

## **PUBLIC HEALTH ETC. (SCOTLAND) BILL: PARLIAMENTARY CONSIDERATION PRIOR TO STAGE 3**

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This briefing summarises Parliamentary scrutiny of the Public Health etc. (Scotland) Bill prior to stage 3, the proceedings for which will take place on Thursday 12 June 2008. The briefing first summarises Parliamentary consideration of the Bill, before outlining in more detail:

- the Health and Sport Committee's Stage 1 report recommendations and the Scottish Government's response (Table 2)
- the substantive amendments agreed at Stage 2 (Table 3)
- substantive issues that were raised at stage 2 but which did not result in the amendment of the Bill, including other non-legislative commitments made by the Scottish Government or indications of further deliberations to be made by the Minister or other Members before stage 3 (Table 4)

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## INTRODUCTION

The [Public Health etc \(Scotland\) Bill](#) (the Bill) was introduced to the Scottish Parliament on 25 October 2007. It is accompanied by [Explanatory Notes](#) (2007) and a [Policy Memorandum](#) (2007). The long title of the [Bill \[as amended at stage 2\]](#) states:

“An Act of the Scottish Parliament to restate and amend the law on public health; to make provision about mortuaries and the disposal of bodies; to enable the Scottish Ministers to implement their obligations under the International Health Regulations; to make provision relating to the regulation of provision of sunbeds; to amend the law on statutory nuisances; and for connected purposes.”

Further information on the Bill as introduced is contained in the SPICe briefing '[Public Health etc \(Scotland\) Bill](#)' (Robson, 2007).

This briefing considers the Parliamentary scrutiny of the Bill up to stage 3, summarising key recommendations of the lead Committee at stage 1, the response of the Scottish Government to these, debates concerning key amendments at stage 2, and any commitments made for stage 3.

## PARLIAMENTARY CONSIDERATION

Stage 1 commenced on 31 October 2007 with the Health and Sport Committee (the Committee) as the lead committee. The Committee published its [Stage 1 Report](#) (Scottish Parliament Health and Sport Committee, 2008a) on 18 March 2008, with the [stage 1 debate](#) (Scottish Parliament, 2008) being held on 17 April 2008. Stage 2 commenced on 7 May 2008 (Health and Sport Committee, 2008b), with further meetings on 14 May 2008 (Health and Sport Committee, 2008c) and 21 May 2008 (Health and Sport Committee, 2008d). Key dates in the Parliament's consideration of the Bill are listed in Table 1, below.

**Table 1: Summary of Parliamentary consideration**

Action	Date
<b>Pre-legislative discussion</b> Health and Sport Committee	<a href="#">19 September 2007</a>
<b>Bill introduced</b>	25 October 2007
<b>Preliminary discussion</b> Health and Sport Committee	<a href="#">31 October 2007</a>
<b>Stage 1 consideration</b> Health and Sport Committee	<a href="#">9 January 2008</a> , <a href="#">16 January 2008</a> , <a href="#">30 January 2008</a> , <a href="#">20 February 2008</a>
Finance Committee	<a href="#">6 November 2007</a> , <a href="#">4 December 2007</a> and <a href="#">15 January 2008</a>
Subordinate Legislation Committee	<a href="#">27 November 2007</a> , <a href="#">11 December 2007</a> , <a href="#">18 December 2007</a> and <b>additional evidence on 3 June 2008</b>
<b>Stage 1 Report</b>	<a href="#">18 March 2008</a>
<b>Scottish Government Response to Stage 1 Report</b>	<a href="#">14 April 2008</a>
<b>Stage 1 plenary debate</b>	<a href="#">17 April 2008</a>
<b>Stage 2 consideration</b> Health and Sport Committee	<a href="#">7 May 2008</a> , <a href="#">14 May 2008</a> and <a href="#">21 May 2008</a>
<b>Stage 3 plenary debate</b>	Scheduled for 12 June 2008

The remainder of the briefing highlights key points in relation to:

- the Health and Sport Committee's Stage 1 report recommendations and the Scottish Government's response through commitments made by the Minister for Public Health (the Minister), Shona Robison MSP, in her [evidence](#) (Scottish Parliament Health Committee, 2008e) to the Committee and her [response](#) (Scottish Government, 2008a) to the Committee's Stage 1 Report (Table 2)
- the substantive amendments agreed at Stage 2 (Table 3)
- substantive issues that were raised at stage 2 but which did not result in the amendment of the Bill, including other non-legislative commitments made by the Scottish Government or indications of further deliberations to be made by the Minister or other Members before stage 3 (Table 4)

The tables contain links to relevant documents and official reports, which provide further information on amendments and other issues. All documents related to the Bill as it proceeds through Parliament can be found on the Scottish Parliament's Public Health etc (Scotland) Bill [web page](#).

For ease of reference, the Tables below use a number of abbreviations for ease of reference and in the interests of brevity:

SPHSC = Scottish Parliament Health and Sport Committee  
SG = Scottish Government  
ICO = Information Commissioner's Office  
COSLA = Convention of Scottish Local Authorities

## STAGE 1 CONSIDERATION

As lead Committee, the Committee issued a call for written evidence on the Bill on 31 October 2007. This resulted in 53 responses from a range of organisations. The Committee took oral evidence over four sessions, including a round-table discussion with local authorities, NHS boards, consultants in public health medicine and environmental health officers. (Please see [volume 2](#) of the Committee's stage 1 report (SPHSC, 2008a) for full details of those providing written and oral evidence).

The Bill was broadly welcomed as it sought, on the whole, to update and modernise existing legislation. However, as can be seen from Table 2, below, there were a number of issues identified through evidence, which the Committee sought to have addressed by the Scottish Government. Table 2 presents the recommendations of the Committee and the Scottish Government's response. Please note there were no recommendations for Parts 5-7 of the Bill.

**TABLE 2: STAGE 1 REPORT RECOMMENDATIONS AND SCOTTISH EXECUTIVE RESPONSE**

Stage 1 Report	Committee Recommendation	Scottish Governments Response	Outcome
<b>Part 1: Public Health Responsibilities</b>			
Designation of competent persons by health boards – <a href="#">Para 11-20</a>	The Committee was satisfied that defining the health board competent person in secondary legislation was appropriate. However, the Committee also welcomed the Minister's decision to consult further on the detail of this matter.	Noted that the qualifications and experience necessary had been discussed by an expert working group (see <a href="#">SG, 2008b</a> for further details), but that draft regulations based on the group's recommendations would be consulted upon. (SPHSC, 2008e, <a href="#">col 567</a> ).	Consultation on draft regulations to be published prior to stage 3 (SG, 2008c).
Designation of competent persons by local authorities – <a href="#">Para 21-23</a>	The Committee was satisfied that defining the local authority competent person in secondary legislation was appropriate and that the SG's plans in this regard were reasonable in current circumstances.	Although there was no specific recommendation the Minister was asked to confirm that a local authority competent person would be an environmental health officer, which the Minister confirmed (SPHSC, 2008e, <a href="#">col 567</a> ), as long as the officer had at least two years experience.	Consultation on draft regulations to be published prior to stage 3 (SG, 2008c).
Joint public health protection plans – <a href="#">Para 24-26</a>	The Committee invited the Minister to reflect on the proposal for joint public health protection plans to be prepared by health boards in consultation, rather than collaboration, with local authorities, in the light of the concerns raised by witnesses that this could represent a retrograde step compared with current arrangements.	SG aim was to reduce bureaucracy wherever possible, thus the emphasis would be on the effectiveness of the planning rather on the preparation of the plan. Noted that health boards have long running experience in taking the lead in health protection planning and was therefore confident the provisions in the Bill would be sufficient. ( <a href="#">SG, 2008a, p 2</a> ).	Non-government amendment (192) was lodged at stage 2 – see Table 4.

Stage 1 Report	Committee Recommendation	Scottish Executive Response	Outcome
<b>Part 2: Notifiable diseases, notifiable organisms and health risk states</b>			
Information to be reported – <a href="#">Para 33-42</a>	This was in relation to section 13 of the Bill, which would require that the medical practitioner, when notifying a suspicion of a notifiable disease, report the suspected disease and the patient's name, address and postcode, occupation if considered relevant, sex, date of birth and NHS identifier. The Committee raised an issue regarding the definition of the NHS identifier, and was satisfied with the explanations in relation to this matter. However, notwithstanding the minister's subsequent letter of 28 February (see <a href="#">SG, 2008d, p 2</a> ), it invited the Minister to reflect further on whether the patient's school or place of work should be reported, on the order of items included in the definition of the NHS identifier and on the issues raised by the ICO.	Agreed to introduce amendments at stage 2 to include a patient's school or workplace in the information to be provided and to amend the order of items in the same section so that the patient's community health index number would appear first. In terms of the ICO, a commitment to introduce amendments to ensure the provisions in the Data Protection Act 1998 are explicitly applied in terms of the use of personal information and its transfer. ( <a href="#">SG, 2008a, p 2</a> ).	Government amendments (25-27, and 215-221) and non-government amendments (25A and 27A, and 193 and 195-197) lodged at stage 2 - see Tables 3 and 4.
Health risk states – <a href="#">Para 43-49</a>	The Committee noted the concerns raised regarding the practicalities of notifying health risk states, the workability of the definition and implications for the future. It invited the SG to reflect on the definition of health risk state and consider whether any amendment to it was necessary.	Agreed to consider this issue further for stage 2, but wanted to ensure that the definition was not too rigid that it did not provide for appropriate flexibility in monitoring new illnesses and conditions. ( <a href="#">SG, 2008a, p 2-3</a> ).	Government amendments (28 and 29) lodged – See Table 3.
Definition of director and diagnostic laboratory – <a href="#">Para 53-57</a>	The Committee welcomed the Minister's intention to amend the definition of director of a diagnostic laboratory and noted that the SG is giving further consideration, in consultation with the Food Standards Agency, to whether laboratories testing food and water samples should be covered by the Bill.	Agreed to lodge amendments at stage 2 concerning the definition of a director of a diagnostic laboratory. As regards the issues connected with the testing of food and water samples, advised that the SG was consulting with the Food Standards Agency. <a href="#">SG, 2008a, p 3</a> ).	Government amendments (31 and 32) lodged at stage 2 – see Table 3.
10-day time limit for notification – <a href="#">Para 58-60</a>	The Committee was satisfied with the SG's explanation of the 10-day rule for notification by laboratories. Further, the Committee asked how the provisions of the Bill would apply in respect of tests performed in a laboratory that is not within Scottish jurisdiction and welcomed the Minister's agreement to look into the matter.	Agreed to lodge an amendment at Stage 2 to clarify this issue.	Government amendment (30) lodged at stage 2 – see Table 3.

Stage 1 Report	Committee Recommendation	Scottish Executive Response	Outcome
Lists of notifiable organisms - <a href="#">Para 61-65</a>	The Committee welcomed the Minister's commitment to lodge amendments at stage 2 to remove "any other clinically significant pathogen found in blood" from the list of notifiable organisms set out in schedule 1.	Issue raised with the Minister in her stage 1 evidence to the Committee (SPHSC, 2008c, col <a href="#">582-583</a> ). The Minister said that the expert working group that developed the list considered that it would be wise to include the words so that public health professionals could be alerted to any new risk. However, she accepted the issues raised, acknowledged that the description was wide and agreed to remove the words at stage 2.	Government amendments (18-24) lodged at stage 2 – see Table 3.
Biosecurity - <a href="#">Para 66-68</a>	The Committee asked about biosecurity arrangements in respect of tests performed in a laboratory that is not within Scottish jurisdiction and welcomed the Minister's agreement to look into the matter.	Advised that the House of Commons' Innovation, Universities and Skills Committee had launched a UK-wide inquiry into biosecurity at the end of 2007, which was expected to highlight any additional requirements to be met (subsequently the Committee was made aware that the report was due in May 2008). Added that work was on-going to consider what lessons need to be learned from the incident and, more generally, what more can be done to ensure that security is as good as possible. (SPHSC, 2008a, para <a href="#">66-68</a> ).	
<b>Part 3: Public health investigations</b>			
Appointment of an investigator - <a href="#">Para 69-72</a>	The Minister acknowledged the concerns raised by the Committee about the relationship between the provisions to appoint a public health investigator and the earlier provisions to appoint local authority and health board competent persons and agreed to reflect upon the matter. The Committee noted the Minister's subsequent letter, dated 28 February (see <a href="#">SG, 2008d, p 2</a> ), giving a rationale for the section 21 provisions on the appointment of public health investigators, but believed that there was a need for more clarity and encouraged the Minister to reflect further on the matter.	Noted that the intention of the wording was to provide flexibility for the statutory investigation of public health investigations by statutory bodies. However, given the concerns of the Committee and other consultees, the SG agreed to lodge amendments at stage 2 to ensure the role of the health board and the local authority competent person in instigating such investigations is clear. ( <a href="#">SG, 2008a, p 3</a> ).	Government amendments (37-39) lodged at stage 2 – see Table 3.

Stage 1 Report	Committee Recommendation	Scottish Executive Response	Outcome
Summary application procedure - <a href="#">Para 75-80</a>	The Committee noted with surprise that court procedures referred to in the Bill were not competent; was dismayed that a Bill could reach the stage of introduction in the Parliament with incorrect provisions; was disappointed that it was not clear whether the SG's proposed course of action with regard to this matter was as simplified as the proposal by the Law Society of Scotland; noted the Minister's reassurances, and awaited with concern further correspondence clarifying the matter. Further, the Committee reserved the right to seek further evidence on this matter at stage 2, should the Bill progress to that stage.	Stated that amendments would be introduced at Stage 2 to ensure that the procedures in parts 3, 4 and 5 of the Bill accurately reflected current Scottish civil law procedures and fulfil the policy intentions of the Bill. Added that these were prepared following discussion with the Law Society. ( <a href="#">SG, 2008a, p 4</a> ).	Government amendments (46, 157, 178 and 188-190) lodged at stage 2 – Table 3.
Compensation: the appointment of an arbiter – <a href="#">Para 83-85</a>	The Committee noted the Minister's acknowledgement, in supplementary written evidence, the point made by the Law Society of Scotland that people should be able to select the Lands Tribunal for Scotland as an arbiter for compensation cases relating to public health investigations. The Minister advised that the Law Society of Scotland's suggestions were being considered further and the Committee welcomed her commitment to lodge amendments at stage 2 if appropriate.	Stated that there should be a simple, straightforward way of resolving disputes relating to the levels of compensation payable under Parts 3, 4 and 5 of the Bill. Added that the SG had sought to achieve this by allowing the parties to agree a person to resolve the dispute and, if such a person cannot be agreed upon, for the Lands Tribunal to deal with it. However after listening to concerns that this approach may be considered somewhat restrictive and that it would be more appropriate to make provision for the Lands Tribunal itself to determine disputes that may arise over the provision of compensation, intended to lodge an amendment at Stage 2 to provide that the Lands Tribunal may act as arbiter in cases of dispute over compensation.	The SG (2008c) has advised that it undertook to pursue whether the President of the Lands Tribunal could be appointed as arbiter in such cases. However, it was not possible to finalise discussions prior to stage 2 deadlines.

Stage 1 Report	Committee Recommendation	Scottish Executive Response	Outcome
<b>Part 4: Public health functions of health boards</b>			
Duty to give explanation: exemption – <a href="#">Para 86-89</a>	The Committee suggested that any exemption to the requirement to give an explanation should be subject to the caveat that, in situations where a requirement had not been given, it should be required that the explanation be given as soon as practically possible. The Minister agreed to give further consideration to the issues raised by the Committee about the exemption from the duty to give explanation.	The Committee's comments were in connection with supplying information to an individual who the health board is seeking to have medically examined, quarantined, detained in hospital or detained in hospital long-term or where a health board competent person is proposing to make an exclusion order or a restriction order. The Committee was concerned that the wording of the Bill would mean that a person could be denied this if the matter was urgent. The SG agreed to bring forward amendments at stage 2 to clarify the issue consider the matter further ( <a href="#">SG, 2008a, p 4</a> ).	Government amendments (58-64, 72, 74, 80, 81, 86, 92 & 93) lodged at stage 2 – see Table 3.
Appealing medical examinations – <a href="#">Para 90-99</a>	The Committee was not satisfied with the Minister's position that there would be no practical purpose in appealing a sheriff's decision to authorise the medical examination of a person other than to enable the individual to obtain compensation: suing for damages is a separate issue and seeking a remedy via judicial review under human rights legislation would be a very long and expensive process. Furthermore, the Committee did not accept the suggestion that an appeal would be unlikely to provide a test for other cases on the basis that any appeal would be restricted to the facts and circumstances of a particular appeal – the Committee believed that, if those facts and circumstances were similar to a prior appeal, the outcome of that prior appeal would be relevant to the appeal under consideration. Accordingly, the Committee urged the Minister to reconsider the position on this matter and to lodge amendments to the Bill to include a specific right of appeal following a decision to proceed with a compulsory medical examination, whether or not the examination has taken place.	Stated that the policy intention behind the no appeal mechanism was that the decision to medically examine someone without consent would be taken only when it was crucial that evidence was obtained as to whether an individual or group of individuals had a particular infectious disease, or strain of disease which would have a significant impact on public health. This would be undertaken as a last resort, after engagement with the individual to try to persuade them as to the necessity of the examination. Whilst orders which restrict liberty, i.e. exclusion, restriction, quarantine and detention, would remain in force while any appeal is being considered, thus preserving the public health benefit, this would not be possible in the case of medical examinations. However, in light of the Committee's and other stakeholders' concerns on this issue, the SG reconsidered the position. Whilst an appeal mechanism could delay the examination, the SG was assured that quarantine, as an initial response, could prevent or reduce the risk of spread of potential infection, until such time as an appeal on medical examination could be heard. Thus agreed to bring forward amendments at Stage 2 to allow for appeal against medical examination. ( <a href="#">SG, 2008a, p 5</a> ).	Government amendments (65 and 131) lodged at stage 2 – see Table 3.

Stage 1 Report	Committee Recommendation	Scottish Executive Response	Outcome
<p>Exclusion and restriction orders – <a href="#">Para 100-104</a></p>	<p>The Committee noted the Minister’s explanation of the difference in the extent of restriction to a person’s liberty by exclusion and restriction orders compared with quarantine orders and understood the need for rapid action. Nevertheless, the Committee had some sympathy with the views expressed in the legal submissions. The Committee also recommended that the provision should refer to an order prohibiting persons from entering or remaining in “specified places” rather than in “any place”, which could be considered confusing.</p>	<p>The SG was satisfied with the provisions in the Bill as introduced, and explained that there was a clear distinction between exclusion and restriction orders and those which require the authorisation of a sheriff — that is medical examination, quarantine and detention orders. The SG’s view was that it is appropriate that the assessment of risk that requires the restriction of some contact with the general public can be assessed and made at health board competent person level, based on their expertise and experience. Considered that this was in line with normal practice, whereby Designated Medical Officers of Health Boards (who act on behalf of local authorities in the exercise of their statutory public health responsibilities) exclude individuals from work, or exclude children from school, if they have an infectious disease or have been exposed to an infectious disease. Such powers would be used in, e.g. outbreaks of salmonella or e-coli. However, where the risk is judged to be sufficiently high that measures more restrictive of individual liberty are required, e.g. quarantine and detention orders, then the SG considered it appropriate that these more restrictive orders were made by the sheriff. (<a href="#">SG, 2008a, p 5-6</a>).</p> <p>Noted that the words ‘any place’ and ‘any activity’ are used because they set up the entitlement of the competent person to make the exclusion or restriction order. The detail of what must be specified in the order is then set out in other sections. Thus, the effect of the sections taken as a whole is that persons will be prohibited from going to “specified places” or from taking part in “specified activities”. In addition, Health Board competent persons have a duty to make the least restrictive order necessary. (<a href="#">SG, 2008a, p 5-6</a>).</p>	<p>Non-government amendments (199 and 200) lodged at stage 2 – See Table 4.</p>

Stage 1 Report	Committee Recommendation	Scottish Executive Response	Outcome
<b>Part 7: International Health Regulations</b>			
International Health regulations - <a href="#">Para 115-116</a>	Noted the recommendations of the Subordinate Legislation Committee.	This Part of the Bill creates a regulation-making power to give effect to IHR 2005 and subsequent amendments. The purpose and scope of IHR 2005 are to prevent, protect against, control and respond to the international spread of disease while avoiding unnecessary interference with international traffic and trade. In its <a href="#">Stage 1 report</a> (SPHSC, 2008a, para 115-116) the Committee made no recommendations on this, though noted comments by the Subordinate Legislation Committee, which are detailed in the report. The SG ( <a href="#">2008a, p 7</a> ) noted that it would bring forward amendments at Stage 2 which would ensure a consistency of approach with provision in the UK Health and Social Care Bill currently going through the Westminster Parliament, which would implement the IHR in England and Wales. It also committed to work with the UK Department of Health and stakeholders in the development of regulations, to be made under the powers in section 89, which, it said, would be subject to comprehensive consultation.	Government amendments (205-212, 214 and 224) lodged at stage 2 – see Table 3.  Committed to consultation on future regulations should the Bill be passed.
<b>Part 8: Information on health effects of sunbeds</b>			
Information on the health effects of sunbeds - <a href="#">Para 117-141</a>	The Committee acknowledged that the collaboration between Ken Macintosh MSP and the SG was an on-going process and was grateful to them for alerting it to their plans at an early stage, allowing evidence to be taken at stage 1. However, given that the evidence taken unavoidably involved examining proposals without the benefit of sight of the proposed legislative provisions, the Committee reserved the right to seek further evidence once the amendments had been lodged, which may include licensing. Nonetheless, the Committee welcomed the principle of the proposals outlined in the evidence at stage 1.	Draft amendments were published prior to being lodged. This allowed the Committee to take further evidence from major stakeholders on 14 May 2008 (SPHSC, 2008d, col <a href="#">839-864</a> ).	Non-government amendments (1-17, 202, 202A, 202B, 203, 266 and 267) – see Tables 3 and 4.

Stage 1 Report	Committee Recommendation	Scottish Executive Response	Outcome
<b>Part 9: Statutory nuisances</b>			
<p>Enforcement – <a href="#">Para 146-149</a></p>	<p>The Committee noted the SG’s explanation of how fixed penalty notices (FPNs) would work in relation to statutory nuisances. However, the Committee remained concerned that the wording of the Bill would offer an offender “the opportunity of discharging any liability to conviction” in respect of an offence by payment of a fixed penalty and welcomed the Minister’s commitment to consider this matter.</p>	<p>SG considered further how best to deal with cases of both discrete nuisances which persist after payment of a FPN and recurring offences. Thus, intended to lodge amendments at Stage 2 to clarify the issue. In addition, the SG would provide detailed procedural guidance to enforcement officers before implementation. (<a href="#">SG, 2008a, p 6</a>).</p>	<p>The SG (2008c) has advised that it undertook to consider the operation of the FPN scheme in relation to an apparent loophole of an offender who does not abate a nuisance but who discharges his liability for prosecution by paying the FPN. No specific amendment on this was required as the Environmental Protection Act 1990 contains powers to allow local authorities to issue a fresh abatement notice, which creates a new basis for liability and allows the local authority to take enforcement action if it is breached. This will be explained in the guidance, referred to in the SG response, which is due to be published in June 2008.</p>
<b>Part 10: General and miscellaneous</b>			
<p>Disclosure of information – <a href="#">Para 154-156</a></p>	<p>The Committee welcomed the SG’s undertaking to lodge amendments to the Bill to take into account situations where an authority may need to disclose information about an individual without that individual’s consent.</p>	<p>Under the Bill as introduced, information would only be disclosed between relevant bodies for the purposes under the Bill “if the individual consents”. The Committee considered that there might be circumstances in which the individual did not consent (eg where an individual is too ill to give their consent) but one authority needs to refer information to another body. The Committee raised this point with the Minister, who noted the SG’s intention to amend the Bill at stage 2 to take account this issue. (SPHC, 2008a, para 154-156).</p>	<p>Government amendments (215-222) lodges at stage 2 – see Table 3.</p>

Stage 1 Report	Committee Recommendation	Scottish Executive Response	Outcome
Requirement to consult appropriate stakeholders before regulations are introduced – <a href="#">Para 157-159</a>	The Committee welcomed the Minister's agreement to consider whether to include in the Bill a general requirement to consult appropriate stakeholders before regulations were drawn up.	Noted that it was normal practice to consult stakeholders before making regulations and the SG would expect that practice to continue. However, to put the matter beyond doubt, would lodge an amendment at Stage 2 to incorporate a specific duty to consult. However, such an amendment would need to take into account circumstances in which Scottish Ministers may need to make regulations in urgent situations. ( <a href="#">SG, 2008a, p 6</a> ).	Government amendments (223) lodged at stage 2 – see Table 3.

## STAGE 2: MAIN AMENDMENTS AGREED TO

Stage 2 (detailed consideration of the Bill) was completed by the Committee on 21 May 2008 and was followed by publication of the [Bill \[as amended at Stage 2\]](#). Table 3 provides an overview of the main amendments agreed to at Stage 2, with a focus on any amendments in response to concerns raised during Stage 1 consideration of the Bill, and the effect of these amendments. It also notes any additional commitments made or possible stage 3 amendments. The vast majority of the amendments agreed to at Stage 2 were lodged by the Scottish Government.

**TABLE 3: SUMMARY OF MAIN AMMENDMENTS AGREED TO AT STAGE 2**

Issue and reference	Amendment and effect	Outcome
<b>Part 2: Notifiable diseases, notifiable organisms and health risk states</b>		
Lists of notifiable organisms: removal of “any other clinically significant pathogen found in blood” from the list of notifiable organisms set out in schedule 1 (SPHSC, 2008b, col <a href="#">804-806</a> ).	Amendment <a href="#">18</a> was in response to the Committee's recommendation on this issue. Also lodged were amendments <a href="#">19-24</a> , which sought to add a disease and various organisms to the lists in schedule 1 following representations made by a number of stakeholders. One amendment (22) was to change “ <i>Varicella</i> ” virus to “ <i>Varicella-zoster</i> ” virus - the correct name of the organism that causes chickenpox. Dr Richard Simpson MSP was concerned that this was to be included, given that it is a common virus, the workload this would mean for laboratories in having to notify boards about it, and wondered in what circumstances a test for the organism would be undertaken. The Minister agreed to provide clarification on the issue connected with amendment 22 prior to stage 3.	The Minister agreed to provide clarification on amendment 22 prior to stage 3.

Issue and reference	Amendment and effect	Outcome
To include a patient's school or place of work in issues to be reported should be reported and to reorder the items included in the definition of the NHS identifier (SPHSC, 2008b, col <a href="#">807-809</a> ).	Amendments <a href="#">25 and 27</a> were in response to the Committee's recommendation and sought to include the address of a patient's school or place of work in sections 13 and 14. These were agreed to. Dr Richard Simpson MSP lodged amendments <a href="#">25A and 27A</a> , which proposed also adding the name of a patient's place of work or education to the information notified, as he considered that the address of a place may not always be sufficient. Despite initially opposing the amendments, the Minister said she was relaxed about them and the Committee agreed to them. Amendment <a href="#">26</a> addressed the Committee recommendation of reordering the items in the definition of the NHS identifier.	
Definition of a health risk state (SPHSC, 2008b, col <a href="#">812-813</a> ).	Following the concerns of the Committee that the definition may be too wide and may encompass unintended situations, amendments <a href="#">28 and 29</a> sought to amend the definition so that the meaning of the phrase "health risk state" would encompass only those things that are listed in the section, rather than including them (see Table 4, for further debate on this issue).	
Definition of director a of a diagnostic laboratory (SPHSC, 2008b, col <a href="#">814</a> ).	Following the recommendation of the Committee, amendments <a href="#">31 and 32</a> and would have the effect of extending the list of persons who may be 'in charge' of the diagnostic laboratory to include persons who may not have a medical background.	
10-day time limit for notification in circumstances where tests are performed in a laboratory that is not within Scottish jurisdiction (SPHSC, 2008b, col <a href="#">813-814</a> ).	Amendment <a href="#">30</a> followed the recommendation of the Committee, and would have the effect of making provision about how identification of a notifiable organism may take place and when it takes place. Where a diagnostic laboratory makes the identification of an organism itself, it is when it makes that identification. Where a diagnostic laboratory sends samples to other laboratories (including ones outwith Scotland), the date of identification is the date on which the diagnostic laboratory becomes aware of the identification by the other laboratory.	
<b>Part 3: Public health investigations</b>		
The relationship between the provisions to appoint a public health investigator and earlier provisions to appoint local authority and health board competent persons - ensuring the role of the health board and the local authority competent person in instigating such investigations is clear (SPHSC, 2008b, col <a href="#">816</a> ).	In response to the Committee's recommendations, amendments <a href="#">37, 38 and 39</a> , collectively, would allow competent persons to appoint and be appointed as investigators for public health investigations. The SG considered that, in most cases, a health board competent person would appoint someone else as an investigator, including a local authority competent person, but in exceptional cases the competent person might need to appoint themselves as the investigator if there was no one else in the area to carry out that role.	

Issue and reference	Amendment and effect	Outcome
Clarifying, and providing consistency between, the provisions concerning powers of investigation (SPHSC, 2008b, col <a href="#">817-819</a> ).	Amendments <a href="#">43-45, 47-49, 170, 50-53, 177 &amp; 179-187</a> were not lodged as a result of the Committee's recommendations. Discussion centred round amendments 47 and 48, which would extend the powers a sheriff or justice of the peace, in issuing a warrant) (already in section 27 - public health investigation warrants), to authorise investigators to take any other person they authorise, including a constable if they expect to be seriously obstructed, into premises under investigation, and to allow the investigator to take any equipment or materials into premises under investigation, for the purpose of the investigation. This sought to make these powers consistent with powers set out in section 22 (powers relating to entry to premises). Dr Richard Simpson MSP asked for clarification from the Minister on the need to have a "constable" explicitly mentioned. Firstly, because the beginning of that paragraph stated that a warrant could authorise investigators to take any other person they authorise. Secondly, because to gain entry to premises may require a more appropriate person eg the fire and rescue service for a biohazard threat. The Minister said the provision would not preclude others' being brought in, but given the personal obstruction to entry to the premises, it was felt that that specification was important. However, she agreed write to the Committee with further information on that point.	Minister to write to the Committee with further information on the point raised.
To ensure court proceedings in the Bill are competent (SPHSC, 2008b, col <a href="#">823-824</a> ).	Following the Committee's concerns on these matters, amendments <a href="#">46, 157, 178 and 188 to 190</a> were lodged to rectify the various problems raised.	
Public health investigations: compensation.	Section 30 specifies the circumstances in which compensation may be paid by persons who appoint investigators to carry out a public health investigation. Following concerns at of stakeholders discussed at during stage 1, the Minister lodged <a href="#">amendments 54-56</a> making it clear where responsibility for payment lies – namely, with the employer of the investigator or the employer of any person who is authorised by the investigator. In addition she lodged <a href="#">amendment 57</a> that made a small consequential change to the appointment of the arbiter, to accommodate circumstances in which compensation may be payable by more than one person.	
<b>Part 4: Public health functions of health boards</b>		
Providing information to an individual when a health board is applying for compulsion, exclusion or restriction orders (SPHSC, 2008b, col <a href="#">826-828</a> ).	Principally, amendments <a href="#">58-64, 72, 74, 80, 81, 86, 92 &amp; 93</a> were in response to the Committee's report. This sought to remove the section concerning the situation of not providing an explanation if the risk to public health was a matter of urgency. Instead a new section was proposed placing a duty on health boards, so that in circumstances where it was not reasonably practicable to provide an explanation it should be given "as soon as reasonably practicable after taking the proposed action and in so far as it is reasonably practicable to do so". Whilst welcoming the proposed amendment, Dr Richard Simpson MSP was concerned about the use of the word "reasonable" and questioned what that actually meant. The Minister agreed to cover such issues in guidance.	SG guidance to be published on this issue.

Issue and reference	Amendment and effect	Outcome
Health board applications to the sheriff for an order for medical examination, quarantine, detention in hospital and exceptional detention in hospital, respectively (SPHSC, 2008b, col <a href="#">826-830</a> ).	<p><a href="#">Amendments 62, 71, 79, 91, 103 and 105</a> were not in connection with a specific Committee recommendation. The Bill as introduced provided that a health board may apply to the sheriff for the area within which the board has its principal office for an order for medical examination, quarantine, detention in hospital and exceptional detention in hospital respectively. The SG considered that this may be inconvenient and cause an unnecessary delay, as the person in relation to whom the action is to be taken and the relevant health board competent person who has to be satisfied that the criteria for these orders has been met may not be located close to the board's principal office. The amendments therefore provided for a health board to apply to any sheriff in the health board's area, thus allowing it to choose the most appropriate sheriff court for each application. Rhoda Grant MSP lodged Amendments 172, 173, 174, 175 on the same issue. However, these amendments would provide that a health board is able to apply to the sheriff for the area in which the person is present, rather than the sheriff for the area within the board has its principal office, as currently provided. Rhona Grant said this would "redress the balance in favour of the person who is subject to the court action so that the court action takes place in a court close to the person, not one that is convenient to the health board alone". The Minister considered that what Rhona Grant was seeking to achieve would happen in practice under the SG amendments, but felt the SG amendments provided more flexibility. However, she agreed to provide additional guidance to the effect that the sheriff should be the sheriff closest to the person concerned. As a result, Rhona Grant did not move her amendments and the SG amendments were agreed to.</p>	SG guidance on ensuring that hearings for applications for such orders should be held in front of the sheriff closest to the person.
Appealing a sheriff's decision to authorise the medical examination of a person (SPHSC, 2008b, col <a href="#">830-833</a> ).	Amendments <a href="#">65 and 131</a> flowed from the Committee's concern on this issue. Amendment 65 would provide for such an appeals mechanism. In the SG stated that guidance on implementation would advise stakeholders to apply for a quarantine order when a medical examination is applied for, so that there is still protection of public health in the event of an appeal against the medical examination.	SG guidance on the issue to be developed.
Variation of exclusion and restriction orders – health board competent persons (SPHSC, 2008b, col <a href="#">836-837</a> )	These were not amendments that flowed from a Committee recommendation. The Bill provides that a health board competent person may make exclusion and restriction orders. However, as originally drafted, only the competent person who made an order may vary, review or revoke it. Amendments <a href="#">99, 102, 119 and 123</a> sought to ensure that any competent person in the same health board area as the competent person who made an order would be able to undertake those functions, in case the competent person who made the order is unavailable.	
Extension of quarantine and hospital detention orders (SPHSC, 2008b, col <a href="#">837</a> ).	<p><a href="#">Amendments 104, 109, 116-118, 120-122, 124-129, 132, 133 and 135</a> did not result from a recommendation of the Committee, and sought to further clarify the role of the health board competent person. The SG stated that whilst this role was clear in relation to applying to the sheriff to medically examine, quarantine, detain, and detain under an exceptional detention order, it was less clear in relation to reviewing, extending and varying, and revoking orders. Principally, the amendments sought to ensure that the role of the competent person was explicit and clear throughout Part 4.</p>	

Issue and reference	Amendment and effect	Outcome
Appealing quarantine, detention or exceptional detention orders in circumstances where the Order was made when the person was not present (SPHSC, 2008c, col <a href="#">864</a> ).	Although not the result of a specific Committee recommendation <a href="#">Amendments 130 and 134</a> were in response to concerns that such appeals would not be speedy enough. They provide that, where a person would be subject to such an Order, and the order had been made without the person to whom it applied being present or represented, that person would be able to apply to the sheriff for recall of the order within 72 hours of the order being made.	
Obstruction offences (SPHSC, 2008c, col <a href="#">866-867</a> ).	These amendments were not as a result of a Committee recommendation. Principally, <a href="#">amendments 152-156, 238, 243, 246, 158 and 159</a> , were lodged to plug gaps in the offence provisions in the Bill (in Parts 4, 5 and 6), and create three new offences: i) obstructing a person authorised to take someone to a place of quarantine, ii) breaching any conditions that are imposed in a quarantine order, iii) to apply where a child is subject to an exclusion order, a restriction order or a quarantine order, it would be the parents or the person with day-to-day care and control of the child who would be responsible for ensuring that the child does not go to the place from which they are excluded, without a reasonable excuse.	
<b>Part 5: Public health functions of local authorities</b>		
Serving notices on occupiers or owner of infected premises or things Obstruction offences (SPHSC, 2008c, col <a href="#">868-869</a> ).	Sections 68 and 71 of the Bill, as introduced, state that such notices must be in a form prescribed by regulations. The SG considered that this may place an unnecessary bureaucratic burden on local authorities, particularly in light of their experience in serving notices under other legislation. Thus, <a href="#">amendments 229 and 235</a> sought to remove these provisions, with the SG intending to cover the issue in guidance instead.	SG to publish guidance on this issue.
<b>Part 7: International Health Regulations</b>		
Giving effect to International Health Regulations 2005 (IHR 2005) (SPHSC, 2008c, col <a href="#">871-873</a> ).	<a href="#">Amendments 205 to 212, 214 and 224</a> followed the outcome of work between the SG and the other Administrations in the United Kingdom to ensure that similar powers – and, therefore, a similar level of health protection – would be available at points of entry into the four UK countries (see Table 2, above). They would ensure that there is consistency of approach between this Bill and the Health and Social Care Bill, currently progressing through the UK Parliament, thus providing a comprehensive system of health protection regulations throughout the UK.	

Issue and reference	Amendment and effect	Outcome
<b>Part 8: Information on the effects of sunbeds</b>		
<p>Regulation of provision of sunbeds (SPHSC, 2008c, col <a href="#">839-863</a> and SPHSC, 2008d, col <a href="#">878-899</a>).</p>	<p>There was a significant debate concerning the regulation of sunbeds at stage 2. As discussed in Table 2, amendments to bring in regulation were lodged by Ken Macintosh MSP with the support of the Scottish Government. These were published in draft form, which allowed the Committee to take additional written evidence (see the Committee's Public Health etc (Scotland) Bill <a href="#">webpage</a> for all written supplementary evidence received on this issue) and oral evidence (SPHSC, 2008c, col <a href="#">839-863</a>). Views ranged from those supporting regulation of the type proposed by Mr Macintosh, to those who considered a more formal licensing scheme may be appropriate and those who wanted less regulation than that proposed by Mr Macintosh.</p> <p>As regards amendments, two main sets were lodged. <a href="#">Amendments 202 and 203</a> in the name of Helen Eadie MSP and <a href="#">amendments 1-17</a> in the name of Ken Macintosh MSP. Helen Eadie's amendments sought to introduce a licensing scheme through amending the Civic Government (Scotland) Act 1982. Mr Macintosh's amendments, which had the support of the SG sought to bring in a regulation scheme, with a variety of provisions, including:</p> <ul style="list-style-type: none"> <li>• making it an offence for an operator to allow persons under the age of 18 to use a sunbed on their premises</li> <li>• creating the offence of selling or hiring a sunbed to a person who is under the age of 18</li> <li>• making it an offence for an operator of a sunbed premises to allow, without reasonable excuse, a person to use a sunbed on those premises without supervision</li> <li>• requiring the operator or their employee / agent to be present on the sunbed premises at any time a person is using a sunbed on those premises</li> <li>• empowering an authorised local authority officer to enter and inspect premises and an environmental health officer (EHO) to enter a dwelling place</li> <li>• powers of authorised local authority officers to issue Fixed Penalty Notices (FPN) when an operator of a sunbed premises has committed an offence</li> <li>• granting powers to Scottish Ministers to introduce regulations on the application of sunbed use for medical purposes and in the information that must be provided to users of sunbeds</li> </ul>	<p>SG to reconsider issue of entering private dwellings prior to stage 3.</p> <p>Further discussions to take place on additional provisions to those in Ken Macintosh's amendments, perhaps through the 1982 Act.</p>

Issue and reference	Amendment and effect	Outcome
Regulation of provision of sunbeds. (cont.).	There was significant debate concerning these two different approaches. There was sympathy with Helen Eadie's amendments, particularly considering the difficulties the Committee had been made aware of acting on health and safety standards. It was pointed out in evidence that a licensing scheme may make it easier to act on such standards, indeed some local authorities had already gone down this route. (See SPHSC, 2008c, col <a href="#">839-863</a> regarding this debate). As health and safety standards were a matter for the UK Parliament, the Minister (SPHSC, 2008d, col <a href="#">889-890</a> ) said she had begun discussions with the Health and Safety Executive to explore what could be done in practical terms about the problems of enforcement by EHOs. She suggested that if those discussions did not prove productive then discussions could then take place on proceeding under the more appropriate legislative vehicle of the Civic Government (Scotland) Act 1982 (the 1982 Act), instead of trying to make more amendments at stage 3. Following further debate Helen Eadie's amendments were not agreed to by a majority of the Committee, though Ken Macintosh's were agreed to unanimously. One outstanding issue in relation to Mr Macintosh's amendments was concerns about EHOs being able to enter private dwellings and the Minister agreed to consider the issue further before stage 3.	
<b>Part 9: Statutory nuisances</b>		
The need to consult before introducing any regulations emanating from the new powers that are introduced in this Part of the Bill (SPHSC, 2008d, col <a href="#">906-907</a> ).	<a href="#">Amendments 247, 249, 250, 254 and 255</a> did not flow from a recommendation from the Health and Sport Committee, but of a recommendation of the Subordinate Legislation Committee (the SLC) endorsed by the SPHSC (2008a, para 185). This was to bring provisions for regulatory powers under this Part in the Bill in relation to the timing of FPNs, which themselves sought to amend the Environmental Protection Act 1990, in line with procedures in that Act and the Smoking, Health and Social Care (Scotland) Act 2006. The effect of the amendments would ensure that Scottish Ministers, before making regulations, consult, as is reasonably practicable to do so, appropriate stakeholders. In addition, the amendments would introduce affirmative procedure for all regulation-making powers introduced into the Environmental Protection Act 1990 by Part 9 of the Bill, except for the power to exclude places or types of place from insect nuisance. This SG considered this went beyond the recommendation of the SLC. Finally, the Minister noted that the SG will produce procedural guidance for all existing statutory nuisance provisions, as well as the proposed new provisions.	SG to publish draft guidance on all existing statutory nuisance provisions in June 2008.
Statutory nuisance – land covered by water (SPHSC, 2008d, col <a href="#">907</a> ).	Amendment 248 was not a result of a Committee recommendation. It places equal emphasis on “water covering land” and “land covered with water”. The Bill as introduced only referred to “land covered with water” and it was thought that this might encourage emphasis on the “land” rather than the “water” element. The amendment specifically includes “structures” within the definition of “land” and this is designed to capture things like outdoor swimming pools, culverts etc., which may lead to nuisances. Buildings are not included within the definition of “land” in order that indoor swimming pools etc. are not caught. The amendment also contains a specific list of exclusions for matters which are adequately covered by other legislation or which have not given rise to nuisances in practice.	

Issue and reference	Amendment and effect	Outcome
<b>Part 10: General and miscellaneous</b>		
Where an authority may need to disclose information about an individual without that individual's consent (SPHSC, 2008d, col <a href="#">908-909</a> ).	<a href="#">Amendments 215-221</a> result from the SGs commitment to consider this issue further following the Committee's recommendation. They clarify when information could be shared, for the purposes of the protection of public health, and to whom. They take account of the Committee's concern that there may be circumstances where information needs to be disclosed without the person's consent. In addition, the amendments sought to ensure disclosure of information would be made in accordance with the Data Protection Act 1998. Finally, Scottish Ministers would be given the power to introduce regulations to modify any enactment including the Act in line with other sections of the Bill.	
Requirement to consult appropriate stakeholders before regulations are introduced (SPHSC, 2008d, col <a href="#">909-910</a> ).	Following the Committee's recommendation in this area, <a href="#">amendment 223</a> provided that Scottish Ministers must, before making regulations under the Bill, consult, in so far as it reasonably practicable to do so, those they consider appropriate.	

## STAGE 2: KEY AREAS OF DEBATE – AMENDMENTS NOT AGREED TO

As can be seen from Table 3, above, the vast majority of amendments that were agreed to at Stage 2 were Scottish Government amendments. However, there were a number of non-government amendments. Some of these were lodged as 'probing' amendments designed to elicit more information or action from the Scottish Government. Members may seek permission from the Committee to withdraw these if they have received the information they wanted or have been given a commitment by the Government to consider the matter further in some way. Other non-government amendments are to make a specific change to the Bill, and these are often moved by the Member that has lodged them, though may not be agreed to. The following table outlines amendments that were lodged, and whilst, not being agreed to or withdrawn resulted in a particular commitment for further action on the part of the Scottish Government, or from the Member themselves.

**TABLE 4: SUMMARY OF KEY AMMENDMENTS LODGED BUT WERE WITHDRAWN OR NOT AGREED TO**

Issue and reference	Amendment and effect	Commitments
<p>Joint public health protection plans - health boards seeking the agreement of local authorities to the plans and not just consulting with them (SPHSC, 2008b, col <a href="#">802-803</a>).</p>	<p>This related to the Committee's recommendation on this point at stage 1. Dr Richard Simpson MSP lodged amendment <a href="#">192</a>, which sought to provide that health boards must agree joint public health protection plans with local authorities, rather than just consult with them. In response, the Minister (SPHSC, 2008b, <a href="#">col 803</a>) reiterated her view concerning bureaucracy and the experience health boards have in preparing similar plans (see Table 2, above), adding that the consequence of the amendment would be to make it impossible for a health board to comply with its duty to prepare a plan under another subsection of the Bill. She also noted that COSLA was not pursuing the issue. Dr Simpson replied that he still considered the duty to be weak, but would seek to withdraw the amendment and consult further on whether to lodge an amendment at stage 3.</p>	<p>Possible non-government stage 3 amendment following further deliberations.</p>
<p>Duties to notify notifiable diseases and organisms - Privacy Impact Assessments (SPHSC, 2008b, col <a href="#">809-811</a>).</p>	<p>This followed on from the debate, noted in Table 2, concerning issues raised by the Information Commissioners Office. Dr Richard MSP lodged <a href="#">amendments 193 and 195-197</a>, which would have the effect of putting a requirement on Scottish Ministers, in respect of sections 13-16, to undertake and have regard to the outcome of a privacy impact assessment (PIA) before issuing any guidance on the implementation of these sections. The SG considered that it was not clear that a PIA would be necessary or appropriate in these circumstances. It was concerned that placing a requirement for a PIA on the face of the Bill will remove from Ministers the discretion that all other organisations and bodies have in considering whether a PIA is required for a change in process. Following discussion, Dr Simpson sought permission to withdraw the amendment, adding that he would give further consideration to the issue before stage 3.</p>	<p>Possible non-government stage 3 amendment following further deliberations.</p>
<p>Exclusion orders: application of orders to specified places (SPHSC, 2008b, col <a href="#">833-834</a>).</p>	<p>As noted in Table 2, above, on exclusion and restriction orders the Committee recommended that provisions on these should refer to an order prohibiting persons from entering or remaining in "specified places" rather than in "any place", which it considered could be considered confusing. Helen Eadie MSP proposed <a href="#">amendments 199 and 200</a>, which would give effect to this in terms of exclusion orders. The Minister considered that all order-making sections of the Bill followed a standard and clear pattern in that what an order may cover is set out, and what a particular order must contain is specified. In addition, she considered the amendments could themselves lead to confusion and would require to be amended at stage 3. Helen Eadie said that despite the Minister's assurances she was still slightly concerned and said she may take further advice on this issue prior to stage 3.</p>	<p>Possible non-government stage 3 amendment following further deliberations.</p>

Issue and reference	Amendment and effect	Commitments
Prohibition on provision or display of certain information relating to sunbeds SPHSC, 2008d, col <a href="#">899-906</a> ).	Ken Macintosh MSP proposed amendments offering two options in preventing sunbed operators providing material referring to beneficial effects from sun bed use. <a href="#">Amendment 266</a> , proposed preventing sunbed operators providing persons entering sunbed premises with information referring to any beneficial effect on health of sunbed use or displaying any notice or other material making such a reference in or on sunbed premises. <a href="#">Amendment 267</a> , was wider and proposed preventing sunbed operators providing any information to any person referring to any beneficial effect of sunbed use. This is not restricted to sunbed premises. It also prevents an operator displaying a notice or other material in or on sunbed premises referring to such effects. The SG was opposed to the amendments on the grounds that both amendments were outwith legislative competence of the Scottish Parliament, as the regulation of misleading advertising is generally reserved. In addition, there was a concern the amendments could be open to challenge, given that amendment 5, which had been agreed to (see Table 3, above), exempted the medical use of sunbeds, inferring that they have a medical use. Finally, the SG considered that amendment 6 (see Table 3, above) provided that sunbed operators must provide a person who proposes to use a sunbed on sunbed premises with such information regarding the effects on health of sunbed use as may be prescribed by Scottish Ministers. Following discussion, it was suggested that amendment 6 , which had been agreed to, could be amended at stage 3 with the addition of a phrase along the lines of, "and this is the only information that can be displayed". The Minister agreed to consider this for stage 3, and Mr Macintosh sought to withdraw his amendments, which was agreed to by the Committee.	SG to consider the matter further prior to stage 3.

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