

HEALTH COMMITTEE

Tuesday 17 January 2006

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2006.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

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

CONTENTS

Tuesday 17 January 2006

Col.

SUBORDINATE LEGISLATION.....	2473
Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2006 (draft)	2473
Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 (draft) ...	2473
HUMAN TISSUE (SCOTLAND) BILL: STAGE 2	2475

HEALTH COMMITTEE

2nd Meeting 2006, 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 ALSO ATTENDED:

Joe Logan (Scottish Executive Health Department)

Lewis Macdonald (Deputy Minister for Health and Community Care)

CLERKS TO THE COMMITTEE

Lynn Tullis

Simon Watkins

SENIOR ASSISTANT CLERK

Tracey White

LOCATION

Committee Room 4

Scottish Parliament

Health Committee

Tuesday 17 January 2006

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

Subordinate Legislation

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2006 (draft)

The Convener (Roseanna Cunningham): I welcome everybody to this afternoon's meeting of the Health Committee. I have received apologies from Shona Robison. We have received no other apologies, so I expect other committee members to come. I will give the officials with the Deputy Minister for Health and Community Care a few moments to take their seats.

Item 1 is consideration of subordinate legislation. The committee is asked to consider under the affirmative procedure the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2006. I welcome the Deputy Minister for Health and Community Care to the meeting. For the purposes of the draft order, he is accompanied by David Roy from the Food Standards Agency Scotland and by James Preston.

As is indicated in the committee's papers, the Subordinate Legislation Committee has considered the draft order and has made no comment. The Justice 2 Committee has also considered it and has made no comment. No member wishes to seek from the deputy minister clarification on the order, and no member wishes to debate it. I therefore invite the minister to move motion S2M-3801.

Motion moved,

That the Health Committee recommends that the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2006 be approved.—[*Lewis Macdonald.*]

Motion agreed to.

Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 (draft)

The Convener: Under item 2, the committee is asked to consider under the affirmative procedure the draft Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order

2006. For the purposes of this draft order, the Deputy Minister for Health and Community Care is accompanied by Kerry Chalmers and Dr Carol McRae.

As has been indicated in the committee papers, the Subordinate Legislation Committee has considered the instrument and has made no comment. Does any member seek clarification from the deputy minister?

Mrs Nanette Milne (North East Scotland) (Con): I have a query about proposed new subparagraph (2C)(g) of paragraph 5 of schedule 1 to the Civic Government (Scotland) Act 1982, which paragraph 5 of the schedule to the draft order will insert. It states:

"skin piercing shall not be carried out on a child under the age of 16 unless accompanied by a person who has parental rights and responsibilities in respect of that child and who has also given their consent in writing".

Before I saw the detail of the order, I was concerned that consent in writing could be falsified by a friend or whomever. Will the adult who accompanies the child have to have written proof of whether or not they have parental rights?

The Deputy Minister for Health and Community Care (Lewis Macdonald): A requirement is certainly put in place for parental consent to be given in person. I am looking to my colleagues for any confirmation on this, but the provision makes it clear that it is the responsibility of the operator of the premises to ensure that a person is, for example, over 16. I assume that the same would apply in relation to a parent. It is the responsibility of the operator of the premises to be satisfied before carrying out any procedure that the person who is claiming to be a parent or to have parental rights is indeed such a person.

Mrs Milne: I presume that there is no such requirement in place at the moment.

Lewis Macdonald: That is essentially the case. We are introducing a new provision.

The Convener: There are no further questions, and no members have expressed a wish to debate the instrument. I invite the minister to move motion S2M-3778.

Motion moved,

That the Health Committee recommends that the draft Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 be approved.—[*Lewis Macdonald.*]

Motion agreed to.

Human Tissue (Scotland) Bill: Stage 2

14:04

The Convener: Item 3 on the agenda is our continued consideration of the Human Tissue (Scotland) Bill at stage 2. This is day 2 of our stage 2 consideration. We have set a deadline to complete consideration of the bill by the end of today's meeting.

The Deputy Minister for Health and Community Care remains in his seat, and I welcome the other officials who now join him: Will Scott, Joe Logan, Keith White and Joanna Keating.

Sections 19 to 25 agreed to.

Section 26—Authorisation of post-mortem examination etc: child 12 years of age or over

Amendments 67 to 69 moved—[Lewis Macdonald]—and agreed to.

Section 26, as amended, agreed to.

Section 27—Authorisation of post-mortem examination etc as respects child 12 years of age or over by nominee or person with parental rights and parental responsibilities

Amendment 70 moved—[Lewis Macdonald]—and agreed to.

Section 27, as amended, agreed to.

Section 28—Authorisation of post-mortem examination etc as respects child under 12 years of age

Amendment 71 moved—[Lewis Macdonald]—and agreed to.

Section 28, as amended, agreed to.

Section 29—Nomination of person under section 25(1) or 27(1): additional provision

The Convener: Group 1 is on the nomination of persons. Amendment 72, in the name of the minister, is grouped with amendment 109.

Lewis Macdonald: Amendment 72 provides additional safeguards to ensure that an adult or a child aged 12 or over understands the implications of nominating an adult to authorise on their behalf a post-mortem examination and related activities. The amendment will specifically require witnesses to such nominations by adults or mature children to certify that, in the witness's opinion, the adult or child understands the effect of their nomination and has not been unduly influenced in giving it. Amendment 104 is a consequential amendment. I move amendment 72.

Amendment 72 agreed to.

Section 29, as amended, agreed to.

Section 30—Post-mortem examination and removal and retention of organs: further requirements

The Convener: Group 2 is miscellaneous amendments. Amendment 73, in the name of the deputy minister, is grouped with amendment 109.

Lewis Macdonald: Amendment 73 is a technical amendment that makes further provision in relation to authorisation by an adult for a post-mortem examination under section 24(1). It clarifies that, for a person to be satisfied that a post-mortem authorisation has been given verbally by a deceased adult, the record of the authorisation must show that permission was expressed verbally by that adult. Amendment 109 is a related technical amendment.

I move amendment 73.

Amendment 73 agreed to.

The Convener: Group 3 is on prescribed forms of authorisation. Amendment 74, in the name of the minister, is grouped with amendments 79, 81, 106 and 107.

Lewis Macdonald: Amendment 74 has been lodged because of the Subordinate Legislation Committee's comments at an earlier stage. That committee noted that section 47(a) will give ministers powers to prescribe the form in which authorisation for certain activities under parts 2 and 3 of the bill can be given. It asked the reasonable question whether such forms would be mandatory. I confirm that our intention is that although the forms for part 3 authorisations will not be mandatory, the new authorisation forms for part 2 that cover hospital postmortems will be mandatory. That will address directly the specific concern, in the context of hospital postmortems, about lack of consistency in past practice.

The amendments will clarify that at section 30(3) of the bill in the case of authorisation that is given by, respectively, an adult's nominee or nearest relative, the nominee of a child aged 12 or over, or a person who had parental rights and responsibilities in relation to a deceased child.

On the other hand, in relation to tissue samples or organs that have been required for procurator fiscal purposes but which are no longer required, such forms will not be mandatory. The reason for the difference is that in such cases the forms will be used mainly for research purposes. Each research project will probably need to devise its own form. Also, a form has already been devised for a specific research project that is working well; we do not wish to prevent the use of that form.

Along with forensic pathologists and representatives of the Procurator Fiscal Service, we shall develop standards for post-mortem examinations that are instructed by fiscals. If that work concludes that a standard form is required under part 3, the bill allows for that; the amendments in group 3 reflect those different approaches and will require the form for part 2 authorisation to be given in regulations, but also provide that the form for part 3 authorisations “may be given” in regulations. That distinction is the basis for the amendments.

I move amendment 74.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): Is the research form mandatory?

Lewis Macdonald: No. The form that exists has been worked up as part of a research undertaking. The amendments in group 3 allow that we may prescribe the form for such research under part 3, but the bill does not say that that will be mandatory. In other words, we may wish to have a standard form, but at this stage we do not see the need for one.

Dr Turner: Could the form become mandatory?

Lewis Macdonald: It could become a standard form under regulations, but not under the primary legislation.

Amendment 74 agreed to.

Amendments 75 to 81 moved—[Lewis Macdonald]—and agreed to.

Section 30, as amended, agreed to.

Section 31 agreed to.

Section 32—Offences: post-mortem examinations

Amendments 82 and 83 moved—[Lewis Macdonald]—and agreed to.

Section 32, as amended, agreed to.

Sections 33 to 35 agreed to.

Section 36—Notice under section 33(2) or 35(2)(a): further provision

The Convener: We move to group 4, on notice by the procurator fiscal that part of a body is no longer required for fiscal purposes, in relation to universities. Amendment 84, in the name of the minister, is grouped with amendment 85.

Lewis Macdonald: Amendment 84 is a technical amendment to section 36, which indicates to whom the procurator fiscal should send notice that organs or tissue samples are no longer required for the fiscal’s purposes. In order to future-proof the legislation, we have concluded that the specific reference to the “Department of

Forensic Pathology” at a university should be removed. Not all universities, now or in the future, will organise in that departmental way, so it is not appropriate to have such a specific reference in the bill. Instead, it is intended that such departments, or their equivalents, will be included in an order made under section 36(2)(c). Amendment 85 is consequential upon amendment 84.

I move amendment 84.

Amendment 84 agreed to.

Amendment 85 moved—[Lewis Macdonald]—and agreed to.

Section 36, as amended, agreed to.

Section 37—Authorisation of use etc after examination: adult

Amendments 86 to 88 moved—[Lewis Macdonald]—and agreed to.

Section 37, as amended, agreed to.

Section 38 agreed to.

Section 39—Authorisation of use etc after examination: child 12 years of age or over

Amendments 89 to 91 moved—[Lewis Macdonald]—and agreed to.

Section 39, as amended, agreed to.

14:15

Section 40—Authorisation of use etc after examination: person with parental rights and parental responsibilities for child 12 years of age or over

Amendment 92 moved—[Lewis Macdonald]—and agreed to.

Section 40, as amended, agreed to.

Section 41—Authorisation of use etc after examination: person with parental rights and responsibilities for child under 12 years of age

Amendment 93 moved—[Lewis Macdonald]—and agreed to.

Section 41, as amended, agreed to.

Sections 42 to 44 agreed to.

Section 45—Nearest relative

The Convener: Group 5 is on the meaning of “nearest relative”. Amendment 94, in the name of the minister, is grouped with amendments 95 to 99.

Lewis Macdonald: The amendments in the group address various aspects of the nearest-relative hierarchy with regard to authorisation, and they respond to evidence that was submitted in discussions with the committee at stage 1.

Amendment 94 responds to a point that was made by the Equality Network and will bring the bill into line with the Mental Health (Care and Treatment) (Scotland) Act 2003 by making it clear that the partner of a person who dies in hospital must have cohabited for a minimum of six months before their partner's admission to hospital in order for them to be considered as the nearest relative for the purposes of the legislation. The purpose of the amendment is to achieve consistency with other recent Scottish legislation.

Amendment 95 will add cousins to the nearest-relative hierarchy in section 45 and will place them after aunts and uncles and before nieces and nephews.

Amendment 96 responds to a point that was made by the British Medical Association at stage 1. It also seeks to bring the bill into line with recent legislation by excluding from the hierarchy spouses or civil partners who are permanently separated or who have deserted or been deserted by their partners. In other words, if a person who dies is married, but to someone from whom they are separated, and they are in another relationship with another partner, the separated spouse is not considered to be within the nearest-relative hierarchy.

Amendment 97 seeks to clarify that relatives at the same level in the nearest-relative hierarchy have equal status for the giving of authorisation for transplantation or for post-mortem examination. Amendment 98 relates to that and will remove the existing provisions that specify that the eldest relative in a particular level of the hierarchy has priority. Those provisions will no longer be required because of amendment 97.

Amendment 99 is a technical amendment

I move amendment 94.

Amendment 94 agreed to.

Amendments 95 to 99 moved—[Lewis Macdonald]—and agreed to.

Section 45, as amended, agreed to.

Section 46—Witnesses: additional provision

Amendments 100 to 105 moved—[Lewis Macdonald]—and agreed to.

Section 46, as amended, agreed to.

Section 47—Power to prescribe forms and descriptions of persons who may act as a witness

Amendments 106 and 107 moved—[Lewis Macdonald]—and agreed to.

Section 47, as amended, agreed to

Section 48—Amendment of the Anatomy Act 1984

The Convener: Group 6 is on part 5 technical amendments. Amendment 177, in the name of the minister, is grouped with amendments 179, 188 and 201.

Lewis Macdonald: Group 6 contains the first of the amendments to the Anatomy Act 1984. Amendment 177 is a technical amendment. Amendment 179 is a tidying amendment that will insert an omitted reference to education in a relevant part of the bill. Amendment 188 will update cross-references to existing restrictions on anatomical examination of a body where a request has been made in accordance with section 4. Amendment 201 will make a minor adjustment to reflect our policy of accepting only written requests with special arrangements for people who are blind or unable to write by amending section 6(1) of the Anatomy Act 1984.

I move amendment 177.

Amendment 177 agreed to.

The Convener: We come to group 7, which is on imported bodies. Amendment 178, in the name of the minister, is grouped with amendments 189 to 193.

Lewis Macdonald: Amendment 178 makes it clear that a body that is imported for use for anatomical examination in Scotland is not to be treated as an anatomical specimen until authority for such an examination has been given in Scotland. In doing so, it will ensure that there is no prohibition in the Anatomy Act 1984 on transporting such a body to a person who might give authority for anatomical examination of it.

Amendment 193 will place a further restriction on who may give authority for anatomical examination of an imported body. There will be a requirement that a person who gives such authority must be licensed under section 3(2) of the Anatomy Act 1984 both to carry out anatomical examinations and to have possession of anatomical specimens. Amendment 189 is consequential.

Amendments 190 to 192 will amend the requirements concerning previous examination of an imported body that may take place without preventing authority from being given for use of the imported body for anatomical examination.

Collectively, the amendments will clarify that there must not have been previous examination outwith Scotland that was an anatomical examination or an examination that had the characteristics of such an examination; if there was such an examination, it must have been only for the purposes that are set out in the bill: education, training or research.

I move amendment 178.

Dr Turner: Is there any difference between “an imported body” and a body that is already in Scotland?

Lewis Macdonald: Yes—there are differences in a number of respects. The fundamental difference is the three-year rule, which is that anatomical examination of the body of a person who has died in Scotland must happen within three years. The amendments seek to provide clarity and consistency. Joe Logan might want to add something about the fundamental differences between the way in which the law treats bodies from within Scotland and those that are imported.

Joe Logan (Scottish Executive Health Department): An imported body, which is preserved, can be retained beyond the three-year period, but cannot be used for anatomical examination when it is imported; it would be used for teaching and training purposes. The same does not apply to bodies that have been obtained within Scotland. Bodies that have been obtained from within Scotland and of which there has been anatomical examination, have to be disposed of at the end of the statutory period. We are seeking to provide that there is no fear that a body that has been donated in Scotland for anatomical examination could be retained after three years. The only bodies that can be retained beyond three years cannot be used for anatomical examination and must have been imported to Scotland.

Dr Turner: Is there any provision for people who might wish to extend the period of use of their body?

Joe Logan: Body parts can be retained beyond the three-year period, for which authority must be given, but whole bodies cannot. The Executive can extend the statutory period—it might be extended if there was a shortage of bodies. There is, however, a desire to have a closure date for anatomical examination of bodies.

Lewis Macdonald: The provisions are legally necessary, but do not reflect any enormous demand.

Amendment 178 agreed to.

Amendment 179 moved—[Lewis Macdonald]—and agreed to.

The Convener: We move to group 8, which is on anatomical examinations. Amendment 180, in

the name of the minister, is grouped with amendments 181 to 187.

Lewis Macdonald: I will begin by explaining amendment 187, as the majority of amendments in the group relate to it.

Amendment 187 was lodged in response to a concern that was expressed to the committee about the need to ensure that children fully understand the consequences of making a request or authorisation under the Anatomy Act 1984. Amendment 187 will amend section 48(5)(b) of the bill to insert a new subsection (1C) into section 4 of the Anatomy Act 1984. That will provide more stringent controls for requests by children who are over the age of 12 but who are not yet adults, including requests from such persons who are blind or unable to write. The requirements are that there must be two adult witnesses, not one, and that they must certify that the child understood the effect of the request and was not acting under undue influence in making it. In the case of signing by a signatory, when the child is unable to write for whatever reason, the signatory and the witness must certify that the child has understood the effect of the request and has not acted under undue influence in making it.

The remaining amendments in the group are minor or consequential amendments. I move amendment 180.

The Convener: Does any member of the committee wish to comment?

Mrs Milne: Could the two adults be any two adults?

Lewis Macdonald: Yes.

Amendment 180 agreed to.

Amendments 181 to 193 moved—[Lewis Macdonald]—and agreed to.

The Convener: Group 9 is on controls on possession of bodies and parts after anatomical examinations. Amendment 194, in the name of the minister, is grouped with amendments 195 to 200, 211, 213 and 216.

Lewis Macdonald: I will focus first on amendment 195, which amends paragraph (c) of proposed new section 5(1) of the Anatomy Act 1984 so that section 5 of that act does not control the possession of bodies that have been used for examination outwith Scotland and which have been imported for use in anatomical examination in Scotland and are being or may be used for that purpose. It is intended that such bodies will be controlled by the Anatomy Act 1984 in the same way as imported bodies on which there has been no previous examination will be.

Amendment 199 is important to other amendments in the group. It will allow the

indefinite possession of bodies that have been used for anatomical examination outwith Scotland subject to certain conditions. As Joe Logan explained in answer to a previous question, unamended by amendment 199, the bill would allow the possession of parts of bodies that have been used for anatomical examination outwith Scotland but not the possession of whole bodies that have been used in those circumstances.

These amendments relate to a specific area. Plastinated or otherwise preserved bodies that are obtainable outwith Scotland may provide very useful teaching aids to schools of anatomy in Scotland. The intention is to modernise the 1984 act and not unduly restrict schools of anatomy in Scotland in possessing bodies or parts of bodies from elsewhere that may provide a useful educational resource.

Amendments 196, 200, 211, 213 and 216 are consequential amendments and amendments 194 and 197 are technical amendments.

Amendment 198 makes it possible for parts of bodies that have been examined outwith Scotland to be possessed under the authority of a licence from Scottish ministers, irrespective of how long after the date of death those parts of bodies arrived in Scotland, provided that the other conditions are satisfied. It makes sense to do that for imported parts when parts of bodies from Scotland—which have to be removed from a body within three years of the date of death—may be retained indefinitely thereafter. That answers Jean Turner's earlier point about consistency in the legislation.

I move amendment 194.

The Convener: Does any member wish to comment?

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): We have got a limit of three years on bodies within Scotland for good reason—what is the reason?

Lewis Macdonald: The three-year limit is there to assure people who are considering donating their body for anatomical examination that it will not be retained in whole indefinitely. In making that decision, they then know that retention is limited.

14:30

Mr McNeil: The relatives of the people whose bodies come from outwith Scotland are not given the same consideration that we expect for relatives here. Where do those bodies come from?

Lewis Macdonald: The technology of plastination, to which I referred, is a German development. Joe Logan might like to comment, but I have no doubt that there is adequate

provision in Germany to ensure the donor and their families that their interests are taken into account.

Joe Logan: The bodies that can be retained indefinitely would not have been subject to anatomical examination in Scotland. The bodies that are subject to that examination, even if they are imported, should be disposed of after the statutory three-year period. The bodies that would be retained indefinitely would be those that had been specifically imported in a preserved state. However, they could not undergo anatomical examination in Scotland. They would come from abroad, and the person who lawfully possessed them would give authority for that. That person would have to agree that the body was going to be used for these purposes.

Mr McNeil: I want reassurance that the relatives of those people, irrespective of where they come from, are given the same consideration as relatives here are. I appreciate that different lands have different laws, but something in the back of my mind tells me that the bodies are taken from the third world and are traded. Tell me that that is not the case.

Lewis Macdonald: You can rest assured that that is not the case. It is important to recognise that bodies can be imported for these purposes only by a licensed organisation or person—in effect, that means a school of anatomy at a Scottish university.

Mrs Milne: Has the minister said anything about amendment 199? I apologise if I missed it, but I did not pick it up.

Lewis Macdonald: Indeed I did. Amendment 199 allows indefinite possession of bodies that have been used for examination outwith Scotland, subject to certain conditions. You will see that that provision is central to the group of amendments.

Mrs Milne: Some of us have expressed concerns that the provision might prevent people who hold imported bodies for public display and museum activities from carrying out the procedures that are necessary to preserve the bodies and prepare them for display. Will you reassure us on that?

Lewis Macdonald: The next group of amendments, to which we will come shortly, deals specifically with public displays. Nothing in the current group relates to that.

Joe Logan: Nothing in the bill prohibits the proper preservation of bodies and body parts or requires museums to have a special licence for that. That is not regarded as anatomical examination as such.

The Convener: Jean, did you wish to speak on that point?

Dr Turner: I think that my question has been answered.

The Convener: Minister, do you want to say anything further?

Lewis Macdonald: No, thank you.

Amendment 194 agreed to.

Amendments 195 to 201 moved—[Lewis Macdonald]—and agreed to.

The Convener: Group 10 is on controls on public displays. Amendment 202, in the name of the minister, is grouped with amendments 203 to 210, 212, 214, 215, 217 and 218.

Lewis Macdonald: This group of amendments relates to the points that Nanette Milne raised. Amendment 203 follows on the commitment that I gave in the previous stage that bona fide museums will not be required to be licensed for the public display of anatomical human remains. The amendment seeks to take a power to make an order by statutory instrument to specify persons responsible for the operation or control of specified museums. Such persons so specified will be exempt from the requirement to have the public display authorised by a licence. We will draw up a list of the exempt persons, by which we mean the legal title of those persons, so that a change in personnel in a museum does not mean that we have to amend the list. Amendment 210 provides that the order will be made by statutory instrument and subject to the negative resolution procedure.

Amendment 204 will allow the public display of a wider range of anatomical human remains. It permits, subject to conditions, the public display of parts from bodies retained after anatomical examination in Scotland has concluded or body parts that have been removed during anatomical examination of a body outwith Scotland. It also allows the public display of bodies or parts of bodies that are in the course of being used for anatomical examination in Scotland and bodies that have been so used outwith Scotland. The displays of all such bodies and parts of bodies must also be authorised by Scottish ministers, who will grant a licence for that purpose. Amendments 202, 206, 207, 212, 214, 215 and 217 are consequential to that amendment.

Amendment 205 provides that a licence may be granted for public display if Scottish ministers think that that is in the interests of education, training or research, which may include giving health education to the public. That is broader than currently provided for in the bill and reflects the concern that was raised in evidence at stage 1 that the purposes for which public display was allowed were too limited and did not allow public display for general education. Amendment 208 provides that no person, including persons

licensed to display a body or part publicly, may do so while a procedure in relation to an anatomical examination—for example, dissection—is being carried out. The public display of such bodies or parts during an anatomical process or procedure is not permitted. Amendment 218 is consequential to amendment 208.

Amendment 209 deletes paragraph (a) of subsection (5) of new section 6A of the Anatomy Act 1984, which is inserted by section 48(9) of the bill. That subsection provided that prohibited public display included

“display by visual image by means of an electronic communications network”.

We recognise the legitimate use of such images, for example in medical education, but we have concerns that the use of such electronic images should be with the approval of the donor. We consider that, rather than requiring statutory prohibition, the appropriate use of such images can be governed through the code of guidance that the bill makes provision for and through model authorisation forms.

I move amendment 202.

Amendment 202 agreed to.

Amendments 203 to 218 moved—[Lewis Macdonald]—and agreed to.

Section 48, as amended, agreed to.

Section 49—Arrangements by the Scottish Ministers for assistance with functions under section 1, 2, 15(3), 16(2) or 17(3)

Amendments 171 to 173 moved—[Lewis Macdonald]—and agreed to.

Section 49, as amended, agreed to.

Sections 50 and 51 agreed to.

After section 51

The Convener: Group 11 is on amendment to the Adults with Incapacity (Scotland) Act 2000. Amendment 174, in the name of the minister, is the only amendment in the group.

Lewis Macdonald: Amendment 174 is the final part of the package of amendments that the Executive is introducing in relation to the position of adults with incapacity under the bill. Our consultation on adults with incapacity at stage 1 highlighted the need to clarify the relationship between the powers of the welfare attorney or guardian under the Adults with Incapacity (Scotland) Act 2000 and the bill's authorisation provisions.

We have already discussed the rest of the package and it is generally agreed that an adult with incapacity should be able to donate

regenerative tissue. However, as that will benefit others, rather than the adult in question, the matter falls outwith the scope of the powers of the welfare attorney or guardian acting on the adult's behalf. The clinicians who raised the issue of donation will no doubt want to involve such guardians and attorneys in their discussions and will no doubt take account of their views.

However, amendment 174 seeks to make it clear that the formal decision in such a case will not rest with the welfare attorney or guardian. As we discussed at a previous meeting, the Human Tissue Authority will be responsible for scrutinising donations by adults with incapacity of regenerative tissue or, in the context of domino transplants, organs.

Amendment 174 also seeks to put it beyond future doubt that the powers of a welfare attorney or guardian under the Adults with Incapacity (Scotland) Act 2000 do not extend to giving authorisation under the bill for removing body parts after death for transplantation or to authorising a hospital post-mortem examination on the adult with incapacity.

In addition, the welfare attorney or guardian will not be able to make a request under the Anatomy Act 1984 on behalf of the adult with incapacity for the adult's body to be used for anatomical examination.

I move amendment 174.

Amendment 174 agreed to.

Section 52 agreed to.

Section 53—Regulations or orders

The Convener: Group 12 is on provision for consultation on subordinate legislation. Amendment 175, in the name of Dr Jean Turner, is the only amendment in the group.

Dr Turner: Amendment 175 seeks to add to the end of section 53(1)(a) the phrase

“after consultation with such persons as the Scottish Ministers consider appropriate”.

Under the bill, Scottish ministers will be required to make regulations to implement its provisions. However, before they do so, they should consult relevant bodies such as health trusts, universities and the medical profession. Amendment 175 seeks to ensure that there is an obligation in that respect.

I move amendment 175.

Lewis Macdonald: We sympathise with the intention behind amendment 175. However, our track record thus far on the bill has shown that, in a large number of areas, we have sought to consult people who will be affected by the bill's

provisions as they have developed and, indeed, shows that we will consult any affected people on any regulations made under its terms.

However, we will not seek to carry out a full consultation on every set of regulations made under the bill. After all, some of them will be relatively minor or technical in nature. We will wish to implement in the usual way provisions that will be required to reflect European Union regulations. I am happy to assure Jean Turner and other members either today or later with regard to their concerns that particular aspects of the bill's regulation-making powers will be consulted on appropriately, but I ask her to withdraw amendment 175, as it is unnecessary.

The Convener: I ask Jean Turner to wind up and to indicate whether she wishes to press or withdraw her amendment.

Dr Turner: I am happy with the minister's comments and will seek leave to withdraw amendment 175.

Amendment 175, by agreement, withdrawn.

The Convener: Group 13 concerns affirmative resolution procedure for regulations under section 15(3). Amendment 176, in the name of the minister, is the only amendment in the group.

14:45

Lewis Macdonald: Amendment 176 seeks to reflect the Subordinate Legislation Committee's comment that the power in section 15(3), which deals with the sensitive issue of restrictions on transplants involving living donors, is very wide. We agree that it might well be more appropriate that regulations be subject to the more detailed scrutiny that is afforded by the affirmative resolution procedure and, having recognised that point, for consistency's sake, we would also want regulations made under the related new sections 15(3A) and (3B), which were inserted into the bill at the previous stage 2 session, to be subject to the affirmative resolution procedure. This amendment amends section 53(3) to provide that regulations made under sections 15(3), 15(3A) and 15(3B), in respect of restrictions on transplants involving living donors, will be subject to the affirmative resolution procedure.

I move amendment 176.

Amendment 176 agreed to.

Section 53, as amended, agreed to.

Section 54—Interpretation

Amendments 109 and 110 moved—[Lewis Macdonald]—and agreed to.

The Convener: Group 14 concerns the definition of “tissue”, “tissue sample” and “organ”.

Amendment 219, in the name of Dr Jean Turner, is the only amendment in the group.

Dr Turner: Amendment 219 relates to an important issue. When we were taking evidence, we often found that people were in doubt as to what “tissue” and “organ” meant. The Wellcome Trust has done quite a bit of work on this matter. Any medic who looks up the word “tissue” will find that quite a large amount can be written on the subject. The Wellcome Trust has helped us to come up with an amendment that provides a definition of “tissue” and “organ”. The definition of the former is based on the definition of “relevant material” in the Human Tissue Act 2004 and the definition of the latter is based on the definition of “organ” in the Human Organ Transplants Act 1989.

I agree that it would be nice to be as clear as possible, for the protection of patients, about the obligations of the medical profession.

Section 23(6) of the bill says:

“A part of the body of a deceased person which is not mentioned in subsection (5)—

that is, an organ, a tissue sample, blood or other bodily fluid—

“may not be removed from the body during a post-mortem examination of the body.”

It is unclear whether that prevents the retention of material such as skin, hair and nails.

On the status of the retention of foetal material, part 2 of the bill permits the retention, with authorisation, of tissue, following a hospital post-mortem procedure. Part 1 permits the use, with authorisation, of parts of the body that are removed after death in other circumstances for audit, teaching and research. As the definitions are unclear, there is some doubt as to the status of the foetal material, either on the death of the unborn foetus or after the death of the mother. That is probably enough in the way of examples.

I move amendment 219.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Reading the amendment, I think that it would be useful if Jean Turner—or anyone else—could explain to me what “gametes” are.

Dr Turner: They are female and male reproductive cells.

Mike Rumbles: Is this issue to do with the Executive having included the word “tissue” in the bill, meaning it to include bone marrow, without an explanation of what “tissue” is, or is the issue to do with you wanting the bill to contain an explanation of exactly what “tissue” is?

Dr Turner: It would be beneficial to everyone if we think back to when we were taking evidence—

The Convener: Jean, if you could just hold on for a second until other members have asked their questions. You will have a chance to wind up when everyone else has had an opportunity to speak.

Mrs Milne: It is important that we should know what we are talking about when we are talking about tissue and organs. The fact that the amendments tie the bill into the Human Tissue Act 2004 and the Human Organ Transplants Act 1989 should make the definitions clear across the United Kingdom.

The Convener: If no other member wishes to make a comment, Lewis Macdonald may do so.

Lewis Macdonald: I understand the thinking behind the amendment and the desire for clarity. I am also aware of the concern that Nanette Milne referred to, which relates to the possibility that practical difficulties might be caused by differences between the provisions in our bill and those in the Human Tissue Act 2004 and that, therefore, research collaboration between Scotland and the rest of the United Kingdom might be discouraged. We want to avoid that, so I am happy to assure the committee that we will work with the other UK health departments and agencies to make sure that our approach to research is consistent and that researchers face no difficulties.

I am also mindful of the concerns that the convener expressed during the stage 1 debate regarding definition and whether children in particular could donate skin for transplantation, which is a point to which I will return. However, there is a difficulty in inserting into Scottish legislation a definition or definitions taken from UK legislation, such as the Human Tissue Act 2004. That is because any definition in that act was devised for it. Both the structure and the terminology that are used in the drafting of legislation that applies south of the border are different from those that apply here.

Nevertheless, we considered whether we should include comprehensive definitions of “organ” and “tissue” in our bill. For two reasons, we decided that we should not. First, as Jean Turner said, there are a number of definitions—there is no universally agreed definition of either “tissue” or “organ” in the scientific or medical community. A definition that worked in the context of transplantation and which would be regarded as appropriate from a medical perspective might not work in the context of post mortems or be regarded as appropriate by pathologists. We do not want to create different definitions for the same term in different sections of the bill. Therefore, it seemed sensible not to put tight definitions in the bill at all. That was done not merely to avoid confusion but to recognise that future scientific

development may change our understanding of medical terms. We do not want to build an unforeseen restriction into the bill.

Instead, our approach has been to clarify any points of doubt in each part of the bill. In dealing with donation after death, part 1 of the bill simply uses the term “body parts”. That term covers every possibility and is less likely to be overtaken by developments in transplantation.

There are different levels of severity of intervention in living donation, which means that we have been able to distinguish between organs and parts of organs on the one hand and tissue on the other. We also need to be able to distinguish tissue that is regenerative from tissue that is not, which the bill does in relation to bone marrow. The distinction between organs and tissue in post-mortem examinations in parts 3 and 4 of the bill reflects the very different level of emotional significance that organs can have. If we did not make that distinction, we would be failing to adopt one of the main lessons that was learned from past practice.

We take on board the point that has been made about the need for clear definitions and I agree that there are some details that it would be useful to clarify. Since stage 1, therefore, we have had discussions with clinicians on how best to achieve that. There are some specific areas—Jean Turner mentioned one or two of them—in which we would want a degree of clarity. Therefore, I wish to lodge further amendments at stage 3 to make it clear that the bill regards skin as a form of tissue. That will allow skin to be included under the definition of regenerative tissue in section 15(3). That will allow both children and adults with incapacity to donate skin for the purposes of transplantation. That will allay the concerns that were raised at stage 1 and attract general support.

Corneas should also be regarded as a form of tissue and I wish to make provision for that at stage 3. We want to consider the issue of foetal matter, which Jean Turner raised. I have not yet come to a conclusion, but we want to consider the position. The cornea is non-regenerative, so a child or an adult with incapacity would not be able to donate it.

We have also carefully considered the points raised by the Medical Research Council and the Wellcome Trust in relation to the words “tissue sample” in section 23(5)—an issue that I think Jean Turner was referring to. Section 23(5) lists the parts of the body that can be retained after a post-mortem examination. Clearly, the list ought to be comprehensive so that maximum benefit can be obtained from the post mortem, but doubts have been expressed over whether the list allows the inclusion of skin, hair and nails. Any ambiguity should be removed and I will seek to do that by lodging an amendment at stage 3.

I hope that the committee will accept those assurances and agree that we acknowledge the issues that have been raised. However, we want to deal with them issue by issue and not impose overall definitions that might have unintended consequences. I therefore ask Jean Turner to withdraw amendment 219.

The Convener: I invite Jean Turner to deal with the points that have been made and to indicate whether she wishes to press amendment 219 or seek leave to withdraw it.

Dr Turner: It is evident to all of us around the table that this issue is difficult. It is very important, especially for the relatives of people who have died, that we get our decision right.

I accept everything that the minister has said and I know that he is working on the issue with clinicians and various organisations. I will therefore seek leave to withdraw amendment 219.

When people fill in a form, they must be able to discuss exactly what they are signing. The form must be clear to them. My idea of “tissue” and a relative’s idea of “tissue” could be very different. For example, the word could mean the whole heart of a tiny foetus, baby or child. We all mean different things by the same words, so it is important to be clear.

Amendment 219, by agreement, withdrawn.

Section 54, as amended, agreed to.

Section 55 agreed to.

Schedule agreed to.

Section 56 agreed to.

Long title agreed to.

The Convener: That ends our stage 2 consideration of the Human Tissue (Scotland) Bill. I thank everybody.

I remind members that there is no meeting of the Health Committee next week because we will all be participating in case-study visits in connection with our care inquiry. The next meeting of the committee will be on Tuesday 31 January, when the committee will hear evidence from the Haemophilia Society and the Minister for Health and Community Care on the issue of hepatitis C. We will also consider smoking regulations.

Thank you and good afternoon.

Meeting closed at 14:57.

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

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

The deadline for corrections to this edition is:

Wednesday 25 January 2006

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

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

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

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

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

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

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

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

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

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

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

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron