Dear Mr Gibson,

I am writing further to my oral evidence to your Committee on Wednesday 7 October. As you will recall, I promised near the end to follow up on an issue raised by John Mason. In doing so, I would also like to take the opportunity to correct a couple of errors in my evidence, and to respond a bit more fully to some of the criticisms of the Financial Memorandum – and in particular the summary table of costs – that were aired at the meeting.

Restrictions on advertising of alcohol: Police Scotland evidence

John Mason referred (at column 25) to the written submission by Police Scotland, which points out that the Bill provides for fixed penalties (for alcohol advertising offences) to be payable to local authorities (under paragraphs 2(2)(c) and 2(3) of the schedule to the Bill), whereas equivalent penalties under the Antisocial Behaviour etc. (Scotland) Act 2004 are payable to the court.

In my initial response, I inadvertently confused the issue here with that of alcohol awareness training, which (under section 30) is to be available as an alternative to the fixed penalty under the 2004 Act.

Police Scotland are correct to note that the Bill’s schedule provides for fixed penalty amounts to be payable to the relevant local authority. As they also point out, fixed penalties under the 2004 Act (Part 11) are payable to the clerk of the justice of the peace court (in practice, to the Scottish Courts and Tribunals Service).

The schedule to the Bill is largely modelled on that used in the Smoking, Health and Social Care (Scotland) Act 2005 – rather than on the 2004 Act. In the 2005 Act, the power to give fixed penalty notices is vested both in authorised officers of a local authority and in the police, but (in either case) payment must be made to “the council in the area of which the offence was alleged to have been committed or a person acting on its behalf” (paragraph 3(3) of schedule 1). Exactly equivalent provision is made in my Bill.

The main reason why the Bill provides for payment to be made to local authorities (rather than to the courts) is that the Scottish Ministers are required by law to pay to the UK Treasury an amount equivalent to any income received by the Scottish courts.
(including from payment of fixed penalties). Although Ministers in practice allow the courts to retain part of the sums received to cover their administration costs, providing for payments to be made to the local authority avoids this drawback altogether and allows all the income to be retained in Scotland.

As the police must already have different ticketing books and IT arrangements for fixed penalties under the 2004 and 2005 Acts, I am unclear why my Bill would create additional cost and complexity by its choice of one existing Act rather than the other as its model.

Number of licensees

Early on in my evidence (Official Report, column 5) I said I thought there were around 1,400 licensees in Scotland. In fact, the most recent published statistics (2013-14) show that there were 16,276 premises licences in force at the end of March 2014. I apologise for this inadvertent error. Notwithstanding this error it is clear that the costs of sending out any amendments to the licence, or indeed any further amendments from the Government, would only require a mail shot which could be combined with the annual mailing from the boards and therefore would be at minimal cost.

Summary table of costs

Mark Macdonald, Gavin Brown and yourself all raised questions about the summary table of costs at the end of the Financial Memorandum, querying the terms used and the way in which some cells cover two columns.

The main point to emphasise here is that this table is a summary of the FM as a whole. Each cell in the table aims to encapsulate what has been set out in more detail earlier in the FM, and should be read in that context.

I fully accept that a FM that answered the question of what costs were expected to arise from a particular measure with something as bare and unsupported as “None” or “Minimal” would be inadequate; but my FM does not do this. For each of the 10 measures, there is at least a paragraph of text under each of the three main headings required by Rule 9.3.2 – i.e. costs on the Scottish Administration, costs on local authorities and costs on other bodies, individuals and businesses. Potential savings (not required under the Rule) are also referred to in a number of instances.

Perhaps it would also help to explain a bit more about the terms used in the summary table:

- “None” has been used where the relevant paragraphs state that no costs (or savings) are expected to arise. Example: the cell for caffeinated alcohol (s.2) / Costs on Scottish Administration – which summarises paragraph 19 of the FM.
- “Unquantified” has been used where the relevant paragraphs mention costs (or savings) that may arise, but where it has not been possible to estimate meaningfully the amounts involved. Example: the cell for Multi-pack

---

discounting (s.1) / Costs on others – which summarises paragraphs 13 and 14.

- “Minimal” has been used where the relevant paragraphs mention costs that may arise, but anticipates that these will be very low. Example: the cell for Age discrimination (s.3) / Costs on Scottish Administration – which summarises paragraph 27 of the FM.

- “Some, but unquantified” has been used where the relevant paragraphs anticipate costs (or savings) that may arise, but where it has not been possible to estimate meaningfully the amounts involved. Example: the cell for container marking (s.4) / costs on local authorities – which summarises paragraph 34 of the FM. Firstly we have had to be cautious not to mislead the committee in part because our request for likely costs did not receive a sufficient number of replies to allow certainty in extrapolation; secondly where the proposal is innovative and the cost benefit ratio requires further testing, we have proposed pilots which may or may not lead to full roll out.

- “Significant, but unquantified” is used only once, in the cell for caffeinated alcohol (s.2) / Potential savings. This is because the relevant paragraphs (18, 24 and 25) refer to savings that could be significant in scale, but where related uncertainties prevent meaningful amounts being attributed directly to the Bill.

In relation to three of the 10 measures (community involvement, drinking banning orders and alcohol awareness training) a single “merged” cell in the table covers both “Costs on local authorities” and “Costs on others”. Again, the rationale for this is explained in the corresponding paragraphs of the FM – i.e. that such costs as are anticipated could fall partly on local authorities, and partly on others, in proportions that will depend on how the Bill is implemented in practice.

For example, paragraph 49 explains why the additional costs of consultation estimated in paragraphs 41-48 could be transferred wholly or partly from local authorities to applicants for licences by a decision to increase licence fees. Similarly, paragraph 90 explains that the costs of applying for DBOs might fall partly on local authorities and partly on the police, while paragraphs 104 to 106 explain that alcohol awareness training courses could be funded by a combination of local authorities, the police and Health Boards.

As a result, it has also been necessary to show the total (quantified) costs in the final row of the table as spread between local authorities and others.

**Best estimates**

At the end of the evidence session, you suggested that the Financial Memorandum might not fully comply with standing orders either because it does not contain “best estimates” of costs, or because it does not always distinguish costs on local authorities from costs on other bodies, individuals and businesses.

I do not accept that the Memorandum fails to comply with the relevant Rules. Throughout the document, it indicates clearly where costs (and savings) are anticipated, the anticipated scale of these, and the associated margins of uncertainty – and the methodology used is explained where appropriate. Where it does not provide estimated amounts, the reasons for this are explained – on the principle that it is better to be open about the uncertainties involved in implementing
some of these measures than to include arbitrary figures that cannot be explained or justified.

Similarly, where the FM does not fully separate the costs on local authorities and others, the reasons for this are explained in the FM – for example, because the Bill is not prescriptive on how certain measures will be implemented, and because the choices made will affect how costs are distributed.

You also said that you raise similar questions about Scottish Government FMs, and that “everyone should be held to the same standard”. While I understand and accept the principle of that, I also think that some account should be taken of the very different circumstances faced by an individual MSP introducing a Member’s Bill. A Minister introducing a Government Bill is supported by a team of civil servants, who in turn have access to all the resources and information available within the Scottish Administration, plus established channels to other public sector bodies. By contrast, the Non-Government Bills Unit, which assisted me in the preparation of my Bill and its accompanying documents, has far more modest resources and must rely much more heavily on published information or receiving responses from those who will be affected. I know that NGBU staff spent a considerable amount of time and effort seeking relevant information to inform the FM, but in many cases were simply unable to obtain it. (Some of this is documented in the FM itself – see paragraphs 45, 84 and 89, for example.)

What I hope this demonstrates is the considerable efforts that were made to cost the measures in the Bill, and to be open and clear about the limitations of the information and methodologies that were available at that time. Perhaps with more time and resources available, some more relevant information could have been included. But no FM is ever going to be perfect, nor can it be expected to give a full and accurate picture of what a Bill is going to end up costing. The reality is that this will always depend – to a greater or lesser extent – on a range of factors, not all of which can be anticipated with any confidence. This is particularly so when (as in this case) responsibility for implementing the Bill is outside the control of the member introducing it, and when the Bill is aiming at changing individuals’ behaviour and tackling deep-rooted social attitudes.

Whilst the costs have been difficult to estimate with accuracy there can be no doubt that these will be massively outweighed by the savings which could accrue from the health and community safety benefits.

I trust that these additional observations are helpful, and I look forward to seeing the outcome of your Committee’s scrutiny.

Yours sincerely,

Dr Richard Simpson MSP