The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 11 November 2014

Session 4

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HEALTH AND SPORT COMMITTEE
29th 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:

Shaben Begum (Scottish Independent Advocacy Alliance)
Sue Kelly (Inclusion Scotland)
Karen Martin (Carers Trust Scotland)
Michael Matheson (Minister for Public Health)
Gordon McInnes (Mental Health Network (Greater Glasgow))
Alex Neil (Cabinet Secretary for Health and Wellbeing)
Rhona Neill (People First (Scotland))
Carolyn Roberts (Scottish Association for Mental Health)
Steve Robertson (People First (Scotland))
Andrew Strong (Health and Social Care Alliance Scotland)
Alison Taylor (Scottish Government)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Health and Sport Committee

Tuesday 11 November 2014

[The Convener opened the meeting at 10:00]

Subordinate Legislation

Public Bodies (Joint Working) (Integration Scheme) (Scotland) Regulations 2014 [Draft]

Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Regulations 2014 [Draft]

Public Bodies (Joint Working) (Prescribed Local Authority Functions etc) (Scotland) Regulations 2014 [Draft]

Public Bodies (Joint Working) (National Health and Wellbeing Outcomes) (Scotland) Regulations 2014 [Draft]

Public Bodies (Joint Working) (Scotland) Act 2014 (Modifications) Order 2014 [Draft]

The Convener (Duncan McNeil): Good morning, and welcome to the 29th meeting in 2014 of the Health and Sport Committee. I ask everyone in the room, as I usually do at this point, to turn off mobile phones, as they can interfere with the meeting and the sound system. Those paying attention will notice that some of the committee members and officials have tablet devices, which they are using instead of hard-copy papers.

Agenda item 1 is subordinate legislation. We have five affirmative instruments before us. As usual with affirmative instruments, we will have an evidence-taking session. The Cabinet Secretary for Health and Wellbeing and his officials will provide evidence on the instruments. Once all our questions have been answered, we will have the formal debate on the motions.

I welcome Alex Neil, the Cabinet Secretary for Health and Wellbeing, and his Scottish Government officials, who are Alison Taylor, team leader; John Paterson, divisional solicitor; Frances Conlan, bill team leader; and Clare McKinlay, solicitor.

Cabinet secretary, do you want to make a brief statement?

The Cabinet Secretary for Health and Wellbeing (Alex Neil): Yes, please, convener. Thank you very much for the opportunity to do so and to introduce the affirmative instruments supporting the Public Bodies (Joint Working) (Scotland) Act 2014 to the committee for discussion.

I will say a few words about the important role that this legislation has to play in helping to ensure that Scotland as a country provides the best support to its people wherever they may live and however complex their support needs.

Health and social care systems around the world are adapting to meet the needs of populations that are living longer. Scotland is no different from the rest of the developed world in that regard; nevertheless, our partners across Europe and beyond recognise that Scotland is taking bold and ambitious steps to integrate care.

Our legislative framework for integration, which the instruments are an important part of, requires our health and social care systems to work together more closely than ever before. It places individuals, patients, service users, carers and families at the centre of planning and service provision, with outcomes set out in law and resources pooled to reflect and maximise support for the individual's whole pathway of care.

The programme of reform builds on a long history of partnership working across health and social care. Its development has benefited greatly from the involvement of a wide range of stakeholders and partners across all sectors. I extend my sincere thanks to all the people involved. I look forward to continuing the work with them once the legislation is in place.

I will set out briefly the effect of the five instruments under consideration. The regulations on the integration scheme set out matters that must be included in the integration scheme that will be prepared by each local authority and health board in addition to matters prescribed in the act for inclusion in the scheme. That information provides the framework within which the integration authority—either an integration joint board or a lead agency—will operate.

The regulations on outcomes for national health and wellbeing set out the outcomes that every integration authority must work towards, providing a strategic framework for the planning and delivery of health and social care services. Together those outcomes articulate the core values of the integrated health and social care system that we are establishing in every part of Scotland.

The regulations on prescribed health board functions set out which health functions and services may, must and must not be integrated. I suggest that the most important aspect of the regulations is the list of health services that must be integrated as set out in schedule 3. Health

services are included on the must list to ensure that integrating arrangements include at least adult, primary and community healthcare and aspects of adult hospital care that offer the best opportunities for service redesign and better outcomes. That is the approach that we have set out from the beginning of the process through consultation and the passage of the bill through Parliament.

The regulations on prescribed local authority functions set out which social care functions of local authorities must be integrated along with the health functions to which I referred.

Finally, the modifications order that has been included for the committee's consideration will make technical amendments to the act for two purposes. The amendments that are made by the order will ensure that the application of section 1(4)(d) of the act is aligned with the policy intention where the lead agency model of integration is used. It will also amend a cross-reference to the National Health Service (Scotland) Act 1978 to ensure that the powers of the Common Services Agency are appropriately broad.

I welcome the opportunity to discuss the instruments further.

The Convener: Thank you.

Do members of the committee have any questions for the cabinet secretary?

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Yes. It has all been made very clear on the whole; the only area that I am still slightly concerned about is continuing care, because of the report that came out last April and the proposal that all continuing care should be provided only within a hospital setting. That seems to go against the general thrust of what the Government is trying to achieve, which is that people should be as close to their home as possible and that care homes—certainly a few of them, but not all of them—should be capable of looking after people with quite complex and high needs. That report indicated that the already very small numbers in Scotland who are involved and who will receive free care will be looked after in hospital.

In England, 58,000 people receive free national health service care in hospital or in a care home—many of them are in care homes. In Scotland, the figure is only around 1,700. I understand that 1,100 or so of them are in hospital and that 600 are in care homes. Proportionately, around 4,500 should receive free continuing NHS care, but we are not seeing that.

Frankly, I am not really interested in comparisons with England—it is what we do here that is critical—but I am concerned that, as far as I can see from my reading of the instruments, which are technical and complex, that issue has not been resolved, partly because the Government has not, as far as I know, decided quite how to act on that report yet. It has accepted the report, but action on it has not been agreed.

That seems to me to be an area of almost immediate dispute. If 500 patients or the potential new cohort of 500 patients are going to be transferred, that will be something of a problem.

Alex Neil: I made a statement to Parliament following that report in which I accepted its recommendations and principle, and outlined how the Government is moving forward. I intend to bring a progress report to the committee at some stage early in 2015.

The important, key difference that the report recommended was that, from April next year, continuing care should be defined as hospital based. We are not saying that there is a whole load of people with continuing care under the new definition and they will all be hospital based; rather, we are saying that, to be defined as continuing care patients for the future, they have to require long stays in hospital. Under the new system, every case will be reviewed at least every three months, of course.

In respect of integration, the care of those people will still come within the ambit of the relevant parts of the legislation, although obviously the day-to-day administration of their care will be for the clinicians who care for them. Therefore, there should be no dispute whatsoever. Those people are part and parcel of what the legislation does.

Dr Simpson: The joint operation.

Alex Neil: Absolutely. I do not know whether anyone wants to add anything to that.

Alison Taylor (Scottish Government): That is absolutely correct. The specialties within which those people may be treated will be either part of the integrated arrangement or not, depending on the details that are set out in the regulations. The focus is on what type and locus of care is best for the patient, and that is a medical decision.

Dr Simpson: Right. It is clear that funding that care will fall on the individual families if people are moved out of hospital.

Alex Neil: As you know, with the Convention of Scottish Local Authorities, we are reviewing the whole issue of funding. Let us take the example of funding for dementia sufferers. I know that care for dementia patients is not continuing care, but it is a similar situation. When free personal care was introduced, it was confined to people of pension age because they no longer qualified for working-age benefits. The assumption was made that

anyone who required the kind of care that is required for dementia sufferers—dementia is a topical issue at the moment—would be of pension age or would receive working-age benefits. Around 3,000 of the 87,000 people in Scotland who have been diagnosed with dementia have not reached pension age. A big issue is what kind of care they should get. Some patients will be entitled to free personal care anyway—some people misinterpret the legislation as saying that it is necessary to be over 65 to get free personal care, but there are exceptions.

The problem is that, because of the changes that have been made to working-age benefits, there are people who have not reached pension age who are not qualifying for free personal care and who are not getting the level of working-age benefits that it had been assumed that they would get when free personal care was introduced. That is part of this mix. In relation to continuing care as well as conditions such as dementia, we are actively looking to identify how many people fall between the stools, in what circumstances they do so and what we need to do to close any gaps. That is due to be reported on by the end of the calendar year.

Dr Simpson: I look forward to that.

Richard Lyle (Central Scotland) (SNP): I welcomed the Public Bodies (Joint Working) (Scotland) Act 2014, because I had experience of situations in which people were not getting out of hospital because the social work department had not adapted their home. I am sure that the 2014 act and the subordinate legislation under it will help many people, and I know that you are totally committed to that.

I have a question about proportional representation on the boards. You want to be inclusive, as far as that is possible. However, there is a situation whereby some political parties are taking all the local authority representation on the board. I will not name the party that is doing that in my area, but I believe that that is wrong. From 2007 to 2012, we had joint working and all parties got a fair share through proportional representation, but I do not think that that is happening now.

Do you intend to introduce other subordinate legislation to fix that? I make a plea to everyone to share out the representation to ensure that all parties are represented on the boards.

Alex Neil: I believe that there is a strong case for local authority representation on boards to be based on the proportionality of representation in the councils, but we have not made that statutory, because if we were to do so, that would introduce a new principle for the governance of external local authority representation, on which there is a wider debate to be had. Rather than prejudge that debate, we are not making proportionality a mandatory part of the representation of councils on boards, and we have no plans to do so.

That said, my personal view is that, for the stability of an integrated scheme, it would be beneficial to have proportional—and, certainly, cross-party—local authority representation on the board, because I think that we all agree that the measures that we are talking about are about everyone working together, parking politics at the door and doing what is best for service users and patients. I think that we will get more stability in the system if we widen the involvement of stakeholders and include minority parties in councils in the representation on boards. However, that is entirely a matter for each council to take a decision on. It is not mandatory. There is a wider debate to be had on whether in future the principle of proportional representation should be extended to all bodies on which local authorities have external representation, but I think that that debate is outwith the scope of the legislation that the committee is considering.

Richard Lyle: I recently attended an event that was hosted by the British Medical Association, and that was one of the points that it made. Are you encouraging boards to ensure that general practitioners and so on are represented on the boards?

10:15

Alex Neil: Absolutely. That is happening in three different ways. It is not just the partnership board that is important; the make-up of the localities is also fundamental to the working and success of the legislation. Also, even at this stage, in drawing up the shadow boards' strategic plans, we have made it absolutely clear that, as well as looking at the substance of the strategic plans, we will be looking at the process by which they have been drawn up. I want to be sure that all the key stakeholders—including GPs, who have a vital role to play, as many others have, in ensuring the success of integration—have had an opportunity to be involved and to contribute to the development of the strategic plan, and that they can continue to do so.

The Convener: As no members have further questions, we move to item 2, the formal debate on the affirmative SSIs on which we have just taken evidence. I remind committee members that they should not now put questions to the cabinet secretary, and I remind officials that they must not speak in the formal debate. I invite the cabinet secretary to move motion S4M-11455.

Motion moved,

That the Health and Sport Committee recommends that the Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Regulations 2014 [draft] be approved.—[*Alex Neil*.]

The Convener: Do any members wish to contribute to the debate?

Members *indicated disagreement.*

The Convener: Cabinet secretary, I assume that you do not feel the need to sum up.

Alex Neil: No, thank you.

Motion agreed to.

The Convener: Item 3 is our second formal debate on the affirmative SSIs on which we have just taken evidence. I invite the minister to move motion S4M-11456.

Motion moved,

That the Health and Sport Committee recommends that the Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Regulations 2014 [draft] be approved.—[*Alex Neil*.]

The Convener: I offer members an opportunity to contribute to the debate.

Dr Simpson: The important thing is the clarity with which the regulations divide contractual arrangements from operational arrangements. That is extremely welcome, because it is one of the things on which the previous attempts to drive integration on a voluntary basis failed. I welcome the fact that the regulations make it clear that the board retains the responsibility for contractual arrangements on a whole list of issues but that the function will go to the new joint board, which will have the power to do the planning and to effect the operation of the systems.

The Convener: There are no other members who wish to contribute to the debate. Cabinet secretary, do you wish to respond?

Alex Neil: I agree with Dr Simpson. That is an important element in making integration a success.

Motion agreed to.

The Convener: Item 4 is our third formal debate on the affirmative SSIs. I invite the minister to move motion S4M-11457.

Motion moved,

That the Health and Sport Committee recommends that the Public Bodies (Joint Working) (National Health and Wellbeing Outcomes) (Scotland) Regulations 2014 [draft] be approved.—[*Alex Neil*.]

Motion agreed to.

The Convener: Item 5 is our fourth formal debate on the affirmative SSIs. I invite the minister to move motion S4M-11458.

Motion moved,

That the Health and Sport Committee recommends that the Public Bodies (Joint Working) (Integration Scheme) (Scotland) Regulations 2014 [draft] be approved.—[*Alex Neil*.]

Motion agreed to.

The Convener: Item 6 is our fifth and final formal debate on the affirmative SSIs. I invite the minister to move motion S4M-11459.

Motion moved,

That the Health and Sport Committee recommends that the Public Bodies (Joint Working) (Scotland) Act 2014 (Modifications) Order 2014 [draft] be approved.—[*Alex Neil*.]

Motion agreed to.

The Convener: That concludes our consideration of subordinate legislation. I thank the cabinet secretary for giving his time this morning, formally and informally, and for the officials' attendance. It is all very much appreciated.

10:20

Meeting suspended.

10:22

On resuming—

Food (Scotland) Bill: Stage 2

The Convener: Agenda item 7 is stage 2 consideration of the Food (Scotland) Bill. Members should have a copy of the groupings and the marshalled list. I welcome the Minister for Public Health, Michael Matheson, and his officials.

Sections 1 and 2 agreed to.

Section 3—General functions

The Convener: Amendment 49, in the name of Aileen McLeod, is grouped with amendments 51, 52, 56, 58, 62 and 64.

Aileen McLeod (South Scotland) (SNP): The majority of the amendments that I have lodged for the committee's consideration at stage 2 are based on concerns that were raised with me by a number of groups, not least those with a particular interest in consumer protection and consumer interests. They are keen for the role of food standards Scotland in relation to consumers to be strengthened. Some of the concerns are worth exploring further with the minister and, on others, I am keen to seek some reassurance from him.

The groups concerned broadly support the bill's provisions and see it as affording an opportunity for a new food Scotland body to build on the strengths of the Food Standards Agency Scotland. Many of the amendments in the group primarily seek to ensure that the new food body delivers for consumers by protecting the public from risks to health and improving the public's diet; they also seek to ensure that consumers' interests are protected and are central to everything that the new body does in relation to food.

Amendment 49 would amend section 3, "General functions", by removing the word "significantly" from subsection (1)(c). The thinking behind the amendment is that, by requiring the new body to act only when matters significantly affect consumers'

"capacity to make informed decisions about food matters",

the threshold to inform consumers is perhaps being set too low. Amendment 49 would widen the range of food matters about which FSS will keep the public informed and advised.

Amendment 51 would insert a new provision in section 4(1), which concerns governance and accountability. It would require FSS to operate in a way that

"treats the interests of consumers as its primary consideration".

Amendment 52 would amend the definition of good decision-making practice in section 4(2) by providing that it includes

"consulting consumers and representatives of consumers".

Amendments 56 and 58 would amend section 6 in relation to the membership of FSS and the appointment of its members by ministers. The concern behind amendment 56 is to ensure that there is an open process that secures a balance of expertise on the board between those who have industry experience and those who have, as the amendment states,

"experience or knowledge of consumer affairs".

Amendment 58 relates to amendment 56 but goes a little further, because it would require that, when ministers appoint members of FSS, they

"have regard to the balance of expertise, skills and experience required by members to ensure that Food Standards Scotland operates in a way which treats the interests of consumers as its primary consideration."

The last amendment in the group is amendment 64, which would amend the meaning of

"other interests of consumers in relation to food"

in section 54 by widening the definition to include

"wider social and ethical considerations relevant to food."

The concern is that the definition in section 54 is perhaps too narrow and focuses largely on labelling issues and food descriptions. However, perhaps what is required is just some assurance that FSS will have sufficient scope to represent the public on all food issues that matter to them and that that is made a bit clearer.

I welcome comments from the minister on the amendments in group 1.

I move amendment 49.

The Convener: No other members wish to speak. I call the minister.

The Minister for Public Health (Michael Matheson): I will respond to each of Aileen McLeod's amendments. We understand the intention of the proposal in amendment 49 to remove the word "significantly". It is important that food standards Scotland acts on a wide range of interests that are important to consumers, and that is what its intended objective is. However, the practical effect of the seemingly small change that amendment 49 proposes would be that FSS could have to turn its attention to a wide range of concerns, significant or not. That could risk FSS losing focus on the most important matters that it must consider.

The word "significantly" is important in section 3 because it makes it clear that, although FSS will be concerned with all matters of interest to consumers, it cannot lose focus on matters that

have the most impact on consumers. For that reason, I invite the committee not to support amendment 49.

I appreciate the intention behind amendment 51, as it will be important that the message is clear from FSS that it must be consumer focused. However, I argue that the amendment is unnecessary, because it is clear from section 2, which sets out the objectives of food standards Scotland, that the consumers' interests have to be FSS's primary concern. Setting that out in different language in section 4 would be unnecessary and could be confusing. Food standards Scotland's objectives are set out clearly in the bill. Therefore, I invite the committee not to support amendment 51.

Amendment 52 would require food standards Scotland to consult consumers and their representatives. Consultation will be a key issue for the new body. Under European legislation, we have to consult publicly on all food law. The bill goes further—it requires food standards Scotland to consult all those affected by its decisions. It will be a consumer-focused body, which means that consumers and their representatives will be consulted, so it is not necessary to state that again in the bill. Furthermore, the wording of amendment 52 is problematic, as it does not require consultation before any decision or action, so it might not fully deliver its intention. The existing provisions require consultation before any action. Therefore, I ask the committee not to support amendment 52.

10:30

On amendment 56, I send the strongest signal possible that it is hard to imagine any circumstance in which anyone without experience or knowledge of consumers could be suitable for appointment to the food standards Scotland board. Given that the body's objectives are entirely focused on the public and the consumer, that experience or knowledge will be a requirement for any member who is appointed to the board. I realise that the amendment does not intend to limit the influence of the consumer focus but, by introducing the notion that only two members must have such experience or skill, it might dilute the need for all members to have such experience. Therefore, I hope that the committee will agree that the amendment is unnecessary. I invite it not to support that change.

Amendment 58 covers the same ground as amendment 56. The desire to make such experience or skill a requirement by amending the bill is understandable. However, as I said, ministers do not intend to appoint members without experience of consumers or consumer affairs. The skills required of members must be linked to food standards Scotland's objectives, which are all about a consumer focus. As with amendment 57, amendment 58 is unnecessary. I invite the committee not to support it.

The position on amendment 62 is similar. Any committees established by food standards Scotland would be bound by its consumer interest focus. Under the bill, it should not be possible for committees to operate outwith the scope of protecting the interests of the public and consumers. Therefore, the amendment is unnecessary and I invite the committee not to support it.

Amendment 64 would introduce a specific meaning for the phrase "other interests of consumers". I recognise that social and ethical considerations will naturally form part of consumers' interests. However, those interests would be covered by existing provisions. The amendment might lead consumers to question why only those interests were listed as examples, which could lead to misunderstanding about food standards Scotland's wider consumer objectives. Therefore, the amendment would not be as helpful as is intended. I invite the committee not to support it.

The Convener: I ask Aileen McLeod to wind up and to press or withdraw her amendment.

Dr Simpson: Oh! Are we not having a debate?

The Convener: You can speak if you make a bid.

Dr Simpson: I will do that.

The Convener: The clerk has reminded me that I offered members the opportunity to participate in the debate before I called the minister to respond. Therefore, we cannot have a debate. I am sorry about that.

I call Aileen McLeod.

Aileen McLeod: I listened carefully to what the minister said on the amendments and the representation of consumer interests. I am reassured by what he said, so I will not press amendment 49.

The Convener: The amendment is withdrawn.

Dr Simpson: I wish to move the amendment. I understand that, if a member seeks leave to withdraw an amendment, another member may move it if they wish to do so.

The Convener: We need to get committee members' agreement to withdraw the amendment, rather than have it moved again. [*Interruption*.] I am being told that, in this case, the amendment has been moved and withdrawn and no other member can move it.

Dr Simpson: Convener, I put on record my dissatisfaction with the way in which the procedure is being handled. I did not hear the request for speakers; I would have come in immediately if I had. I feel that I have been denied the opportunity of making a number of important points about the amendment that the committee should take into consideration.

I also express my dissatisfaction with the fact that the member who moved the amendment can withdraw it without the committee having the opportunity to say whether it agrees to it being withdrawn. That is not my understanding of procedure.

The Convener: That is the difference with what I said and the advice that I was given. You can object to the amendment being withdrawn, but you cannot move it.

Dr Simpson: In that case, I object to it being withdrawn.

The Convener: I will take the criticism that I went to the minister too quickly, but I had no bids from any member to participate in the debate.

Dr Simpson: My dispute arises because you did not ask the minister to wind up. You asked him to speak, and I understood that he was making his introductory remarks about the amendment rather than being at the winding-up stage.

The Convener: I am sorry for that misunderstanding.

Dr Simpson: I want to object to amendment 49 being withdrawn, if that is permitted.

The Convener: Does the committee agree to the withdrawal of amendment 49?

Dr Simpson: No.

The Convener: The committee does not agree.

Dr Simpson: Is there a vote on that?

The Convener: There will be a division.

For

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

Against

Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Abstentions

McNeil, Duncan (Greenock and Inverclyde) (Lab)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 49, by agreement, withdrawn.

The Convener: Amendment 50, in the name of Aileen McLeod, is in a group of its own. Aileen McLeod will speak to and move the amendment, and then of course I will ask whether any other members wish to participate in the debate, before I go to the minister.

Aileen McLeod: Amendment 50 is to section 3, page 2, line 12. Section 3 provides that the new FSS body will have the function of monitoring the performance of enforcement authorities in enforcing food legislation. Amendment 50 would add the words

"and promote best practice by",

the purpose of which is to expand FSS's function in relation to the enforcement authorities so that, in addition to monitoring their performance, the new body must also promote best practice by enforcement authorities. The bill does not require FSS to promote best practice between local authorities and other agencies, although it will be in a key position to do so. That would help to put the relationship between FSS and the local authorities on to a more proactive basis that, it is generally felt, will lead to better outcomes on food safety and enforcement issues.

I move amendment 50.

Dr Simpson: I support the amendment. It is critical that the new food standards body should be in a position to promote best practice. It is essential for the new body to look at the variation between local authorities, select those that are not doing well and report to us on what is happening for whatever reason. It should also be able to pick up and promote best practice in local authorities, which are the main enforcement bodies. I welcome the amendment.

The Convener: Does any other member wish to speak?

Nanette Milne (North East Scotland) (Con): Amendment 50 is important, because it is clear that best practice has to be sought across the country. We know that there are variations—not everything is the same in every authority. I am happy to support the amendment.

Michael Matheson: The creation of food standards Scotland provides an opportunity to look at the links between enforcement nationally and locally. We should not rush into that, and it is already part of our vision for how we provide even better protection for the public and consumers. However, we must first ensure that we bed in FSS.

Amendment 50 will help to provide a strategic link between enforcement authorities and FSS, which is why I support it. I invite the committee to support the amendment for the reasons that Aileen McLeod outlined.

Aileen McLeod: I will press amendment 50. I thank the minister for supporting it.

Amendment 50 agreed to.

Section 3, as amended, agreed to.

Section 4—Governance and accountability

The Convener: I ask Aileen McLeod to move or not move amendment 51.

Aileen McLeod: Not moved.

Dr Simpson: I object.

The Convener: Richard Simpson can move the amendment, because it has not been moved previously.

Amendment 51 moved—[Dr Richard Simpson].

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

Members: No.

The Convener: There will be a division.

For

Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

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)

Abstentions

Milne, Nanette (North East Scotland) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 51 disagreed to.

The Convener: I ask Aileen McLeod to move or not move amendment 52.

Aileen McLeod: Not moved.

Amendment 52 moved—[Dr Richard Simpson].

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

Members: No.

The Convener: There will be a division.

For

Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

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)

Abstentions

Milne, Nanette (North East Scotland) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 52 disagreed to.

The Convener: Amendment 53, in the name of Aileen McLeod, is grouped with amendment 54.

10:45

Aileen McLeod: Amendments 53 and 54 relate to a need to strengthen the provisions on governance and accountability in section 4 to deal with concerns that were raised around ensuring that there are sufficient protections for how the new body will ensure that there is openness and transparency. [*Interruption*.]

The Convener: Following that announcement, I should say that the committee, the minister and members of the public will, of course, observe the period of silence for remembrance in the committee room. I invite Aileen McLeod to continue.

Aileen McLeod: Thank you, convener.

The ultimate aim of amendments 53 and 54 is for the new body—FSS—to hold its meetings in public, except when the matter that is under discussion relates to personnel matters or it is considered that other exceptional circumstances apply. When meetings are held in private, the reason for doing so must be made publicly available.

Amendment 53 would insert into section 4(2) the words

"unless subsection (2A) applies, holding all meetings of Food Standards Scotland, and all meetings of any committee established by it, in public".

Amendment 54 seeks to insert two new subsections—subsections 2A and 2B—into section 4. Those proposed new subsections set out the circumstances under which food standards Scotland or any of its committees may decide to hold meetings or parts of meetings in private.

I move amendment 53.

Dr Simpson: I speak in support of the amendments. Most public bodies in Scotland now hold their meetings in public, which is a welcome development, but there has been a tendency to hold sections of meetings in private and those sections have tended to extend beyond the issues that are listed. The proposals give a fairly broad remit to FSS, or a committee that has been established by FSS, to hold meetings in private where it is thought that there are circumstances that should apply, but reasons for that will need to be given. That means that the public can have

confidence that matters are not being discussed in private that should more appropriately be discussed in public. The approach will allow public scrutiny and, indeed, scrutiny by MSPs of the process as it goes forward.

I therefore very much welcome Aileen McLeod's having moved amendment 53.

Rhoda Grant (Highlands and Islands) (Lab): I, too, speak in support of amendments 53 and 54. It is very important that the new board is transparent so that people know what is going on and can have confidence in it. It is in the public interest that there is transparency as decisions are made. I therefore welcome and support the amendments.

Nanette Milne: We live in an era in which it is becoming more important to have transparency in all public bodies. The amendments simply indicate that the new agency would follow that pattern.

Michael Matheson: We consider that amendments 53 and 54 are unnecessary. Nothing in the bill prevents food standards Scotland from holding meetings in public and nothing prevents it from publishing papers. The bill as drafted provides for sufficient accountability and transparency, and food standards Scotland has a duty to keep the public informed and to publish reports.

The amendments' actual effects are not wholly clear, because they do not place direct duties on food standards Scotland to hold meetings in public. Instead, the amendments are placed in the context of wider duties of food standards Scotland to operate as far as is reasonably practicable in particular circumstances. We believe that those matters can be dealt with administratively and that, as food standards Scotland is an advisory body that is required in its general functions to keep the public informed and advised, the approach that has been set out in amendments 53 and 54 is disproportionate. I therefore invite the committee not to support the amendments.

Aileen McLeod: In light of the minister's comments, the matters of openness and transparency can be dealt with administratively. Obviously, they are important issues if we are to give reassurance to the public and consumers. I am happy to seek to withdraw amendment 53 and not move amendment 54, although I reserve the right to revisit the issue. I will speak to the groups that are concerned to get feedback from them before stage 3.

The Convener: As no one objects, this time, to the amendment being withdrawn, I will—

Dr Simpson: I object.

The Convener: You need to—

Dr Simpson: I thought that I was not allowed to, because it has been moved.

The Convener: The advice is that the question can be put. You cannot move the amendment again. If you object to its being withdrawn, the question can be put.

Dr Simpson: I object.

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

Members: No.

The Convener: There will be a division.

For

Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

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 53 disagreed to.

The Convener: Amendment 54, in the name of Aileen McLeod, was debated with amendment 53. I call Aileen McLeod to move or not move the amendment.

Aileen McLeod: Not moved.

Amendment 54 moved—[Dr Richard Simpson].

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

Members: No.

The Convener: There will be a division.

For

Grant, Rhoda (Highlands and Islands) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

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 54 disagreed to.

Section 4 agreed to.

Section 5 agreed to.

The Convener: This might be a good point to suspend the meeting to wait for the two minutes' silence, which will be in about three minutes, rather than be caught in the middle of something. Do members agree to do that?

Members *indicated agreement.*

10:52

Meeting suspended.

11:02

On resuming—

Section 6—Number and appointment of members

The Convener: Amendment 55, in the name of Aileen McLeod, is grouped with amendments 36, 37, 57, 59 to 61 and 38 to 40.

Aileen McLeod: If I may, I will speak to amendments 55, 57, 60 and 61.

Amendment 55 seeks to take on board the concerns that a number of groups raised with me regarding the minimum size of the FSS board of three members and a chair. The concerns were that that could be insufficient to ensure an appropriate balance of expertise among the members, and the preference was for increasing the minimum to five members and a chair.

I am conscious that, at stage 1, the minister told the committee that the new body will have a minimum of four board members including the chair and a maximum of eight members. I am also aware that the committee in its stage 1 report indicated that it was not convinced that the number of members of the board needs to be increased. The key point is to get reassurance from the minister that there will be an appropriate balance of expertise between industry and consumer representatives.

Amendment 57, which relates to amendments 56 and 58, again seeks greater transparency and openness in the procedure by which ministers will make appointments to FSS, which should be based on merit and should ensure a balance of expertise.

Amendments 60 and 61 concern the membership of the board. They seek to explore what might be possible in relation to limiting appointments to a four-year period that is renewable only once, so that there can be fresh thinking from different people with experience of new food technology. The intention is to ensure that FSS remains at the forefront of new developments in food science and technology.

I move amendment 55.

Dr Simpson: I will speak to amendments 36 to 39. I want to explore with the minister the reasons for

"a councillor"

and

"an employee of any local authority"

being excluded from the board. I fully understand paragraphs (a), (b), (c) and (d) in section 6(2), which exclude people who are usually excluded, and I understand that councillors and employees of local authorities are usually excluded. However, because of the nature of this board and its relationship with the local authorities that will act as the enforcement authorities, I believe that it should be possible, although not a requirement, for councillors and local authority employees who have great expertise in enforcement to be members of the board. That is critical to the provisions that we have already agreed to, which require the promotion of best practice and monitoring of the performance of the enforcement authorities.

I would like to explore with the minister whether, in this instance, it would be more appropriate to remove the exclusion of councillors and local authority employees. Doing so would not require the minister to appoint such people, but the bill precludes the minister from having the discretion to do that if he or she wishes.

I turn to the other amendments in the group. I believe that amendment 55 is entirely appropriate. Let us suppose that only three members are appointed, although that is unlikely. If one of them becomes the chair, one is a consumer member and one is from industry, we would have a significant problem. The board would also have a problem with being quorate, because if one of them did not turn up—let us say that the consumer member was unable to attend—we could end up with only the chair and the industry member on the board. The board will be independent so, as was alluded to in the committee's report, it is critical that it has a minimum of five members. That would be a more appropriate number.

On the term of service, eight years is a reasonable time. After that, we should refresh the board with new members. There may require to be further consideration of whether that should apply to the chairman, or to a chairman who is appointed in a successive period. Again, I will be interested to hear the minister's view, but there may be more detailed work to be done on that. I am thinking of a situation in which, for example, someone is appointed as chairman six years in. We would not want them to drop off after another two years.

I turn to amendment 40. I have been thinking about the rule in section 7 on page 4 whereby, if someone does not attend for six months, they may be required to come off the board. It is possible that a member could be having treatment over six months and we would not necessarily want them to come off the board, so I am not sure about that, although I have not lodged an amendment to suggest that the provision be removed.

I believe that, if a member does not attend at least a third of the meetings that are held in any 12-month period, they should automatically be removed. Section 7(2) deals with a situation in which the minister wishes to end someone's membership. I note again that the board will be independent and it may be that the board, as opposed to the minister, will want to remove someone who does not attend regularly for no good reason, so it might not be appropriate to leave that to the minister. For the moment, however, I have lodged amendment 40 to insert the provision in section 7(2)(b).

Richard Lyle: I found what Richard Simpson said about councillors interesting. I remind him that there are more than 1,200 councillors in Scotland. At a previous meeting I pushed the cabinet secretary with regard to councillors' membership of a particular board, but on this occasion I cannot agree with Richard Simpson's amendments and I will not support them.

Michael Matheson: As members are aware, the Health and Sport Committee has already considered the number of members and has accepted that the number that is set out in the bill is the minimum only. I have given the committee my assurance that the intention is to run food standards Scotland with a full complement of eight members—seven members of the board and the chair—at most times. The number in the bill—three members plus the chair—has to be low enough to allow a level of flexibility during reappointment rounds or in case of emergencies. The same number is set for other bodies of similar size, as discussed at stage 1.

Richard Simpson referred to the possibility of the consumer person not being available for a particular board meeting. As I have advised the committee, those who are appointed to the board of food standards Scotland will all be required to have a consumer focus, given the body's responsibility to consumers. Therefore, we do not believe that we should reconsider the numbers at this stage.

On amendments 36 and 37, removing councillors or any employees of councils from the list of persons who cannot be appointed to food standards Scotland could be problematic and impracticable. Under the ethical standards code of conduct for board members, councillors or council employees, if they were also members of food standards Scotland, would have to declare an interest and take no part in discussions or decision making about matters concerning local authorities. That would diminish their ability to be fully active members and would affect quite significantly the body's ability to perform its duties. Almost half of the work that will be undertaken by food standards Scotland will be around enforcement matters, the vast majority of which are undertaken by local authorities. I therefore invite the committee to agree that it would be impracticable to change that provision in the bill, and therefore not to support the amendments.

Amendment 57 is unnecessary, as ministers are already under the duty to make appointments based on merit through open appointment procedures in respect of appointments to public bodies. The amendment duplicates existing practice from the Public Appointments and Public Bodies etc (Scotland) Act 2003. The Parliament has appointed the Commission for Ethical Standards in Public Life in Scotland to oversee compliance with that duty. I therefore ask the committee not to support amendment 57.

With regard to amendment 59, applications for public appointments are made in confidence. The main effect of ministers publishing the details of all applicants would be likely to be a reduction in the number of people who would be willing to apply. I am sure that a reduction in applications is not something that the committee would wish to see. Scottish ministers already have good account of the breadth of society from which applications come when considering further and future recruitment rounds. The requirement to publish applications is therefore not necessary, so I ask the committee not to support the amendment.

Amendments 60 and 61, on the period of appointment and on reappointment limits for members of food standards Scotland, touch on another aspect of public appointments that is already covered. The Commission for Ethical Standards in Public Life in Scotland oversees ministers' compliance with the commissioner's code on appointments, which recommends an eight-year limit for appointments. The amendments are therefore unnecessary and are contrary to the existing code, so I invite the committee not to support them.

Amendments 38 and 39 are impracticable for the same reasons that I gave for amendments 36 and 37. If a member becomes a councillor of any local authority, or a council employee, it would be impractical for the person to continue as a member of food standards Scotland. Under the code of conduct for members, that person would have to take no part in a significant portion of food standards Scotland's business. Expertise from

local authorities can be provided to the FSS board through the secondment of staff to the body as and when required, but there would be a potential conflict of interest if they were a formal member of the board. I therefore ask the committee not to support amendments 38 and 39.

11:15

We believe that amendment 40 is unnecessary, because the bill already provides sufficient grounds for the removal of a person by reason of absence, and there is a level of flexibility that allows that to be extended where, for example, in the situation to which Richard Simpson referred, a member might be undergoing treatment. There would be flexibility to allow the period of absence to be extended. I therefore ask the committee not to support amendment 40.

Aileen McLeod: Having listened to the minister's comments, I feel more reassured. The issues that I raised through my amendments 55, 57, 60 and 61 have clearly been considered. I accept the minister's reassurance that members of FSS will have a consumer focus and I will not press my amendments.

Amendment 55, by agreement, withdrawn.

Amendments 56, 36, 37 and 57 to 61 not moved.

Section 6 agreed to.

Section 7—Early ending of membership

Amendments 38 to 40 not moved.

Section 7 agreed to.

Sections 8 to 10 agreed to.

Section 11—Proceedings

The Convener: Amendment 1, in the name of the minister, is grouped with amendment 2.

Michael Matheson: Amendment 2 is the main amendment in the group. It will make a minor change that is a common provision that is used when establishing public bodies. It will clarify that anything that is done by food standards Scotland or any of its committees will not be invalid because of a defect in membership, including having had a membership ended because section 7 applies. That will ensure that decisions and actions that are taken by food standards Scotland and its committees are not open to challenge on the basis of a defect in membership.

I move amendment 1.

Dr Simpson: I still have concerns, because of the amendment on membership that we did not vote on. If food standards Scotland had only three members, and a membership had been ended under section 7 and another member could not attend, perhaps through illness, the body would be down to one member. Obviously, we cannot go back to the amendment to which I referred, but I will raise the issue again. I think that we could end up in a situation in which only one or two people take action, on our behalf, as an independent food standards body, and I just do not think that that is wholly acceptable.

I will not oppose amendment 1, but I give notice of the fact that I intend to raise the matter for Parliament to decide on at stage 3, subject to the Presiding Officer's agreement.

The Convener: You are entitled to do that.

Bob Doris (Glasgow) (SNP): I listened carefully to what the minister said about the composition of food standards Scotland. He referred to practice in other public bodies, with which the approach in the bill seems to be consistent. On amendment 1, would the Government's position achieve consistency with other public bodies? I just want to ensure that a consistent approach is being taken.

Michael Matheson: The board will operate with seven members and a chair, which is eight members. The minimum size that it would go down to would be three members and a chair, or four members in all. The position is exactly the same for the boards of a number of other organisations of similar size and composition, including the Scottish Housing Regulator and the Office of the Scottish Charity Regulator. I am not aware of any problems or concerns that they have had about the size of their boards.

As I have set out, we intend the board of FSS to have seven members and a chair. The minimum number of members that it would ever have would be three members and a chair, which I believe provides the level of certainty that is required in relation to decision making for a public body of this nature.

Amendment 1 agreed to.

Section 11, as amended, agreed to.

Section 12—Committees

Amendment 62 not moved.

Section 12 agreed to.

After section 12

Amendment 2 moved—[Michael Matheson]—and agreed to.

Section 13—Delegation of functions

The Convener: Amendment 3, in the name of the minister, is grouped with amendments 4, 5 and 6.

Michael Matheson: Amendment 4, which goes with amendment 3, is the main amendment in the group. Together, they seek to remove the ability of food standards Scotland to delegate any of its functions to any other person. When the bill was drafted, it was thought that there might be circumstances in which FSS would need to delegate functions, especially in its first few months. Good progress has been made in preparing for the new body to take on its functions fully in April 2015, and we are now assured that any support that is needed thereafter could be contracted rather than delegated. Contracting is preferable to giving the body a wide-ranging ability to delegate functions.

Amendments 5 and 6 are minor consequential amendments that will ensure that the provisions in section 13 cross-refer to one another.

I move amendment 3.

Dr Simpson: I will speak in support of this group of amendments. My original notes talk about the deletion of the provision in question. I understand that delegation might have been necessary for the transitional arrangements, but it seemed to me to be inappropriate to have that provision in the primary legislation. I therefore welcome the fact that the minister is seeking to delete that element from the bill.

Amendment 3 agreed to.

Amendments 4 to 6 moved—[Michael Matheson].

The Convener: Does any member object to a single question being put on amendments 4 to 6?

Members: No.

The Convener: Thankfully, no member has objected.

Amendments 4 to 6 agreed to.

Section 13, as amended, agreed to.

Section 14—Annual and other reports

The Convener: Amendment 41, in the name of Dr Richard Simpson, is grouped with amendments 42 to 46 and 48.

Dr Simpson: The main purpose of most of the amendments in the group is to allow consideration of the question whether, as a whole, but in respect of this bill in particular, reports should be produced only online. I have received comments about that being an unintended consequence of the amendments: I point out that it is, in fact, the intended consequence. The provision could be modified by saying that an agency such as food standards Scotland should produce an executive summary but, to be frank, I think that the days of publication of expensive 36, 45 and 50-page annual reports are over, so I have lodged this group of probing amendments to find out whether the Government is moving in the same direction.

Amendment 45, which relates to section 14 and would amend line 5 of page 7, seeks to require food standards Scotland to provide an electronic copy of its report to the Scottish Parliament. That should be an absolute requirement instead of something that it "may" do. I see no reason for its not being required to submit a report—after all, Parliament has to scrutinise those things—but that report should be provided to Parliament, with a link to the Parliament's information site.

I move amendment 41.

Bob Doris: I was not going to speak on this group of amendments and I have to say that I had not paid very close attention to them—for which I apologise to Dr Simpson—but when I was listening to his comments, I looked at my notes and decided to tell the committee a slightly tangential story about online publications. I know of a community council that shall remain nameless but which has not—let us say—entered the information technology age, and provisions have to be made for it to get hard copies of various publications. I will listen to what the minister has to say and, obviously, to Dr Simpson's summing up, but I am concerned that a requirement that such reports be published exclusively online will raise access issues for some groups in society.

Michael Matheson: Many of the amendments in the group are intended to ensure that food standards Scotland provides reports either in electronic form or online. That is good practice; I would expect a public body such as food standards Scotland to be doing that as a matter of course. However, amendments 41 and 42 would mean that food standards Scotland would publish its reports only online—Richard Simpson has stated that that is the intention behind the group—and I believe that such a move could have adverse consequences. For a start, such an approach to reporting could, as Bob Doris has pointed out, easily deny access to a significant number of consumers and interested parties. I do not believe that anyone would want that, so I ask the committee not to support amendments 41 and 42.

11:30

I am more than happy to explore the matter further with Richard Simpson and to work with him to see whether what he seeks could be achieved more manageably at stage 3. It is important that

people who do not have access to online or electronic versions are able otherwise to access food standards Scotland's reports.

Amendments 43 and 44 would have an unfortunate and unintended effect, as amendments 41 and 42 would. Amendment 43 could lead to criticism that the Parliament was micromanaging the relationship between food standards Scotland and Scottish ministers by prescribing how reports should be sent to ministers. On amendment 44, how documents are to be laid in Parliament is well regulated by the Parliament's standing orders. Therefore, I ask the committee not to support amendments 43 and 44. I suggest that Richard Simpson may want to consider pursuing the matter through the Parliament's standing orders.

Amendment 45 would require food standards Scotland to lay before Parliament all reports that it prepares, including those that are—quite properly—not intended for publication. That is unworkable in practice; it may even be unlawful to lay certain internal reports. The new body will be under duties on transparency and on providing the public with information and advice, which will ensure its transparency more effectively than any overarching requirement on it to lay in Parliament all reports that it prepares. Therefore, I ask the committee not to support amendment 45.

Amendment 46 would have an unfortunate unintended effect, as would amendments 41 to 44. The amendment would restrict to electronic publication the methods by which reports could be published. It is commonly used as one type of publication, but we cannot make it the only method. I ask the committee not to support amendment 46.

Amendment 48 is unnecessary. The word "document" needs no definition in the bill to include "an electronic communication". The word "document" is legally defined in the Interpretation and Legislative Reform (Scotland) Act 2010 as

"anything in which information is recorded in any form".

That definition applies to all acts, so I invite the committee not to support amendment 48.

Dr Simpson: The purpose of the group of amendments was partly to make it clear on the public record that we need to take a far more directive approach in moving towards more online information. I welcome the minister's offer to have further discussions about how that might reasonably be achieved, while accepting Bob Doris's valid point that some people are not information-technology literate—or are perhaps not keen to become so, although I do not want to cast aspersions on his council. The fact that people can access the information online through libraries may not be sufficient. I accept those valid points, but I hope that we may have the opportunity to pursue the issue and to ensure that we make this an exemplar bill in terms of shifting more information online.

If it helps you, convener, it is my intention to seek to withdraw all the amendments in the group.

The Convener: We need to go through the amendments in order, as an amendment must first be moved before it can be withdrawn.

I had better ask whether anyone objects to amendment 41 being withdrawn. [*Laughter*.] Does anyone object?

*Amendment 41, by agreement, withdrawn***.**

The Convener: Thank you.

Amendments 42 to 46 not moved.

Section 14 agreed to.

Section 15—General powers

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

Dr Simpson: Amendment 47 is an attempt to be helpful to the minister in the sense that it might be that the minister would have the power to say that any charges that would be made for facilities at the request of any person under section 15(2)(b) would not be levied in certain circumstances that the minister himself or herself would define.

I move amendment 47.

Michael Matheson: Amendment 47 would, if Scottish ministers were to give their approval, allow food standards Scotland to make, for facilities or services that it provides at the request of any person, a charge that exceeds the reasonable costs of providing the facility or service concerned. It is not clear why that would be considered to be appropriate, given that food standards Scotland's purpose will not be to profit from providing assistance. I therefore do not think that that is something that we should implement, so I ask the committee not to support amendment 47.

Amendment 47, by agreement, withdrawn.

Section 15 agreed to.

Section 16—Application of legislation relating to public bodies

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 8 and 9.

Michael Matheson: As was touched on in an earlier debate on section 16, the amendments will insert "Food Standards Scotland" into several further acts that apply to public bodies in Scotland.

Amendment 7 will give FSS obligations under the Public Records (Scotland) Act 2011 to produce, implement and review its records management plan.

Amendment 8 will include FSS as a regulator for the purpose of part 1 of the Regulatory Reform (Scotland) Act 2014. That will enable Scottish ministers to make provision to improve regulatory consistency further, to require regulatory functions to be exercised in a way that contributes to sustainable economic growth, and to encourage regulators to adopt practices that are consistent with regulatory principles.

Amendment 9 will include FSS in the Procurement Reform (Scotland) Act 2014, which places general duties on contracting authorities' procurement activities, and provides specific measures that are aimed at promoting good, transparent and consistent practice in procurement.

I move amendment 7.

Amendment 7 agreed to.

Amendments 8 and 9 moved—[Michael Matheson]—and agreed to.

Section 16, as amended, agreed to.

Sections 17 to 19 agreed to.

Section 20—Powers for persons carrying out observations

The Convener: Amendment 63, in the name of Aileen McLeod, is in a group on its own.

Aileen McLeod: Amendment 63 seeks to strengthen the powers in section 20 so that FSS would be able to require food business operators that conduct food testing to disclose the results of that testing. Currently, there is no provision to give FSS the access that it needs to industry testing data and analysis. By requiring food company tests to be shared with FSS, the amendment is intended to ensure that early action can be taken whenever and wherever food fraud or food adulteration is detected, to protect consumers and other businesses that rely on the same supply chain.

This is another amendment that I thought might be worth exploring further with the minister, as it could have a positive impact. I will certainly listen carefully to what the minister has to say on it.

I move amendment 63.

Dr Simpson: The amendment is important. When the committee visited the unit in Aberdeen, we heard that testing is done by three groups—the food standards people, the health and safety people, and individual factories that are seeking to maintain quality control. It should be possible for FSS to say that it is comfortable with the testing that is being done by a company using an external tester, but for that to happen it is essential that FSS should have access to such data, as well as information on how it was arrived at and the nature of the testing laboratory and its methodology.

As Aileen McLeod says, the purpose of the amendment is partly to give FSS some control over something that a firm might be promoting as its quality control but which may or may not be adequate. The purpose is also to simplify the system so that the agency can just accept a company's testing and will not need to do further testing. In fact, I hope that the Health and Safety Executive would also take that approach. By streamlining some activities, we can reduce the burden on industry and promote the Government's desire to strengthen our economy.

Michael Matheson: I welcome the intention behind amendment 63, which is to address one of the recommendations of Professor Jim Scudamore's expert advisory group following the horsemeat food fraud incident.

The Government supports the intention behind the amendment, but we would like to go further. The Government believes that the amendment as it stands is not sufficient to achieve the desired effect and to enable officers to act quickly in circumstances of food fraud or adulteration. The powers of observation that the amendment seeks to alter cannot in themselves be used to investigate whether a crime has been committed. We are considering what can be done using existing legislation and the best timing for introducing a scheme to deliver the intentions behind the amendment.

If that cannot be achieved using existing legislation, we will consider whether a further amendment should be lodged at stage 3 to achieve the desired outcome of ensuring that FSS can compel access to the results of testing that is undertaken by private operators and companies. I am more than happy to work with Aileen McLeod on that at stage 3 if that is the appropriate way in which to proceed and if we cannot accommodate the measures within existing legislation.

Aileen McLeod: I welcome the minister's comments that the Government supports the intention of the amendment and seeks to go further by considering what can be done using existing legislation and the best timing for that. I am fully reassured that something will be done in the area to deal with the concerns that have been raised, and I look forward to seeing what the minister does, whether that involves other legislation or bringing back the issue at stage 3.

I am content not to press amendment 63 at this stage.

Amendment 63, by agreement, withdrawn.

Section 20 agreed to.

Sections 21 to 28 agreed to.

Section 29—Power to issue guidance on control of food-borne diseases

The Convener: Amendment 10, in the name of the minister, is grouped with amendments 18 to 21.

11:45

Michael Matheson: Amendment 10 is a minor drafting change to bring clarity to the provisions that will give food standards Scotland the power to issue revised guidance as well as guidance.

Amendment 19 follows a recommendation by the Delegated Powers and Law Reform Committee both to have the Lord Advocate publish guidance to enforcement authorities and to allow specified exemptions from publishing guidance for the Lord Advocate where it could be prejudicial to the administration of justice.

Amendments 18, 20 and 21 revise section 50 of the bill to put the Lord Advocate's powers to revise guidance and publish revised guidance into the same style as similar powers in amendment 10. That will achieve consistency across the bill.

I move amendment 10.

Amendment 10 agreed to.

Section 29, as amended, agreed to.

Section 30 agreed to.

Section 31—Certain functions of Food Standards Agency ceasing to be exercisable

The Convener: Amendment 11, in the name of the minister, is grouped with amendments 24, 25 and 27 to 32.

Michael Matheson: Amendment 11 makes a minor change in terminology.

Amendments 24, 25 and 27 to 32 each make changes to a range of legislation and change references to "the Food Standards Agency" into references to "Food Standards Scotland". All those changes are consequential to the creation of food standards Scotland and the removal of certain functions that are exercised in respect of Scotland from the Food Standards Agency.

I move amendment 11.

Amendment 11 agreed to.

Section 31, as amended, agreed to.

Sections 32 and 33 agreed to.

Section 34—Regulation of animal feeding stuffs

The Convener: Amendment 12, in the name of the minister, is grouped with amendment 13.

Michael Matheson: Amendment 12 is a minor technical change to section 34, on the regulation of animal feeding stuffs. It allows orders that regulate animal feeding stuffs to be made that are reasonably similar but not necessarily exactly equivalent to provisions in the Food Safety Act 1990. That will keep the powers in section 34 in line with the powers in section 30 of the Food Standards Act 1999, which the provisions replace.

Amendment 13 inserts a cap on the maximum penalty that could be applied by regulations that are made under section 34 of the bill, which relates to animal feeding stuffs. The amendment responds to another of the helpful recommendations that were made by the Delegated Powers and Law Reform Committee to restrict the width of powers appropriately.

I move amendment 12.

Amendment 12 agreed to.

Amendment 13 moved—[Michael Matheson]—and agreed to.

Section 34, as amended, agreed to.

Sections 35 to 47 agreed to.

Section 48—Power to make supplementary etc provision

The Convener: Amendment 14, in the name of the minister, is grouped with amendments 15, 16, 17, 33 and 34.

Michael Matheson: Amendments 14 and 15 will make minor changes to make it clear that any regulations in subsections (2) and (3) of section 48 would be made specifically under the powers set out in section 48(1) and not under any other power in section 48. That change will provide certainty.

Amendment 16 will make a minor change of language to remove the duplication of the word "under" in section 48(3) and replace it with the words "referred to in", which will not change the effect of section 48(3).

Amendment 17 will provide additional detail regarding the exercise of the power to make supplementary provision for fixed penalty notices and compliance notices. The Scottish Government is grateful to the Delegated Powers and Law Reform Committee for supporting the delegated powers in section 48. The committee recommended that the Scottish Government

"gives consideration to amending the Bill so as to restrict the exercising of the power in these circumstances so that it does not permit the wholesale removal of the discharge of

criminal liability which section 37 and 44 provide in circumstances where an administrative sanction has been issued and complied with."

Amendment 17 will provide that protection.

Amendments 33 and 34 will make further changes that the Delegated Powers and Law Reform Committee recommended. The changes are that regulations made under a specific subsection of section 48 would be introduced through the negative procedure.

I move amendment 14.

Amendment 14 agreed to.

Amendments 15 to 17 moved—[Michael Matheson]—and agreed to.

Section 48, as amended, agreed to.

Section 49 agreed to.

Section 50—Lord Advocate's guidance

Amendments 18 to 21 moved—[Michael Matheson]—and agreed to.

Section 50, as amended, agreed to.

Section 51 agreed to.

Section 52—Meanings of "food" and "animal feeding stuffs"

The Convener: Amendment 22, in the name of the minister, is grouped with amendments 23, 26 and 35.

Michael Matheson: On amendment 22, the committee will recall that in July the Scotland Act 1998 (Modification of Schedule 5) Order 2014 was passed.

The order amended schedule 5 to the Scotland Act 1998 in relation to reserved matters with regard to food and animal feeding stuffs and, in doing so, better aligned the Scottish Parliament's legislative competence with the Scottish ministers' executive competence. Amendments 23, 26 and 35 make related changes to other sections to ensure that the new definitions can take full effect throughout the bill.

I move amendment 22.

Dr Simpson: Can someone explain to me whether the definition of food in regulation EC 178/2002, as of 7 December 2004, includes any other substances that might be consumed by human beings? In other words, does it include drink or other liquid elements besides other things that might be classified in the public's mind as food? I could not find an answer to that.

Michael Matheson: The definition does include drink.

Dr Simpson: Thank you.

Amendment 22 agreed to.

Section 52, as amended, agreed to.

Section 53 agreed to.

Section 54—Meaning of "other interests of consumers in relation to food"

Amendment 64 not moved.

Section 54 agreed to.

Sections 55 and 56 agreed to.

Section 57—General interpretation

Amendment 48 not moved.

Amendment 23 moved—[Michael Matheson]—and agreed to.

Section 57, as amended, agreed to.

Section 58 agreed to.

Schedule—Modification of enactments

Amendments 24 to 32 moved—[Michael Matheson]—and agreed to.

Schedule, as amended, agreed to.

Section 59—Subordinate legislation

Amendments 33 to 35 moved—[Michael Matheson]—and agreed to.

Section 59, as amended, agreed to.

Sections 60 to 63 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Food (Scotland) Bill. I thank the minister and his team for attending, and everyone for their participation and patience.

I suspend the meeting so that we can set up for a panel of witnesses.

11:59

Meeting suspended.

12:08

On resuming—

Mental Health (Scotland) Bill: Stage 1

The Convener: Agenda item 7—[*Interruption*.] No—it is agenda item 8. I am doing well this morning.

Agenda item 8 is a round-table evidence-taking session on the Mental Health (Scotland) Bill. As is usual with such sessions, we will begin by introducing ourselves. I am convener of the committee and MSP for Greenock and Inverclyde.

Gordon McInnes (Mental Health Network (Greater Glasgow)): I am a development worker for the Mental Health Network (Greater Glasgow).

Bob Doris: I am a Glasgow MSP and deputy convener of the committee.

Andrew Strong (Health and Social Care Alliance Scotland): I am policy and information manager at the Health and Social Care Alliance Scotland.

Rhoda Grant: I am a Highlands and Islands MSP.

Karen Martin (Carers Trust Scotland): I am mental health co-ordinator at the Carers Trust Scotland.

Aileen McLeod: I am a South Scotland MSP.

Carolyn Roberts (Scottish Association for Mental Health): I am head of policy and campaigns at the Scottish Association for Mental Health.

Colin Keir (Edinburgh Western) (SNP): I am the MSP for Edinburgh Western.

Nanette Milne: I am a North East Scotland MSP.

Shaben Begum (Scottish Independent Advocacy Alliance): I am with the Scottish Independent Advocacy Alliance.

Richard Lyle: I am a Central Scotland MSP.

Sue Kelly (Inclusion Scotland): I am outreach and development officer at Inclusion Scotland.

Dr Simpson: I am a Mid Scotland and Fife MSP.

Steve Robertson (People First (Scotland)): I am chairperson of People First (Scotland), which is the national self-advocacy organisation for people with learning disabilities. The organisation is run by the members, all of whom have learning disabilities.

Rhona Neill (People First (Scotland)): I work for Steve Robertson at People First (Scotland).

Gil Paterson (Clydebank and Milngavie) (SNP): I am the MSP for Clydebank and Milngavie.

The Convener: I welcome everyone to the meeting; we are very pleased to have the guests we have invited along this morning, and I apologise for any inconvenience they might have been caused. We are not far off the time we expected to start, but the committee has had a very busy morning. Nevertheless, we will try very hard to give this issue our normal serious consideration by, in the main, listening to our guests. Just to get things going, however, we need to ask some questions. The deputy convener, Bob Doris, has agreed to do that, and we will see where we go.

Bob Doris: I was halfway through crafting my first question, which was about the proposal to extend from five to 10 working days the period after a short-term detention certificate ends before a compulsory treatment order must be applied for and whether the balance in that respect was right. However, in the spirit that the convener has referred to, I do not necessarily want to focus on and tie us down to that. Instead, I want to open up a discussion about whether our witnesses think that the balance of additional powers in the bill is appropriate.

The Convener: Karen Martin is showing an interest in answering that question.

Karen Martin: We feel that the bill has taken a very clinical direction. It has moved away from the person-centred recovery approach taken by "Towards a Mentally Flourishing Scotland", the mental health strategy and, indeed, by the carers strategy, which is all about working with people at and building things up from the grass-roots level. As I have said, things have gone very clinical, and there is not an awful lot of evidence that the legislation will work towards the recovery of individuals with lived experience of mental ill health or that it will, in fact, involve carers in any meaningful way, even though respect for carers is one of the principles underpinning it.

Andrew Strong: As I said, I am from the Health and Social Care Alliance Scotland, whose 780 or so members include disabled people, people with long-term conditions and third sector organisations that work in health and social care. Earlier this year, we held a round-table session on this very legislation with a group of organisations and people who work with the Scottish Government on a wide range of the issues in question, and there was deep concern about the proposals not being particularly person centred, despite the wider push, not least in the 2020 vision, to encourage

such an approach in health and social care. There was also concern about the bill making a series of administrative duties in isolation from people and their rights, and about its focus on updating existing legislation instead of reflecting on the range of developments that have taken place over the past decade. For example, the alliance that I speak on behalf of is making a strong push on self-management but I do not see much of that coming through in the bill.

Carolyn Roberts: I want to talk about the bill in general and then I will quickly discuss the extension from five to 10 days that Bob Doris highlighted in his question.

We are concerned that the bill contains several proposals that seem to reduce people's rights and their ability to participate fully. I refer in particular to the proposal to extend nurses' power to detain; the quite limited nature of the proposals on appealing against excessive security; the proposal to decrease substantially the time within which a person can appeal against transfer to the state hospital; and the proposal to increase from seven to 14 days the length of time for which an assessment order can be extended. What the proposals have in common is that no detailed case—indeed, in some instances, no case at all—has been made for why they are necessary, even though they all, in one way or another, infringe people's rights. We are concerned that proposals in the bill that might affect people's rights have not been fully outlined and explored in the policy memorandum.

On the extension from five to 10 days, members will know that that was proposed by McManus, and we supported it at the time. We have not shifted our position, but we know that the number of interim orders—their number was the reason given for making the change—has fallen substantially, so we are looking for more information from the Government on the assessment that it has made of the measure's impact and whether it is still required.

12:15

Sue Kelly: Our response to the bill was informed by work that we had been doing to consult disabled people across Scotland on whether the Scottish and United Kingdom Governments are meeting their obligations under the United Nations Convention on the Rights of Persons with Disabilities. Our concerns all relate to the extent to which the bill is being taken forward with proper account being taken of the way in which any changes have implications for people's human rights.

It seems to us that the UNCRPD is crucial in the context of mental health provision, exactly because of the powers that are given to medical and legal professionals to deny what people would generally consider to be a person's fundamental rights. Those rights are massive. They include a person's right to freedom and autonomy and to make decisions on their own behalf. The bill gives professionals the right to do things to human beings that in any other context, including other medical contexts, would be deemed torture or abuse. Giving professionals those powers is not something that should ever be treated as routine.

We have been reviewing the bill, and the basis of our submission is our concern about the extent to which we think that it may be moving in the direction of being more about administrative necessity than about identifying people's rights. That is why we asked for People First to be represented at today's meeting, and I know that Steve Robertson wants to speak to those issues.

The Convener: Do you want to speak, Steve? If you are not ready yet, there will be opportunities later.

Steve Robertson: I have some views from People First. It is our input on the Mental Health (Scotland) Bill. Shall I go with that?

The Convener: Yes, of course—whatever you are comfortable with.

Steve Robertson: Okay—I was just checking.

Most disabled people, whatever their disability or impairments, get treated less well than the general population. In most areas of life, people with learning disabilities are even more disadvantaged than our friends and colleagues in the wider disability movement. In healthcare, for instance, we can expect to die 20 years sooner than other people. Educational opportunities are denied to us through a lack of adequate support and through inflexible systems. A greater number of crimes are committed against us, including sexual abuse. Our right to have relationships and start a family is blocked and prevented in all sorts of ways. Most important for today's consideration of the bill, our right to equal treatment under the law is quite simply denied to us.

The Mental Health (Care and Treatment) (Scotland) Act 2003 describes us as "mentally disordered". We described our experience of that in our open letter to all MSPs earlier this year.

The 2003 act defines us as "mentally disordered" because of our

"learning disability, however caused or manifested",

and it allows us to be detained and treated for our mental disorder, even though we know that there is no treatment or cure for a learning disability. Ours is the only permanent impairment that is defined and dealt with in that way. Because of

that, we are routinely denied access to justice, and anyone with a learning disability who commits an offence can simply be diverted away from the criminal justice system and into the health system and forensic services. While that sounds like a good thing, what it means in practice is that we can be detained for many years and restricted in nearly everything that we do, sometimes for the rest of our lives. That is happening to many people with learning disabilities in Scotland at the moment.

The safeguards in the system are mostly controlled by psychiatrists. We accept that some psychiatrists are kind and well-meaning people, but we do not accept that psychiatrists have a monopoly on understanding and managing people with learning disabilities. If a psychiatrist says that someone needs to be detained and restricted and watched and escorted, and that advocacy is not in their best interests, that is pretty much the end of the story. It should not be.

We are asking to be taken out of the 2003 act. We say that most of its provisions do not apply to us and have little or no relevance to us. Our view is that we would benefit from help and support to learn and additional time to learn and remember, rather than treatment for a disability that we will have for all of our lives. In fact, for us, things that are called "treatment" are most often about restrictions on our lives anyway.

The other major assault on our human rights is the way that the Adults with Incapacity (Scotland) Act 2000 is being used and applied to us. When the Adults with Incapacity (Scotland) Bill was drafted and passed, we were pleased about it and supported it. The principles of the 2000 act are sound. It makes it clear that all other, less-restrictive options must be considered and applied before guardianship orders are granted, and that capacity is not an all-or-nothing idea.

However, over the past few years, sheriffs in Scotland have begun citing each other and claiming that, where a person has been found by a psychiatrist to "lack capacity" on the basis of their "mental disorder", a guardianship becomes the "least-restrictive option" in order to protect the person from claims of "deprivation of liberty".

We think that it is very scary that Scottish sheriffs claim to be protecting us from deprivation of liberty by removing all our rights to self-determination. We think that it is shocking that firms of solicitors are urging parents to apply for guardianship orders before we reach the age of 16, meaning that we might never experience adult citizen rights in our own country in the 21st century.

We honestly believe that the time has come for a new piece of legislation that is just about people with learning disabilities. We think that it is only right and fair that learning disability is properly defined as an intellectual impairment rather than a mental disorder. With that definition, we would want recognition that additional time to learn and support to understand things, together with easy-read documents and support to make some decisions, are what we need. We need those things to help us take part in our communities, rather than restrictions, detentions and efforts to keep us apart from the world that we want to live in.

Those have not been easy things to say, and some people may feel uncomfortable with what I have said, but those are the facts.

The Convener: Thanks, Steve.

Bob, you asked the original question and encouraged the responses.

Bob Doris: It would be inappropriate to leave Steve Robertson's statement to the committee hanging. I apologise that all that I will do at the moment is mirror back to you a couple of the comments that you made. You set a challenge for the committee that is clearly outwith the scope of the bill but, if I were you, I would have taken the opportunity to put my views on the record, too. That is precisely what you did, and I respect that.

I wrote down your point about the definition of those living with learning disabilities and the appropriateness or otherwise of deeming people to be mentally disordered. You mentioned the term "intellectual impairment" and said that there should perhaps be different processes in place to support people living with learning disabilities. We have to consider that, although not in relation to the bill.

You made a point about how the Adults with Incapacity (Scotland) Act 2000 impinges on the rights of those living with learning disabilities. You specifically mentioned guardianship orders. You spoke about degrees of independence, liberty and freedom and about guardianship orders perhaps taking everything from certain people with learning disabilities.

I will just leave those remarks hanging there. I thought that it would be wrong not to respond to the powerful statement that Steve Robertson made.

I think that the most reasonable follow-up question is about advocacy. Within the legislation, there are additional powers taken by professionals. From my reading, they are well intentioned and there is some rationale behind additional powers being taken. Every step of the way, when people's rights are impinged on—perhaps for acceptable reasons, because of clinical evidence—there is a strong need for

advocacy. I know that Shaben Begum has strong views on advocacy in the bill.

I do not know whether that is the best way to take forward the discussion but, as always, we are in the witnesses' hands. I did not want to leave Steve Robertson's powerful statement hanging there.

Steve Robertson: That is great. I really respect everything that you said. Thank you—it is much appreciated.

The Convener: Shaben Begum was named, so does she want to respond?

Shaben Begum: I support the points that Steve Robertson made about access to advocacy. Recently, we produced research called the map of advocacy for 2013-14, which is a snapshot of what happens in the world of advocacy in Scotland. We asked all advocacy organisations and all NHS and local authority commissioners and funders how much money they spend on advocacy. To go back to Steve Robertson's point, one issue that came out was that funding for advocacy has been either frozen or cut. Overall, we found that funding for advocacy has gone down by 1p per head, but the demand for advocacy increases year on year. For this edition of the map, demand had gone up by 8 per cent.

One concern that we share with People First is that, even though people with a learning disability have a legal right to access independent advocacy under the 2003 act, they still do not have access to advocacy in the way that they should. Steve Robertson talked about the extreme ends of the spectrum, where people might be in forensic settings. Those people have some access to advocacy, but not in the way that we want to see it.

I want to concentrate on the people who are in the community but who might be leading isolated lives in many respects—we talked about that outside the committee room—through a lack of social networks or family and friend networks. Advocacy provides a vital life link for those people by promoting social inclusion and safeguarding their rights.

People with learning disabilities are one of those groups who still do not have the right level of access to advocacy. If they are in the community but have limited networks and are not in receipt of services from a community psychiatric nurse or mental health officer, they are less likely to find out about advocacy. We have found that fewer and fewer mental health professionals are telling people about advocacy.

We have in-depth research in which 12 people with a learning disability from throughout Scotland were interviewed. The majority said that they had never been told about advocacy. We are talking about adults in their 30s, 40s or 50s who had never found out about advocacy from a statutory source. A CPN or their social worker had not told them about it; they had found out about it through other people they knew, collective advocacy or self-advocacy groups.

12:30

We are finding out that people do not find out about advocacy in time. The majority of the people who took part in the qualitative research said that they wished that somebody had told them about advocacy, because it could have saved so much misery and distress in their lives. They said that it could have made a huge difference to them if they had known about advocacy, about their rights and about how they could challenge decisions that were being made about them, their financial freedom and their freedom to make decisions, have relationships and do all the things that you and I do, which include making the mistakes that we all make.

Making mistakes is one of the reasons that professionals use for safeguarding people with a learning disability. We give a lot of consideration to risk, but we all make terrible mistakes in our private lives every day. We have the freedom to do that, but people with a learning disability do not have those same freedoms. They do not enjoy the same level of freedom and opportunity to be active citizens in our society.

I am sorry; I have been waffling. If Bob Doris has a particular question on advocacy, I will answer it.

Gordon McInnes: I suppose that this is a supporting statement. My organisation has a contract with NHS Greater Glasgow and Clyde to do user-involvement work in mental health, but it is also a service-user-led organisation with 600 members. Our perception is that services are fire fighting. They are very much on the back foot and are not looking to do proactive work, which is the other part of advocacy. We can get a person when they are unwell and support them through the tribunal process—that is fine—but very little proactive work is being done with people.

We did peer promotion of advance statements. It was hugely successful to the extent that our limited capacity could deliver it—it was a sideline to my paid job. We took service users from being cynical about advance statements, because they can be overruled, to saying that everyone should have one and should have the narrative about advance statements to engage with. For instance, the issues that someone has with access to information for carers can be addressed in an advance statement, as can be their attitudes to

treatments. The statement represents the service user taking responsibility for telling services what they need to know about their care and treatment. The statement puts that on a plate.

NHS Greater Glasgow and Clyde has two computer systems: Genisys and PIMS—the patient information management system. If there is an advance statement, an alert flashes up. Genisys is a central database and the documents can be downloaded from it. An advance statement can be accessed in most mental health settings in Glasgow 24/7, 365 days a year. Few statements are made, because practitioners do not have the capacity to do proactive work, but they could be a huge part of a service user's greater involvement in their mental health treatment and improving outcomes.

We promote advance statements as documents that improve crisis response, minimise people's time in hospital and improve their recovery post-hospital. That probably has a financial implication for the NHS and, were that approach to be adopted on a larger scale, there would be significant improvements not only in rights but in treatment.

Karen Martin: I echo what Shaben Begum and Gordon McInnes said but I make a plea for carers. The advocacy services that are available for carers are even less well known. The people we consulted throughout Scotland, including young carers and people in condition-specific charities that work with people with various mental illnesses, said that knowing that they could access advocacy or that it existed but they could not access it because it was full or did not operate in their areas might have made a difference to whether they became a named person. It might have given carers more of a say, more confidence and more of a voice to take part in treatment decisions and might have allayed a lot of family and relationship issues.

The Carers Trust would certainly like to see more in the bill about carer advocacy rights, to support carers. I agree with Gordon McInnes that building that into the advance statement is great, but we need to promote and publicise the role of the named person, as stated in McManus. It is a huge disappointment to carers that that is not reflected in the bill.

Andrew Strong: McManus mentioned that advocacy needs more promotion and that there is a direct issue about the appropriate provision of advocacy and the associated funding for it. That is further exacerbated by the perfect storm scenario, whereby lots of disabled people and people with long-term conditions are being affected by welfare reform and cuts to services.

I do not know whether the committee noted that this week the Scottish social attitudes survey revealed that there has been an increase in stigma and discrimination over the past few years in relation to people who come within the bill's scope: people with mental health problems and people with learning disabilities. Advocacy can be a tool for challenging that, but a block is that a lot of people cannot access it because there is not enough provision. We would support monitoring of access to the independent advocacy that exists. There require to be consequences for local authorities and health boards when people cannot access advocacy services. Greater empowering of people to report failings on advocacy is probably required, too. I am not sure whether that is within the bill's scope, but there is definitely a gap.

Gordon McInnes: When we are discussing somebody taking up the role of named person, another element is that somebody such as a mental health officer may take on the role. There are two issues. A family member who takes on the role often lacks advocacy skills or knowledge of the mental health treatment process or the legal frameworks. When a professional does it, they often do so at short notice and do not know the person. Both those factors have an impact.

I suggest that there should be some rules, because we often hear that a professional has been nominated as a named person at the last minute. The professional concerned might not know the person so, although they might have the skills and the knowledge of the system, how can they argue on that person's behalf?

Shaben Begum: I will highlight research that the Mental Welfare Commission for Scotland published last year. A series of focus groups was held throughout Scotland to talk to people who have used mental health services. The majority of them knew nothing about the named person, advance statement, independent advocacy or their rights under the 2003 act. The people who knew about their rights to a named person and an advance statement had used advocacy or had been involved in a collective advocacy group.

Advocacy has been shown time and again to be a useful vehicle for enabling people to have a better knowledge and understanding of their rights. People are more likely to nominate a named person and have an advance statement if they know about those things in the first place and if they have an advocate who supports them.

Many of our members do a lot of work to raise awareness about what a named person is, what their responsibilities are and how that role can help the service user. They also help a lot of service users to draw up advance statements and to think about what will be a robust advance statement. Advocacy needs to be recognised for

the role that it plays in generally raising people's awareness about their rights and in specifically raising awareness about the two additional safeguards in the 2003 act.

Karen Martin: I agree with Shaben Begum. When we consulted carers through our network partners throughout Scotland and the Scottish young carers services alliance, we found that time and again we had to spend time explaining what a named person is, what we meant by an advance statement and where carers fit into being a named person. We also had to separate out the role of the named person from that of the primary carer when they are not one and the same person.

As McManus recommended, greater awareness is needed of the role of the named person and the consequences of taking it on. It is quite a powerful role and taking it on has a lot of consequences, especially for a sibling, wife, husband, mother or father of someone who has a mental health problem.

The role can interfere with family relationships. That is why the Carers Trust and the Scottish young carers services alliance want the McManus recommendation that 16-year-olds should be able to nominate named persons to be implemented, which would bring the legislation into line with that on issues such as the age of legal capacity. Many adolescents struggle with families. They do not have to have a mental disorder to have poor family relationships, but the situation is made worse if a 16 or 17-year-old has a mental disorder on top of that and their parents have to give consent. That seems to be an anomaly. The common view is that, if people can vote when they are 17, why can they not decide who will represent them or act in their best interests?

There are a lot of issues to do with the named person. The Carers Trust, the Scottish recovery network, the Glasgow Association for Mental Health and Support in Mind Scotland feel that the Government has missed out a lot of the robust powers and responsibilities that McManus recommended. Another issue is raising awareness about the role of the named person, which will impact on the service user, because the two can start to work together better.

Sue Kelly: I echo much of what has been said, particularly about advocacy. We have talked about McManus. The principles on which the 2003 act rests are completely disrespected if people do not have the support that they need to make their own decisions and do not have the advocacy available to allow them to challenge substitute decision making. Not having that undermines the spirit of the legislation, which was supposed to be groundbreaking.

People we have spoken to say that advocacy should not be provided just in times of crisis, that early independent advocacy should be provided and that things such as peer advocacy projects should be encouraged. Support should be planned early and the treatment that is required should be considered. I echo everything that has been said about advance statements, which help to prevent deterioration of mental health and avoid the necessity for compulsory treatment, which is such a difficult issue.

There are lots of debates about compulsory treatment and whether it is in and of itself a total denial of somebody's human rights. It would be a way of avoiding any such situations if people got early advocacy and made informed decisions when they were not feeling so unwell. We say in our submission, on the basis of what people have told us, that we would like a statutory duty to be placed on health boards to promote advance statements and ensure that people are fully informed about what making an advance statement means.

Gordon McInnes: There are two points when an advance statement is likely to be needed—one is in the tribunal process and the other is during treatment in a crisis. That is often when the proactive work bears fruit, which is part of the point to make about advance statements. Often, the treatment process is like a conveyor belt, so the people in the hospital do not see the benefit of the community work and those in the community do not see the benefit of the crisis work. Those things need to be tied together, which is why I stress the importance of the advance statement as a proactive document. When someone is in the community, a well-written advance statement might not make a big impact but, if they become unwell again, it will—particularly if the tribunal process adequately supports them. That is what I mean when I say that a well-written advance statement can improve almost every aspect of a person's mental health care and treatment.

12:45

The Convener: Gil, do you want to take us on to another subject?

Gil Paterson: Yes.

The Convener: Great. First, however, Rhoda has a supplementary question on the previous subject.

Rhoda Grant: Gordon McInnes mentioned the availability of the advance statement. Previous witnesses have given us evidence on confidentiality. Gordon, you seem to be saying that the advance statement is very accessible, so how do you deal with confidentiality issues?

Gordon McInnes: I have supported peers to do sessions with people who have had things such as disinhibited behaviours and other sensitive issues included in their advance statement. If there is a central database, there is a clear access requirement.

When we do the work, we get the person to draw up a list of people who have copies of the statement and include their names and addresses, and they put that distribution list, if you like, in the statement. That includes their GP and psychiatrist, as well as any named person, carer or anyone in any other such role.

The assumption is that they will discuss the matter and any access-related confidentiality issues with them. However, that requires someone to sit down and do the work to decide who should be on the list, what should be in the statement and who should get access to the information. If a person is not happy about receiving or giving information, they should not be put on the list.

A lot of our members are socially isolated, so they do not have a huge list of people to draw on.

Rhoda Grant: I am sorry, convener, but I should have referred members to my entry in the register of interests, because I have an intern from Inclusion Scotland.

The Convener: Carolyn, do you want to help us to conclude this bit of the discussion?

Carolyn Roberts: On the specific point about confidentiality, advance statements are a great tool—I absolutely echo what Gordon McInnes said—and people need to be encouraged to make more of them. When we have done research on the experience of being detained, people have said that they do not know about the statement or believe that the statement will have no weight, so we welcome the fact that the bill will introduce a register of advance statements. However, people have expressed concerns about the fact that the entire advance statement will be held in the register and have asked who will see what is a personal document.

In our submission, we propose that—ideally—the register should hold only the fact that a statement has been made, the date when it was made and whom to contact to get it. That would reassure people, while letting the register do everything that it should. Failing that, we urge that the provisions on who can access the statement be tightened up.

The bill says that a person's mental health officer and the responsible medical officer can see their statement, which is absolutely right. However, it also says that anyone acting on the person's behalf, as well as their health board, can access the statement. Those are incredibly broad provisions; we strongly urge that they are tightened up.

Dr Simpson: We should be aware of the fact that, the last time we looked, there had been 900 breaches in health boards, with people accessing confidential data that they should not have accessed. The witnesses raise a valuable point.

I have always been of the view that the person who holds the statement—provided that the individual is confident to do so—should be the general practitioner. A lot of confidential information should be held at that level and accessed only if the patient and the GP are in agreement that it should be accessed. That is in general, but we will need to return to the whole issue of privacy and confidentiality.

In the context of the bill, I support Carolyn Roberts' view that the register should record the existence of the advance statement and not the full content of it. Enabling health boards to access advance statements is far too broad an approach; the bill must be much more tightly defined.

Bob Doris: I appreciate Gil Paterson's patience, as I know that he wants to come in. I take on board the comment that health boards getting the advance statement is a fairly broad provision and that the bill might need to be tightened up in respect of what that means. I do not know the answer to this question but, if the advance statement is held by a GP or another trusted individual and we have a register that says only that a statement exists, might not there be times of crisis when one would need quick access to the statement—within minutes or hours—when one might not be able to access it from those sources? I am not arguing against Dr Simpson's position; I am just wondering whether there are practical aspects to take account of, in case one needed to get the advance statement as quickly as possible.

Gordon McInnes: Roll up at Parkhead hospital at 3 am.

The Convener: Everybody seems to be in broad agreement that there are times when it would be needed quickly.

Gil Paterson: At the start of the session, Carolyn Roberts made a quick reference to appeals against hospital transfers and the rights of managers in effect to transfer patients from one establishment to another. Under the bill's proposals, the length of time for making an appeal would be cut from 12 weeks to four weeks. I do not want to put words in the mouth of the Mental Welfare Commission for Scotland, but when we questioned it on the matter, its main concern was not so much about rights being taken away or reduced—it seemed to think that, in some cases, that was the right thing to do because the patient required treatment that could not be provided in a

particular establishment—but about the loss of the patient's bed in the establishment in which they had been housed. In other words, after they had been moved elsewhere—perhaps against their wishes—they might have no right to go back. Of course, the panel might have entirely different concerns or might wish not to dwell on what I am saying if it thinks that it is irrelevant.

Carolyn Roberts: You have raised a really good point. The provisions relate specifically to transfers to the state hospital, which is our highest-security hospital. Our concern about the very substantial reduction in the timescales for appealing against decisions on people being transferred is that the reason why the proposal is felt to be required has not been very well outlined. The argument is that the time for appeal delays treatment that might be required urgently, but we neither understand that nor think that it has any substance. After all, the existing mental health legislation allows the tribunal to order a person to be transferred immediately, pending their appeal.

That brings us to the Mental Welfare Commission for Scotland's concern about loss of the bed at the original hospital. I do not have the details, but I am told that on at least one occasion a person who was transferred to the state hospital won their appeal only to find that their bed in the sending hospital was no longer available. It is clearly an issue; I have read the commission's evidence and I think that it has proposed that the person's bed be guaranteed until the appeal has played out. That seems entirely sensible to me, but it does not necessitate a reduction in the appeal timescales from 12 weeks to 28 days, especially as the tribunal can already direct a transfer to take place, pending the outcome of an appeal.

The Convener: Does anyone else wish to comment on that?

Dr Simpson: I have a related question, convener, but it goes back to sections 10, 11 and 12, which relate to the right of appeal against certain levels of security. At the moment, that right applies only to those at the state hospital, but in light of the RM v the Scottish Ministers case, the bill now proposes to extend the right to those in medium-secure units, which we supposedly have an adequate supply of—that particular building programme has now been completed and we now have a unit at the Murray royal hospital development, a unit in Glasgow and a unit in Edinburgh. However, the point that some of the witnesses have raised in evidence is: why stop at that? What about lower-secure units? After all, one of the Millan principles was about providing the least restrictive care, and surely people who are being restricted in any way should have the right of appeal. Do the witnesses think that the bill should be amended to ensure that the right of appeal against excessive security is extended not just to medium-secure units but to low-secure units? What are the arguments for and against such a move?

Carolyn Roberts: We agree that the provision to appeal against excessive security should apply to people in low security, and we absolutely agree that the intention of Millan was for the principle of least restrictive security to apply. There has been a court case on the matter, which you referred to, and the person who brought that case was in a low-secure setting. As we know, it is possible to move from a low-secure hospital setting to a community-based order, and we believe that the Scottish Government's argument for confining the right to appeal to medium-secure units is that an appeal against low-secure accommodation would essentially be an appeal against detention itself, given that the next step would be a move into the community. We do not agree with that. Someone can move from one level of security to another and still be in low-secure accommodation. We think that the right should apply as widely as possible.

We note that the purpose of this part of the bill is to bring in regulations that will give effect to a provision in the original Mental Health (Care and Treatment) (Scotland) Act 2003. It appears to us that the intention of the 2003 act is to allow a right to appeal against excessive levels of security to apply as widely as possible. We do not see why it would not.

We have concerns about whether there is sufficient low-secure accommodation provision. Given that people will be able to appeal against medium-level security, we would like to see work done on what low-level secure accommodation is available, whether it is enough and what more we need to do to develop that estate.

Dr Simpson: In his evidence, John Crichton said that now we have medium-secure accommodation sorted, we really need to look again at low secure.

When the 2003 bill was going through Parliament, we debated whether the provision should apply to lower levels of security, but at that point we did not have community treatment orders. We have now had 10 or 11 years' experience of CTOs and we should regard them as another form of detention. A CTO is a restriction on liberty, even though it is a restriction within the community. Steve Robertson made that point eloquently. We need to look at that.

We also need to look at learning disability, although that might not be possible within this rather limited act.

Can I say one more thing, convener?

The Convener: Yes, you can, Dr Simpson, but you are not giving evidence.

Dr Simpson: I know. I just wanted to comment on Steve Robertson's position. As a fellow of the Royal College of Psychiatrists, I hope that I am one of the kind psychiatrists to whom he was referring. Maybe he will tell me later.

I was concerned to hear that somebody could say that advocacy was not appropriate to an individual. I cannot think of circumstances in which advocacy is not appropriate. Are there any circumstances in which it is appropriate not to suggest that an individual might wish to take up the option of having advocacy?

The Convener: I will allow people to answer Gil Paterson's original question on security, and the questions that flowed from that, before we go into answering another question, Richard.

Bob Doris, do you want to come in before we get a response from our panellists?

Bob Doris: I would rather hear witnesses' opinions on security than ask about it. I was going to ask a question on that.

The Convener: Ask your question, then we will hear the responses.

Bob Doris: Okay.

Apologies; I am maybe showing my ignorance by asking this question but I am trying to get my head round the point that was made. If someone is being transferred from a low-secure setting—not in the community—to another low-secure setting, or if they are being transferred from a more secure setting to a less secure setting, how could they appeal on the ground that the security was excessive? The constraints on the person would be lessened or not changed. That is a common sense view of what I am hearing.

I appreciate that somebody moving from a low-secure setting to a community treatment order might be a different issue. However, when someone is transferred from one establishment to another with the same level of security, why would there be a need to appeal against excessive security? Are other mechanisms not available through which a detention can be contested, irrespective of whether someone is being transferred from one hospital to another?

I hope that that makes sense. I am just trying to understand the bill's provisions and why they are unreasonable.

The Convener: Maybe the panellists will give us a wider sense of their views on security and the appropriateness of where someone is at any given time. Can we have some responses on that? I do not know whether I saw Gordon McInnes nodding—

Gordon McInnes: I was just agreeing.

The Convener: —or whether he was just nodding off. Carolyn Roberts?

13:00

Carolyn Roberts: I am not sure that I have fully understood the question. Perhaps I was not being clear when we were talking about appeals against excessive security. The provisions in the bill would give effect to the provisions in the Mental Health (Care and Treatment) (Scotland) Act 2003 on the right to appeal against being held in excessive levels of security. That right came in for the state hospital, which has the highest level of security; you can now appeal against your being held there, and if your appeal is successful you get moved to a medium-secure facility.

We are arguing for a similar right at every level. Not only should people in medium security be able to appeal against their being held there and move to low-level security, as is set out in the bill, but people in low-level security should also be able to appeal and perhaps move to a community setting. That right would not come into play if you were being transferred from one medium-secure facility to another, because the level of security would not change, as you have said. Have I understood the question right?

Bob Doris: That was ideal. Are you saying that, for those who are currently staying in the lowest form of secure setting, there should be a standing right to appeal, full stop? If so, do you not agree that there are already mechanisms in place for reviewing compulsory treatment orders? I am just trying to establish what the difference is. Do you want people in the lowest level of secure setting to have the standing right to appeal on an on-going basis, or only at the point of transfer?

Carolyn Roberts: You can appeal against a hospital transfer, but we are talking about specific rights with regard to being held in excessive security. An appeal against a hospital transfer could be made on a number of issues such as appropriateness or clinical care, but the rights that we are talking about are specifically about being able to argue, "I am being held in a level of security that is not necessary."

Bob Doris: I must have misunderstood that when I was talking about transfers. Do you want people, wherever they are and irrespective of other grounds for appeal, to have the right to appeal against the level of security in which they are being held?

Carolyn Roberts: Yes.

Bob Doris: But is there not already a statutory review process for those under compulsory treatment orders that say where they should be?

Carolyn Roberts: They would be reviewed every two years.

Bob Doris: Are there conditions attached to that right to have an order reviewed? I am not trying to be churlish—I just do not understand. Should there be a right to appeal every three months, every six months or every nine months? When should the person who is residing under that level of security and detention get the right to have their order reviewed or repealed? Is it a standing right or one that would be given every so often? I apologise for asking so many questions; I will not ask any more, but I see that I need to increase my knowledge and understanding of the process.

The Convener: Karen Martin will help us along.

Karen Martin: I hope so, convener.

My understanding is that the responsible medical officer—the consultant psychiatrist—has a duty to constantly review the care and treatment of anybody who is on a compulsory treatment order. If my understanding is correct, if someone was beginning to recover and could function in an open ward—they might not be quite ready to move out into the community, but they would not need to be in a low-secure unit and could have ground access and be allowed to get out and about—it would be a matter for the responsible medical officer, along with the treatment team, the carer and the service user him or herself. If somebody has been under a compulsory treatment order for two years, there is a statutory duty for the tribunal to review it. People are given an order for up to six months in the initial circumstances, pending on-going review, and I think that the situation is the same for those in low-secure units.

I do not know whether I have helped things or have muddied the waters further and confused everyone.

Bob Doris: It is my responsibility to get more knowledge of the situation. Thank you for assisting me.

The Convener: What if people found themselves in various types of accommodation not because they were appropriate but because of a lack of appropriate accommodation somewhere else? Can you give me some clarity about where their rights would lie in that situation? We have heard that you could find yourself in the state hospital and make an appeal but then lose an appropriate place elsewhere, the consequence of which would be a continuing stay in the state hospital because there was nowhere else for you to go. What happens in that situation? Indeed, the same question arises as the level of security flows down to the medium or low level or perhaps if you are in the community. I have heard about such problems, but I do not know about the timescales involved or how the regular assessments come into play. How can assessments ensure that people are in the appropriate setting based on their needs and clinical assessment?

Karen Martin: That is where we would certainly advocate greater involvement of family members and carers—not just named persons, who can be different from the carer—in the review process and assessments. What could happen is that someone might be deemed ready for discharge from a unit—perhaps not the state hospital or a medium-secure unit but a low-secure unit or open ward—but the family might not be ready. The person could still be discharged into a family that is not prepared, has not been involved and does not know the side effects of medication or who to call in a crisis.

Greater involvement of the family can help to prevent some of the issues that you have mentioned from arising. In particular, we need greater involvement from the forensic carers of people in the state hospital, which covers the whole of Scotland and Northern Ireland. A lot of forensic carers feel that they are underrepresented and are not brought into any discussions about movements or other changes, and involving them more could help to reduce the problem of people being moved about and then suddenly finding that they have nowhere to go.

The Convener: Does anyone else want to respond?

Shaben Begum: Can I comment on the point that Richard Simpson made?

The Convener: Yes, because that is the one that we are going to come to next. You can kick off.

Shaben Begum: Before the Mental Health (Care and Treatment) (Scotland) Act 2003 was implemented, there were lots of situations in which people were told that advocacy was not suitable for them. Quite often that decision was made by a clinical team, and I know that Steve Robertson will have lots of examples of that. Unfortunately, we still hear of people being told, “Advocacy isn’t appropriate for you.” As a former advocate, I have experienced lots of situations in which I was told that advocacy was not helpful because it was putting ideas in people’s heads or that certain people would never have thought of challenging people in authority if I had not suggested the idea to them.

For me, advocacy is all about broadening people’s horizons and telling them about their options, their rights and all the things that they do not know about. After all, they might not know that they can exercise those rights. However, we still hear about cases of people with dementia or learning disabilities, or children and young people, who are not able to access advocacy.

I do not know whether you have had a chance to read the briefing information that we sent out. Children and young people who are detained or receive care under the 2003 act still do not have access to advocacy in the way that adults do. Some people are still being told all the time that they do not need advocacy or that it is inappropriate because it will interfere with the clinical treatment that they are receiving.

Karen Martin: From a carer's point of view, the other side of what Shaben Begum is talking about is carers who are told that a patient does not need an advocacy worker because they have a solicitor. A solicitor and an advocacy worker do very different jobs, and the advocacy worker can get a lot of information from the service user because they are not coming in suited and booted from a law firm. There are also carers who are denied access to advocacy.

Shaben Begum: We are told that people who have a learning disability do not need advocacy, but then again I was often told that I did not need to advocate for people who had been informed of their rights. There is a misunderstanding about the role of advocacy. Sometimes I played an active role in meetings and supported a person in speaking up—or I spoke up on their behalf if that was what had been agreed—but sometimes I was just there for moral support, because we all know what it feels like to be isolated and alone. The role of the advocate will be different in different situations and with different groups of people.

That misunderstanding about what advocates do persists among some clinical teams and professionals, and Karen Martin makes a good point about the confusion that arises from people thinking that someone who has a carer, a named person or a lawyer does not need advocacy. The advocate is more likely to know the person better than their lawyer does. The lawyer will see them only at certain points on their journey, but the advocate sees them a lot more often and has a much better qualitative relationship with them.

The Convener: We are now in the final 10 minutes of the session, and I would like to hear Gordon McInnes's views.

Gordon McInnes: I will be very quick. I should say that, as a former advocate myself, I am biased.

Given that a large part of people's experience of receiving compulsory treatment is disempowerment, which has real implications for treatment outcomes, the advocacy process and the involvement that it brings have a therapeutic benefit. I do not mean that in a wishy-washy way. The very fact that someone is given compulsory treatment quite often damages them, and advocacy should be viewed as almost essential in minimising that collateral damage.

Rhoda Grant: Can I change the subject, convener?

The Convener: I was hoping that you would. We have 10 minutes left, and I want to give other issues an airing.

Rhoda Grant: Some people have referred to the named person. What I am picking up is that it might not be appropriate for the carer to be the named person, because they might not have the expertise. We have heard from service users that the named person has a lot of access to their medical records and the like, which some people might not want a family member to have.

I suppose that it is up to the individual, but is there a need for the named person to be a professional, who could extend the role to carers and family members? In that way, carers and family members would be equipped to support and help but would not be able to access information if the person in question did not wish them to. Do we need to expand the role in that way? Indeed, should we give people the choice not to have a named person at all?

Karen Martin: The responsibility must lie with the service user, who should be given the power to decide whether they want a named person. We would like the bill to leave it up to the service user to decide whether they want a named person and, if they do, who it will be.

When the service user lacks capacity or is unable to nominate because they do not have anybody in their life, a paid worker could come in as a named person. From our point of view—that is, the point of view of carers who go on to become named persons—a named person is a party at a hearing, so they have the right to cross-examine witnesses, lead evidence and present evidence et cetera. We would not like that to be diminished, because for a lot of carers that is a powerful role through which they can put across their side of things and challenge medical and mental health officers.

We would like the default named person provision removed from the bill. I have not met any service users or carers who like the idea. Under that provision, the named person could be your nearest relative, who might be Auntie Jean, your auntie five times removed, who lives in Australia and who has not seen you—now an adult under a compulsory treatment order—since you were two years old. Realistically, what kind of information is she going to be able to provide?

People are supposed to nominate not when they are ill but when they are well, but we know of some carers who were nominated as named

persons when the patient was ill and the first they knew of it was when a load of paperwork arrived at their door. That paperwork is very sensitive, and there is an issue about what kind of information that we give named persons and how we prepare them to receive it.

In my role, I have done some training with carers about the type of information that they are likely to get, which has opened a lot of eyes. In fact, Gordon McInnes was at that training. Some mental health officers will give you information on a person from their birth to the current day, while others will give you just what you need to know for the purposes of the hearing.

The role could be expanded to include paid named persons, but I would be very careful about going too far down that road. Carers, family and friends, who can be named persons too, offer a lot of value and I would be a bit wary that we might get paid people setting up wee businesses—Named Persons "R" Us, perhaps—instead of paid personal assistants who might know the people really well.

Carolyn Roberts: We think that the named person role is fundamental but that people ought to be able to choose their named person. The bill will make a lot of improvements to the named person provisions, in that people will be able to say that they do not want one or to choose who to have. However, although that will improve the situation, there will still be a default named person for individuals who do not state that they do not want one.

13:15

The problem with that is that, as we all know from people's experience of the 2003 act, people do not have good awareness of their rights. Indeed, the research that we did in preparation for our response to the bill backed that up, and the Mental Welfare Commission's research, too, found that people have low awareness of their rights. Therefore, it is not particularly helpful to introduce a right to opt out of having a named person, because there is no reason to think that people will be any more aware of that right than they are of any other right.

We agree with McManus, who recommended that the default named person role be abolished; that carers be given limited automatic rights to ensure that abolishing the default named person role does not reduce carer involvement, which is important; and that named persons be given more support to ensure that they understand the role. Although the bill requires named persons to consent to taking on the role, which is good and should mean that the role is explained to people, we think that named persons need more support to be able to carry the role out. We are absolutely clear that the default named person role should be abolished.

Gordon McInnes: I agree with a large amount of that. I am not aware of any real training or support for named persons, apart from the stuff that Karen Martin does. Someone can be thrown into a situation in which they are expected to be effective in a tribunal process and to deal with complex medical treatments for a person they love and are in a relationship with. That is an impossible situation for a lot of people.

I mean no disrespect to MHOs when I say that although they all know the process and systems very well they will not know the person well. That takes me back to my point about freeing up capacity to do proactive work with people.

Shaben Begum: We agree that the default named person role needs to be taken away. As Karen Martin said, there needs to be proper support for named persons. In our evidence, we said that named persons need access to advocacy, because if they receive the right support they will have a better understanding of their responsibilities and they will be able to militate more effectively against the sort of relationship breakdown that can come about when a spouse, partner or whoever acts as a named person.

There needs to be better scrutiny of access to advocacy. Our evidence backs up what Karen Martin said about carers' access to advocacy being very limited. Maybe the Mental Welfare Commission should have responsibility for looking at who can and cannot access advocacy and how access works across the country. Our main concern is that section 259 of the 2003 act, which is about access to advocacy, is not being implemented in a coherent and consistent way across the country.

If work was done on the issue, we could address some of the gaps because we would be able to find out who is not getting access to advocacy, beyond what the SIAA does. For example, until recently, when the NHS took responsibility for health in the prison service, there was no advocacy at all for people who were detained and who were using mental health services. Slowly but surely we are getting more access to advocacy in the prison service, but we are far from meeting demand and many people in the prison service who have been detained under the 2003 act still do not have access to advocacy.

The Convener: I am afraid that that brings us to the end of our meeting. I thank you all very much for your attendance this morning and for your oral evidence. Thank you, too, for your important

written evidence, which I hope that you will see reflected in our report on the bill.

We will defer item 9 until 25 November, unless any committee members want to push on—but I do not expect any bother from you about that. Thank you.

Meeting closed at 13:19.

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