

JUSTICE 1 COMMITTEE

Wednesday 24 November 2004

Session 2

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JUSTICE 1 COMMITTEE 36th Meeting 2004, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)

*Mr Bruce McFee (West of Scotland) (SNP)

*Margaret Mitchell (Central Scotland) (Con)

*Mrs Mary Mulligan (Linlithgow) (Lab)

*Margaret Smith (Edinburgh West) (LD)

*attended

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Helen Eadie (Dunfermline East) (Lab)

Miss Annabel Goldie (West of Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

THE FOLLOWING ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)

Mr Tom McCabe (Minister for Finance and Public Service Reform)

CLERK TO THE COMMITTEE

Alison Walker

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Douglas Thornton

LOCATION

Committee Room 4

Scottish Parliament

Justice 1 Committee

Wednesday 24 November 2004

[THE CONVENER *opened the meeting at 11:06*]

Emergency Workers (Scotland) Bill: Stage 2

The Convener (Pauline McNeill): Good morning everyone, and welcome to the 36th meeting this year of the Justice 1 Committee. We are all present today, so there are no apologies. I ask members to ensure that they switch off their mobile phones.

The only item of business today is stage 2 of the Emergency Workers (Scotland) Bill. Before we move to the formal process, I have a statement to read out on the admissibility of amendments. I would be grateful if the committee would bear with me, because I would like to get it on the record. Members will see why when they hear what I have to say.

A number of the amendments before us today would, if agreed to, represent a significant extension of the bill. They would mean that offences created by the bill could be committed in circumstances that are not emergency circumstances. Because of that, the amendments were referred to me under rule 9.10.4 of the standing orders, to make a ruling on their admissibility.

I spent time carefully considering the scope of the bill and the admissibility of the amendments. My view is that the bill is principally about protecting emergency workers, and the amendments in question offer the committee alternative mechanisms for achieving that aim. I have therefore concluded that all the amendments are admissible.

The committee experienced many difficulties in scrutinising the bill at stage 1, and had particular difficulty in establishing the policy intention of the bill. The view that the scope of the bill was so narrow that the provision under section 2(4) relating to emergency circumstances could not be broadened out to mirror the Police (Scotland) Act 1967 was never clear to the committee, particularly as the policy memorandum to the bill referred to the bill providing

“specific protection for emergency workers similar to that provided for police officers in the Police (Scotland) Act 1967.”

The emergency circumstances provision was one of the issues that the committee wished to explore further at stage 2 and, as such, it said in its stage 1 report that it would consider all the evidence on emergency circumstances, including the on-duty provision, at stage 2. While at no time did the committee recommend any particular option for stage 2, it was clear that members wanted to discuss a full range of options to ensure the effectiveness of the legislation. I believe that the scope of the bill is the protection of emergency workers, and the committee should have the opportunity to debate the variety of mechanisms that are proposed by the amendments to achieve that objective.

I am conscious that to rule against any advice given on the admissibility of particular amendments could set an unhelpful precedent, so I make it clear that I believe that there are unusual and particular circumstances relating to this bill that have led me to take this unusual step.

I thank members for their patience. I now propose to move to the marshalled list of amendments. I welcome the Minister for Finance and Public Sector Reform, Tom McCabe, and his officials. Minister, you will be aware that at stage 2 officials are not allowed to speak on the record. However, I realise that there may be times when you need to confer with your officials, therefore I will be generous if you need to do that, to ensure that you are able to take any advice that you need to take.

The Minister for Finance and Public Service Reform (Mr Tom McCabe): That is appreciated, convener.

Before section 1

The Convener: Amendment 11, in the name of the minister, is grouped with amendments 12, 3, 13, 14, 4, 15 to 19, 21, 22, 5, 23 to 30, 7, 31, 54, 8, 33 to 46, 9, 10 and 48. Amendment 14 pre-empts amendment 4; amendment 5 pre-empts amendments 23 to 25, 6 and 53—amendments 6 and 53 being in a later group; and amendment 10 pre-empts 48. As members know, pre-emption means that if the first amendment is agreed to, the other amendment or amendments cannot be called.

This first group is of such a large size because it was very difficult to separate out the issues. I have decided to split the debate. The first part will be on the circumstances under which offences can be committed; the second will be on the evidential provisions. This is the most important grouping for us to discuss at stage 2. I want to make sure that, by the end of our discussion, the minister and committee members feel that they have aired all the issues and that they have raised all the questions or comments that they might have. If

members or the minister wish to speak on more than one occasion, I will be generous in that regard, so as to ensure that there is a full debate. Once we get past this first grouping, we will have done quite a bit of our stage 2 consideration.

Mr McCabe: I start by speaking to the amendments relating to the widening of circumstances in which offences can be committed. Those are amendments 3 to 5, 7 to 11, 16, 37 to 40, 42 and 48. I will begin with the amendments that have been lodged by the Executive—amendments 11, 16, 37 to 40, 42 and 48.

The Emergency Workers (Scotland) Bill is about protecting those who provide emergency services to protect our society. The bill recognises the unique and special support that emergency workers provide for people throughout Scotland. Any one of us might need that support at any time and if such support is hampered in any way, that might have far-reaching consequences for those who are in need of assistance.

The Executive believes that, for the police, firefighters and ambulance workers, the very real possibility of being required to respond to an emergency is ever present—responding to emergencies lies at the core of those workers' functions. Even when they are undertaking non-urgent tasks, they need to be ready and able to respond to any emergency that may arise. Similarly, hospitals are clearly and indisputably places where serious illness and injury are treated, so they are effectively in a constant state of emergency—by their very nature, they deal with emergencies, as defined by the bill, virtually all the time. That means that health workers in hospitals must be constantly ready and able to provide emergency services. As is the case with police, fire and ambulance workers, any act that impedes those health workers in the course of even their more routine duties could have significant implications for their ability to respond to the next emergency, which could occur at any moment. We feel that we need to take action to prevent that from happening. It is for that reason that we have lodged amendments to safeguard the operational capacity of those workers to respond to emergencies, should they arise.

Amendments 11, 16 and 48 extend the bill's protection to police, fire and ambulance workers whenever they are on duty. Amendments 37 to 40 and 42 extend on-duty protection to doctors, nurses, midwives, ambulance workers and those who assist them anywhere in a hospital setting.

The amendments significantly extend the protection afforded to the police, to fire and ambulance workers and to health workers in hospitals. In doing so, we will achieve a more robust and comprehensive package of protection

for emergency workers providing emergency services. I therefore commend amendments 11, 16, 37 to 40, 42 and 48 to the committee.

11:15

With the convener's permission, I will now address Stewart Maxwell's amendments 3 to 5 and 7 to 10. These amendments, to which Stewart Stevenson will speak on behalf of Stewart Maxwell, go further still than those lodged by the Executive by extending on-duty protection to all emergency workers, and it will be clear from what I have already said that I do not support them. If the bill is amended in line with the Executive's amendments, it will give the right level of protection to the right workers in the right circumstances.

It is absolutely right that general practitioners, prison officers and others should be protected by the legislation when they are responding to emergency circumstances. In such situations, they are indeed emergency workers and should receive the proper protection. For the majority of their time, however, such workers are not involved in the provision of emergency services. Their work is, of course, valuable, but it is not connected, first and foremost, with emergency responses in the way in which the work of the police, fire and ambulance workers can be construed. The Executive believes that those workers are adequately protected in non-emergency situations by common law, under which it is already an offence to assault any person no matter what their professional status.

Further to that, the Lord Advocate's guidance to procurators fiscal will ensure that assaults against any workers who serve the public are treated particularly seriously. That is supported by the package of non-legislative measures that we are developing to protect all public service workers. I believe that that will provide the most suitable protection for those who are not directly providing emergency services. Providing on-duty protection to those workers would be entirely inconsistent with the emergency focus of the bill. Therefore, I ask Stewart Stevenson, on behalf of Stewart Maxwell, to consider not moving amendments 3 to 5 and 7 to 10.

I move amendment 11.

Stewart Stevenson (Banff and Buchan) (SNP): My colleague Stewart Maxwell is experiencing the delights of the health service over the next few weeks, so I am sure that he will be thinking of our activities here today.

I welcome the set of amendments that the minister has just spoken to. We regard them as useful changes to the bill and will have no difficulty supporting them if the arguments for the

amendments in Stewart Maxwell's name do not carry the day. The situation in which the amendments were originally lodged has changed significantly with the Executive's broadening of the scope of the bill, which we welcome.

Nonetheless, I make a distinction between some of the amendments in Stewart Maxwell's name—amendments 3 to 5 and 7 to 9—and amendment 10. Amendments 3 to 5 and 7 to 9 seek to extend protection to people who are on duty rather than simply in emergency circumstances. The logic associated with that definitional underpinning of the amendments is that those people are required to be available to respond to emergency circumstances. The minister properly makes the point that people such as doctors, and GPs in particular, do not have as their primary role responding to emergency circumstances. In circumstances in which there are relatively few doctors available, if they are taken out of line through any action by a member of the public, that could impact their subsequent ability to respond in an emergency. That is the core of the argument that caused Stewart Maxwell, who has been involved with the bill throughout, to lodge the amendments.

Amendment 10 is slightly different and I do not think that it should necessarily stand or fall with the other amendments, which clearly stand or fall as a group just as the minister's amendments do. Amendment 10 relates to the long title and reflects the bill's change in emphasis from people providing emergency services to emergency workers. There is a case for saying that amendment 10 could sensibly support and augment the minister's amendments.

However, I do not intend to be particularly doctrinaire or prescriptive about this. I will listen to the debate and the minister's summing up before finally coming to a conclusion on the actions I want to take. The minister therefore has every opportunity to persuade me to his point of view.

The Convener: I invite members of the committee to speak to any of the amendments. As I said, I would quite like to divide up the issues but that is just for the sake of tidiness and to ensure that all the issues are aired.

Mr Bruce McFee (West of Scotland) (SNP): I welcome the change in emphasis that is clear in the Executive amendments. It has gone quite a long way towards clearing up the central sticking point, as it appeared to me as a newer member of the committee. The question is whether we stop at the three services, with the extra provisions for health workers, or whether the bill should go on to provide on-duty protection throughout. That is the essential argument for me and I am open-minded about it because the Executive's amendments take a lot of my concerns out of the equation.

Amendment 37 seeks to remove some words from section 3 of the bill and insert the word "hospital" in their place. In his remarks, the minister said that that would mean that on-duty protection was extended to doctors, nurses and midwives while they are working in hospitals. However, what is the definition of "hospital"? Does it include maternity units and clinics that can also deal with emergency situations?

The Convener: Minister, I am open-minded about how you want to respond. Do you want to pick up points as members make them, or to hear what everyone has to say first?

Mr McCabe: It might be helpful to pick up and respond comprehensively to points. I would be more comfortable with that.

The Convener: So will you respond to Bruce McFee? I am sorry; I now realise that you meant the opposite.

Margaret Smith (Edinburgh West) (LD): I welcome the Executive amendments. They go a long way towards addressing many of the concerns that the committee had about the bill.

From the point of view of public perception and for the sake of clarity, I can understand why the amendments seek to emphasise that the people who work for the blue-light emergency services are key people whose jobs are about dealing with emergencies.

Most of my comments are about health services and members of the health team working in, and outwith, hospitals. I want to go with the idea of health workers other than doctors, nurses, midwives and ambulance staff working in a hospital. What extra protection will such workers get under the bill? As I understand it, they have the added protection of being seen as people who may potentially assist in an emergency. My question comes back to the evidential chain that the committee fixed on during the earlier meetings.

I return to my example of the medical records secretary at the other side of the hospital finding medical records for someone who is undergoing an emergency operation. I presume that if the medical records secretary was bopped over the head at that point, she would be protected by the legislation. However, if she was taking out a piece of paper that related to someone who had a broken arm she would not be protected by it. The key point is: how can it be proved in court that the person who assaulted the medical records secretary knew that she was in any way assisting in an emergency? I am not saying that the bill, as it is crafted, does not potentially give the medical records secretary extra protection. I am saying that the person who assaults her may not know that that protection is there, so it may not be

possible to prove in court that they had that knowledge when they carried out the assault.

My second point is one that has been made by the British Medical Association, the Royal College of Nursing and others. I welcome the extra protection provided by extending the legislation to cover a hospital rather than only accident and emergency premises—we all welcome that. However, the organisations make the point that the shift in health services is very much to try to get services out of hospitals and into the community. A lot of work that is done in the community could be seen as emergency work. What protection might be available to people who work in other national health service premises? Has the minister considered the potential for extending the legislation to cover NHS premises in addition to hospitals?

Mrs Mary Mulligan (Linlithgow) (Lab): I am also interested in the points that Margaret Smith raises.

I welcome the clarification that the minister has provided on the bill, not only because I was a late starter on the bill but because there was uncertainty as to where we were going in relation to those who would be protected by the bill. The minister's comments this morning have been helpful and have clarified the situation considerably.

On Stewart Maxwell's amendments, which Stewart Stevenson has spoken to, I would like both the minister and Stewart Stevenson to comment on the points that I raise.

It is helpful that we now have a definition in front of us, but I understand Stewart Maxwell's concern that those who, at some stage in the future, may be involved in an emergency situation should in some way be protected. However, there are practical difficulties related to that. I use as an example a GP who may have been required to respond to an emergency situation, but because of an assault a couple of days earlier is not available. Would the legislation be applicable were he to be required to deal with an emergency six months after the assault? That seems to stretch the point too far.

The minister's comments that generally people will be protected by the common law and that the Lord Advocate's guidance would offer additional protection for those who may be caught up in circumstances such as those that I described lead me to think that Stewart Maxwell's amendments are not necessary. I appreciate the point that he is making about ensuring that anybody who should be available to deal with emergencies should not be assaulted, but on balance we are better to stick with a strict definition so that there can be no misunderstanding and people cannot misinterpret

what is intended. When we are dealing with such legislation it is particularly important that people can be clear about the circumstances, the people involved and the nature of the event. It might muddy that somewhat if we go with Stewart Maxwell's amendments, which might give us problems in the future.

The Convener: Would other members like to comment?

Stewart Stevenson: Can I respond to a point that Mary Mulligan made? Strictly speaking, you do not have to let me do so.

The Convener: I will let you back in. Would the minister like to respond now?

Mr McCabe: I am okay at the moment if you want to carry on. I am noting the points as they arise.

Stewart Stevenson: Mary Mulligan invited me to comment further—I will do so briefly. The argument turns on a relatively simple point. I use GPs as the example. If we extended protection to GPs while they are on duty—rather than leaving them protected only in emergency circumstances—we would remove the need to test whether a person who subsequently assaulted them knew or ought to have known that the GP was responding to an emergency. I do not know how one would know that. It would be extremely difficult to demonstrate that the person committing the assault or impeding the GP knew or ought to have known that they were responding to an emergency. That is where the argument turns. It is a judgment call and I do not think that it is straightforward.

11:30

The Convener: Like other members of the committee, I welcome the debate, which was initiated by Stewart Maxwell's amendments and the Executive's response to them. As the minister knows, we were clear in our stage 1 report that we wanted significant changes to be made to the bill, so I welcome the Executive amendments that are before us, which demonstrate the Executive's positive response.

The questions which workers we cover and to what extent we cover them have always been difficult for us. Gerry Brown from the Law Society of Scotland in his evidence at stage 1 drew the analogy—I do not know whether this is a good parallel, but it is the one that we have—with a balloon full of water: if we poke it at one end, it pushes out at the other. The bill is a good example of how, when we start to amend legislation, we have to ensure that it balances up.

The policy intention is a lot clearer to me than it was at stage 1. The minister stated in his opening

remarks that it was important to acknowledge the work that emergency workers do and the consequences of any failure to act—a point that Margaret Mitchell put repeatedly at stage 1. The policy intention now is what I thought it should have been, so I welcome the fact that the Executive has made it clear.

I come down on the side of the Executive's proposals in relation to the extent of protection and the group of workers covered. I am satisfied that the group of workers that the Executive has chosen to cover under the on-duty element are those who are routinely and regularly involved in emergencies. Other groups of workers are involved in responding to emergencies, but not to the same extent.

There are anomalies in the bill, some of which the amendments address. We will come on to prison officers later, but I think that they carry out more of a public-order duty than an emergency duty. To extend the protection to all groups of workers when they are on duty would give rise to other problems. I welcome what the Executive has suggested and I hope that the committee will support extending the groups of workers who are covered by the bill when they are responding to emergency circumstances.

I have comments to make on the evidential test, to which Margaret Smith has referred, but I will leave them just now and let the minister respond to the points that have been made so far. Before he does so, Margaret Mitchell has points to make.

Margaret Mitchell (Central Scotland) (Con): First, I want to comment on the ruling that you made at the start of the meeting, convener. The fact that you felt that you had to make it indicates the problems that we have had with the bill. I came to the conclusion at stage 1 that it would be impossible to produce a bill to protect emergency workers acting in emergency circumstances. The minister's amendments mean that the bill is not really about protecting emergency workers in emergency circumstances; instead, it provides for a two-tier level of protection for public sector workers. That has to be acknowledged from the outset.

The minister's amendment 11 is welcome in so far as it clearly stipulates emergency workers with the blue-light services—the police, the fire service and the ambulance service—and I suppose that it is possible to frame the bill to include that limited range of people. However, were the Parliament to agree even to that measure, it would do so in the knowledge of a certain absurdity, because a serious assault on any of those people would be prosecuted under common law—which would take into cognisance the serious circumstances—rather than under the bill. That is the problem with the bill.

The minister has lodged amendments that are designed to make some sense out of the bill. The first matter in that regard is the extension of the category of people who will be affected. In many ways, we are trying to second-guess every conceivable category of people who could be in an emergency circumstance. That is not what statute should do. That is why we have common law, which has the necessary flexibility. For example, the bill does not mention Transco workers investigating a gas leak, which might put their lives at risk, nor does it deal with the possibility that, if a railway maintenance crew were obstructed or hindered in its work, there could be a derailment and a huge loss of life. Nothing like that is covered in the bill.

We cannot legislate for every conceivable circumstance that could constitute an emergency situation or for every conceivable person who could, on any given day, be classed as being an emergency worker. For that reason, I will not support the minister's amendments, apart from the ones that are designed only to tidy up or simplify the bill.

Mr McCabe: I will do my best to answer all the points that have been raised. If I miss anything, I would appreciate it if members would get back to me.

I appreciate the comments that were made by Stewart Stevenson, Bruce McFee and other members of the committee. It is an important principle that, when the Executive proposes legislation, we do our best to accommodate the comments made by committees of the Parliament. Obviously, that will not always be possible and there will be times when we do not agree, but I hope that, at least in part, we are demonstrating that there is a strong willingness on the part of the Executive to listen to what has been said by committees and to do our best to respond to that.

Stewart Stevenson talked about doctors on call. In a situation in which a doctor believes that they are responding to an emergency situation, they are covered by the bill. It is as simple as that. We do not think that every situation in which a doctor is called out will necessarily be an emergency but, if the doctor, having made an assessment of the information that has been made available to them, believes that they are responding to an emergency, they are covered by the bill.

I am being passed bits of paper by my official, convener, but, as I cannot read when I am speaking, I will just speak.

Bruce McFee rightly asked about the definition of "hospital". We are talking about the commonsense interpretation of the word. The facilities that are contained in the hospital building,

such as the maternity unit and various clinics, are covered by the bill.

Mr McFee: That is fine as far as it goes. However, if a clinic is situated outwith the hospital grounds—many clinics are situated in town or village centres—is it covered by the bill's definition of "hospital" or will we have to return to that matter at stage 3?

Mr McCabe: Unless the clinic is in a hospital, it is not covered by the definition. However, if a doctor is responding to an emergency situation in one of those clinics, he or she will be covered.

Mr McFee: So two levels of protection are given to a doctor depending on whether he is inside or outside the hospital grounds.

Mr McCabe: As I tried to explain, our intention is that, under the bill, a hospital—in the ordinary sense of the word—is a place that the public will clearly identify as a facility that needs to be ready to respond to an emergency. That means that the building and the people who work in it—including the people who are specifically mentioned—need to be ready to respond. In that sense, a hospital is always ready to cope with emergencies. That is why we have framed the bill in such a way.

Mr McFee: So the definition would cover a maternity hospital that stood on its own.

Mr McCabe: That is a hospital—yes.

I cannot remember which member raised the awkward situation of the receptionist—

The Convener: It was Margaret Smith.

Mr McCabe: I am sorry—it was Margaret Smith. The first point that I stress is that the vast majority of the situations that will arise under the bill will be clear cut. However, there will be always be awkward situations. Our trained and experienced procurators fiscal will be able to assess the appropriate approach to take in each situation. Procurators fiscal take such decisions on prosecutions on a daily basis. They will use their experience to assess what is appropriate under the bill depending on the circumstances of the case.

Margaret Mitchell said that the Executive seems to be invoking a two-tier system. In a sense, that is true. In the bill, we advocate the principle that certain categories of workers need to be ready to respond in emergency situations and that, because they need to be in that position more than other workers do, we want to afford them a particular level of protection.

In the bill, we have not tried to second-guess every conceivable situation. That is why we have framed the bill as we have. We have tried to delineate certain premises, to identify certain workers and to make it clear that actions

pertaining to them would attract higher penalties in that they would be prosecuted under the bill.

The Convener: I return to some of the issues that Margaret Smith raised. I accept that most situations will be clear cut. We have experienced procurators fiscal who will understand what the bill is driving at and the difficult circumstances of the workers that it provides for. However, it is still worth exploring the unusual situations that might arise.

We are interested in the chain of staff in a hospital: the people who are assisting. Is the radiographer who is assisting the staff in accident and emergency who are covered by the bill in a clear-cut situation? If the radiographer X-raying a patient who has come through the door of an accident and emergency ward is hindered, obstructed or assaulted, is that enough for an offence to have occurred?

Mr McCabe: Yes. The response is an assistance to an emergency situation. If the person is assisting the group of workers in a hospital setting who are identified under the bill, he or she is covered.

The Convener: I suppose what I was trying to explore are the difficulties that arise from the fact that the X-ray department might be quite a distance away from the accident and emergency department. My question was an attempt to test the chain. The chain is probably set out clearly in the bill, in that the accused probably does not need to know that someone came through the door of accident and emergency with a fractured skull or whatever. Can we reasonably assume that the radiographer who is carrying out his or her duties in X-raying a patient is assisting staff in an emergency situation?

11:45

Mr McCabe: There are two points. First, if someone is assisting in a hospital, that is about their being in the hospital and not necessarily about an emergency, because we are defining a hospital as a specific location where people would expect to be ready to respond to emergencies.

Secondly, we have discussed the bill's provisions quite extensively, with the Law Society of Scotland, the Crown Office and our other legal advisers, and we are convinced that the bill's provisions can and will be applied in practice. We have tested out with important bodies how practical it will be to apply the provisions of the bill and we are satisfied that that body of opinion agrees that the provisions can be applied in practice.

The Convener: Would you say that we therefore do not need to define any further what is

meant by “assisting”? I do not think that there is a definition of “assisting” in the bill. If there is a permanent state of emergency in a hospital, we can infer from that that a radiographer, for instance, is assisting a doctor or nurse in an emergency.

Mr McCabe: The test would be that it should be obvious to a reasonable person that the work of that radiographer was making a contribution to a situation. I think that that is the test that we would apply: is it obvious to a reasonable person that the assistance provided is making that contribution?

The Convener: We will come to the question of the evidential test, but that is a useful answer.

Stewart Stevenson: I want to test that my understanding is complete of the minister's response on GPs, because it is perfectly possible that it is not. I preface my remarks by saying that, if we agree to the minister's amendments, we shall end up with three bits of the bill at the beginning. The first of those covers the core emergency services, which is fair enough. The third covers people who are assisting, which is also okay. The middle bit, which is cut down from the existing section 1, basically leaves us with prison officers, Her Majesty's Coastguard staff, Royal National Lifeboat Institution staff and, in section 1(3)(g), “a medical practitioner”.

The amendments also add the following wording:

“No offence is committed under subsection (1) above”.

Subsection (1) is the one that will refer, after the amendments are agreed to, to

“A person who assaults, obstructs or hinders another person acting in a capacity mentioned in subsection (3) below”.

That subsection is the one in which GPs are referred to. However, the new wording says:

“No offence is committed ... unless the person who assaults, obstructs or hinders knows or ought to know that the person being assaulted, obstructed or hindered is acting in that capacity.”

In other words, the person committing an assault must know that the GP is acting in the capacity mentioned in the subsection. The amendments make the bill a very circular piece of legislation, although I am quite prepared for the minister to assure me absolutely that that gives the necessary protection.

I continue to have concerns and, if I am wrong, which I can be, it would be useful to get that on the record. However, it appears to me that it is not simply sufficient for the GP to have the view—with which the courts would agree—that there are emergency circumstances, if another test is that the person who assaults also

“knows or ought to know”

that there are emergency circumstances surrounding what the GP is doing or is about to do. I want to nail that issue down and it would be useful if the minister could help me. I see some nodding heads, so I suspect that other committee members are also concerned about those difficulties, which may simply be difficulties of drafting rather than of intent or outcome.

Mr McCabe: I understood that we were going to split the debate between the circumstances that might obtain and the evidential requirements.

The Convener: That is right.

Stewart Stevenson: I am sorry.

Mr McCabe: I think that what I have to say about the next amendments may cover that but, if it does not, I am quite prepared to come back to the issue.

Stewart Stevenson: I am content as long as the subject will be covered.

The Convener: What Mr McCabe said is correct and we can return to the matter.

Margaret Smith: I return to my question about other health care workers in a hospital. Perhaps I am being daft, but are they covered only if they are actively assisting a defined emergency worker in an emergency situation in a hospital? Are they assumed to be assisting by virtue of working in a hospital? If the answer to the second question is yes, the bill protects every health care worker who works in a hospital, because the assumption will be that emergencies occur regularly and routinely in every hospital. That would give health care workers a level of protection that would be welcome as a clarification of the situation on hospital premises. Somebody who assaulted any health care worker in a hospital would know that they risked prosecution under the bill.

Mr McCabe: The provisions apply when someone is assisting in a hospital, full stop. It is not automatically assumed that such a worker is assisting; they must show that they were providing assistance. However, they are protected when they are assisting.

Margaret Smith: If a radiographer is assaulted when sitting at her desk to have her tea break, she will not be covered, because she is not actively assisting another emergency worker in the hospital.

Mr McCabe: That is correct. The bill does not cover her, but the common law does.

Margaret Smith: Absolutely. Is the radiographer who X-rays my badly staved finger covered? The radiographer who X-rays somebody's fractured skull is clearly covered. If I understand you, the

radiographer who X-rays a broken ankle or staved finger on hospital premises should be assumed to be assisting because she is in a hospital, but that means that she would be covered when undertaking any of her duties in hospital.

The Convener: That is the point that I was going to make. The position needs to be clear. We know about the health worker who is not engaged in anything and about the health worker who is involved in what no one would dispute is an emergency circumstance, but the bit in the middle is unclear. How will the bill treat a person who is assisting and is clearly not involved in emergency circumstances but is dealing with a minor fracture?

Mr McCabe: I am sure that Margaret Smith's finger is important to her—

Margaret Smith: It is very sore.

Mr McCabe: However, it would probably not be categorised as an emergency. As long as a person is assisting a doctor or any other emergency worker in a hospital, they are covered.

Margaret Smith: Does that apply whether the health care worker is assisting to deal with a minor fracture or an emergency fractured skull?

Mr McCabe: I am sorry; I missed that.

Margaret Smith: You say that such a worker is covered while they assist, but must they assist in a situation that could be defined as an emergency?

Mr McCabe: No—the provisions apply as long as they are assisting.

Margaret Smith: As long as health care workers assist any of the defined people in a hospital, they are covered.

Mr McCabe: Yes.

The Convener: So the cover is quite wide.

Margaret Smith: It is very wide.

Mr McCabe: That is why we identified the hospital as an entity in the commonsense understanding of it.

The Convener: That means that assisting need not be defined, because the meaning can be inferred from the fact that assistance is being given to a person who is covered while they are on duty and in a hospital. That makes a lot of sense. I understand Bruce McFee's point that a line must be drawn between hospitals and clinics, but drawing the line round hospitals gives a group of workers substantial added protection in some circumstances, which is important.

Margaret Smith: I have a small point about drafting. We have achieved more clarity, but we have had some ambiguity on the way. Could the bill be redrafted to make it clear, without having to

go through the assistance route, that health care workers who work in a hospital are covered? I ask that to find out whether you can tidy up the bill to make it clearer.

The Convener: You can respond, minister. I am being generous with this debate because of the Pepper v Hart scenario and so that we get you on the record and are clear about what the bill is driving at.

Mr McCabe: I do not quite know the mechanisms that we would use to clarify the point. I am trying to help and I am thinking off the top of my head. Margaret Smith used the example of the radiographer making a cup of tea and asked whether they would be covered.

The Convener: I would like it to be made clear, for the purposes of the record, that they would not be covered by the bill but would be covered by the common law.

Mr McCabe: It would be as wrong to assault that individual in that setting as it would be in any other setting. The law would give the appropriate protection.

Margaret Mitchell: If a doctor in a hospital situation is making a cup of tea and is assaulted, is he covered?

Mr McCabe: Yes.

Margaret Mitchell: That is because of the causal link.

The Convener: It is because he is on duty.

Mr McCabe: It is because he is on duty and the person committing the assault would remove his immediate ability to respond to an emergency.

Margaret Mitchell: That opens up a Pandora's box, because the doctor is not in an emergency circumstance; he is having a tea break in the canteen, but he has special protection because of the consequences of interfering with him.

The Convener: Let me just throw that point back at you, Margaret. A doctor might be assaulted, even though he is having a cup of tea, to such an extent that he is not available for duty. I have always supported the argument that we have to examine the consequences. The test cannot be applied to every worker in the same way, which is why I think that the Executive has got it right.

Margaret Mitchell: That is where we cannot legislate, because there are so many causal links. The number of scenarios is limitless in which there is a causal link that has the potential—

The Convener: The answer to your question is yes.

Margaret Mitchell: Which is why I think that the bill will create bad legislation.

Mr McCabe: As I said, there will be points on which we disagree, and I do not agree with that point of view.

Mr McFee: From what you have said, minister, it is now pretty clear who would and would not be covered in a hospital setting and the circumstances in which they would or would not be covered. You referred to the police, ambulance and fire services. However, there is a difficulty with the position of GPs, particularly when it comes to evidence and proving that a person knew that the GP was responding to an emergency. Is there not a case for simply including GPs when they are on duty, along with the police, ambulance and fire services?

Mr McCabe: We think not, because a large number of situations that doctors encounter are not emergency situations. Doctors carry out a range of routine duties. When they are responding to an emergency, it is appropriate that they are covered, but it is not appropriate to give them the comprehensive cover to which you alluded.

Mr McFee: We will revisit that when we come to the sections on evidential tests.

Stewart Stevenson: It might help us to see a way forward if you could respond positively to my next question. Section 6 seeks to give ministers the power to make secondary legislation. Would that enable you to move people between what will be the first three sections of the bill? In other words, would section 6 give you the power to take GPs out of section 1 in the bill as introduced and put them into the section that will be section 1 in the bill as amended, if it were judged, in light of experience, that that was the appropriate thing to do, or will we have to amend section 6 to allow that to happen?

Mr McCabe: I understand that the answer is yes, that would be possible.

The Convener: That is a good question.

I know that you will address the question of evidential tests. It would be helpful to get on the record how they will operate. The test for emergency circumstances is that the emergency worker believes that they are responding to an emergency, but does it matter how ridiculous that belief is? Is that covered by the word "reasonable"?

12:00

Mr McCabe: Yes. The test involves a "reasonable person". There has to be reasonable belief. That is the answer. Would you like me to address the amendments that the Executive has lodged?

The Convener: Yes. That would be helpful.

Mr McCabe: Thank you. The Executive's amendments are designed to address the issues that were raised at stage 1 on the bill's evidential requirements. For the record, they are amendments 12 to 15, 17 to 19, 21 to 31, 33 to 36, 41, 43 to 46 and 54.

It is critical that the legislation that we produce is robust, effective and, above all, workable. I know that the committee shares our wish that the evidence that is required to prove each aspect of an offence under the bill is clearly apparent to all. I welcome the many useful points that were raised on the issue in the stage 1 report. As I mentioned a few moments ago, since stage 1 the Executive has closely consulted the Law Society to ensure that the bill's evidential requirements are as clear as they can be and that it will be possible for offences to be prosecuted successfully under the legislation. Those discussions with the Law Society have proved immensely valuable and I am confident that the approach that we have agreed fully addresses the concerns that the committee raised.

The significant quantity of amendments includes a number of technical and drafting amendments that are consequential to other, more substantial changes. Fundamentally, however, the amendments will ensure that the evidential requirements for the four separate offences that are created by the bill are laid out explicitly and incontrovertibly. Our amendments clarify the mens rea requirements of the offences under the bill. In other words, we will set out on the face of the bill what the Crown needs to prove in relation to the knowledge of the accused in order to prove an offence under the bill. The Crown will have to prove that the accused knew or ought to have known the emergency worker's status, for example as a constable or a doctor; where appropriate, that the emergency worker was or might have been responding to emergency circumstances or as if there were emergency circumstances, and that the emergency worker believed or had reasonable grounds to believe that there were or might have been emergency circumstances; and, where the victim is the person assisting an emergency worker, that the victim was assisting the emergency worker.

I am aware of the concerns that were expressed at stage 1, but it will not be necessary for the Crown to lead expert evidence to prove the existence of emergency circumstances. The bill will make it clear that circumstances are to be taken to be emergency circumstances provided that the emergency worker reasonably believed that they were or might have been emergency circumstances.

The bill also covers emergency workers who are responding to hoax calls. Emergency workers who

reasonably believe that they are responding to emergency circumstances will receive the bill's protection even if there are no such circumstances—for example, where the emergency call is the result of a hoax.

Amendments 21 and 22 have been lodged for technical reasons. They are designed to ensure that definitions that are provided in the bill are consistent with the interpretation order. I commend amendments 12 to 15, 17 to 19, 21 to 31, 33 to 36, 41, 43 to 46 and 54 to the committee.

Stewart Stevenson: On amendment 13, I return to the point that I made earlier. I am perfectly happy that the definition of “emergency circumstances” lies in the reasonable belief of the worker. That is extremely useful. However, unless you can reassure me, I have a slight concern about what is in section 1, which will become section 2. Under very many circumstances, the person committing an assault—in particular, an assault of a GP—may be able to show that they could not have known or could not have been expected to know that the GP was responding to emergency circumstances. Can you flesh out how the assaulter might be able to make a judgment to which the court could respond about whether a GP was responding to emergency circumstances? The knowledge of the person who commits an assault is one of the evidential requirements for which you seek to make provision in amendment 13.

Margaret Smith: Minister, you have set out what the Crown will need as regards the accused's knowledge of—or what they ought to have known about—the status of the person whom they assaulted. That person will need to have been responding to emergency circumstances, to have thought that they were responding to emergency circumstances or to have been assisting with such a response. That is welcome recognition of the fact that they might have been responding to a hoax call, which is a possibility that many of us had concerns about.

I presume that the evidential requirements for when someone is assaulted in a hospital are different, because the Crown will need to be able to prove that the accused knew or ought to have known that the person whom they assaulted was a worker who was assisting someone who was on duty in a hospital. What are the evidential requirements for an assault in such a situation?

The Convener: I have a point of clarification, although I think that I know the answer. The emergency worker must believe that they are responding to an emergency. Must that be an emergency as defined in the bill and nothing else? For example, they could not say, “Well, I thought that it was an emergency.” Is it correct that their

belief must correspond with the definition of an emergency that is given in the bill?

Mr McCabe: Yes.

Mr McFee: I am mindful of the minister's earlier comment that he could not read and speak at the same time; I do not know whether that applies to reading and listening.

Mr McCabe: I am better with listening.

Mr McFee: I return to the point that Stewart Stevenson made about the evidential requirement as regards attacks on GPs. Although other matters have been cleared up reasonably well, I still have difficulty with that. If a GP is entering someone's house or walking along the road to go to someone's house, how can the person who carries out the attack reasonably be expected to know whether the GP is attending someone who has had a heart attack, dealing with a case of flu or visiting a wean with the mumps? Indeed, how can they be expected to know that the person is a GP at all, the big bag notwithstanding?

Mr McCabe: It is important to be explicit about the fact that, if there are circumstances in which it can be demonstrated that an individual could not reasonably be expected to have known that the person whom they attacked was responding to an emergency, it would not be possible to prosecute the case under the bill. However, I stress that I think that such occasions will be extremely rare.

Margaret Smith asked about assaults in a hospital. The definitions of the various situations are clearly laid out in the bill. It is open to people to read and understand what is meant. To return to the point that Stewart Stevenson made earlier, and to which Bruce McFee returned, we could spend the rest of the week speculating about what circumstances and occurrences might arise. For example, is the doctor running at speed in an excited manner? Such questions have to be taken into account. It is possible that a doctor who arrives at a situation and who receives significant verbal abuse will make his identity known to people in an explicit way, by saying something along the lines of, “I am responding to an emergency here. It would be in your best interests to move away.” Under such circumstances, the severity of the situation might be conveyed to people who might have bad intentions.

The Convener: That is one area that gave the committee some concern. I presume that, under those circumstances, a GP would say that they were a GP. The court would have to consider that as evidence of whether the accused knew or ought to have known that the person whom they attacked was a GP.

Mr McFee: I accept that if a GP says, “I'm a doctor,” it is reasonable for the person to know

that the GP is a doctor. However, will that GP have to say, "I'm a doctor and I'm going to a heart attack victim," "I'm a doctor and I'm going to a flu victim," or whatever the situation happens to be? If, when someone drops down in the street, a guy rushes across saying, "I'm a doctor," and takes out his stethoscope to make sure that the victim's heart is still beating, it is very clear to everybody that that is an emergency situation.

Home visits concerns me, however. I think that we are missing a golden opportunity to give additional protection to GPs. Whether we are talking about somebody breaking into a doctor's car to steal their bag and the drugs that they carry around with them, or about obstructing them in some way other than carrying out an assault, I think that the possibility of giving some added protection is being missed. I rather suspect that we are introducing an unnecessary grey area with respect to that group of workers.

Mr McCabe: I hear the point that is being made, although I do not necessarily agree with it. As I said, we could spend an awful lot of time trying to illustrate the situations in which it would be conveyed to an individual who had ill intent that there was an emergency going on. If a doctor arrives in a car in front of a house in response to a serious cardiac situation, there must be a strong likelihood that at least one member of the family will be at the front door or the gate. I do not think that they would be sitting back, relaxing and having a cup of tea while they waited for the doctor to arrive. There is potential for a whole range of circumstances to demonstrate to someone with ill intent that the situation was serious. I say again that we could be here for a long time trying to portray lots of different situations. We think that there is enough in our proposals for a reasonable person to assess whether someone with ill intent is obstructing a doctor or whomever else is responding to an emergency.

The Convener: The key thing is that GPs are referred to specifically in the bill. I am sympathetic to the point that Bruce McFee makes—in fact, the whole committee is, having discussed it. That is one of the open doors in the proposed legislation. We might have to consider another set of workers who might be making home visits for medical purposes.

I realise that you will have the power to modify the provisions. It is fair enough that GPs are a specified group—the Executive might simply have to monitor how things develop. I think that the committee is at one with the Executive in identifying that GPs, health visitors and a whole range of other workers, including social workers, who visit people in their homes are a vulnerable section of the community.

As the Executive has stated before, the bill is just the centrepiece for the other messages that it wants to make clear, which relate to the protection of a whole range of workers, as we have discussed. I hope that the Executive will agree that the situation of some workers whom we have been discussing might require a bit of monitoring to see whether the power to modify might be used in the future.

Mr McCabe: The modifying provisions are in the bill for a good reason. Even if they were not there, there would always be representative bodies and individuals who could lobby and make representations to the Parliament if they felt that the legislative cover was inadequate or that we could, in certain circumstances, improve the legislation that we had created.

However, it is important to note that there is a dearth of recorded incidents, as the committee acknowledged. That surprises me, because people know that such incidents happen. I have experience of what happens on Saturday nights in the accident and emergency department at Glasgow royal infirmary and it strikes me as remarkable that so little of what goes on is recorded in a way that would enable action to be well founded and justified. If groups of workers such as general practitioners or their representatives think that there is scope to make changes through the bill's order-making provisions, it is important that they build up and present a body of evidence that supports their case.

12:15

The Convener: I propose to wind up the debate unless members want to raise further matters. Minister, do you want to add anything on the amendments in conclusion?

Mr McCabe: No. I am quite content.

The Convener: In that case, the question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 11 agreed to.

Section 1—Assaulting or impeding providers of emergency services

Amendment 12 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 12 agreed to.

Amendment 3 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)

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

Amendment 3 disagreed to.

Amendments 13 and 14 moved—[Mr Tom McCabe]—and agreed to.

Amendment 4 not moved.

Amendments 15 to 17 moved—[Mr Tom McCabe]—and agreed to.

The Convener: Amendment 49, in my name, is in a group on its own.

I lodged amendment 49 as a probing amendment, because the issue to which it relates would otherwise not have been debated at stage 2. At stage 1, the committee debated whether prison officers and prisoner custody officers fitted well into the definition of an emergency worker. I am satisfied that prison officers should be included, but amendment 49 relates specifically to section 1(3)(d)(ii), which mentions

“a prisoner custody officer within the meaning of Chapter II of Part VIII of the Criminal Justice and Public Order Act 1994”.

The point of lodging the amendment was simply to get on the record whether that paragraph refers to Kilmarnock prison officers. Initially, we assumed that the term “custody officer” referred only to officers who work for Reliance Secure Task Management Ltd, or anyone else who calls themselves a custody officer.

I move amendment 49.

Mr McCabe: As I said, the purpose of the bill is to protect the providers of emergency services. The Executive believes strongly that prison officers are the main providers of emergency services within prisons. Equally, Reliance prisoner custody officers may be called on to act in an emergency circumstance while on prisoner escort duty. Therefore the Executive does not support amendment 49. The unique circumstances within prisons mean that the first response to an emergency is not to dial 999, but to call on the prison's emergency response team. Prison officers respond to emergencies and, in the vast majority of even life-threatening cases, they deal with them without the assistance of other emergency services. That applies whether the prison officer is an employee of the Scottish Prison Service or a prisoner custody officer in Kilmarnock prison. Amendment 49 would remove from the bill prisoner custody officers who work in private prisons.

Amendment 49 would also remove Reliance prisoner custody officers from the bill. Like prison officers more generally, Reliance custody officers work in unique circumstances in close proximity to prisoners. If emergencies arise during prisoner escort duty, it is incumbent on Reliance officers to deal with them in the first instance. Like prison officers, they do not have the benefit of being able to rely on a 999 call to deal with immediate emergencies. As I hope I made clear earlier, the role played in prisons and on escort duty by prisoner custody officers in responding to emergencies is a vital one that is not filled by the other emergency services.

I invite the withdrawal of amendment 49.

The Convener: That has been helpful in clarifying to whom amendment 49 refers.

What would the Executive consider to be an emergency circumstance in relation to a Reliance officer?

Mr McCabe: I hesitate to mention the tragic occurrence that happened recently in which a Reliance officer was stabbed in the back in a custody van, but that was obviously an emergency situation.

The Convener: Who responded to that situation?

Mr McCabe: The officer's colleagues who were present.

The Convener: That is helpful. I lodged the amendment to get clarification on those points because it was the only available mechanism by which to do so.

Amendment 49, by agreement, withdrawn.

Amendments 18 and 19 moved—[Mr Tom McCabe]—and agreed to.

The Convener: Amendment 1, in the name of Stewart Maxwell, is grouped with amendments 20 and 2.

Stewart Stevenson: I welcome the acknowledgement that is implicit in amendment 20 that we should extend the definition of workers who carry out rescues on water. However, in mentioning a

"person or organisation operating a vessel for purposes similar to those of the RNLI",

amendment 20 would not achieve the Executive's intent. I cite as my source for that page 22 of the RNLI annual report 2003, where the RNLI outlines its purpose. It states:

"The RNLI saves lives at sea. The objects of the institution also include promoting safety and providing relief from disaster, both at sea and on inland waters."

It is clear that the RNLI's purposes in relation to inland waters are considerably more restricted than they are to sea. Therefore, it may be that in requiring other organisations to be operating for purposes similar to those of the RNLI, the bill would not extend the benefit of its protection to the Loch Lomond rescue boat, which is an example that has been talked about before.

A secondary piece of information is that the RNLI's website carries throughout in its banner heading at the top the phrase "Safety on the Sea".

I will move amendment 1 on the basis that the phrase "independent rescue craft" provides a more clear-cut definition and avoids potentially restricting the definition and denying rescue craft that operate on inland waters the protection that is offered by the bill.

I move amendment 1.

Mr McCabe: Stewart Maxwell wants to extend the protection provided by the bill to inland water rescue teams that are not affiliated to the RNLI. Although the Executive agrees with the objective of amendments 1 and 2, we do not support the amendments, because we do not believe that they would achieve their purpose. As a result, we have lodged our own amendment on the issue,

amendment 20, which I hope the committee will agree fulfils the objective.

I will shortly deal with why amendments 1 and 2 would not achieve their intention, but first I will set out the Executive's policy position on the issue.

The bill seeks to protect those who provide emergency services. The Executive believes that people on whom we depend to protect our health, our well-being and our possessions, in difficult and often dangerous circumstances, are uniquely deserving of specific statutory protection. I share Stewart Maxwell's respect for crews such as the Loch Lomond rescue boat and the Nith and Port William inshore rescue teams. I also recognise the valuable emergency response role that such crews fulfil. That is why we fully agree that the crews of the rescue boats that are not covered by the RNLI are every bit as entitled to the bill's protection as are other workers who are listed. That is why we also want those workers to be added to the bill.

I will now deal with the effect of Stewart Maxwell's amendments. In making reference to "independent rescue craft", the amendments fail properly to define the workers whom they seek to support. It is inaccurate to speak of rescue crafts as being either dependent or independent. That status belongs to those who operate the rescue vessels. Even then, the question must be from whom or what such crews are independent. It is not clear from the amendments that the workers intended to be protected are crew members of vessels that are not operated by the RNLI. We believe that amendment 20 provides a clear statutory definition that will cover members of the rescue vessels that are not currently covered by the bill. We believe that amendment 20 more accurately fulfils the intention to extend the bill's protection to that group of workers. Given that our intentions are very similar, I ask Stewart Stevenson to consider withdrawing amendment 1 and not moving amendment 2.

Mr McFee: I have a genuine concern about amendments 1, 2 and 20. I do not think that any of them does the job that the committee wants them to do. The general view of the committee is that we want people who are not part of the RNLI who are carrying out such rescue operations, whether in fresh or salt water, to be covered.

I note the minister's concerns about what he regards as the deficiencies of amendments 1 and 2, but I also note that there is concern about the perceived deficiencies of amendment 20. I am not sure how to deal with such concerns at this stage, other than by rejecting the amendments. However, I would not want that to give out the signal that we are happy with what is currently in the bill. The bill must have a form of words that gives protection both to RNLI lifeboat people and to inshore rescue

people on Loch Lomond or on any other body of fresh water. Having heard Mr McCabe's arguments against amendments 1 and 2 and Mr Stevenson's arguments against amendment 20, I am not convinced that any of the amendments covers inshore rescue people.

12:30

The Convener: I welcome Jackie Baillie to the meeting. She has a special interest in the subject that we are debating, so I invite her to speak.

Jackie Baillie (Dumbarton) (Lab): Thank you, convener. I will attempt to be brief. I am grateful that the committee recognised in its stage 1 report the importance of inland water rescue craft and sought to have their crews covered by the bill. I am equally grateful that the Executive not only reflected on that but went out to speak to the Loch Lomond rescue boat group—that was well received—and introduced recognition of it in an Executive amendment. Stewart Maxwell has also lodged amendments on that aspect.

The Loch Lomond rescue service is a vital one. It is a voluntary service, but that should not mean that its crew are excluded from enjoying the same protection that the bill will afford to other categories of emergency workers. The key question is which amendment would do the job best. I am happy to rely on the Executive's legislative competence and the minister's on-the-record assurance that the Loch Lomond rescue boat crew will be included in the bill's provisions.

I must say to Bruce McFee that my understanding is that the bill will afford protection to RNLI boat crews and that that will continue to be the case. The question is whether amendment 20 captures the scope of what the committee wanted. Given the minister's on-the-record commitments, my view is that amendment 20 provides what the committee wanted. The Loch Lomond rescue boat group is at pains to point out that it is not the RNLI, but it is equally at pains to point out that it undertakes the same training as the RNLI does and that the only difference between it and the RNLI is the body of water on which the Loch Lomond group operates.

I thank the convener for the opportunity to attend the meeting. I support amendment 20.

Margaret Smith: As Jackie Baillie just said, the only difference between the Loch Lomond rescue group and RNLI services is the body of water on which the former operates. Was any thought given to stating explicitly in the bill that it covers both offshore and inland rescue vessel crews?

I take this opportunity to put on the record my appreciation of the excellent work that the RNLI

does in my constituency from the Queensferry lifeboat station.

The Convener: I am not sure whether there is a difference of opinion between Stewart Stevenson, who represents Stewart Maxwell, and the Executive on this issue. It might help if we try to flush out whom we think the amendments do not cover. Before I ask the minister for his opinion, does Stewart Stevenson want to say anything?

Stewart Stevenson: I listened carefully to what the minister said about the drafting of amendments 1 and 2 and I accept what he said, so I seek the committee's consent to withdraw amendment 1. However, like Margaret Smith, I would like the Executive or someone else to add words at stage 3 to what amendment 20 proposes to make it explicit that the protection would apply to inland water rescue crews as well as to those at sea.

Mrs Mulligan: I was going to ask about the point to which Stewart Stevenson just referred. The minister said in his opening comments that the Loch Lomond rescue service was similar to RNLI services and that amendment 20 would cover it. Stewart Stevenson pointed out that the RNLI operates at sea and asked for the bill to include a reference to inland water rescue services. I do not know whether that aspect is covered somewhere else in the bill. It would be helpful if the minister responded to Stewart Stevenson's point.

Mr McCabe: It is what the crews do that is important. The RNLI and the inland water rescue crew save lives. That is the comparison that I would draw. Given that the Executive thinks that inland water rescue crews do similar things to the RNLI, we are extending the same protection to them.

Mrs Mulligan: So you are not differentiating between where they would be saving lives; rather, it is the role that they play that is important.

Mr McCabe: Exactly.

Mr McFee: I think that all members on the committee, as well as Jackie Baillie, want inland and offshore craft covered. The question is whether that is what the amendments achieve. That is my concern. With respect to the minister, that is what he means and that is the Executive's intention, but I would not want to get into a situation where a court comes up with a different definition of amendment 20 from the definition that we are being assured about today. If amendment 20 is passed, we should invite the Executive to consider tightening the definition so that it is clear. The RNLI's purpose is to save lives at sea, and I would not want there to be arguments in court about what kind of water it happened to be. It may

just be an issue that has to be considered and that has to be tightened.

The Convener: I think that the minister has been clear that the intent behind the provision is for a court to consider what a worker does. If a worker is saving a life, and it is an emergency, a court would need to look no further and would not need to know what sort of water it was. There is really no need to tighten the provision. It makes sense, because it is at the heart of the bill.

Mr McCabe: I would agree with that. I will turn my mind to a form of words that will help me to explain the position more clearly at stage 3, and to ensure that that is clearly on the record in that part of the proceedings. That may help.

The Convener: The committee would welcome that clarity.

Amendment 1, by agreement, withdrawn.

Amendment 20 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 20 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 20 agreed to.

Amendment 2 not moved.

Amendments 21 and 22 moved—[Mr Tom McCabe]—and agreed to.

The Convener: Amendment 51, in the name of Margaret Smith, is grouped with amendments 52, 50, 6 and 53. I remind members that amendments 6 and 53 are pre-empted by amendment 5, which was debated in the first group.

Margaret Smith: I wish to put the case for the inclusion of professionally qualified social workers

“taking action required or permitted by a child protection order.”

The main objectives of the bill are twofold. The first is to protect emergency workers. We heard compelling evidence from the British Association of Social Workers and the Association of Directors of Social Work about why social workers should be included. The second objective is to protect

others in emergency circumstances, where there could be present or imminent serious injury or worsening of injury, illness or harm. I am convinced that social workers acting in child protection cases need protection; not only can they find themselves in volatile, difficult and potentially dangerous situations but they prevent children who are at risk from being caused further illness, injury or harm. There is a compelling argument for their inclusion.

We heard evidence that in a child protection situation it is normal for two social workers to go into a house to take a child. We were also told that it was unusual for the police to be present and that in some circumstances a social worker might decide in the course of a normal visit that they need to take out a child protection order immediately. Social workers can find themselves in emergency circumstances very quickly. For those reasons, I am convinced that social workers working in child protection should be included in the group of emergency workers in the bill.

Other social workers have argued for their inclusion in the bill; I support the case for the inclusion of mental health officers, who are covered in amendment 52. Many of the points that I have made about child protection officers can be made about MHOs. Mental health officers and child protection officers go into situations in which they restrict people's liberty, which they have statutory obligations and cover to do. Extension of the definition of emergency workers to include mental health officers would be worth while. Marlyn Glen's sensible amendment 53 is consequential on amendment 52 and would include mental illness in the definition of emergency circumstances.

Kenny MacAskill's amendment 50 goes further and would include in the definition of emergency worker all sorts of community care workers. I have wrestled with my conscience on the amendment and the matter is a judgment call. I would prefer to see further evidence about whether the case could be made for including those workers through the minister making an order to modify the list, rather than going with what we have heard. The key point is that both child protection officers and mental health officers can make the case that they are regularly and routinely involved in emergencies. Making that case for other social workers, social care workers or community care workers becomes much more problematic. I am not saying that such workers never deal with emergencies, but including them would take us into the grey area of making a judgment call, as colleagues have said.

My judgment is that to expand the definition to include all social workers or community care workers would go against what the Executive is

trying to do in terms of the breadth of the bill. It would become complicated to determine who should be included and who was not included and the sorts of circumstances in which they could find themselves. We would have to rely on the common law in many circumstances.

Stewart Stevenson might be minded to take forward Kenny MacAskill's amendment 50 to stage 3. The amendment refers to registered social workers. That might create a loophole, because under the Regulation of Care (Scotland) Act 2001, a third or a quarter of qualified social workers have been registered. If we went with that definition of a social worker, we would have a period of a year or two when social workers dealing with child protection, mental health officers or community care workers would not be covered. I suggest that if colleagues want to accept Kenny MacAskill's amendment 50 rather than my amendment 51—or if Stewart Stevenson wants to take amendment 50 forward to stage 3—they might want to consider amending it. I might have the information wrong, but that is my understanding.

I move amendment 51.

12:45

Mrs Mulligan: I am keen not to repeat what Margaret Smith has just said, although I agree with what she outlined in opening the debate on this group of amendments. Earlier, I said that I welcomed the minister giving us a clear definition of the groups of people and the situations that are covered by the bill. It might therefore seem a little ironic that we should now suggest additional people who we think should be included. However, it was recognised in the committee's discussions that other people operate in emergency circumstances.

Amendment 52 relates specifically to mental health officers acting to prevent further harm or to restrict a person's liberty, but not to all mental health officers in whatever circumstances they might be operating. Exactly who is being referred to is clear, and the amendment is not totally an attempt to widen the helpful definition that the minister has provided. It was recognised in the committee's discussions that there is an acknowledged risk when a mental health officer is acting in such a capacity in such circumstances. Extending the legislation to cover them would therefore be appropriate and would recognise the circumstances in which they operate.

I hope that members will support amendment 52. Likewise, I will support amendment 51—which again relates to specific categories within a profession in which there is an additional risk—and amendment 53.

Stewart Stevenson: I very much agree with the broad thrust of what colleagues have said about their amendments so far. I do not intend to move amendment 5 and therefore to pre-empt other amendments in the group, although, of course, other members could move amendment 5 if they wished to do so.

On Kenny MacAskill's amendment 50, Margaret Smith made a good point about not all social workers being registered yet, although the window within which that will be a problem is probably not all that great. We are not clear about how many social workers have still to register, but it is clear that there will be a point in the not-too-distant future at which they will all be registered. The general point about amendment 50, in contradistinction to Margaret Smith's amendment 51 and Mary Mulligan's amendment 52, is that it would throw the net wider on much the same basis as section 1(3)(g) of the bill includes GPs who spend the majority of their working lives in more mundane and non-emergency work. One could say the same of social workers or many mental health workers because they deal with emergency situations only in extremis. By the same token, their contribution to society is of immense value. Indeed, it is generally recognised that there are considerable recruitment difficulties in social work and mental health, and perhaps we will make the professions more attractive to potential recruits as an unintended consequence of extending the net as wide as possible.

However, that is not the primary purpose of amendment 50, which simply aims to extend the same rights to social workers who may often find themselves in emergency circumstances, even if they started a working day or a trip out of the office without intending to be in such circumstances.

Amendment 6 would usefully extend the definition to include "significant harm" and would make the circumstances absolutely clear. Marlyn Glen's amendment 53 would also be useful, and I have no difficulty in supporting it.

Marlyn Glen (North East Scotland) (Lab): The purpose of amendment 53 is to include mental illness in the bill's definition of an emergency circumstance. That follows logically from amendment 52, which proposes to include mental health officers in the bill. It also fits in with the Executive's position on prioritising mental health and putting it on an equal footing with physical health.

Mr McCabe: As we have heard, amendments 50, 51 and 52 would add mental health officers and social workers dealing with child protection to the list of workers who will be protected by the bill. The Executive agrees with that objective. Those workers are emergency workers similar to those already listed in the bill and should be included

alongside those other workers. However, although amendment 50 on the one hand, and amendments 51 and 52 on the other, share a similar objective, they go about achieving it in differing ways. Having examined the two approaches, the Executive's view is that the approach that is taken by amendments 51 and 52 represents a better way of achieving that objective. We have reached that view because amendment 50 would cover a wider range of duties and social workers than would amendment 51. Amendment 50 covers routine activities, such as assessments, which would move the focus away from emergencies. The bill is about protecting providers of emergency services.

In addition, amendment 50 would not cover mental health officers when they respond to all emergency circumstances, as recommended by the committee. It would protect that type of social worker only when they were actively dealing with emergency hospital admissions or detentions. I therefore believe that amendment 52 would better fulfil the committee's recommendation in that regard. The Executive therefore opposes amendment 50 and supports amendments 51 and 52. I urge the committee to do the same and ask Stewart Stevenson not to move amendment 50 in favour of amendments 51 and 52.

Amendments 6 and 53 would change the bill's definition of emergency circumstances. In amendment 6, Kenny MacAskill seeks to broaden the definition of emergency circumstances so that occasions that are causing or are likely to cause significant harm to a person are covered by the bill. We cannot support that amendment.

This bill is firmly, intentionally and explicitly focused on emergency circumstances. Our objective in introducing it was to protect those who provide emergency services. We believe that the valuable function that emergency services provide for our society makes them particularly deserving of such additional protection. However, by extending the definition of emergency services to include the words, "significant harm", the range of circumstances that would be covered by the bill would go far beyond genuine emergencies. The word "significant" suggests something less severe than the word "serious", as currently used in relation to serious injury or illness. However, the issue goes further than that. The notion of harm is not confined to a person's physical or mental health. Harm might be inflicted just as easily upon a person's economic status or their emotional well-being. Quite clearly, that is not the sort of circumstance that we are trying to cover in the bill. I therefore ask members to consider not moving Kenny MacAskill's amendment 6.

In amendment 53, Marlyn Glen seeks to make it clear that the definition of emergency circumstances covers situations in which the

mental health of a person is at risk. That would ensure that people responding to such circumstances were covered by the legislation. I fully support that amendment. In defining emergency circumstances as those that

"are causing or are likely to cause ... serious injury ... or ... serious illness",

the Executive has always intended that mental illness should be covered.

The addition of mental health officers to the list of workers who will be protected by the bill makes it all the more relevant and important that circumstances involving mental illness be explicitly recognised as emergency circumstances. The Executive therefore agrees that amendment 53 would strengthen the bill by clearly and indisputably setting out the types of circumstance in which the new legislation could be used. I therefore support amendment 53.

The Convener: Thank you, minister. If members have no further points to make, I ask Margaret Smith to wind up.

Margaret Smith: I welcome the minister's acceptance of the arguments in favour of including child protection and mental health officers.

The Convener: Sorry—I have made a mistake. You need to wind up, so you get the last word. I will stop you there and let Margaret Mitchell speak.

Margaret Mitchell: I have a problem with including in the definition social workers per se. As we look at the intent behind the legislation, we must look at its deterrent effect. Often the members of blue-light services, which we have already looked at, are the victims of malicious and reckless conduct. I freely admit that social workers are often in dangerous circumstances and we want to do everything that we can to protect them, but I do not see how amendments 51 and 52 would give them protection in the circumstances into which they go.

If social workers are dealing with someone with a mental illness, that person lacks the capacity to know what is going on. If they are in a fraught situation caused by a child custody case, equally, it is the passion of the moment that may induce the conduct against them. Using common law is the best way to deal with all such scenarios. If we want to give extra protection to social workers in any kind of dangerous situation, I suggest that the Executive consider using technology such as personal alarms, for example, so that social workers have that added protection on the spot. I honestly do not think that putting in statute what is proposed in the amendments will help—it could, in fact, hinder.

Stewart Stevenson: I acknowledge the minister's point that the drafting of amendment 50

does not cover all mental health workers during all emergencies. On that basis, I will not move the amendment. However, I will consult Mr MacAskill further on his intentions at stage 3.

Mr McFee: I, too, was going to mention that point because there was concern that the drafting of amendment 50 might be deficient. Mr MacAskill might have to revisit the matter.

However, contrary to what was said at the other end of the table by Margaret Mitchell, I think that there is a case for ensuring that certain types of social worker are covered by amendment 50. The out-of-hours services in particular place social workers in very difficult situations—their job is not just about extracting vulnerable individuals from particular circumstances; sometimes they have to extract the circumstances from round about the individual. If a social worker has to face a group of five or six people who might be hell-bent on preventing them from carrying out their work, which is to protect a vulnerable person, there would be some merit in amendment 50. However, if Stewart Stevenson is of a mind not to move the amendment and to seek some redrafting, I will be happy with that.

The Convener: Finally, I invite Margaret Smith to wind up.

Margaret Smith: I welcome what the minister said about my amendment 51 as well as Mary Mulligan's amendment 52, both of which deal with mental health officers. The evidence that we took on those workers was clear, although it was less clear on other sectors of the social work work force.

I might have said in error in my earlier remarks that the power to modify the definition was contained in amendment 6, when in fact that power is in section 6 of the bill. The power to modify the definition of emergency workers might be called upon by ministers in the future if people can present examples of the kind of situation we have spoken of. It might be that groups of social workers are the people to gather such data.

I agree whole-heartedly with Margaret Mitchell's point about using technology to support social workers, key health care and social care workers, professionals allied to health care and medicine and housing officers who go into people's houses and who work out in the community. We must embrace the fact that these workers need to be supported by more technology. I do not think that anyone in this committee has done anything other than echo the Executive's view that the bill is only part of a jigsaw puzzle in the effort to assist and protect key workers. As a result, I certainly support Margaret Mitchell's comments about the use of technology.

I welcome the fact that Stewart Stevenson has decided not to move amendment 50 on the ground that it does not cover all mental health officers in emergency situations. On registration, I acknowledge that there would be a loophole for a relatively short time; however, that period might be as much as a couple of years, so it is important that we plug it. I welcome the minister's comments on amendment 51, which I will press.

13:00

The Convener: The question is, that amendment 51 be agreed to. Are we all agreed?

Members: Yes.

The Convener: Amendment 51 is therefore agreed to.

Margaret Mitchell: Sorry, convener. I want to vote against amendment 51.

The Convener: Will you please make that a little clearer next time? I do not like having to go back to take votes.

The question is, that amendment 51 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 51 agreed to.

Amendment 52 moved—[Mrs Mary Mulligan].

The Convener: The question is, that amendment 52 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 52 agreed to.

Amendments 50 and 5 not moved.

Amendment 23 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 23 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

Against

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 23 agreed to.

Amendment 24 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 24 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 24 agreed to.

Amendment 25 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 25 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 25 agreed to.

Amendment 6 not moved.

Amendment 53 moved—[Marlyn Glen].

The Convener: The question is, that amendment 53 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 53 agreed to.

Section 1, as amended, agreed to.

The Convener: For clarification, members cannot disagree to a section; they can only lodge an amendment to delete it.

After section 1

Amendment 26 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 26 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 26 agreed to.

Section 2—Provisions supplementary to section 1

Amendment 27 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 27 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 27 agreed to.

Amendment 28 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 28 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 28 agreed to.

Amendment 29 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 29 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 29 agreed to.

Amendment 30 moved—[Mr Tom McCabe].

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

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 30 agreed to.

Amendment 7 not moved.

Amendment 31 moved—[Mr Tom McCabe]—and agreed to.

Amendment 54 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 54 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 54 agreed to.

Amendment 8 not moved.

Amendment 33 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 33 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 33 agreed to.

Amendment 34 moved—[Mr Tom McCabe]—and agreed to.

Amendment 35 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 35 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 35 agreed to.

Amendment 36 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 36 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 36 agreed to.

Section 2, as amended, agreed to.

Section 3—Assaulting or impeding health workers in hospital accident and emergency premises

The Convener: I now call amendments 37 to 46, all in the name of the minister and all previously debated. I invite the minister to move those amendments en bloc.

Amendments 37 to 46 moved—[Mr Tom McCabe].

The Convener: Does any member object to a single question being put on amendments 37 to 46?

Margaret Mitchell: Amendment 45 is simply a drafting amendment, which I have no problem with. I intend to vote against the other amendments.

The Convener: Do you object to a single question being put?

Margaret Mitchell: Amendment 45 is just a drafting amendment—yes, I would like the question on that amendment to be put singly, for the sake of consistency.

The Convener: We will have to vote on each amendment separately, in that case. The question is, that amendment 37 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 37 agreed to.

The Convener: The question is, that amendment 38 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 38 agreed to.

The Convener: The question is, that amendment 39 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 39 agreed to.

The Convener: The question is, that amendment 40 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 40 agreed to.

The Convener: The question is, that amendment 41 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 41 agreed to.

13:15

The Convener: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)

McFee, Mr Bruce (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 42 agreed to.

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 43 agreed to.

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 44 agreed to.

Amendment 45 agreed to.

The Convener: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)

Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 46 agreed to.

Amendment 9 not moved.

Section 3, as amended, agreed to.

Sections 4 and 5 agreed to.

Section 6—Power to modify

The Convener: Amendment 47, in the name of the minister, is in a group on its own.

Mr McCabe: At stage 1, the committee raised concerns that the order-making power in section 6 was too far reaching to be subject to the negative resolution procedure. My predecessor, Andy Kerr, listened to those concerns and gave a commitment to amend the bill. Amendment 47 will fulfil that commitment by making the order-making power subject to the affirmative resolution procedure. That will mean that changes to the list of workers who are protected by the bill cannot be made unless a draft order has been laid before, and approved by resolution of, the Parliament.

I move amendment 47.

Margaret Mitchell: I welcome that amendment.

Amendment 47 agreed to.

Section 6, as amended, agreed to.

Section 7 agreed to.

Long Title

Amendment 10 not moved.

Amendment 48 moved—[Mr Tom McCabe].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marilyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

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

Amendment 48 agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill, for which I thank members. I particularly thank the new members of the committee, who got to grips quickly with the bill, and the minister and Executive officials, who have worked hard to produce the amendments. I speak for the committee in expressing my gratitude for the debate that we have had today.

Mr McCabe: On behalf of myself and the Executive, I acknowledge that the committee has put in an extraordinary amount of work on the bill. As a result of that work, you have helped us to produce a bill that is workable, robust and focused. I greatly appreciate the engagement that we have had with the committee since I took over my portfolio.

The Convener: I am sure that the committee appreciates that. Unfortunately, I do not think that you will meet us in the foreseeable future, but who knows?

I remind members that the committee's next meeting will be on Wednesday 1 December at 10 am, when we will examine the progress that has been made in implementing the recommendations of the former Justice 1 Committee's inquiry into the regulation of the legal profession. We will also undertake further post-legislative scrutiny of the Protection from Abuse (Scotland) Act 2001 and consider an update on European Union justice and home affairs scrutiny. As we were not sure how long it would take to complete stage 2 of the Emergency Workers (Scotland) Bill, we had scheduled an extra meeting, which we no longer require.

Meeting closed at 13:21.

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