HEALTH AND SPORT COMMITTEE

Wednesday 9 January 2008

Session 3

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

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HEALTH AND SPORT COMMITTEE
1st Meeting 2008, Session 3

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Ross Finnie (West of Scotland) (LD)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)
*Rhoda Grant (Highlands and Islands) (Lab)
*Michael Matheson (Falkirk West) (SNP)
*Ian McKee (Lothians) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)
Dr Richard Simpson (Mid Scotland and Fife) (Lab)

COMMITTEE SUBSTITUTES

Joe FitzPatrick (Dundee West) (SNP)
Jamie McGrigor (Highlands and Islands) (Con)
Irene Oldfather (Cunninghame South) (Lab)
Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Kathy Banks (Sunbed Association)
Dr Sara Davies (Scottish Government Healthcare Policy and Strategy Directorate)
Professor James Ferguson (University of Dundee)
Ken Macintosh (Eastwood) (Lab)
Molly Robertson (Scottish Government Public Health and Wellbeing Directorate)
John Sleith (Royal Environmental Health Institute of Scotland)
Stella Smith (Scottish Government Legal Directorate)
David Wallace (Scottish Government Environmental Quality Directorate)

CLERK TO THE COMMITTEE

Tracey White

SENIOR ASSISTANT CLERK

Douglas Thornton

LOCATION

Committee Room 1

Scottish Parliament

Health and Sport Committee

Wednesday 9 January 2008

[THE CONVENER *opened the meeting at 10:02*]

Subordinate Legislation

Food Labelling (Declaration of Allergens) (Scotland) Regulations 2007 (SSI 2007/534)

Fishery Products (Official Control Charges) (Scotland) Regulations 2007 (SSI 2007/537)

Meat (Official Control Charges) (Scotland) (No 2) Regulations 2007 (SSI 2007/538)

The Convener (Christine Grahame): Good morning and welcome to the first meeting in 2008 of the Health and Sport Committee in session 3 of the Scottish Parliament. I remind everyone—committee members and others—to ensure that mobile phones and other electronic devices that you do not require for life support are switched off.

We have received apologies from Richard Simpson, who is unfortunately unwell, and from Michael Matheson, who has understandably been delayed in traffic as a result of the stormy chaos outside.

I wish everyone a happy and prosperous new year.

Agenda item 1 is subordinate legislation. We have for consideration three instruments that are subject to the negative procedure. Scottish statutory instrument 2007/534 will implement a European directive to ensure that consumers are informed when certain allergens are present in pre-packed foods. SSI 2007/537 will implement the new rates in European regulation EC/882/2004 on official feed and food controls from 1 January 2008 and set out new minimum charges as contributions by food businesses to local food authorities for hygiene controls on directly landed fish and fishery products. SS1 2007/558 will implement the new rates in European regulation EC/882/2004 on official feed and food controls from 1 January 2008 and set out new minimum charges for meat-hygiene official controls at approved establishments. No motions to annul have been lodged. Do members wish to comment on the regulations?

Mary Scanlon (Highlands and Islands) (Con): I want to comment on SSI 2007/538.

The Convener: It is SSI 2007/558.

Mary Scanlon: The paper that I have says that it is SSI 2007/538.

The Convener: I beg your pardon—you are right.

Mary Scanlon: The Subordinate Legislation Committee has made two comments on SSI 2007/538 about which I am slightly concerned. First, it has said that it has

"received a response from the Food Standards Agency with which it is only partially satisfied".

On the Subordinate Legislation Committee's second comment, I want to record my concern about the fact that the lack of clarity is such that it could affect the operation of the instrument. In the past, legislation has come before us accompanied by so much information that it has been difficult to scrutinise it. I feel that when the Subordinate Legislation Committee raises such points we should at least record that fact.

Ross Finnie (West of Scotland) (LD): The lack of clarity relates to the definition of poultry and land mammals. However, when looking at the definitions that appear in the statutory instrument, I found that the definitions that were being applied to both were already to be found in existing statutory instruments. I am puzzled, therefore, as to why a definition that has been acceptable in previous instruments is now being questioned. We are given no detail about the reason why the situation has been found to be unsatisfactory. I accept, at face value, what Mary Scanlon says, but without going back to the previous statutory instrument, I am not sure why—

Mary Scanlon: I am merely quoting from the Subordinate Legislation Committee's briefing.

Ross Finnie: Indeed—that led me to look at the definitions in the instrument, as I shared your concern. When I read what is said about the definitions in regulation 2 and in paragraph 15 of schedule 2—which says that expressions that are used in the instrument have the meaning that they have in European Community regulation 882/2004—I was puzzled as to why the point had been raised.

The Convener: Does the committee agree to defer consideration of the matter until next week, so that we can seek clarification from the Subordinate Legislation Committee about what was meant by its comment, in relation to what Ross Finnie has just said?

Ross Finnie: If we do that, we should also ask about the Subordinate Legislation Committee's other comment, which relates to the possibility that operation of the instrument might be affected. Clarification on that would also be helpful.

The Convener: We can raise both points.

Do we agree that we wish to make no recommendation in relation to SSI 2007/534 and SSI 2007/537, and that we will write to the Subordinate Legislation Committee to inquire about the points that have been raised in relation to SSI 2007/538?

Members *indicated agreement.*

Public Health etc (Scotland) Bill: Stage 1

10:08

The Convener: Item 2 on the agenda is stage 1 of the Public Health (Scotland) Bill. This is our first evidence-taking session, during which we will take evidence from the Scottish Government's bill team on the general principles of the bill.

In the interests of keeping some kind of order for *Official Reports* of our evidence-taking sessions, to make it easier to refer to our discussions later, I suggest that we relate our questions to the sections of the bill in sequence, rather than jump about. That does not mean, of course, that we cannot return to an issue that has been dealt with if a query arises later. Do members agree to that?

Members *indicated agreement.*

The Convener: I stress that the approach is not intended to be a straitjacket and that it will be possible to ask questions about a section that has already been dealt with.

We will, later today, take evidence from a range of witnesses on the regulation of sunbed facilities in relation to proposed amendments.

I will now introduce our very patient bill team. We have with us Molly Robertson, who is the bill team leader; Stella Smith, of the legal directorate; Dr Sara Davies, who is the medical adviser; and David Wallace, of the air, noise and nuisance team, which sounds very exciting. You must be a very good party guest, Mr Wallace.

David Wallace (Scottish Government Environmental Quality Directorate): Absolutely.

The Convener: I invite Ms Robertson to make introductory remarks.

Molly Robertson (Scottish Government Public Health and Wellbeing Directorate): I would like to put the provisions of the bill into context. The bill is designed mainly to consolidate and update the law on health protection in Scotland. Current legislation dates back to 1889, with the main provisions being in the Public Health (Scotland) Acts of 1897 and 1945. Much of the legislation has been replaced by general environmental and hazard-specific legislation, but what is left is no longer fit for purpose to ensure the best level of health protection from current threats to the people of Scotland.

The globalisation of travel and trade means that the risks that are posed to public health today are very different to those that were experienced by our parents and grandparents. A number of new public health threats are emerging—severe acute

respiratory syndrome, Ebola and acts of bioterrorism—in addition to the re-emergence of old threats such as tuberculosis, many strains of which are now multidrug resistant. Scotland is not immune to such threats, as the recent incidence of anthrax in the Borders testifies.

The provisions in the bill are based mainly on proposals that were drawn up by a public health review group, which comprised a number of representatives from health protection, public health and environmental health. The proposals for change were subsequently issued for consultation by the previous Administration at the end of 2006, and about 100 responses were received. They all acknowledged the need for modern public health legislation, although they also highlighted a need for further work with stakeholders to clarify and refine the proposals. That further work has, in the main, been taken forward through a public health legislation reference group, which included representatives from relevant professional groups and organisations.

The bill is principally about protecting the public from infectious diseases and contamination. However, in addition to that, the opportunity has been taken to give a statutory underpinning to provisions on mortuaries, which will update the 1897 provisions; to enhance the statutory nuisance regime of the Environmental Protection Act 1990 as it applies to Scotland; and to require operators of sunbed premises to provide information on the health effects of sunbed use. The latter provision is still being developed, and we will inform the committee as soon as the proposals have been finalised.

The bill contains strong powers for health boards. The majority of the powers already exist and have not been abused. The powers, which comply with the European convention on human rights, can be used only in strictly defined circumstances and where the person concerned poses a significant risk to public health. They are similar to powers that are available in much of the developed world. Other countries in the United Kingdom are in the process of updating their legislation along similar lines.

The vast majority of people co-operate with requests from public health professionals in respect of their own care, and to avoid the spread of disease. However, the few who may not co-operate have the potential to undermine measures to limit the spread of a serious and potentially catastrophic epidemic. Although we hope that the circumstances under which such powers may be used do not arise, it is necessary to equip our health authorities with the tools that they need to ensure that a future public health threat can be contained, or at least delayed, effectively.

I appreciate that the bill covers a wide range of detailed issues within a complex legal framework. We are happy to take questions and to try to clarify any proposals on which the committee would like further explanation.

The Convener: Thank you. Do committee members have any questions on part 1, "Public health responsibilities"?

Helen Eadie (Dunfermline East) (Lab): I would be grateful if the panel could elucidate further the consultation process that took place, and highlight any issues that arose in the 100 responses that you received. I have not seen the responses. Did any issues emerge from the consultation on part 1 of the bill that you think it would be worth while sharing with committee members?

Molly Robertson: Issues that came up on part 1 during the consultation related to the designation of competent persons by health boards and by local authorities. Consultees expressed concern about the removal of the role of a designated medical officer, to be replaced by competent persons by health boards. Since then, we have been working on that comprehensively with stakeholders to explain why we proposed the changes. A working group has been working for a couple of months now on the qualifications for competent persons, which will be set out in regulations. Unfortunately, I cannot give any details of that today because, although the working group has reported to the Government, we have not yet agreed what will be in the regulations. However, we hope to have that agreement shortly and will certainly inform the committee as soon as we have the detail of it.

10:15

Other issues related to the notification of non-communicable diseases, which was mooted in the consultation proposals. After further work with stakeholders, we decided that it should not be a provision in the bill. There are other methods for obtaining such information, there may be data protection issues and such arrangements might be swamped by notifications of non-communicable diseases that do not require urgent public health action.

I am trying to think of other issues that came up. The width of health board powers was an issue for some consultees. Again, we have tried to work with stakeholders to ensure that they are content with what we now propose in the bill.

Sara Davies might have other issues that are worthy of mention.

Dr Sara Davies (Scottish Government Healthcare Policy and Strategy Directorate): I will just mention that there was a good deal of

agreement with the principle in part 1 of the bill of splitting the responsibilities for people, property and premises.

The Convener: You say that the qualifications for a health-board competent person will be in draft regulations, which are under discussion at the moment. Will those draft regulations be available to the committee before stage 2?

Molly Robertson: Absolutely. We hope to make the regulations' content available to the committee shortly.

The Convener: That is fine. Thank you.

Mary Scanlon: Protecting public health is, of course, about controlling infectious diseases and contamination. Does the bill need to include anything on hospital-acquired infections, particularly in respect of closure of wards, or is there adequate protection for patients and staff in our hospitals in the current legislation and protocols?

Molly Robertson: It is not intended that the bill will be used for enforcement procedures in respect of health care acquired infections. Those procedures are already governed by the Health and Safety at Work etc Act 1974, and the Scottish Government and the Health and Safety Executive are in contact about whether anything needs to be done to strengthen the enforcement procedures on HAIs. Obviously, the enhanced notification arrangements that are provided for in the bill will ensure that such infections are picked up quickly, which will be of benefit in addressing the problems that are associated with them.

Mary Scanlon: That is helpful.

The Convener: As no other member wishes to ask about part 1, we will move on to questions on part 2, "Notifiable diseases, notifiable organisms and health risk states".

Ian McKee (Lothians) (SNP): I draw the witnesses' attention to section 16(2)—I am having a second bite at the cherry because I met the bill team at the Subordinate Legislation Committee—which gives the director of a diagnostic laboratory the job of notifying to the appropriate people the existence of a notifiable organism within 10 days of its identification. There are penalties if that is not done. At the back of the bill, in schedule 1, there is a long and formidable list of notifiable organisms, some of which I have not heard of. It is a comprehensive list, indeed. If the director of a laboratory comes across one of the organisms listed, his course of action is clearly set out. I am concerned that at the end the list includes

"Any other clinically significant pathogen found in blood".

To my mind, that puts an unreasonable onus on the director of the laboratory. Who determines what is clinically significant? What is clinically significant to one person might be clinically insignificant to another. We are talking about divulging confidential details of a patient to a third party, and that one line in the bill could cause certain diseases to be notified on some occasions and not on others.

There is a mechanism in the bill for adding other organisms to the list if necessary. Would not it be more sensible to delete the last line of the list and allow the Government to add other organisms when it decides that they are clinically significant? The director of the laboratory would then just have to follow the instructions.

Molly Robertson: The expert working group that developed the list considered that it would be wise to include that provision so that public health professionals could be alerted to any new threat. We acknowledge that it is a wide description that could include a number of diseases that might not be worth reporting. We have taken note of the information that has been provided and the recommendation from the Subordinate Legislation Committee, and we intend to consider the issue further.

The Convener: I think that is a hit, Ian.

Ross Finnie: My question is on the same part of the bill and develops the point that was raised by Ian McKee. Sections 16 and 17 are the only places in which references are made to laboratories. It may be that the answers to my questions are contained in other legislation, but I seek comfort. As I understand it, the bill is structured to provide greater clarity in delineation in respect of premises and health matters. However, there is no specific reference to who is responsible for laboratories. That seems odd, especially considering public health, although I am sure that you will tell me that it is provided for elsewhere. If so, can you clarify the regulations that govern the operation and security of laboratories in relation to potential outbreaks that would be dangerous to public health?

Finally, in either the bill or other legislation, is consideration given to the clear risks that have been identified since the unfortunate leakage from controlled laboratory premises at Pirbright in Surrey, which gave rise to the most recent foot-and-mouth disease outbreak? I appreciate that those are different circumstances—they relate to animal health—but the principles of the exercise of control over laboratories are the same, particularly in the context of a serious public health risk. Is that point dealt with elsewhere in legislation, or should laboratories have been brought within the scope of the bill?

Molly Robertson: I am not sure that I can answer that today.

The Convener: Perhaps Dr Davies can help.

Dr Davies: I can help initially by saying that the bill relates to infections and human health—

Ross Finnie: I was talking about the principles of laboratory security and the control and nature of laboratories. Unless I have misunderstood it, the bill seeks to draw a distinction between the persons who are responsible for disease control and those who are responsible for premises. To repeat my question, are there provisions in the bill or in existing legislation that govern control of laboratories in the same context as an outbreak of disease is covered by the bill?

Dr Davies: Thank you for clarifying that. I apologise for going down the wrong track. My understanding is that the biosecurity of laboratories, the standards that they must meet and the accreditation that they must gain in order to perform their investigations are covered by a range of legislation and regulations. I cannot give you chapter and verse on that, but I would be happy to come back to you on it.

Ross Finnie: You follow my drift—the issue sticks out once one starts to think about it. The bill is clear about dividing disease control responsibilities between people and premises, but the only reference to laboratories occurs in the context to which Ian McKee referred, namely offences by a person who is responsible for a laboratory.

Molly Robertson: In relation to the premises and people split, it might be helpful at this stage to clarify that when we talk about responsibility for premises, we are talking about premises that are infected or contaminated. Once an infection is picked up, the local authority will be responsible for decontaminating the premises, if necessary. We are not talking about regulating laboratories through the bill.

Ross Finnie: I am not suggesting that the bill should be used to regulate laboratories. All I am saying is that it is difficult for me as a layman to obtain—from the explanatory notes or anywhere else—an understanding of how an outbreak of disease could be controlled such that it would not leak from a laboratory. I am not suggesting that that necessarily needs to be in the bill; I am just saying that it is not immediately clear to a layman what the connections are.

Stella Smith (Scottish Government Legal Directorate): Certain aspects of biosafety are reserved. If it would be helpful, we could get back to the committee with more detail on that.

The Convener: It would be extremely helpful to the committee if you could provide, as soon as is practicable, a note about the existing legislation on the biosecurity of laboratories. We appreciate the distinction between people and premises. Are you content with that suggestion, Ross?

Ross Finnie: Yes.

Helen Eadie: I apologise if I ask a question the answer to which I could look for elsewhere, but other members of the committee might find it helpful for me to ask in respect of part 2 of the bill the same question that I asked about part 1. During the consultation, were issues of any significance raised that you wish to share with the committee? If the convener would prefer, I could check the Scottish Parliament information centre's briefing or ask SPICe. I presume that we will have all the consultation responses.

The Convener: We are about to get an answer on where we can locate all the consultation responses. Are they on the Government's website?

Molly Robertson: Yes, the full report on the consultation is on the Government's website.

The consultees were broadly content that the present arrangements should be updated. At the moment, laboratory reporting is voluntary. It was thought that it should be put on a statutory footing. In the main, consultees were content with the principle of a new statutory notification scheme. At the time of the consultation, we did not have the list of notifiable diseases or the list of notifiable organisms, but they have since been referred to our public health reference group, which has commented on them.

Helen Eadie: Do any other members of the panel have anything to add?

The Convener: I think not.

We move on to consider part 3, "Public health investigations". I invite questions from members.

10:30

Ross Finnie: I would just like clarification of one point—you maybe explained this earlier. I understand perfectly the need to try to separate out and give greater clarity to who is responsible for what, but if there is a major outbreak, who among the several parties listed in section 21 is ultimately in charge of co-ordination? Is there a mechanism in the bill that makes it clear which body would assume that co-ordinating responsibility?

Molly Robertson: The responsibilities are set out in guidance to the health boards and local authorities. Basically, the health board is in charge of an incident—or an outbreak—control team if there is an incident that is contained within a health board area. However, if the incident is spread over a number of health board areas, health protection Scotland would take the lead. In

other, more major outbreaks, the police would take control. Those arrangements are all set out in guidance.

Ross Finnie: Sorry, I did not quite catch the name of the body that you referred to.

Molly Robertson: It is health protection Scotland.

Ross Finnie: The police would come under the local authority. Which body in the list in section 21(2) does health protection Scotland come under?

Molly Robertson: It is under the Common Services Agency—health protection Scotland is not a legal entity in itself; the legal entity is the Common Services Agency. The body at section 21(2)(c) is in effect health protection Scotland

Ross Finnie: Thank you.

The Convener: Section 24(4) states:

"No answer given by a person in pursuance of a requirement imposed under subsection (1) is admissible in evidence against the person in any criminal proceedings."

That is an interesting one. If it is apparent from an answer that is given that a serious criminal offence has been committed, I take it that there could not then be a referral to police.

Molly Robertson: It is quite common to have such a provision in legislation such as this. The provision was inserted because, in a number of instances, people have withheld information because they thought that they might incriminate themselves. When there is a public health incident, the first priority is obviously to contain that public health incident and, therefore, we want to ensure that people such as owners of premises will provide the necessary information that will allow the public health incident to be investigated thoroughly. The provision, however, will not prevent that person, if he is liable and there is other evidence to suggest that he has committed an offence, from being prosecuted using the other evidence that is found on the premises, for example.

The Convener: Just to clarify for the record, if there was an admission of such culpability, that could not be presented to the police?

Molly Robertson: That is right.

The Convener: An issue that arises from that—because there is a mix here between civil and criminal in some instances—is the recording of incidents. It is not clear how the recording of interviews and so on is going to take place. I do not want to go into sections later in the bill that deal with appellate procedure, but when these matters are taking place, how will they be recorded?

Molly Robertson: That issue is already covered in guidance on dealing with incidents or outbreaks. The advice to environmental health professionals and health professionals is that if it is likely that criminal proceedings may be necessary, evidence should be taken in such a way that it can be used in such proceedings.

The Convener: If somebody were to go for appellate procedure because they thought that some of the processes had been unfair—you are talking about serious, perhaps criminal, proceedings, but I am just talking about appellate procedure where people feel that the premises should not have been sealed off in the first place—how will this be recorded so that there will be something to place before a sheriff?

Molly Robertson: I refer that question to Stella Smith.

Stella Smith: Sorry, could you repeat the question?

The Convener: At various stages—this is only one of them—a party may wish to appeal against proceedings. How will the proceedings that they wish to appeal against have been recorded so that they can be presented to a sheriff?

Stella Smith: Molly Robertson has already said that the recording is covered in guidance.

The appeal that you are talking about would be a civil appeal. Section 24(4) applies only to criminal proceedings. As far as your question about the non-admissibility of this evidence in criminal proceedings is concerned, despite the provision, the police would carry out their own investigation as normal, so it does not preclude a prosecution taking place.

The Convener: Obviously not—I am isolating that. I am concerned about how all the proceedings will be recorded so that an individual or a company can use that material thereafter if they are challenging what has taken place. We will perhaps come on to the issue later.

Michael Matheson (Falkirk West) (SNP): For clarification, will this form of questioning be undertaken while the person is under caution?

Dr Davies: Public health investigators, in particular environmental health officers, are well versed in how to take evidence in public health investigations. There is previous experience from trading standards and investigations of incidents when there may have been criminal activity or lax health and safety security. Whether statements were taken under caution would probably be decided by an outbreak control team. One has to go through a process when there is a public health incident. Initial evidence is taken and brought back to an outbreak control team, which decides whether further evidence is needed and whether statements need to be taken under caution.

Michael Matheson: Would the police be involved at that stage?

Dr Davies: In a major incident, police would usually be involved, either in the outbreak control team or in liaising with the public health investigation.

Michael Matheson: Mrs Robertson referred to incidents in which problems had arisen because people were not forthcoming with evidence. Can you give us examples of such incidents?

Molly Robertson: Yes. During a public health incident, there could be occasions when someone does not pass on information. For example, if someone did not give full information about who they had supplied contaminated meat to, that might mean that a public health incident could not be investigated properly. There is also an issue about contact tracing. In other words, if they did not give information about who had been in contact with premises or products and so on, it would not be possible to further investigate with those persons whether they were infected or contaminated.

Michael Matheson: Has that been a problem in recent incidents?

Dr Davies: Such cases provide some background as to why the public health legislation needed to be updated—there has been a problem in the past.

Michael Matheson: I am trying to get an idea of how big a problem it is and how recently it has been a problem. How common is the problem?

Dr Davies: As far as I know, we do not have any statistics about when it has been a problem, but there were major problems in previous outbreaks.

Molly Robertson: We could cite the John Barr case of 1997 as an example of the failure to provide information leading to an outbreak being much larger than it would have been if the information had been provided in the first instance.

Michael Matheson: That was an example of someone withholding information deliberately.

Molly Robertson: Yes.

The Convener: I do not want to pursue the point for too long as we are only at stage 1, but you said that there is existing guidance. It would be useful for the committee to see that and to know whether it will be renewed. You say that the law requires to be more stringent, so I presume that the guidance will have to reflect that.

Molly Robertson: Absolutely. The guidance will have to reflect the changes that are being made to the legislation. We will be happy to share that with you.

The Convener: I have a final point on part 3 of the bill—my lawyer's hat comes out at this point. Section 30 states:

> "a person who appoints an investigator is to pay compensation for loss or damage caused by … the investigator; or … a person authorised by the investigator".

Is that compensation not just for material damage but for loss of profit or income and the other problems that might flow from a business being shut down?

Molly Robertson: Depending on the incident, that would be covered by food safety legislation or health and safety at work legislation. The compensation in the bill applies only to damage to or destruction of an article or substance—as it says in subsection (3).

The Convener: Is that clear in the section?

Molly Robertson: Section 30(3), I hope, makes that clear.

The Convener: Section 33?

Ross Finnie: Subsection (3) of section 30.

The Convener: I am glad that I have help with my hearing today.

So the compensation is for articles and so on. Parties would have to use other legislation to get compensation for loss of income and profits and so on.

Dr Davies: Yes, and the bill makes it clear that there would be difficulty in getting compensation for loss of profit if a business was shut down because it was contributing to a public health problem.

The Convener: That is a different matter—I fully accept that it would be difficult to get compensation if a business was fully contributing to such a problem. I was just wondering what would happen about loss of income to a company or individual if they were not.

We now move to part 4, "Public health functions of health boards".

Mary Scanlon: One of the most controversial provisions in part 4 is the power to quarantine individuals, which is new. Will you explain why it is necessary to introduce that power? Have there been instances in the past when the spread of infectious diseases or contamination has been rife and the power to quarantine individuals would have helped to contain that?

Molly Robertson: I will pass you to Sara Davies, who is more familiar with that subject.

Dr Davies: When there were SARS incidents around the world and Scotland was not immune from the concerns about SARS, it was a worry that we did not have the power to quarantine. Because

of the nature of the incidents and through the work of public health professionals and others, it was not necessary to have the power. However, if the SARS outbreak had come closer to us, we would have certainly needed it.

Mary Scanlon: So the power relates more to the SARS outbreak than to anything that has happened historically.

Dr Davies: Yes.

Stella Smith: Perhaps I could clarify what Sara Davies said. It is true that we have never previously had regulations about quarantine. However, there has always been a power in the Public Health (Scotland) Act 1945 under which regulations on quarantine could have been made. No regulations were ever made, but they have always been in contemplation. We now have something in the bill that the Parliament would wish anyway.

Mary Scanlon: You mentioned something in the private briefing that it would be helpful to have on record. Will you explain what powers you have over aircraft and shipping in the North Sea and around Scotland to control infectious diseases?

Molly Robertson: The relevant power is in part 7, which deals with international health regulations. As the committee is aware, we plan to amend that. We can clarify the power further when we consider the part in question. It deals with infection and contamination arising as a result of vessels or aircraft coming into or leaving Scotland.

Mary Scanlon: Okay. It is just that the policy memorandum mentions aircraft and ship regulations.

10:45

Helen Eadie: In the bill, "the sheriff" is mentioned at various points, especially on pages 22 and 23. If a sheriff makes an order, what sanctions are available in the event of non-compliance? What happens if an individual goes missing once a sheriff has applied an order to them?

Molly Robertson: The offence provision is set out in section 65 and the sanctions are set out in part 10.

As with other offences, if someone absconded, we would have to do whatever we could to find that person because they could pose a risk to wider public health. The efforts that would be made to find someone would obviously depend on the seriousness of the infectious disease that he or she had.

Rhoda Grant (Highlands and Islands) (Lab): My questions are about the legal process and issues such as rights of appeal against quarantine. How does quarantining someone fit in with providing them with access to justice? If a person is deemed to have a condition that is dangerous enough to have them quarantined, how can they access courts, justice and legal representation, and how do we protect the people who provide legal representation in the courts? I am concerned that if the legal process is not carried out, a loophole could arise that could lead to someone being freed from quarantine. Where does the balance lie between protecting human rights and access to justice and ensuring public health?

Molly Robertson: We will ensure that the court processes are such that people will be able to make an appeal. That will all be down to court procedures.

Stella Smith: There are many practical issues—as well as the ones that you have just mentioned, there is the issue of how we go about serving orders on people who are quarantined. We are aware of those issues and are working towards finding the best possible solution to make the relevant part of the bill work in practice. It is clear that whatever solution we come up with will have to be ECHR compliant. If that solution requires us to take powers, we will take the powers that are necessary at stage 2.

The Convener: I am a bit concerned by that answer. Which civil court process are you looking to apply in any of the contexts that we are talking about? When an application is made to the sheriff, will there be a written statement with an entitlement of the party's solicitor to have answers provided? What process in civil court procedure are you talking about? Is it a process that already exists?

Stella Smith: That is something that we are looking at. Section 66 already contains some such provisions, but we are actively considering the issue for stage 2.

The Convener: I do not want to be rude, but now that we have begun our consideration of the bill, is it not a bit late to be examining the court processes that will be brought in to remove rights from people and to make enforcement orders to detain and quarantine them?

Stella Smith: We will not remove rights from anyone. The main provisions are already set out in the bill. It is simply a matter of dealing with the practicalities of the court processes to ensure that our proposals will work in practice. Obviously, whatever we do will have to be within devolved competence and be ECHR compliant.

The Convener: We know that. I am asking a simple question about all the applications to sheriffs that the bill mentions. Let us say that I represent someone who is to have an enforced medical examination or to have their premises

closed down. What is the court process for applying to the sheriff? What has the Sheriffs Association said? What discussions have you had with the legal fraternity about such processes? Are amendments to the sheriff court or Court of Session rules necessary?

Molly Robertson: We are working on court rules and so on with our justice colleagues and the central legal office to ensure that the simplest possible procedures for orders and appeals against orders are in place.

Ross Finnie: I am sorry, but I must press you on that. In answer to Rhoda Grant's questions, Stella Smith directed our attention to section 66. Rhoda Grant specifically asked about appeals against orders. I think that we understand the need in a public health incident to make an application to detain someone if there is reasonable knowledge or belief that they may be infected, but Rhoda Grant asked about protecting that person's rights of appeal. We were directed towards section 66, which specifically excludes appeals.

Molly Robertson: It does not exclude—

Ross Finnie: It does. Section 66(2) states:

"The sheriff may determine an application … in the absence of the person to whom the application relates."

The person's absence is the issue. Obviously, a person cannot be present if they are contaminated. Appeals are excluded in the section. With respect, committee members have difficulty in understanding how you will meet the fundamental requirements of parliamentary legislation.

Stella Smith: My apologies. The right of appeal against quarantine and hospital detention orders is covered by section 59.

The Convener: With respect, we should distinguish between rights of appeal, the obligation of authorities to make applications to the sheriff and processes that are not in place. The committee will have to be satisfied about matters when we reach stage 2. It is all very well saying that people have rights under the ECHR, but there will be no such rights if the processes do not exist to provide a structure.

Stella Smith: Absolutely. However, the bill currently includes a summary application procedure.

The Convener: Yes.

Stella Smith: We are considering whether and how that procedure would work in practice. Given the context, there are obviously various difficulties, but we are aware of the issue and we will have a satisfactory answer for members.

The Convener: At stage 2?

Stella Smith: Yes.

The Convener: I think that we will want to return to the matter. Does Ian McKee have a question on the same part of the bill?

Ian McKee: Yes. I have a fairly simple question on the sections that deal with detaining someone compulsorily under quarantine or in a hospital. Obviously, a person would be detained on the ground that they had an infectious disease—a highly infectious disease, I presume—or were contaminated and were a risk to public health. The bill lists those who can detain people, the first of whom is "a constable". It strikes me that many people who are part of the public and have families will be regarded as qualified to detain people who are highly infectious and a risk to public health. Will there be a specially trained group of people in each health board area who will fulfil that function? The provisions strike me as very general. There are loads of constables in Scotland, not all of whom know how to handle someone who is highly infectious and about the consequences of doing so. Has that matter been considered?

Molly Robertson: Things would clearly depend on the circumstances surrounding the public health incident and the seriousness of the infectious disease. The bill lists a range of people who would be able to remove a person to hospital. It does so simply to provide flexibility. There may be occasions when it would be appropriate for a health board officer or a local authority officer to be involved. In other cases—perhaps where there is a breach of the peace—we would need to bring in the police. How they handle the situation would depend on its seriousness. Health boards and local authorities have experience of dealing with such situations and involving the police. It might be necessary to bring them into an incident control team. Health boards, local authorities and the police already have experience of working together on such incidents.

Dr Davies: As Molly Robertson said, there is a variety of different circumstances. The classic detention orders, for which we have the powers at the moment but which are refined in the bill, are usually used for homeless people with tuberculosis. They are not infectious within the contact that is involved in taking or escorting somebody to a hospital. Those are different circumstances to, for example, concern that somebody who is coming off a flight has something like the Ebola virus. In those circumstances, we would have to get specialist services from England to take the person to a special place of quarantine. The approach depends on exactly what the condition is.

Ian McKee: It strikes me that, given how the bill is phrased, the sheriff could order a constable or an officer of the health board to do the task without adequate training. I would have thought that that was a public health issue. People who are authorised to do the unpleasant task of detaining someone against their will—perhaps someone who is fighting—should have a degree of training that enables them to do their job as safely as possible. They should also be aware of the risks and should probably earn a higher income for having taken on those responsibilities. The drafting seems a bit short in that respect.

Molly Robertson: We will certainly consider that issue further.

Ross Finnie: I will ask about the matter from a slightly different angle. I placed a slightly different construction on it, which might or might not be helpful. Section 42(1)(a)(iv) uses the phrase:

"or … other person the sheriff considers appropriate".

I read that as implying that you expect the words

"person the sheriff considers appropriate"

to apply in all cases in which the sheriff is deciding whether a person could be removed by

"(i) a constable;

(ii) an officer of the health board;

(iii) an officer of a local authority".

In other words, when making an order for removal to and detention in hospital, the sheriff is required to consider whether any of those persons is appropriate and, if not, determine who might be appropriate. If I am right—and that is unlikely—it would get us round Ian McKee's problem. However, there is an interesting constructional issue about the drafting of subparagraph (iv).

Molly Robertson: We will certainly take that away for consideration. As I said, the provision was drawn up to ensure that there was flexibility to deal with the wide range of public health incidents.

Ross Finnie: We understand that; it is not under dispute. To take Ian McKee's point seriously, the issue for us is who decides who is appropriate in the circumstances. There is a clear inference to be made from subparagraph (iv) that, if sheriffs have to determine other appropriate persons, they must determine which person is appropriate when they grant the order. If that were the case, it would get round Ian McKee's difficulty. If the section does not bear that construction, his problem is still present.

Molly Robertson: We will certainly take that away for further consideration.

The Convener: That is a drafting point for you to clarify.

Time is pressing and we have had many bites at that cherry. We will move on to part 6, which concerns mortuaries.

Ross Finnie: Oh—that is Mary's subject.

The Convener: I declined to make any comment. [*Interruption.*] I beg your pardon, we have not done part 5. We are being premature about mortuaries. We can never do that; it is a bad sign.

Are there any questions on part 5, "Public health functions of local authorities"?

11:00

Mary Scanlon: I do not mean to be light-hearted about this, but I am trying to imagine the

"Provision of facilities for disinfection".

I refer to section 67(5)(c). I was wondering how facilities can be provided to deal with insects that are contaminated—bearing in mind the fact that midges are currently carrying bluetongue disease. I am not sure how the provisions would work in practice.

Molly Robertson: The facilities that must be provided are covered by section 67(1)(a)(i) to (iv). Section 67(5)(c) simply refers to the method of infection.

The Convener: I am afraid there is no big mystery for you, Mary.

Mary Scanlon: So it is to do with the person, as opposed to—

Molly Robertson: Yes, or an item. You would not be quarantining an insect. Sorry.

Mary Scanlon: I would not think so.

The Convener: It is not about bringing in an insect in a matchbox or anything like that. It is a secure lab.

We will move on. I beg your pardon—Ian McKee has a point to make first.

Ian McKee: I have a quick point about part 5, "Public health functions of local authorities". Do you not think it a public health function of a local authority to organise appropriate training for its staff for the new challenges ahead, or would you take that for granted?

Molly Robertson: We would not take that for granted; we would perhaps try to cover that in guidance. Local authorities do a lot of that at the moment anyway. The bill restates a number of existing statutory duties.

The Convener: We have now dealt with that. You will be reviewing your guidance, and we can perhaps consider that, too. We now move to part 6. We at last come to mortuaries. I am surprised

that Mary Scanlon's hand is up first, but there we are.

Mary Scanlon: It is one of my favourite subjects. I am pleased about the provisions concerning the notification of infectious diseases to undertakers. That has been an issue in the past, and I am delighted that you have managed to overcome issues of patient confidentiality. Undertakers and their staff should get the same protection as national health service staff.

My concern relates to the financial memorandum:

"The Bill places a duty on local authorities to ensure provision is made (but not necessarily provide) for mortuary … facilities".

We have been talking about various additional duties for local authority staff. It is a concern that another duty is being imposed—to ensure that provision is made for mortuaries—and yet it is expected that no additional costs will be borne by local authorities. I would have thought that placing another duty on local authorities, on top of all the other duties that the bill would impose, was a point of concern.

The Convener: To clarify the matter, the duty is on the health board. The question might be one of costs to health boards.

Mary Scanlon: I was quoting from paragraph 218 of the financial memorandum, which says:

"The Bill places a duty on local authorities to ensure provision is made (but not necessarily provide) for mortuary and post-mortem facilities in their areas".

I am not sure whether there is a contradiction there.

Molly Robertson: I am happy to clarify—

The Convener: Yes, please. I have been looking at section 83, which places a duty on health boards.

Molly Robertson: That section places a duty on health boards for hospital-related deaths; the bill places a duty on local authorities for other deaths in their areas.

There is a complexity of arrangements for mortuary provision at the moment, which has built up over a number of years. The existing public health legislation does not place a duty on anyone, but says that local authorities may fit up and provide mortuaries. Let us start with the local authorities in the major centres of population. In Edinburgh and Aberdeen, the mortuaries are run by the local authorities anyway, so there is no change to the arrangements there. In Glasgow and Dundee, the city mortuaries are run and operated by the police, but with funding from the local authorities. There should be little in the way of differences there. In other health board areas, where there is a hospital, there is a mortuary. All that we would intend to happen there is for the local authorities to ensure that the hospital is dealing with deaths in its area.

The majority of dead bodies are stored with undertakers before they are buried or cremated. They are only required to go to a mortuary in particular circumstances.

Mary Scanlon: The SARS virus has been mentioned. If such a virus came to Scotland and caused multiple deaths, who would be responsible for providing mortuaries?

Molly Robertson: The bill deals with the day-to-day provision of mortuaries and post-mortem facilities. In the event of a pandemic or emergency, other arrangements are in place. Local authorities hold contracts that deal with the holding of bodies in such emergencies. Our pandemic flu plans also contain particular arrangements because obviously current arrangements would not suffice in such circumstances. Arrangements have been made for cases of mass fatalities.

Mary Scanlon: Would you mind telling me what those arrangements are?

Molly Robertson: I cannot provide the detail, but I have some information with me.

"In the event of an incident resulting in mass fatalities, local authorities already have contracts in place for temporary mortuaries, which will allow more bodies to be stored than normal capacity enables.

In the event of a pandemic, Strategic Co-ordinating Groups (SCGs) will consider arrangements for additional mortuary capacity, interment arrangements, and give due consideration to diverse faith, religious and ethnic requirements. This planning is being informed by work undertaken by The Police and Community Safety Directorate, which has prepared a report on options for storage for the SCGs."

All of that is done under the pandemic preparedness plans.

Mary Scanlon: So there is currently a working group and a report is being done, but we do not know what the exact arrangements are.

Molly Robertson: In the event of an emergency, arrangements are in place with local authorities to deal with mass fatalities.

The Convener: Can I clarify the conflict between the financial memorandum and section 83(2)? I asked who had the duty to provide mortuaries and you responded that mortuaries are for hospital-related deaths and the duty to provide them was being placed on health boards. However, section 83(2) does not say that. It talks about people

"(a) who die in a hospital in the board's area; or

(b) who die elsewhere and whose bodies are brought to such a hospital."

I just wanted to get that on the record. It is not just that there is a duty on the health boards to take care of hospital-related deaths; it is a wider duty.

I am concerned about funding. There might be times when there is a conflict between the costs to a health board and those to a local authority. Who pays for what?

Molly Robertson: I am sorry if I misled the committee by mentioning hospital-related deaths; that was just an abbreviation on my part. It is as is set out in section 83(2), which is about people who die in hospital or, for whatever reason, are brought to the hospital after they have died. Obviously people are brought to hospital by ambulance and, at the moment, hospitals are required to provide mortuary facilities for those bodies, and they will continue to be required to do so.

The Convener: I am thinking about who foots the bill at the end of the day. It might cause conflict if, say, there was a mass accident involving 200 people in a certain hospital's area, and the health board had to deal with the costs. It would cost the health board but not the local authority, so there could be a conflict.

Molly Robertson: That might well be covered by the current guidance on dealing with emergencies. We can come back to the committee on that.

Ross Finnie: I might have asked this question when we had the private briefing. Given that the intention of the bill is to streamline provision and clarify the responsibilities between health boards and local authorities, when you were drafting sections 82 and 83, did you consider whether it might have been possible to indicate that the provision of a single mortuary premises might be the more desirable outcome in the 21st century and beyond?

In your answer to Mary Scanlon you quoted section 83(1), which states:

"Each health board must provide or ensure the provision for"—

such facilities.

Is the phrase,

"or ensure the provision for"

intended to be a signal to health boards that if there are existing premises they should not duplicate them? Although the bill is specifically designed to streamline the process, there is a specific provision for separate mortuaries for health boards and local authorities.

Molly Robertson: In the initial consultation proposals, there was consideration of whether the NHS should take full responsibility for the provision of mortuary and post-mortem facilities except where there was a need for a forensic post mortem, in which case the police would pay for it. However, in further discussion with stakeholders and senior management in the NHS on the potential costs we heard that it was not seen as a core responsibility of the NHS to look after dead bodies and that NHS funding would be better used looking after the living. That is why we have developed the proposals in the way that we have. Stakeholders have been involved in the process and have signalled their agreement.

Ross Finnie: Hang on a minute. This is about government—not the health board or the police—so the funding is all coming out of the same pocket. You are suggesting that one of the reasons for taking the approach that you have taken is that the money might not be available within the health board. Presumably, if I asked you who was going to give the money to the local authority to provide the rest of the facilities, the answer would be the Government—which also provides funding for the health board. In the final analysis, the money is available; the question is to whom you allocate it. Therefore, we would go through the ridiculous procedure of allocating money to one set of people to provide mortuary services and then allocating money to another set of people to provide mortuary services. Is that efficient?

Molly Robertson: There is no separate provision given to the NHS to provide mortuary facilities, but the majority of hospitals have mortuaries, because people die in hospital. There is a line in grant-aided expenditure that relates to mortuaries, crematoria and burial grounds, so local authorities already get a funding line for that. That might not have completely answered your question.

Ross Finnie: I am just puzzled about the streamlining effects of the bill, which do not seem to be contained in that provision.

The Convener: I would like us to move on. We wanted to explore the conflict in terms of who is responsible and who has the duty to provide facilities in certain circumstances. We might want to consider that later. It might be helpful if we saw the current guidance. Perhaps the clerks could provide that for us.

We move on to part 7, to which the clerk is pointing me. I know that it is part 7—last night was windy and disturbing, but I am still awake. Given that members have no questions to ask on part 7, we will move on to part 8, which is on information on the effects on sunbeds. I welcome Kenneth Macintosh, who has been waiting patiently in the public gallery. At last, we have reached that part of the bill in which you have an interest, Kenneth.

I invite the bill team to comment on part 8, which is fairly skimpy at the moment. It would be useful

for Mr Macintosh and the committee to hear what the bill team's thinking is on this part.

Molly Robertson: I have only a few remarks to make on part 8 of the bill. The committee is aware that it is a marker provision at the moment and that we are working with Mr Macintosh to develop amendments for him to lodge at stage 2. We have had a couple of meetings with Mr Macintosh and plan to have a further meeting with him and other stakeholders very shortly. Although we will flesh out the amendments, unfortunately I cannot give any details from the Government's point of view at this stage because they have not been formally agreed at the Cabinet sub-committee on legislation. Mr Macintosh will give evidence to this committee later, and he has already provided some written evidence that covers the understanding that we have on the amendments, but they have not been officially agreed yet.

11:15

The Convener: Bearing in mind what Ms Robertson has said about not being able to tell us any of the Government's thinking on this part of the bill, do members still want to ask questions?

Mary Scanlon: Yes. Paragraph 78 of the policy memorandum refers to providing information to the users of sunbed salons on the risks involved,

"similar to information provided to people who smoke or drink alcohol regarding the risks of undertaking those activities."

Do you feel that that comparison is appropriate?

Molly Robertson: I will leave committee members to judge that for themselves. We were simply making the point that it is the Government's duty to provide information about an activity that it thinks is harmful to health so that individuals can make an informed decision about whether they should participate in it.

Mary Scanlon: But you are ranking sunbed use alongside smoking and alcohol. Do you think that the dangers of sunbeds are equal to those of smoking and alcohol intake?

The Convener: That is a policy rather than drafting matter, so we should put the question to ministers, rather than the bill team. Have I taken the words from your mouth, Ms Robertson?

Molly Robertson: Yes. Thank you.

Helen Eadie: What discussions have you had with Cancer Research UK on the issue? What discussions have you had and what work has been undertaken by either the previous or current Administration at an international or European level on the regulation of sunbeds themselves rather than regulating sunbed parlours?

I can answer Mary Scanlon's question. As I am sure that we will hear from Professor Ferguson and others, there is a skin cancer epidemic and it is horrendous. We can attribute that to people going abroad for holidays, but the use of sunbeds is implicated as well.

The Convener: If you could answer the question on consultation, Ms Robertson, it would be interesting.

Molly Robertson: We have obviously realised the health impact of using sunbeds, which is why we are supporting Ken Macintosh in lodging amendments to the bill that will not only highlight the dangers but help to regulate sunbed use. On consultation with other groups, Cancer Research UK will be included in our meeting with stakeholders and Mr Macintosh later this month.

Helen Eadie: Have you had any discussions at European level? Work is on-going at European level on the issue, and I would be reassured to know what the Scottish Government has done in that context.

Molly Robertson: That is not something that I can comment on at the moment. As I said, the amendments that we will support will be put forward by Mr Macintosh. We already fund work to raise awareness of the dangers of skin cancer through the sunsmart campaign, which will continue.

The Convener: That is perhaps a question that we can ask Ken Macintosh.

Helen Eadie: My only comment is that, although sunsmart has been a good campaign, it has been limited to Tayside and Fife. I know that it will be rolled out to other parts of Scotland, but—please correct me if I am wrong—lamentably little money is spent on education and raising awareness of skin cancer and the use of sunbeds. I remember Jamie Inglis mentioning that 2p or 3p per head of population is spent on leaflets, which is lamentable given the seriousness of skin cancer.

The Convener: Again, those are good questions to ask ministers—and, indeed, the member with regard to his bill—but I do not think that they are appropriate for the bill team.

Rhoda Grant: In light of your comments, will you lodge your own amendments to this section of the bill or will you simply support Ken Macintosh's amendments?

Molly Robertson: We will support Kenneth Macintosh's amendments and will help him to develop them.

Rhoda Grant: So you will not consult stakeholders directly yourselves.

Molly Robertson: We will work with Mr Macintosh on that. As I said, we are meeting stakeholders later this month.

The Convener: And then any amendments will be a matter for the committee.

We move to part 9 of the bill, which deals with statutory nuisances. I am delighted to see that there is no section on MSPs.

Rhoda Grant: The definition of artificial light nuisance in section 92 seems very broad. What work has been carried out on that? After all, one person's nuisance could be someone else's health and safety lamp.

David Wallace: The definition has been left deliberately broad, because we felt that we needed to cover every possibility. It will also allow the person accused of creating the light nuisance to use the defence of best practicable means.

As the approach taken in England in the Clean Neighbourhoods and Environment Act 2005, with its long list of exemptions, does not appear to be working very well, we thought that it would be better to have comprehensive coverage and rely on the defence of best practicable means. We also intend to issue guidance to help environmental health officers to enforce the provision.

Rhoda Grant: Will we be able to see that guidance at stage 2, or will it be produced after the bill is passed?

David Wallace: I hope that it will be available by stage 2.

The Convener: Is there any case law on this matter that could be used as guidance?

David Wallace: I do not think that there is any case law, certainly in the UK, because light was made a nuisance in England only in the Clean Neighbourhoods and Environment Act 2005. Indeed, it is not yet a nuisance in this part of the country.

The Convener: That is interesting. Do nuisances have to be defined in statute?

David Wallace: As I said, I am not aware of any case law on the matter. We are entering a new area here.

The Convener: What about all the cases of people getting interdicts against neighbours who, because of all those gardening programmes, have put floodlights or Blackpool illuminations in their gardens or who have decorated their houses with Christmas lights and so on? Are those not examples of light nuisance?

David Wallace: That is why we are doing something about the matter in this bill. The fact is that light nuisance—particularly from security lighting, which might benefit the people who use it but cause problems for their neighbours—is becoming more and more of a problem.

Mary Scanlon: I wonder whether light nuisance might be covered under the local authority duties set out in the Civic Government (Scotland) Act 1982.

David Wallace: I am not aware of that.

Mary Scanlon: So you are not aware of any local authority taking action on light nuisance.

David Wallace: I think that such action can be taken only during the planning process. Light issues might be considered during the planning of, for example, a new football stadium, gymnasium or outdoor football facility to ensure that they do not cause any local problems. However, more minor issues such as a neighbour putting up lights in his garden are not covered.

Mary Scanlon: And they are not covered under the Antisocial Behaviour etc (Scotland) Act 2004.

David Wallace: That is right.

The Convener: Obviously not, since there is no case law. I find that interesting, in view of all the houses that are decorated with this mad Christmas lighting. I sound as if I should be saying, "Bah, humbug."

I see that members have no other questions on part 9. That is excellent, as we seem to be taking our time over this. Do members have any questions about part 10, which is a catch-all general and miscellaneous provisions part?

Members: No.

The Convener: Excellent. Unless members have any questions about the schedules, which we have already dealt with to some extent, we have concluded this part of our evidence taking.

I realise that we have overrun our projected time. I am not unhappy about that, because the evidence has been interesting. If anyone wishes to make a brief comment or ask a brief question about any of the parts of the bill, they may do so now, or forever hold their peace.

As no one has any comments or questions, I thank the witnesses very much for their useful evidence. You have agreed to respond in writing on various issues.

I suspend the meeting for a few minutes.

11:25

Meeting suspended.

11:33

On resuming—

The Convener: We now resume taking evidence. I welcome Ken Macintosh, whose proposed member's bill would require the licensing of sunbed and tanning salons. I refer members to paper HS/S3/08/1/5, which includes a submission from him. Perhaps he can tell us about his proposal. The bill team was bound to secrecy for the time being, but he is not.

Ken Macintosh (Eastwood) (Lab): I am not bound to secrecy—far from it.

I thank the committee for inviting me to give evidence. I am conscious that many members, including the convener, will be familiar with my proposal to regulate sunbeds to tackle skin cancer in Scotland. However, it is important to state a few facts and to outline my proposal for the record.

Scotland is in the grip of what many health commentators have described as a skin cancer epidemic. Over the past 30 years, the incidence of skin cancer has more than trebled. The straightforward reason for that is the rise in the popularity of tanning. I want to raise awareness of the dangers of tanning and of tanning salons. I want us to avoid paying a price 20 years from now for the growth in popularity of tanning salons over the past decade.

It has been estimated that 100 of the 2,000 deaths each year in the United Kingdom from skin cancer can be attributed to the use of sunbed salons. Those 100 deaths result from a purely cosmetic exercise. There is every reason to believe that many users of sunbed salons are not fully aware of the risks. Some people still believe that sunbeds are safe. Although some operators work to a code of practice, many more do not. For example, many operators do not provide adequate advice to their customers or exercise responsible control over the number of sessions that customers can have.

One reason why the Scottish Parliament should take the lead yet again in cancer prevention is that fair-skinned Scots are among those most at risk from developing skin cancer. The factors that put users of sunbeds in the high-risk category include having fair skin, blue eyes, freckles or ginger hair. Another crucial factor, of course, is youth.

The Convener: We are all looking at Ross Finnie.

Ross Finnie: I am just missing the hair.

Ken Macintosh: He will be flattered by the reference to youth.

Ross Finnie: I am obliged.

Ken Macintosh: I am therefore proposing three simple measures: the first is to ban under-18s from using sunbeds; the second is to outlaw stand-alone or unstaffed coin-operated machines; and the third is to ensure that operators provide advice on the risks of using sunbeds.

The measures would be enforced by local authority environmental health officers. As members will be aware, eight local authorities have already set an example by introducing their own local licensing schemes. Those are to be commended. However, we need one clear unambiguous message—one law covering the whole of Scotland—that lets people know the dangers and risks involved in using sunbed salons.

The Convener: Thank you very much. Do committee members have any questions?

Mary Scanlon: I have no problem with supporting Kenneth Macintosh's proposal. I know that sunbeds were raised as a major issue many years ago when we were on the cross-party group on cancer.

I have a concern about the suggestion that there should be no inspection regime but only a licensing regime. How would people know about non-compliance without an inspection regime? I am not suggesting that there should be an inspection regime, as I am mindful of the fact that the bill provides no additional resources for local authorities.

Secondly, it is proposed that advice should be given about the amount of time that people should spend under a machine. My concern is that, if people felt that they were not sufficiently tanned, they could just go round the corner to another tanning salon. How could that possibly be regulated?

Thirdly, many of us fit into the category of having fair skin and blue eyes. How would people be trained to give advice? Someone who is running a business will not be particularly interested in turning people away, so they might just learn the right questions to ask.

Ken Macintosh: Mary Scanlon's questions highlight a number of issues that are still under discussion between me and the Government. I hope that the committee will be able to decide on those matters at stage 2, when we move amendments to the bill.

On the first issue, my original member's bill proposal included an inspection regime. Inspections would have been required every two years, or perhaps even annually, before a premises was granted a licence. I cannot speak on behalf of the Government but I think that it will propose that, rather than following the licensing route, it should simply change the law. I think that the benefits of having the Government behind a

public health measure such as the bill outweigh the benefits of the licensing scheme itself.

Both measures would be enforced by the same people—local authority environmental health officers. The bill would not place a duty on them to inspect, but it would give them the power to do so. It would be for local authorities to decide how to exercise that power. I believe that local authorities should monitor and inspect regularly. These may be questions for other witnesses, but local authority environmental health officers are moving to a different kind of practice for inspections of small premises such as sunbed salons. It is important that sunbed operators are aware that local authorities will enforce the law and that there will be occasional inspections, if not annual inspections.

The third part of my proposal is that sunbed operators should provide information and advice to users. Current discussions suggest that that information will be included in regulations, as part of a subordinate legislation package. There may still be room for discussion of whether advice or guidance should be provided to local authorities on how often to inspect.

Mary Scanlon: I am slightly confused. In your written submission you say that there will be "No inspection regime". Have you changed your view on that issue? Do you intend to lodge amendments at stage 2 to implement an inspection regime? Is that the issue that you are currently discussing with the Government? I understand that it is not too keen on an inspection regime.

Ken Macintosh: I apologise for the confusion. The position is exactly as Mary Scanlon has outlined. Since I submitted my written evidence to the committee in December, I have had a meeting with the Scottish Government, at which it was clarified that subordinate legislation, rather than a code of practice, might be the best route. The Government is keen that an inspection regime should not be laid down, but I am keen that the duty of inspection should be made clear. In other words, we should not say in the bill that there will be no inspection, but no schedule of inspections should be laid down. Does that clarify the position?

Mary Scanlon: How will non-compliance with recommendations be identified?

Ken Macintosh: Compliance will be monitored and enforced by local authority environmental health officers. Although the bill may not stipulate exactly how often they will inspect, I hope that it will give them a power to inspect. I also hope that there will be subsequent regulation of the details of the advice and information to be given out, which must be part of that inspection regime.

You raised two further issues. First, you asked what will prevent customers from going to another salon. Currently, there is nothing to prevent customers from going to another salon, or multiple salons, or from using machines to excess. My proposed bill would not ban sunbeds. All that it would do is flag up the fact that using sunbeds is an inherently risky activity and allow adults to make an informed choice. However, I hope that responsible operators will monitor the number of sessions that their customers have and advise them accordingly. There are no recommended levels of exposure, but operators may be able to advise customers that they are overdoing it. Responsible operators will monitor usage, but it is for individuals to decide how often they attend salons.

Secondly, you asked about training. I am currently discussing the issue with the Government. I believe that training is essential for staff in salons. It is important that when a customer comes to a salon they are asked what skin type they are and whether they are on medication that may be light sensitive, for example. It is also important that staff know why they are asking those questions. However, it is debatable whether provision for training should be included in the bill. If anything, that is a matter for subordinate legislation.

11:45

The Convener: Can I clarify the situation? Your proposed structure will probably be laid down under subordinate legislation, but that would not preclude or exclude a code of practice. They could co-exist.

Ken Macintosh: That is right. Currently, there is a code of practice that members of the Sunbed Association follow voluntarily, but it does not cover many operators. My original intention was that a code of practice or guidance of some sort be issued, but I am currently discussing whether it would be better for subordinate legislation to stipulate clearly what is expected.

As all members know, Government codes of practice fall into the grey area between legislation and good practice. There are codes of practice in education and other policy areas, but it is unclear to individuals whether they are enforceable in court. There is no such dispute about subordinate legislation; it is enforceable.

The Convener: A code of practice is admissible as evidence if there is a breach. I know that you are still in discussions, but all I am saying is that the two can exist together. You can have your statutory instrument but you could also have a code of practice or guidance. It would be a further layer down, would provide evidence as to what

should happen and would assist if there were any breaches. I make that point because you seem to be saying that the choice is one or the other.

Ken Macintosh: As discussions progress on the amendments that I will lodge, the key point for the committee is that I will propose not a code of practice but subordinate legislation. That is what I hope for.

Helen Eadie: I warmly welcome your proposal and congratulate you and all the stakeholders who have been involved to date. Having worked with you for a number of years on the cross-party group on cancer, I fully understand the rationale behind your proposal. Having visited some relevant websites—Cancer Research UK's sunsmart campaign website and European websites—I can see that sunbeds come in all shapes and sizes. Would you like to amplify that point further? My understanding is that, until fairly recently, there have been no standards for sunbeds. To what extent do the salons throughout Scotland match standards? If I have got anything wrong in that, I apologise, and perhaps you could put the record straight.

Ken Macintosh: I am conscious of the campaigning work that Helen Eadie has done on skin care generally, not only skin cancer.

The bill would address sunbed salons only. Therefore, it would not cover domestic machines or other machines that people might operate at home. The only regulations of which I am aware exist at a European level, but they are manufacturer standards. Although they may be influenced by public health considerations, they are not part of public health legislation; they are manufacturer standards for the control of electrical goods.

As it happens, the European Union is working towards recommended maximum power levels and recommended numbers of sessions, so those regulations will address some of the issues about which we may be concerned, but almost by the back door. It is far more important that, when we discuss public health and preventive measures in Scotland, we send out a clear, unambiguous public health message about the use of sunbeds. As part of my discussions with the Government about using a Government bill rather than a member's bill to deal with the issue, the minister has made a commitment to me that there will be a health education campaign to accompany the bill. Members might want to get the minister to comment on that on the record, but I do not doubt the minister's commitment to it.

There is no doubt that changing the law is an important step in protecting our young people and that it will send out a clear message. However, in the long term it is more important that health awareness and education work is done across the board in schools and with adults, so that people are clear about the dangers of using sunbeds and of exposure to the sun generally. I know that excellent work has been done in Fife, through the keep your shirt on campaign and the national sunsmart campaign, on which we can build.

Helen Eadie: To what extent are salons with coin-operated machines left unstaffed, which might mean that such machines are open to abuse and might involve all kinds of risks for the user?

Ken Macintosh: My argument against coin-operated machines is that if we accept—as I hope that members will—that using sunbeds is inherently risky, such machines should not be left unstaffed in premises on our high streets. Mary Scanlon made a comparison between the provision of sunbeds and the provision of alcohol or tobacco. We would not expect to have cigarette machines or alcohol-vending machines available in unattended premises on the high street with only a simple sign saying, "Under-18s, please do not use." The message for sunbed salons should be similar. We are talking about something that can cause grave damage and can even kill, so we should not underestimate the dangers.

It is also important that we label sunbeds. In other words, we should put on them the equivalent of the health warning that appears on packets of cigarettes. Sunbeds should display a warning that their use is a dangerous activity, advising people to proceed with caution. Coin-operated machines undermine that message entirely.

There have been high-profile examples—although these are not the reason for the proposed measure—of children accessing coin-operated machines. A couple of years ago there was a case in Stirling in which an 11-year-old boy and a 13-year-old boy went into a coin-operated machine, pumped money into it, burnt themselves badly and had to be taken to hospital. At the time, environmental health officers could not take any action against the premises, because there was no law against having unstaffed coin-operated machines.

Helen Eadie: I am grateful for that answer.

Ian McKee: I would like to explore the concept of causality. In the past few years we have been told that there have been alterations in the ozone layer, and that people's holiday patterns have changed considerably as they take longer holidays and holidays nearer the tropics. The information in some of the briefings that I have seen has been a bit vague about the increase in the number of privately operated sunbed salons. Cancer Research UK's briefing includes the results of a study carried out in Perth and Kinross, which showed a 30 per cent increase, but we have also been told that sunbeds are more commonly used in Glasgow and areas associated with deprivation.

How can you make the specific link between sunbeds and the incidence of skin cancer? I understand the degree of suspicion, but sometimes things are declared with certainty even though certainty does not necessarily exist. The figure of 100 deaths from sunbed-related melanomas every year in the UK—I have not read the paper in the *British Journal of Dermatology*—is an estimate, and estimates can sometimes be wrong.

It is obviously the ultraviolet light that causes the harm. We have been told in two briefings that four of every five sunbeds emit ultraviolet light levels that exceed the maximum permitted in the British standard. If people are using sunbeds, and are risking developing all these skin diseases by doing so, would not the first thing to consider be a reduction in the ultraviolet emissions from sunbeds to fit the maximum level in the British standard, which you have not mentioned in your proposals?

Ken Macintosh: I will answer all your questions to the best of my ability, but I urge you also to put them to the subsequent witnesses, as I am not and do not claim to be a medical expert. However, I am familiar with the area, after working on it for some time.

Professor Diffey produced a paper for the *British Journal of Dermatology*, in which he created a model. Many of the links between skin cancer and sunbeds are established through epidemiology, so they are difficult to identify. It strikes me that the position is similar to the early stages of the process by which the link between tobacco and lung cancer was established. It took many years to establish a definitive direct link between the two, but it became clear at an early stage that they were linked. The committee may want to ask the Sunbed Association about the issue but, as far as I am aware, no one now denies that there is a link between ultraviolet radiation and skin cancer.

The figure of 100 deaths was established using a model of exposure: how many people use sunbeds, and how their usage compares with exposure from holidays abroad.

The explosive growth in the number of sunbeds is the reason why I am promoting amendments to the Public Health etc (Scotland) Bill. Previously—as recently as 10 years ago—local authorities provided sunbeds in local health centres. That reinforced the link between tanning and health—the idea of a healthy tan. However, local authorities became aware of the dangers associated with sunbed usage and pulled out of the area. That gave rise to an explosion in the number of sunbed parlours on street corners. The Royal Environmental Health Institute of Scotland can provide the committee with figures for that growth.

About four years ago, when I began to work on the issue, I carried out a cursory examination of the number of solariums and sunbed parlours listed in Glasgow phone books at that time and 10 years previously. The number had risen from under 10 to 30. It is difficult to make a comparison, because areas change, but the growth in the number of sunbeds is clear, certainly from anecdotal evidence. The issue was brought to the cross-party group on cancer because of the perceived explosion in the number of unregulated salons on street corners.

Ian McKee identified a crucial point. Sunbed salons target not the most affluent or most deprived communities, but aspiring working-class communities. When we address issues of health inequality, which the Parliament is keen to do, it is important that we recognise the dangers that sunbeds pose to some of our more vulnerable communities. More affluent communities and individuals have higher cancer survival rates. They tend to identify skin cancer at an early stage and to get faster treatment. It is important that we take action against sunbed parlours because they will exacerbate the existing health inequalities in our communities relating to skin cancer. The issue also affects youth. Most cancers are associated with age, but skin cancer has a young profile.

Ian McKee mentioned the British standard. The difficulty is that issues such as the British standard relate to health and safety and other reserved matters. I do not say that they are not important or that further work should not be done on them, but the Parliament does not control those matters. Work is under way to update health and safety legislation. I know that Cancer Research UK, among others, has made submissions on the issue, and I have big hopes for what will emerge at the other end of the process. However, that does not take away from the need for the Parliament to send out a public health message and to control salons.

It is important to control the power of the tubes or bulbs that are used. All these establishments are now advertising new, more powerful bulbs. As the committee will probably hear in later evidence this morning, those bulbs provide the equivalent of Mediterranean sun rather than British sun, so they are even more dangerous. It is important that health and safety laws are enforced, but we in this Parliament should focus on the powers that we have that will make a difference. I believe that my proposals will make a difference.

12:00

Ian McKee: If 80 per cent of sunbeds are pouring out ultraviolet light at what are regarded as dangerous levels, it is important to tackle that.

Ken Macintosh: Absolutely. I should say that I do not think that my proposed measures are either definitive or the last answer—far from it. I hope that they are the first step in changing our habits and in changing how we enforce controls on sunbeds. I do not pretend to be an expert on the standards on ultraviolet radiation. You might want to explore those questions with other witnesses later this morning, as they might be able to provide more definitive answers.

The Convener: I have a short question on environmental health officers. I note that one submission points out that such officers face many demands. If the proposal comes to pass, will there be sufficient foot soldiers, albeit that they will not have a schedule of inspections to enforce? There is not much point in introducing a law that cannot be enforced.

Ken Macintosh: Again, that is a very good point, which I am sure that John Sleith and other witnesses will be happy to answer.

My view is that, just as the Government provided extra funding to local government to enable environmental health officers to enforce the smoking ban that we passed, extra funding in this case would not go amiss. However, it is not necessary. Environmental health officers could deal with the matter under their remit. It would be better if they were funded to do so, but I think that they could cope. However, they can give their own evidence on that.

Ross Finnie: In response to Ian McKee's question on the UK target for UV emissions, you directed our attention—very properly—to the fact that such UK standards are reserved. Have you explored whether it is competent and within the devolved powers of the Scottish Parliament to require premises to meet the British standard? Such a requirement need in no way interfere with how the standard might be set.

Ken Macintosh: The regulations, which will be a matter for subsequent discussion and approval by the Parliament, would lay out a number of factors that sunbed operators would be required to follow. I believe that the Parliament's common practice is that, in referring to matters that are subject to change and regular update, primary legislation should refer simply to industry-wide, national or international standards. Therefore, I do not think that there would be a difficulty in referring to standards that have been set and approved elsewhere, especially given that the standard to which we are referring is long established. Do you have other concerns about that?

Ross Finnie: I do not have a concern. Perhaps I misconstrued your response but it struck me that, although you accepted and acknowledged Ian McKee's point that it was not helpful that a large proportion—or any proportion—of sunbeds emit UV emissions at above the UK standard, you seemed to suggest that it would be difficult to tackle that because the matter is reserved. I am trying to turn the matter round the other way by suggesting that we need not attempt to interfere with how the standard is set. I simply wanted to ask whether you had considered whether any regulations or other subordinate legislation under the bill might include a requirement that the equipment installed in any premises should meet the standard.

Ken Macintosh: I should say that there is currently a legal requirement to meet that standard. The Health and Safety Executive could enforce the current standard in premises, but it does not do so in practice. That is why I am proposing that we take further measures. There is nothing in what I am proposing that undermines the standard that already exists or the existing law with which premises should be complying. It is a question of enforcement.

However, if the Scottish Parliament signifies its will and wish that standards in sunbed parlours be raised, that customers be advised of the risks and that the general management of sunbed operations be improved, we can expect—I would hope—that matters such as the enforcement of health and safety regulations and British standards on ultraviolet radiation will be more likely to be monitored from now on.

The Convener: To clarify, you are saying that there are already mandatory standards covering the power of the machines that are used, if I can put it like that. Therefore, there is no requirement to introduce provision for that. It is simply that enforcement of those standards is not taking place. A reference might be made to that, perhaps in regulations or in guidance. Simply by enacting your amendments, the law that already exists would be applied more rigorously than it is at the moment. However, there is no need for a change in the law.

Ken Macintosh: That is almost precisely it, convener. I wish that you were giving evidence.

The Convener: I might do one day on my own licensing bill. I am taking lessons from you.

Rhoda Grant: Would there be anything to prevent environmental health officers from carrying out checks on the machines? Would that have to be done by the Health and Safety Executive? If environmental health officers went to a parlour, would they have to call in the Health and Safety Executive to carry out the check?

Ken Macintosh: I suggest that Rhoda Grant and other members pursue that question with John Sleith of the REHIS. He is an expert, and he might contradict my understanding. You should clarify the matter with him.

It would be helpful to build such matters into our legislation, as that would place a clear duty on local authorities to enforce compliance. Currently, the standards that we are discussing come under reserved health and safety legislation, so there is a totally different legislative route. I could not comment on why the current regulations or laws are not enforced, but I believe that it would be helpful if our bill and the subsequent regulations built in a reference to standards.

The Convener: I am not quite sure whether that is a competent legislative approach. No doubt, the members of the bill team are listening to this discussion, and they can judge whether such provision is necessary, given that some existing legislation applies.

Ian McKee wishes to pursue the point, but I want to move on after that.

Ian McKee: For clarification, is Ken Macintosh saying that, because a UK agency will not enforce the present law, we have to discuss other potential legislation to cope with the situation? To put it simply, if 80 per cent of sunbeds are working at a dangerous level, that would seem to a logical person to be the thing that we should tackle first, before getting round to use by under-18s and other factors.

Ken Macintosh: There are two different arguments there. I do not wish to comment on why existing guidance or regulations are not adhered to. There might be many reasons for that. Whatever health and safety provisions exist now, there is still a need for the measures under the bill. Health and safety legislation is there to protect the operators and users of machinery; it is not about identifying the risks that are associated with equipment such as sunbeds. The use of sunbeds is a risky activity in itself, and the bill would label it as such. The bill would offer protection to young people, and others, from the dangers involved. That involves a different approach—one that I believe is entirely necessary.

It is worth reflecting on the fact that the UK Government is currently considering very similar measures. The health risks that are posed by sunbeds go far beyond health and safety risks. We should be identifying that using the bill.

The Convener: Thank you very much. I want to move on because we are overrunning our timetable. We can return to the matter.

We will now move on to the next lot of witnesses. I ask them to take their places.

As we have this little interlude, I ask committee members to get ready with their questions. I refer them to the submission from the University of Dundee photobiology unit at annex C of paper HS/S3/08/1/5 and the submission from the Sunbed Association.

I welcome Kathy Banks, of the Sunbed Association, Professor James Ferguson, of the photobiology unit at the University of Dundee, and John Sleith, who is a member of the council of the Royal Environmental Health Institute of Scotland. In the interests of time, we will move straight on to questions because we have the written submissions.

I see that committee members took my advice and are ready with their questions. That is good.

Ross Finnie: All the witnesses might want to respond to my question, which follows up the issues that we closed the previous evidence-taking session with: the fundamental matter of sunbed equipment, the evidence from studies and reports that Professor Ferguson referred to in his letter to the committee, and evidence submitted by the Health and Safety Executive.

I am still puzzled by the matter. Professor Ferguson has reported the factual position to us, but it is not entirely clear why the Health and Safety Executive's guidance has not been implemented. Perhaps we will have to speak to the HSE, but Professor Ferguson is obviously involved in the matter. It is a fundamental issue, particularly given the conclusion that

"four out of five sun beds … exceed the maximum permitted in the British Standard".

The issue is not fresh legislation, because that standard is a reserved matter. However, the committee is concerned to acquire a little more knowledge on the exact state of play.

Professor James Ferguson (University of Dundee): In recent years, there has been a move towards shorter-wavelength emissions in sunbeds, which produce a faster turnover in sun parlours. The concern is about those shorter wavelengths. The fundamental problem is that we do not yet know the exact wavelength and delivery method of irradiation that creates melanoma.

Based on sunburn, which is much more related to two types of skin cancer—basal cell and squamous cell carcinomas—we know that the new beds are definitely more carcinogenic than the older, long-wavelength UVA beds. We have a problem in that the safety legislation relates to sunburn and to basal and squamous cell carcinomas, but the mortality rate associated with sunbeds primarily relates to malignant melanoma, which has a rather more complicated relationship with sunlight exposure. The causality question probably relates particularly to melanoma. Nevertheless, the consensus among dermatologists with an interest in the area is that exposure to photons from sunlight or artificial light sources—such as sunbeds, or even the disposable light bulbs that have been in the news recently—plays a role and should be avoided.

There is an information gap, which is why there is room for misunderstanding. Nevertheless, there is a general feeling that people were safer with the older type of sunbed, although there is some debate about that, if I can put it that way.

12:15

The Convener: Do any other witnesses wish to comment? The issue may not be within your remit.

Kathy Banks (Sunbed Association): There is only one standard—a European standard that is published by European standards agencies. In the UK, it is published by the British Standards Institution, so we call it the British standard, but it is the same as the European standard. The main reason that it may not be worked to in the UK is that it is a manufacturing standard that allows the free circulation of goods throughout Europe. Operators must conform to the standard only if they want to put a CE mark on their appliance. If they do not, they do not have to conform to the standard. It is not strictly true that the matter is regulated at present.

The Convener: What does CE mean?

Kathy Banks: It is a European mark of conformity to a standard. It guarantees that a product conforms to a standard and can be sold anywhere in Europe. The standard, along with the Health and Safety Executive's guidance note on UV tanning equipment, is incorporated in the Sunbed Association's code of practice. It is currently being reviewed in Brussels by a working group. We expect that the revised standard may be published some time next year.

Ross Finnie: You say that the standard is incorporated in your code of practice. Does that mean that you require members of the Sunbed Association to purchase only equipment that bears the CE stamp?

Kathy Banks: Yes. The Sunbed Association represents not only tanning salons and health clubs and leisure centres with sunbeds, but manufacturers of sunbeds and tubes. It is a requirement for membership of the association that members work to the code of practice, which means that they must work to the European standard and according to the HSE guidelines. The code goes much further and covers other issues, but it is compulsory for our membership to work to the European standard. When the standard is revised, our code will be revised accordingly.

The Convener: Of course, only 20 per cent of operators are members of the association.

Kathy Banks: Around 20 per cent. Membership is voluntary, as is the case with all trade associations. We cannot force people to join us.

The Convener: Should we consider making membership compulsory?

Kathy Banks: That would be marvellous, but I do not know how that could be done.

Ian McKee: May I follow up on a specific point?

The Convener: Of course. You may also ask your other questions.

Ian McKee: Does the fact that the Sunbed Association represents 20 per cent of sunbed operators and that 80 per cent of sunbeds put out emissions that are higher than the British or European standard mean that all operators who are not members of the association are using beds that put out a dangerous amount of ultraviolet light?

Kathy Banks: I cannot answer the question without doing a detailed survey. However, I know that many tanning operators and manufacturers who are not members of the Sunbed Association operate properly and are not cowboys or rogue traders, although for some reason they have chosen not to be members of the association.

I do not know where the figure of 80 per cent comes from. Although beds now have a higher UV output than they had 10 or 20 years ago, session times are reduced significantly. If someone goes on a sunbed with a lower UV output for 20 minutes, the effect is the same as if they went on a sunbed with higher UV output for six minutes. Both the strength of the bed and the time that people spend on it must be taken into account.

The study that Professor Brian Diffey carried out was mentioned. The point was made that 100 deaths a year are caused by sunbeds. I do not know whether members have seen the study, but it is a quantitative study that is based on crude estimates. Professor Diffey, whom I know well, made a calculation based on a number of statistics. In reality, 100 people a year are not dying because of melanoma caused by sunbeds, although that is not how the press quoted the report. Professor Diffey has told me that he was misquoted in the press and that that was not the result of his study.

Another point that I would like to clarify is about tanning salons with coin-operated sunbeds. The Sunbed Association does not have unstaffed tanning salons in its membership—they cannot comply with our code of practice, as it requires sunbeds to be operated and used under the supervision of trained staff. For that reason alone, unstaffed salons cannot be members of our association. However, some coin-operated sunbeds are used in staffed salons. Most sunbeds use either timers or tokens, but some are coin operated. We should make it clear that the concern is about unstaffed salons, not coin-operated sunbeds.

The Convener: It would be useful if you provided the committee with your code of practice, so that we can see what your members, who form about 20 per cent of operators, are doing.

I have a note of members who want to ask supplementary questions, but to move along the process, I will take a question from Rhoda Grant, who had a supplementary—

Ian McKee: Can I ask my question?

The Convener: You can do that, then Rhoda Grant can ask her main question. I will explain the modus operandi, if I may. Mary Scanlon had a supplementary, but she should just ask her main question, after which we will have Helen Eadie.

Ian McKee: I want to explore further with Professor Ferguson the causality issue and the weighting of all the factors. As far as I can see, there is a suggestion of a link between malignant melanoma and sunbeds, but we are not certain about what power of sunbeds is involved, and there does not seem to be a lot of information about the increased usage of sunbeds over a certain period. We have figures showing that, between 2003 and 2005, the number of sunbed parlours went up from 794 to 807, which is not a huge increase, but we do not know anything about the treatment times or the strength of the tubes. There are also the other factors that I mentioned when asking an earlier question, about climate change, holidays and people's expectations.

I am a little adrift in considering the degree of significance that we should place on each of the factors. I get the impression that, although the measures that might be put in the bill are worthy, we should be a little sceptical about whether they will make much difference to the health problem. What are your thoughts on that?

Professor Ferguson: We cannot dissociate the sunbed issue from the sunlight exposure issue. As I mentioned, the important point is to realise that photons of a particular wavelength damage the DNA whatever their source. To tackle the large rise in the incidence of skin malignancy, we need a two-pronged attack on unnecessary ultraviolet exposure, whether it is from sunlight or sunbeds. It is worth thinking of ultraviolet as a reagent that interacts with DNA and produces mutations.

The problem with malignant melanoma is that we have no really good animal model for it, although we have animal models for squamous cell carcinoma. If we put a mouse under sunbed-type ultraviolet light, we produce squamous cell carcinomas—there is absolutely no doubt about that. We now know that we can induce in human cell culture the type of DNA damage that is associated with the tumours.

On the causality issue, I do not want the committee to go away with the idea that the association between skin cancer and ultraviolet is weak. Although this is another issue altogether, I see people who have never been abroad but who have used sunbeds at home every day of their lives for 15 years and who present at my clinic at the age of 30 with severely sun-damaged skin—their skin is completely wrecked. It is obvious that sunbeds are capable of inducing that kind of damage. An important point is that we are trying to moderate exposure to ultraviolet irradiation.

Another issue that was raised is that not only have sunbeds' amount of energy changed, but the wavelengths have changed. There are more shorter wavelengths in the newer rapid-tan stand-up cubicles than there used to be in the long-wavelength ultraviolet sunbeds. The wavelength emission in newer sunbeds is the same as in Mediterranean midday, midsummer sunlight, so I do not think that scientists would disagree that there is a real risk from sunbeds in relation to skin cancer as a whole. How much of someone's component is from sunlight and how much is from sunbeds will differ for each individual, depending on their relative exposure, but both must be attacked if we are to reduce the incidence of skin cancer.

Rhoda Grant: I return to the previous question about standards. You mentioned that the CE standard is a European standard and that it is not required for the sale of sunbeds. What is the incidence of sunbeds that do not have a CE number, given that that is a requirement for the trade of sunbeds?

Kathy Banks: If a sunbed carries a CE mark, it has to conform with that standard; the CE mark indicates that it conforms with the standard. If it is not CE marked, it does not have to conform with the standard. Does that answer your question?

Rhoda Grant: My understanding was that in order to trade throughout the European Union, a CE mark is required.

Kathy Banks: Yes. If a sunbed is manufactured in the UK to that standard, it means that it is good enough to be sold in France, Spain or anywhere else in the European Community.

Rhoda Grant: So someone would not be able to manufacture a sunbed in the UK without a CE mark and sell it within the UK.

Kathy Banks: No. They could.

The Convener: Would John Sleith like to comment?

John Sleith (Royal Environmental Health Institute of Scotland): I will comment on the inspection of equipment, which was raised earlier. My submission mentions that a regime is in place whereby environmental health officers routinely inspect sunbed parlours as part of the health and

safety regime, but it is fair to say that testing the equipment requires a level of technical expertise and access to specialist equipment that not many local authorities have. I am aware of a pilot scheme that was conducted by Perth and Kinross Council and Professor Ferguson, for which Professor Ferguson's unit provided the equipment. That pilot threw up some examples, but I am not aware of its having been replicated widely throughout Scotland.

Rhoda Grant: If the standard of sunbeds and the rays that they emit were covered by the legislation, it would not be possible for environmental health officers to enforce it—that would have to be done by a body such as the HSE.

John Sleith: No. I envisage that environmental health officers would do it. We would welcome that task. We are willing to do it and capable of doing it, as we have experience, knowledge and skills in dealing with public health legislation in many other areas. It may be a matter of getting access to specialist equipment, whether it has to be borrowed or can be supplied.

The Convener: Professor Ferguson is nodding.

Professor Ferguson: Yes. We conducted the pilot jointly with the environmental health officers. A small portable piece of equipment is required. It is easy to be trained in its use through photonet, which is the national managed clinical network for phototherapy in Scotland. We do that annually for all hospitals; it is very easy to do and takes only a few minutes.

The Convener: Have we come to the point at which the committee could consider not only the regulation of sunbed parlours but the standard of the equipment, which could be dealt with in one blow, as it were, and could be monitored and assessed by environmental health officers rather than by trading standards officers?

John Sleith: Yes.

The Convener: That is fine.

Rhoda Grant: Would a provision in the bill be required to allow you to do that, or could you do it under existing health and safety legislation?

John Sleith: Existing health and safety legislation allows us to do that. There is no need for such provision to be made in the bill.

12:30

The Convener: We can explore that with the bill team. Again, the question is whether the matter is competent. If it is a designated trading standards matter, we may have to do something. We can look into that.

John Sleith: I should confirm that trading standards are not part of environmental health.

The Convener: I know that. However, from previous evidence, I understand that trading standards officers deal with the compliance of the equipment.

John Sleith: They would deal with aspects of the supply of equipment by manufacturers to operators.

The Convener: We will tease this out at a later date.

Mary Scanlon: My question, which is for Mr Sleith, has been partially answered. In his paper, we read that environmental health officers

"routinely check sunbed salons to check for compliance with Health & Safety provisions."

Professor Ferguson said that the new sunbeds are more carcinogenic. In the Cancer Research UK briefing, we read that the Perth and Kinross study shows that 83 per cent of sunbeds do not comply with the European standard. How is the European standard for radiation levels implemented at present? From your answers thus far, I am not sure that it is being implemented.

John Sleith: What I meant to say was that routine inspections are carried out under health and safety legislation. They relate to compliance with welfare facilities for staff, general safety and so forth, but—

Mary Scanlon: I am sorry to interrupt, but I understand from the Cancer Research UK briefing that there is a European standard on radiation levels. The Perth and Kinross study found that 83 per cent of sunbeds had radiation levels that were too high. How is the directive implemented at present?

John Sleith: I am not aware of that being widely monitored by environmental health officers throughout Scotland. Obviously, I cannot speak for all 32 authorities, but I am not aware that that is commonly done.

Mary Scanlon: Are you not aware of this European standard on radiation levels?

John Sleith: Yes, but not many local authorities have access to the specialist equipment that is required to undertake the tests.

Mary Scanlon: So, this European standard is not being implemented at present.

John Sleith: That is fair to say.

Kathy Banks: Legislation is already in place in the UK. The Electrical Equipment (Safety) Regulations 1994 require that electrical appliances that are placed on the market are safe for use. Those regulations could be expanded to say that

sunbeds that are deemed to be safe must be manufactured in accordance with the European standard. If that is not the case, they could be deemed to be unsafe and in contravention of the regulations.

Mary Scanlon: I am sorry, convener, but the question is not simply whether the equipment is safe. As Kenneth Macintosh and other witnesses have said, the issue is also the time that someone spends under these machines. I understand that spending shorter periods under the new machines could have an even greater effect. As Professor Ferguson said, the new machines are more carcinogenic.

Members of the Health and Sport Committee have to consider many guidelines, regulations and European directives. We considered three Scottish statutory instruments earlier this morning. Our duty is to ensure that they are properly implemented. I do not know where the European standard has come from. No one seems to know about it and yet, in one study, 83 per cent of sunbeds were found to be operated incorrectly. People are being exposed to carcinogenic ultraviolet rays and yet, as a parliamentarian, I cannot find out who is responsible. Members of the public are unaware that they are entering a danger zone. I am trying to get a bit of clarity on the European standard.

Professor Ferguson: The overall problem with sunbeds has been that the Health and Safety Executive's 1995 guidelines on sunbed use, which come under the responsibility of environmental health, are just guidelines and are not enshrined in law. The change that the Public Health etc (Scotland) Bill brings about is that people should not be able to ignore the guidelines in future as they have done in the past. Obviously, the Sunbed Association feels that, too. The bill is about putting right for the future the thing that is wrong.

Mary Scanlon: Consumer safety, as well as whether machines are fit for purpose, is a consideration. My concern is that although local authority environmental health officers will have a demonstrable additional responsibility, the bill will provide not a penny more to help them to fulfil that.

The Convener: I will take a question from Michael Matheson on the same point—equipment safety—but I am trying to see where we are and to summarise. Perhaps Ken Macintosh should consider extending the points that he raised with us to include the standard of equipment in parlours, which should comply with whatever the European regulations are. Is that our position? We will add other matters, such as the requirement to be over 18, as well as the equipment standard, which Mr Sleith has said his environmental health officers could enforce.

John Sleith: Yes.

Michael Matheson: The convener has covered my point in part, but I am not clear about whether the bill needs to place a statutory obligation on local authorities to enforce the European standard.

John Sleith: That follows naturally. The bill with the amendments would add fresh impetus to the regime of inspecting sunbed salons.

Michael Matheson: No proposed amendment would impose a statutory obligation. Of the four amendments that Ken Macintosh proposes to lodge, one would

"introduce a code of good practice, enforceable by local authority environmental health officers."

I understand that we might want the code of practice, rather than the bill, to refer to the European standard, because a code can be more readily changed than a bill. However, a statutory obligation on local authorities to inspect parlours to ensure that they are complying with the code of practice is not proposed. If we do not place that statutory obligation on them, will we be in danger of falling back into what is the present situation, in which environmental protection officers do not enforce a directive from the Health and Safety Executive because local authorities do not have to do that?

John Sleith: As I said, the bill will provide fresh impetus and will make local authorities re-examine what they do. All that depends on what exactly is said in subsequent regulations or codes of practice, but environmental health officers have good networks and liaison groups in which we come together and which I am sure would discuss good practice on enforcing and implementing the legal provisions.

The Convener: We are getting into European standards. Ross Finnie will ask for clarification about them.

Ross Finnie: We have loosely used the phrase "European standard". Can anyone clarify that? Does that standard derive from a regulation or directive? Does it have the force of law, or has it been developed through practice and over time? Is it a European legal requirement?

John Sleith: We are referring to one small element of the package—a European directive that covers the power and output of tubes or bulbs.

Ross Finnie: The Scotland Act 1998 requires European law such as a directive to be enacted in the law of Scotland. No exemptions to that exist. The position for the UK as a whole is slightly different, but the 1998 act obliges the Scottish Government and, by extension, the whole of Scotland to comply with European law. The

discussion is revealing that an aspect of European law is not being complied with.

Kathy Banks: I clarify that we are talking about a European standard, not a European regulation or directive. It does not come from the European Commission in Brussels.

Ross Finnie: That is not what Mr Sleith said.

The Convener: Rather than hear about it in a circumlocutory way, we need to clarify what it is. We need to know the reference for it—BSI or whatever—and we need a note on its status, where it comes from and what it is. Rather than just continue to ask questions, we can come back to it for clarification. Whether that is from our own researchers, the Government or elsewhere, the committee will require that to be clarified.

We are not going to resolve the issue now, so we should put it to one side and move on to Helen Eadie, who has been very patient. We have pinched all your European stuff, Helen.

Helen Eadie: That is okay, convener. I know that the European Commission was working on that precise point two years ago. The question is whether the work was translated into a directive, which it would be helpful to know. Information was on the Commission website at the time—I found it by following links from the Cancer Research UK website. That first alerted me to the issue because the situation is alarming.

Dr McKee raised a point about causality. In 1999 and 2000, when we were doing work on mobile phones—Ross Finnie may remember that—there was a great deal of hesitation and doubt about the precise causality. However, the Parliament rightly decided to adopt the precautionary principle. I hope that the committee and Parliament will follow that route again by supporting the bill. Even though we are not 100 per cent certain about the causality, I hope that we will do that.

My question is about the list in the submissions of about 12 references to articles from a variety of sources. They relate to the causality argument, so will the witnesses comment on how heavyweight the papers are? I do not know whether the witnesses have seen the whole list, but it is impressive. There is a variety of articles mentioned in the submissions to the committee.

Linked to that, a report has been carried out in England on the cost to the national health service of skin cancer. It found that expenditure of more than £190 million was directly linked to skin cancer, particularly malignant melanoma, which was said to account for 63 per cent of the total cost of skin cancer.

Professor Ferguson, you mentioned the Scottish Dermatological Society and others, and I notice that, in the variety of articles mentioned in the papers, there is one by your colleague Harry Moseley. Will you comment on the extent of the work that has been done? How long has the work on causality being going on for?

Professor Ferguson: A huge experiment was done that involved British and Irish people who had emigrated to Australia—some of them had been forced to do so. They moved to a much lower latitude, and the evidence for an association between that and melanoma rates and other forms of skin cancer is overwhelming.

The difficulty with exposure to sunbeds and sunlight has arisen because people who use sunbeds generally seek sunlight as well. Teasing out those two factors in causality has been more of a problem. Having said that, I know that in recent years metanalysis papers, which examine all previous publications, have tended to find an association. However, it has always been a difficult area. There should be no doubt about the fact that ultraviolet is photomutagenic and that it induces cancer in animal studies. I hope that everyone accepts that. We do not know the precise mechanisms for melanoma. However, because the light from sunbeds is now very like sunlight, we have to make certain assumptions that sunbeds are playing a role in the incidence of melanoma.

Helen Eadie: Mr Sleith mentioned health and safety guidelines. Are there guidelines on this issue that the committee might see?

12:45

John Sleith: The Health and Safety Commission produced a health and safety poster that relates specifically to guidance and information that should be provided to members of the public who are using sunbed parlours. That poster is required to be displayed in premises.

Helen Eadie: Could we have sight of that, convener?

The Convener: Yes.

The Sunbed Association says that it represents 20 per cent of parlours. Is that a UK figure?

Kathy Banks: Yes, the figure is for the whole of the UK.

The Convener: How many parlours in Scotland do you represent?

Kathy Banks: In total, probably about 75 salons throughout Scotland.

The Convener: Out of how many?

Kathy Banks: I do not know the total number.

Mary Scanlon: The information that we have here is that there were 807 parlours in Scotland in 2005—so 75 parlours is less than 10 per cent.

The Convener: Yes, we were assuming that the 20 per cent figure applied to Scotland, but the association is perhaps less well represented in Scotland. Thank you for clarifying that, and I thank all the witnesses for their evidence this morning.

Time is pressing on and committee members have other meetings to go to. I remind members that we will take evidence on the bill again at next week's meeting, when we will hold a round-table discussion with representatives of local authorities, NHS boards and other organisations in the field. The following week, we will consider our approach to taking oral evidence in the light of written evidence that we have received. The deadline for receiving written evidence is 18 January.

Meeting closed at 12:47.

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