

HEALTH COMMITTEE

Tuesday 20 December 2005

Session 2

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HEALTH COMMITTEE

32nd Meeting 2005, Session 2

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)

*Kate Maclean (Dundee West) (Lab)

*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)

*Mrs Nanette Milne (North East Scotland) (Con)

*Shona Robison (Dundee East) (SNP)

*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Mr Kenneth Macintosh (Eastwood) (Lab)

Mr Stewart Maxwell (West of Scotland) (SNP)

Euan Robson (Roxburgh and Berwickshire) (LD)

Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Lewis Macdonald (Deputy Minister for Health and Community Care)

CLERKS TO THE COMMITTEE

Lynn Tullis

Simon Watkins

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERK

Roz Wheeler

LOCATION

Committee Room 2

Scottish Parliament

Health Committee

Tuesday 20 December 2005

[THE CONVENER *opened the meeting at 14:00*]

Subordinate Legislation

Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (draft)

The Convener (Roseanna Cunningham): I welcome everybody to this afternoon's meeting. I want to get off to a quick start, because we have a lot of work to do this afternoon. No apologies have been received.

Under item 1, the committee is asked to consider an affirmative instrument. I thank the Deputy Minister for Health and Community Care for being present. The Subordinate Legislation Committee considered the draft order and had no comment to make. If no member wishes to seek clarification from the minister or debate the draft order, I invite the minister to move motion S2M-3703.

Motion moved,

That the Health Committee recommends that the draft Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 be approved.—[*Lewis Macdonald.*]

Motion agreed to.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 18) (Scotland) Order 2005 (SSI 2005/626)

The Convener: Item 2 is another affirmative instrument. It is one of our old friends—an amnesic shellfish poisoning order. The Subordinate Legislation Committee considered the order and had no comment to make. If no member wishes to seek clarification from the minister or debate the order, I invite the minister to move motion S2M-3717.

Motion moved,

That the Health Committee recommends that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 18) (Scotland) Order 2005 (SSI 2005/626) be approved.—[*Lewis Macdonald.*]

Motion agreed to.

Feeding Stuffs (Scotland) Regulations 2005 (SSI 2005/605)

Meat (Official Controls Charges) (Scotland) Regulations 2005 (SSI 2005/607)

Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (SSI 2005/608)

National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment (No 3) Regulations 2005 (SSI 2005/617)

National Health Service (Pharmaceutical Services) (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/618)

The Convener: Under item 3, the committee is asked to consider five negative instruments. The Subordinate Legislation Committee has not yet published its comments on SSI 2005/605, SSI 2005/607 and SSI 2005/608, but the clerks have an update, which has been circulated to all members. I will give members a minute or two to look through it. While members are doing that, I should say that the Subordinate Legislation Committee considered SSI 2005/617 and SSI 2005/618 and had no comment to make.

As I have not received any comments from members and no motions to annul have been lodged, are we all agreed that the committee does not wish to make any recommendations in relation to these five negative instruments?

Members indicated agreement.

Human Tissue (Scotland) Bill: Stage 2

14:03

The Convener: Item 4 is stage 2 consideration of the Human Tissue (Scotland) Bill. We have set part 1 as the end-point for consideration today. I welcome the minister in charge of the bill—Lewis Macdonald—who has been here since the meeting began.

Section 1—Duties of the Scottish Ministers as respects transplantation, donation of body parts etc

The Convener: We begin with section 1 and group 1, on promoting donation for transplantation and so on. Amendment 112, in the name of Nanette Milne, is the only amendment in the group.

Mrs Nanette Milne (North East Scotland) (Con): I will be brief. Amendment 112 seeks to ensure ministers' on-going commitment over time to promote awareness of organ donation and transplantation. The aim is for successive generations of people to become aware of the systems that are in place for organ donation and to be encouraged to become donors as a result. The intention is to ensure continuity of public awareness.

I move amendment 112.

The Convener: As no member has indicated that they wish to comment on the amendment, I call the minister.

The Deputy Minister for Health and Community Care (Lewis Macdonald): I sympathise entirely with Nanette Milne's motivation in moving amendment 112, but the amendment is not necessary. As it stands, section 1(b) makes it clear that ministers have a continuous duty to

"promote information and awareness about ... donation".

Nothing in the section suggests that the duty should be intermittent or that it should be exercised only in fits and starts. A statutory duty underpins the wide range of work that the Executive undertakes at the moment, and I believe that it is adequate for its purpose. Our world-class transplantation services in Scotland are the best advertisement for the benefits of transplantation.

The Executive will, of course, undertake specific awareness raising as part of the run-up to the implementation of the bill. That will include the development of guidance and training for transplant co-ordinators and staff. We will support the network of transplant co-ordinators across

Scotland, including supporting their work to promote awareness. We have produced an organ donation teaching resource pack, which we believe is the first of its kind anywhere in the world. It is an educational tool that will allow senior pupils to explore the ethical issues that are associated with transplantation. Through its use, we hope to create a generation of people in the years ahead who are aware of the issues around transplantation.

Of course, ministers take opportunities, as Andy Kerr did yesterday, to promote the benefits of organ donation. Indeed, all the approaches that ministers are taking are in line with the duty that the bill puts on us. On the basis of those assurances, I hope that Nanette Milne will seek leave to withdraw amendment 112. I also hope that she will accept that the spirit of her amendment is reflected in the bill as it stands.

The Convener: I ask Nanette Milne to indicate whether she will press or seek leave to withdraw amendment 112.

Mrs Milne: I appreciate what the minister has said and accept that the intention of the present Executive is to ensure that on-going commitment. However, as that does not necessarily go beyond the next few years, I will press amendment 112.

The Convener: The question is, that amendment 112 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Milne, Mrs Nanette (North East Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 112 disagreed to.

Section 1 agreed to.

Sections 2 to 5 agreed to.

After section 5

The Convener: The second group of amendments concerns the question of presumed consent. Amendment 113 is grouped with amendments 114, 121, 132, 133, 143 to 146, 148 and 168 to 170. All the amendments in the group are in the name of John Farquhar Munro, who is

unable to be here to move his amendments. I understand that Mike Rumbles has a comment to make.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): John Farquhar Munro has asked me to not move his amendments.

Amendments 113 and 114 not moved.

Section 6—Authorisation: adult

The Convener: Group 3 is on the dating and witnessing of authorisations and withdrawals for transplantation. Amendment 115, in the name of Jean Turner, is grouped with amendments 1, 116 to 118, 120, 129 to 131, 134 to 142, 25 and 105.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): The intention of my amendments 115 to 118, 120, 129 to 131 and 134 to 142—many of which are similar—is to introduce a mandatory requirement for authorisations to be signed, witnessed and dated. For example, amendment 115 would insert certain formal requirements in relation to an authorisation for

“the removal and use of a part of the adult’s body after the adult’s death”.

Under section 6(2), such an authorisation must be in writing, but there is no requirement for it to be dated or signed, nor is there a requirement for the adult’s signature to be witnessed. Amendment 115 would require authorisations to be dated and signed before one witness, which would ensure that the document complied with section 3 of the Requirements of Writing (Scotland) Act 1995, which provides for a presumption as to the granter’s subscription. Amendments 117 and 118 would ensure that a withdrawal of an authorisation, as well as having to be done in writing, would have to be signed before one witness or expressed verbally in the presence of two witnesses.

Amendment 120 is slightly different and seeks to ensure that an authorisation or a withdrawal of an authorisation would have to be intimated as soon as practicable to the adult’s general practitioner. It is important that a patient’s records are kept up to date to ensure that no mistakes occur in carrying out the patient’s wishes or following their instructions. Amendment 120 would ensure a consistent information flow between the patient, the hospital and the GP.

My amendments would make the authorisation procedure easy, simple and straightforward. The matter might have been dealt with in regulations, but they may change down the line. The provisions should be in the bill, as it is important that authorisations are signed, dated and witnessed.

I move amendment 115.

Lewis Macdonald: Our amendments 1, 25 and 105, by contrast with Jean Turner’s, seek to remove the witness requirements for verbal authorisations under section 6. We welcome the increasing use of telephone registrations by adults with the national health service organ donor register. We do not wish to prevent that, so we wish to amend section 6 to remove the witness requirements for verbal authorisations. Our amendments would permit an adult to give verbal authorisation without witnesses.

In contrast, Jean Turner’s amendments would, as she said, take the bill’s transplantation provisions in the opposite direction by increasing the ratification requirements for authorisation under part 1. I do not accept that any advantage would be gained for donors or potential recipients by moving in that direction. Clearly, the bill deals with the two different activities of transplantation and hospital post mortems. We believe that an increase in the verification requirements for transplantation would run the risk of a significant reduction in the number of donors. Apart from the general undesirability of that, Jean Turner’s amendments could have specific consequences. For example, it would not be possible to add one’s name to the organ donor register online or by telephone, and UK Transplant would have to adapt its existing forms to take account of the dating and witnessing requirements. Anyone who wanted to carry a donor card would not only need to sign it; they would have to have the signature dated and witnessed, and people might decide that that was too much bother.

14:15

Jean Turner’s amendments would prohibit the present system of obtaining authorisation for tissue retrieval by phone from an adult’s nearest relative or a person with parental rights and responsibilities for a child. There is a practical risk that, in spite of a person’s clearly expressed wishes, an authorisation that is otherwise clear might fall because it was not dated. We believe that the requirement for notification of a donor’s general practitioner is unnecessary. The key person to be told about a person’s wishes is their nearest relative. That is clearly for the person themselves to do. It is important to emphasise that people should, where they can, discuss their wishes with their family. We hope that the approach that is laid out in the bill will help to achieve those authorisations, but we do not want to create unnecessary hurdles that have to be jumped before organ donation can take place.

Janis Hughes (Glasgow Rutherglen) (Lab): The committee has a strong view that we must do everything possible to encourage potential donors to register, whether by telephone or online. I am

concerned that if such wishes had to be witnessed, people might be dissuaded from registering. To support the amendments would be a retrograde step in the context of the committee's views on the bill.

Lewis Macdonald: I agree with Janis Hughes.

The Convener: I ask Jean Turner to indicate whether she is going to press or withdraw amendment 115.

Dr Turner: I will press the amendment. When things go wrong, it is nice to have the exact documentation. Many things can go wrong with computers these days, and the one weak area of registration is how we ensure that someone has really put their name on to the register. There have to be checks and balances all the way along the line. It is all about trust. It is important to sign and date documents and to have them properly witnessed. If something is verbally agreed to by a patient, it would be nice to have witnesses and for the witnesses to put their names down on paper.

The Convener: The question is, that amendment 115 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Milne, Mrs Nanette (North East Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robison, Shona (Dundee East) (SNP)

ABSTENTIONS

Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

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

Amendment 115 disagreed to.

Amendment 1 moved—[Lewis MacDonald]—and agreed to.

The Convener: Group 4 is on authorisation, or withdrawal of authorisation, by a person who is blind or unable to write. Amendment 2, in the name of the minister, is grouped with amendments 119, 12, 13, 35, 36, 67 to 69, 75 to 77, 86 to 91, and 100 to 103.

Lewis Macdonald: The amendments in the group are being introduced as a result of evidence that was submitted to the committee at stage 1. We agree that the bill should provide for people who are blind or unable to write to give or withdraw authorisation. The bill already contains such provision under part 5, which will amend the

Anatomy Act 1984. Our amendments are based on the provisions of part 5, with appropriate witness and signatory safeguards for all the types of self-authorisation that are covered under parts 1, 2 and 3, which do not already make provision for authorisation to be expressed verbally.

For all authorisations that are given in that way, provision will be made for such authorisation to include a statement, to be signed by the signatory and the witness, that the adult or child who is blind or unable to write has expressed the intention to give authorisation and has requested the signatory to sign on their behalf. Additional protections are built in for children over 12 years of age to ensure that they understand the effects of the authorisation, and to demonstrate that they are not acting under undue influence in giving it. The amendments also take account of the needs of people who are blind or who for whatever reason cannot write and who wish to withdraw authorisation. Provision is made for similar safeguards in that context.

I highlight amendments 119 and 13, which will introduce, amongst others, new sections 6(6) and 9(7). They make it clear that authorisations that are provided by way of ticking boxes or other representations of characters in visible form come within the scope of authorisations "in writing" by an adult under section 6(2)(a)(i), and by a child under section 9(2)(a)(i). That has significance beyond the needs of people who are blind or unable to write. The provision will ensure that registrations that are made online on the NHS organ donor register will count as written authorisations under the terms of the bill. We will no doubt return to that point.

I move amendment 2.

Amendment 2 agreed to.

The Convener: Amendment 116, in the name of Jean Turner, was debated with amendment 115. I ask Jean Turner to move or not move the amendment.

Dr Turner: I move the amendment.

The Convener: You want to move it?

Dr Turner: Is this amendment 116?

The Convener: Yes. Do you want to move it?

Dr Turner: Is it one of the amendments to which I spoke earlier?

The Convener: Yes. You lost the vote on the lead amendment.

Dr Turner: Yes.

The Convener: Do you still want to press amendment 116?

Dr Turner: There is no point.

The Convener: It is a matter for you either to move or not move the amendment.

Dr Turner: I would move them all—although I know what the votes will be.

Amendment 116 moved—[Dr Jean Turner].

The Convener: The question is, that amendment 116 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robison, Shona (Dundee East) (SNP)

ABSTENTIONS

Milne, Mrs Nanette (North East Scotland) (Con)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

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

Amendment 116 disagreed to.

Amendment 117 moved—[Dr Jean Turner].

The Convener: The question is, that amendment 117 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robison, Shona (Dundee East) (SNP)

ABSTENTIONS

Milne, Mrs Nanette (North East Scotland) (Con)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

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

Amendment 117 disagreed to.

Amendment 118 moved—[Dr Jean Turner].

The Convener: The question is, that amendment 118 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robison, Shona (Dundee East) (SNP)

ABSTENTIONS

Milne, Mrs Nanette (North East Scotland) (Con)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

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

Amendment 118 disagreed to.

Amendment 119 moved—[Lewis Macdonald]—and agreed to.

The Convener: Group 5 is on the national health service organ donor register and existing authorisations for transplantations. Amendment 111, in the name of Mike Rumbles, is grouped with amendments 7 to 11 and 54 to 58. Amendment 11 is pre-empted by amendment 133, which has already been debated.

Mike Rumbles: This is an extremely important bill and I am sure that it will be supported by everybody.

During stage 1, several witnesses told the committee that it would be a mistake not to include in the bill reference to the organ donor register. They felt that to include such a reference would make the position absolutely clear and would ensure that nobody will fall through the net when the new system comes on stream.

When the minister gave evidence on the matter at stage 1, there was genuine debate about whether his position—he was fairly sure that people on the organ donor register would not fall through the net—was accurate. When we sought clarification from the civil servant who accompanied him, it was still not clear that people would not fall through the net.

The minister promised that he would, if necessary—which was, I suppose, the get-out clause—lodge amendments at stage 2 to ensure that reference would be made in the bill to the NHS organ donor register. The minister said that the argument against including such a reference in the bill was that the name of the NHS organ donor register might change as time goes by, but that was not the view that the witnesses put to us.

It became clear from the amendments that were lodged for stage 2 that the minister was not going to ensure that the bill will include a reference to the NHS organ donor register. That is a mistake, although I am sure that the minister will say that

the other amendments in the group, which are in his name, will have the same effect as amendment 111. However, the way in which they would achieve their end is rather byzantine. I am not saying that they would not have the same effect—they probably would—but I am concerned about how many amendments there are and how they are phrased. If we are to be open and transparent and leave nothing to doubt, we should use plain English and be straightforward in the way we approach our legislation.

My amendment 111 is quite clear—it is a simple amendment and it is the only one that I have lodged to an excellent bill. However, like many of our witnesses, I think that it is important for the bill to include a reference to the organ donor register. Some 27 per cent of the adults in Scotland are on that register and I do not want anything to happen that might mean that people slip off that register. The point of the bill is to increase organ donations; we want to do everything in our power to ensure that that happens and we do not want civil service-ese being inflicted through the technical detail of the bill. There must be clarity of purpose. If I may be so bold, I say that my amendment is clearer and more straightforward than the host of amendments that the minister has lodged.

I move amendment 111.

Lewis Macdonald: The key amendments in the group in relation to amendment 111 are amendments 7 to 10.

At the end of stage 1, I gave a commitment that I would lodge amendments that would be designed to address the concern about whether section 8 would convert all the names on the NHS organ donor register to authorisations. Amendments 7 to 10 will make it clear beyond peradventure that all online registrations on the NHS organ donor register, including those that will be made before the new legislation comes into force, will count as valid authorisations.

14:30

As I said in relation to amendment 119, to which the committee agreed a moment ago, new section 6(6), which that amendment introduces, will play an essential part by providing that online registrations count as authorisations in writing. That will partly achieve the purpose of Mike Rumbles's amendment 111.

Our amendments 7 to 10 recognise that UK Transplant is increasingly promoting not just online registration but registration by telephone. The amendments will ensure that telephone registrations count as authorisations.

Our amendments will put it beyond doubt that putting one's name on the register now or in the

future will count as self-authorisation for the purposes of the bill. It is therefore my view that mention in the bill of the register, which amendment 111 seeks to do, is unnecessary and carries one or two risks. If we include in the bill a specific reference to the register, it is at least arguable that we ought also to say that any other way of expressing written wishes is equally valid. That, in the light of the clear effects of the Executive amendments, will not be necessary, but might inadvertently create different classes of existing authorisation. In particular, it might mean that the register would have a different status to organ donor cards, which millions of people have been carrying for many years.

We also run the risk that the register might at some point be replaced. The register is the means by which we envisage authorisations being given by many people for the foreseeable future, but if in time it is replaced by something else, we might require to amend primary legislation, which we do not want to do unless doing so is necessary.

Our aim is to be as flexible as we can and to cast the net as wide as possible in ensuring that any expression of wishes counts as an authorisation under the bill. Section 6 has been drafted to support current practice, particularly the ways in which people can add their names to the register, whether by sending in a form, or registering online or by phone.

The other aspect of current practice that we completely endorse is that transplant co-ordinators should continue as a matter of course to consult the register in every situation in which organ donation is a possibility.

I give an absolute assurance to members that the role of the register will feature in the guidance that we will issue to transplant co-ordinators to help them implement the bill once it is enacted. They have also to understand that the bill will not be confined to allowing existing requests by adults that have been given by way of a name's being put on the register; it will be possible to act on other forms of existing request. I hope that Mike Rumbles will on that basis feel able to seek to withdraw amendment 111.

I have a few brief words to say about the other Executive amendments in the group. They relate to existing holdings—in other words body parts that have been removed from deceased persons before section 3 comes into force. The amendments will permit body parts that are held for the purposes of transplantation, research, education, training or audit to be used for such purposes after the eventual act comes into force. Amendment 56 clarifies that it will not be an offence so to do. That is clearly important where tissue has been retrieved and stored for therapeutic purposes before the act comes into

force. We simply want to avoid any risk of constraint on the use of such tissue once the bill becomes an act.

The Convener: Do other committee members wish to comment?

Shona Robison (Dundee East) (SNP): I have a reflective question. I have sympathy with Mike Rumbles's amendment 111, given the need for clarity, but the minister said that he feels that his amendments will be robust enough to ensure that nobody would be left off the register or would not transfer over. Which group of people does Mike Rumbles think might be left in doubt, given the minister's amendments? That clarification would be helpful at this stage.

Mike Rumbles: It is really a matter of preference. I agree with the minister that the amendments that he has lodged would deal with the issue, but I want to say why the committee should support amendment 111 and not the minister's amendments.

Amendment 111 seeks to achieve clarity and straightforwardness. I wrote down what the minister just told the committee because I am a layman: he said that the position would be "beyond peradventure". I am not sure how many laypeople around the table know what that phrase means—I am not sure. That is exactly what I was talking about: here we have civil service-ese entering our legislation. Amendment 111 is simple and straightforward and uses clear English, so people know what it means. We do not know in detail the technical meaning of the other amendments.

In addition, I notice that the minister said—I think in an attempt to placate me—that he could give an "absolute" guarantee that the role of the register would be in the guidance. If it is to be in the guidance, what is the problem with putting it in the bill? My point is this: I wish that Parliament would take more of a commonsense approach to our legislative process.

To answer Shona Robison's question, this is not an argument about who will be left on or off the register. It will not be a huge problem if amendment 111 is not agreed to and the minister's amendments are, because we will probably have the same result at the end of the day. However, if my amendment is agreed to, we can strike a blow for straightforwardness, for good English and for openness and transparency.

Mrs Milne: I have a supplementary question for Mike Rumbles. I am a simple person and I like simple language. How would amendment 111 cover the other issues that were mentioned by the minister about the other forms of registration?

Mike Rumbles: In particular?

Mrs Milne: Just in general.

Mike Rumbles: I think the minister threw in a bit of a red herring. I do not wish to be critical, but he spoke—I think in order to confuse—about people who carry the donor card and who are on the register. I see that the minister is smiling, but I assure him that I am not trying to be problematic. We all know that carrying a card and being on the donor register have no legal force at the moment. That is the great thing about the bill—we are trying to give those decisions legal force and we all have the same objective in mind. When one carries the card, the information that is contained on it is passed to the organ donor register. The issues that the minister raised are a red herring. Amendment 111 would not keep anybody off the register—if one reads it, one will realise that it would keep everybody on the register; that is its whole point.

The minister spoke about giving the register higher status—

The Convener: I am going to let the minister back in, but you will have a chance to wind up afterwards. I should not have called you to speak at this stage because you have not heard the minister—that was my mistake. I was going to let you continue if you were not going to go on too long, but you were beginning to do so. You will have the opportunity to speak again after the minister has spoken.

Lewis Macdonald: The Executive amendments before us cover a wider range of areas than Mike Rumbles's amendment 111. I hope that that is helpful to Nanette Milne.

The key point is about the substance of Mike Rumbles's amendment. I do not want to confuse Mike Rumbles or anyone else—I am also a believer in good English. I inform him that the words "beyond peradventure" were used entirely on my initiative and were not words that were put in front of me by civil servants. The intention is simply to make it absolutely clear that the purpose that Mike Rumbles seeks will be achieved beyond doubt—let me put it in those words—by the amendments in my name.

If there is confusion, it is in the suggestion or implication that carrying an organ donor card means that a person is automatically on the organ donor register. That is not the case; they are separate forms of authorisation, which is why we are keen not to include any by name in the bill. Instead, we want to construct the bill to include all forms of valid authorisation, whether written, verbal or online through the register. Our purpose will be achieved by the Executive's amendments. Mike Rumbles's amendment 111 is not necessary.

The Convener: Mike, this is the wind up. I was so busy going through the papers to deal with the

John Farquhar Munro situation that I got completely lost.

Mike Rumbles: I will reply to Nanette Milne and the minister about their worry that amendment 111 would give a “special status”—that is the phrase that was used—to the organ donor register. I suppose that that is true. If I scribbled on a piece of paper that I wanted to donate my heart after my death and then put that piece of paper in my wallet, the Executive’s amendments would authorise such a decision.

I do not regard amendment 111 as a criticism of the Executive’s amendments. However, I admit that my amendment would give special status to the 27 per cent of adults in Scotland who have registered with the NHS organ donor register. I return to the simple point that my amendment would make for better legislation. It would also be better for the people of Scotland to be able to read the bill when they pick it up.

It is, if I may say, rather amusing that the minister uses the phrase, “make it clear beyond peradventure”, when what he means is beyond doubt. He wanted absolute clarity, but he has succeeded in providing the opposite, which has caused confusion. The point may be amusing, but it is valid. The phrase “beyond peradventure” now carries weight in relation to the bill.

In one sense, it does not matter whether amendment 111 or the minister’s amendments are accepted because, ultimately, they will have the same outcome. The advantage of my amendment on this important issue is that it expresses what people who gave evidence to the committee at stage 1 told us they wanted. I ask the committee to consider being a little bit independent and saying that my amendment is better and clearer than the minister’s amendments, although, as I admit, the end result will be no different.

The Convener: You must indicate whether you intend to seek to withdraw amendment 111 or to press it.

Mike Rumbles: I will press amendment 111.

The Convener: The question is, that amendment 111 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)

AGAINST

Eadie, Helen (Dunfermline East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)

ABSTENTIONS

Milne, Mrs Nanette (North East Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Convener: The result of the division is: For 3, Against 4, Abstentions 2.

Amendment 111 disagreed to.

Amendment 120 not moved.

The Convener: I have still to call amendment 121 in the name of John Farquhar Munro. A two-second silence would indicate that nobody was going to press John Farquhar Munro’s amendments. We do not have to say “not moved”, as he is not here to move it himself.

Amendment 121 not moved.

Section 6, as amended, agreed to.

Section 7—Authorisation by adult’s nearest relative

The Convener: Group 6 is on the nearest relative’s knowledge of the wishes of the deceased. Amendment 122, in the name of Nanette Milne, is grouped with amendments 123 to 128.

14:45

Mrs Milne: I lodged the amendments because of a concern that was expressed to me that section 7 does not ensure that a deceased person’s wishes will be honoured if a nearest relative can make a decision to authorise organ donation when the deceased has not, before death, made his or her wishes known to that relative.

The fact that the deceased person had not made their wishes known could be regarded as an opt-out situation, which, it has been suggested to me, could be open to a legal challenge at the European Court of Human Rights under articles 8, 9 and 10 of the European convention on human rights. I do not wish to make it more difficult to obtain organs for donation but, as the thrust of the bill is to ensure the informed authorisation of donors, it is worth pursuing the issues that have been raised with me. I would welcome the minister’s agreement to consider those issues, especially from the human rights point of view.

I would prefer the amendments to be regarded as probing and would rather not move amendment 122 at this time. I am not sure of the procedure.

The Convener: You have to move amendment 122. If you do not move it, we will just not have a discussion on it.

Mrs Milne: I move amendment 122.

The Convener: Do any other members of the committee want to comment?

Members: No.

Lewis Macdonald: I encourage Nanette Milne to act on her instinct and not to press the amendments, which would take the bill in a contrary direction from the fundamental principle of what we are trying to do. When people express wishes about what should happen to their body after death, those wishes should be respected. As currently drafted, the bill allows a nearest relative to give authorisation unless the relative knows that that was against the wishes of the deceased. That is a positive and effective approach to obtaining authorisation from a nearest relative and I believe that it is the right approach.

Nanette Milne's amendments would change that emphasis by requiring a nearest relative to be certain that the deceased was willing to allow a part of their body to be used for transplantation and shifts the burden in that direction. Consequently, when people did not formally record their wishes, the amendments would make it much more difficult for a nearest relative to be comfortable in proceeding to give authorisation.

The approach that the bill takes is preferable, as it allows a nearest relative to give authorisation unless he or she knows that that would be against the wishes of the deceased. The effect—although not the intent—of the amendments could be significantly to reduce organ donation authorisations by relatives.

Mrs Milne: I appreciate what the minister says. I do not want to make organ donation more difficult, but a concern was raised with me about challenges to such authorisation under the ECHR. Nevertheless, I will not press amendment 122.

Amendment 122, by agreement, withdrawn.

Amendments 123 to 129 not moved.

The Convener: Group 7 is about verbal authorisation for transplantation and so on by the nearest relative, for adults, or the person with parental rights and responsibilities, for children. Amendment 4, in the name of the minister, is grouped with amendments 17, 21, 26 to 34, 37, 38, 40 to 42, 44 to 46, 48 to 50 and 52.

Lewis Macdonald: As I intended to say when we discussed John Farquhar Munro's amendments, the Executive's amendments are a direct response to the comments that the transplant co-ordinators made in their evidence to the Health Committee at stage 1. The co-ordinators emphasised the fundamental importance of gaining authorisation from relatives—including over the telephone—for the retrieval of tissue for therapeutic purposes. We do not want to restrict current or future practices for

obtaining verbal authorisation from an adult's nearest relative or from a person with parental rights and responsibilities.

Amendment 4 will allow authorisation by an adult's nearest relative under section 7 to be given verbally. Amendment 17 will allow verbal authorisation to be given by the parents of a child who has died at the age of 12 or over. Finally, amendment 21 will allow verbal authorisation to be given by a person who had parental rights and responsibilities in relation to a child who died under the age of 12. The other amendments in the group are consequential.

I move amendment 4.

Dr Turner: Is it intended that telephone authorisation will be followed up in writing?

Lewis Macdonald: It will be recorded on CD-ROM.

Dr Turner: So there will be a record of the telephone conversation.

Lewis Macdonald: Yes. There will be a record that the conversation has taken place and that verbal authorisation has been given.

Amendment 4 agreed to.

The Convener: Group 8 is on the time limits for the withdrawal of authorisation. Amendment 5, in the name of the minister, is grouped with amendments 6, 18, 19 and 22 to 24.

Lewis Macdonald: Once more, the amendments arise from the evidence that was given at stage 1. I gave a commitment to consider how best to address the concern that the bill might allow the nearest relative of a deceased adult to withdraw authorisation for transplantation at any time. It is clear that that would represent a serious risk to the intended recipient of a donated organ—at worst, it would put his or her life at risk.

We carefully considered how the problem could best be addressed. It would be difficult to define cut-off points for withdrawal in all the different circumstances that might arise, so we concluded that it would be best to prohibit the withdrawal of authorisation once that authorisation had been given. That will apply both to people with parental rights and responsibilities and, in the case of adults, to the nearest relative.

In taking that approach, we look to the transplant co-ordinators to give clear advice to relatives or people with parental rights and responsibilities about the implications of their giving authorisation for transplantation. The Executive will work directly with the Scottish transplant co-ordinators to produce guidance and to adapt working practices to ensure that relatives and others are fully informed of the consequences of their decision

and the fact that it cannot be reversed once it has been made.

I highlight the fact that the prohibition of withdrawal applies only to transplantation under part 1 of the bill, where it is necessary because of the possible effect on the potential recipients of organs. It does not apply to authorisation for research, education, training or audit purposes under part 1 of the bill or to authorisation for post mortem under parts 2 or 3. It will remain open to the nearest relatives to withdraw authorisation at any time before the post mortem is carried out.

I move amendment 5.

The Convener: No member of the committee wishes to comment. We will therefore forgo the minister's winding-up remarks.

Lewis Macdonald: I am happy to forgo them.

Amendment 5 agreed to.

Amendments 130 and 131 not moved.

Amendment 6 moved—[Lewis Macdonald]—and agreed to.

Amendment 132 not moved.

Section 7, as amended, agreed to.

Section 8—Existing written request: adult

Amendments 7 to 10 moved—[Lewis Macdonald]—and agreed to.

Amendment 133 not moved.

Section 8, as amended, agreed to.

Amendment 11 moved—[Lewis Macdonald]—and agreed to.

Section 9—Authorisation: child 12 years of age or over

Amendment 12 moved—[Lewis Macdonald]—and agreed to.

Amendments 134 to 136 not moved.

Amendment 13 moved—[Lewis Macdonald]—and agreed to.

Section 9, as amended, agreed to.

Section 10—Authorisation as respects child who dies 12 years of age or over by person with parental rights and responsibilities

The Convener: Group 9 is on whether the person with parental rights and responsibilities should not include the local authority. Amendment 14, in the name of the minister, is grouped with amendments 15, 16, 20, 39, 43, 47, 51, 70, 71, 78, 80, 92, 93 and 110.

15:00

Lewis Macdonald: The amendments relate to looked-after children and arise from a concern that was raised with the Health Committee about the role of local authorities that had parental rights and responsibilities for a looked-after child immediately before that child's death. We recognise that the position of a council in such circumstances is different from that of others with parental rights and responsibilities. Therefore, we seek to amend the bill to ensure that a local authority that had parental rights and responsibilities for a looked-after child immediately before that child's death cannot give authorisation for the removal and use of body parts or for a post-mortem examination of the child's body in the event of the death that child.

I move amendment 14.

Amendment 14 agreed to.

Amendments 15 and 16 moved—[Lewis Macdonald]—and agreed to.

Amendment 137 not moved.

Amendments 17 and 18 moved—[Lewis Macdonald]—and agreed to.

Amendments 138 and 139 not moved.

Amendment 19 moved—[Lewis Macdonald]—and agreed to.

Section 10, as amended, agreed to.

Section 11—Authorisation as respects child who dies under 12 years of age

Amendment 20 moved—[Lewis Macdonald]—and agreed to.

Amendment 140 not moved.

Amendments 21 and 22 moved—[Lewis Macdonald]—and agreed to.

Amendments 141 and 142 not moved.

Amendment 23 moved—[Lewis Macdonald]—and agreed to.

Section 11, as amended, agreed to.

Section 12—Removal of part of body of deceased person: further requirements

Amendments 143 to 145 not moved.

Amendment 24 moved—[Lewis Macdonald]—and agreed to.

Amendment 146 not moved.

Amendments 25 to 52 moved—[Lewis Macdonald]—and agreed to.

Section 12, as amended, agreed to.

After section 12

The Convener: Group 10 is on the removal of tissue samples to determine viability of transplantation. Amendment 53, in the name of the minister, is the only amendment in the group.

Lewis Macdonald: In its evidence at stage 1, the Royal College of Pathologists drew attention to the fact that tests sometimes have to be carried out to ensure that transplantation can go ahead without causing any harm to the potential recipient. The college was concerned that such tests might count as a form of post-mortem examination under the bill and that the testing would require separate authorisation in that case.

That type of testing is clearly an integral part of the transplantation process; it is not a post-mortem examination for a separate purpose. Amendment 53 is designed to give effect to that view by giving the transplant surgeon the discretion to decide which parts of the body need to be tested. The amendment also allows the testing to be carried out by another person, who is in practice a transplant pathologist.

I move amendment 53.

Amendment 53 agreed to.

Section 13—Preservation for transplantation

The Convener: Group 11 is on transportation of the body in relation to preservation for transplantation and so on. Amendment 147, in the name of Dr Jean Turner, is the only amendment in the group.

Dr Turner: Amendment 147 would permit managers of premises in which a body is placed to remove it to other premises for the purpose of preservation for transplantation. Section 13 will allow managers to take steps to preserve a body for transplantation and to retain a body for that purpose. The amendment would simply clarify that such bodies may be removed to other premises for those purposes. It is as simple as that; it is an addition to what is already in the bill.

I move amendment 147.

Lewis Macdonald: Amendment 147 raises an interesting issue. First, I will rehearse the policy intentions that we want to pursue with section 13. If there is authorisation for transplantation—for example, if a person who is dying carries an organ donor card—we do not think that there would be any objection to moving the body to preserve the organs. Indeed, arranging for the body to be taken to a hospital that has the proper facilities might be the only way of fulfilling the dying person's wish to be an organ donor, so we support that.

However, section 13 also deals with situations where it is not immediately clear whether there is

authorisation. It is our view that for hospital managers to remove a person's remains or somebody who is on the point of death from one hospital to another when there is no certainty of obtaining authorisation would strike many people as disrespectful to the deceased. Therefore, we do not believe that amendment 147 should be supported. The essential test is whether the amendment would be likely to have public support. In cases in which there is authorisation, amendment 147 would pass that test, whereas in cases in which there was no authorisation, it would not.

Having had the opportunity to consider the matter closely because of the amendment, we accept that there might be some ambiguity about whether the reference in section 13(1)(a) to taking “steps for the purpose of preserving the part for use for transplantation”

would cover the moving of the body in the way that is suggested in the amendment, even in cases in which authorisation exists. We would like to consider the point further and, if need be, to lodge an amendment at stage 3 to clarify the position and to reinforce the policy intentions that I have outlined. On that basis, I hope that Jean Turner will withdraw amendment 147.

Amendment 147, by agreement, withdrawn.

Section 13 agreed to.

After section 13

Amendment 54 moved—[Lewis Macdonald]—and agreed to.

Section 14—Offences: removal or use of part of body of deceased person for transplantation, research etc

Amendments 55 to 58 moved—[Lewis Macdonald]—and agreed to.

Amendment 148 not moved.

The Convener: Group 12 is on offences. Amendment 59, in the name of the minister, is grouped with amendments 60, 63, 64, 82 and 83.

Lewis Macdonald: The amendments are technical. Where offences are triable, summarily or on indictment, references to the level of fine in the case should be not to levels on the standard scale but to the statutory maximum. That is what the amendments achieve.

I move amendment 59.

Amendment 59 agreed to.

Amendment 60 moved—[Lewis Macdonald]—and agreed to.

Section 14, as amended, agreed to.

Section 15—Restrictions on transplants involving live donor

The Convener: Group 13 is on live donors. Amendment 149, in the name of the minister, is grouped with amendments 150 to 167 and 171 to 173.

Lewis Macdonald: With your indulgence, I will take a little bit longer on this group than on one or two of the groups that we have just dealt with. I gave a commitment to the committee and to the Parliament during the stage 1 debate on the bill to lodge amendments at stage 2 to deal with adults with incapacity. Nanette Milne has lodged several amendments of her own—to ensure, perhaps, that the Executive did not forget that commitment.

I assure members that we have given the issue detailed consideration in order to lodge amendments that will achieve all our objectives. They are important amendments, although I agree that they are complex. It is also important to get on record exactly what the amendments try to do.

The bill's approach to living donation is that, under section 15(1)(a), the removal of an organ, part of an organ or any tissue that is not regenerative tissue from a living child is an offence, unless certain criteria are met. Similarly, section 15(2)(a) creates the offence of using for transplantation such organs, parts of organs or tissue as have come from a living child, unless certain criteria are met.

The section 15 offences relating to the removal and use of organs from children can absolutely not be disapplied. Section 15 also contains similar removal and use offences in relation to adults. Adults are treated differently from children in two important ways. First, the removal and use of tissue from an adult is not currently an offence under section 15. Secondly, the offences relating to the removal and use of organs or parts of organs from adults may be disapplied in certain circumstances by means of regulations made under section 15, whereas they cannot be disapplied in relation to children.

Concerns were expressed at stage 1 of the bill that, first, adults with incapacity should be given the same protection in relation to transplant as children. Secondly, there was concern that an absolute ban on transplants from a living child or an adult with incapacity might mean that organs that had been removed from such a person during domino organ transplant operations could not be used. There was also agreement that it should be possible for children and for adults with incapacity to donate regenerative tissue.

We have taken all those concerns into account. The amendments are designed to ensure that the statutory position for children and adults with incapacity is that they should not be able to be a

living donor of an organ or part of an organ, except in the context of a domino organ transplant operation. They should also not be a living donor of any tissue other than regenerative tissue.

In order to achieve that result, the bill requires to be amended to specify that the removal of any tissue from a living adult with incapacity is an offence, which is what amendments 150 to 154 do. We also need to specify that the use of tissue so removed is an offence, which is what amendments 156 and 161 do.

The bill needs to set out the circumstances in which tissue can be removed from an adult with incapacity and thereafter used without an offence being committed. Amendment 162 makes it clear that the relevant offences relating to the removal and use of tissue do not apply when the tissue removed and used for transplantation is regenerative tissue. The other criterion specified in section 15 is that no reward has been offered in contravention of section 17.

Amendment 162 will introduce new sections 15(3A) and 15(3B), under which a power will be given to make regulations that set out the other criteria that have to be satisfied to avoid committing an offence. Those regulations will enable ministers to disapply the offences already created by the bill relating to the removal and use of organs, parts of organs or any tissue from a child, as well as the new offences that will be introduced by amendments 154 and 161 relating to the removal and use of tissue from a living adult with incapacity.

We also need to provide for an appeals procedure. That is already the case with regulations made under section 15(3) in relation to adults. As with living donations generally, people are allowed to have a defence in certain circumstances against the charge of having committed a relevant offence. Amendment 164 provides a defence in respect of each of the new offences that will be created under section 15(1)(a) and new section 15(1)(c) and under section 15(2)(a) and new section 15(2)(c). That defence is that the person who removed or used the organs or tissue believed reasonably that an exception applied to that removal or use. That is one group of amendments.

15:15

It is also worth saying something about the amendments on the important issue of the two types of donation that will be open to an adult with incapacity. The bill needs to recognise that a domino transplant operation involves a two-stage process. At the first stage, the adult with incapacity has organs implanted for his or her benefit. That counts as treatment under part 5 of the Adults with

Incapacity (Scotland) Act 2000, so we intend to preserve the role of the adult with incapacity's welfare attorney or welfare guardian under that part in respect of the first stage of the domino operation.

However, at the second stage of the operation—the onward donation of the spare organ that has been freed up—the donation does not count as treatment, because it does not directly benefit the adult with incapacity. We therefore intend to clarify the provisions of the 2000 act that deal generally with the powers of the welfare attorney and the welfare guardian, so that they will not have powers in relation to the donation stage of a domino operation. The necessary changes to the 2000 act will be in the amendments that are to be lodged for the second day of stage 2 consideration of the bill. I hope that I am making myself clear. The amendments that we are dealing with now will move us in the chosen direction, but the committee will need to consider additional amendments at another meeting.

If the welfare attorney or welfare guardian should not have authority for the onward stage of a domino transplant, someone else must make the decision. Our view is that the Human Tissue Authority is best placed to do that, because of its wider responsibilities, so we want to make that possible. The cases that will need to go to the Human Tissue Authority will be clear, because an adult with incapacity will have been identified by being certified as incapable in relation to the transplant operation. Amendment 165 addresses that and amendment 162 will allow the Human Tissue Authority to provide the necessary approval for donation of the spare organ.

Amendment 165 also recognises that there should be an exemption from an offence for a domino organ transplant.

Our intention is that the Human Tissue Authority should scrutinise donation in regenerative tissue cases. It is setting up procedures to assess the capacity of living people who are potential donors, which is appropriate. However, the existing procedure for certification of incapacity under part 5 of the 2000 act does not apply in relation to the removal and use of regenerative tissue from an adult with incapacity; it applies only when the adult benefits, as with my earlier point. Therefore, our amendments refer to a new function of the Scottish ministers to assess whether an adult is incapable in relation to a decision about the removal and use of regenerative tissue for transplantation. If the opinion is that the adult is incapable in relation to such a decision, the Scottish ministers can issue a certificate of incapacity. Amendment 167 makes it clear that the certificate can last only for a year, in recognition of possible concerns about its duration.

Other amendments deal with all those points in detail. I will not go into all the detail on all the amendments—the committee gets the drift that the amendments are designed to bring the adult with incapacity provisions into line with the intentions of, I think, the committee, and certainly of speakers in the stage 1 debate.

I move amendment 149.

Mrs Milne: The purpose of my amendments is to give adults with incapacity the same legal protection as children have with regard to the live donation of non-regenerative material. In view of the amendments that the minister has lodged, which essentially cover what my amendments would do, I will not move my amendments.

Shona Robison: I appreciate what the minister has proposed in principle, because it responds to concerns that were expressed at stage 1. However, I am sure that I am not the only one who thinks that a complicated bill has now become even more complicated, particularly given the new offences that have been brought in. I seek an assurance that the guidance that will be offered to the professionals who will be required to implement the legislation will be clear and precise.

Lewis Macdonald: I am happy to give that assurance. We will work with the Human Tissue Authority, in particular, to ensure that the guidance is as clear, comprehensible and easy to follow as possible. The bill contains different provisions for children, adults with incapacity and adults with capacity, so it is bound to become complex, but in practice we want to make it as simple and manageable as possible.

Amendment 149 agreed to.

Amendment 150 moved—[Lewis Macdonald]—and agreed to.

Amendments 151 to 153 not moved.

Amendments 154 to 156 moved—[Lewis Macdonald]—and agreed to.

Amendments 157 to 160 not moved.

Amendments 161 to 165 moved—[Lewis Macdonald]—and agreed to.

Amendment 166 not moved.

Section 15, as amended, agreed to.

After section 15

Amendment 167 moved—[Lewis Macdonald]—and agreed to.

**Section 16—Records, information etc.:
removal and use of parts of human bodies for
transplantation etc.**

The Convener: Group 14 is on records and information. Amendment 61, in the name of the minister, is grouped with amendment 62.

Lewis Macdonald: Amendments 61 and 62 have been lodged as a result of information requirements under the European directive on safety of tissue and cells. The amendments provide that regulations made under sections 16(1)(a) or 16(1)(b), which will require records to be maintained or specified information to be provided in connection with body parts that are removed, used or retained for the purposes of section 3(1), will apply to parts that are removed from living persons as well as parts that are removed from deceased persons.

I move amendment 61.

Amendment 61 agreed to.

*Amendment 62 moved—[Lewis Macdonald]—
and agreed to.*

Section 16, as amended, agreed to.

**Section 17—Prohibition of commercial
dealings in parts of a human body for
transplantation**

*Amendments 63 and 64 moved—[Lewis
Macdonald]—and agreed to.*

Section 17, as amended, agreed to.

**Section 18—Summary proceedings for
offences under section 15, 16(4) or 17(1) or (2)**

The Convener: Group 15 is on the commencement of summary proceedings. Amendment 65, in the name of the minister, is the only amendment in the group.

Lewis Macdonald: Amendment 65 is a technical amendment to remove what would otherwise become a statutory restriction on the time within which summary proceedings under section 17(1) could be commenced.

I move amendment 65.

Amendment 65 agreed to.

Section 18, as amended, agreed to.

After section 18

The Convener: Group 16 is on priority of authorisation for transplantation. Amendment 66, in the name of the deputy minister, is the only amendment in the group.

Lewis Macdonald: Under the terms of the bill as drafted, a person can authorise a number of

different activities. Amendment 66 will ensure that, where authorisation is given for the removal and use of part of a body for transplantation and for other purposes, the authorisation for transplantation will take priority. The amendment does not change the overall primacy afforded to the powers of the procurator fiscal; otherwise, it puts the potentially life-saving donation of organs for transplantation ahead of other authorisations under the bill.

I move amendment 66.

Amendment 66 agreed to.

The Convener: That ends today's stage 2 consideration of the Human Tissue (Scotland) Bill. We are rather ahead of our anticipated schedule, so I commend all members of the committee for forgoing the opportunity to hear the sound of their own voices.

This has been day 1 of our stage 2 consideration. Our aim today was to complete consideration of part 1, and we have achieved that. Our next scheduled date for consideration of the bill at stage 2 is 17 January 2006, and the deadline for lodging amendments is noon on 12 January. Our target is to complete consideration of the bill at stage 2 at that meeting on 17 January.

I thank the minister and his officials for being here today. We will see them again on 17 January, if not before.

Health Bill: Legislative Consent Memorandum

15:28

*Meeting suspended until 15:35 and thereafter
continued in private until 15:49.*

15:26

The Convener: We will move into private session after this brief item. The legislative consent memorandum on the Health Bill was lodged on 8 December, and it has now been referred to this committee for consideration. A copy has been circulated. The committee is required to report to the Parliament before the deadline for consideration. Subject to the committee's agreement, I propose that we take evidence from the Minister for Health and Community Care at our meeting of Tuesday 10 January. That date was originally indicated as a day when we would not meet, but we are now required to do so. The committee will also have an opportunity to consider a report from the Subordinate Legislation Committee. I propose that the committee then moves into private session to agree the content of the report that we are required to produce, and to agree our recommendation to Parliament. Those arrangements will allow the committee's report to be published by the appropriate deadline, ahead of the Parliament's consideration of the Executive's legislative consent motion.

It is my intention to write to the Executive to express our concern about the process. This is the first use of the new procedure for UK legislation, and it seems that we are already running into timescale difficulties. I want to flag up my concern early in the new process.

Is the committee content that, at our meeting on 10 January 2006, we proceed on the basis that I have outlined?

Members *indicated agreement.*

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