not atypical for a minister or priest to live in a house that is physically connected to a church. I assume that the private part of the premises is exempt, but what about that part of the premises that connects the house to the church—the part that is used for the putting on of vestments? I am not sure how that fits into paragraph 18 of schedule 1.

Lewis Macdonald: It sounds as if the convener has a particular premises in mind.

The Convener: No. I am sure that you will accept, minister, that many churches are built in that way.

Lewis Macdonald: Yes, indeed.

The Convener: Some denominations leave little for their clerics to enjoy except for the occasional cigarette. I assume that the private house is exempt from the ban, even if it is connected to a church. I am concerned about that part of the premises where the vestments are put on. Such rooms often have a door that leads into the church and another that leads into the private house. Would that part of the premises be included or excluded?

Lewis Macdonald: Key to the question is the definition of residential accommodation. If the

room in question is clearly part of someone's residential accommodation, it is exempt; if it is not, it is captured by the regulations.

Joanna Keating: My colleague and I have just looked at the definition of residential accommodation, which is

"any premises as is ... used by any person for residential purposes ... but not including a reference to ... any premises as constitutes any common area to which the person has ... access in connection with the person's use or occupation of any accommodation".

The common area includes the corridors or other parts that are used for common purposes.

The Convener: So, the area in which the priest or minister puts on their vestments is included in the prohibition.

Lewis Macdonald: Assuming that it is accessible to others and that it is used in connection with the place of worship.

The Convener: So, no more fly fags before the service starts.

Lewis Macdonald: In the kitchen.

The Convener: It is one of those situations in which there is a hybrid part of the premises.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): When we took evidence in Ireland, the people to whom we spoke told us that the Irish Government supplied all the no-smoking notices that were displayed following the implementation of the legislation in Ireland. People spoke of the ease with which people were given a warning because of all the notices that were displayed. Are you thinking along those lines, minister?

Lewis Macdonald: Yes. We have made those notices available. They can be downloaded from the web and we have also sent them out to businesses. They are available to people who want to see what is entailed.

Mr McNeil: So, it is a voluntary buy-in. Is there no letter going out to premises saying, "You must display these notices by X date"?

Lewis Macdonald: There will be in advance of the act coming into force.

Mr McNeil: I am interested to know how all of that will work.

The Convener: Premises in some areas are already receiving the leaflets. I am not sure what is happening in other areas, but the information has gone out to many premises in the Perth and Kinross Council area.

Mr McNeil: I am not as often at the pub as you are, convener.

The Convener: It is a coffee shop.

Kate Maclean: At committee stage and also in the stage 1 debate, I raised the question of designated smoking rooms in adult day care centres. In the committee's stage 1 report, we say that some adults are more or less required to spend the whole day at a day care centre, either because of their condition or to provide respite for their families who are caring for them.

The Executive said that it would consider an exemption as part of its consultation on the regulations. Can the minister tell us the result of the Executive's consideration of the matter? I feel strongly about this. If we can have designated smoking rooms in adult care homes, why cannot we have designated smoking rooms in adult day care centres? It seems strange not to do so. I think that the Executive said that it was not minded to exempt day care centres because to do so would ignore the health of those service users and staff who do not smoke. However, service users and staff often travel in volunteer vehicles. It seems a bit strange to allow them to travel in vehicles in which they could be subjected to smoke, but not to allow designated smoking rooms in day care centres.

I visited the Dundee Society for Visually Impaired People on Monday in connection with the rehabilitation campaign, of which you are probably aware, minister. Visually impaired elderly people visit the premises and spend the day there. I do not know whether you know the bit of Dundee in which the society is located, but if elderly visually impaired or blind people who are visiting the centre want a cigarette, they will have to stand outside in Ward Road, which is quite a busy road, next door to the Department for Work and Pensions office.

There is a compelling case for allowing, on humanitarian grounds, a designated area in an adult day care centre for smoking. I wonder what consideration was given to that idea during the consultation and whether you would reconsider it.

Lewis Macdonald: We did consult on that proposal. You have lit on one of the difficult areas and I recognise precisely the difficulty. However, as with vehicles, a line must be drawn somewhere and the line of distinction between care homes and day care centres is clearly the distinction between an individual's ordinary residence and a place that is not their ordinary residence. There will always be difficult cases close to the borderline, but the line that we have decided to draw is appropriate and clear.

Kate Maclean: So, detention or interview rooms are designated smoking rooms and are exempt from the regulations. How could such rooms be considered somebody's ordinary residence, as opposed to a day care centre in which somebody

might spend every day, five days a week, almost 52 weeks a year?

Lewis Macdonald: Understood. Again, this arose from the consultation. We recognised that the circumstances of individuals who are detained in detention or interview rooms are parallel in many ways to those of people who are detained in prison, so we made a designated exemption in that case. Again, I take your point. There are always grey areas close to the borderline and we made the judgments that I described. Sarah Davidson might have something to add about the responses to the consultation in relation to day care centres and Kate Maclean's points.

Sarah Davidson: On this matter, as with others, there were views on both sides, as the minister said. It was one of those finely balanced issues. We recognise that where the line was drawn means that there are difficult cases. However, the line had to be drawn where it did not potentially permit wider abuse.

Kate Maclean: Can I ask that the issue be reconsidered? I think that it is humanitarian that people who attend day care centres should have the same right to a designated smoking area as does somebody who has been detained.

Mr Maxwell: May I take you back, minister, to the definition of "no-smoking premises" in the draft regulations? Regulation 3(3)(b)(i) defines "wholly enclosed" and regulation 3(3)(c)(i) defines "substantially enclosed". Regulation 3(3)(b)(i) refers to

"premises ... having a ceiling or roof".

I hope that this is not a bizarre point, but I do not see anywhere a definition of what does and what does not constitute a roof. I understand the 50 per cent test for exterior walls. However, is there a possibility of temporary structures getting round the ban by having some sort of partially enclosed roof that is not a roof? I know that that sounds rather silly, but do you understand my point?

The Convener: Do you mean a canopy or a tent of some kind?

Mr Maxwell: No. Tents and marquees are dealt with elsewhere in the regulations. I am talking about partial roofs. When does a roof become a whole roof?

Lewis Macdonald: Again, the answer is in regulation 3(3)(b), which defines "wholly enclosed". The regulation states that a "ceiling or roof" is such whether it is so "permanently or temporarily". I hope that that answers your question.

Mr Maxwell: But regulation 3(3)(b) also talks about premises being "enclosed"

"except for doors, windows and passageways".

I accept that if there is a window or skylight in a roof, it is clearly still a roof. However, if a roof has an opening in it, is it still a roof? I am not trying to be funny here.

Lewis Macdonald: No, no.

Mr Maxwell: Part of the debate during stage 2 involved the example of somebody removing a brick from a wall, which would effectively have meant that a place was no longer wholly enclosed. That was part of the reason for the changes that were made to the definition of “substantially enclosed”.

Lewis Macdonald: In that sense, a roof is a roof, I suspect. The position with a wall is slightly different on enclosure because it is possible to create premises that provide shelter without completely walling them in, but it is not possible to create premises that provide shelter without a roof that effectively covers the whole top area.

Mr Maxwell: I am not sure that that is true. A football stadium is completely open at one end, but it has a roof. If somebody created a completely enclosed room with a partial roof that was attached to their premises, would it be caught by the regulations or not?

Lewis Macdonald: You mention a particularly interesting case—a football stadium—which is one that I discussed with officials before today. Where spectators are watching a football match from a stand that has a roof over it, it is clear that those premises are enclosed because they have a roof—even if it does not extend to cover the front row of the stand—and walls around at least 50 per cent of the area.

Mr Maxwell: Are you saying that any kind of roof is a roof, even if it only partially covers a room?

Lewis Macdonald: Yes, if it is effectively a roof. Perhaps Joanna Keating would like to add something on the legal definition.

Joanna Keating: We looked at different structures when we were trying to work out our definitions to find out whether it was possible to have premises, most of which had a roof or ceiling. Where that is the case, it is clearly a roof or a ceiling for the purposes of the regulations.

Under the definition of “substantially enclosed”, we also considered the opening in the premises. In the scenario of a football stadium, we were considering the area in front of the spectators and calculating that opening against what is around them.

Mr McNeil: When is a roof not a roof? Is a shelter or a lean-to a roof?

The Convener: If a shelter was open on three sides, it would be okay.

Lewis Macdonald: A shelter that has no walls is not an enclosed space.

Mr McNeil: That is the difference between a gazebo and a marquee.

The Convener: It looks as though we have exhausted the questions, minister, which you will be glad to hear. There are one or two matters on which we would like some further information to satisfy ourselves that all aspects have been taken into consideration, and you have obviously picked up on some members’ concerns about particular areas.

Lewis Macdonald: Yes, I have picked up on concerns that have been raised and I will be happy to write to you in response to them.

The Convener: Kate Maclean is indicating that she wants to ask another question. She will get one question and then we will finish.

Kate Maclean: I have difficulty supporting the exemption of private vehicles. The easiest thing to do would be to take that out of the regulations. If a local authority or health board told somebody who was working as a voluntary driver that they were not allowed to smoke, that person could say that their vehicle was exempt by law. If that exemption were removed, it would be easier to enforce the regulations. That is only a suggestion; obviously, you will get back to us.

Lewis Macdonald: I am happy to get back to you on the work that we have done that has led us to our conclusions. When we return to the committee with the regulations, there will no doubt be an opportunity to discuss further some of the points that have been made.

The Convener: I thank the minister, Joanna Keating and Sarah Davidson.

Hepatitis C

14:45

The Convener: Item 5 is discussion of the hepatitis C evidence session that we are planning. Members will remember that an evidence session to explore the case for an independent public inquiry into the infection with hepatitis C of Scottish NHS patients was postponed earlier in the year because of the launch of a judicial review in the Court of Session on the very day that our evidence session was scheduled to take place.

It has taken some time for us to work our way through the ramifications of that. The situation has now been clarified and the committee can go ahead with the evidence session. Members will be aware that, although the Minister for Health and Community Care has said that he is prepared to give evidence, he added a cautionary note that he might be restricted to responding to questions in some areas because of the outstanding court procedures and that a Scottish Executive solicitor would attend the session to prevent him answering questions that would stray into sub judice matters.

As a compromise, I thought that it would be useful for us to ascertain the main points that we wish to raise with the minister, without prejudice to any additional items that might arise between now and any evidence session. In that way, we will get some indication in advance if any of those areas will cause difficulties that could result in the minister not responding at the meeting.

Depending on the availability of witnesses, any evidence session is likely to take place early in the new year.

I invite members to flag up issues that they would like to raise directly with the minister at any such evidence session.

Dr Turner: I would like there to be an inquiry. I would like to ask the minister why we would avoid an inquiry because it would be a win-win situation for everybody. The tragedy is that so many people have lost faith in a certain part of the health service. Most people are not looking to litigate; when something does not go according to plan, all that they want is answers.

It has been flagged up recently that certain notes have gone missing, as if there were a conspiracy out there, but an inquiry would clear that up. For the sake of people who, through no fault of their own, received blood products in good faith from medical people who also acted in good faith, we need to know when the blood transfusion service became aware that things were not quite right and why we took blood from people in prison and so on.

The Convener: We have to be careful not to go over ground that we have already covered. I advise members to look at the evidence that we have taken. You are saying that you would like to raise directly with the minister the politics of why there should not be an inquiry because it would make more political sense to have one.

Dr Turner: Not having one would throw up more doubt that could be clarified.

Janis Hughes (Glasgow Rutherglen) (Lab): On that point, the evidence session would be helpful for members who were not on the committee when we first looked at the matter. Some of the issues that Jean Turner raised—about the blood transfusion service and the evidence that it gave—were covered at that time. The whole point of taking evidence from the minister is to consider any new evidence. We should not go over old ground.

The Convener: I urge people to look at what was covered in earlier days of the Health Committee, but members are entitled to ask questions.

Dr Turner: People probably do not feel that questions have been completely answered.

The Convener: That is a separate issue, Jean. It is worth looking at existing information submitted to the Health Committee.

Mike Rumbles: We have to be absolutely clear that two years ago, in September 2003, the then Minister for Health and Community Care, Malcolm Chisholm, told the committee that he would hold a public inquiry if any new evidence became available. I want to ask the current Minister for Health and Community Care what new evidence since 2003, if any, has been brought to his attention. Surely that is the starting point.

Mr Maxwell: I apologise if what I talk about has been gone over previously. Obviously, as a committee substitute, I am not totally up to speed with some of the Health Committee's previous work.

I thought that three areas were of interest. Jean Turner touched on the first, which is the country of origin and the direct origin of the individual blood source; that is, whether the blood came from a voluntary, paid or prisoner source. Another issue is whether different blood sources were used for different products. For example, was some blood used for transfusion and some used for products? What practical steps were involved in doing that and did that have any effect on the situation that arose?

The second area of interest is the timing of the information that was provided to those who were at risk of infection. A number of questions have been raised about the suggestion that although

certain people in authority knew about the risk, there was a delay in informing those who had possibly been infected by the blood products. That area needs explored.

The third area, which I know about only from press stories, regards accusations about documents and evidence from previous investigations being destroyed. I wonder whether it would be possible to ask about that.

The Convener: I suspect that, on that last question, the solicitor who will appear with the minister would be likely to say that the minister could not answer any question along those lines. I am not certain about that, but if there is an on-going court case, there might be an issue about that kind of question.

Mr Maxwell: That might be the case. However, from my point of view, coming to the issue at this stage, what is important are the practical steps that led up to the situation that arose, the investigations that took place and what happened to the documents from those.

The Convener: Those are the three important aspects from your perspective. Does any other member wish to raise a point, make a comment or indicate what they might like to ask?

Kate Maclean: Presumably, if something occurs to us at the time, we can question the minister.

The Convener: Absolutely. This is to try to clarify matters in advance. For example, if a question on one of Stewart Maxwell's areas of interest cannot be answered because of a concurrent court case, we are as well knowing that in advance rather than finding it out on the day.

Mr McNeil: The focus must be on whether there is new evidence. Even in my short time on the committee in this parliamentary session, I have become aware of some of the work that the previous committee did. When Christine Grahame was the convener, we had sessions on the Irish situation, which is different from what happened here, and on articles in Sunday newspapers that purported to have new evidence, which we rebutted. However much we feel for the people who have the condition, we have been down that road. If we look at page 2 of the submission from Philip Dolan, does any of the information in the bullet points amount to new evidence? The minister needs to be challenged about that.

The Convener: If any further questions occur to members over the next short period, can you ensure that they are communicated to the clerks? We want to try to clarify in advance whether anything is simply going to be struck out because it is considered sub judice.

That ends the business for the public part of the meeting, so I ask all members of the public to leave the committee room. Thank you.

14:54

Meeting continued in private until 15:16.

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