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Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 21 January 2014

Session 4

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HEALTH AND SPORT COMMITTEE
2nd Meeting 2014, Session 4

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Rhoda Grant (Highlands and Islands) (Lab)
*Colin Keir (Edinburgh Western) (SNP)
*Richard Lyle (Central Scotland) (SNP)
*Aileen McLeod (South Scotland) (SNP)
*Nanette Milne (North East Scotland) (Con)
*Gil Paterson (Clydebank and Milngavie) (SNP)
Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab) (Committee Substitute)
Alex Neil (Cabinet Secretary for Health and Wellbeing)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 1

Scottish Parliament

Health and Sport Committee

Tuesday 21 January 2014

[The Convener *opened the meeting at 09:45*]

Public Bodies (Joint Working) (Scotland) Bill: Stage 2

The Convener (Duncan McNeil): Good morning and welcome to the second meeting in 2014 of the Health and Sport Committee. As usual at this point, I ask everyone in the room to switch off mobile phones and other wireless devices, as they can interfere with the meeting and the sound system. I should point out that some members and officials are using tablet devices instead of hard copies of their papers.

I have apologies from Dr Richard Simpson. Malcolm Chisholm has joined us once again as the Labour substitute.

There is only one item on the agenda. Today is the first day of stage 2 of the Public Bodies (Joint Working) (Scotland) Bill. Members should have a copy of the bill, the marshalled list of amendments and the groupings.

Today, we can go no further than the end of section 33. We have discussed with the committee that, depending on our progress, an appropriate time to end would be around 12.30—that would be a drop-dead time. We have some time next week to complete our business.

I welcome back to the committee the Cabinet Secretary for Health and Wellbeing, Alex Neil, and his officials.

Section 1—Integration plans: same local authority and Health Board area

The Convener: Amendment 1, in the name of the cabinet secretary, is grouped with amendments 2, 7, 12, 13, 15 to 18, 27 to 37, 52, 53, 55, 59, 60, 64 to 68, 70, 72, 73, 77, 82, 86, 109, 111, 121, 122, 148 to 155, 158 to 190, 192 to 194 and 196 to 199.

I call the cabinet secretary to move amendment 1 and to speak to all the amendments in the group.

The Cabinet Secretary for Health and Wellbeing (Alex Neil): The amendments in the group in my name make a drafting change to the term "integration plan": they amend it to "integration scheme". The change is presentational. The term "integration scheme" reflects the purpose of the document setting out the integration arrangements that must be prepared under section 1 or section 2 by the health board and local authority.

Furthermore, stakeholders raised concerns about the potential for confusion about which duty applied to whom and for what purpose in relation to the integration plan and the strategic plan. I am happy to respond to stakeholder concerns and make that presentational change.

I move amendment 1.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I can see why the cabinet secretary wants to make the change. Obviously, because of the bill's structure, we start with the plans and go on to the delivery.

I do not know whether one of the Government amendments incorporates this point—I am sorry, but I have not checked every single one. The amendments refer to the "scheme", but the title of section 4 is "Integration planning principles" and I did not notice an amendment that relates to it. It seems a bit awkward that we will change "plan" to "scheme" but that the bill will still refer to "planning principles". Furthermore, when it comes to the strategic plan at section 24, there are "delivery principles".

There is a certain awkwardness in that. I therefore wonder whether, if there is not such an amendment, you need to lodge a further amendment to align the references, so that all the references to "plan", rather than "scheme", are in the later part of the bill.

The Convener: As no other member wishes to speak, I call the cabinet secretary to respond and sum up.

Alex Neil: Mr Chisholm makes a very fair point, which we will look at, and we will consider whether we need to lodge an additional amendment at stage 3.

Amendment 1 agreed to.

Amendment 2 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 3, in the name of the cabinet secretary, is grouped with amendments 4, 8, 146, 54, 56 to 58, 69, 71, 74 to 79, 156 and 157.

Alex Neil: This explanation is fairly long, but it is necessary to put it on the record.

Amendments 3, 8, 56, 74 and 79 deal with payments to an integration authority. They make provision for circumstances in which the functions that a health board is delegating to an integration authority include services that are carried out in a hospital that provides for the areas of two or more local authorities—for example, the hospital may be

large, such as Edinburgh royal infirmary or Glasgow Southern general hospital.

Flexible use of budgets is key to improving outcomes, and the principle of an integrated budget is key to successful integration. It is also of key importance to the policy intention of integration that the appropriate parts of acute hospital budgets and activity are included within integrated strategic planning. Discussions, particularly with national health service stakeholders, have nevertheless indicated that inclusion of some hospital budgets in the physical payments to the integration authority could be problematic.

Hospitals that provide a substantial part of their services to the populations of two or more local authority areas—that is, large hospitals—form an important common resource, and dividing up and paying out their budgets to numerous integration authorities could undermine their operational management. At the same time, in order to preserve the integrity of the policy and the intention of the bill, it is important that strategic planning includes the hospital capacity used by the population of the integration authority. All appropriate aspects of the health and social care resource spent on the integration authority's population must be included within the scope of the strategic plan so that it can be used to total best effect.

The amendments provide that health boards are not required to physically disaggregate the budgets for large hospitals that serve several communities; instead, the health boards can set aside the appropriate portion of the large hospital budget, and its use is then directed by the integration authority via the strategic plan. Amendment 8 provides a definition for "large hospitals".

Amendment 146, from Malcolm Chisholm, appears to introduce a similar alternative mechanism for local authorities to make notional payments to integration joint boards for delegated functions, although I am advised that other changes to the bill would also be needed to achieve that effect. The amendment's intended effect appears to be that local authorities could also set aside budgets whose use is to be directed by the integration authority.

I gather that Malcolm Chisholm's intention was in fact to amend the provision about payments as it applies to health board budgets rather than local authority budgets. The effect of such an amendment would be that the health board could either make a payment to the integration authority for all of its delegated functions, not just large hospital budgets, or it could set aside the notional amount for the direction of the integration authority via the strategic plan.

The key point is that my amendments relate to one portion only of health board budgets: the budgets for large hospitals that provide services to more than two local authority areas. Health board budgets covering, for example, community hospitals will be paid to the integration authority and will not be set aside in the same way. I do not support extending the notional budget principle to other aspects of health board budgets, as Mr Chisholm has proposed, or indeed to local authority budgets. Such a change would send a very unwelcome signal to health boards and local authorities about the integration authority's duties and responsibilities with regard to strategic planning.

It is vitally important to the success of our policy intention that the authority of the integration authority in relation to the strategic planning process and the funding that underpins it are both absolutely clear. The amendments in my name provide the right balance of requiring actual payment with practical flexibility in relation to managing large hospitals.

Amendments 3 and 4 deal with the content of integration schemes, which must include the method of determining resources to be paid to the integration authority and the method of determining any resources that are set aside by the health board for large hospital budgets.

The amendments will also improve the terminology used in the bill regarding budgets. The phrase "method of calculating" will be replaced by "method of determining", which better reflects the policy intention for integrated budgets, which is that payments should be determined based on a regular process of local discussion and consideration rather than on a prescriptive formula carried forward from year to year.

That change in terminology is also seen in amendments 54, 58, 69 and 76, which relate to payments to the integration joint board, and in amendments 156 and 157, which cover revision of integration schemes.

Amendments 56 and 74 apply, respectively, to the integration joint board model and the lead agency with the local authority as lead agent model. They have the same effect as each other, providing that health boards must set aside an amount to be determined in accordance with the method set out in the integration scheme for large hospital functions.

Amendments 57 and 75 provide for the requirement on health boards to make payments either to an integration joint board or a local authority acting as the lead agency for delegated functions where no large hospital functions are delegated or, where they are delegated, when the

health board has decided to include them in the payments.

Amendment 79 provides for the integration authority to be able to direct the health board on the use of large hospital budgets in line with the strategic plan. We expect integration to achieve a shift in the balance of investment in institutional and non-institutional care, and strategic plans will set out changes in the use of resources of large hospitals. We expect strategic plans to set out how integration authorities will reduce the use of large hospital services for the population. At the same time, it is possible that in some circumstances strategic plans will set out an intention to use more of some services that are provided in large hospitals.

It is possible that, in either circumstance, a planned reduction or increase in the use of large hospital services will not be realised despite what is set out in the strategic plan. When that happens, an adjustment will be needed to the payments between the health board and the integration authority to reflect the change in resources. If a planned reduction in the use of large hospital services is realised by the integration authority, amendment 79 will enable an integration authority to require a health board to pay to it any savings that are realised by the health board in relation to services delivered in a large hospital so that the integration joint board may reallocate that money to interventions to reduce hospitalisation.

If a planned increase in the use of large hospital services is not realised, amendment 79 will enable an integration authority to require a health board to pay back to it money for services that were not used. Likewise, if the integration authority uses more of the large hospital services than was planned for, amendment 79 will require the integration authority to pay money to the health board as it would normally have to when directing under section 22.

Amendments 71 and 78 are concerned with payments to local authorities in respect of delegated functions. The bill provides for different models of integration including circumstances in which more than one local authority is covered by an integration scheme with one health board. Amendments 71 and 78 provide for a situation in which more than one local authority is covered by the same integration scheme as a health board and a lead agency arrangement is put in place whereby one of the local authorities is the lead agency. In such a circumstance, the amendments provide that the delegating local authority must make a payment to the local authority that is acting as the lead agency in relation to each delegated local authority function.

I am particularly grateful to all the participants in our integrated resources advisory group and our national steering group on joint strategic commissioning for their contribution to this work.

I move amendment 3, and I invite Malcolm Chisholm not to move amendment 146.

Malcolm Chisholm: I always intended amendment 146 to be a probing amendment. As you have indicated, minister, I made a mistake in putting it against line 26 rather than line 29, as my concern was section 13(3). However, as it is only a probing amendment I am sure that it is not a cardinal offence to have put it in the wrong place. I still have points to make in relation to it.

This is an important group of amendments, as it takes us to two of the central issues of the bill that featured prominently during our stage 1 consideration. The first is the funding arrangement and the second is the balance of power, if I can put it that way, between the integration authority and the local authority and health board that form the strategic plan.

10:00

A problem with the bill as formulated is that it could return us to bureaucratic commissioning arrangements. The bill says:

> "The Health Board must make a payment to the integration joint board".

Presumably the integration joint board would then have to make a payment back for services that it commissions. That would be a problem.

The complex amendments lodged by the cabinet secretary try to deal with that. It is a bit unsatisfactory that the funding detail came out only after the stage 1 consideration. We had no chance to question officials about the funding detail at that stage, and we were all very surprised when we received a note that said that, I think, at least half the health board budget and three quarters of the over-75s emergency care budget would be handed over, if that was the language that was used. I am not saying whether that is right or wrong; I am just saying that we were surprised that the extent of financial delegation was that great. That is my little moan out the road.

We now have detailed Government amendments. My colleagues and I would not be minded to oppose them, but we might want to reserve the right to examine them further before stage 3 to see whether they meet all the concerns. They seem to avoid the pitfalls of reintroducing the old-style commissioning arrangements.

The Government amendments refer to the amounts "set aside", which is very similar language to that used in my proposals on notional payment. My amendment 146 would make the reference to "payment or notional payment", so I do not accept the cabinet secretary's criticism that

that implies that the notional payments would be for everything; rather, I meant that notional payment as well as genuine payment would be an option.

The balance of power issue is also illuminated by the amendments, and amendment 79 is significant in that regard. I do not have a particularly strong view on the matter, but I draw the conclusion from amendment 79 that it will very much be the integration authority that calls the shots in directing health boards on what they should do with their acute hospitals. I think that that is the intention, and again I will want to reflect further and perhaps listen to what health boards have to say on the matter.

An issue that came up at stage 1 was exactly how much power is to be invested in the integration authority. Amendment 79 makes it clear that the key decisions will be made by the integration authority and that it will have the power to direct health boards.

My colleagues and I are not minded to vote against the cabinet secretary's amendments. Since my amendment 146 was always a probing amendment, I am very happy not to move it. However, we reserve the right to scrutinise what is a central part of the bill further at stage 3.

Alex Neil: I thank Malcolm Chisholm for his contribution, which was very helpful. I am happy to meet Malcolm and any other committee member before stage 3 if they require further clarification of our intentions on the detail.

I realise that this is a very complex area and I want to be happy that members are satisfied, before we get to stage 3, that what we are proposing is the right thing to do. I think that it is—and I very much welcome Malcolm Chisholm's offer to not move his amendment. It is not very often that he makes a mistake.

The Convener: Charm will get you everywhere, cabinet secretary. [*Laughter*.]

Amendment 3 agreed to.

Amendment 4 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 202, in the name of Rhoda Grant, is grouped with amendment 203.

Rhoda Grant (Highlands and Islands) (Lab): I have lodged a number of amendments that seek to embed co-production into the bill. The reason for the bill is to improve services to service users and their carers. Integration means that they should receive a seamless service. However, we should all strive to involve service users in devising the services that they receive in order to enable them to live fulfilling lives.

Amendment 202 seeks to embed co-production into the plan for integration. The integration plan sets out how the authority will work and what actions will flow therefrom. Asking the authority, as part of the plan, to make arrangements for the participation of service users, carers and their representatives would ensure that co-production is required. Those principles will flow forward into front-line service delivery. The amendment would also ensure that any service users will be supported in their involvement.

Proposed new subparagraphs (dc)(iv), (dc)(v) and (dc)(vi) would ensure that staff are embedded to participate, and allow the authority to use expertise from other organisations in the third sector within the community as it sees fit.

Amendment 202 highlights the need for accountability for the use of resources. It would ensure that services are monitored and arrangements made to improve quality, safety and standards of service. That issue runs through other amendments and was sought by a number of consultees to the bill, including the Royal College of Nursing. Those principles need to be made clear as part of the integration plan.

I also speak in support of amendment 203, in the name of Nanette Milne, which seeks to ensure that an integrated plan makes arrangements for a single complaints system. I have also lodged amendment 217, which asks Scottish ministers to set up an integrated complaints system. My amendment would ensure that the integrated authority is subject to the public service ombudsman keeping it in line with its constituent authorities. The amendments together would ensure the provision of Scotland-wide guidelines on how complaints should be handled and ensure that joint boards implement that as part of their integration plan.

I move amendment 202.

Nanette Milne (North East Scotland) (Con): My amendments focus on ensuring that service users and unpaid carers are central to planning and shaping integrated services, that there is a strong voice for the third sector in joint strategic commissioning and locality planning and that there is a focus on personal outcomes for service users.

If integration is to produce seamless services for the people who use them, health and social care partnerships should be obliged to provide a clear, simple route into a complaints process to ensure that the needs and experience of service users are listened to and learned from, which should help to drive improvement.

Complaints processes are a key accountability mechanism, helping people to access their rights in relation to health and social care. Amendment 203 would amend the bill to include reference to

ensuring effective access to a complaints system. I also support amendment 202, in the name of Rhoda Grant.

Alex Neil: Amendments 202 and 203 seek to place requirements on health boards and local authorities to include additional items within their integration scheme. I begin with the items that are listed in amendment 202. I draw the committee's attention to the policy statement that outlines the regulations that I intend to make under the power contained in section 1(3)(e). Within those regulations, I will set out in more detail than is appropriate on the face of the bill the arrangements that must be put in place to ensure, first, that there is effective monitoring of integrated resources and payments and, secondly, how clinical and care governance will assure the quality, safety and standards of the services developed. The regulations will therefore cover the matters that are addressed in proposed new subsections (da) and (db) of amendment 202.

The strategic planning and locality planning processes that integration authorities must put in place will determine how integrated services must be planned and delivered. Scottish ministers have included within sections 26, 27 and 32 of the bill a requirement to consult and take account of the views expressed by a wider range of stakeholders than amendment 202 would require. The bill therefore already makes provision for the consultation of stakeholders that goes beyond that which is proposed in subsection (dc) of amendment 202.

It is not proportionate to require in primary legislation the participation of those listed in amendment 202 over other key parties and stakeholders, and I do not consider that a requirement in the integration scheme to develop a strategy to support stakeholders in the planning and delivery of services is the best approach.

I am also concerned that amendment 202 limits that strategy to a small number of stakeholders. For example, it does not include general practitioners, who equally might need support in developing their skills to strategically plan services across the area of an integration authority. Instead, I intend to set out in statutory guidance that such support should be provided to all participants in the various activities required in the bill. That will ensure that all participants are offered support to fully engage in the planning and delivery of services and that such support can be tailored to each activity instead of simply being provided for in a high-level strategy.

Amendment 203 seeks to require integration schemes to provide a single point of entry for complaints that fall within the scope of integration. I fully recognise that the current system for social work complaints is no longer up to date or fit for purpose and we have been working to produce a new system that will be more accessible, allow complaints to be completed far faster and produce a co-ordinated response for the complainant. In due course we will bring forward under Scottish ministers' existing powers changes to secondary legislation that I expect will satisfy what Nanette Milne quite rightly intended by lodging amendment 203. However, the Public Bodies (Joint Working) (Scotland) Bill is not the appropriate legislative vehicle for making changes to the complaints system, especially when we have not consulted on them as part of the bill.

I therefore urge Rhoda Grant not to press amendment 202 and Nanette Milne not to move amendment 203.

Rhoda Grant: I will press amendment 202 because I truly believe that adopting the principles of co-production means not just consulting people but involving service users in such decisions. If they are involved in the integration scheme, they will be able to influence the various stages of the work of this legislation.

In response to the cabinet secretary's point about GPs, I should point out that they would be included under proposed subsection (dc)(vi), where local authorities and health boards can involve any other person they think fit. I know that, much to my regret, GPs are not employees of the health board, but they could be involved.

As I have said, I will press amendment 202 because I think that it is important to how the bill works and in involving service users and carers in designing services and their own care.

The Convener: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)

Against

Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

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

Amendment 202 disagreed to.

The Convener: I call Nanette Milne to indicate whether she wishes to move amendment 203, which has been debated with amendment 202.

Nanette Milne: Thank you, convener. I appreciate the cabinet secretary's understanding of my reasons for lodging these amendments—

The Convener: Nanette, at this point, you can only indicate whether you are moving the amendment.

Nanette Milne: I will not move my amendment, and I will reserve my position for stage 3.

Amendment 203 not moved.

The Convener: Amendment 5, in the name of the cabinet secretary, is grouped with amendments 6, 9, 140 to 142, 10 and 200. Under the pre-emption rule, if amendment 9 is agreed to I cannot call amendments 140 to 142.

Alex Neil: The Scottish Government has made it clear from the outset that the policy of integration applies to health and social care functions. At its introduction, the bill permitted any local authority function to be included in the integrated arrangement with health functions, subject to provision made by regulations restricting the range of local authority functions that could be delegated. This group of amendments changes the approach so that the range of local authority functions that can be delegated will be set out in the bill itself in the proposed new schedule.

10:15

On amendment 5, proposed new subsection (4A) provides for local authorities to delegate functions that are conferred on them by the acts listed in the schedule proposed in amendment 10. In policy terms, those can be considered as, in effect, social care functions. Proposed new subsection (4C) provides for the Scottish ministers to prescribe from that list of functions those that must be delegated by a local authority but only in so far as they relate to adults. The Scottish ministers will be able to require the delegation of adult social care functions only, leaving the delegation of other functions in the schedule to local determination.

Proposed new subsection (4B) provides for health boards to delegate functions prescribed by the Scottish ministers. Proposed new subsection (4D) provides for the Scottish ministers to prescribe the functions of a health board that must be delegated where an integration joint board is established or where the local authority is the lead agency. Again, the Scottish ministers can prescribe functions only in so far as they relate to adults. Therefore, again, the Scottish ministers can require the delegation of adult health care only, leaving the delegation of other health functions to local determination.

Proposed new subsection (4E) sets out the requirements on which an integration model that is provided for in proposed new subsection (4D), in which the health boards and local authorities are both lead agencies, is agreed. The local authority must delegate social care functions in relation to adults or the health board must delegate health functions in relation to adults. That ensures that the integration of adult health and social care functions is achieved.

Proposed new subsections (4F) and (4G) make provisions similar to those that are contained in sections 1(6)(c) and 1(6)(d). The Scottish ministers may set out the functions of health boards and local authorities that must or may not be delegated under certain circumstances. Subsections (4F) and (4G) provide some flexibility for the Scottish ministers to set out functions that go together and those that do not go together.

Proposed new subsection (4H) enables the Scottish ministers to remove enactments from the schedule, should that be considered appropriate in future. The exercise of that power is subject to affirmative procedure.

Amendments 6 and 9 are consequential on amendment 5. Amendment 10 provides for the schedule that creates a list of functions conferred on local authorities that constitute social care under the bill. Amendment 200 sets out that regulations made under proposed new subsection (4H) of section 1 will be subject to the affirmative procedure.

I turn to amendments 140 to 142 from Mr Chisholm, which are pre-empted by amendment 9 in my name. Amendment 9 removes the requirement for the Scottish ministers to prescribe the functions that may not be delegated. However, it is important that the Scottish ministers have the flexibility to prescribe when functions may not be delegated in certain circumstances, not least because I wish to ensure that the bill is future proof—that is, that it is able to keep pace with changes in technology, practice and service design and redesign.

Providing a certain service in a hospital will be entirely right for some individuals. However, for others, the most appropriate place may be in their own home or a community setting. The bill and amendment 5 provide for that legitimate flexibility, but amendment 142 would remove it. Therefore, I cannot support amendments 140 to 142.

I move amendment 5 and ask Mr Chisholm not to move amendments 140 to 142.

Malcolm Chisholm: I struggle to follow the cabinet secretary's line of argument, because I would have thought that my amendments would give him the maximum amount of flexibility.

When I read section 1 of the bill, I thought that it was rather overdone and rather complex but,

when I saw the amendments that the cabinet secretary had lodged, I realised that it was simplicity itself compared to them. I cannot see how he can possibly argue in favour of flexibility when he is adding a schedule to the bill that lists in fine detail those parts of local government legislation that may be subject to delegation.

That, in itself, removes all flexibility. I would have thought that the minimum change that the cabinet secretary could make would be to ensure that the content of that schedule was in regulations rather than being on the face of the bill. I have still to be persuaded that all this level of detail is necessary in the first place. I thought that the conclusion that we had derived from our stage 1 discussions was that certain functions had to be delegated and therefore it seems to me that it would be adequate for the bill to say, "These are the functions that must be delegated" and leave it to the good sense and local determination of health boards and local authorities to decide whether they want to add to that list. That would be the principled argument for my position.

There is also a practical argument. Health boards and local authorities are concerned that they might be delayed in their wish to hand over powers to the integration authority while they wait for regulations. All that they need to know is what must be delegated; the rest could surely be left to local determination. If I am missing something to do with the requirements of legislation, and if that is impossible, I will accept the cabinet secretary's argument, but I cannot say that I am persuaded by any of the arguments that he has made hitherto. I will just have to listen to his winding-up remarks and make a snap decision on whether to move my amendments.

As this is the only time that I will be allowed to speak, I should say that if I decide not to move my amendments, the decision will be subject to the same caveat that I intimated earlier and that, on further consideration, we might wish to revisit the issue at stage 3.

Rhoda Grant: I have some concerns about the amendments. They are hugely technical and quite difficult to scrutinise.

An issue that has been raised with me is the transition between child and adult services. It is a big issue but it was not really covered when we talked about the bill. Will the Government's amendments prohibit an integrated transition between child and adult services?

In my region, Highland Council and NHS Highland have a different integration model in which children's services have been transferred to the local authority. Is there anything in the amendments that will prohibit other authorities from taking that same line?

I seek reassurance for those who have issues about the transition between child and adult services. Such transitions are fraught with difficulty at the moment and if the amendments make that worse, that would be a retrograde step.

Alex Neil: I think that Mr Chisholm and I are trying to get to exactly the same place but we are doing it in a slightly different way. I will clarify a number of things.

First, we will state clearly in the bill what must be the responsibility of the integration authority. Also, by agreement with the health board and the local authority, the integration authority can take on any of the relevant additional functions that it might wish to do. In fact, in a number of the partnerships that are already operating, such as that in West Lothian, they are already doing so, and children's services is a very good example of that.

Secondly, I want to clarify for Rhoda Grant that the bill does not restrict any partnership from taking on the additional responsibility of children's services. Again, the informal, non-statutory partnerships are up and running and that is already happening in a number of them. There is no restriction on that and my personal view is that it would make sense for partnerships to do so in a number of circumstances.

Malcolm Chisholm: May I come in on that?

The Convener: I am sorry; the cabinet secretary is winding up and there is no opportunity for debate at this stage.

Alex Neil: We had representations from local government that the wording in the bill was too wide and that it did not clarify the definition of social care services and social care functions. Local government was concerned that the definitions were so wide that they could take in any range of responsibilities that go above and beyond what is intended in the bill. I therefore agreed that more definition in the bill was required to allay those concerns.

That is the reasoning behind the amendments. We are trying to get to the same place: a clear definition of what must be done by the integrated authorities and what they may do in addition to that, depending on local decision making. As I said, there is total flexibility there. If the health board and the local authority agree to place any additional non-statutory requirement on integrated bodies to provide such services, they are entirely free to do so.

I have offered to meet Mr Chisholm and anyone else on the committee for further discussions before we get to stage 3. I would be happy to discuss this particular area of policy, because we are absolutely sure that we are doing the right

thing. In addition, we are taking local authority colleagues with us on this, which is extremely important for the success of the entire project.

Amendment 5 agreed to.

Amendments 6 to 8 moved—[Alex Neil]—and agreed to.

The Convener: I remind members that if amendment 9 is agreed to, amendments 140 to 142 will be pre-empted.

Amendment 9 moved—[Alex Neil]—and agreed to.

Section 1, as amended, agreed to.

Schedule

Amendment 10 moved—[Alex Neil]—and agreed to.

Section 2—Integration plans: two or more local authorities in Health Board area

The Convener: Amendment 11, in the name of the cabinet secretary, is grouped with amendments 39, 40, 44, 49, 83, 120, 191 and 195.

Alex Neil: This group contains minor and technical amendments in my name. Section 2 addresses requirements to put in place integration arrangements in health board areas that cover more than one local authority area.

Amendment 11 will remove some text that is now considered to be redundant; the effect of the bill will be unchanged. Amendment 39 is a drafting amendment to ensure that the requirement to consult the constituent authorities on the appointment of the chief officer is specific to the appropriate constituent authorities of the integration joint board.

Amendment 40 will remove the definition of a constituent authority from section 10. A separate definition of that will be inserted by amendment under section 43. Amendments 44, 49 and 120 are drafting amendments to provide consistency in the use of the term "constituent authorities" in relation to an integration joint board. The amendments will achieve more consistent use of terminology in the drafting of the bill.

Amendments 191 and 195 provide a definition for the use of the terms "constituent authority" and "constituent authorities". The term refers to the local authority or local authorities and health board as parties to an integration scheme in pursuance of which an integration joint board has been established. Amendment 195 provides for where "constituent authority" is to be used.

Amendment 83 seeks to broaden the duty of co-operation in relation to integration schemes. The current drafting of the duty is narrow and refers to what could be interpreted as an exhaustive list of resources. I believe that the duty of co-operation would be clearer and more effective if it was expanded to cover all shared resources. That will better ensure effective and efficient use of all resources and reduce conflicting demand in the delivery of services.

I move amendment 11.

Amendment 11 agreed to.

Amendments 12 and 13 moved—[Alex Neil]—and agreed to.

10:30

The Convener: Amendment 14, in the name of the cabinet secretary, is in a group on its own.

Alex Neil: Section 2 addresses requirements to put in place integration arrangements in health board areas that cover more than one local authority area. Amendment 14 ensures that all adult health and social care functions that are prescribed as being required to be included in an integrated arrangement are held by a single body. Integration must result in service planning and provision that is integrated from the perspective of the service user. We will not achieve that position if adult health and social care functions are planned for and delivered by different bodies. It is therefore vital that the bill ensures that all integrated functions are held by one body.

As originally published, that was not a requirement of the bill. That meant that it would have been possible for a health board and two or more local authorities to split up adult health and social care functions by delegating them to more than one local authority in a multicouncil health board area. Amendment 14 ensures that that course of action, which would have seriously undermined the policy intention of integration, is not possible.

I move amendment 14.

Amendment 14 agreed to.

Amendments 15 to 17 moved—[Alex Neil]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Considerations in preparing integration plan

Amendment 18 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 204, in the name of Rhoda Grant, is in a group on its own.

Rhoda Grant: The purpose of amendment 204 is to ensure that the integrated authority also has regard to the community planning process. If we

genuinely want to integrate services that are responsive to local communities' needs, we must also integrate them with other local planning processes. Doing so would acknowledge that health and care services operate in the wider sphere of public services and would mean that they must contribute to the fulfilment of single outcome agreements. Although integrating services is about improving service users' experience and creating efficiencies, those services also need to play their part in meeting their partner authorities' obligations with regard to existing legislation. Amendment 204 would mean that stronger connections would be made with the community planning agenda, which is important to the integration of all services.

I move amendment 204.

Alex Neil: The bill requires health boards and local authorities to take account of the integration planning principles and the national health and wellbeing outcomes when preparing an integration scheme. Amendment 204 seeks to add community planning outcomes to that list.

The Government is bringing forward a community empowerment bill that will include integration authorities as bodies that must participate in community planning along with health boards, local authorities and others. A requirement to include integration authorities in community planning itself is much the stronger way to ensure the proper place of integrated health and social care in community planning, rather than referring to community planning outcomes that do not at present exist in law.

I invite Rhoda Grant to agree that the Scottish Government's position in relation to community planning and integration is stronger than her proposal, and to withdraw amendment 204.

Rhoda Grant: I will seek further information from the cabinet secretary, possibly in the interlude between stages 2 and 3, on whether the community empowerment bill will come into force before the Public Bodies (Joint Working) (Scotland) Bill comes into force, because I think there might be an overlap there. I will withdraw amendment 204 and await that clarification.

Amendment 204, by agreement, withdrawn.

Section 3, as amended, agreed to.

Section 4—Integration planning principles

The Convener: Amendment 19, in the name of the cabinet secretary, is grouped with amendments 19A, 20, 21, 205, 206, 22, 207, 23, 24, 143, 208, 209, 25, 26, 97, 97A, 223, 98, 99, 224, 225, 100, 226, 101, 102, 227 to 230, 103, 231 and 104.

Alex Neil: This will be another long contribution, but I am afraid that it has to be done.

The Convener: There's a surprise.

Alex Neil: I put on record my appreciation of all the stakeholders involved in the development of the integration principles. The principles underpin the bill; they provide for a person-centred focus; and they reflect the key cornerstones of effective integration.

The integration planning principles provide for matters that health boards and local authorities must take into account when preparing an integration scheme. Their purpose is to ensure that, when planning for their integrated arrangements, health boards and local authorities do so from the perspective of, and for the benefit of, the service user, rather than for organisational or administrative convenience.

The integration delivery principles provide for matters that integration authorities must take into account when preparing a strategic plan. Their purpose is to ensure that, when integration authorities plan services using the totality of health and social care spend, they do so from the perspective of, and for the benefit of, the service user, rather than on the basis of historical service provision.

Amendments 19, 21 to 23, 26, 97, 99 to 101 and 104, in my name, are drafting amendments to sections 4 and 25 and change the term "recipients" to "service users". I believe that the term "service users" is more appropriate as it more accurately provides for more active engagement and choice by persons who use health and social care services, rather than providing for them as passive recipients of services.

Amendments 20 and 98, in my name, are further technical amendments that will ensure that the language in the bill does not imply that there is a single way that integrated services can be planned.

I turn to amendments 19A, 205, 207, 97A, 224 and 226, in Malcolm Chisholm's name. I acknowledge the concern raised by stakeholders that the bill should take a human rights-based approach and reflect the principles of independent living. Although I recognise that aim, the committee will already be aware of the requirement for all acts of the Scottish Parliament to comply with human rights as enshrined in the European convention on human rights. It is therefore not necessary for that to be repeated in the bill.

I have considered the use of the term "independent living". Although I accept and agree that it is important to ensure that these principles and ideals are reflected in standards of planning,

delivery and design of services, terms such as "independent living" are, by their very nature, potentially subject to change or differing interpretation.

The integration principles must apply equally to all users of the health and social care services that are covered by the bill, not only vulnerable or disabled people. I believe that amendments 24 and 102, in my name, reflect stakeholders' concerns in that regard. They require the health board and the local authority, in taking account of the integration planning principles, to reflect the fundamentals of service users' rights and independent living principles. They will ensure a high standard of service quality and will protect and improve the safety of users of health and social care services.

Amendment 143, in the name of Aileen McLeod, would add the requirements of safety and quality to the list of matters that health boards and local authorities must take into account when preparing their integration scheme. Aileen McLeod's amendment 143 copies across the effect in part of my amendment 102 to the integration delivery principles, so that the same point is made in both sets of principles. I am very sympathetic to Ms McLeod's amendment on that point and am therefore happy to accept it.

Amendments 102 and 143 together require improvement in the quality of services and forgo the need for amendment 228, in the name of Rhoda Grant. Furthermore, a quality service is based not only on the amount of time given to service users. Best practice guidance is the place for such matters, not principles in primary legislation.

I turn to amendments 206 and 225, in the name of Nanette Milne. I believe that the requirement outlined in the amendments is properly addressed by the requirement for health boards and local authorities to take account of the particular needs of service users, which can be fairly regularly quantified by health boards and local authorities. Health boards and local authorities, in their consideration of individuals' needs, must already take into account specific circumstances as part of a holistic, personalised approach to care, and are already subject to statutory requirements and guidance in relation to assessment. However, given the importance of considering individuals' needs within an integrated approach to care, I intend to provide statutory guidance on the matter, which will provide further support to health boards and local authorities to ensure that their understanding of need is appropriate.

In terms of individual choice, it is important to distinguish between the requirements placed on local authorities by the Social Care (Self-directed Support) (Scotland) Act 2013 to provide choice and control over social care services, and the purpose of the bill, which is to bring together responsibility, accountability, delivery and planning for health and social care services. Choice and control cannot equally apply to all service users in all circumstances and to all health and social care services under the bill. The integration planning and delivery principles importantly require the health board, local authority and integration authority to consider service users' needs and to plan for integration and deliver services from the service user's perspective. I therefore cannot support amendments 209 and 230, in the name of Malcolm Chisholm.

I am, however, sympathetic to Rhoda Grant's amendment 223, which seeks to amend section 25. I believe that the intention in amendment 223 is to broaden the circumstances in which the integration delivery principles will apply. However, I believe that there is a conflict with the purpose of section 25(1)(a), which is to ensure that services are provided in a way that improves service users' wellbeing. Applying the principles to how services are commissioned conflicts with ensuring that the services are provided for the service user's benefit—in other words, with ensuring that services are planned and delivered in a person-centred way. Furthermore, the Scottish Government has already issued to partners guidance on strategic commissioning for the integration of health and social care, and that guidance will be revised as part of the process of implementing the bill. I therefore ask Rhoda Grant not to move amendment 223.

Rhoda Grant's amendment 227 requires services to be provided in a way that takes account of the needs of a service user who moves between two local authority areas. The basis on which a local authority provides a service to a service user is their physical presence in that local authority's area, so a local authority cannot begin to provide services until the service user is physically present in that area. We are aware that it can be difficult for people to move if they are unsure about whether the care services that they will need will be in place by the time that they move. We have therefore developed and have in place protocols to encourage local authorities to enter into transitional arrangements to help to facilitate moves.

We will continue to work with the Convention of Scottish Local Authorities and key stakeholders to ensure that local authorities are encouraged to set up voluntary schemes to work together in carrying out assessments in advance of the person being physically present. I appreciate the need for service users to make sure that when they move into a new local authority area they can access the services they need and that those are provided.

However, I do not believe that amendment 227 achieves that aim, so I cannot support it.

10:45

Turning to Mr Chisholm's amendments 208 and 229, it is right that issues of quality and continuing improvement are raised. Indeed, as the policy memorandum states, that is one of the areas that the bill aims to address. However, I have a number of points to make on the amendments.

First, section 41 already gives the Scottish ministers a power regarding statutory guidance. An amendment to section 41 that will be considered on day 2 of stage 2 will require that that power applies to integration authorities. Secondly, integration authorities will not directly deliver services. Health boards and local authorities will continue to deliver health and social care—albeit integrated health and social care—and will continue to be subject to existing guidance and quality standards that apply across health and social care, as set out in the Scottish Government's 2020 vision for health and social care. My amendment 102 will provide for continuous improvement. I therefore ask Mr Chisholm not to move amendments 208 and 229.

Amendments 25 and 103, in my name, reflect the concerns that were raised by stakeholders about the potential meaning and interpretation of the term "local professionals". There are many people who deliver a range of services, advice and support, and they all contribute to the health and wellbeing of individuals, but they might not regularly see themselves as professionals or be recognised as such by statutory bodies. Amendments 25 and 103 provide the right balance and will reflect those concerns and the ethos of integration as a whole.

On amendment 231, in Rhoda Grant's name, I have expressed my admiration, and will continue to do so, for the dedication, professionalism and enthusiasm that are demonstrated by those who deliver health and social care services across Scotland, many of whom are carers for family members or friends. However, placing the integration authorities under a requirement—in taking account of the integration delivery principles—to reward people who deliver services is not appropriate. I am not sure what rewards Ms Grant envisages, but I think that it is for all of us who are involved in the policy, planning and delivery of health and social care services, as well as users of those services, to ensure that people are supported and feel appreciated for the quality services that they provide. I therefore ask Rhoda Grant not to move amendment 231.

I support amendment 143 in Aileen McLeod's name. I do not support amendments 19A, 205 to 209, 97A and 223 to 231.

I move amendment 19.

Malcolm Chisholm: There are quite a lot of issues to deal with, but I will mainly speak to the amendments that I lodged.

At the beginning of the cabinet secretary's comments, he referred to the integration principles. It would have been my preference to have those integration principles right up at the front of the bill in section 1, but of course he has split them into planning and delivery principles. I do not think that it is worth falling out over that but I, like many stakeholders, would have preferred some general overarching principles that applied to planning and delivery, and to have those at the beginning of the bill.

On my amendment 19A, the cabinet secretary said that there is no recognised definition of the term "independent living". I suppose that I could say, "Well, what's new?" I remember making a speech last week about sustainable economic growth. Many people who gave evidence on that issue said that there was no recognised definition of the term, but there it is in a piece of Scottish Government legislation that was passed last week. Therefore, the cabinet secretary's argument does not stand up, particularly given that he has accepted a definition of independent living in the document "Our Shared Vision for Independent Living in Scotland", which states:

"Independent living means 'disabled people of all ages having the same freedom, choice, dignity and control as other citizens at home, at work, and in the community. It does not mean living by yourself, or fending for yourself. It means rights to practical assistance and support to participate in society and live an ordinary life.'"

Therefore, there is an accepted definition.

The cabinet secretary says that that does not apply to everyone, but it mentions disabled people having

"the same freedom, choice, dignity and control as other citizens".

Implicit in that is, of course, that we all have those things. Most of us have them without having to argue for them, but disabled people have had to argue to get on to the same footing as we are on. I therefore do not accept the cabinet secretary's arguments about independent living.

Nor do I accept the cabinet secretary's argument about rights. We want a rights-based approach to integrated health and social care planning and delivery. The cabinet secretary said that it is not necessary to use the word "rights" because we already follow the Human Rights Act 1998. I think that the use of that word is important

because there is a particular rights-based approach to health and social care, which of course he accepted in the Social Care (Self-directed Support) (Scotland) Act 2013. Section 2 of the 2013 act states that

"the right to dignity of the person is to be respected ... the person's right to participate in the life of the community in which the person lives is to be respected."

Clearly, the cabinet secretary did not follow his own principles in that legislation.

With reference to the cabinet secretary's amendment 24, it would be preferable to lift the language from section 2 of the 2013 act. I have not proposed an amendment to that effect but may do so at stage 3. What I have proposed is to put a reference to rights in a general sense in two places in the bill. I think that that is important in order to emphasise the importance of the rights-based approach to integration.

Amendment 208 is about quality and proposes adding to the bill the wording

"recognised guidance and adherence to established quality standards and promotes continuous improvement in the standard and quality of care".

I believe that that is more comprehensive than a shorter reference to improving the quality of the service.

Again, I may not press amendment 208 today, but I may return to the matter at stage 3. I will probably not press it because Aileen McLeod's amendment 143 proposes including the wording

"improves the quality of the service",

which encompasses protecting and improving service users' safety.

Wording about safety is very important, so I am minded to support amendment 143, not move amendment 208 and perhaps try again at stage 3 with an amendment to what is proposed by amendment 143.

Nanette Milne has seconded amendment 209 and, without trying to pressurise her, I hope that she will speak about it. The amendment would add to section 4 the wording

"enables service-users to exercise choice and control and to participate—"

that is the key word—

"in decisions regarding their need for services and the provision of those services".

I think that every user of health and social care services should have the right to participate. I am not really sure why the cabinet secretary has a problem with that.

I will press most of my amendments, but I will not move amendment 208.

I move amendment 19A.

Nanette Milne: It is very welcome that the bill is person centred. However, a number of stakeholders feel strongly that amendment 206, in my name, emphasises that the bill should go beyond just people's needs to their aspirations and abilities. I appreciate what the cabinet secretary said about guidance coming forward to health boards on the definition of needs, but I would like to see it made a bit more explicit in the bill. By explicitly referring to "aspirations" and "abilities" as well as needs, amendment 206 reflects the human rights approach of the bill. I will therefore move amendment 206.

I support amendment 209, in the name of Malcolm Chisholm, because I think that what it proposes would enable service users to "participate in decisions" regarding their need for services and give them "choice and control" in decision making, which I think we all feel is very important. I am happy to support that principle by supporting amendment 209.

Aileen McLeod (South Scotland) (SNP): I thank the cabinet secretary for his support for my amendment 143. During the committee's consideration of the bill at stage 1, we received evidence from various stakeholders about their concerns around the need for principles on the quality and safety of care to be embedded in the core principles of both the planning and delivery of the integrated services that are set out in the bill. In the committee's stage 1 report, we were sympathetic to those concerns and asked the Government to reconsider its approach to quality and safety in the bill.

I note that many of those concerns have been addressed in the amendments lodged by the cabinet secretary. In particular, new wording has been proposed in amendment 102, which will amend section 25 with respect to the integration delivery principles, at line 9 on page 11. That amendment will introduce the wording:

"protects and improves the safety of service-users"

and

"improves the quality of the service".

Amendment 143 seeks to replicate that wording in section 4, on the integration planning principles, so that there is consistency in both sets of principles. I believe that the quality and safety of care are fundamental, and I am keen for that to be emphasised in the planning principles, so that the requirements for the quality and safety of care must be taken into account by health boards and local authorities when they are preparing their integration schemes. I ask colleagues to support amendment 143.

Rhoda Grant: I will speak to amendments 223, 227, 228 and 231, which are in my name.

Amendment 223 ensures that the provisions in section 25(1)(b) apply to those services that are commissioned or contracted as they do to services from statutory providers. The cabinet secretary said that he has sympathy for amendment 223 but that it would perhaps have some unintended consequences. I will take the amendment away and possibly bring it back at stage 3 when I have considered what he has said about those unintended consequences.

Amendment 227 provides a new duty on the integrated authorities to enable service users to move between different board areas. Currently, service users moving to another authority area need to be assessed when they move, before their support package can be put in place. That is a major barrier to movement, especially for career and family reasons. If we believe in providing people with basic human rights, we need to ensure that they have confidence that there will be no gap in service provision and that they will not be detrimentally affected by their decision to move house. Amendment 227 places a duty on the integrated authorities to take that into account.

I have heard what the cabinet secretary has said on the matter, and he has pointed out that people need to be physically present in an area before transitional arrangements can be put in place. I intend to move amendment 227, because I think it is important to include that in the bill. It puts an onus on to the integrated authorities to take that into account and to ensure that people have confidence that services will be available, which will allow them to move. Otherwise, people face a huge barrier to moving.

Amendment 228 addresses the 15-minute or seven-minute care visit. It places a duty on service providers to spend an adequate length of time for the delivery of the service that they have been commissioned to provide. It provides for service users' wellbeing and dignity and, hopefully, it will ensure that service users receive adequate care and will put an end to care visits of 15 minutes or less.

Amendment 231 recognises that people working to provide care services are often low paid, and that they lack training or support to provide those services. We must all recognise the dedication and professionalism of staff who provide care, which often goes unrecognised. Staff are often paid the minimum wage and receive little or no training in order to fulfil their duties. That is especially the case regarding services that are contracted out. As we know, local government and NHS boards are signed up to paying a living wage, but that is not true in other sectors. Amendment 231 would hopefully call a halt to those practices and would ensure that front-line care providers are properly trained and remunerated, so that they can provide safe, high-quality care.

However, amendment 231 is dependent on amendment 223 to put the onus on those people who are commissioned to provide services, so I intend not to move amendment 231 and to bring it back at stage 3 once I find an appropriate place to put it, where it would not have any unintended consequences.

We should all aspire to people being paid the living wage, and we should ensure that that applies to all those who are paid from the public purse.

I support the other amendments in the group that seek to improve the principles of the bill by placing greater emphasis on the needs and aspirations of service users. It is important to include rights in the bill. As Malcolm Chisholm said, other legislation has already done that. I very much hope that the cabinet secretary might see his way to supporting the proposals in that regard.

11:00

Bob Doris (Glasgow) (SNP): I will make a couple of brief comments. I was not going to speak about amendment 228, but I will refer to it briefly. The first part of amendment 228 mentions improving

"the quality of the service to service-users".

I think that amendment 143 takes that into account. The second part of amendment 228 states that that is

"particularly in relation to the amount of time afforded to ... service-users".

We all have concerns, on occasion, about the practices of certain local authorities, but I am not sure whether the bill is the place to make provision in relation to that. I merely wanted to put that on the record. It is not a way of dismissing some of the concerns that are out there. I just do not think that the bill is the appropriate place to make such provision.

My more substantive comment is on amendment 209, on extending choice for service users, which was lodged by Malcolm Chisholm, supported by Nanette Milne. I would be interested to hear from the cabinet secretary when he sums up whether he agrees that the self-directed support rights that individuals have in relation to social care services, if they are properly applied, already give them much of that choice and control, and that service users could use them rather than our including something on that in the bill. Integration, under community planning and the forthcoming community empowerment and

renewal bill, is a way to extend the influence, choice and control of service users.

The Convener: I call on the cabinet secretary to wind up.

Alex Neil: I will try to deal with the main points that members have raised. We are all trying to end up in the same place. The issue is largely how we get there, and different routes have been suggested.

First, picking up on Bob Doris's latter point, I note that I oppose a number of the amendments not because I disagree with their intention but because I believe that it is more appropriate for the issues to be addressed in full in secondary legislation and in guidance. The danger is that, if we tie ourselves down in language in the bill, we may at a later stage find ourselves restricted in our flexibility, particularly where there are changing circumstances. Secondary legislation and guidance can be changed and updated much more regularly to reflect changing circumstances than can primary legislation. Again, I am happy not just to discuss these matters with committee members but to have further discussions with stakeholders about what should be in the bill and what is better done in secondary legislation or in guidance.

Secondly, in response to a point that Malcolm Chisholm made, I point out that we did not incorporate the human rights legislation into the Social Care (Self-directed Support) (Scotland) Act 2013. What we did was to define independent living and the criteria for that. I am keen that we do everything that we can do to encourage people with independent living, but it is not always appropriate in every circumstance. For example, if there is an extremely frail older person who is not capable of independent living, that is clearly something that we have to address in other ways. The amendments do not contain enough flexibility in relation to the different circumstances of the multitude of service users that we deal with in health and social care.

A good example of that arose yesterday—although the reporting was somewhat inaccurate in places—when BBC Scotland referred to people with long-term conditions, some of whom may be close to being in a vegetative state. Clearly, for them, independent living is not the appropriate package of care. We need to be able to deal with every eventuality and not constrain ourselves and have unintended consequences because of wording in the bill. I am anxious to ensure that we do not do that, particularly in relation to independent living, which is a core part of the philosophy and the delivery of services right across everything that we are doing in health and social care.

Finally, I come to the human rights issue. I stand by what I said—unlike Westminster, we are governed by the convention in absolutely everything that we do. However, I recognise that there is another body of opinion and people still feel strongly that there is a need to reflect rights more in the bill.

I am happy—indeed, I will undertake—to have further discussions with the key stakeholders who have made this point to find out whether I can do a bit more to accommodate their position at stage 3. There is no point in repeating in this bill something that is already in law, but I am happy to consider any area where those people feel that a shortfall still has to be addressed and to look again at the matter before we finalise stage 3.

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

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)

Against

Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

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

Amendment 19A disagreed to.

Amendment 19 agreed to.

Amendments 20 and 21 moved—[Alex Neil]—and agreed to.

Amendment 205 moved—[Malcolm Chisholm].

The Convener: The question is, that amendment 205 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)

Against

Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

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

Amendment 205 disagreed to.

Amendment 206 moved—[Nanette Milne].

The Convener: The question is, that amendment 206 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)

Against

Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

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

Amendment 206 disagreed to.

Amendment 22 moved—[Alex Neil]—and agreed to.

Amendment 207 moved—[Malcolm Chisholm].

The Convener: The question is, that amendment 207 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)

Against

Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

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

Amendment 207 disagreed to.

Amendments 23 and 24 moved—[Alex Neil]—and agreed to.

Amendment 143 moved—[Aileen McLeod]—and agreed to.

Amendment 208 not moved.

Amendment 209 moved—[Malcolm Chisholm].

The Convener: The question is, that amendment 209 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)

Against

Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

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

Amendment 209 disagreed to.

Amendments 25 and 26 moved—[Alex Neil]—and agreed to.

Section 4, as amended, agreed to.

The Convener: I propose a short comfort break of five minutes. I knew that that would make Richard Lyle happy—it is my purpose in life to put a smile on that man's face.

11:11

Meeting suspended.

11:20

On resuming—

Section 5—Power to prescribe national outcomes

The Convener: Amendment 210, in the name of Bob Doris, is grouped with amendments 213, 215, 220, 232, 235 and 238.

Bob Doris: Section 1 of the bill provides that a local authority and health board must prepare an integration plan with regard to the delegation of functions and resources for the area of the local authority. The plan must set out which integration model will apply, the functions to be delegated, and the resources that will be available to support the effective delivery of those functions.

The integration plan will also have a key part to play in delivering the new framework being introduced by the legislation. Significantly, before submitting the integration plan to the Scottish ministers for approval, a local authority and health board must jointly consult various persons or groups of persons under section 6(2) of the bill.

Allied health professionals deliver a wide range of significant health and social care outcomes. They are experts in rehabilitation, re-ablement, preventative care, health promotion and self-

management. Indeed, allied health professionals are often the link that holds complex health and social care pathways together, especially for older people and those with long-term conditions. Many individuals value highly the person-centred therapeutic approach applied by allied health professionals. Significantly, the desired outcomes of the bill, particularly in relation to positive patient experience, are aligned with the approach and practice of the allied health professionals. Amendment 213 would ensure that allied health professionals are consulted in the preparation of integration plans.

Amendment 210 refers to section 3 of the bill. It provides that, when a local authority and a health board are preparing an integration plan, they must have regard to the integration planning principles and to the national health and wellbeing outcomes. Under section 5, the Scottish ministers may, by regulation, prescribe national outcomes in relation to health and wellbeing. Before making such regulations, however, the Scottish ministers are required, under section 5(3), to consult representatives of various bodies and groups and to involve them in the development of these outcomes. Amendment 213 would ensure that allied health professionals are consulted at that point.

Amendments 215 and 220 refer to integration joint boards and integration joint monitoring committees respectively. If passed, the amendments would give a statutory right to a place for allied health professionals on such boards and committees. If it is not desirable to put such a right on a statutory footing, I ask the cabinet secretary for reassurance that allied health professionals will be suitably consulted and have their expert views made known.

I turn to amendments 235 and 232. For the purposes of preparing a strategic plan, integration authorities must establish and consult groups. The term used is "such other persons as it considers appropriate". If passed, amendments 235 and 232 would ensure that allied health professionals would be specified as such appropriate groups or persons to be consulted.

The final amendment in the group, amendment 238, gives a definition to a term that is used throughout the amendments: relevant profession. For the purposes of the amendments, it has the same meaning as in the Health Professions Order 2001.

One of the difficulties in preparing the amendments was that there seems to be no legal definition of allied health professionals. That is why the amendments would place the phrase "relevant profession" in the bill. Some other stakeholder groups suggested to me—correctly, in my view—that to define a relevant profession as an allied health profession is to apply a rather narrow definition. That shows the difficulties that arise when we try to specify in the bill different groups to have statutory rights as consultees or to be on boards.

I am convinced that allied health professionals have a vital role to play in health and social care integration and in other matters, such as seven-day healthcare provision, which the Parliament has considered in the recent past and will continue to consider as part of the 2020 vision. Therefore, the amendments are intended as probing amendments to get some assurances from the cabinet secretary that allied health professionals are a key stakeholder group. Depending on his response to the points that I have made, I would be content to withdraw amendment 210 and not to move the others at the appropriate stage.

I move amendment 210.

Malcolm Chisholm: I certainly support the thrust of what Bob Doris is saying. Often in the past, the vital contribution and role of allied health professionals have been overlooked. I do not know whether the amendments in this group are the right way to address that issue; I am open minded about that. I have an amendment coming later that, in a different context, recognises the importance of allied health professionals so, in general, I am anxious that that be recognised in the bill and accompanying guidance.

I support the spirit of what Bob Doris says, but we might need to revisit the wording subject to what the cabinet secretary says.

Rhoda Grant: I have sympathy with Bob Doris's amendments as well. I very much hope that all health professionals who are involved in the delivery of front-line services will be involved in all the processes in the bill. When we visited Highland, one of the things that struck us most was that nursing staff, allied health professionals and everybody else involved in somebody's care were speaking together—there were no barriers to that—and delivering good-quality care.

There is concern that allied health professionals have perhaps not been as fully involved in the past as they should have been. I hope that not only they but all health professionals will be involved.

Nanette Milne: I agree with that. Rhoda Grant spoke about our visit to Highland. We saw the same in West Lothian, where integration was working because all professionals were involved and focusing on the needs of the patients who were being looked after. It is crucial to involve them all, and it would be important to provide for that in the bill.

Alex Neil: Section 48 of the bill allows the Scottish ministers to prescribe via regulations a list

of health professionals. It is not clear whether amendment 210 is intended to define "health professionals" fully or expand the types of professional who must be consulted to cover a broader range of health professionals.

Given that the Scottish ministers have the power to prescribe via regulations what is meant by health professionals, it is not at all clear what added value amendment 210 would bring. The effect would be to remove some of the flexibility for the Scottish ministers to define health professionals.

The intended effect may be to provide clarity in the bill about which professionals working in health services must be consulted under sections 5, 6 and 7 and included under sections 12, 16 and 26, but the definition provided for in the amendments does not appear to achieve that outcome. It covers various professions but not, for example, doctors and nurses. Therefore, the effect is confusing and appears to add unnecessary complexity to the provision already made for the inclusion of health professionals in the consultation process.

11:30

Amendment 238 provides a definition of "relevant profession", although it is not a comprehensive definition. I fully understand that the intention is to ensure that all health professionals, including allied health professionals, are properly consulted, particularly on regulations, guidance and secondary legislation, but I believe that the existing provisions already do that. I will undertake to ensure that that consultation happens because we are very keen that it should.

As Nanette Milne and Bob Doris rightly said, the success of integration projects that are already up and running, such as that in West Lothian, proves their benefits and the necessity to involve all professionals in every stage of the design and delivery of health and social care services. Unfortunately, the amendments in this group would not do the job. The job is better done elsewhere in the bill and regulations.

The Convener: I call on Bob Doris to wind up and press or withdraw amendment 210.

Bob Doris: I thank the cabinet secretary for his reassurances. He has put on public record the central role that allied health professionals and others will have in making a success of not just health and social care integration but other challenges that will be faced by social care and public health in the years ahead. Given those reassurances, I would like to withdraw amendment 210.

Amendment 210, by agreement, withdrawn.

The Convener: Amendment 211, in the name of Rhoda Grant, is in a group on its own.

Rhoda Grant: Organisations that represent service users and carers, peer support groups and indeed organisations that have a role in providing services, advice or advocacy to enhance the health and wellbeing of service users are not included in the group specified in section 5(4).

Amendment 211 would provide that such groups could be consulted on the national health and wellbeing outcomes. The amendment would not prescribe any groups but would allow organisations with a suitable remit or those that could make a valuable contribution to be consulted on the national outcomes.

I move amendment 211.

Nanette Milne: I am happy to support Rhoda Grant's amendment 211. It would catch all the people who have a worthy contribution to make, who should be consulted.

Alex Neil: Section 5 deals with the power to prescribe national outcomes for health and wellbeing. Subsections (3) and (4) deal with requirements on the Scottish ministers to consult various groups before making regulations to prescribe the national outcomes.

Amendment 211 would add a group to the list of groups whose representatives the Scottish ministers must consult as they see fit. The list covers:

"health professionals, users of health care, carers of users of health care, commercial providers of health care, non-commercial providers of health care, social care professionals, users of social care, carers of users of social care, commercial providers of social care,"

and

"non-commercial providers of social care."

Amendment 211 would add to the list:

"other organisations contributing to the health and wellbeing of service-users."

Consultation on the outcomes needs to be broad in scope to ensure that the needs and priorities of service users are fully reflected. The bill as introduced provides for such breadth, and amendment 211 would add no value to the very broad requirement. I therefore ask Rhoda Grant to withdraw amendment 211.

The Convener: I ask Rhoda Grant to wind up and press or withdraw amendment 211.

Rhoda Grant: I believe that organisations such as peer support groups and advice or advocacy groups are not included in the list, so I wish to press amendment 211, to ensure that any group that has a contribution to make is included.

The Convener: The question is, that amendment 211 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)

Against

Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

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

Amendment 211 disagreed to.

Section 5 agreed to.

Section 6—Consultation

Amendments 27 and 28 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 212, in the name of Rhoda Grant, is in a group on its own.

Rhoda Grant: Amendment 212 is part of a suite of amendments that seek to ensure co-production with service users and their carers. It ensures the involvement of service users and their carers in the preparation of integration plans and that they, along with their representative groups, will be involved in the process. It ensures co-production in proposing the integration plans, which is important in involving people in the services that are provided for them.

I move amendment 212.

Alex Neil: Amendment 212 adds the requirement for health boards and local authorities to involve service users, unpaid carers, third sector organisations and others in the process of developing and agreeing their integration plans.

The committee will wish to note the list of stakeholders that is within the policy statement on section 6 and that the Scottish ministers intend to require them to be consulted on integration schemes. The list of stakeholders includes all those who are noted within amendment 212 as well as a number of other groups of people who I believe should also be consulted, such as health and social care professionals. I draw the committee's attention to section 6(3), which requires that

"the local authority and the Health Board must take account of any views expressed"

by those who they must consult as noted in the policy statement.

The requirement to consult and take account of views goes beyond a duty to involve, as amendment 212 would provide. Therefore, the existing provisions in section 6 and the regulations that I intend to make under that section already go further than would the effect of amendment 212. I therefore ask Rhoda Grant to withdraw the amendment.

Rhoda Grant: I believe that the amendment would go further than consultation. It seeks to involve people in genuine co-production and planning of services that they will be using. I therefore press amendment 212.

The Convener: The question is, that amendment 212 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)

Against

Doris, Bob (Glasgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Lyle, Richard (Central Scotland) (SNP)
McLeod, Aileen (South Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

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

Amendment 212 disagreed to.

Amendment 213 not moved.

Amendment 29 moved—[Alex Neil]—and agreed to.

Section 6, as amended, agreed to.

Section 7—Approval of integration plan

Amendments 30 to 34 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 144, in the name of the cabinet secretary, is grouped with amendment 145.

Alex Neil: The bill, as introduced, does not clearly establish the process for approval, modification and resubmission of integration schemes. The amendments will ensure that that process is made explicit and is conducted within a set timeframe.

The amendments will require that, when the Scottish ministers refuse to approve an integration scheme, the health board and the local authority will be given one opportunity to provide a modified

integration scheme. The amendments require the Scottish ministers to provide detailed information on why the scheme was not approved and advice on how it can be amended to meet approval.

The Scottish ministers will set a timescale in which the resultant modified scheme must be submitted for consideration. The amendments make it clear that, if ministers find cause to reject a modified integration scheme—if, for example, the detailed information and advice that they have provided has not been taken into account—they will use their default powers, which are outlined in section 39, to ensure that integration occurs.

The amendments will ensure that fit-for-purpose integration schemes are established across Scotland in good time to progress integration.

I move amendment 144.

Amendment 144 agreed to.

Amendments 35 and 145 moved—[Alex Neil]—and agreed to.

Section 7, as amended, agreed to.

Section 8—Publication of integration plan

Amendment 36 moved—[Alex Neil]—and agreed to.

Section 8, as amended, agreed to.

Section 9—Functions delegated to integration joint board

Amendment 37 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 38, in the name of the cabinet secretary, is grouped with amendments 61 to 63.

Alex Neil: Section 9, as introduced, covers the delegation of functions where the integration joint board model is used. Section 9(3) establishes that functions for integration must

"be delegated before the prescribed day."

Amendment 38 enables the delegation of functions to take place at any date after the integration scheme has been approved by the Scottish ministers, provided that the formal requirements of the bill in relation to the strategic plan are complied with. The Scottish ministers may also prescribe a day by which all functions must be delegated and strategic plans must commence. That enables integration authorities to put integrated arrangements in place as soon as they are ready and makes provision for a date by which integrated arrangements must be in place.

Amendment 38 responds to feedback from stakeholders that indicates that different areas are at different stages of development in relation to integration and that those that are further ahead do not want to be artificially held back by a single go-live date that applies to all areas.

Amendments 61 and 62 provide clarification on the date on which a lead agency arrangement will go live. They also provide for certainty in start dates for lead agency arrangements, which enables the Scottish ministers to prescribe a day by which functions must be delegated. The result is that all integrated health and social care arrangements in Scotland will be in place by that date at the latest. Locally, partners will also have flexibility to delegate functions earlier than that.

Amendment 63 is consequential to amendment 62.

I move amendment 38.

Amendment 38 agreed to.

Section 9, as amended, agreed to.

Section 10—Chief officer of integration joint board

Amendments 39 and 40 moved—[Alex Neil]—and agreed to.

Section 10, as amended, agreed to.

Section 11—Other staff of integration joint board

11:45

The Convener: Amendment 41, in the name of the cabinet secretary, is grouped with amendments 42, 43, 45, 214, 46 to 48, 51 and 217.

Alex Neil: Amendments 41 and 42 seek to provide further clarity on the ability of the Scottish ministers to make an order under section 11 that would allow integration joint boards to recruit staff other than the chief officer. Amendment 41 provides for flexibility in the use of the powers, so an order made under section 11 can apply to a single integration joint board or to some integration joint boards.

Amendment 42 places a requirement on the Scottish ministers to consult with health boards, local authorities and integration joint boards, where established, before exercising the power to make an order under section 11 to enable integration joint boards to employ staff directly. Enabling integration joint boards to employ staff provides for a significant change in the delivery of health and social care, so I recognise the wide-ranging nature of those powers.

Amendments 41 and 42 will establish a flexible and collaborative approach to the further

empowerment of integration joint boards, which I believe is more appropriate.

Amendments 43, 45, 46, 47, 48 and 52 all relate to section 12, which sets out further provisions that relate to integration joint boards. Amendment 43 aims to clarify that "their functions" means both functions conferred directly on the integration joint board by virtue of the bill, such as a duty to prepare a strategic plan, and delegated functions by virtue of an integration scheme, and that in either case those powers can be conferred on the integration joint board only by an order made by the Scottish ministers.

Amendment 45 enables the Scottish ministers to make an order allowing integration joint boards to establish committees or to delegate functions conferred upon them by an integration scheme. That will be necessary for the effective delivery of functions should direct delivery of delegated functions by the integration joint board be permitted in future. It is important that the responsibility for the effective carrying out of both the delegated functions and the functions conferred on the integration joint board by virtue of the bill, such as preparing the strategic plan, continues to rest with the integration joint board. Therefore, it is only the delegated functions that may be sub-delegated to committees of the integration joint board, the chief officer of the integration joint board or employees of the integration joint board.

Amendment 214, in the name of Rhoda Grant, would add a requirement that, when the Scottish ministers prescribe the membership of the integration joint board, they must include service users, unpaid carers and non-commercial organisations. The committee will wish to note the policy statement provided for section 12, which provides detailed information on the requirements that the Scottish ministers intend to set out in regulations in relation to the membership and proceedings of the integration joint board. The list of members of the integration joint board includes all those noted in amendment 214 and a number of other groups of people that I believe should be involved, such as health and social care professionals.

I believe that it is disproportionate to set out in the bill the groups noted in amendment 214, thus treating the representation of those groups in a different way from the representation of, for example, local authorities and health boards. I believe that the proper place to list the membership of the integration joint board is in regulations and I intend to include all those noted in amendment 214. I therefore cannot support amendment 214.

Amendment 46 seeks to ensure that the Scottish ministers' powers in section 12 are subject to appropriate restrictions. It will allow the Scottish ministers to set out a standard set of arrangements for integration joint boards, covering membership and general proceedings to be introduced, and prevent those arrangements from being varied when it is not appropriate.

Amendment 47 seeks to specify that an order made under section 12 does not require to make general provision for all integration joint boards, except for general orders noted in amendment 46, but can also be for either one or some integrated joint boards. This drafting amendment clarifies the use of the power in section 12.

With regard to amendment 48, stakeholders have raised concerns that the powers in section 12 are far-reaching and, should they be exercised, could significantly change the delivery of health and social care. In recognition of the concerns that have been expressed, especially by local government, I have lodged amendment 48, which seeks to require the Scottish ministers to consult the health board, the local authority and the integration joint board, where it has been established, to ensure that empowerment of integration health boards, where appropriate, is taken forward in a collaborative way.

Amendment 51 seeks to require integration joint boards to have an officer responsible for their financial affairs; to keep accounts; and to have their accounts audited and to provide for the audit to be carried out by the Accounts Commission for Scotland. That will ensure that the bill provides for the proper stewardship, accounting and audit of the money that is received and paid by integration joint boards and for a duty upon integration joint boards to achieve value for money.

Amendment 217, in the name of Rhoda Grant, which seeks to create a new complaints and appeals system for integration joint boards, is, I believe, unnecessary. Health boards and local authorities already have complaints systems. We fully recognise that the current system for social work complaints is no longer up to date or fit for purpose and have been working to produce a new system that will be more accessible, allow complaints to be completed far faster and provide the user with greater transparency. We expect that complaints about services provided by local authorities or health boards will be handled in accordance with new regulations that we expect to introduce shortly and which will produce a joined-up, seamless complaints service and a co-ordinated response for the complainant. In any case, the Public Bodies (Joint Working) (Scotland) Bill is not the appropriate legislative vehicle for making changes to the complaints system, especially when we have not consulted on them as part of this bill.

I move amendment 41 and invite Rhoda Grant not to move amendments 214 and 217.

Rhoda Grant: Amendment 214 seeks to ensure that all service users, carers and their representatives have a representative member on integration boards. Although by necessity that board member will have to represent a very wide group, it is nevertheless important that they are at the very heart of the board and I welcome the cabinet secretary's comments about setting that out in regulations.

The cabinet secretary also said that he did not want to treat those people differently from other groups involved in the board but I suggest that they are different. After all, those are the people for whom the services will be devised and, coming back to the issue of co-production in the bill, I hope that they will be involved in the decisions that are made for them.

As the cabinet secretary will introduce regulations to put what I have suggested into practice, this amendment might have no meaning, so I will not move it. However, I hope that the cabinet secretary will consider whether there is some way of putting users and carers at the heart of the bill to make it very clear that this legislation is for them, and of ensuring that co-production is employed in creating the services that they use and which support them.

Amendment 217 seeks to ensure the introduction of an integrated complaints procedure that will be devised by the Government and which will provide some uniformity with regard to the integration boards. I note the cabinet secretary's comments about introducing a joined-up complaints procedure. It is really important that service users do not have to try to find out which authority, health board or integration board the person in question works for before they can instigate a complaint and, as a result, we need a joined-up scheme. I will wait and see what the cabinet secretary proposes and, for the moment, will not move amendment 217.

The Convener: As no other members wish to speak, I call the cabinet secretary to wind up.

Alex Neil: I thank Rhoda Grant for agreeing not to move her amendment. I will stick to the commitments that I have given and take on board her comments.

Amendment 41 agreed to.

Amendment 42 moved—[Alex Neil]—and agreed to.

Section 11, as amended, agreed to.

Section 12—Integration joint boards: further provision

Amendments 43 to 45 moved—[Alex Neil]—and agreed to.

Amendments 214 and 215 not moved.

Amendments 46 to 49 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 50, in the name of the cabinet secretary, is grouped with amendments 216, 218, 66, 80 and 81.

Alex Neil: The order-making power in section 12 provides for the Scottish ministers by scheme to enable the staff, property, rights and so on of a local authority or a health board to be transferred to an integration joint board. Integration joint boards will not be initially established with employees of their own, but will instead discharge their duties via directions to the health boards and local authorities.

Section 12(3) allows for a possible future decision by the Scottish ministers that integration joint boards should be able to employ staff directly. I fully realise that that has wide-ranging implications for the delivery of health and social care. I therefore lodged amendment 50, which requires the Scottish ministers to consult the relevant integration joint board, health board and local authority before making such a scheme as an appropriate and proportionate mechanism to ensure a collaborative approach for the transfer of staff, property, rights and liabilities to integration joint boards.

Similarly, amendment 66 places a requirement on the Scottish ministers to consult the health board and local authority before making any such scheme under section 15 on the transfer of staff between health board and local authority employment in either direction under lead agency arrangements in order to ensure that their views are taken into account.

Amendments 216 and 218, in the name of Rhoda Grant, would require the Scottish ministers, before making such a scheme under section 12 or section 15 with regard to staff, to consult health and social care professionals and other groups of persons whom the Scottish ministers consider to have an interest. I recognise the concerns expressed during stage 1 that staff should be given a voice in any decision to transfer their employment from a health board or a local authority to an integration joint board. I welcome Rhoda Grant's amendments in that regard and I accept amendments 216 and 218.

Furthermore, section 36(3) makes similar provision for the Scottish ministers, by scheme, to make provision about the transfer of staff in consequence of a new integration scheme. For

consistency, I therefore intend to lodge an amendment at stage 3 that will replicate the effect of amendments 216 and 218 in relation to section 36(3).

12:00

Amendment 80 seeks to clarify the circumstances in which section 19 applies. Section 19 already makes it clear that it applies to transfers of employment under the circumstances that are set out in sections 12 and 15. The amendment proves beyond doubt that section 19 also applies to transfers of employment that take place when a scheme is made as a result of a new integration scheme under section 35.

Amendment 81 clarifies the intention of section 19(3)(b) in relation to pension obligations in circumstances in which staff transfer between employers, such as between a local authority and a health board or to an integration joint board. When such a transfer takes place, there will be no transfer of any liability for any deficit or right to a share in any surplus in respect of the transferred employee's membership of a pension scheme for their employment prior to the transfer. The amendment ensures that such transfers correspond to the requirements of international accounting standards and avoids the risk of a potential misinterpretation resulting in a material additional expense to the original employer.

I move amendment 50 and support Rhoda Grant's amendments 216 and 218.

Rhoda Grant: Amendments 216 and 218 recognise the impact on staff of the changes to integration boards. In the public sector, there are already efficient and well-established procedures for consulting, negotiating and involving staff in changes to their working conditions and arrangements. I hope that those good practices will continue into the partnership authorities, especially during the time of transition, and it is important that we put that in the bill to ensure that it happens. I am grateful to the cabinet secretary for his support for those amendments.

On amendment 81, which relates to pensions, I understand what the cabinet secretary says but I seek assurance that the amendment will not interfere with a person's right to transfer their pension if they see fit and if that gives them the best deal when they move employer. I seek some reassurance on that.

Alex Neil: I reassure Rhoda Grant that amendment 81 does not affect an employee's right to transfer their pension.

Amendment 50 agreed to.

Amendment 216 moved—[Rhoda Grant]—and agreed to.

Section 12, as amended, agreed to.

After section 12

Amendment 51 moved—[Alex Neil]—and agreed to.

Amendment 217 not moved.

Section 13—Payments to integration joint boards in respect of delegated functions

Amendments 52 and 53 moved—[Alex Neil]—and agreed to.

Amendment 146 not moved.

Amendments 54 to 59 moved—[Alex Neil]—and agreed to.

Section 13, as amended, agreed to.

Section 14—Functions delegated to local authority or Health Board

Amendments 60 to 63 moved—[Alex Neil]—and agreed to.

Section 14, as amended, agreed to.

Section 15—Transfer of staff where functions delegated to local authority or Health Board

Amendment 64 moved—[Alex Neil]—and agreed to.

Amendment 218 moved—[Rhoda Grant]—and agreed to.

Amendments 65 and 66 moved—[Alex Neil]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Integration joint monitoring committees: further provision

The Convener: Amendment 219, in the name of Rhoda Grant, is in a group on its own.

Rhoda Grant: Amendment 219 deals with the principles of co-production by ensuring that service users and carers or their representative groups are included in the membership of monitoring committees, which would ensure their involvement at every stage in the process. I very much hope that members will support the amendment, which would ensure that service users and carers are involved in monitoring the care that is provided for them.

I move amendment 219.

Alex Neil: I believe that amendment 219 should refer to section 16(1)(b), which is the power to make regulations regarding membership of a committee, rather than section 16(1)(a), which is

the power to make an order regarding its establishment. I will proceed on that basis.

Amendment 219 would add a requirement that when Scottish ministers prescribe the membership of the integration joint monitoring committee, they must include service users, unpaid carers and non-commercial organisations. The committee will wish to note the policy statement provided for in section 16, which provides detailed information on Scottish ministers' intentions in relation to the provision that will be made for the membership and proceedings of the integration joint monitoring committee.

The list of members of the integration joint monitoring committee that I intend to prescribe includes all those noted in amendment 219 and a number of other very important groups of people, such as health and social care professionals and a staff representative. I believe that it is disproportionate to set out in the bill that we should include the groups noted in amendment 219 but not provide in that way for, for example, the representation of local authorities and health boards, health and social care professionals or service users themselves.

I believe that the proper place to list the membership of the integration joint monitoring committee is in secondary legislation. I intend to include all those noted in amendment 219 in such secondary legislation. On that basis, I ask Rhoda Grant to withdraw amendment 219.

Rhoda Grant: Given the cabinet secretary's reassurance, I seek to withdraw amendment 219.

Amendment 219, by agreement, withdrawn.

Amendment 220 not moved.

Section 16 agreed to.

Section 17—Payments to Health Boards in respect of delegated functions

Amendments 67 to 70 moved—[Alex Neil]—and agreed to.

Section 17, as amended, agreed to.

Section 18—Payments to local authorities in respect of delegated functions

Amendments 71 to 78 moved—[Alex Neil]—and agreed to.

Section 18, as amended, agreed to.

After section 18

Amendment 79 moved—[Alex Neil]—and agreed to.

Section 19—Transfer of staff: effect on contract of employment

Amendments 80 and 81 moved—[Alex Neil]—and agreed to.

Section 19, as amended, agreed to.

Section 20—Co-operation

Amendments 82 and 83 moved—[Alex Neil]—and agreed to.

Section 20, as amended, agreed to.

After section 20

The Convener: Amendment 84, in the name of the cabinet secretary, is grouped with amendments 85 and 87 to 89.

Alex Neil: Amendments 84 and 85 will allow functions that are conferred by statute directly on an officer of a health board or a local authority, when those functions relate to a function that is delegated as part of an integration scheme, to be treated as being conferred on officers of the other bodies that prepared the integration scheme. That will ensure that no barriers to fully integrating health and social care arise from the fact that certain statutes confer functions directly on officers of local authorities or health boards. The amendments will allow flexibility in the exercise of such functions, which is consistent with the aim of integration.

As for amendment 87, section 21 covers the effect of the delegation of functions on the rights, duties and powers of health boards, local authorities and integration authorities. The provisions are particularly important to establishing liability in the event of any failure of integrated services. In the bill as introduced, liability for failure rests entirely with the authority to which functions were delegated. I now consider that to be an impractical approach to liability, which will as time goes on be complex by definition, given the complexity of people's needs and the resulting health and social care provision to support them.

12:15

Amendment 87 follows the principle that responsibility should rest with control and makes clear that the integration authority or either of the delegating bodies may be liable for any claims arising from the exercise of delegated functions. In particular, the integration authority might be liable for claims that can be attributed to failures in relation to its role, such as failures of strategic planning. However, that does not preclude the possibility that a health board or local authority should be liable for acts that have been carried out in the exercise of a direction of the integrated

authority through the strategic plan and that were factually within that board's or authority's control.

Since the bill was introduced, a great deal of work has been undertaken with stakeholders to clarify questions relating to governance and, as part of that, liability in the event of things going wrong under integration. Amendment 87 sets out a practical approach to the potential complexities of liability under integrated arrangements. It allows responsibility for the exercise of the functions to be determined on a case-by-case basis. Given the complexities of health and social care planning and provision for an ageing population, I judge that to be an appropriate and proportionate solution. Work is on-going with stakeholders to plan for any liabilities that may arise under the exercise of integrated health and social care provision. A working group is planned that will comprise all members of the Society of Local Authority Lawyers and Administrators in Scotland, NHS Scotland's central legal office and the Scottish Government legal directorate to develop guidance for integration authorities that will enable them to set out provisions regarding liability in their integration schemes.

With regard to amendment 88, section 22 provides for integration authorities to give directions to health boards and local authorities with respect to carrying out functions. The section enables integration authorities to ensure that health boards or local authorities provide the services that are set out under the strategic plan. The purpose of amendment 88 is to close the loop that enables the integration joint board to oversee the strategic planning process by giving directions to health boards and local authorities for the delivery of services.

The amendment will change section 22 to reflect the different integration models. It provides that, where an integration authority is an integration joint board—that is, where the corporate body model is used—that integration joint board must provide direction to the health board and local authority on the provision of services. Integration joint boards will not—initially at least—employ their own staff and directly deliver services. Therefore, for services to be delivered, it will be necessary for directions always to be given to either the health board or the local authority. On the other hand, where the lead agency model is used, the bill enables but does not require the lead agency—whether it is a health board or local authority—to give direction to the delegating agency for the delivery of services where necessary. The lead agency will also deliver services, and so a requirement to give directions is not mandatory in this instance.

Amendment 88 supports the circumstances in which more than one local authority agrees a lead agency arrangement with a health board. In that situation, the local authority that is the lead agency can choose to direct only one of the local authorities to carry out a function for the entire area that is covered by the integration scheme.

In proposed new section 22(3), amendment 88 provides that the person to whom the direction is given must provide such information as is necessary to enable the integration authority to judge whether a direction is necessary. That will ensure that such information as is necessary for effective strategic planning is shared between the integration authority, the health board and the local authority.

In proposed new sections 22(4) and 22(5), amendment 88 provides that a direction can be given to more than one person. That means that an integration joint board will be able to give a direction to both the health board and the local authority, and that such a direction can require each party to carry out parts or all of the direction, depending on the circumstances. That will enable an integration authority to give directions in such a way as to support integrated service delivery by bringing together the activities of delivery teams in the health board and local authority.

Section 22 provides for integration authorities to give directions to health boards and local authorities with respect to carrying out functions. The new section that will be inserted by amendment 89 will enable integration authorities to ensure that health boards and local authorities provide the services that are set out under the strategic plan.

Subsection (1) of the new section ensures that directions issued under section 22 make adequate provision for the carrying out of functions, particularly in relation to the making of payments and the manner of carrying out the function. The effect of subsection (1) is that it will be clear to the person to whom a direction is issued how the integration authority expects the function to be provided, and the integration authority will be better placed to ensure delivery of integrated functions in accordance with the strategic plan.

Subsection (2) of the new section ensures that integration authorities are able to use directions to manage any difficult relationships with the health board and/or local authority. The effect is that where an integration authority needs to take action to protect its interests—for example, to obtain information, enforce any court order or pursue any claim against the health board or local authority—it can do that by way of a direction. Subsection (2) also provides for the situation in which any liability that is incurred by the integration authority necessitates a payment to be made by the health board or the local authority.

Subsection (3) of the new section clarifies that it is the integration authority that must make payments to the health board and local authority in support of the directions given. Subsections (6) and (7) provide for the situation in which a health board and local authority agree that an integration joint board should be enabled to deliver some functions directly by itself. Those provisions apply for the possible future position in which an integrated board is to employ such staff and manage such contractual arrangements as are necessary to deliver services directly.

Amendment 89 enables Scottish ministers to make an order preventing the joint board from giving direction to the health board and local authority, thus enabling it to carry out the function directly itself. Such an application must be made to Scottish ministers in writing by the health board and local authority. Scottish ministers may in response make an order relating to the relevant functions and the integration joint board may decline the request entirely or may make the order in relation to only some of the functions concerned, depending on whether they are of the view that doing so would improve performance in terms of the national health and wellbeing outcomes.

Subsection (8) of the new section provides for circumstances in which ministers do not believe that quality of outcomes would be improved by enabling an integration joint board to deliver some functions directly by itself and allows ministers to exclude such functions from the order.

I move amendment 84.

Amendment 84 agreed to.

Amendment 85 moved—[Alex Neil]—and agreed to.

Section 21—Effect of delegation of functions

Amendments 86 and 87 moved—[Alex Neil]—and agreed to.

Section 21, as amended, agreed to.

Section 22—Further powers of persons to whom functions are delegated

Amendment 88 moved—[Alex Neil]—and agreed to.

Section 22, as amended, agreed to.

After section 22

Amendment 89 moved—[Alex Neil]—and agreed to.

Section 23—Requirement to prepare strategic plans

The Convener: Amendment 147, in the name of Malcolm Chisholm, is grouped with amendments 90 to 94, 116, 118, 123, 236, 124 to 126, 131, and 201.

Malcolm Chisholm: Again, I have homed in on what was quite an important theme at stage 1: the importance of locality arrangements.

We could refer to many points in the evidence where people said that a lot of the change that they wanted and expected would take place in localities through the locality arrangements. On looking more carefully at the bill, I was therefore surprised that there seems to be very little reference to those locality arrangements.

Section 32, to which we will come later, refers to consultation when it comes to certain changes in localities, but again it is all at a very general level and no one reading the bill would have any clue about what is supposed to happen in those localities. It therefore seems to me that a minimal change that could be made would be to insert a subsection that suggests that regulations should set out the key principles of locality planning.

I am partly concerned that, as drafted, the bill could be interpreted quite differently with reference to locality arrangements. I suppose that I am partly influenced by the experience of community health partnerships, which were legislated for 10 years ago. The intention of those passing that legislation was that CHPs should be rooted firmly in communities, and yet we all know how many community health partnerships became local authority-wide structures.

I accept that the bill has the minimal requirement that there should be at least two localities in each local authority area but, given the size of some local authorities, that is not saying a great deal. Moreover, just to say that there should be two localities says nothing about what the relative powers and responsibilities of those areas should be as distinct from the integration boards.

I fear that, although a lot of the rhetoric of the bill is about locality arrangements and the involvement of a wide range of people from health professionals to service users in those localities, it could be interpreted differently by integration boards if they wish to operate in a centralising manner.

We therefore need a little more in the bill about the locality arrangements. The amendment is fairly minimalist because it just says that the principles should be in regulations. If they were in regulations, that would allow Parliament to debate them and either approve them or ask for them to be amended. I move amendment 147.

The Convener: I now call Nanette Milne to speak to amendments 236 and other amendments in the group. [*Interruption*.] No, I have jumped the gun again. I call on the cabinet secretary to speak to amendment 90 and other amendments in the group.

Alex Neil: The amendments in this group deal with the process of strategic planning.

Malcolm Chisholm's amendments 147 and 201 highlight in particular the role of locality planning within strategic planning. They would give the Scottish ministers, subject to affirmative procedure, the power to set out the key principles of locality planning in regulation.

I am sure that the committee will agree that locality arrangements will be fundamental to the success of the agenda as they are at the sharp end of where health and social care services will be drawn together and delivered. Getting that right within and outwith the legislation is absolutely key.

During the past two years, the Scottish Government has had extensive discussions with stakeholders about how best to reflect locality arrangements in the legislation. The overwhelming response has been that we should require that they are established in every area of Scotland, that they are embedded within the strategic planning process, and that they involve the full range of local stakeholders in their establishment and operation.

Other than those three key areas, the response has been that the rest of the arrangements should be left to guidance to allow local flexibility on how the localities should operate. To prescribe the arrangements runs the risk of hampering local innovation, disengaging stakeholders from the start, creating unnecessary bureaucracy, and creating arrangements that are unsuitable for the majority of localities in Scotland.

12:30

I have considerable sympathy for the intention behind Mr Chisholm's amendments 147 and 201, but I do not believe that they are the best way to achieve the aim of strengthening the basis of locality planning.

First, the bill already contains principles that integration authorities must have regard to in the development of locality arrangements. Adding a second set of principles via regulation will not add much to those arrangements.

Secondly, regulations are used to set out the detail of arrangements that must be put in place rather than principles that organisations must have regard to. That is why we have already established principles on the face of the bill that define how integration must be taken forward.

Thirdly, stakeholders have been clear that they believe that the most effective way of developing locality arrangements is to provide flexibility, underpinned with statutory guidance. The bill makes provision in section 41 to ensure that all statutory partners must have regard to the statutory guidance that we produce. I intend to provide statutory guidance on locality planning that goes beyond just the setting of principles to consider far more of the detail of how localities can be made to be successful.

Finally, the message has been clear from stakeholders that they should be left to make successful locality arrangements in the way that suits them locally. I believe that that is the right thing to do. The bill sets out clear arrangements for annual reporting and, as noted in the policy statement for the regulation, that will include a duty to report on the success of the locality arrangements. I intend to hold integration authorities to account for that. I therefore invite Malcolm Chisholm to withdraw amendment 147 and not to move amendment 201.

My amendments in this group focus on ensuring appropriately robust and flexible arrangements for strategic planning. Amendment 90 allows the health board and local authority to choose to delegate functions on a day that is earlier than the day that is prescribed by the Scottish ministers. When that is done, the integration authority must make clear in the strategic plan the date when functions are to be delegated. That will ensure transparency and clarity as to when delegation will take place. It also allows for local flexibility where good progress in integration is being made.

Amendment 91 requires the integration authority to have prepared a strategic plan before the functions can be delegated by the health board and local authority. That is important in order to ensure that services are planned for and delivered in an integrated way.

Amendment 92 removes the requirement to restrict the first strategic plan to a period of three years. As introduced, the bill requires the first strategic plan prepared by an integration authority to relate to the period of three years beginning with the prescribed day on which integration begins. While the integration authority can plan for a longer period, the plan must be reviewed and revised at least every three years. For example, if an integration authority wishes to produce strategic plans covering a five-year period, it can do so, but it will need to develop a new five-year plan at least every three years. The strategic plan can and should be reviewed at any other time within that three-year period and, if revised earlier than the end of the three-year period, a new three-year period will commence from the new start date.

Amendment 92 responds to discussion with stakeholders that has led to the conclusion that restricting the strategic planning period to a maximum of three years is unnecessary and inconsistent with good practice in relation to commissioning and planning services.

Amendment 93 removes a requirement for strategic plans following the first strategic plan to be prepared every three years, before the anniversary of the day on which the integration began. Instead, amendments 127 and 129, to be debated in group 20, require the integration authority to keep the strategic plan under continual review and to establish a new strategic plan for a period of three years.

Amendment 94 is a drafting amendment that provides for a definition of "integration start day". The amendment provides the start of integration to be the date set out in the strategic plan or the prescribed date for integration authorities that are integration joint boards and lead agency.

Amendment 116 makes it clear that section 27 refers to the development of the strategic plan, and the strategic planning group is formed for that purpose. Amendment 118 is a technical change that updates the numbering of the section. Amendment 123 will enable the integration joint board to obtain relevant information from the health board and local authority for the purposes of preparing the strategic plan.

Amendment 124 will remove section 28, which relates to the lead agency model. In the bill as introduced, a lack of approval for the strategic plan under section 28 requires a lead agency to modify the strategic plan but does not prevent the lead agency from implementing a plan that has not been approved. To give the delegating agency a greater power over the strategic plan than that held by the lead agency would undermine the principle of delegation. The provision as it stands would therefore be an unnecessary complication to the strategic planning process, without benefit for patients or service users.

Given that amendment 124 will remove section 28, which relates to the lead agency model in its entirety, I ask Nanette Milne not to move amendment 236. I reassure Nanette Milne that regulations will ensure the proper involvement of the third sector in strategic planning, and guidance will be provided to support that.

Amendment 125 will require the integration authority in a lead agency arrangement to publish the strategic plan as soon as practicable after it has been finalised. That is the same requirement that applies to an integration authority in a body corporate arrangement.

Amendment 126 will simplify section 29. As a result of removing section 28 via amendment 124, it will no longer be necessary to make different provision for different models of integration in relation to publication of strategic plans.

Amendment 131 will require the integration authority to publish an annual financial statement on commencement of its first strategic plan and every year after that. In order to support transparency regarding use of the integrated budget, the financial statement must set out the total resources that the integration authority intends to allocate under the provisions of the strategic plan.

In conclusion, I urge Malcolm Chisholm to withdraw amendment 147 and not to move amendment 201, and I urge Nanette Milne not to move amendment 236.

The Convener: I now call Nanette Milne to speak to amendment 236 and the other amendments in the group.

Nanette Milne: Amendment 236 is suggested as an approach to get third sector sign-off of strategic plans in the bill. As we know, the third sector is a key partner, alongside health boards and local authorities, and many stakeholders want to see its role clearly articulated in statutory guidance, as the cabinet secretary said, and secondary legislation.

I am seeking third sector sign-off of strategic plans prepared by the health and social care partnerships because the joint sign-off under reshaping care for older people has enabled many areas to overcome barriers to partnership and has been a key driver for the cultural change that is widely acknowledged as the essential foundation for successful integration. That is why I lodged amendment 236.

Alex Neil: I assure Nanette Milne that I totally agree with her on the need for the proper representation of the third sector, which we will provide in the secondary legislation and guidance.

The Convener: I ask Malcolm Chisholm to wind up and press or withdraw amendment 147.

Malcolm Chisholm: I listened with interest to what the cabinet secretary said. There could have been a contradiction between his strong words about statutory guidance and his previous words about leaving everything to localities so that innovation is not curtailed.

I want to look further at the issue. I may well want to lodge amendments with different wording at stage 3, but I am prepared to withdraw amendment 147 at present.

Amendment 147, by agreement, withdrawn.

Amendments 90 to 94 moved—[Alex Neil]—and agreed to.

Section 23, as amended, agreed to.

The Convener: That ends today's consideration of the bill at stage 2. I thank everyone for their patience and co-operation.

Meeting closed at 12:39.

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