JUSTICE AND HOME AFFAIRS COMMITTEE

Tuesday 25 January 2000
(*Morning*)

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JUSTICE AND HOME AFFAIRS COMMITTEE
3rd Meeting 2000 (Chamber)

CONVENER:

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER:

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS:

*Scott Barrie (Dunfermline West) (Lab)
*Phil Gallie (South of Scotland) (Con)
*Christine Grahame (South of Scotland) (SNP)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
*Kate MacLean (Dundee West) (Lab)
*Maureen Macmillan (Highlands and Islands) (Lab)
Pauline McNeill (Glasgow Kelvin) (Lab)
*Michael Matheson (Central Scotland) (SNP)
*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

THE FOLLOWING MEMBERS ALSO ATTENDED:

Iain Gray (Deputy Minister for Community Care)
Angus MacKay (Deputy Minister for Justice)
Dr Richard Simpson (Ochil) (Lab)

COMMITTEE CLERK:

Andrew Mylne

SENIOR ASSISTANT CLERK:

Shelagh McKinlay

ASSISTANT CLERK:

Fiona Groves

Scottish Parliament

Justice and Home Affairs Committee

Tuesday 25 January 2000

(*Morning*)

[THE CONVENER *opened the meeting at 09:35*]

The Convener (Roseanna Cunningham): Good morning, everyone.

One or two conversations are taking place because a member of the committee is unable to attend the meeting this morning. Pauline McNeill sent her apologies and, although she might be able to be present later, we have been discussing how to handle the arrangements, whether pairing is appropriate and so on. That is why the start of the meeting has been slightly delayed. Pauline's apologies are noted at this stage, but if she is able to turn up at some point, she will be marked as present and her apologies can be withdrawn.

Declaration of Interests

The Convener: Item 1 will be brief. We should have addressed Michael Matheson's declaration of interests last week, following his arrival on the committee, but unfortunately we omitted to do so. I call on Michael to indicate whether he has relevant interests and ask him to remember that, as with all such declarations, he should err on the side of caution by declaring any interests that would prejudice or give the appearance of prejudicing his ability to participate in a disinterested manner in the proceedings of the committee.

The purpose of this item is to allow Michael to make a general declaration of interests now, although he should also declare any interests relevant to the bill, as should other members. It would be appropriate for members who suddenly think, "Well, despite what I said at the first committee meeting, perhaps I really ought to indicate an interest now," to do so.

Michael Matheson (Central Scotland) (SNP): I have no interests to declare in relation to the Justice and Home Affairs Committee. However, in relation to my previous employment and my continuing status as a state-registered occupational therapist, I have an interest in the Adults with Incapacity (Scotland) Bill.

The Convener: Are other members suddenly wondering whether it might be best for them to declare an interest? I see Scott Barrie looking a little puzzled. It might be better to put your comments on record, Scott, even if you are unsure, as at least you will be covering yourself.

Scott Barrie (Dunfermline West) (Lab): Until your preamble, convener, I had not thought about it. However, I was previously employed as a social work manager and served on a working party that examined some of the proposals in the early stages of the draft bill.

The Convener: Your declaration was appropriate—it serves as a reminder to us all to be careful.

I am not sure whether, strictly speaking, Richard Simpson should declare his interests, as he is not a member of this committee. However, Richard, it might be appropriate for you to do so, as you are to move amendments—if we were in a meeting of the Parliament, you would probably have to declare your interests and I know that you have an interest.

Dr Richard Simpson (Ochil) (Lab): I declare an interest as I am a member of the Royal College of General Practitioners and a fellow of the Royal College of Psychiatry.

The Convener: Other than the general interests declared at the beginning of the Justice and Home Affairs Committee proceedings in July—or whenever our first meeting took place—might any other members be held to have any kind of interest in the bill?

Members *indicated disagreement.*

Adults with Incapacity (Scotland) Bill: Stage 2

The Convener: We move straight on to stage 2 of the bill. I remind members—

Dr Simpson: I am sorry, convener. I have another interest to declare. I am also a director of a nursing home. Although the home is in England, that interest is still relevant.

The Convener: Yes, it is.

Returning to the bill, I remind members to move amendments only when they are reached in the order of the marshalled list. Committee members received with their papers a guidance note produced as a result of our experience last week. It was inevitable that, once we had followed the procedure for a few hours, we would want to tweak one or two matters. I hope that members have read that note.

I also remind members that debates on each group of amendments are meant to be just that—debates. They are not designed to turn into question-and-answer sessions with the minister or with other members. There was a distressing tendency for that to happen last week. All requests to speak in each debate—that is, each time a member wants to speak or to come back in on an on-going debate—should be made to me and through me, as convener. It is up to me to decide when the debate will end. I do not want to lose control of the situation, particularly if an issue that does not justify the length of debate is involved.

I am looking to my right because, in general—

Christine Grahame (South of Scotland) (SNP): Convener, I read my copy of the note.

The Convener: I refer members to the announcement in Friday's business bulletin, which stated that today the committee

"will not proceed beyond the end of Part 3 of the Bill".

I hope that, with the help of committee members, we will not be required to battle on right through until 6 pm, although that slot has been given to us. If committee members also do not want to be here at 6 pm, I hope that they will occasionally impose a self-denying ordinance—that would be extremely helpful.

Section 6—Expenses in court proceedings

The Convener: Today's stage 2 proceedings begin with amendment 88, with which we are discussing amendment 155. Members will recall that we decided, rather unusually, to adjourn our debate on amendment 88, although the amendment had already been moved. At the point where we adjourned, the matter had been left with the minister so that he could provide further information. He indicated last week that that information might be available this week. I sincerely hope that it is.

The Deputy Minister for Justice (Angus MacKay): Thank you, convener.

I will make a slightly substantial contribution, but I hope that it will address the concerns that were raised last week.

As the committee discussed last Wednesday, amendment 88 provides that public authorities would have to meet their own costs whenever they were involved in an action for the purpose of representing the public interest. The Executive view is that the public interest ground should be retained in section 6, to safeguard the public purse. For example, public authorities might be involved in cases that examine how the legislation is to be interpreted. Such cases could include the interpretation of an intervention or of mental disorder where an individual adult has been involved but either drops out of the action or dies—those cases might be pursued because of the point of principle involved. Expenses could justifiably be awarded against the third party whose actions had given rise to the need for proceedings or against a public authority that became involved.

It should be noted that the provision does not require the courts to make an award of expenses—it simply permits them to do so. An award of expenses will always be a matter for the courts, taking into account the circumstances of the individual case. However, the Executive agrees with the point made by members of the committee last Wednesday—it is difficult to envisage why expenses should be awarded against the adult in public interest cases. We are still considering closely whether there exist any circumstances in which awards against the adult's estate should be made in such cases.

On that basis, the Executive asks that amendment 88 be withdrawn, so that we are able to consider amending section 6 at stage 3 to exclude the possibility of awards of expenses against the adult in cases where a public authority is involved solely to represent the public interest. I hope that Mr Gallie and other members of the committee find that approach acceptable.

We are grateful to Dorothy-Grace Elder, who is not present, for contributing to the debate on amendment 88 by lodging a further amendment—amendment 155—to section 6. I will take a brief moment to explain that the Executive is opposed to amendment 155 because it would leave the public interest ground in section 6, but would provide that the court could make an award of

expenses against the statutory authorities where the other parties had acted in good faith. The amendment appears to remove the possibility of awards against either the adult's estate or any other person whose actions have led to the proceedings. The Executive thinks that amendment 155 goes too far. Last week, members of the committee did not appear to have a problem with the approach that expenses might be awarded against the adult's estate where the proceedings are for the purpose of protecting the adult's interests.

There is a specific exclusion in section 6 for proceedings on welfare guardianship, in cases where the local authority is exercising its statutory duty to ensure that a guardian is appointed if required. It is the general policy of the Executive on the bill that, where proceedings are intended to protect the adult's financial interests, the adult's estate should meet the costs.

09:45

Amendment 155 seeks to permit the court to take account of issues such as the other parties acting in good faith. We are not sure what the intention behind that aspect of the amendment is. An award of expenses is, in any case, discretionary to the court. That depends on many factors, including the behaviour of the parties.

We are unsure how the amendment achieves any more than that. In policy terms, we would not want to introduce unnecessary factors for the court to take into account when making an award of expenses. We hope that amendment 155 can therefore be withdrawn.

The Convener: Christine Grahame has indicated that she wants to speak, but I wonder whether it would be more appropriate at this stage to ask Phil Gallie to respond to the minister's comments.

Phil Gallie (South of Scotland) (Con): It seems that the minister has taken time to reflect on the arguments put forward last week. Given the fact that it is the responsibility of the attorneys to look after the interest of the adult at all times and the fact that they are committed so to do, it seems difficult that they place their own funds under threat—if that is indeed what they are doing.

Given the minister's assurances, I am prepared, with the consent of the other members of the committee, to withdraw amendment 88.

Christine Grahame: I have a question on amendment 155, which Dorothy-Grace Elder asked me to—

The Convener: I was just about to move on to that. Dorothy-Grace Elder is not here, and amendment 155 has not been moved. Does anyone wish to move it on her behalf?

Christine Grahame: After what the minister has said, I do not know whether I am entitled to speak to it. I spoke to Dorothy this morning—she has other business and could not attend.

I wanted to clarify through you, convener, what the point of amendment 155 was. Given what the minister said, it might be that it does not require to be moved.

The direction that Dorothy was taking on

"all other parties"

having

"acted throughout in good faith"

echoes something that Phil Gallie said. The way in which section 6 is framed might deter people from taking on the task of acting on behalf of an adult who is incapacitated to whatever degree. There is a perceived sword of Damocles over

"any person whose actings have resulted in the proceedings."

Given what has been said about the discretion of the sheriff, which I explained to Dorothy, and if someone acting—crucially—in good faith does not have an award made against them, it might not be necessary to move amendment 155.

Angus MacKay: I think that I understand what amendment 155 was and the good intention behind it, but our current intentions address the points raised by it.

Christine Grahame: Under those circumstances, I will not move amendment 155.

The Convener: Does the committee agree that amendment 88 be withdrawn?

Amendment, by agreement, withdrawn.

Amendment 155 not moved.

Section 6 agreed to.

Section 7—Functions of the Mental Welfare Commission

The Convener: There is only one amendment to section 7—amendment 133.

The Deputy Minister for Community Care (Iain Gray): Amendment 133 is a technical amendment, requested by the Mental Welfare Commission itself. As the bill stands, there is a duplication between the commission's duty to investigate complaints under section 7(1)(d), which amendment 133 covers, and the identical duty of the local authority under section 8(1)(c).

The proper role of the commission is to investigate complaints about how welfare attorneys and guardians exercise their powers

under the bill, but only in cases where the local authority, which is the primary complaints body, has not carried out its own investigation satisfactorily, or has failed to investigate the complaint altogether. The amendment aims to preserve the Mental Welfare Commission's general watchdog role.

Amendment 133 replaces amendment 6, which sought to do the same thing, but which, in error, dealt only with circumstances in which the local authority had carried out an investigation, but not to the commission's satisfaction. We are grateful to the Alliance for the Promotion of the Incapable Adults Bill for pointing out that amendment 6 did not cover a situation in which the authority had simply failed to carry out an investigation. I hope that the committee will support the newer amendment.

I move amendment 133.

Amendment 133 agreed to.

Section 7, as amended, agreed to.

Section 8—Functions of local authorities

The Convener: Amendment 89, in the name of Phil Gallie, is grouped with amendments 90 and 141, which are also in Phil Gallie's name.

Phil Gallie: Amendment 89 removes the word "supervise" and inserts "monitor". "Supervise" suggests an overall authority. My view is that, to some degree, that suggests that local authorities would be breathing down the necks of the attorneys.

I accept that local authorities should be able to monitor. I would go further, and suggest that there is a role for local authorities to monitor and assist. I feel that "supervise" suggests an unnecessary authority, which, to a degree, could be seen to overpower the attorney's role in the vast majority of cases.

I move amendment 89.

Iain Gray: I agree with Phil Gallie that amendments 89 and 141 would reduce the functions of the local authority in relation to the guardians and attorneys. We would argue that that reduction would, however, not be desirable. It would imply a less active role in overseeing the proxy's actions.

We believe that the supervision of welfare guardians should be routine, and should not happen only as the result of a court order, because of a guardian not carrying out their functions properly, for example. It is perhaps unfortunate to categorise that as "breathing down the necks of the attorneys". It is very much about protecting the interests of the adult under guardianship.

In the Scottish Law Commission's original consultation exercise, all those who responded on the matter were in favour of guardians with welfare powers being regularly supervised. The core reason for that being necessary is that the adults under guardianship are unlikely to be able to deal with the guardian's deficiencies themselves. They require protection through regular supervision.

We can consider some existing parallels. We would expect local authority supervision to include the kind of supervision exercise currently being carried out for mental health guardians. In such cases, the authority has a duty to visit at least once every three months, and may call for reports and request information from the guardians. There will be regulations to cover that, and there will be consultation on those regulations once the bill has received royal assent.

There will be an opportunity to discuss and consult on the balance between proper, regular supervision and something that is excessive and obtrusive at the time.

We strongly believe that amendment 89 would result in a lower standard of protection for vulnerable people, who are by definition unlikely to be able to protect their own interests. On that basis, we hope that Mr Gallie will consider withdrawing amendment 89.

Amendment 90 aims to specify the jurisdiction of individual Scottish local authorities. We appreciate the intention behind the amendment. The purpose of section 8(1)(d), to which the amendment applies, is not to define jurisdiction in Scotland, but to clarify a general jurisdiction relating to people habitually resident or present here.

The details of which local authorities in Scotland have jurisdiction for dealing with particular investigations and complaints are dealt with more generally by the Local Government Act 1988. We feel that the amendment brings something to the legislation that is not properly required in the bill.

The Convener: I have a question about amendment 89. If we decide to take out "supervise", do you envisage that there would be no supervision, or do you think that there must be some supervision, but provided by another body?

Phil Gallie: The amendment suggests that supervision is replaced by a level of monitoring. The fact is that the guardian has appointed the attorney to look after the affairs of the individual who requires that level of support and care.

In many cases, the individuals who have that power will be loving relatives—a mother or a father. I feel that many of those individuals have committed their lifetime to looking after the incapable adult, and it is rather insulting to place an authority over them, which is what I understand

would happen if we kept the word "supervise".

I acknowledge that there might be a need for supervision in some instances, but under the circumstances in which an individual has had problems up to the age of 16, and if the parents are still looking after the individual, I think that the parents are the best people to make the judgment, and that little supervision will be necessary in such circumstances.

Gordon Jackson (Glasgow Govan) (Lab): I understand what Phil means, in the sense that we do not want heavy-handedness and the local authority taking over the situation. I would not want that either.

The difficulty is that the word "monitor" is of no use, because it takes away all responsibility. The people up in the press gallery monitor us all day and every day, but they have no responsibility for what we do. Somehow, the local authority must eventually have responsibility, albeit not in a heavy-handed way. As far as I can see, the word "monitor" contains no responsibility at all.

Michael Matheson: I seek a point of clarification from the Deputy Minister for Community Care in relation to amendment 90 and to his comments on the Local Government Act 1988. Do the present provisions of the act deal with the matter of jurisdiction sufficiently, and do they prevent any confusion from arising about the role of local authorities?

Iain Gray: Yes. That is our belief.

Perhaps I was not clear in my original comments: without amendment 89, local authorities would be required only to supervise welfare guardians routinely, subject to the measures that we suggested using in parallel with the provisions on mental health. Local authorities supervise attorneys only when ordered to do so by the court if there has been a problem with the attorney's behaviour. I hope that that goes some way towards meeting the points that Phil Gallie made in discussing attorneys who might be close, loving relatives.

10:00

Phil Gallie: I had not spoken specifically to amendment 90, but I accept the comments made on it.

On amendment 89, Gordon Jackson referred to local authorities having responsibility. I believe that the public guardian has that responsibility. If he were to appoint local authorities to supervise, that could be a condition of the attorney's appointment. I still feel that that is heavy-handed.

Will it be a burden on local authorities' resources if they take over that role? Does it change the status quo to a great extent?

Iain Gray: Parts 4 and 6 of the bill deal with the specific local authority powers and duties that flow from the legislation. Mr Gallie has raised a fair point; I undertake that we will ensure that local authorities are resourced to carry out the duties that the legislation would place on them.

The Convener: Phil Gallie will have to decide now.

Phil Gallie: I accept the minister's comments, which I think are made in good faith, but I am concerned that they are not reflected in the bill. If they could be incorporated, to give the assurances that I sought, I would accept that. At present, however, I will not withdraw the amendment and if it is defeated, I will expect the minister to live up to his comments.

The Convener: The question is, that amendment 89 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Phil Gallie (South of Scotland) (Con)
Mrs Lyndsay McIntosh (Central Scotland) (Con)

AGAINST

Scott Barrie (Dunfermline West) (Lab)
Roseanna Cunningham (Perth) (SNP)
Christine Grahame (South of Scotland) (SNP)
Gordon Jackson (Glasgow Govan) (Lab)
Kate MacLean (Dundee West) (Lab)
Maureen Macmillan (Highlands and Islands) (Lab)
Michael Matheson (Central Scotland) (SNP)
Euan Robson (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 2, Against 8, Abstentions 0.

Amendment 89 disagreed to.

The Convener: The tenor of Phil Gallie's comments suggested that he is minded not to move amendment 90.

Phil Gallie: That is correct.

Amendment 90 not moved.

The Convener: That concludes the amendments to section 8.

Section 8 agreed to.

Section 9—Intimation not required in certain circumstances

Amendments 134 and 135 moved—[Angus MacKay]—and agreed to.

Amendments 7 and 8 moved—[Angus MacKay]—and agreed to.

Section 9, as amended, agreed to.

Section 10 agreed to.

Section 11—Codes of practice

The Convener: We move to amendment 136, in the name of Phil Gallie, which is grouped with amendment 138, also in the name of Phil Gallie.

Phil Gallie: Amendment 136 places on the Scottish ministers an obligation to prepare or revise all codes of practice to be issued by various bodies under the act. Ministers should be obliged to revise the codes of practice; if they are not subjected to that duty, the possibility of divergent standards arises.

Should I move amendment 138 at the same time?

The Convener: No. Speak to amendment 138, but do not move it yet.

Phil Gallie: Amendment 138 also addresses codes of practice. It adds a time scale by inserting the words "from time to time", which would ensure that ministers would be obliged to revisit codes of practice regularly. I am interested in the minister's views on how often the codes of practice should be reviewed. Should that be an on-going procedure, or should it be within a term of years?

I move amendment 136.

Angus MacKay: We are not entirely sure of the reason for the amendment, which does not appear to alter substantively the effect of section 11(1). It appears to be a stylistic amendment to make the bill read more easily. I have listened to Mr Gallie's reasons and I am still not sure how the amendment changes the meaning of the bill.

We think that it would be better to stick to the wording of the bill as it stands. The reference to the codes of practice is at the start of the section, which gives it greater prominence.

Phil Gallie: I apologise, but I am having difficulty hearing the minister. That is probably my fault rather than his.

Angus MacKay: I will speak more closely to the microphone.

I am not sure that moving the text around makes a substantive difference to the section. Mr Gallie's points already appear to be covered in the bill. The Executive therefore resists the amendment.

Gordon Jackson: Phil Gallie's amendment seems simply to move the need for revision from the beginning of section 11(1) to the end . The bill includes the need for revision; I do not mind where it appears in the section.

Phil Gallie: I thought that the wording was rather open-ended. I accept the minister's comment and go along with his points. I think that some form of time scale for revision might be useful, but I will withdraw the amendment.

Amendment, by agreement, withdrawn.

Amendments 137 and 138 not moved.

Section 11 agreed to.

Section 12—Appeal against decision as to incapacity

The Convener: We move to amendment 9, which is an Executive amendment.

Angus MacKay: This is substantially a technical amendment to clarify who may use the provision, at section 12, for appeals against decisions on incapacity. The adult and others with a relevant interest will be able to appeal. That is consistent with provisions elsewhere in the bill for those who may make applications to the courts.

I move amendment 9.

Amendment 9 agreed to.

Section 12, as amended, agreed to.

Section 13—Creation of continuing power of attorney

The Convener: We now move to part 2 of the bill. Amendment 10 has already been debated with amendment 124.

Angus MacKay: I move amendment 10.

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scott Barrie (Dunfermline West) (Lab)
Roseanna Cunningham (Perth) (SNP)
Phil Gallie (South of Scotland) (Con)
Gordon Jackson (Glasgow Govan) (Lab)
Mrs Lyndsay McIntosh (Central Scotland) (Con)
Kate MacLean (Dundee West) (Lab)
Maureen Macmillan (Highlands and Islands) (Lab)
Michael Matheson (Central Scotland) (SNP)
Euan Robson (Roxburgh and Berwickshire) (LD)

AGAINST

Christine Grahame (South of Scotland) (SNP)

The Convener: The result of the division is: For 9, Against 1, Abstentions 0.

Amendment 10 agreed to.

The Convener: I call amendment 139, which is grouped with amendments 11, 91, 12 and 92.

Phil Gallie: Amendment 139 leaves out the word "solicitor" and inserts "member of a", meaning a member of the prescribed list.

The inclusion of the word "solicitor" suggests

that solicitors will not be part of the prescribed list. This is, to an extent, a probing amendment. Why should solicitors be excluded from the list, or mentioned separately? We should all remember that one of the aims of the bill is to cut costs for people who are in a vulnerable state. Being in a vulnerable state can lead to those people not having much money in their natural estate. Involvement with solicitors inevitably brings additional costs. Will the minister clarify those issues?

Angus MacKay: I am grateful for the opportunity to address the issues raised by the probing amendment. Sections 13 and 14 are the only sections in the bill where lawyers, rather than doctors, assess capacity. That is appropriate, because it is the granter's understanding of the legal document that they are signing that is essential and the granter's capacity—not their incapacity—that is being assessed. The solicitor may consult other people, including a doctor, to satisfy him or herself that the granter is fully able to understand the importance of creating the power of attorney and is not under any undue influence to do so.

The Scottish Law Commission considered whether it was appropriate to specify solicitors in section 13 and reported that certification by solicitors was generally welcomed during its consultation. The commission concluded that certification by solicitors would not give rise to extra expense—Mr Gallie mentioned that issue—in most cases, since most powers of attorney are prepared with the involvement of lawyers. That will be particularly important for powers of attorney granted in the bill, to ensure that powers granted do not fall once capacity has been lost, for example because of poor drafting of the power.

The Executive agrees with the Law Society of Scotland that amendment 139 is inappropriate. Solicitors normally prepare powers of attorney and they should be authorised to grant the certificates, whether or not the regulations are made to include other categories.

The Executive resists amendment 139. We intend to make the regulations allowed for in this section of the bill, so that other professions can be involved in granting certificates under sections 13 and 14. We will consult on who should be included.

The Scottish Law Commission considered, for example, that ministers of religion and doctors could be included. If the amendment intends to ensure that classes other than solicitors are prescribed by the Executive, we can reassure Mr Gallie that we intend to make those regulations, although we cannot say when we will do that until we have consulted on the detail.

It appears inconsistent to amend section 13, but not section 14. It appears unlikely that Mr Gallie's policy intention is to alter the conditions for granting a continuing power of attorney in that manner, but not the conditions for granting a welfare power of attorney.

Is it appropriate, convener, for me to deal with amendments 11, 12, 91 and 92?

10:15

The Convener: Yes.

Angus MacKay: Amendments 11 and 12 ensure that where a continuing or welfare power of attorney is granted to a solicitor, that solicitor will not be authorised to assess the granter's capacity. That avoids any potential conflict of interest between the adult and their solicitor.

The Executive agrees with the aim behind amendments 91 and 92 of ensuring that the same solicitor who certifies an adult's capacity is not also granted the power of attorney. That gives an additional safeguard to ensure that the granter of the power understands fully what they are doing. Amendments 11 and 12, lodged by the Executive, meet that purpose. We are confident that our amendments satisfy the point in question more precisely, and we ask Mr Gallie to withdraw his.

Phil Gallie: The point that the minister has made is that the prescribed list will allow for people in other positions to carry out the task that is defined for the solicitor. Given my concerns about additional costs and the degree to which people believe a solicitor is the major route towards achieving the aim, why does not the minister simply say that the solicitors will appear on the prescribed list? That way they will be included, as others will, and people will feel that there is an extended choice.

Angus MacKay: I have already touched on why we feel it is appropriate to specify solicitors, given that this is the only part of the bill under which solicitors rather than medical practitioners can assess capacity. We intend to use regulations to prescribe a more substantial list. The point that Mr Gallie raises will be addressed in full consultation.

In specific circumstances, there is nothing to prevent a solicitor's client from applying for legal advice and assistance to help meet the costs of the solicitor's advice on drawing up a power of attorney. Any award of that sort would depend on the normal financial tests for advice and assistance.

Gordon Jackson: Far be it from me to support solicitors, but I feel that there is some advantage in the point that has been raised. The certificate in question is an important document—its being wrongly or carelessly handled may lead to a

financial loss. There is recourse against solicitors in such cases; there is a professional body and there is a guarantee fund. Solicitors can be made accountable—although perhaps not to the extent some would like—if a mistake is made. It is important that they can be held accountable if something goes wrong in the signing of the certificate, so there must be protection in the bill.

The Convener: That was a controversial contribution from Gordon. Do you want to comment on that, Phil?

Phil Gallie: I have to say that I was moving rapidly towards accepting the minister's comments but, most unusually for Gordon, he has turned me against that. As I am sure Gordon realises, there is concern about self-regulation of solicitors by solicitors, but that is another issue.

I have listened to the minister and I accept his assurances. I therefore withdraw amendment 139.

The Convener: Are members content that amendment 139 be withdrawn?

Amendment, by agreement, withdrawn.

Amendment 11 moved—[Angus MacKay]—and agreed to.

Amendment 91 not moved.

Section 13, as amended, agreed to.

Section 14—Creation and exercise of welfare power of attorney

Amendment 12 moved—[Angus MacKay]—and agreed to.

Amendment 92 not moved.

Phil Gallie: I move amendment 93. We are moving at a heck of a rate here, convener.

Gordon Jackson: You should not moan about that.

The Convener: You will feel the benefit of it this afternoon. [*Laughter.*]

Phil Gallie: Amendment 93 seeks to insert after the attorney's name, "or a named substitute". That would allow some latitude for the welfare attorney without removing responsibility. The naming of a substitute could have benefits at a later stage, particularly in the event of the unexpected death of the welfare attorney, and it seems a logical thing to permit.

Angus MacKay: Mr Gallie has set out the purpose of the amendment. It is the Executive's view that common law on attorneys already allows for the granter to name a substitute attorney to act for them if the attorney is absent or is ill or dies. Our legal advice is that existing common law provisions would apply to continuing attorneys and to welfare attorneys appointed under the bill. It would not be appropriate to try to enshrine the common law provisions in the bill, as it would be complex and unnecessary. Codes of practice and guidelines will also clarify that both substitute and joint attorney appointments are possible.

Phil Gallie: I bow to the minister's team's knowledge of the common law. If what he has outlined is indeed the case, he has assured me that the circumstances that I have described would be well catered for. I therefore withdraw the amendment.

The Convener: The question is that amendment 93 be withdrawn.

Amendment, by agreement, withdrawn.

Amendment 13 moved—[Angus MacKay]—and agreed to.

Amendment 140 not moved.

Iain Gray: I move amendment 14, on which I expect there to be some debate. Amendments 14 and 15 provide for important restrictions on the powers of welfare attorneys in medical treatment. In some ways, the debate that we are having today is the precursor to the much fuller debate that will take place when we consider part 5, which deals with medical treatment and research for patients who are incapable of giving informed consent.

The amendments ensure that welfare attorneys cannot consent to any of the sensitive medical procedures that are specified in section 45(2). They are the types of treatment that are to be excluded from the general authority to treat—covered in section 44—for people who are unable to consent. Extra safeguards, such as the consent of a court or a second medical opinion, will be required before such treatments can be carried out.

The amendments also ensure that welfare attorneys cannot consent to any treatment on behalf of a patient who is formally detained under the Mental Health (Scotland) Act 1984. That act gives additional protections to the patient and it would not be right to allow attorneys to consent, thereby circumventing those additional protections. That is the purpose of amendment 15.

The amendments restore the bill to what was in the original Scottish Law Commission draft bill. We believe that they will be generally welcomed and I ask the committee to agree to them.

The Convener: Nobody is indicating that they want to speak, so perhaps your apprehension that these amendments would give rise to lively debate will not be fulfilled, minister. Members may not have realised the import of these amendments, so I shall give everyone a moment or two.

Is the purpose of amendment 14 to fulfil the commitment made by Jim Wallace during the stage 1 debate?

Iain Gray: That is correct.

Dr Simpson: I welcome amendment 14 because it removes the list that is yet to be prepared. At the moment, treatments such as electroconvulsive therapy and psychosurgery will be covered.

The Convener: I have allowed a little latitude to members, but I will not allow too much time. Members should have been prepared before coming to the meeting.

Amendment 14 agreed to.

Amendment 15 moved—[Iain Gray]—and agreed to.

The Convener: We now come to amendment 94, which is grouped with amendments 95, 105, 109 and 117, all of which are in the name of Phil Gallie.

Phil Gallie: I move amendment 94, which inserts a list of conditions, albeit negative ones, to be placed upon the welfare attorney. The list would follow the negative condition that states:

"A welfare attorney may not place the granter in a hospital for the treatment of mental disorder against his will."

As I said earlier, the vast majority of welfare attorneys will always have the well-being of the adult with incapacity at heart. However, the bill recognises the need to cover situations that may arise in only a few cases. I believe that the proposed additional comments, added to the comment already in the bill, would enhance the situation in that small minority of cases.

Iain Gray: These are important amendments, so I have more comments to make on them than on others. I hope that members will bear with me.

I understand the concerns that Mr Gallie has raised and can only agree that we must ensure that the legislation covers the very few situations in which the well-being of the adult with incapacity is not being well served. However, we think that the amendments are not necessary. Indeed, far from giving additional protection, we do not think that they would have the effects that they are designed to achieve. I shall attempt to explain why.

Amendments 94, 105 and 109 seek to prevent proxy decision makers acting, refusing to act or failing to act in ways that would in any case be utterly at odds with the general principles of the bill. The amendments are unnecessary, as the criminal law already prevents intentional harm and stops anyone from bringing about the death of another person; that would be murder. Acts that are criminal at present will remain so; the bill would not change that.

10:30

Indeed, we believe that these amendments would weaken current law, because they attempt to set out explicitly all the extreme actions that are to be prevented. The danger is that if an undesirable action does not occur to us while we are drafting the bill and it is missed out, the implication would be that it is permitted. Experience in the courts teaches us that it is impossible to legislate in such detail that all forbidden actions are covered explicitly. It is better to rely on the principled approach of the bill and on the common law. Full guidance on what is expected of proxy decision makers would be given in codes of practice, which can be updated readily in the light of practical experience. The combination of those two provides strong and comprehensive protection, which is what Mr Gallie seeks.

The Scottish Law Commission was clear in its 1995 "Report on Incapable Adults" that under the bill proxies would have fiduciary duties and owe a duty of care to the adult in common law. A person with a fiduciary duty to discharge is not allowed to enter into any engagement in which he or she has, or can have, a conflicting personal interest, whether actually or potentially, with the interests of the person to be protected. Thus, an attorney would be prevented by his or her fiduciary duty from performing any action that would result in financial gain for the attorney at the adult's expense.

The Scottish Law Commission was clear also that a duty of care for proxies already exists at common law and that it should not be spelled out in the bill. Although I was not present at the stage 1 meeting, I read the *Official Report* and that argument was reiterated convincingly, particularly by Professor Sheila McLean. She pointed out that it is not the practice to create statutory duties of care between individuals, because they would be impossible to set and enforce as a single standard of care.

It is unnecessary to do so in the bill, because the general principles in part 1 set out what is required. We have already undertaken to consider whether an intervention to which the general principle applies can be defined in both positive and negative terms; in other words, as an act and as a decision not to act. There was some discussion of that issue at stage 1, and we have agreed to look at it.

We believe that it is necessary to limit proxies' liability when they have acted reasonably, in good

faith and in accordance with the general principles. Indeed, section 73 does that, and will, I am sure, be discussed in more detail when we reach part 7.

The bill provides effective safeguards for anyone with an interest to challenge the activities of a proxy, if necessary, for the adult's benefit. For example, the courts could order a proxy to be supervised by the relevant statutory authority, or curtail or remove his or her powers.

I hope that the committee will agree that amendments 94, 105 and 109 are not needed and would not improve the bill as they seek sincerely to do. They are incomplete and could cast confusion on matters that are already dealt with appropriately by existing law.

I would like to take the opportunity to assure the committee about the general nature of section 15, which is referred to by amendments in this group. Section 15 is in the bill because we are concerned that potential attorneys should not be deterred from taking up office through the fear that their duties will be too onerous or burdensome. That issue was raised in an earlier debate this morning, but for different reasons.

We want to encourage people to consider granting powers of attorney in the event of their future incapacity. Such private and personal arrangements are the most likely way to ensure that granters' wishes are fulfilled satisfactorily in the event that they later lose the capacity to act for themselves. We are concerned that amendment 95 might be perceived as placing a considerable and unwelcome burden on welfare attorneys.

Section 15, to which amendment 95 refers, is not just about financial expense to the attorney. It refers also to actions that might be time consuming or personally difficult for the attorney to carry out. For example, the granter might give a power to the attorney that requires them to search for a particular form of residential care for the granter, which could involve the attorney travelling widely to identify a suitable care establishment. It would be reasonable, under section 15, for the attorney to restrict their searches to sources close to home that met the granter's general requirements. The Executive does not want a welfare attorney to be under a greater obligation to act than is a continuing attorney with financial powers. The test and the potential burden should be the same.

We believe that the amendment has been prompted by concerns that passive euthanasia might be allowed by part 5, particularly section 47. It might be construed that section 15 would justify not treating a patient with incapacity if doing so would be unduly burdensome or expensive. I wish to reassure the committee that Executive amendments to part 5, which are still to be lodged, will remove concerns about section 47. We have made it clear that it is not our intention to legalise passive euthanasia. I am happy to give that assurance again. However, we want to keep the general nature of section 15.

I know that there are fears that section 15 suggests that medical treatment could be withheld or withdrawn from an incapacitated patient if it were costly or difficult to organise, but the amendments that we have announced to part 5 should allay those concerns—particularly the changes that we seek to make to section 47, which deals with an attorney refusing treatment.

Section 15 deals with the obligation on the attorney, not with the expense or burden on statutory authorities. It does not imply that treatment would not take place because of the expense to a statutory authority, so the section could not justify withdrawal or withholding of treatment from an incapable patient when a proxy considered it should not be given on the ground of expense. Nor would a proxy ever be likely to be justified in refusing treatments simply because it would burden the proxy. I hope that that gives some reassurance to committee members who have concerns on this issue. Our legal advice is that the section would be interpreted as dealing with the events of ordinary life—shopping, transport, accommodation, hobbies and pastimes—and not with medical treatment.

I want to emphasise also the general principles in the bill that will govern the actions of welfare attorneys, particularly the requirement that everything that is done must benefit the adult. There will be safeguards. I repeat that we have undertaken to examine whether an intervention should be defined in the bill, and we will consider lodging an amendment at stage 3. I hope that that reassures Mr Gallie and the committee that amendment 95 is not necessary and should be withdrawn.

Amendment 117 seeks to add a statutory duty of care. I understand that it is meant to address the concern that proxy decision makers will have powers but not responsibilities. The amendment is well intentioned, but we consider it unnecessary and undesirable. The arguments about a statutory duty of care were well rehearsed in the evidence given at stage 1, and Professor McLean argued convincingly against a statutory duty. I note that paragraph 38 of the committee's report on stage 1 says that most committee members were convinced by her reasoning.

In its 1995 report, the Scottish Law Commission was clear that attorneys, guardians and others acting under the bill would already be held at common law to owe a duty of care to the adult. The bill would not have referred to breaches of this duty, as it does at section 73 on limitation of

liability, if the situation were otherwise.

At common law, attorneys must exercise due skill and care in performing the tasks they have been empowered to carry out. When the attorney is a professional person—we have had some light-hearted discussion about that this morning—they must demonstrate the skill and care that would be expected of a reasonably competent member of that profession. The bill does nothing to alter that. Those duties would apply equally to welfare attorneys, a new office, and others exercising similar duties under the bill, such as guardians.

The law does not generally place statutory duties of care on individuals, and it is difficult to see how such a duty could be based on anything other than good faith. When it is based on good faith, it is difficult to see how it could be tested or enforced in practice. We find it almost impossible to envisage evidence that could challenge the assertion that a decision was taken in good faith. It would be difficult to set a single standard for proxies, some of whom will be professional or statutory authorities, but some of whom will be private individuals, including relatives.

However their duties are expressed, proxy decision makers will be required to follow the general principles in the bill and their activities can be challenged by anyone with an interest. If necessary, for the adult's benefit, the courts could order a proxy to be supervised by a relevant statutory authority or curtail or remove his or her powers.

I hope that, with those assurances, Mr Gallie might be persuaded to withdraw his amendment.

The Convener: Several members have indicated a wish to speak.

Euan Robson (Roxburgh and Berwickshire) (LD): I accept what the minister is saying about death and harm. It is clear that that is covered by criminal law. I am not clear about the concept of financial gain. I have looked through part 1 and I cannot see where the general principle would cover the issue of financial gain. If someone is acting in a professional capacity, surely they are in some sense taking financial gain, because that is their employment. That is in contrast to people who act in a voluntary capacity, but who have an official status under the bill. If we incorporate something about financial gain, do we exclude professionals from acting in certain ways, but include individuals acting in a voluntary capacity? I am not clear what the minister was saying about this issue. Can he go back over that for me?

The Convener: If the minister will let us go round the other people who wish to speak, he can deal with any points that have been put to him.

Christine Grahame: I do not support Phil's amendment. I accept what the minister says. Having looked at the bill in total, and subject to amendments further down the line, I am satisfied that the general principles in section 1, the roles of various dramatis personae, if I may call them that—the sheriff, and the discretion that he has to recall and intervene at all stages; the public guardian; the safeguarder; local authorities—the guidelines and the general duty of care to act in good faith in the interests of the incapax, provide sufficient checks and balances. The amendment is not just superfluous; it would be damaging to the bill. There is sufficient flexibility in the roles of all those parties to act as checks and balances in the operation of the welfare attorney.

10:45

Gordon Jackson: The minister is right, and I do not support the amendments either. The idea that someone would say, "I am going to make money out of this" or "I am going to harm the person" is not tenable. Existing common law, plus the general principles of the bill, would stop that happening. Even if the amendments are not included in the bill, one sees that it is ridiculous to think that someone would say, because it is not prohibited, that they would harm the person. They could not do that.

The same applies to the general duty of care, which our law contains, and I agree with Sheila McLean that there is no point in making that duty statutory. I do not share the minister's view that there might be situations in which it could not be proved that somebody had breached the duty of care. I can imagine many ways of showing that. It is merely a matter of fact: if a person has breached the duty of care, that can be established, and if they have not, it cannot. I agree with Christine Grahame that the amendment causes confusion, as unnecessary parts of a bill tend to do. If it is not needed, leave it out.

Dr Simpson: Gordon has expressed much of what I wanted to say. However, paragraph (d) of the amendment, relating to medical treatment, is an area to which we will need to return under section 47, where it is more properly dealt with. I realise that there are sections that interlock with this, such as section 73, which relates to the limitation of liability. However, the feeling in the debates in the Health and Community Care Committee was that a duty of care should not be imposed. It was thought that that was not appropriate, but that other elements in the bill covered that duty. That has emerged also in today's debate.

Michael Matheson: The Executive plans to lodge amendments to part 5 of the bill, to deal with some of the concerns about the issues that that part seeks to address. Given the level of concern

that has been expressed, I would welcome an indication from the minister that the amendments to part 5 could be published early, so that detailed consideration can be given to them.

Iain Gray: The Executive will take Mr Matheson's point—its intention is to lodge the amendments as early as possible, which comes down to the practicalities of preparation of the amendments before lodging them. However, he makes an important point—there is interest in part 5, and we will endeavour to lodge the amendments early.

Mr Robson raised the question of the potential conflict between financial gain for a proxy and the interests of the adult. We believe that two elements give protection against that, the first of which is the general principle of the bill. That principle is that all actions must benefit the adult who has incapacity—that would apply to all proxies. The second element refers again to common law, in which there is a fiduciary duty that says that the proxy must not make financial gain at the adult's expense. Any person with such a duty cannot enter into an engagement in which he or she has a personal interest that conflicts with the interests of the person being protected. In a sense, those elements offer a double protection.

Mr Robson also raised the question of professional people having the role of proxy. Such people would be covered further by the codes of practice and legislation of their professions, whether legal, medical or whatever.

Phil Gallie: I am pretty well persuaded by the general view of the committee; perhaps the minister's words give the assurances that are sought. As he suggested, we covered some of the comments that he made in our debate on interventions, which encompassed both positive and negative aspects. At that time, we accepted assurances that, in defining intervention, both sides of the argument would be considered.

My point concerns amendment 95. The intention is to ensure that if a welfare attorney felt that it would be in the interests of an individual's welfare to incur expenditure, they could do so. Such expenditure might not necessarily be for a medical need—it could be for an electric wheelchair or an electronic hearing aid. The welfare attorney could ensure that funds were made available to provide such equipment.

The Convener: Is that a question that you would like the minister to address?

Phil Gallie: Yes.

The Convener: Is the minister in a position to respond?

Iain Gray: Such expenditure would not be prevented, according to our understanding and interpretation of that part of the bill.

Phil Gallie: Do you think that they would not be prevented—

Iain Gray: Such actions would be in the adult's best interests, which would not be unreasonable.

Phil Gallie: I think that the minister is taking further advice.

Iain Gray: Having two brains is quite helpful, because I can stall, but still give the answer.

Such expenditure would be incidental, so it would be considered reasonable. It would be possible to provide the support that Phil suggests.

Phil Gallie: Sometimes people say that they wish I had one brain, never mind two, but that is another issue.

Iain Gray: That is not something that we would want to endorse. [*Laughter.*]

The Convener: Phil, you must make a decision on amendment 94.

Phil Gallie: I wish to withdraw the amendment.

Amendment, by agreement, withdrawn.

Section 14, as amended, agreed to.

Section 15—Attorney not obliged to act in certain circumstances

Amendment 95 not moved.

The Convener: That completes the debate on amendments to section 15.

Dr Simpson: Taking into account the consideration of section 15 and what the minister has said, I would like to mention to him the possibility of lodging amendments to that section as early as possible.

Iain Gray: I take Dr Simpson's point.

The Convener: The point is taken on board.

Section 15 agreed to.

Section 16—Power of attorney not granted in accordance with this Act

The Convener: There is only one amendment to section 16, which is an Executive amendment that has already been debated with amendment 124.

Iain Gray: I move amendment 16.

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members *indicated disagreement.*

The Convener: I heard a dissenting voice—we require a division.

For

Scott Barrie (Dunfermline West) (Lab)
Roseanna Cunningham (Perth) (SNP)
Phil Gallie (South of Scotland) (Con)
Gordon Jackson (Glasgow Govan) (Lab)
Mrs Lyndsay McIntosh (Central Scotland) (Con)
Kate MacLean (Dundee West) (Lab)
Maureen Macmillan (Highlands and Islands) (Lab)
Michael Matheson (Central Scotland) (SNP)
Euan Robson (Roxburgh and Berwickshire) (LD)

Against

Christine Grahame (South of Scotland) (SNP)

The Convener: The result of the division is: For 9, Against 1, Abstentions 0.

Amendment 16 agreed to.

Section 16, as amended, agreed to.

The Convener: It would be appropriate to have a break, before we move on to amendment 17, which is an Executive amendment.

10:54

Meeting adjourned.

11:13

On resuming—

Section 17—Registration of continuing or welfare power of attorney

The Convener: Amendment 17, which is an Executive amendment, is grouped with amendments 29, 55 and 81, also Executive amendments.

Angus MacKay: These are all technical amendments that were suggested by the Subordinate Legislation Committee at stage 1. Apart from a few exceptions, the bill refers to details that are to be entered in the registers that are maintained by the public guardian as prescribed particulars. The details of the information that is to be entered in the registers may be set out in regulations to be made by ministers under section 5 of the bill. Amendment 17 makes the bill consistent in always referring to details for the public guardian's register as prescribed particulars.

I move amendment 17.

The Convener: I reiterate, for members who were a little late in returning, that this group of amendments arose out of recommendations from the Subordinate Legislation Committee. They are technical amendments.

Amendment 17 agreed to.

Angus MacKay: Amendment 18 is also a technical amendment, which removes unnecessary detail concerning the way in which the public guardian is to send through the post copies of powers of attorney that he or she has registered. The Executive appreciates that powers of attorney are important documents, and that it is vital to inform the granter when they are registered, as well as other people whom the granter wants to be notified. Nevertheless, section 17(6), which this amendment seeks to remove, contains details about the requirements for posting such information that are superfluous in comparison to the rest of the bill. The Executive considers that such matters can and should be left to the public guardian's own administrative arrangements.

I move amendment 18.

Amendment 18 agreed to.

Section 17, as amended, agreed to.

Section 18—Powers of the sheriff

11:15

The Convener: Amendment 19 is an Executive amendment that has already been debated with amendment 124.

Angus MacKay: I move amendment 19.

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scott Barrie (Dunfermline West) (Lab)
Roseanna Cunningham (Perth) (SNP)
Phil Gallie (South of Scotland) (Con)
Gordon Jackson (Glasgow Govan) (Lab)
Mrs Lyndsay McIntosh (Central Scotland) (Con)
Kate MacLean (Dundee West) (Lab)
Maureen Macmillan (Highlands and Islands) (Lab)
Michael Matheson (Central Scotland) (SNP)
Euan Robson (Roxburgh and Berwickshire) (LD)

AGAINST

Christine Grahame (South of Scotland) (SNP)

The Convener: The result of the division is: For 9, Against 1, Abstentions 0.

Amendment 19 agreed to.

The Convener: Amendment 141, in the name of Phil Gallie, has already been debated with amendment 89.

Amendment 141 not moved.

The Convener: Amendment 96, in the name of Phil Gallie, has been grouped with amendment 20, which is an Executive amendment.

Phil Gallie: Amendment 96 is a probing amendment that seeks to find out precisely what the sheriff has in mind when he grants powers of

attorney. Section 18 provides a wide range of powers to the sheriff, in relation to powers of attorney. The sheriff may make a number of orders to safeguard or promote the interests of the granter. This amendment provides that the range of orders includes the scope of actions that may be undertaken under the power of attorney.

There is an element of discretion, as far as the sheriff is concerned, which might include areas of exclusion. I recognise that we have had a fair degree of debate already on negativity aspects and common law.

I move amendment 96.

The Convener: I invite the minister to respond to that and to speak to amendment 20.

Angus MacKay: Executive amendment 20 has been introduced for consistency. It tries to ensure that certain sheriffs' decisions concerning the supervision of continuing attorneys will be final, as is the case in similar decisions concerning welfare attorneys. Unless the power of attorney is being revoked, wholly or in part, decisions of the sheriff will be final. That should prevent disruption to an adult's affairs over relatively minor matters.

Amendment 96 could be read in two different ways. If it is intended simply to clarify that the court has power to consider and determine the scope of a power of attorney, the amendment is unnecessary. The general policy in the bill, in relation to attorneys, is that the common law position would stand—as it does, for example, on events that end a power, such as the bankruptcy of an attorney with financial powers. That common law would always be open, permitting someone to ask a court, in a dispute arising on construction, to confirm that an attorney is acting within or outside his or her powers.

As our policy is not to restate the common law in the bill, as was discussed earlier, we consider that the amendment would be unnecessary on that basis. However, if the amendment is intended to give the courts new powers of interpretation, which could result in the courts looking behind the terms of the power, we would strongly oppose it on policy grounds.

Phil Gallie: Could the minister repeat that, please?

Angus MacKay: If the amendment is intended to give the courts new powers of interpretation, which could result in the courts looking behind the terms of the power, we would oppose it on policy grounds. I shall proceed to describe what we mean by that.

At common law, a power of attorney that is expressed in writing will be the measure of the rights of the parties. If powers are expressed narrowly, for limited purposes, that will be the limit of the power. It would not be open to the courts to add to those powers and imply more than a period on the face of the document—for example, by hearing evidence of the granter's intention. We are not changing the common law position in the bill. Further, at common law, special powers need to be given to an attorney if it is intended that he or she is to carry out transactions such as the sale of property or the borrowing of money, or engage in professional services. It is not our intention to interfere with that common law provision.

At common law, if an express power did not cover a specific issue, that would not be implied by the court. Our legal advice is that the court would take the view that the issue was not included in the scope of the power. Our view is that, unless the power of attorney clearly confers a power, the attorney should not be able to exercise it. If they require additional powers, they must use another measure under the bill, such as an application for guardianship. Solicitors who draw up powers of attorney will be aware of the common law on powers of attorney. They should ensure that powers are drafted sufficiently clearly and that the granter understands the extent of the powers that they are conferring on their future attorney.

Section 18(2)(e) has a sweeping power for the sheriff to revoke any of an attorney's powers, or their appointment. That is slightly different from attempting to interpret what was in the granter's mind when they conferred powers on their attorney. The point of revoking an attorney's powers is to free the way for other measures to be taken to look after the particular affairs of the adult concerned when an attorney fails to carry out their duties properly or the terms of the grant make the power unworkable in practice.

We hope that the committee agrees that it would not be right to extend the powers of the courts, as this amendment proposes. It is important to respect the wishes of the granter of a power of attorney whenever that is consistent with the granter's interests. The philosophy behind the bill is that, if a power of attorney cannot safely stand, another statutory measure should be substituted if it is necessary to protect the granter. I hope that Mr Gallie will decide not to press his amendment.

Phil Gallie: Once again, I am getting the message about common law. It was not my intention to increase the powers of the courts to the degree that the minister suggests, and I have no hesitation in withdrawing the amendment.

Amendment, by agreement, withdrawn.

Amendment 20 moved—[Angus Mackay]—and agreed to.

Section 18, as amended, agreed to.

Section 19—Records

The Convener: Amendment 97, in the name of Phil Gallie, is grouped with amendments 49 and 66, which are both Executive amendments.

Phil Gallie: I record amendment 97 as a probing amendment only. I have some concerns about overburdening welfare attorneys. I believe that a simplification process is necessary throughout this bill, in spite of some of the amendments that I have tabled. This amendment attempts to define certain powers and actions that are placed on the attorney, on which I seek the minister's views.

I move amendment 97.

Angus MacKay: Executive amendments 49 and 66 are designed to provide an additional safeguard and achieve consistency in the bill's provisions, regarding the requirement for various proxy decision makers to keep records. At present, the bill contains provisions requiring record keeping by attorneys and managers of care establishments and the submission of accounts by financial guardians. However, there is no general requirement for record keeping by interveners and guardians. These amendments rectify that omission and ensure a consistent approach.

Amendment 97, in the name of Phil Gallie, seems to be designed to include in the bill details of the kind of records that continuing or welfare attorneys should keep. However, the approach of the bill is to be as general as possible in its primary provisions and to leave the details to regulations and codes of practice, on both of which matters there will be further extensive consultation. That will allow for more flexibility, as regulations and codes of practice can be amended and updated more easily than primary provisions in legislation. I hope that members of the committee accept that that general approach is better.

There are further problems with this probing amendment. We are particularly concerned that record keeping should not be perceived as too burdensome by individuals who otherwise might be happy to be appointed as a continuing or welfare attorney. The amendment imposes strict and detailed requirements on an attorney. For example, a welfare attorney would have to record everything done for the granter. Would that cover issues such as keeping a note of every telephone call? Would simple routine care, such as taking the adult to a hairdresser or chiropodist, or ordering their meal in a restaurant, require to be recorded? We do not think that such requirements are intended by the probing amendment, but they could be implied by it.

In addition, as particular types of record are not specified in the amendment, the effect would be that they are not required. However, codes of practice will make it clear that the detail required in an attorney's records will be commensurate with the simplicity—or complexity—of the adult's affairs. Should there be a legal challenge to an attorney's actions, codes could be used as evidence of the sort of records that the attorney should have been keeping. There will be public consultation on draft codes after the bill becomes law. The codes will also be laid before the Parliament and will be revised, if need be, in the light of practical experience and comments made about how they should operate in practice.

Phil Gallie: I take some succour from the minister's comments on the codes of practice, which is the issue that I really wanted to address. Given that the minister has determined that there will be a code of practice to take us down that line, my aims in lodging this amendment are fulfilled to a degree.

The minister commented on overburdening the welfare attorneys. In our last debate, I did not comment on amendment 20, in the name of the Executive, but I was concerned about the issue of accounts. I could see that the accounts that are referred to in section 18(2)(b) could become too burdensome, in that the individuals would have to address issues such as hairdresser costs, taxis and so on. Perhaps at a later date the minister could revisit those issues when he is considering amendment 20 and its reference to section 18(2)(b).

The Convener: Do you wish to respond, minister?

Angus MacKay: We think that we have struck a prudent balance. We will look to the codes of practice and guidelines to give clear definitions of what constitutes a reasonable—or unreasonable—burden to place upon attorneys.

Amendment, by agreement, withdrawn.

Section 19 agreed to.

Section 20—Notification of change of address etc.

The Convener: Amendment 21 is in the name of the Executive and is grouped with amendments 142 and 143, also in the name of the Executive, and amendment 98, in the name of Phil Gallie.

Angus MacKay: Should I speak to all the amendments?

The Convener: You should speak to all the Executive's amendments.

Angus MacKay: Amendment 21 requires continuing and welfare attorneys to tell the public guardian of events that have the effect of bringing their power of attorney to an end. For example, if their marriage to the granter ends through

separation or divorce, or if the granter of a continuing power or the continuing attorney becomes bankrupt. That should ensure that the public guardian's registers are up to date and provide accurate public information about continuing and welfare attorneys who are empowered to act.

Amendment 142 will have the effect of making section 20, which deals with registering changes to do with continuing and welfare powers of attorney, consistent with provisions elsewhere in the bill. It will be for the public guardian to notify the adult and the relevant statutory authorities of such changes, which should help the authorities concerned to carry out properly their protective functions towards people who grant a continuing or welfare power of attorney.

Amendment 143 requires the executors of an attorney who dies to notify the public guardian. It is only the attorney personally who may act for the granter—not anyone connected with the attorney after he or she dies.

Should I address Mr Gallie's amendment?

The Convener: Yes.

Angus MacKay: Amendment 98, in the name of Phil Gallie, appears to be designed to achieve the same effect as amendment 143. However, the Executive considers that our amendment is the stronger of the two, particularly as it clarifies that the public guardian should amend his or her registers when he or she learns of the attorney's death and inform everyone who needs to know.

I move amendment 21.

11:30

Phil Gallie: I felt that amendment 98 was essential, as I could not see where in the bill a situation where an attorney dies is covered. The minister suggests that the bill will cover that situation. If that is the case, I am well satisfied.

I might have been a bit slow picking up the minister's words. With the convener's blessing, could he repeat the precise way in which that situation is covered?

The Convener: I will bring in Christine first.

Christine Grahame: My thinking may be blurred, but the Executive's amendment 21, which inserts

"; or

(d) of any other event which results in the termination of the power of attorney,"

into section 20 does not sit well with the Executive's next amendment, which deals with the death of the attorney and the obligations on the executor. The Executive may want to tidy that up, because

"any other event which results in the termination of the power of attorney"

could be the attorney's death.

At present, section 20 reads:

"the attorney shall notify the Public Guardian—

(a) of any change in his address;

(b) of any change in the address of the granter of the power of attorney; or

(c) of the death of the granter of the power of attorney,"

and, if the Executive's amendment is agreed:

"; or

(d) of any other event which results in the termination of the power of attorney,".

However, the attorney cannot notify the public guardian of an event under the proposed paragraph (d) because that event might be his death—[*Interruption.*]

Angus MacKay: Sorry, convener. I am trying to clarify two separate points that have been raised.

Christine Grahame: Do you want me to go through my point again, or are you with me?

Angus MacKay: I will clarify the point that Phil Gallie raised and then we can revisit your point.

The bill does not address Mr Gallie's point, but amendment 143, if accepted, amends the bill so that his point will be addressed.

Returning to the point that Christine Grahame raised—

Phil Gallie: So, amendment 143 is in the next group—

The Convener: No, it is in this group. It is directly above amendment 98.

Phil Gallie: Okay—sorry.

The Convener: Minister, will you respond to Christine Grahame's point?

Angus MacKay: I am not clear about her question.

Christine Grahame: Amendment 21, in the name of the Executive, is a catch-all amendment. The bill as drafted puts obligations on the attorney to notify the public guardian of circumstances outlined in section 20(a), (b) and (c). A new obligation is outlined in the Executive's new paragraph (d). However,

"termination of the power of attorney"

could include the death of the attorney. In my view, the wording is untidy, as the section would impose obligations on an attorney that might follow his or her death.

Perhaps the section should be rejigged and a new section 20(e) introduced, which could say, "and any other event not above mentioned which results in the termination of the power of attorney".

Do you see my point?

Angus MacKay: If the attorney dies, he would not be covered by amendment 21. That situation would be covered under amendment 143.

Christine Grahame: The drafting is not neat, as

"any other event which results in the termination of the power of attorney"

includes the attorney's death. I think that the Executive should tidy that up.

The Convener: Christine, are you saying that, if the Executive's amendments are carried, the drafting of this section means that the attorney would be the person charged with the responsibility of reporting his own death?

Christine Grahame: Yes, it could mean that. It is untidy.

The Convener: The point that Christine is trying to make is that the way in which this section is drafted would apparently impose on an attorney the responsibility of reporting his own death. [*Laughter.*] That appears to be Christine's point.

Christine Grahame: I thought I had made it clear.

Angus MacKay: It may be helpful that I have now received guidance from the two brains.

The Convener: I am just trying to clarify the point that is being made. I am not associating myself with it, nor am I saying that I am against it.

Angus MacKay: As I understand it—although as the debate proceeds I am less convinced that I do understand it—amendment 21 refers to the attorney notifying the public guardian. A situation in which the attorney has died is covered by amendment 143, which requires notification by the attorney's executors.

Dr Simpson: All that Christine is suggesting is that the order of subsection (d) and the new unnumbered subsection should be reversed. In the natural progression, "any other event" should come last. If the death of the attorney has been dealt with first, that is logical.

The Convener: Minister, you may wish to recruit Richard Simpson and Christine Grahame to the drafting team. [*Laughter.*] Do you wish to comment?

Angus MacKay: We will consider the issue that has been raised and bring forward something to deal with it.

The Convener: We are all vastly relieved. With that assurance, I will move on and put the questions.

Amendment 21 agreed to.

Amendments 142 and 143 moved—[Angus MacKay]—and agreed to.

Amendment 98 not moved.

Section 20, as amended, agreed to.

Section 21 agreed to.

Section 22—Termination of continuing or welfare power of attorney

The Convener: Amendment 22 is an Executive amendment and is grouped with amendments 45, 69, 70, 71 and 114, which are all in the name of the Executive.

Angus MacKay: These amendments all add to the bill protection for third parties dealing with an attorney or guardian with powers over heritable property, where there is a problem with the powers granted. If a third party buys property in good faith in those circumstances, they will not have their title to the property challenged. There is similar protection in existing Scottish legislation on trusts and bankruptcy, and we are bringing the bill into line with that. Specifically in relation to attorneys, a third party would be protected only if they bought the adult's property from an attorney not knowing that the attorney's marriage to the granter had ended or that the attorney had been superseded by the appointment of a guardian by the courts.

There are practical reasons for introducing this third-party protection into the bill. If the third party bought the adult's house from an attorney who did not have the power to sell it, because those powers had passed to a guardian, but the proceeds were used to pay for the adult's residential care, it would not be desirable to consider undoing the whole transaction.

The adult with incapacity is protected in a number of separate ways that are not affected by the introduction of this third-party protection into the bill. Executive amendment 148 would require an attorney who misuses an adult's funds to repay those funds with interest. Despite the new form of protection for third parties, at common law the adult would be able to sue an attorney who dealt with their property outwith the attorney's authority or in breach of the attorney's duties to the adult. In those circumstances, it is right that the attorney should bear the responsibility for their wrong action, rather than a third party who has dealt with the attorney in good faith.

I move amendment 22.

Gordon Jackson: This is not a technical amendment. It is quite important that third parties

in the situation that the minister has described should be protected. The amendment is very welcome.

Amendment 22 agreed to.

Section 22, as amended, agreed to.

Section 23—Determination of applicable law

Amendment 23 moved—[Angus MacKay]—and agreed to.

The Convener: We now come to Executive amendment 24, which is grouped with Executive amendment 25.

Angus MacKay: Amendments 24 and 25 are technical amendments. They replace the reference to the adults' movable or immovable property—terms that were used in the Scottish Law Commission's draft bill—with the more up-to-date terminology of property and financial affairs, which is used throughout the bill.

I move amendment 24.

Amendment 24 agreed to.

Amendment 25 moved—[Angus MacKay]—and agreed to.

Section 23, as amended, agreed to.

Section 24—Authority to intromit with funds

Angus MacKay: I move amendment 26.

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

Members: No.

The Convener: There will be a division.

FOR

Scott Barrie (Dunfermline West) (Lab)
Roseanna Cunningham (Perth) (SNP)
Phil Gallie (South of Scotland) (Con)
Gordon Jackson (Glasgow Govan) (Lab)
Mrs Lyndsay McIntosh (Central Scotland) (Con)
Kate MacLean (Dundee West) (Lab)
Maureen Macmillan (Highlands and Islands) (Lab)
Michael Matheson (Central Scotland) (SNP)
Euan Robson (Roxburgh and Berwickshire) (LD)

AGAINST

Christine Grahame (South of Scotland) (SNP)

The Convener: The result of the division is: For 9, Against 1, Abstentions 0.

Amendment 26 agreed to.

Section 24, as amended, agreed to.

Section 25—Application for authority to intromit

Angus MacKay: I move amendment 27.

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

Members: No.

The Convener: There will be a division.

FOR

Scott Barrie (Dunfermline West) (Lab)
Roseanna Cunningham (Perth) (SNP)
Phil Gallie (South of Scotland) (Con)
Gordon Jackson (Glasgow Govan) (Lab)
Mrs Lyndsay McIntosh (Central Scotland) (Con)
Kate MacLean (Dundee West) (Lab)
Maureen Macmillan (Highlands and Islands) (Lab)
Michael Matheson (Central Scotland) (SNP)
Euan Robson (Roxburgh and Berwickshire) (LD)

AGAINST

Christine Grahame (South of Scotland) (SNP)

The Convener: The result of the division is: For 9, Against 1, Abstentions 0.

Amendment 27 agreed to.

The Convener: We now move on to Executive amendment 28, which is grouped with amendments 30, 31, 99, 32, 35, 36 and 38, variously in the name of the Executive and Phil Gallie.

Angus MacKay: Most of the amendments are technical amendments to part 3, and are mainly intended to ensure that the designated account process in the withdrawal of funds scheme works properly. However, I would like to draw attention to amendments 32 and 99, both of which set out to clarify that withdrawers under the access to funds scheme may be authorised to use the adult's resources to meet care costs such as home help charges. That provision is intended to cover the costs of the adult's care, including respite care or domiciliary services such as those provided by home helps.

It has been said that it is not entirely clear what this provision is meant to cover. We think that amendment 32 is preferable to amendment 99 because it is fuller and more likely to help those using the bill to understand what is intended. I hope that Mr Gallie will be persuaded to withdraw his amendment.

I move amendment 28.

Phil Gallie: I understand what the minister is saying. My concern was that the definition of "looking after" was not precise. That concern may seem pedantic, but it is fundamental to the bill, which is all about taking care of adults.

Christine Grahame: I agree with Phil Gallie. "Looking after" is a loose term, which does not reflect the language that is used elsewhere in the legislation. What does that term mean? I could say that I was looking after my cat or dog. The term is too imprecise, and I agree that it should be deleted.

Angus MacKay: Executive amendment 32 retains the words "looking after" and adds the words "or caring for", whereas Mr Gallie's amendment substitutes "taking care of" for "looking after". Therefore, we feel that our amendment is slightly fuller.

Phil Gallie: The purpose of my amendment was to register that the bill is about caring for adults. As the minister has gone at least halfway to meeting my concern, it would be ungracious of me not to accept what he says.

Amendment 28 agreed to.

Amendments 29 to 31 moved—[Angus MacKay]—and agreed to.

Section 25, as amended, agreed to.

Section 26 agreed to.

Section 27—Purposes of intromissions with funds

11:45

The Convener: I invite Phil Gallie to move the amendment in his name, which we have already debated with amendment 28.

Phil Gallie: Given the minister's assurances—his pledge—I will not move the amendment.

Amendment 99 not moved.

Amendment 32 moved—[Angus MacKay]—and agreed to.

Section 27, as amended, agreed to.

Section 28—Withdrawal and use of funds

The Convener: I invite the minister to move Executive amendment 33, which is grouped with Executive amendments 34, 144 and 148.

Angus MacKay: I have a slightly lengthy contribution to make on this group, but I will whistle through it as quickly as possible.

Amendment 33 corrects an error in the bill and restores the position to that in the Scottish Law Commission's draft bill. The amendment ensures that, under the access to funds scheme, the public guardian's certificate of authority allows, but does not require, the fundholder to release the adult's funds. The amendment is necessary because the access to funds scheme is a permissive, not a mandatory, scheme as far as fundholders and the account holder are concerned.

The authority to release the adult's funds is required to enable fundholders to act contrary to the normal contractual arrangements that they have with customers, which require the account holder to have legal capacity to operate their account.

The Executive has been clear about the basis of the part 3 scheme in all public policy statements. The scheme is intended to help fundholders to offer a service that they want to give to existing customers or clients who are unfortunate enough to lose the capacity to manage their funds. Although the fundholder does not have to agree to an arrangement under part 3, once they do so, safeguards will be put in place to protect the adult's funds.

The scheme and the surrounding safeguards have been discussed thoroughly with bodies representing banks and building societies in Scotland and the details have been agreed. The amendment is needed to ensure that the scheme conforms to those fundholders' requirements.

The amendment is also necessary because there could be a pre-existing authority over the adult's account, such as a foreign power of attorney—which would take precedence over the part 3 authority—of which the public guardian may not be aware. There may also be statutory impediments on the designated account, known to the fundholder, which rightly should prevent any transfer of funds from the adult to the designated account.

In normal circumstances, the public guardian's certificate would be sufficient to secure the transfer of the adult's funds to the designated account, as the part 3 scheme envisages. That will solve the real problem faced by many partners and carers who find that their accounts are frozen and that they are unable to get access to funds that are needed for everyday living expenses. Joint accounts are dealt with separately under section 31 of the bill.

Amendment 34 corrects an error in the bill. Section 28(2) deals with the liability of the fundholder of the adult's account where funds have been transferred wrongly from that account. The fundholder is liable to the adult for such funds, but can claim relief from the withdrawer, who will have received the funds. As currently worded, the reference in line 12 is to the fundholder of the designated account—that is, the withdrawer's account—not to the fundholder of the adult's account. The amendment corrects that. Section 28(2) does not make sense without the amendment.

Amendments 144 and 148 ensure a consistent approach in the bill to require that, where an adult's funds are misused, they shall be repaid with interest at a standard rate. At the moment, the bill makes this provision apply only to withdrawers under the part 3 scheme for access to an adult's funds and, to some extent, to managers of care establishments who are looking after residents' funds under part 4.

Amendment 148 brings together in one new section requirements for all those acting under the bill to repay, with interest, to the adult funds that they have misused. Amendment 144 simply removes the corresponding provision from part 3 where it is no longer required as a result of the new section.

The Executive will also shortly lodge an amendment to part 4—similar to amendment 144—for discussion by the committee when part 4 of the bill is reached.

I move amendment 33.

Christine Grahame: I would like to hear the minister's response to a point that was raised by the Law Society. The society has indicated that it is opposed to the amendment on the ground that it makes compliance with the scheme by banks and other fundholders voluntary rather than mandatory, thus failing to remedy the very problem that the legislation seeks to address. Can the minister tell us where the Law Society is wrong? What is the point of an order of the court—with, as I understand it, a certificate—that does not have mandatory authority attached to it?

Angus MacKay: We are dealing with what would happen if the fundholder, apparently unreasonably, refused to act on the public guardian's certificate of authority in relation to a transfer of funds. The Executive has considered both that issue and whether it would be possible to provide for some form of review mechanism in such an event.

However, any such arrangement would negate the purpose of the access to funds scheme. That scheme is supposed to be quick, straightforward and of low cost. It is also supposed to be based on the agreement of both the public guardian and the fundholder to the transfer of funds. It is not intended that there should be a statutory review of a fundholder's decision. We think that, if such a reviewable issue arose, it would no longer be appropriate for that to be covered by part 3 of the bill. Instead, a person should seek an intervention order or guardianship order, which would enable that person to step into the shoes of the adult and deal with the account on their behalf.

Issues would take time to resolve, and it would continue to be difficult to manage the adult's day-to-day financial affairs in the meantime. The Executive therefore considers that, if the fundholder does not act on the public guardian's certificate, it would be preferable for the part 3 application to fall altogether, and for an intervention order, guardianship order or another measure under the bill to be sought to deal with the adult's financial affairs. However, as has been stated, we do not think that the part 3 scheme should be made mandatory.

Amendment 33 agreed to.

Amendments 34 and 144 moved—[Angus MacKay]—and agreed to.

Section 28, as amended, agreed to.

Section 29 agreed to.

Section 30—Duration and termination of registration

Amendments 35 and 36 moved—[Angus MacKay]—and agreed to.

Section 30, as amended, agreed to.

Section 31—Joint accounts

Angus MacKay: I move amendment 37.

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scott Barrie (Dunfermline West) (Lab)
Roseanna Cunningham (Perth) (SNP)
Phil Gallie (South of Scotland) (Con)
Gordon Jackson (Glasgow Govan) (Lab)
Mrs Lyndsay McIntosh (Central Scotland) (Con)
Kate MacLean (Dundee West) (Lab)
Maureen Macmillan (Highlands and Islands) (Lab)
Michael Matheson (Central Scotland) (SNP)
Euan Robson (Roxburgh and Berwickshire) (LD)

AGAINST

Christine Grahame (South of Scotland) (SNP)

The Convener: The result is: For 9, Against 1, Abstentions 0.

Amendment 37 agreed to.

Section 31, as amended, agreed to.

Section 32—Transfer of funds

Amendment 38 moved—[Angus MacKay]—and agreed to.

Section 32, as amended, agreed to.

Section 33 agreed to.

The Convener: That concludes our consideration of part 3 of the bill. It is clear that we miscalculated the time required. I thank all members for attending. The meeting will not now have to go on into the afternoon, which I am sure will be a great relief to everybody, including the Executive team and the ministers.

If there are more Executive amendments, particularly to the more controversial parts of the bill, the committee would be grateful if we could see them as soon as is humanly possible, to allow maximum time for discussion.

Euan Robson: When will the bill be reprinted to show us what the amended sections will look like?

The Convener: We do not expect an amended bill to be published until we have completed stage 2 and the bill goes back to the chamber for debate. I know that one or two members are of the view that there should be a running amended bill, but that puts quite a burden on the clerks and the civil servants. If such a bill was feasible, I dare say that some members would like to have it, but members have an individual responsibility to keep track of amendments.

Christine Grahame: I am the one who has raised that point; I have been lobbying ruthlessly for the bill to be updated as we go along. I accept that the clerks have a huge burden of work, but I wonder, convener, whether you could approach whatever committee deals with such matters to see whether this committee's staff could be increased. That would be in everybody's interest, as it will be increasingly difficult to see where we are with the bill.

I would like to know which committee members will be stapling the amendments into their draft copies as they go along. I doubt whether anyone will manage to do that and whether the bill would be readable afterwards. What I am asking for should not be impossible. Adjustments in sheriff court pleadings are added to the original documents in a different colour. A working paper would assist everybody.

The Convener: I would not want anyone to suggest that members of the Scottish Parliament were any less capable than members of the Westminster Parliament, who are supposed to keep their own running total.

Kate MacLean (Dundee West) (Lab): Anyone can refer back to the *Official Report* to check amendments. I feel that we have enough paper dealing with future business without adding further paper dealing with what we have already covered.

The Convener: The issue has been raised. We will take it on board and consider whether the practicalities allow for the request to be granted. In the meantime, it is a member's responsibility to keep track of amendments.

Future Business

The Convener: On 8 February, the next Tuesday for which a double meeting is planned, we may use the afternoon session to deal with non-bill matters such as the Carbeth hutters, prisons and domestic violence, the last of which will need to be addressed in some detail in the light of recent ministerial statements. We will give ministers early notice if we decide to do that.

The committee is coming under enormous pressure to meet outwith Edinburgh on Mondays. That poses some difficulties. There is pressure on Parliament to take up the slots that are available. As I discussed with the members who would be most affected, I made a tentative offer on behalf of the committee to move the afternoon session from Tuesday 8 February to Monday 7 February and to meet in Stirling. That arrangement has fallen through because of logistical problems that have nothing to do with us.

I have provisionally suggested that we meet in Glasgow on the afternoon of Monday 6 March, which would mean that, instead of our having an all-day meeting the following day, only the arrangements for Tuesday morning would stand. We are under enormous pressure to meet outside Edinburgh—it is unreasonable that we should be the only committee that does not do so.

I have considered the possible venues—Glasgow is easier than Edinburgh for more than half the members of the committee. Of the members who are not as assisted by Glasgow, the city is a neutral venue, in terms of travel time, for at least two or three. There are only one or two members for whom Glasgow imposes a greater burden in terms of travel. I ask those members to remember that some members of the committee have to bear that greater burden as a matter of course.

12:00

Kate MacLean: As I come from Dundee, it makes virtually no difference, in terms of the travelling involved, whether I go to Edinburgh or to Glasgow. If we meet outwith Edinburgh, there has to be some added value to it. The principle behind the consultative steering group's recommendation that committees meet elsewhere was to involve people in the democratic process. I do not see the added value, in terms of that principle, in meeting outwith Edinburgh if, when we do so, there are few people in the press and public galleries. I make a plea that, if we meet on a Monday, we try to ensure that committee meetings do not clash with meetings of the Equal Opportunities Committee. We discussed the problems—

The Convener: Monday meetings would help you, in that respect.

Kate MacLean: They would, as long as the Equal Opportunities Committee was meeting on a Tuesday.

The Convener: That is a slightly more difficult matter. Monday 6 March would allow you to attend an Equal Opportunities Committee meeting on 7 March—is that right?

Kate MacLean: I do not know, off hand.

The Convener: If we agree to meet on Monday 6 March in Glasgow, the meeting would be for non-legislative matters. We would not ask the whole ministerial team and the Executive to traipse across the country, for precisely the reason that Kate mentions—there would be little added value in doing so. We would be discussing non-bill matters, which in our case I would expect to be equally applicable wherever we were meeting.

I repeat that there is a great deal of pressure on every committee of the Parliament to meet outside Edinburgh, not necessarily frequently, but at least on some kind of regular basis. It was not intended that we should make a special plea to go to a special area; the point was that, in effect, the whole of Scotland would have ownership of the committees and the Parliament. At the moment, the meeting in Glasgow on 6 March is only a proposal; if we were to go, that would have to be agreed by the conveners group and the bureau. It is not yet set in stone. I ask you at least to note that it is possible that we will meet in Glasgow on the afternoon of Monday 6 March.

We will be dealing with non-bill matters, which means that we are unlikely to be having votes all through the day. If some committee members felt that they could not make that meeting, no votes would be affected. We would put that proviso on such a meeting.

As with the meeting last week, the business bulletin will indicate the progress that we expect to make next week and the point in the bill beyond which we will commit ourselves not to go. Members should keep an eye on the business bulletin.

Phil Gallie: In Westminster, we moved the Scottish Grand Committee and the select committees around Scotland—when we went to some of the medium-sized towns in particular, a significant level of interest was engendered. At that point, we were used to capacity audiences. I would like to think that a visit to Glasgow might bring about that level of interest.

Scott Barrie: A quick question—is it Tuesday and Wednesday next week?

The Convener: We are meeting on Tuesday morning and Wednesday morning next week.

With that—and rather earlier than we had expected—I draw this meeting to a close. Thank you for your forbearance.

Meeting closed at 12:04.

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