



Rhoda Grant

Scottish Labour MSP for the Highlands and Islands

17 April 2008

Speech in the Scottish Parliament

Public Health etc. (Scotland) Bill Stage 1

It is clear that the general principles of the bill have been accepted and supported by the Health and Sport Committee and consultees.

Much of what is in the bill occurs in practice, but there was a need to put practice on a clear statutory footing by bringing together and updating existing legislation to meet modern challenges.

However, there are several issues of contention in the bill that need to be dealt with at stage 2, many of which are to do with the balance between the rights of individuals and the rights of the wider community.

The public good must be paramount, but we must ensure that there are also sufficient safeguards to protect individuals whose liberty is at stake.

That principle is acknowledged in human rights legislation.

I am not exaggerating when I say that at its most draconian the bill will allow a person to be quarantined without receiving a reasonable explanation for the action.

There might be cases when that has to happen to protect the public, for example if someone who does not speak English is suspected of carrying a virus or disease whose spread would have major health implications.

We need to ensure that there are robust safeguards to protect individuals in such situations, and we need to ensure that such people receive an explanation at the first possible opportunity.

Let us be clear: being quarantined in such a way could be a terrifying ordeal.

The minister said that the powers will be used only when co-operation is not forthcoming, but it is difficult for a person to co-operate when he or she has had no explanation for what is happening.

The bill will allow for health boards and local authorities to appoint a competent person to carry out their responsibilities.

The definition of a health board's "competent person" is wide, and health boards that cover sparsely populated areas are concerned that, given the geographical challenges that they face, a tighter definition might mean that the competent person would be located some distance from the incident, which would delay action.

The competent person would have delegated powers to obtain an order to submit an individual to an intrusive medical examination without the necessity of an explanation—indeed, the person would have no right of appeal.

The committee argued that an explanation should be given immediately and that there should be a right of appeal, even if the appeal had to take place after action had been taken, because a delay would have public health implications.

Even if the appeal took place after the event, it would enable the individual to examine the decision that had been made on their case and to consider the decision making of the competent person.

The competent person would be held to account and would not take lightly a decision to force examination if they knew that their decision would be open to scrutiny by the court.

It is unthinkable that we should give an individual the power to force a person to have a medical examination without providing a means whereby the decision could be scrutinised.

As members have said, the court processes for which the bill provides must be legally competent.

I understand that the Government is addressing the issue and am grateful for that.

The processes must also be workable.

Someone who has been quarantined and needs access to justice must be able to obtain legal advice and to access the court process in a way that does not carry additional risk to the public.

There is little information in part 8, on sunbeds, so committee scrutiny has been difficult.

We will probably have to take additional evidence at stage 2, when we have more detail about how part 8 will be amended.

The proposed approach appears to involve regulation without licensing.

Some local authorities already operate licensing regimes, so for the bill to prevent them from doing so would represent a backwards step.

We should explore the idea of a Scottish licensing scheme, under which the operation of sunbeds would be subject to the same regulation in all local authorities.

Such an approach would not increase the workload for environmental health officers, who would have to police operators' compliance with regulations.

Licensing would give EHOs greater powers to ensure compliance.

I pay tribute to Kenneth Macintosh's work in relation to sunbeds, which has made it possible for legislation to be proposed.

He has taken a pragmatic decision to accept the Government's stance, but the Health and Sport Committee should consider whether we should go further and introduce a licensing scheme.

Other sections are of concern.

For instance, the provisions on fixed penalties for those who create a nuisance need to be clarified and tightened, because they could be interpreted to mean that the payment of a fixed penalty discharges any liability to prosecution.

That happens currently with fixed penalties and the bill suggests that the same will happen with fixed penalties for nuisance.

How does that fit with prosecution for persistent nuisance?

Given that the bill includes light nuisance, if someone had a faulty halogen light shining in their neighbour's window, would payment by the person of a fixed penalty mean that they need take no further action?

Any confusion in the provisions would lead to less action to deal with nuisance, either by fixed penalty or prosecution.

The bill will give authorities powers to medically examine people, restrict their movements and place them in quarantine.

Those powers are required to protect the greater good, but we must ensure that checks and balances are in place so that the powers are used properly.

Misuse of the powers could have a devastating effect on an individual.

The likelihood of its happening is slim, but one case would be one too many.

I therefore urge the Government to take on board the Health and Sport Committee's views.

ends

Rhoda Grant's website : www.rhodagrants.org.uk

Highlands and Islands Labour : www.handilabour.org.uk