HEALTH COMMITTEE

Tuesday 12 December 2006

Session 2

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HEALTH COMMITTEE
28th 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)
*Euan Robson (Roxburgh and Berwickshire) (LD)
*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Mr Kenneth Macintosh (Eastwood) (Lab)
Dave Petrie (Highlands and Islands) (Con)
Margaret Smith (Edinburgh West) (LD)
Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Lewis Macdonald (Deputy Minister for Health and Community Care)

CLERKS TO THE COMMITTEE

Karen O'Hanlon
Simon Watkins

ASSISTANT CLERK

David Simpson

LOCATION

Committee Room 6

Scottish Parliament

Health Committee

Tuesday 12 December 2006

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

Adult Support and Protection (Scotland) Bill: Stage 2

The Convener (Roseanna Cunningham): I welcome everyone to the meeting. This is day 1 of stage 2 of the Adult Support and Protection (Scotland) Bill. We have set a deadline to consider sections 1 to 50 today. I welcome the Deputy Minister for Health and Community Care and his officials, Andy Beattie, Jean MacLellan, Kay McCorquodale and Denise McKay.

Section 1—General principle on intervention in an adult's affairs

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

The Deputy Minister for Health and Community Care (Lewis Macdonald): It was clear from stage 1 that the committee was concerned that the bill could be read as applying more widely than was intended. Amendment 1 reflects our having listened to those concerns and our intention to make it as clear as possible that the bill will have effect only for certain people in certain circumstances.

Amendment 1 ensures that section 1 cannot be read as applying generally to people outwith the group of adults at risk whom the bill is intended to protect. It makes it clear that the general principle on intervention in adults' affairs that is contained in section 1 is to be read as having the same importance as the other principles that are set out in section 2.

I move amendment 1.

Amendment 1 agreed to.

Section 1, as amended, agreed to.

Section 2—Principles for performing Part 1 functions

The Convener: Amendment 58, in the name of Nanette Milne, is in a group on its own.

Mrs Nanette Milne (North East Scotland) (Con): Amendment 58 seeks to ensure that the positive influence of an adult's family, friendship, social contacts and support networks is taken into account in respect of any intervention in that adult's life. It would add to the list of principles to be followed in performing the functions under part 1, which currently include considerations such as the views of relatives, the adult's background and characteristics, and their feelings or wishes.

I move amendment 58.

Lewis Macdonald: We do not disagree with the principle that is outlined in the amendment. However, in our view that principle is already captured under the broader principles in section 2, which place a duty on those performing functions under the bill to have regard to an adult's wishes and to the views of relatives and others with an interest in the adult's well-being. The principles have been drawn up intentionally so as to be aligned with those in the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003, to ensure that the three items of legislation available to practitioners are founded on similar basic principles.

I absolutely recognise that what lies behind the amendment is the importance of family, friends and social networks to a person in these circumstances. If Nanette Milne is content to withdraw the amendment, I will be happy to ensure that the code of practice reflects the intention behind amendment 58 and delivers what it asks for in due course.

Mrs Milne: I am interested to hear the minister's response. The amendment was suggested to me by the Law Society of Scotland, which felt that there was a need for some tightening up in that respect. However, given the reassurance that I have received from the minister, I seek to withdraw the amendment.

Amendment 58, by agreement, withdrawn.

Section 2 agreed to.

Section 3—Adults at risk

The Convener: Group 3 is on changes to the definition of "adults at risk". Amendment 30, in the name of the minister, is grouped with amendments 30A, 31 and 44. Amendment 30A will be disposed of before the question on amendment 30 is put.

Lewis Macdonald: The definition of adults at risk was a key issue that arose during discussions in the committee and the debate in the Parliament at stage 1. Amendment 30 will significantly alter the definition and demonstrates our appreciation of the need for clarity about when intervention is appropriate. We have taken on board the points that were made in the debate and amendment 30 makes it clear that the definition will neither cover the entire adult population nor capture an individual on the basis of a single set of

circumstances that applies to them, such as disability or mental disorder.

Amendment 30 will put in place a three-limb definition of adults at risk, and each limb must apply before there can be the intervention for which the bill makes provision. Amendment 30 also makes it clear that "harm" covers actual and likely harm by the individual, as well as intentional abuse. The three-limb definition will ensure that only people who are not in a position to safeguard their own welfare and who are at risk and who are unusually vulnerable for some other reason will be subject to intervention under the bill.

Nanette Milne's amendment 30A represents an attempt to ensure that nobody who ought to be protected will be missed out. However, the inclusion of the term, "communication difficulties" would potentially widen the definition a little to include not just people with sensory impairment but people who have language difficulties. Therefore amendment 30A in its present form is not particularly helpful, although I understand the intention behind it. We want to ensure that there is appropriate protection for the people whom amendment 30A seeks to capture, but the three-limb definition in amendment 30 ought to deliver that objective.

I move amendment 30.

Mrs Milne: Amendment 30 and the other Executive amendments in the group largely deal with my concerns about the meaning of "disability" in the bill. However, for the sake of completeness, "communication difficulties" should be included. Communication difficulties are often ignored—or perceived to be ignored—although they can be an important factor in certain adults' risk of harm. The definition in the bill should include communication difficulties as well as physical and mental disabilities.

Shona Robison (Dundee East) (SNP): Will the minister respond to Disability Agenda Scotland's concern that amendment 30 would keep in the bill a reference to "mental disorder"? According to DAS, the approach is based on the incorrect assumption that certain characteristics make people inherently vulnerable. DAS notes that the bill fails to define disability, although I think that it is acknowledged that there can be difficulties to do with the definition in the Disability Discrimination Act 1995.

Subsection (1)(c) of the proposed new section that would be inserted by amendment 30 refers to people who,

"because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected."

How would you demonstrate that a person was more vulnerable than someone else to being harmed?

Lewis Macdonald: You raise a couple of issues. We have taken on board concerns about the definition of adults at risk in the bill as introduced and amendment 30 will ensure that none of the factors that you list will be significant unless a person is already

"unable to safeguard their own well-being, property, rights or other interests".

That approach will ensure that there is not one law for people who are disabled and another for people who are not. Only those who are unable to protect themselves are covered, if they are also at risk of harm; and only if those two conditions are met does the reference acknowledge that there are certain circumstances that make a person more vulnerable to risk of harm. Those circumstances include disability, mental disorder and the other points covered in amendment 30 to do with infirmity.

Shona Robison asked about the definition of disability, but I suspect that that definition is for another place. She mentioned the Disability Discrimination Act 1995, which is a Westminster act giving a specific and detailed legal definition of disability. In the Adult Support and Protection (Scotland) Bill there is no attempt to define disability. Unlike the DDA, the bill is not principally a piece of disability legislation. The bill refers to disability, and the word should take its usual meaning—referring to a person whose ability to carry out normal activities is adversely affected by an impairment. That is as far as the law needs to go in this bill. The bill does not seek to introduce new provisions for disabled people, but disabled people are among those who will benefit from the protection that the bill will offer.

Shona Robison: What about my final question, about how you would demonstrate that someone is more vulnerable to being harmed than anyone else.

Lewis Macdonald: A duty would lie with the officer carrying out an action on behalf of a local authority, and principles would guide the sheriff, and they would both look through the three different points that are outlined in subsection (1) of the proposed new section in order to define a person's vulnerability.

Shona Robison: Are those points in order?

Lewis Macdonald: They are. Before action could be considered, it would have to be shown, first, that a person was unable to safeguard their own interests, then that they were at risk of harm, and only finally that one of the other conditions applied.

Amendment 30A moved—[Mrs Nanette Milne].

The Convener: The question is, that amendment 30A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Milne, Mrs Nanette (North East Scotland) (Con)
Robison, Shona (Dundee East) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 30A disagreed to.

Amendment 30 agreed to.

Section 3, as amended, agreed to.

Section 4—Council's duty to make inquiries

The Convener: Amendment 33, in the name of the minister, is grouped with amendments 4 and 34.

Lewis Macdonald: This group of amendments makes small changes to the wording of section 4, to clarify matters in relation to the duty of a council officer to make inquiries about an adult at risk. Amendment 33 makes it clear that councils are bound to act when concerns arise about any—although not necessarily all—of the person's circumstances. For example, if it is clear from the outset that a person's property is at risk, that will be the focus and there will be no need to investigate the person's health.

Amendments 4 and 34 make it clear that the council's duty relates to each of the individual conditions specified in section 4. Listing the criteria as a person's well-being, property or financial affairs reflects our intention. Our purpose is to remove any ambiguity as to the application of the provision.

I move amendment 33.

Amendment 33 agreed to.

Amendments 4 and 34 moved—[Lewis Macdonald]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Co-operation

14:15

The Convener: Group 5 is on co-operation between public bodies. Amendment 35, in the name of the minister, is grouped with amendments 36, 37, 59 and 38.

Lewis Macdonald: During stage 1, the view was expressed that the specific role of the police should be recognised. That is reflected in amendments 35 to 38. The police have a particular role in the detection of crime and in supporting inquiries into potential harm. Therefore, we seek, by way of amendment 35, to add them to the list of those with a duty to co-operate. I hope that that will strengthen interagency working and allow action to be taken both to protect the adult and to respond to potential criminal activity that might be uncovered in the course of inquiries. The amendment also adds other councils to the list of those with a duty to co-operate to make it clear that if another council has prior knowledge of information relating to a case, it will be required to share it with the lead council. The other amendments in my name are consequential to amendment 35.

I move amendment 35.

Mrs Milne: I am no lawyer, but the Law Society of Scotland, which suggested amendment 59, asserts that section 5 in its current form does not denote clearly that it is the adult at risk, not another person, whose case must be reported. I lodged the amendment to provide clarity.

Lewis Macdonald: I do not believe that amendment 59 is necessary. Section 5(3)(b) already refers to the person in the context of the reference to the adult at risk in section 5(3)(a). Having said that, I do not believe that the amendment does any harm or detracts from the bill in any way. I am therefore quite content to accept the committee's decision on it.

The Convener: But you do not accept the amendment.

Lewis Macdonald: I will accept it.

Amendment 35 agreed to.

Amendments 36 and 37 moved—[Lewis Macdonald]—and agreed to.

Amendment 59 moved—[Mrs Nanette Milne]—and agreed to.

The Convener: Group 6 is on the replacement of the term "abuse" with the term "harm". Amendment 6, in the name of the minister, is grouped with amendments 8, 10 to 15, 72, 18, 21, 22, 80, 24 to 26, 32, 28 and 29.

Lewis Macdonald: This important definition was debated in detail at stage 1. The intention of the bill has always been to provide protection from both deliberate and unintended harm. In order to provide absolute clarity about that objective, the large number of amendments in my name replace the word "abuse" with the word "harm" throughout the bill. It is important to acknowledge that that does not mean that we are changing our view that there is an issue with abuse that needs to be addressed. Abuse of older people and other vulnerable adults needs to be addressed. However, we make it clear that although the bill deals with those people, it also deals with cases in which a person might come to harm through the unintended actions of another party, or indeed their own neglect. That is the central purpose of the amendments, which take on board the committee's view in its stage 1 report.

I move amendment 6.

The Convener: I point out that if amendment 72 is agreed to, I will not be able to call amendment 18, which will have been pre-empted. In addition, amendment 80 pre-empts amendment 24.

Mrs Milne: Amendments 72 and 80 seek to remove the word "serious" from the phrase "serious abuse". It is thought that that wording could cause significant difficulties in interpretation. Amendment 72 would ensure that a sheriff may grant a banning order only if satisfied that the degree and/or nature of the harm to the adult at risk justifies the consideration of granting such an order. That would be clearer than using the term "serious abuse".

Lewis Macdonald: I do not accept Nanette Milne's amendments 72 and 80. The term "serious" is appropriate where inquiries have found that a person might be at risk of serious harm, which is clear justification for further measures to be taken. The distinction is important and I do not want to lose it. Although I understand the concern behind Nanette Milne's amendments, the courts are accustomed to dealing with the concept of seriousness in making judgments on issues of this kind. I would prefer the member to withdraw her amendments because they do not increase clarity, although I understand that that is her intention.

Amendment 6 agreed to.

Amendment 38 moved—[Lewis Macdonald]—and agreed to.

Section 5, as amended, agreed to.

After section 5

The Convener: Group 7 is on the duty to consider the importance of providing advocacy and other services. Amendment 7, in the name of the minister, is the only amendment in the group.

Lewis Macdonald: Amendment 7 reflects debate at stage 1 when the committee expressed the view that people to whom the bill applies should have parallel rights to those who are subject to interventions under existing statutes, such as the Mental Health (Care and Treatment) (Scotland) Act 2003, regarding reciprocity and advocacy services. The bill's provisions aim to support and protect adults at risk of harm and amendment 7 recognises explicitly the importance of advocacy in assisting people to communicate their views. It also requires that the local authority gives due regard to the importance of providing other services that might be appropriate to the needs of the adult in each case and thereby secure the principle of reciprocity.

I move amendment 7.

Amendment 7 agreed to.

Section 6—Visits

Amendment 8 moved—[Lewis Macdonald]—and agreed to.

The Convener: Group 8 is on council officers carrying out visits needing to be accompanied by a doctor. Amendment 45, in the name of Jean Turner, is grouped with amendment 50.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): The bill will enable a council officer to enter a person's home without their consent, which might in itself be frightening and stressful to the person who is alleged to be at risk at that point. If a council officer enters a person's home, they should cause as little upset as possible.

Most people have a general practitioner, and if they do not, they are usually assigned one. Since general practitioners are usually trusted and likely to be known by most people in the practice area, the proposal that a doctor should accompany the local authority official in amendment 45 might take the stress out of the situation. If an assessment or diagnosis were required, that could be carried out with the least harassment to the person at risk from harm.

Amendment 50 would add to section 34(1)(a) that, as well as a constable, a doctor should be present, under new section 6(1A), which amendment 45 would insert.

I move amendment 45.

Lewis Macdonald: I accept that, in many cases, it will be helpful to have the presence and input of the adult's general practitioner, as somebody who is familiar with the person and who knows their medical history. However, section 8 already provides the opportunity for a medical examination to be carried out, which, under the bill as it stands, could be done only by a health professional, when that is determined to be necessary. The current

drafting deliberately allows flexibility as to who the health professional should be. Often, the GP will be the best person, but there may be circumstances in which a district nurse or another health professional, such as a mental health professional, may be more appropriate to accompany the visiting council officer. It is worth saying that the bill permits the primary person that the council sends to be a health professional, who could carry out an examination.

I do not support amendments 45 and 50. As I said in relation to an earlier amendment, although in many circumstances in which the bill may be appropriate an intervention will be made for health reasons, in other circumstances an intervention will be made for financial reasons; for example, if there is a concern that a person is being financially disadvantaged and put at risk. It would not be appropriate for a GP or any other health professional to be involved in such a visit. For those reasons, I ask Jean Turner to withdraw amendment 45 and not to move amendment 50.

The Convener: I ask Jean Turner to wind up and to say whether she wishes to press or withdraw amendment 45.

Dr Turner: I will press amendment 45, because it is important that we have no guesswork about whether a doctor should be involved. Naturally, if the issue is merely financial, the general practitioner would leave, but we should have a health professional and another professional from the local authority. It is good to work in pairs when entering people's homes. That would give comfort to them.

The Convener: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Milne, Mrs Nanette (North East Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 45 disagreed to.

Section 6, as amended, agreed to.

Section 7—Interviews

The Convener: Group 9 is on the conduct of interviews and medical examinations. Amendment 60, in the name of Nanette Milne, is grouped with amendments 61, 9 and 76.

Mrs Milne: The aim of amendments 60 and 61 is to clarify that section 7 relates specifically to adults at risk and not to any adult. That is the essence of what I want to say.

I move amendment 60.

Lewis Macdonald: Amendment 9 will ensure that those who are interviewed are fully aware of their right not to answer a question, by imposing an obligation on the person who carries out the interview to inform them of that right before commencing the interview.

As Nanette Milne said, amendments 60 and 61 are intended to limit the group of people who can be interviewed to adults at risk. That would not be helpful, because, in some circumstances, it will be in the interests of the adult at risk for another person to be interviewed, too—perhaps somebody with whom they share their home or, alternatively, in a regulated care setting, a care worker. The current wording of section 7 allows that to happen, as well as allowing the interview of the adult at risk. Therefore, we do not support amendments 60 and 61.

Nanette Milne's amendment 76 would achieve much of what Executive amendment 9 provides for, so I ask her not to move amendment 76. However, I will take on board her point that there is a case to be made for ensuring that people are fully informed of their right to refuse consent. We have made provision to ensure that that happens in respect of interviews. If the member is content not to move amendment 76 today, I will lodge an amendment that makes provision for medical examinations that is consistent with what we have done on interviews.

I ask the committee to agree to amendment 9 and recommend that the other amendments in the group be withdrawn or not moved.

14:30

Mrs Milne: I apologise for omitting to speak to amendment 76. The minister has reassured us that the issue that it raises will be taken into consideration. It is terribly important that people should be informed of what may happen to them.

Amendment 60, by agreement, withdrawn.

Amendment 61 not moved.

Amendment 9 moved—[Lewis Macdonald]—and agreed to.

Section 7, as amended, agreed to.

Section 8 agreed to.

Section 9—Examination of records etc

Amendment 10 moved—[Lewis Macdonald]—and agreed to.

Section 9, as amended, agreed to.

Section 10—Assessment orders

Amendment 11 moved—[Lewis Macdonald]—and agreed to.

The Convener: Group 10 is on council officers and council nominees having no authority to use force. Amendment 62, in the name of Shona Robison, is grouped with amendments 68 and 79.

Shona Robison: The purpose of the amendments is to make it clear that removal and assessment orders do not carry the right to use force against adults who are subject to those orders. The amendments make it clear that there are limits to the powers that assessment and removal orders carry, which is vital for those who are acting under the bill as well as those who are subject to the orders.

Warrants for entry carry the right for reasonable force to be used to gain entry, which may be appropriate when entry is refused but there are reasonable grounds for believing that entry is necessary to investigate a situation, but it is not appropriate to use force against someone who refuses to comply with an assessment or removal order. It is important that the law is very clear about when physical force against someone who is not compliant is justified. For example, removal and assessment orders do not carry any right of detention. There is a great danger that the use of physical force to remove or restrain a person would amount to unlawful detention and be a violation of the person's human rights.

It is important that those who implement the law are aware of how far the powers extend. They may need to take that into account when deciding on the most appropriate action. It is crucial that people who are subject to orders are aware of when force can and cannot be used. Adults who are likely to find themselves subject to the orders may well feel distressed and vulnerable. The use of force against someone in that situation, who poses no risk to other people, cannot be justified.

I move amendment 62.

Euan Robson (Roxburgh and Berwickshire) (LD): I appreciate entirely the sentiment behind the amendment, which is laudable, but there may be circumstances when some form of force is inevitable—for example, if the adult at risk is threatening someone else or is being threatened. In amendment 62, "force" is not qualified as, for example, "undue force". In addition, amendment 79 would constrain the use of force by a constable—that is to say, a police officer. This matter should be considered, but in guidance and codes of practice. Such an approach would provide more flexibility and allow for occasional circumstances in which force might be justified. We should not rule out such matters in statute.

Lewis Macdonald: I understand Shona Robison's point that using force on someone who is at risk of serious harm is an unattractive and contentious proposition, but that would happen only as an absolute last resort, in very exceptional circumstances, when other options had been exhausted. Euan Robson mentioned the code of practice, which will certainly make it clear to practitioners that that ought to be the case.

I should also point out that amendments 62, 68 and 79 all refer to "a council officer", but the bill already sets out provisions relating to council officers. I direct the committee's attention to section 33(4), which states very clearly:

"A council officer may not use force during, or in order to facilitate, a visit".

Euan Robson referred to amendment 79, which also seeks to restrain a constable from using reasonable force in pursuance of his or her duties. In such circumstances, the police officer will have to use his or her judgment in weighing the use of reasonable force against the risk of harm. For example, if a person were at risk of harming themselves, we would all expect a police officer to prevent that from happening. Moreover, although they might not ask for it, the person at risk of harm might simply need a guiding hand to get out of a difficult position.

I do not support amendments 62, 68 and 79 because they are unnecessary with regard to council officers and because constables should be allowed to use reasonable force if they are clear in their minds that it is necessary to protect the adult from risk of harm.

Shona Robison: I do not know whether I accept Euan Robson's arguments, because other legislation could come into play if a situation involved breach of the peace or assault. However, I am somewhat reassured by the minister's point that other parts of the bill already send out a clear message and, indeed, that the code of practice will contain a very strong message on this matter. As a result, I am content to withdraw amendment 62.

Amendment 62, by agreement, withdrawn.

Section 10, as amended, agreed to.

Section 11—Criteria for granting assessment order

Amendments 12 and 13 moved—[Lewis Macdonald]—and agreed to.

The Convener: Amendment 63, in the name of Shona Robison, is grouped with amendments 64, 46 and 67.

Shona Robison: Amendments 63, 64 and 67 seek to ensure that any council officer who acts under the legislation applies the general principles that are set out in sections 1 and 2 and to make it clear that the courts are expected to give specific consideration to those principles before an order is granted.

The bill's general principles, which are set out in sections 1 and 2, are designed to apply to all decisions and actions under part 1 and are critical to ensuring that the adult's interests and rights are protected. Section 1 states that a person may intervene in an adult's life

"only if satisfied that the intervention … will provide benefit to the adult which could not reasonably be provided without intervening in the adult's affairs, and … is, of the range of options likely to fulfil the object of the intervention, the least restrictive to the adult's freedom."

Section 2 provides details of how the general principles should be carried out in practice.

It is important that the principles are considered fully before an order is granted. I believe that the principles will be strengthened if they are referred to specifically at the points in the bill where what the court must consider before it grants an order is set out. That would make it clear to anyone who is seeking an order that they will be expected to explain how they have applied the principles, and that the court will not grant an order unless it is satisfied that the principles have been complied with.

Amendment 64 would amend the criteria for granting the assessment order to require the sheriff to be satisfied that the place to which an adult at risk is to be taken is suitable for the purpose.

I move amendment 63.

Euan Robson: It is important that the sheriff bears in mind the availability and suitability of a place to which an adult at risk is to be moved. I do not think that it is appropriate for that matter to be left in a vacuum. I am sure that, in practice, many sheriffs would bear that in mind, but it is important to have a statutory reference to it. Clearly, that could be applied in the code of practice but, through amendment 46, I am seeking to ensure that the court considers the availability and suitability of the place.

I have some sympathy with amendment 64. I think that the contents of amendments 63 and 67 are implicit in the bill. The court would indeed need to take the factors that they cover into account, but I am interested to hear the minister's view.

Lewis Macdonald: There are two distinct areas of consideration in this group. Amendments 63 and 67 relate to a sheriff being satisfied that the council has taken the principles into consideration. I would point out that section 2 of the bill as introduced is clear. It states:

"A public body or office-holder performing a function under this Part in relation to an adult must, if relevant, have regard to … the general principle on intervention in an adult's affairs"

under section 1, and to the other principles listed in section 2.

In granting an assessment order or removal order, the sheriff will have regard to the general principle in section 1, as well as to the principles that are outlined in section 2. However, the principles might not always agree with each other and, in applying them, the sheriff will require to use a degree of balance. It is therefore important that the granting of orders is not constrained in another way.

It is difficult to see how amendments 63 and 67 would change the position. Existing provision already requires the council to take the principles into account. The sheriff will consider them as a matter of course. If the sheriff disagrees with the council's assessment in relation to the principles, it is clearly the sheriff's assessment that will prevail. I think that amendments 63 and 67 are therefore not necessary and that they do not add anything to the bill.

I have no difficulty, on the other hand, with the principles behind amendments 46 and 64. I have a slight preference for amendment 46, given where it is in the bill and what, precisely, it seeks to insert. I would be happy to accept amendment 46, and I urge the member who lodged amendment 64 not to move it, on the understanding that I am happy to return at stage 3 with an amendment that would do for medical examinations what amendment 46 does for interviews—but to do it consistently and in the same section. I hope that that is acceptable to Shona Robison.

Shona Robison: I hear what the minister is saying about amendments 63 and 67, but I do not believe that there are any reasons for not setting out and reiterating in the relevant sections that the court must consider the principles before it grants an order. I therefore wish to press those amendments.

To clarify what the minister said about amendment 64—

The Convener: I do not want us to get into a protracted, backwards-and-forwards discussion.

Shona Robison: I understand, convener. The minister said that he would come back with an amendment that would include both things in the

same section. Is that because there is something wrong with the way in which the two things are linked at the moment?

Lewis Macdonald: I am happy to provide clarification. Amendment 46 relates to availability and to suitability, whereas amendment 64 relates only to suitability. Amendment 46 relates to section 14 and amendment 64 relates to section 11. We simply want to achieve consistency in the bill.

14:45

Shona Robison: On that basis, I will not move amendment 64. I will, however, press amendment 63.

The Convener: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Milne, Mrs Nanette (North East Scotland) (Con)
Robison, Shona (Dundee East) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 63 disagreed to.

Amendment 64 not moved.

Section 11, as amended, agreed to.

After section 11

The Convener: Group 12 is on a council's duty to provide or arrange transport. Amendment 65, in the name of Shona Robison, is grouped with amendment 69.

Shona Robison: An assessment order authorises a council officer to take the adult at risk from a place being visited under section 6, which might well be the adult's home, to another place, to allow the adult to be interviewed and medically examined, but there is no duty on the council to provide assistance for the adult to return to the place from which they have been removed after the interview or medical examination—or when the adult refuses to give permission for an interview or medical examination.

Removing an adult at risk from their home and taking them to another place is, obviously, a serious step and the adult might well be distressed and feel vulnerable. All efforts must be made to minimise the distress that the adult might experience. That should include ensuring that, after the interview or medical examination has been carried out—or refused—the adult is provided with the transport and support that is necessary for him or her to return home. As the adult might have had to leave home suddenly, they might not have enough money with them or have made the necessary arrangements to get home.

If the council has exercised a power to remove the adult from their home, it should have a reciprocal duty to arrange their safe return home.

Amendment 69 deals with the same issues in relation to a removal order.

I move amendment 65.

Lewis Macdonald: An assessment order will, under the bill, often be the first point at which the health and well being of an individual can be assessed and determined. It might, as a consequence of that assessment, become clear that a further intervention is necessary, not necessarily under this measure but, possibly, under mental health legislation or incapacity legislation. If the assessment requires a further intervention, admission to hospital or a transfer to a different place of residence, it would be inappropriate to require that, following the assessment, the person should be returned to the place where they previously resided. The risk that brought about the intervention might have arisen because of the place in which the person resided. I think that requiring a person to be returned after an assessment could have unintended consequences that would be to the detriment of the adult.

Local authorities already have the power to arrange transport for a person who it has been determined can be safely returned to their ordinary place of residence. That power could be applied flexibly, according to the circumstances. Again, we would aspire to set out in the code of practice the way in which that power should be used.

Shona Robison: Amendment 65 is about the duty to provide or arrange travel and ensuring that someone can return to the place from which they were removed; it is not about a duty to return the person to that place. It imposes a duty to ensure that the person gets practical assistance to return to the place from which they were taken—or any other reasonable place—as soon as is practicable. It is about the practicalities of getting the person to their next place, given that it might be impossible for them to arrange transport themselves. I am not satisfied with the minister's response, so I will press amendment 65.

The Convener: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Milne, Mrs Nanette (North East Scotland) (Con)
Robison, Shona (Dundee East) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 65 disagreed to.

Section 12 agreed to.

After section 12

The Convener: Group 13 is on a council officer's duty to provide information. Amendment 66, in the name of Shona Robison, is grouped with amendment 70.

Shona Robison: Amendment 66 would place on council officers a duty to provide certain information to adults, including information on whether an order has been granted, what it means, the powers that it carries, what will happen next, and what will happen if they refuse to comply. It is essential that adults who are subject to interventions under the bill have a legal right to certain information, particularly as the court might grant orders of which the adult was not previously aware. It is important that the adult is aware of the powers that the order carries and what will happen if they refuse to comply with it.

I move amendment 66.

Lewis Macdonald: I accept the principle that an adult at risk should be kept informed at every stage of an effort to support them. However, I want to make sure that that is done through the code of practice. I do not want to use the approach that is taken in amendments 66 and 70, which would impose an additional legal hoop through which officers would be required to jump before they could take action. We are talking about critical situations in which a person is at risk. The fewer the barriers in the way of action being taken—subject to the determination of the court and so on, as I described in relation to protection orders—the more readily support and protection can be provided to the individual.

On that basis, I ask Shona Robison to withdraw amendment 66 and to not move amendment 70.

Shona Robison: I do not regard the duty in amendment 66 as a legal hoop through which council officers must jump before they can take action. I regard it not as a barrier but as an essential element of informing someone of their rights in a situation in which they might be vulnerable. I will press amendment 66.

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Milne, Mrs Nanette (North East Scotland) (Con)
Robison, Shona (Dundee East) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 66 disagreed to.

Section 13—Removal orders

Amendment 14 moved—[Lewis Macdonald]—and agreed to.

Section 13, as amended, agreed to.

Section 14—Criteria for granting removal order

Amendment 15 moved—[Lewis Macdonald]—and agreed to.

Amendment 46 moved—[Euan Robson]—and agreed to.

Amendment 67 not moved.

Section 14, as amended, agreed to.

Section 15—Right to move adult at risk

Amendment 68 not moved.

Section 15 agreed to.

After section 15

Amendments 69 and 70 not moved.

Section 16 agreed to.

Section 17—Protection of moved person's property

The Convener: As an incentive, and because everybody has been very good, we will have a five-minute suspension at about 3.15.

Amendment 16 is grouped with amendment 16A, which will be disposed of before the question on amendment 16 is put.

Lewis Macdonald: The intention behind amendment 16 and amendment 16A is similar, in that both amendments seek to ensure that any property owned or controlled by the adult at risk should be returned to that person. Amendment 16 provides that property should be returned

"as soon as is reasonably practicable",

whereas amendment 16A requires that in all circumstances property should be returned within 72 hours.

I do not accept amendment 16A, because there may be circumstances in which it is not practicable to meet the 72-hour deadline—for example if the property were a pet and the person required a bit more than three days to adjust to having it back. That is one example—there may be several others—of property that may be removed and that should be returned as soon as is reasonably practicable. There should not be an absolute deadline, but the code of practice can make clear and give force to the requirement that property be returned as soon as is reasonably practicable, to ensure that that is exactly what happens.

I move amendment 16.

Shona Robison: The purpose behind amendment 16A is similar to that behind amendment 16. The reason for stipulating 72 hours is to have a time limit within which property must be returned. I accept that there may be circumstances in which that is not possible, but it would be helpful if the minister could give some indication of a timescale.

Lewis Macdonald: The code of practice will require all due speed in achieving a reasonably practicable early return of property. It will not set a deadline because, for reasons I have described, there will always be exceptional cases, but it will make clear how, in general, property should be returned quickly.

Shona Robison: On the basis of what the minister has said, I will not move amendment 16A.

Amendment 16 agreed to.

Section 17, as amended, agreed to.

Section 18—Banning orders

The Convener: Group 15 is on the replacement of the term "banning order" with the term "exclusion order". Amendment 71, in the name of Nanette Milne, is the only amendment in the group.

Mrs Milne: I lodged amendment 71 in response to a written submission to the committee at stage 1 that stated that the term "banning order"

"is imprecise and unduly emotive, and should be amended to 'exclusion order'."

I am inclined to agree, and I submit that to prevent someone from entering the home of an adult at risk a banning order would be better described as an exclusion order.

I move amendment 71.

Lewis Macdonald: It might be appropriate to describe it as an exclusion order if it only ever applied to the property in which the person who was being excluded was resident and had a right of occupancy. The banning order in the bill goes a little beyond the exclusion order. For reasons with which members will be familiar, there is in the Matrimonial Homes (Family Protection) (Scotland) Act 1981 an exclusion order whereby a person can be banned from the home in which he is resident and has occupancy rights.

In this case, it is possible that a person may also be banned from another house. If, for example, the son of an older woman poses a risk to her, a banning order could apply to prevent him from visiting her at her home, although that home is not his home. Banning orders are therefore slightly wider than exclusion orders in other statutes. For that reason, I would like the bill to retain the term "banning order".

15:00

Mrs Milne: I confess that the niceties of the language slightly escape me and that I thought that an exclusion order would apply beyond a person's residence. If the Parliament's legal people have advised that banning orders would go further than exclusion orders, I must bow to what they have said. Therefore, I will not press amendment 71.

Amendment 71, by agreement, withdrawn.

The Convener: Group 16 is on banning orders and temporary banning orders. Amendment 17, in the name of Lewis Macdonald, is grouped with amendments 47, 19, 48 and 49.

Lewis Macdonald: Amendments 17 and 19 are essentially technical amendments. The consequences of the imposition of a banning order are set out in section 18. Commencement of an action for breach of a civil order in statute requires procedural steps that differ from those for a breach of interdict. The consequences of a breach in each case are different and the amendments are intended to address that.

Amendment 47 relates to the criteria that must be met before a banning order can be granted. The amendment inserts additional tests relating to the rights of occupancy of the property, which we

have just discussed. It is intended to clarify that banning orders can be used when the adult at risk is entitled to occupy the property in question and when that is not the case.

I move amendment 17.

Amendment 17 agreed to.

Section 18, as amended, agreed to.

Section 19—Criteria for granting banning order

The Convener: I remind members that if amendment 72, in the name of Nanette Milne, is agreed to, amendment 18 will be pre-empted.

Amendment 72 moved—[Mrs Nanette Milne].

The Convener: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Milne, Mrs Nanette (North East Scotland) (Con)
Robison, Shona (Dundee East) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 72 disagreed to.

Amendments 18 and 47 moved—[Lewis Macdonald]—and agreed to.

Section 19, as amended, agreed to.

Section 20—Temporary banning orders

Amendment 19 moved—[Lewis Macdonald]—and agreed to.

Section 20, as amended, agreed to.

Section 21 agreed to.

After section 21

Amendment 48 moved—[Lewis Macdonald]—and agreed to.

Sections 22 and 23 agreed to.

After section 23

Amendment 49 moved—[Lewis Macdonald]—and agreed to.

Sections 24 to 31 agreed to.

Section 32—Consent of adult at risk

The Convener: Group 17 is on consent of adult at risk. Amendment 73, in the name of Nanette Milne, is grouped with amendments 20, 74 and 75.

Mrs Milne: Amendments 73 and 74 seek to add the concept of undue influence to the consideration of whether or not an adult at risk has consented to a protection order, as one of the main points about vulnerability is that it involves susceptibility to undue influence. I believe that undue influence is a well-developed and well-understood concept in existing law.

Amendment 75 seeks to widen the scope of section 32(4)(a) to recognise that, when abuse occurs, there may be a number of abusers. Only one of them may be in a position to exert undue influence or pressure, but that may be enough to shield them all, including the individual who is abusing the adult at risk. Amendment 75 recognises that the adult at risk might have confidence and trust in a person within a group of people that includes the person who is inflicting or is likely to inflict abuse. The presence of the person who inspires confidence and trust in the adult at risk may influence them to refuse consent even though that person might be in a group of people that includes the person who is inflicting or is likely to inflict abuse. I hope that amendment 75 would sort that out.

I move amendment 73.

Lewis Macdonald: The bill aims to balance rights with protection, and amendment 20 aims to make it clear that intervention without an adult's consent is acceptable only when every step that could be taken with their consent has been taken but the adult remains at risk. Amendment 20 seeks to address the concern that the committee expressed at stage 1 that the bill was not explicit enough in making that provision.

The principles of the bill are clear that any intervention must be the least restrictive possible for the adult and that overriding the giving or withholding of consent by an adult in a case in which there is undue pressure is an absolute last resort. The authorisation of a sheriff would be required in such an instance. The sheriff would be required to consider all the evidence and circumstances and to weigh up and balance the interests of the adult at risk when considering whether to allow an intervention. The sheriff could, of course, refuse an intervention, and there are also procedural safeguards that must be satisfied, including the need to bring evidence to the court to establish the likelihood of serious harm and the provision that the adult at risk is not required to answer any question and may be medically examined only with their consent. Amendment 20 is intended to strengthen the part of the bill that

says that such intervention is a last resort.

Nanette Milne is right to say that "undue influence" has an established meaning, but it is usually applied in a slightly different set of circumstances from those that apply in the cases that we are discussing. I understand that undue influence is otherwise known as "facility and circumvention". The term describes the position in which, for example, a person who is unduly influenced to buy an item by another person who seeks to sell it to them decides that they do not wish to honour the contract because of that undue influence. It typically relates to a situation in which a stranger seeks to sell something to or otherwise influence the person.

The concept of undue pressure is slightly different. The bill refers to undue pressure usually or typically from a member of the family or somebody else whom the person trusts. Also, the term "pressure" sets a tougher test than "influence". We are saying that a person will not withhold consent for something that is in their interest to be done just because they are being influenced; it takes real pressure to get somebody to do something that is so clearly at odds with their interest. Because undue pressure is a tougher test, it better addresses the committee's concerns that the withholding of consent by an adult should not be overlooked without good cause.

Amendment 75 is not necessary, although I understand the purpose behind it. One person using undue pressure is enough to trigger the measures in the bill as introduced, and the legal position is not altered if other people are taking shelter behind that person.

I therefore ask Nanette Milne to withdraw amendment 73 and not move amendments 74 and 75.

Mrs Milne: On amendment 75, I accept the minister's explanation that one person using undue pressure will be enough to trigger the law. However, I am unconvinced by the argument about undue influence. It is all a matter of degree and language, so I will press amendment 73.

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Milne, Mrs Nanette (North East Scotland) (Con)
Robison, Shona (Dundee East) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 73 disagreed to.

Amendment 20 moved—[Lewis Macdonald]—and agreed to.

Amendment 74 not moved.

Amendment 21 moved—[Lewis Macdonald]—and agreed to.

Amendment 75 not moved.

The Convener: Amendment 76 was debated with amendment 60.

Mrs Milne: I do not remember amendment 76. Is it in order to seek clarification of which amendment that was?

The Convener: Amendment 76 was in group 9.

Mrs Milne: I will not move amendment 76, because I received an assurance from the minister.

Amendment 76 not moved.

Section 32, as amended, agreed to.

The Convener: I suspend the meeting for five minutes to allow people to stretch their legs.

15:12

Meeting suspended.

15:17

On resuming—

Section 33—Visits: supplementary provisions

The Convener: Group 18 is on supplementary provisions on visits. Amendment 77, in the name of Shona Robison, is grouped with amendment 78.

Shona Robison: Amendment 77 relates to section 33(2), which states:

"A council officer must, if asked to do so while visiting any place—

(a) state the object of the visit, and

(b) produce evidence of the officer's authorisation to visit the place."

Amendment 77 seeks to remove the phrase

"if asked to do so",

because I believe that council officers should be taking those steps anyway, to ensure that the person is in full possession of the facts about what is going on.

Amendment 78 seeks to add a third

responsibility on the council officer to the two that I have already mentioned. The officer would have to

"advise the adult of the consequences of non-compliance."

I move amendment 77.

Lewis Macdonald: I shall respond differently to the two amendments. I have some concern that removing the phrase that amendment 77 seeks to remove might introduce some unintended consequences, but that is not a substantial concern. I am happy to accept amendment 77, as the principle behind it is reasonable, but between now and stage 3 I would like to consider whether any further tweaking is required to ensure that there are no unintended consequences.

However, I do not wish to accept amendment 78, which does not have the necessary clarity about the identity of the "adult" it refers to. The consequences will be different, depending on who that adult is. Again, I refer members to section 46. The adult who is at risk cannot commit an offence by obstructing a council officer, so their doing so would have no legal consequence, but another adult who is being advised of the consequences of non-compliance may well be committing an offence by obstructing a council officer in the course of his or her duties.

Given that amendment 9 introduces safeguards to ensure that an adult is fully aware prior to the interview of their right not to answer a question, and given the similar provision for medical examinations that I intend to introduce at stage 3, amendment 78 offers little in addition to what is already in the bill, and I ask Shona Robison not to move it.

Shona Robison: I am pleased that the minister accepts amendment 77. I accept some of the concerns about the clarity of amendment 78, so I am happy not to move it. I might reconsider the matter at stage 3.

Amendment 77 agreed to.

Amendment 78 not moved.

Section 33, as amended, agreed to.

Section 34—Warrants for entry

Amendments 50 and 79 not moved.

Section 34 agreed to.

Sections 35 and 36 agreed to.

Section 37—Urgent cases

Amendment 22 moved—[Lewis Macdonald]—and agreed to.

The Convener: Group 19 is on urgent cases. Amendment 23, in the name of the minister, is grouped with amendment 51.

Lewis Macdonald: It will be necessary to involve a justice of the peace in protective action on those rare occasions when a sheriff is not available and immediate action is needed to prevent harm. Urgent situations might arise when a sheriff is not available to grant a removal order or warrant for entry and any delay might result in harm or the risk of harm. The bill as drafted provides for a JP to grant a warrant or removal order in such cases.

Executive amendment 23 ensures that the duration of a removal order granted by a JP is for the shortest time possible. That provision mirrors the provision that exists in child protection legislation, which specifies a period of 12 hours. That would allow such time as is needed to deal with an urgent case. I hope that narrowing the time available addresses any concerns about JPs being given the power. I recommend that amendment 51 be rejected.

I move amendment 23.

Mrs Milne: I lodged amendment 51 as a probing amendment. The requirement for JPs to be given this significant extra power was not discussed at stage 1. I need the minister to elaborate on the power that JPs are to be given before I decide whether to move amendment 51.

Lewis Macdonald: I will be brief. The JP will be expected to use the power only in the unusual circumstances in which urgent action is required and a sheriff is not available. Such circumstances might arise in a remote rural area where there is not ready access to a sheriff but early action is required. Amendment 23 limits the extent of the order, which I hope addresses the concerns that moved Nanette Milne to lodge amendment 51.

Amendment 23 agreed to.

Amendment 51 not moved.

Section 37, as amended, agreed to.

Section 38—Applications: procedure

Amendment 80 not moved.

Amendments 24 and 25 moved—[Lewis Macdonald]—and agreed to.

Section 38, as amended, agreed to.

Section 39—Adult Protection Committees

The Convener: Group 20 is on adult protection committees: functions and membership. Amendment 52, in the name of Euan Robson, is grouped with amendments 81 and 53.

Euan Robson: These are probing amendments. My aim is to have a short discussion with the minister about ensuring co-operation between adult protection committees and child protection

committees, where they are established. Amendment 52 refers to the desirability of having transitional arrangements in place for when a child moves from the remit of one committee to that of another. The difficulty is that child protection committees are not yet on a statutory basis. They may exist in some areas, but in others there may be no such committees, or adult protection committees and child protection committees may be amalgamated. However, it is worth my seeking the minister's views on the issue and on whether, if the amendments are not acceptable, it could be covered in guidance or a code of practice. It is important that there is co-operation, and it is particularly important that attention is paid to transitional arrangements.

I move amendment 52.

Mrs Milne: I will restrict my comments to amendment 81, which seeks to include in the provisions of the bill the Mental Welfare Commission and the Office of the Public Guardian, which are both public bodies with which an adult protection committee should co-operate to safeguard adults at risk who are present in its council area.

Lewis Macdonald: Like Euan Robson, I fully appreciate the importance of adult protection committees working closely with other key bodies and organisations in their area and beyond, where appropriate. In normal circumstances, one would expect that co-operation to extend to the relevant child protection committee. I accept that there need to be transitional arrangements where a person was formerly covered by child protection legislation and may in future require protection by adult services. I hope to address that issue in the code of practice.

The situation is complicated slightly by the absence of a statutory basis for child protection committees comparable to that which the bill provides for adult protection committees. I ask Euan Robson to withdraw amendment 52, so that we can ensure that the duties that we place on the respective committees are comparable and that we do not require an adult protection committee to co-operate with a child protection committee that, in theory, may not exist or may, as he said, be the same committee. However, we accept the spirit behind the amendments and will be happy to consider further how to ensure that what he seeks is delivered under the code of practice.

I understand that the Mental Welfare Commission does not wish to be a member of all the 32 adult protection committees that may be established across Scotland. The Office of the Public Guardian, which is an even smaller organisation, is likely to take the same view. Both organisations wish to be able to take part in the committees' deliberations, where appropriate, but do not want the burdens of required membership and attendance to be placed on them, especially because many of the cases with which the committees will deal will not relate directly to the organisations' areas of interest. On that basis, I invite Nanette Milne not to move amendment 81, although I understand its purpose. The bill as drafted allows for the involvement of the organisations to which she refers, and we will reinforce that point in the code of practice.

Euan Robson: I am grateful to the minister for his comments and for his assurances on transitional arrangements in particular. On that basis, I seek to withdraw amendment 52.

Amendment 52, by agreement, withdrawn.

Amendments 81 and 53 not moved.

Section 39 agreed to.

Sections 40 and 41 agreed to.

Section 42—Duty to provide information to the Committee

15:30

The Convener: Group 21 is on the duty to provide information to adult protection committees. Amendment 54, in the name of Euan Robson, is the only amendment in the group.

Euan Robson: I am concerned that people who are involved in adult protection committees and in agencies that co-operate with committees should keep proper records. The minister knows from discussions that we have had that there have been instances in which the failure to keep proper records had serious consequences. Of course, the keeping of proper records is a matter of proper professional practice, but there is merit in considering making it a requirement of the bill, so that no one will be in any doubt. If there is a statutory duty to keep proper records, I presume that the relevant regulatory agencies will be able to inspect bodies and take appropriate action if proper records are not being kept and no standard is being developed for the keeping of records.

The matter could be dealt with in regulations or the code of practice. I am interested in what the minister will say, because it is imperative that we signal to all concerned that proper records are essential in ensuring the protection of adults—and children, for that matter.

I move amendment 54.

Lewis Macdonald: I entirely agree with the spirit behind amendment 54. As Euan Robson said, the proper carrying out of functions in such sensitive areas requires the keeping of proper records. I acknowledge that the inadequate keeping of appropriate records has been a

contributory factor in instances in which the statutory provision to protect vulnerable people has failed. In the code of practice on the implementation of the bill we will give a clear signal that proper record keeping is a priority for all bodies concerned.

A number of the public bodies that are caught by the bill are on a statutory footing and have statutory functions, implicit in some of which is a duty to keep records. I am sure that the intention behind amendment 54 is to reinforce that duty. We will be happy to do that in the context of the code of practice, so I ask Euan Robson to withdraw amendment 54.

Euan Robson: I am grateful to the minister for his reassurance. I seek to withdraw amendment 54, but I also seek further discussion with the minister on the matter, because I would like further assurances on all agencies involved.

Amendment 54, by agreement, withdrawn.

Section 42 agreed to.

Sections 43 to 47 agreed to.

Section 48—Appeals

The Convener: Amendment 55, in the name of Euan Robson, is grouped with amendment 56.

Euan Robson: Amendment 55 is a probing amendment and would allow an appeal against a removal order.

The area is difficult, because we must consider both the principle and the practicalities. Although, in practical terms, it may never—the words "may never" are important in all of this—be needed, the provision would ensure the principle of an appeal. It may never be needed because it would not be achievable within the timescale for court consideration. On balance, I am unclear whether the practicalities overwhelm the principle—again because I am not entirely familiar with the court process. I would be grateful for the minister's comments and will listen to what committee members may have to say.

I move amendment 55.

Lewis Macdonald: The bill does not provide for an appeal against a removal order, primarily because a removal order can last for a maximum of seven days. It is not practicable for an appeal to be made to a higher authority—the sheriff principal—and for it to be heard within that time.

The adult at risk, any person with an interest in their well being or property, or the council in question may instead seek to vary or recall the order by making an application to the sheriff. The application would be decided before the expiry of the original order. Any one of those persons could go back to the court the day after the order was granted and ask the sheriff to change or annul it. In effect, the process provides an opportunity for the sheriff to look again at the circumstances of the case to see whether anything has changed. If the sheriff decides that it has, they can act accordingly.

The process is similar to that which comes under existing statute for an interdict. Like a banning order, it can be heard at short notice by a sheriff. However, as for a banning order, the appeal for an interdict would go to a sheriff principal. Again, it would not be heard within the seven-day period. In practical terms, we are not persuaded of the case for an appeal.

Article 6 of the European convention on human rights guarantees

"a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

We believe that the provision meets that obligation precisely and fully. Before a removal order can be granted, a hearing must take place before an independent or impartial sheriff or JP, unless the case is one of the urgent or exceptional cases that we have discussed. From the evidence, the sheriff or JP must be satisfied that the adult is at risk of serious harm if they are not moved to another place. Given the short period for which a removal order can apply, the existing provision under the law delivers the protection that Euan Robson is keen to ensure.

Amendment 56 makes explicit that the banning and temporary banning orders that are granted under the bill can be appealed. It also makes it clear that the order will remain in force until the appeal is expired.

The Convener: As no other member wishes to speak and the minister has waived his right to comment, I call Euan Robson to say whether he wants to press or seek leave to withdraw amendment 55.

Euan Robson: I listened carefully to what the minister said. It appears that, by reference to the sheriff, a reversal of the order can take place. I will give further thought to the matter, read the minister's comments and, if necessary, come back with a further amendment at stage 3. I seek leave to withdraw amendment 55.

Amendment 55, by agreement, withdrawn.

Amendment 56 moved—[Lewis Macdonald]—and agreed to.

Section 48, as amended, agreed to.

Section 49—Persons authorised to perform functions under this Part

The Convener: Group 23 is on restrictions on individuals performing functions authorised by councils. Amendment 57, in the name of Dr Jean Turner, is the only amendment in the group.

Dr Turner: The bill gives a "council officer" the power to enter premises, carry out visits, examine records and implement assessment orders. In our stage 1 report, the committee expressed the concern that the term "council officer" is broad and recommended that the definition of the person who has the power to enter premises should be made more specific.

Rather than provide a detailed description of who a council officer could be—for example, a suitably qualified council officer—amendment 57 would commit the Executive to providing a more restrictive definition through subordinate legislation. It would achieve that by amending section 49 to read: "The Scottish Ministers must"—rather than "may"—

"by order restrict the type of individual who may be authorised by a council to perform functions given to council officers by virtue of this Part."

I move amendment 57.

Lewis Macdonald: I oppose amendment 57 which, in making it mandatory rather than discretionary for ministers to make an order, would have a potentially complex effect. Ministers would be required to make an order, but Parliament might choose to annul it, although our duty would still stand. Therefore, simply in relation to the legislative process, the amendment runs the risk of being a bit confusing.

The Local Government (Scotland) Act 1973 already governs who councils may appoint as council officers. Section 49(1) empowers ministers to restrict the type of officer who is allowed to perform functions under the bill. I assure Jean Turner that we will use those powers. Further, if she is content to withdraw amendment 57, I will undertake to seek to make a draft of the order available to the committee prior to stage 3, to make clear what we intend to do. It is reasonable to assume that the type of person who is included will be, for example, a social worker with qualifications to work in the area. We will seek to make provision so that the officers are appropriately qualified and trained persons. I am happy to provide a draft of the order. The details will have to be consulted on with the Association of Directors of Social Work and others, but I am happy to provide a copy to the committee if Jean Turner is content to withdraw her amendment.

Dr Turner: I accept the minister's comments and will seek leave to withdraw amendment 57. It is difficult to understand the difference between "may" and "must". If we can have more clarification at a later date, I am happy for the amendment to be withdrawn.

Amendment 57, by agreement, withdrawn.

Section 49 agreed to.

Section 50—Interpretation of Part 1

Amendments 26, 31 and 32 moved—[Lewis Macdonald]—and agreed to.

Section 50, as amended, agreed to.

The Convener: That concludes our consideration of amendments for today and ends the public business. I ask members of the public and all non-essential personnel to leave the room and for the sound system to be switched off.

15:43

Meeting continued in private until 15:54.

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