

JUSTICE 2 COMMITTEE

Tuesday 5 September 2006

Session 2

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CONTENTS

Tuesday 5 September 2006

	Col.
ITEMS IN PRIVATE	2613
CHRISTMAS DAY AND NEW YEAR'S DAY TRADING (SCOTLAND) BILL: STAGE 1	2614
SUBORDINATE LEGISLATION	2670
Civil Legal Aid (Scotland) Amendment (No 2) Regulations 2006 (SSI 2006/325)	2670

JUSTICE 2 COMMITTEE **20th Meeting 2006, Session 2**

CONVENER

*Mr David Davidson (North East Scotland) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

- *Jackie Baillie (Dumbarton) (Lab)
- *Colin Fox (Lothians) (SSP)
- *Maureen Macmillan (Highlands and Islands) (Lab)
- *Mr Stewart Maxwell (West of Scotland) (SNP)
- *Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

COMMITTEE SUBSTITUTES

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Carolyn Leckie (Central Scotland) (SSP)
Mr Kenny MacAskill (Lothians) (SNP)
Margaret Mitchell (Central Scotland) (Con)
Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Mrs Mary Mulligan (Linlithgow) (Lab)
Karen Whitefield (Airdrie and Shotts) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Peter Betts (Debenhams)
Martin Clarke (Edinburgh Woollen Mill (Group) Ltd)
Bruce Fraser (Union of Shop, Distributive and Allied Workers)
Riddell Graham (VisitScotland)
Kevin Hawkins (British Retail Consortium)
Liz McHugh (Union of Shop, Distributive and Allied Workers)
Fiona Moriarty (Scottish Retail Consortium)
Alan Rankin (Scottish Tourism Forum)
Graeme Ross (Scottish Co-op)

CLERKS TO THE COMMITTEE

Tracey Hawe
Alison Walker

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 5

Scottish Parliament

Justice 2 Committee

Tuesday 5 September 2006

[THE CONVENER *opened the meeting at 14:07*]

Items in Private

The Convener (Mr David Davidson): Good morning. This is the 20th meeting in 2006 of the Justice 2 Committee, and I welcome people back from the summer recess, which I hope was productive for the people of Scotland. I hope that members also managed to get a bit of a rest.

Item 1 is to ask members of the committee if they agree that we should deal with item 6, our summation of evidence on the Christmas Day and New Year's Day Trading (Scotland) Bill, in private, as has been the custom. Is that agreed?

Members indicated agreement.

The Convener: We shall do the same for our other evidence sessions on the bill, when we pull together our evidence at the end of every meeting.

Christmas Day and New Year's Day Trading (Scotland) Bill: Stage 1

14:08

The Convener: I welcome Karen Whitefield, the member in charge of the bill, and Mary Mulligan, who is exercising her right as an MSP to attend any committee meeting of the Parliament. I am explaining that because sometimes the public get confused when new faces appear. I welcome both members this afternoon.

Before we hear from our witnesses, I have to ask whether the committee agrees to delegate to me the responsibility for arranging any payments of expenses correctly incurred by witnesses coming to the Parliament, which is standard procedure. Is that agreed?

Members indicated agreement.

The Convener: I welcome Fiona Moriarty, the director of the Scottish Retail Consortium; Kevin Hawkins, the director general of the British Retail Consortium; Bruce Fraser, from the Scottish divisional office of the Union of Shop, Distributive and Allied Workers; and Liz McHugh, who is a shop steward for USDAW.

Can you tell us why your organisations think, or do not think, that retail trade should be restricted on Christmas day and on new year's day?

Fiona Moriarty (Scottish Retail Consortium): The SRC, which is part of the British Retail Consortium, has consulted widely with our members on this matter over a number of years. Although we do not take a formal position—or any position—on Christmas day, our members are concerned about proposals relating to new year's day. As you will have noted from our submission, the SRC is mindful of the rights of workers and the special nature of new year's day in Scotland. However, we are yet to be convinced of the value of banning opening on new year's day. We feel that banning larger stores from opening on new year's day would be unnecessarily heavy handed. We are asking for a level playing field with other sectors. We are also concerned about a number of inconsistencies in the bill. For example, why should a larger retailer not be allowed to open on new year's day while a smaller retailer can? I will probably touch on a number of other points during the discussion, but I will leave that with you as a starter for 10.

Bruce Fraser (Union of Shop, Distributive and Allied Workers): I would like to make an opening statement.

The Convener: Could you make it extremely brief? Normally, we just go straight to questions. The question was to do with whether you are for or against the proposal. You could make your statement in answer to that question.

Bruce Fraser: We are for the bill, basically. We believe that it is necessary because of the fundamental change to the Christmas and new year's day celebrations that will come about if we do not have the bill. If large stores are allowed to open on those days, that will not only harm the staff who have to man the stores, it will fundamentally change the nature of that holiday. We have concerns about the code of practice that the SRC members say that they would adhere to. USDAW has had experience of retail employers saying that they were going to do one thing with regard to codes of practice and doing the opposite. For example, with regard to the Sunday trading laws, a major retailer sacked people for refusing to work on a Sunday, even though it had signed up to a voluntary code of practice. That necessitated the Sunday Working (Scotland) Act 2003 being brought in for the protection of staff.

We have difficulty accepting that a code of practice would work. We believe that the bill is necessary to protect the fundamental nature of the Scottish holidays and the traditions surrounding them.

Maureen Macmillan (Highlands and Islands) (Lab): Do members of the panel agree that new year's day has traditionally been a family day in Scotland and that it has been so for longer than Christmas day has been? In my childhood, the shops were always shut on new year's day rather than on Christmas day. Is it important to get across the idea that new year's day is a family day and that, therefore, shops should not necessarily be open, because that might disrupt family life?

14:15

Kevin Hawkins (British Retail Consortium): I will respond to that. First, if this was a bill to prohibit all shops from opening on Christmas day and new year's day, I could understand your point of view. However, it is not such a bill; it discriminates between shops of different sizes.

In effect, the bill creates two classes of employee: those who will be prohibited from working on new year's day, whether they wish to do so or not and whether or not there is consumer demand for the products that their shops sell; and those who, because they work in small shops, will probably be contractually obliged to work or be offered inducements to work. If family life and the traditions of Christmas day are sacrosanct for certain types of shop worker, why not for all? This bill discriminates.

Secondly, it is not true to say that staff in stores bigger than 3,000ft² will not have to work. As anyone familiar with the retail trade knows, there is always preparation behind the scenes the day or evening before, so that a store can open. Workers in the distribution chain must be in place, as must people who deal with telephone sales and internet queries. While it is true that, for stores larger than 3,000ft², the bill would prohibit workers who are employed on the sales floor from working, that is not the whole story. Stores must organise the previous day, which is a normal working day, for new year's day.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I want to ask a question on the floor size aspect, but I am not sure whether you wish us to deal specifically with that issue, convener.

The Convener: Well, the point has been raised.

Jeremy Purvis: My question is directed at USDAW. I was looking at the exemptions in the bill and considering the principle of large stores. It strikes me, for example, that an employee in Boots in Waverley railway station could be exempt, but an employee in the Boots store in Princes Street would not be exempt. Similarly, a restaurant might be part of a franchise that as a whole might be exempt, but the particular restaurant might not be exempt if it were part of a larger shop. I just wonder what USDAW's view is on the equality aspects of that.

Bruce Fraser: We do not have a problem with the bill and its 3,000ft² proposal. I am surprised that the SRC has a problem with it because the 3,000ft² principle came from a consensus that was agreed with employers with regard to the Sunday Trading Act 1994. As a concession to the employers, it was agreed that that size of store could open. We saw no reason to revisit what was agreed 12 or 14 years ago with regard to Sunday trading. If that agreement is good enough for Sunday trading laws, it is good enough for Christmas and new year.

As I said in my opening remarks, if the large stores opened, that would fundamentally change what is a traditional holiday and it would definitely affect the way that families gather to celebrate Christmas and new year.

Jeremy Purvis: Forgive me, but if someone works for Boots or another company that chooses to open its store in Waverley station on new year's day because that store is exempt from the legislation, how are their family's rights being protected if the worker is moved from the Boots store on Princes Street to work in the Waverley store? Companies may wish to move employees to work in a particular store for the day. Is there

not a lack of equality in protecting the rights of the individual or, indeed, of the families of staff?

Bruce Fraser: You may think that there is a lack of equality, but that lack has not shown up in dealing with Sunday trading. Therefore, why should there be a lack of equality when dealing with Christmas? Some employers with smaller stores have opened at Christmas in the past. They ask for volunteers and they usually get them; if they do not, they do not open the store. We have negotiated with employers that if they do not get volunteers, they do not open. Unfortunately, with the larger stores, it is increasingly difficult to get enough staff to staff the stores and that means that they get into compulsion, which definitely affects family life and how people celebrate.

Jeremy Purvis: So the issue is more to do with compulsion than the size of the stores.

Bruce Fraser: It is to do with both. We would be quite happy for all the stores to close. If Parliament decides that it wants all the stores to close, that is fine, but we made the concession that smaller stores supplying essential services to travellers could open. If that is a problem and Parliament decides that all the stores should close, I would not object.

Jeremy Purvis: The issue is whether Parliament should say that all the stores could stay open, but not force staff to work.

Bruce Fraser: That would not work. If I picked you up right, you are saying that employers would not force staff to work. Are you talking about the large stores?

Jeremy Purvis: Any stores.

Bruce Fraser: Our experience of voluntary codes—

Jeremy Purvis: I am sorry to interrupt you, because that is rude, but I was talking about the law. You said that Parliament might say that all stores should close. The flip-side is that Parliament might say that all stores could open, but that the law would say that employers cannot force employees to work.

Bruce Fraser: That would be difficult to enforce. There are subtle, and not-so-subtle, ways of making sure that staff work. The Shops Act 1950 prevented shops from opening on Sundays, but the shops just thumbed their noses at that and started to open, which prompted the Government to hold an inquiry into the matter, which ended with the Sunday Trading Act 1994.

The Convener: We should remember that the bill is about trading, not details of employment. Did you want to ask something, Mary?

Mrs Mary Mulligan (Linlithgow) (Lab): Not yet.

Mr Stewart Maxwell (West of Scotland) (SNP):

Bruce Fraser said in his opening remarks that Scotland had two traditional holidays: Christmas day and new year's day. I agree that new year's day has been a traditional holiday in Scotland almost for ever—certainly since long before I was born—but Christmas day is a relatively recent holiday for Scottish workers. I have worked on Christmas day and my father always worked on Christmas day. It is only in the past 20 or 30 years that it has become a normal holiday. It is not true to say that both days are normal, traditional Scottish holidays.

Bruce Fraser: I do not mind telling you that I am 60 years old and that Christmas day has been a traditional holiday since I started working in shops when I was 17. I worked in shops for 22 years before I became a trade union official. From the day that I started in the shop I had Christmas day and boxing day off as holidays, as well as 1 January and 2 January. Christmas day has been a holiday for a bit longer than 20 years. I know of people who had the Christmas day holiday before I started working. My colleagues, who were older than me, advised me, as a 17-year-old, that I would be off at Christmas and new year and that the shops would be closed.

Mr Maxwell: Do the representatives of the retail consortiums have a different memory from Mr Fraser?

Fiona Moriarty: I did a bit of research into this. I reiterate that we do not have an issue with Christmas day. Irrespective of people's culture, background or religious beliefs, Christmas day is ingrained in Scottish culture as a day that people spend with their family. I understand that as recently as the 1960s, Christmas day was a working day throughout Scotland.

Mr Maxwell: That is the only point that I was making. Mr Fraser called Christmas day a traditional holiday.

A couple of panel members referred to the difference between customer-facing staff, who would, in effect, be banned from working, and those who work behind the scenes. What about those who, in effect, do both? I used to work in retail. Some days I worked in front of house, if you like, and other days I worked behind the scenes. At weekends and on Sundays I worked behind the scenes and on Christmas day I would work in preparation. Would the worker or the job be defined in the legislation?

Kevin Hawkins: I will answer that, and Bruce Fraser may also want to comment. As the convener has rightly pointed out, the bill does not regulate employment; it regulates trading hours. It would prohibit shops above a certain size from opening, but it would not prohibit from working the

staff who needed to be there in order to get the store ready for the following day, and those staff might be employed on the sales floor the following day, and might have been employed on the sales floor that day if the store had been allowed to open. Does that clarify the matter?

Mr Maxwell: Yes.

Kevin Hawkins: I will not take up much of the committee's time, but I would like to clear up a little bit of confusion that might have arisen in the minds of members as a result of Bruce Fraser's remarks about the Sunday Trading Act 1994. The 1994 act, in which I was very much involved through the Shopping Hours Reform Council, was a compromise. Many concerns were expressed by the representatives of small shops and also by the churches about Sunday trading, and at the end of the day the bill recognised the position of small shops by exempting shops under 3,000ft² from the six-hour restriction, so they can open for as long as they like. The six-hour restriction applies to the big shops.

The 1994 act also gave every employee the right to opt out of working on a Sunday. That right was exercised by a significant number of employees, and we have had very little difficulty in recruiting people to work on a Sunday since then.

Bruce Fraser has referred twice now to a voluntary code of practice. That is not on the table for the simple reason that the Office of Fair Trading ruled that it would be contrary to competition law.

Colin Fox (Lothians) (SSP): I am glad that we can all agree that Christmas is now a holiday, irrespective of whether it was one in the past. However, I suspect that a lot of today's proceedings will focus on the new year's day distinction that the employers wish to draw us towards, so I wonder if you can shed some light on my perception that there already appears to be significant pressure on people to work on Christmas day behind the scenes, preparing for boxing day sales. Stewart Maxwell may have highlighted the fact that Christmas day used not to be a holiday, but it is a holiday now. Is it the case, though, that workers are already under some pressure to work on that day, even if the shops are not open?

Fiona Moriarty: Are you addressing that question to us?

Colin Fox: I am addressing it to all the witnesses.

Bruce Fraser: There are pressures on staff to work that day. Not so many people are required behind the scenes for filling shelves and getting stores ready as would be required if the shop were open, but pressure is undoubtedly still put on staff

to work. There have been instances where some stores have already opened on new year's day. One major retailer has opened stores on new year's day for the past two or three years and has maintained that it has no problem in getting staff, but that flies in the face of the fact that USDAW has had hundreds of phone calls from the staff of that same retailer asking what they can do, because they have been put under pressure to work and, in some cases, quietly threatened with dismissal. For example, we know of one key holder, a manager supervisor, in that large company, who was told quite bluntly, "If you don't work, you will be dismissed." There is definitely pressure on people to work, whether behind the scenes or at the counter facing the customers.

Fiona Moriarty: A responsible retailer realises that its key asset is its staff. We need a motivated, committed, well-trained, dedicated workforce, because they are our forward face to the customer. Bruce Fraser has already clearly articulated the fact that, if you are managing a store on Christmas day, the number of staff you need to set up the store for boxing day is nothing like the number of staff you would need if you were manning a full operation.

Negotiation is involved in arranging attendance at work on Christmas day or new year's day. If people work on one of those days, the chances are that they will get double or triple time or time off in lieu. Alternatively, there may be some arrangement whereby people who come in on Christmas day or new year's day are given Christmas eve or new year's eve off. We need to negotiate to ensure that we have a happy workforce because our workers are the people who act on our behalf on our shopfloors.

14:30

Karen Whitefield (Airdrie and Shotts) (Lab): Mr Hawkins mentioned that he was a member of the Shopping Hours Reform Council. Did the council say that people who chose to engage in Sunday working should always be paid at double time?

Kevin Hawkins: No, we did not say that. At the time, Sunday trading was new and no one knew how it would work in practice in different locations and different sizes of store. In recognition of the fact that existing employees who did not exercise their right to opt out would be expected to work on Sundays as the store required, an offer was made in good faith to USDAW and to those involved that payment at double time would continue to be offered as an incentive to staff to work on Sundays. Since 1994, however, a significant number of staff have been taken on who are contractually obliged to work on a Sunday as well as on a Saturday. They have done that freely. As I

said, we have no problems recruiting staff to work on a Sunday. I say that as someone who had nine years' experience in Safeway and six years' experience in WH Smith.

Moving the discussion on a little, if I may, I want to point out that the bill is about regulating trading rather than employment. That being the case, we should talk a little bit about what Scottish consumers want because they are fundamental—

The Convener: We will come back to that.

Karen Whitefield: I want to follow up my question. I asked whether the Shopping Hours Reform Council suggested that workers would be paid at double time—

Kevin Hawkins: Many were paid at double time.

Karen Whitefield: However, within 12 months of the retailers getting their way, Asda broke the agreement.

I would be interested to know whether, in the experience of Scotland's shop workers, it is common practice for people to receive premium payments for working on a Sunday. Will Ms McHugh tell us a little about her experiences as a shop worker?

Kevin Hawkins: If I may, I will answer briefly the question that was put to me. I cannot answer for Asda or any retailer other than those that I worked for. When I joined Safeway in 1995, staff who were in post on 1 January 1994 and who were therefore existing employees in terms of the Sunday Trading Act 1994, were still being paid a premium. Over time, the number of those staff has diminished. They have been replaced by staff who are contracted to work on a Sunday. The premium payment has been phased out in that sense, but it was phased out not as an act of bad faith but because of the progression of time and staff changes.

The Convener: I think that Karen Whitefield's question was also directed at another witness.

Karen Whitefield: I asked Ms McHugh what her experiences were as a shop worker.

Liz McHugh (Union of Shop, Distributive and Allied Workers): What Mr Hawkins said is not the case for my company. We do not employ Sunday workers. We work five days over seven, with Sunday as a normal working day. People get time and a half for working on Sundays, but it is difficult to get people to work on a Sunday. The opt-out clause is a great law. However, in my case—I work with four other people in a management or supervisor job—if I were to opt out, the others would be under more pressure to work on Sundays, so I cannot and would not opt out. Other people in our company opt out, but the company

employs no Sunday workers who could take over from us.

The Convener: I want to move on very slightly. Is there any evidence that larger stores would want to open on Christmas day?

Fiona Moriarty: Absolutely not.

Kevin Hawkins: No.

The Convener: Is USDAW aware of any evidence?

Bruce Fraser: There is no hard evidence for that. However, many of the big retailers gave the same assurances about Sunday trading, and we know what has happened with that.

Bill Butler (Glasgow Annie's Land) (Lab): Good afternoon, ladies and gentlemen. My first question is for the Scottish Retail Consortium. In the SRC's opinion, what would be the economic impact of the bill if it was successfully enacted?

Fiona Moriarty: I can answer the flip-side of that question by talking about the potential value of trading on new year's day. I guess that that represents the potential loss.

Bill Butler: Can we be given some figures on what that loss would be?

Fiona Moriarty: As detailed in our written evidence, the figures are anywhere between £56 million and £88 million. There is a caveat to those. Obviously, not many stores currently trade on Christmas day and new year's day, so we have used figures from our Scottish retail sales monitor—which we developed with the Royal Bank of Scotland and the University of Edinburgh to provide month-on-month, year-on-year calculation of the value of sales in Scotland—along with footfall measurement and the Executive's retail turnover figures for the period of the December bank holiday. The figures represent our best guess—that is all that they are—of the potential trade that could result if more stores opened. We believe that a large proportion of that would be tourist spend rather than displaced spend.

Bill Butler: I understand that the figures are an approximation. They vary between, at the low end, £56 million and, at the high end, £88 million.

What is USDAW's view on the economic impact, if any, that the bill would have?

Bruce Fraser: Frankly, I doubt that it would have the economic impact that Fiona Moriarty suggested. The figures to which she referred are very much a guesstimate. I would be interested to know if they take into consideration the amount that would not be spent on 2 January. How much of the total would simply be a transfer from 2 January to 1 January?

We believe that, when visitors come to this country, they come with a certain amount of money to spend. Visitors come, in increasingly large numbers, every year. Many of them come year in, year out, so they know when the shops are closed. They have a limited amount of money to spend and they currently spend it on 2 January. We do not believe that extra money would be spent on 1 January and that the sales on 2 January would be maintained at the same level. There would be a trade-off between 2 January and 1 January.

Bill Butler: Does USDAW take the same position on the issue as the member in charge of the bill, who argues that we are talking simply about displacement or cannibalisation of spend?

Bruce Fraser: Yes.

Fiona Moriarty: We would take issue with that—

Bill Butler: Does Bruce Fraser have anything else to add on USDAW's position on the economic impact of the bill?

Bruce Fraser: I have nothing to add on that particular question.

Bill Butler: Did Ms Moriarty want to respond to that point?

Fiona Moriarty: I take issue with the word guesstimate. We have had to make assumptions—*[Interruption.]*.

The Convener: While the fire alert continues, I will suspend the meeting until we find out what exactly is happening. I do not want to risk anybody's life or limb.

14:38

Meeting suspended.

14:57

On resuming—

The Convener: I recommence the meeting and ask Bill Butler to put his question to Fiona Moriarty again. She was in mid-sentence.

Bill Butler: I will attempt to do so.

Ms Moriarty, you were saying just before the unexpected suspension that you object to the use of the word "guesstimate" in relation to the SRC's figure of between £56 million and £88 million. Would you prefer the word "approximation"?

Fiona Moriarty: I would be happy to provide the committee with the relevant methodology, which is sound and based on figures that have been verified by the Royal Bank of Scotland, the University of Edinburgh and the Scottish

Executive. We had to make a certain assumption in the figures, but they are correct and I would be happy to provide the rationale for the methodology to the committee clerk.

The main point is that there would be displaced spend from local spend, by which I mean spending by Scottish shoppers in Scottish shops. If a person could not shop on new year's day, they could go into town and spend their money on 2 January, 3 January or 4 January. However, the value of the tourist pound should not be underestimated. If the tourist pound is not spent in Scotland, it is gone for good. I will not labour the point, as I know that VisitScotland—a representative of which the committee will speak to later—feels strongly about the matter.

Bill Butler: Thank you for your explanation and clarification. However, it is obvious that you deprecate the use of the word "guesstimate". Do you prefer the word "approximation"?

Fiona Moriarty: Yes. That word is fine.

Bill Butler: Thank you.

Colin Fox: With your indulgence, convener, I wonder whether I could recap? The SRC is, in effect, saying that large shops have no plans to work on Christmas day because there is no consumer demand for them to do so and therefore no money in doing so.

I understand that the figures are guesstimates and approximations, but we are saying that there is between £56 million and £88 million in opening on new year's day in Scotland, which is either displacement potential or tourist money. Is that right?

15:00

Kevin Hawkins: Yes.

Colin Fox: I will ask about the experience of the wider festive period, not just Christmas day and new year's day. Will you give us a picture of the circumstances that retail employees face at that time of year? How do the conditions and stress that staff are under change at that time of year? We all have the impression that it is a much more hectic time of year, that there is a great deal more spending and that a great deal more stock goes through retail units. The Scottish Low Pay Unit says in its submission:

"Retail workers have come under increasing pressure to work throughout the festive season"

and that they are not universally

"being awarded the enhancements such as additional pay or time-off-in-lieu"

that have traditionally been available. Will you paint us a picture of the circumstances that the

retail trade faces at that time of year, not only on the days that are the bill's focus but in the two-week period of Christmas and the new year?

Liz McHugh: I can speak only for my company. I work for a grocery company, so I hope that there is not a great demand for bread and milk on Christmas day and new year's day. However, the lead-up to Christmas day is tremendous. It is not only a one-week or two-week lead-up; it is the whole month. No one in my company is allowed to take any holidays in December and, in the week before Christmas, supervisors and managers are not allowed a day off—they take the day off previous to the event—so, by Christmas eve, we are on our knees and have worked ourselves right into the ground. The pressure to get the stuff on the shelf and out to the customers is tremendous. The last thing that we want to do is come into work the next day or the following day—we look forward to the time off. No extra staff come into our shop to help out and our shop works hard as it is every week. It is difficult to get to the end of the week. There are areas of the store that are vastly undermanned, but no more staff will be brought in because profit has to be made.

I doubt whether people would volunteer to work Christmas day and new year's day, so I am concerned about who would have to volunteer. Although my children are 28 and 22, they are still my children, I am still a working mother and I still want to sit and have a meal with my family, not only on Christmas day but on new year's day. It is not a priority for me to sell somebody bread and milk. That is just how I feel about it.

Fiona Moriarty: Mrs McHugh makes a compelling argument. Anybody who works on the shop floor in November, December and January knows that those months are the busiest time of the year. We cannot get away from the fact that up to 60 per cent of annual sales go through stores in those three months, but that is no different from the situation for bars, pubs, clubs or restaurants.

To return to the argument about the difference between large and small retailers, we need to think about why we are willing to apply the bill's trading restriction only to larger retailers and not to smaller retailers. By definition, we are saying that the people who work extremely hard in smaller shops will not be afforded the same protection as those who work in larger shops.

Colin Fox: I will take things forward rather than back. Earlier, you rightly highlighted the importance of having a motivated workforce. I am sure that we all agree with that, but what happens to somebody's motivation when there is a conflict between their family, health or tiredness and the company? Do the employees in the industry have a perfectly free choice if they are in a bind between their long-term health or their families'

interests and pressure from their managers? Are you comfortable that they can make the decision that is in their best interests?

Fiona Moriarty: I covered that point a little bit a wee while ago. No responsible retailer will force their members of staff to work; it is about negotiating a situation in which the employee and employer are happy. The next panel of witnesses contains retail employers, whom I am sure will go into a little more detail about how they manage the relationship with their staff.

Kevin Hawkins: The matter is one for committee members to quiz retail representatives on, because they can speak directly about their approach to the issue.

One pressure that has not been mentioned—which can be experienced by all employees at any time of year, but particularly in the run-up to Christmas, when extra trading hours are normally available to employees who want them—is the pressure to maximise earnings. Like everybody else, employees want to spend more money at Christmas, which is why some people want to work on a Sunday or would work on new year's day.

Bruce Fraser: The committee should not just put the question to the retailers, as Kevin Hawkins suggested. We know what the retailers will say, because they say it in their submissions: they ask for volunteers and give premium payments.

We heard from Liz McHugh that pressures exist on staff. We in the trade union know that those pressures extend to people being forced, in one way or another, to work extra hours in the run-up to Christmas, which is a strenuous time. When companies have experimented with opening stores on Christmas day or new year's day, we have always received calls from their staff saying that they do not want to work and would rather be with their families, but that their employer is putting pressure on them to work.

I will describe an incident that was brought to my attention recently—unfortunately, I cannot give the committee a name, because that would cause all sorts of trouble. A supervisor was told that she had to work on new year's day. When she said that she would not, she was told not that she would be dismissed, but that the hours for which she was contracted—which suited her family care—might not be available after the new year if she did not comply with the request to work on new year's day. That was all said behind closed doors between her and her manager, so there were no witnesses. We have mentioned pressure on families and so on. As in other industries, many people who work in retail have commitments to look after children, elderly parents, sick parents or sick children. The lady who was involved in that

situation had such commitments, but she was told that the hours that enabled her to meet those commitments might not be available. Such pressures are exerted.

Colin Fox: We are talking about the industry, and the importance of having a happy workforce has been mentioned. Does your union have collective bargaining agreements with all the big retailers that we have talked about?

Bruce Fraser: We have agreements with most of the main high street names—the big retailers. The agreements have covered working during unsocial hours and on customary holidays and Sundays, and those agreements were negotiated. However, Kevin Hawkins and I have referred to the Sunday Trading Act 1994—I am sorry to use the example of Sunday trading again. When that act was passed, employers assured us that the agreements would stand the test of time. The agreements did not specify that there should be double time on Sundays for existing employees but not for new employees; the agreements as negotiated with the unions simply specified a premium payment—in most cases, double time—for working on customary holidays or Sundays. That applied to all workers—full-time and part-time, new and old. However, very soon after the act that allowed Sunday trading was passed—within 12 months to two years—employers started to say that they would no longer abide by the agreements and that they wanted to pay single time or something less than double time for working during unsocial hours. We had agreements, but getting employers to stick to them was difficult.

The Convener: I think that the question was more about current agreements. Do you have current agreements, as opposed to agreements going back to when the Sunday Trading Act 1994 came into force?

Bruce Fraser: Yes, we do have current agreements with those same retail companies. I was trying to illustrate the fact that they are now not offering double time. They used to offer double time under those agreements, but the agreements have now been devalued so that, in most cases, they are paying only single time. However, we have negotiating rights with those employers.

Colin Fox: With your indulgence, convener, I would like to ask the Scottish Retail Consortium to enlighten us about the number of people who are taken on. What figures are there for people who are taken on as seasonal workers, rather than normal employees, during the festive period? Is it standard practice for those seasonal workers to receive premium rates, compared with normal workers?

Fiona Moriarty: Kevin Hawkins may have a bit more information than I have about that. I do not have figures for the volume of seasonal workers. There will be an influx of students and short-term workers from around the end of November until the beginning of January. If the convener and the member would like me to do so, I can go away and examine that group as a proportion of the total workforce.

Colin Fox: I would be obliged.

The Convener: We would be grateful if you could send that to the clerks when you can.

Jeremy Purvis: I would like to ask Liz McHugh about the level of work in the build-up to that time of year. I would have thought that the whole fortnight leading up to Christmas is really busy.

Liz McHugh: It is more like the whole month.

Jeremy Purvis: Is it different for colleagues who work in hotels and bars or in a Tesco Metro rather than a Tesco store the size of the one in Dalkeith? I would have thought that the pressures on retail staff would be no different to the pressures that other workers are under, but there are exemptions under the bill. Would there be a difference for the workforces?

Liz McHugh: I do not know whether there would be a difference, but if I chose to work in a restaurant or a bar I would know the hours that I would have to work and I would know that I would have to cater to the population's leisure time, so that would dictate that I would be working when most people were not. I would not expect to be working Christmas day and new year's day to sell groceries, in my case, or to sell a sweatshirt, if I worked in Debenhams.

Jeremy Purvis: If you went to work for a company that said it would open on Christmas day and you were aware that it had that policy, it might not be able to force you to work but you would be aware that it would be open. That would mean that it was exactly the same as an hotel—you would know before you did the work. I was struck by your comment that people would know that it was happening. The issue is not that the pressures are any different, but that people would know that it would be happening.

Liz McHugh: I might choose not to work for a company that might open on Christmas or new year's day, and that would be a choice that I made in deciding to work where I work. I could have become a carer, and I would not be able to walk away from the person I was caring for on Christmas day, so I would expect to work that day. However, I do not expect to work on Christmas day in the industry that I am in.

Jeremy Purvis: I do not know what company you work for or how large it is, but I return to the

question of whether there is a difference between working in a Tesco Metro, which will be exempt, and working in a larger Tesco store, which will not be exempt. There could be quite a big inequality, could not there?

Liz McHugh: There could be a big inequality, but a small Tesco might find that it has enough volunteers, whereas I know for a fact that there would not be enough volunteers to work in the store that I am in.

Mrs Mulligan: I am grateful to the convener and to members for allowing me to join the committee today. I should start by drawing members' attention to my entry in the register of members' interests, from which they will see that I am a proud member of USDAW.

I will start by asking Ms Moriarty or Mr Hawkins a question. You have accepted the principle that, at this stage, none of your members wishes to open on Christmas day, but can you give us any indication as to how many of your members are seeking to open on new year's day?

15:15

Kevin Hawkins: In the past year or two, one major department store and two or three supermarkets have opened on new year's day, in locations where they think there might be sufficient consumer demand. They have been surprised by the level of demand, which has exceeded expectations in almost every case. That might encourage them to open more stores—again in selected locations—on new year's day. If there is a general realisation among larger retailers that there is considerable potential consumer demand from either tourists or existing consumers in Scotland, there might be some selective opening over the next few years.

Experience with the Sunday Trading Act 1994 is probably relevant to some degree. Many people do not change their shopping habits quickly. It takes time for different hours and trading regimes to become the norm. Sunday is the best trading day for some of our larger supermarkets south of the border, but that is not the case for everyone. Much depends on the local situation and local consumer demand. Plenty of small to medium-sized retailers, as well as some larger ones in more rural locations south of the border and in county towns, do not bother opening on a Sunday, for the simple reason that they do not think that there is sufficient consumer demand. I do not believe for one moment that every retailer in every location in Scotland will open on new year's day. It will be nothing like that. Retailers will be very selective and will take a toe-in-the-water, suck-it-and-see approach, to find out where the demand is and whether it is likely to continue.

The argument that there is a fixed budget—that people come in with only so much money to spend—was used extensively during the Sunday trading debate. It was argued that Sunday trading would simply spread trade more thinly over the rest of the week. It did not happen in that way. Much Sunday trading was and is incremental. It is on top of a retailer's trading during the week, because retail spending has grown. If we give people more opportunity to spend, more choice and more freedom, many of them will respond. That is what the bill is trying to stop. It is trying to deny people the freedom to choose.

Mrs Mulligan: Your answer dealt with more than my question, but I will try to keep my supplementary succinct. Are you suggesting that relatively few retailers will seek to open on new year's day? How do you feel about representing members of the British Retail Consortium that do not want to open on new year's day but feel that they are being pressured into doing so for competitive reasons, because if they do not pick up business on that day they risk losing it not just then but on other days?

Kevin Hawkins: There is a non sequitur in the question.

Mrs Mulligan: What is it?

Kevin Hawkins: The great majority of the members whom we have consulted in Scotland would like to have the opportunity to open on new year's day—not Christmas day—those stores where they think there is sufficient consumer demand. There is no conflict between big and small retailers. Although one retail federation representing smaller businesses supports the bill, two—the British Hardware Federation and the Horticultural Trades Association—oppose it. The issue is whether retailers perceive that there is consumer demand to which they could respond.

Mrs Mulligan: So you do not believe that some of your members would be under pressure to open just because of competition.

Kevin Hawkins: It is for individual retailers in specific locations to make a judgment on that matter. That has happened in response to the Sunday Trading Act 1994 over the past 10 years. I will repeat what I said earlier: the 1994 act has not meant that every shop in every location south of the border opens on Sundays—far from it. The same will apply to trading on new year's day in Scotland. It will be selective and will happen only where there is sufficient consumer demand. Retailers are in business to respond to consumer demand. If they do not do that, they will not have a business.

Bruce Fraser: I am interested in the theory that when shops open longer, more money magically appears. I have never been able to get a retail

consortium or anybody else in retailing to tell me where that money comes from. I know exactly how much money is in my wallet at the moment. It does not matter for how many hours or days a shop opens, I will spend only that amount of money, because I do not have any more. Kevin Hawkins has drawn on statements from his members, but some of his members have consulted USDAW and told us bluntly that although they do not want to open on Christmas day or new year's day, they would be under tremendous pressure to do so if their competitors opened on those days, so they would have to consider opening. That is different from what Kevin Hawkins said.

The serious question that the committee should consider is whether we want to change fundamentally the Christmas and new year celebrations by allowing more and more stores to open. If one or two stores open, others will do so, because of the pressure and a snowball effect. No doubt not all of them would open—I do not disagree with Kevin Hawkins on that—but more and more stores would have to consider it seriously, although, as they have told us, it would be against their better judgment to open.

Mrs Mulligan: I want to pick up on an issue that my colleague Jeremy Purvis has raised several times about the discrimination between small and large stores. Is it the view of USDAW and the SRC that the bill would be better if we removed the break-off point of 3,000 ft² and just had an across-the-board rule that nothing could open?

Fiona Moriarty: That would help consumers, because they would not be confused—they would know that, on Christmas day and new year's day, they would not be able to purchase anything from small or large stores. However, I still think that the major inconsistency and flaw in the bill is that it would afford rights to retail workers that would not be afforded to workers in other sectors.

Kevin Hawkins: If you tried to force every shop, regardless of size, to close on those days, policing that law would be a difficult job. Many retailers, especially smaller ones that are used to opening on new year's day, would go ahead and open regardless of the law, as happened prior to the Sunday Trading Act 1994, when lots of shops opened illegally, but because they were small the authorities turned a blind eye.

Bruce Fraser: Kevin Hawkins has returned to the point that I made earlier that retailers, if they so wish, will ignore the law, which seems a peculiar argument. On the question whether we would want all stores to close, our answer is, ideally, yes. However, as I said, we have made the concession to retailers that we will stick by the same rules and regulations that cover Sunday trading, partly because many of the stores that open, with the exception of stores such as Boots,

are family-owned stores that are staffed by those families. We have no desire to stop such people from running their small businesses in that way. However, it is a peculiar argument that the law could not be policed and that retailers would do what they liked.

The Convener: Jeremy Purvis may ask a small question, if it is on that point.

Jeremy Purvis: It is on precisely that point. I am trying to find the letter that the committee received from Glasgow City Council, which raises a concern about the bill, because I wonder what USDAW's view is. I am trying to find it so that I can quote it accurately, but it concerns those from ethnic minorities or other groups who would not be exempt under the law and who might be discriminated against. Have you seen that letter and, if so, do you agree with Glasgow City Council on the matter?

Bruce Fraser: I have not seen the letter, so I cannot comment on it.

Jeremy Purvis: If we provided you with the letter, could you come back to us with a view about it?

Bruce Fraser: Yes, certainly.

The Convener: I should point out to all witnesses on the panel that if after they leave they feel that they could write briefly to us about something that would help our deliberations, we would be willing to receive it.

Karen Whitefield: In its submission, the SRC suggested that the vast majority of Scotland's shop workers believe that the impact of being asked to work on new year's day would be insignificant. Could you tell me how you reached that conclusion? Thousands of shop workers across Scotland—both members of USDAW and non-unionised shop workers—responded to my consultation to tell me that the impact of shops opening on Christmas day and new year's day was far from insignificant. They wanted their rights to be protected.

Fiona Moriarty: I am not quite sure that we used exactly that language in that way. However, if I recall the information from our submission correctly, it related to whether our members had any issues about asking and finding people to work on new year's day. Our members reported that they did not have any problem with staffing levels. People in the larger stores—students, part-time staff and people who wanted to supplement their income during what is a busy and expensive time of the year for us all—were almost falling over themselves to be given the opportunity to work an extra day and receive the benefit of that, whether that is double time, time and a half, time off in lieu or whatever else. There are retail representatives

on the panel after this one, who, I am sure, will go into more detail on that.

Karen Whitefield: Can you see why I might be confused? If people are falling over themselves to volunteer to work on new year's day, why did that point of view at no point show up in what was an extensive consultation? The number of people who reported a great desire to work on new year's day was limited. If the numbers are so great and overwhelming, surely that view would have been represented in the course of an extensive consultation.

Fiona Moriarty: I want to pick up a couple of issues. That was a particular campaign, which was well organised by you and USDAW. It was a proactive signature campaign.

Karen Whitefield: No, it was a consultation, to which anybody in Scotland had the right to respond. It was widely publicised and advertised. My point is not about the quality of my consultation—it will be for the committee to decide on that—but about why, if overwhelming numbers of people are demanding to work on new year's day, that view did not feature in the consultation response.

Fiona Moriarty: Sorry, I was confused. I thought that you were talking about your signature campaign. As I understand it, many of the responses to your consultation were from individuals who were probably union members anyway. A vast majority of the respondents who did not support your proposals were retailers. If you want to play a numbers game, you are right that far more respondents to your consultation supported your proposal than opposed it.

Kevin Hawkins: We should be careful about the results of so-called opinion polls and campaigns in which people are approached and asked "Do you support this?" or "Are you against that?" in an emotive way that almost prompts the answer. At the end of the day, people will vote with their feet. The issue for both consumers and employees is what happens in practice if the bill is defeated and workers are allowed to work and stores are allowed to open on new year's day. Objections were reported from both employees and consumers, who are also alleged to be against opening, but I know from many years' experience that what consumers say in response to an opinion poll or consultation and what happens in practice are rather different.

The Convener: As Ms Whitefield rightly said, it is the committee's responsibility to decide on the quality of the consultation. We can seek further information if we think that we need to.

15:30

Karen Whitefield: I accept that the witnesses have a particular view, but if they want to claim that the overwhelming majority of people demand to be allowed to work on new year's day, they must be able to substantiate that claim and they have not yet been able to do that.

Kevin Hawkins: With respect, that is not what we said. What Fiona Moriarty said, and what our evidence says, is that those retailers who have asked for volunteers have got them without any trouble. That is not the same as saying that workers throughout Scotland are overwhelmingly in favour of working on new year's day.

Karen Whitefield: If we consult the *Official Report*, we will be able to check the language that Ms Moriarty used.

I have a specific question about your voluntary code of conduct, which is why I asked about the people who want to volunteer to work. How do you expect your members to operate should they be unable to obtain sufficient numbers of people to open their stores?

Fiona Moriarty: Are you asking about the voluntary code or about manning issues?

Karen Whitefield: I am asking about your voluntary code, which you have suggested as an alternative to the proposal in my bill.

Fiona Moriarty: As we all know, the issue has been debated for a number of years. We wanted to work with the union and you to show that, as an industry, we are willing to talk about what is an important issue. We put forward the notion of a code to show that the sector understands that whether companies trade on Christmas day and new year's day is an emotive issue. As Kevin Hawkins mentioned in his opening remarks, we have now put the code to bed because you made it clear that you felt that it was illegal and the union was not prepared to run with it either.

Kevin Hawkins: More to the point, the OFT has declared that it would be contrary to the Competition Act 1998. The idea of a voluntary code is a non-starter, so I do not know why we are still discussing it.

Karen Whitefield: We are still discussing it because at the weekend I was approached by the *Sunday Herald* newspaper, which told me that the Scottish Retail Consortium had proposed it as an option.

Fiona Moriarty: We did.

The Convener: I am sure that that will appear in the *Official Report*. You have made your point, Ms Whitefield.

Jeremy Purvis: If there is a dispute, what mechanisms exist to deal with it? We have heard that complaints have been made about pressure being put on employees to work on particular days. What is the mechanism for resolving such a complaint? I presume that if the law has been contravened, there is legal recourse to a tribunal. Bruce Fraser mentioned the existing agreements, the most optimistic view of which would be that they need work. What is the current mechanism for resolving complaints and what is the relationship between USDAW and the retailers?

I have another brief question. I am ignorant of what proportion of people who work in retail USDAW represents. I see from the SRC's submission that 261,000 people work in retail.

Bruce Fraser: USDAW has approximately 36,000 members in retail in Scotland. Other unions will have members in that sector, although I could not specify which ones.

The same mechanism exists for resolving any dispute or grievance that a member of staff has. Built into all our agreements are dispute or grievance resolution procedures, which the staff member concerned and the employee would use to resolve a dispute. The problem is that, as often as not, staff feel that they cannot use those procedures because they already feel under pressure and believe that further pressure will be put on them if they go down that route. Therefore, we find ourselves in a difficult position. For example, if Liz McHugh tells us that she is being pressured to work and might lose her job if she does not agree, we would tell her to use the grievance procedure, but she might reply that she is too frightened to do that—it becomes a vicious circle.

The simple answer to your question is that people should use the grievance procedure. They should raise their grievance with their immediate superior in the first instance and go through the various stages; if they are members of a union, the union will represent them. However, as often as not, people are too scared to follow that procedure, I am afraid.

Jeremy Purvis: I have a brief supplementary question, although you might not be able to answer it. How well grievance procedures work might vary according to whether the employer is a big-name retailer or a small retailer. I am thinking particularly of mid-range operators rather than family businesses, although from your experience there may be no distinction between them. Is there a pattern to the complaints that you receive that depends on the size of the operators?

Bruce Fraser: From my experience, I would not say that the size of the retailer is a factor. We tend to have standard agreements, irrespective of

whether operators are small or large, although the agreements might be a bit more complicated with larger operators. For example, our agreement with Tesco is substantial and requires a very thick document. Our agreements with smaller or medium-sized companies would cover the same clauses, but because the companies do not have the same levels of management, the agreement might require a less thick document.

We have had the same complaints from employees of all sizes of retailer. That is probably not because the higher-level management is bloody minded, but because there are always rogue managers somewhere in-between who cause the problems.

Jeremy Purvis: Complaints are not received disproportionately from employees of large retailers.

Bruce Fraser: No.

The Convener: I point out that we have added on more time because of the fire alert, but I ask members to try to be sharper with their questions. Similarly, I ask the panel to be tight with their answers because we would like to cover a number of areas.

Mr Maxwell: I have information that suggests that approximately 11 per cent of Scottish employees work in the retail sector. Some of the 11 per cent would be exempt under the bill—not all the 11 per cent would be protected. Therefore, it seems that 9.2 or 9.5 out of every 10 Scottish employees would not benefit from the bill. The USDAW representatives support the bill, but what justifies the focus on the retail sector, given that similar protection would not be available for the other 90-plus per cent of workers who work in other sectors?

Bruce Fraser: What justifies it is that opening stores during the Christmas or new year holiday would fundamentally change the nature of the holiday period. We know that some factories and particular industries close for the period—for example, the building industry closes down. If there was to be a general opening of stores at Christmas or new year, they would need the infrastructure that allows them to open and to trade—they cannot trade in a vacuum. If the stores open, public transport will be needed, which would affect workers in that sector. In addition, rather than a skeleton police force being on duty, the normal numbers would be needed. Similarly, full emergency services would need to be on duty rather than the usual skeleton service. As I understand it—I can be corrected if I am wrong—hospitals try to get non-emergency patients home for Christmas and new year so that they can have reduced staffing.

All the normal back-up services would have to be available if stores were to open at Christmas and new year, not because retailing is dangerous but simply because there would be more people on the streets. Deliveries would also have to be made. The holidays would become just like any other trading day and the nature of the holiday period would be changed out of all recognition.

Mr Maxwell: I am still at a loss to understand your view that other sectors are different and should not be afforded the same protection. You have mentioned the necessity for extra staff, transport, policing and so on. What if the construction industry, for example, decided tomorrow that it would work through the Christmas and new year period? The bill seeks to make it clear that this period is special, so should not it—or a similar bill—seek to protect those who work in the building trade by stipulating that people should not be allowed to build houses at this time? After all, those workers will need transport and back-up services. Should the bill not cover the equipment hire firms that supply the industry with equipment day after day?

Bruce Fraser: If the matter became a problem for those industries, I am sure that they would find sympathetic MSPs to introduce bills to protect them. It is not for a retail union such as USDAW to seek to introduce a bill that protects the building industry or indeed any other industry. They have their own unions. We represent and are focusing our concerns on shop workers.

Mr Maxwell: You have made that very clear.

As you have said, you represent shop workers. Why are you not concerned about the many other shop and distribution workers who will still have to work during the holiday period, even if the bill is passed?

Bruce Fraser: I thought that we had put that question to bed, but it seems not. We are concerned about those workers, and have agreements that seek to protect them.

Mr Maxwell: So why can you not have similar agreements to protect workers who work on the shop floor? I do not see the difference.

Bruce Fraser: Well, without going back and giving you another lesson on Sunday trading—

Mr Maxwell: Sunday trading is very different, Mr Fraser.

Bruce Fraser: It is not—

Mr Maxwell: It is very different.

Bruce Fraser: With respect, it is not different. If you are going to ask me a question, you could at least let me answer it. As with holidays such as Christmas, new year and Easter, Sundays were seen as special days on which trading should not

take place. However, when those days became normal trading days and lost their special status, retailers stopped complying with agreements on volunteering, premium payments and so on that sought to protect staff—all that went out the window. We contend that, if Christmas or new year trading takes off in a big way, exactly the same thing will happen. More and more shops will open and the special nature of Christmas and new year will be destroyed.

Mr Maxwell: Thank you for your answer, but I still disagree with your view that there is no difference between Sunday trading and trading on Christmas day.

In any case, Sunday trading is here and society has moved on. From what I have seen, it has become extremely popular with consumers and the demand for it cannot be rolled back. How have consumers' rights been taken into account in your argument? Do they not have a right to shop on a Sunday or even on new year's day if they so wish? I do not understand your views on this matter.

Bruce Fraser: Let me put it another way. What about employees'—and, indeed, society's—right not to have to work at Christmas and new year? What about people's right to a special time of year when they can be with their families and celebrate in the traditional way? Why should everything come down to profit alone? Why should we turn what happens on Christmas day, new year's day, Sunday and Easter into what happens out in the street on any other day? Do we want that kind of society?

15:45

Mr Maxwell: What about the rights of Muslims, people of the Jewish faith, Hindus, atheists, students, young and single people or those on their own who do not think that Sundays and new year's day are special and would be more than happy to work on those days? Do they not have a say?

Bruce Fraser: Given that most small stores will be open—and, with respect, a lot of them are owned by Muslim families—the bill will not affect them. USDAW has a policy of negotiating on behalf of people of other religions so that they can have time off to celebrate their special days. We do that frequently.

Maureen Macmillan: I want to sweep up one or two outstanding matters. The bill states that a person, if guilty of an offence, would be liable on summary conviction to pay a fine not exceeding £50,000. What does the panel think of that figure, bearing in mind the large profits that retailers make in large stores—tens of millions of sales per annum per store? Does the panel think that such a breach should be a criminal offence?

Fiona Moriarty: If the bill is enacted, none of our members will trade on Christmas or new year's day. We want to abide by the spirit and the letter of the law, so there would be almost a three-line whip to all our members not to open. Therefore, the fine is almost insignificant to our members because they would operate according to the law. We have an issue with the offence being a criminal one and being policed by the police instead of trading standards officers via the local authority. Perhaps we can explore that more either within or outwith this committee.

Bruce Fraser: We are happy with the bill as presented. We are happy with the proposed level of the fine and we are happy that it should be policed in the way suggested. Our experience of the Shops Act 1950 was that despite what their association said, retailers were happy to breach the law. Therefore, the offence has to be a criminal one.

Maureen Macmillan: You gave your views on the bill's definition of a large shop. To what extent does defining excluded shops according to floor area achieve one of the bill's policy aims, which is to exempt sole traders but include shops with employees? Does the definition of a large shop do that adequately?

Bruce Fraser: I think that it does.

Fiona Moriarty: We are not going to argue with the definition. Whether it is set at 3,000ft² or 23,000ft², it is still the major flaw in the bill because it distinguishes those employees who work in a small-format store from those who work in a large-format store. Where one draws the threshold is—

Maureen Macmillan: It is immaterial to you. You made that point earlier. Thank you.

The Convener: Mr Purvis had a very brief point to make.

Jeremy Purvis: If I may—it goes back to Mr Maxwell's question. If I understood Mr Fraser correctly, he said that he negotiated with the employers of those who are not of the Christian faith for them to have time off to celebrate their special days. Should that right be protected by law, because that is what the bill proposes for employees of the Christian faith?

Bruce Fraser: I hope that I understand your question correctly and I will explain very briefly as the convener requested. I did not mean that we negotiate time off at Christmas for people of other faiths—

Jeremy Purvis: I meant time off for their—

Bruce Fraser: For their particular festivals. No demand has been made of us to seek legislation to protect those holidays. If there were and it

became necessary to protect the holidays of members of different faiths or get them time off guaranteed in law, we would be happy to pursue that on their behalf. We are negotiating with employers at the moment, but we have not had any serious problems so far.

Christmas day and new year's day have now become holidays for the population in general irrespective of individuals' faith. No faith is attached to new year.

Jeremy Purvis: In some communities, Diwali is the same.

Bruce Fraser: Yes.

Jeremy Purvis: But you do not think that that festival should be protected in law.

Bruce Fraser: I answered that point—if it required the protection of law, we would be happy to go down the route of trying to get someone to introduce another bill. However, we have not had any demand from our members of that faith to do that.

Jeremy Purvis: Have you consulted?

Bruce Fraser: We have not consulted widely. We have represented individuals and groups of various faiths who might have had problems in their workplaces. So far we have managed to sort those out for them.

The Convener: Mr Purvis, we need to stick to the business of the bill that is before the committee.

I bring this evidence-taking session to an end. I thank all panel members for coming along. I repeat that if you have any short comments to make to clarify what you have said during the meeting—as opposed to a re-run of your submissions—we are happy for you to send them to the clerks.

15:51

Meeting suspended.

15:56

On resuming—

The Convener: I welcome our next panel. I apologise for the fire alarm; that was outwith our control, I am afraid. I welcome Peter Betts, who is a store manager with Debenhams, and Graeme Ross, who is the deputy chief officer of the Scottish Co-op. I understand that there are time constraints for some people, so we will try to press on. I ask members to be tight with their questions, and if we could have tight answers that would be helpful. I invite you each to tell us in turn why you

think that retail trade should or should not be restricted on Christmas day and new year's day.

Graeme Ross (Scottish Co-op): Good afternoon. We support the broad principles and policy proposals of the bill, which would prohibit large shops from opening on either Christmas day or new year's day. The board of the Co-operative Group has taken the view that none of our shops in the UK will open on Christmas day. Other Co-op societies trading in Scotland, including Scotmid, have also taken a policy decision not to trade on Christmas day.

As you have heard, within the Scottish retail community things are slightly more controversial regarding new year's day. Debenhams, for instance, is strongly opposed to that element of the bill. The Scottish Co-op believes that new year's day should not be regarded in the same way as just any other day because new year's day is a special day for the people of Scotland and is more culturally significant here than in England and Wales. We therefore support that principle of the bill.

However, because the Scottish Co-op provides a service at the heart of local communities, last new year we opened 53 small stores covering less than 3,000ft². Those stores were selected on the basis of their location. For instance, convenience stores in Alness, Kingussie, Aboyne and Ballater provided our customers and members with a service in those fairly geographically remote communities. We have nearly 250 stores in Scotland, but we opened only 53 on 1 January this year.

Much of the debate has been about whether the people who work on Christmas day and new year's day are volunteers. I stress that every member of staff who worked in those 53 stores was a volunteer. They were small stores, they opened between 10 am and 4 pm and they needed only a small number of people to staff them. None of our 60 large stores in Scotland was open on 1 January 2006.

We support the principles of the bill.

16:00

Peter Betts (Debenhams): Good afternoon. I have been the general manager of Debenhams in Glasgow for 10 years. Debenhams has 11 stores in Scotland and more than 130 stores in the UK, and we have successfully traded on new year's day in England and Wales. Our approach to the issue in Scotland was to do that on a trial basis. We kicked off with three stores three years ago—our three main tourist stores in Glasgow, Leith and Edinburgh. That was successful, so we extended the trial to all stores and then incorporated it as policy last year.

In the bill, we happily support the regulation of Christmas day trading but not the regulation of new year's day trading. As you have heard, one reason for that is tourism. The trials in our Edinburgh and Leith stores were very successful. I am told that the new year's day celebration here is one of the biggest in the world, and a lot of tourists just wander round the city. We feel that it would be contrary to the Scottish Executive's tourism policy if retail trade in large stores were outlawed on new year's day.

We already trade on new year's day in England and Wales with some success. What prompted our trial in Scotland was that in England and Wales Debenhams stores started to trade on boxing day, which we had done in Scotland for a number of years. The playing field therefore stopped being level: stores in England and Wales were working a day more than stores in Scotland. We feel that it is only appropriate that we have parity with England and Wales and can trade for the same 364 days.

Another reason for being against the regulation of new year's day trading is that it is unfair to large-space retailers. We cannot see why it should be all right for a small shop of under 3,000ft² to sell women's clothing, but not all right for a big shop, where trading would be outlawed on new year's day.

The bill could turn out to be poor legislation, as it restricts only trading. This does not happen in Debenhams, but some retailers prepare for the boxing day sale by having staff in behind the scenes on Christmas day. We certainly do not support that.

Working in Debenhams on new year's day has been voluntary. We offer triple time, while in England and Wales they pay double time. On boxing day, we pay double time and they pay triple time. As I say, it is generally voluntary. We have not had a problem with staff in our stores. The only occasional problems have been in very specialist areas. In my store in Glasgow, the watch repair guy does not want to work, so the watch repair place is closed, and the florist does not want to work, so the florist's is closed. There are therefore occasions when we have to close small specialist parts of the store. However, in a department store we have economies of scale and we manage very well.

The Convener: You mentioned tourist spend in Edinburgh and Leith last year. Can you give us figures to show how much of the additional trade came from tourists?

Peter Betts: No. Marks and Spencer has a kind of measure of that with its exchange service, but we do not offer that. All I can give you is the anecdotal feedback that it was mainly tourists who

came in on the day. Debenhams is part of the SRC and I think that you heard figures earlier for the sizeable tourist expenditure in stores and shops.

The Convener: Mr Ross, how many of your stores in Scotland are under 3,000ft² and how many are over?

Graeme Ross: Just over 180 of our stores are smaller than 3,000ft² and just over 60 are larger.

Colin Fox: I do not know whether you were here for the earlier session, gentlemen, but you may have heard USDAW, the SRC and the BRC giving us a picture of a fairly hectic time of year for trading. They spoke of increased trading and increased pressures on workers, who would often be exhausted at the end of the month. If your picture is different, I am sure that you will tell us.

The time of year that we are focusing on is clearly important to your overall business. If the figures that the consortiums have given us are right, the period between November and January accounts for between 40 per cent and 60 per cent of the turnover of the larger retailers.

I was interested in Mr Betts's evidence that he pays workers triple time. I will follow up on two issues. The first one, which you touched on in your evidence, is how easy or difficult it is to get volunteers. Secondly, does the decision to pay triple time represent recognition on your part that it is a profitable time for the business so you are able to pay that, or do you pay triple time because that is what you have to pay staff to get them to give up the day at home with their family?

Peter Betts: The lead was taken from the fact that it was company policy to pay triple time for working on boxing day in England.

Colin Fox: Where did that come from? Did the company do that because it knew that it could afford it, or was it the rate that the company had to pay to get people to work?

Peter Betts: It was introduced as a trial. No undertaking was given that we would continue to pay triple time, but the view is that we should do so. You have heard today how that can change. There are no firm plans to change, but I am aware that other retailers might not pay triple time.

You asked a question about the expansion of the workforce at Christmas. I can speak only about Glasgow, but our workforce will expand from about 650 people to about 900. We take a lot of extra people on, including a lot of students. When the students break up for Christmas and the new year, I find it easier to staff that period than some of the late nights in November.

Colin Fox: So your experience in Glasgow, which is the shop that you know best, is that it has

not been difficult for you to find staff either through existing staff volunteering or through bringing in seasonal workers. Is that fair comment?

Peter Betts: Yes. A lot of students will work only on a Saturday or perhaps for a few hours on a Sunday or a few hours on a Thursday night. They just expand their contracts.

Colin Fox: And the seasonal staff would also get triple time.

Peter Betts: Yes.

Jeremy Purvis: Mr Ross, I will ask you the same question about Co-op stores. I was struck by your comment that a fifth of all Co-ops opened on new year's day. Did you have difficulty finding the staff to do so?

Graeme Ross: We had no difficulty recruiting staff for that day. You must remember that at any one time in small stores of less than 2,000ft²—some perhaps only 1,500ft²—we probably need a maximum of three people in the branch. If we had any difficulty with any store, we would seek volunteers from stores in the immediate area and staff the store that way.

Jeremy Purvis: What proportion of the usual daytime Friday staffing levels do you need to open a store?

Graeme Ross: The minimum staffing level to open a store would be three, depending on the size and the trade of the store.

Jeremy Purvis: How many people would work in the store on a typical day?

Graeme Ross: On a normal day?

Jeremy Purvis: Yes.

Graeme Ross: During different shifts it might be 10 or 12, but last new year we opened the stores only between 10 am and 4 pm rather than between 8 am and 10 pm as we do on a normal trading day.

Jeremy Purvis: You opened your remarks by saying that you absolutely recognise special days and that new year's day is a special day in Scotland. Where is the balance between your decision to open a fifth of your stores, where there has been no difficulty getting staff and there has been no pressure on them, and the fact that it is a special day that has to be protected. You have obviously made a policy decision that it is not absolutely a special day that needs to be protected, otherwise you would have made the policy decision not to open any stores.

Graeme Ross: You must remember that the Co-op is a community retailer, so we have a responsibility to the communities that we serve. In remote locations, where perhaps no other retailer

is open, we need to open to serve the needs of that community—whether it be elderly people, people who cannot travel or whatever. That affected our decision as to where we opened the stores.

Jeremy Purvis: Why did you not also open the stores on Christmas day? Those needs will not disappear on Christmas day if they are there on new year's day.

Graeme Ross: We took the view that Christmas day is very much a family day. It is the one day that our workers can get off, bearing in mind that we trade seven days a week.

Jeremy Purvis: So there is a difference between new year's day and Christmas day.

Graeme Ross: Yes. The board decided that nowhere in the United Kingdom would stores be open on Christmas day.

Maureen Macmillan: I wonder whether we could retrace our steps a wee bit, Mr Betts. You talked about opening three of your stores on new year's day and said that it was very successful. What do you mean by successful? I assume that you mean that you made more money on the day than it cost to open the stores, even although you had to pay your staff triple time.

Peter Betts: Yes. Our rent and rates are fixed. Rent on large-space retailing is less of an issue in this respect.

Maureen Macmillan: Would you still be so successful if all the other shops on Princes Street or all the other stores in Glasgow were to open at the same time.

Peter Betts: We would be more successful.

Maureen Macmillan: More people would spend money in your store than elsewhere.

Peter Betts: Yes. The boxing day sale is the biggest day in that week. Stores in Scotland have opened on that day for a while and in England they watched what we were doing quite enviously. As I said, in 2004, England started to trade on boxing day. Now, takings on boxing day are up as a proportion of the week's takings—that happened quite quickly. I think that most retailers in England and Wales have now joined the boxing day trading crowd.

Maureen Macmillan: So, this is really about starting the sales a day earlier.

Peter Betts: Yes. That has always been the case for us, in England as well as in Scotland. I am convinced that if more retailers did it, we would get up to the same levels that we enjoy in England and Wales. Although the day is successful for us, it is not yet as successful as it is in England and Wales.

Maureen Macmillan: So this has nothing to do with tourism; you want to make more money.

Peter Betts: I referred to tourism because the better performance on the day was in Edinburgh and Leith. In Glasgow, if you divide my gross annual turnover by 364, you will see that my gross turnover a day is around £130,000 a day. This year, I will do around £90,000 on boxing day. That is still profitable; I can break even on that.

Maureen Macmillan: Okay, but your main preference would be for all the shops along Princes Street in Edinburgh and on Buchanan Street and Sauchiehall Street in Glasgow to be open on new year's day just as they are on a normal trading day.

Peter Betts: Yes, that would be of benefit. It would give critical mass and choice; people would come out.

Maureen Macmillan: Do you really think that that is what people in Scotland want to see on new year's day?

Peter Betts: Well, people are happy to work on new year's day. As the committee heard earlier, we have to be customer centred. We also have to be staff and shareholder centred but, first and foremost, we have to be customer led.

Maureen Macmillan: Would you like to see trading on Christmas day as well?

Peter Betts: No.

Maureen Macmillan: Why not? What is the difference?

Peter Betts: Again, there is no evidence that people would come out on Christmas day. Life moves on. There is now a far greater reverence for Christmas day than there is for new year's day.

Maureen Macmillan: You are not thinking about opening two or three stores to see how they do.

Peter Betts: On Christmas day?

Maureen Macmillan: Yes.

Peter Betts: No. The tourist opportunity is not really there. As I said, we have to work with our workers—

Maureen Macmillan: I am sorry to interrupt, but is this really about taking up tourism opportunities or maintaining a reverence for Christmas?

Peter Betts: It is about both. Part of the market is tourism and then there are the people who like to come out and shop. The one big thing about shopping that has changed over the past 10 or 15 years is that it has become more of a leisure pursuit. People like to come out, have a stroll and shop. We work hard to make the retail environment much more exciting.

Maureen Macmillan: Do you want to say anything on whether it would be beneficial to have all shops open on new year's day, Mr Ross?

Graeme Ross: On a personal note, I think that it would not. From the business point of view, I stand by what was said earlier, which is that we still believe that new year's day should be regarded as a special day for Scotland. I see no need for all retail outlets to open.

Bill Butler: Good afternoon, gentlemen. I have a few questions for both of you. I put them as a reluctant shopper.

Members: Really?

Bill Butler: In fact, saying that underestimates my aversion to shopping.

Mr Ross, you said that the Co-op's position is that 60 of your large stores are not open on new year's day. What would happen if other large stores were to open on new year's day? I am thinking not only of Debenhams doing that on a trial basis but of an increasing number of large stores doing so. Would the Co-op be forced to follow suit?

16:15

Graeme Ross: We should not stick our heads in the sand. If that happened, we would have to examine what is happening in the marketplace and make a decision based on that. I heard a lot said about Sunday trading, which came into being in the early 1990s. Scottish Co-op was one of the last retailers to start to open its shops on Sundays. That was possibly to our disadvantage—I do not know—but if all the large stores in Scotland opened on new year's day, we would have to review the situation.

Bill Butler: Why was the Co-op one of the last major retailers to open on a Sunday? Did you feel that you were forced to do so because more and more stores were doing so and Sunday was becoming less and less of a special day? Would that be fair?

Graeme Ross: That is a reasonable summary.

Bill Butler: Mr Betts, you said that three Debenhams stores opened three years ago on new year's day on a trial basis and, if I heard you right, that that has been extended to all 11 stores in Scotland. Is that correct?

Peter Betts: Yes.

Bill Butler: You said that tourism was important. There are other shoppers, but tourists are important to the success of the trial venture. Would that be correct?

Peter Betts: Yes, although in the second year the trial was extended to all stores and I expected

stores in communities such as Inverness not to do so well.

Bill Butler: Was that the case?

Peter Betts: Inverness did better than Leith.

Bill Butler: What proportion of your sales originates from visitors, by which I mean the VisitScotland definition of visitors as people who spend one night or more in Scotland? Have you broken down the figures?

Peter Betts: No. In the second year of new year's day opening, the figure was £280,000. From anecdotal feedback I received—we do not have the systems to monitor it—I would suggest that about 60 per cent of that £280,000 was from tourists.

Bill Butler: Would you accept the argument of the member in charge of the bill that that was because of displacement, or spreading it thinly? Would you argue, as Mr Hawkins did, that that was incremental, in other words extra business generated?

Peter Betts: That is the big debate. Yes, I would.

Bill Butler: What is your view on the big debate?

Peter Betts: The tourists who are there are perhaps catching a coach or flying out later that day, and there is not a lot for them to do. Quite a few tourist attractions close on new year's day, which I feel is wrong. It would be lost revenue with regard to new year's day. You asked about general displacement. We can enter into new realms, with Sunday working and so on. I can give you only anecdotal feedback, but I remember when pubs were terribly busy places on Sunday mornings; now they are not. I would suggest that that is displaced expenditure from that aspect of the service sector into stores and shops.

Bill Butler: Would your ideal vision of new year's day be that it should be a day just like any other day? Do you think that it is only good for business if more and more large stores open on new year's day, especially for the business that you are in, which is making money for Debenhams? Is that your vision of the future?

Peter Betts: We are consumer, or market led. On a personal note, I am sad that we open on Sundays and new year's day—I have three young children—but if consumers want to come shopping, we should be open for them. If there are tourists wandering around Princes Street and they want things to do, we should be open for them. From a business point of view, it is appropriate.

Bill Butler: I am grateful for that answer and I am sure that other members are as well.

The Convener: I welcome Jackie Baillie to the meeting.

Jackie Baillie (Dumbarton) (Lab): Thank you, convener. I was detained at the Local Government and Transport Committee, where I was giving evidence. I am delighted to be here now.

I have always understood the shops' mantra that they are responding to demand, but is effective retail development not about creating demand, rather than just responding to it? Shops do that by creating incentives for people to come in, such as blue cross sales.

Peter Betts: Yes.

Jackie Baillie: Let us challenge the argument that shops are simply responding to what is out there. You are also party to creating demand. Are you creating a demand on new year's day that does not exist now?

Peter Betts: The winter sales start on boxing day and run through January. It is a busy time.

Jackie Baillie: Did you offer any additional incentives for people to come in on new year's day, for example in Leith?

Peter Betts: No, not particularly. The winter sale was on. There is advertising for new year's day opening in England and Wales, because new year's day is a public holiday there. We create the demand, but we are competing with the hospitality sector.

Jackie Baillie: I understand that absolutely. A lot of evidence was given about shops responding to demand but, if you are any good at your jobs, you are also creating demand.

Peter Betts: It is a complex argument; the fairness aspect has also to be considered.

Jackie Baillie: Sure.

Jeremy Purvis: I have two brief questions. Do the Co-op and Debenhams advertise on television on Christmas day?

Peter Betts: Debenhams does.

Graeme Ross: I cannot recall whether we advertised on Christmas day last year, but we certainly advertised in the period up to Christmas day.

Jeremy Purvis: Heavily. I do not know whether you heard the evidence from USDAW about staff feeling pressurised. You both said that you have not had a problem opening. Debenhams wants to open all its stores on new year's day and does not have a problem finding staff to work. The Co-op opens a fifth of its stores and does not have a problem finding staff. Why should we believe that that is fine, that everyone is happy and that you do not, informally and behind closed doors, put

pressure on people to work? What documents or mechanisms are there to prevent that? We have heard that there is no code of practice in the retail side.

Graeme Ross: I can speak only for the Scottish Co-op. We consider ourselves a responsible, community retailer. There is no way that we would bully people into working on any public holiday. Working such days is purely voluntary.

Jeremy Purvis: Forgive me, but I suspect that every company would say that. I do not think that many companies would queue up to tell a parliamentary committee that they have bad practice in their stores. There is no code of practice.

Graeme Ross: One of the things that differentiate the Scottish Co-op and all the other Co-ops from companies such as Tesco or Asda is that we are owned by and responsible to our members. We also have to abide by the values and principles of the society.

Jeremy Purvis: What about Debenhams?

Peter Betts: The only point that I can add is that we have to address bigger issues than working on new year's day. There is a greater demand for late-night trading. I know that the stores at Braehead and Glasgow Fort trade until 10 o'clock every night at Christmas. We find that there are bigger issues, such as late-night working and abuse of shop workers by members of the public as a result of consumer, or shopper, rage. On new year's day, we trade from 11 until 6, with a skeleton staff. I cannot cash and I close the warehouse. There are two restaurants in the Glasgow store. In the first year I opened only one and in the second year I opened both.

Working on new year's day is just not the issue that you might think that it is. There are other, bigger issues, such as the fact that we manage to staff the store. Edinburgh has almost zero unemployment. Labour turnover in retailing in Edinburgh is more than 40 per cent. One just does not treat one's staff badly.

Jeremy Purvis: We heard about potential cases in which a manager would have a quiet word with a member of staff if he or she did not come in either late at night, on a Sunday or on new year's day. There would be nothing on paper, but that member of staff might feel that they would not get other opportunities further on or that their contract would not be renewed. What is in place to prevent that? What recourse is there for the member of staff?

Peter Betts: We are open on all the other bank holidays and public holidays. Working on those days is voluntary and is paid at double time. We generally manage on those days to staff the store

with the weekend staff. It has not become an issue and we have not had to bring in a unique process. Like any good company, we have grievance processes and problem-solving processes. If staff are being bullied into something, they have every recourse. We do not need to bring in a unique process for new year's day.

I can speak only for Debenhams, but during the busy Christmas period we try to give three-day and four-day breaks. For example, someone will say, "I'll do new year's day. Can I have boxing day off?" We will say, "Okay." We build breaks around the busy Christmas period. We manage to do that even though it is incredibly busy—and everyone is tired—because of the number of temporary staff that we bring in. Someone will say, "Look, Peter, I'll do boxing day and new year's day for you," then I'll give them a five-day break in the week after the holiday. There are inducements like that, but we do that with all public holiday working. If someone wants to work late or to work early, we will oblige them. If someone does not want to work late, they will do it one week and not the next week. All that you could do is to come in and talk to our managers and our staff.

Jeremy Purvis: I have another couple of questions but I am anxious about the time.

The Convener: I deflect the question to Mr Ross. You said earlier that you responded to community demand and needs when you opened your small stores as a trial. Have you had any demand to open some of your larger stores?

Graeme Ross: We took the view that we should not open the larger stores. Of our 180 convenience stores, we decided to open only those where we felt that we needed to serve the community.

The Convener: That is clear. Thank you.

Mr Maxwell: I have a supplementary question on that. I fail to understand why it was necessary to open those small stores. You sell food. Why was it necessary to open for that one day, given that a pint of milk or a loaf of bread will last through those 24 hours? What is essentially different about the areas where you opened?

Graeme Ross: What is essentially different is that, in those areas, there is no other store where people can get their goods at that time of year.

Mr Maxwell: Yes, but I do not buy stuff on Christmas day or new year's day and I would not do so even if the stores were open. I can buy a couple of loaves and a couple of pints of milk and they will easily last me several days. I do not understand what the consumer demand would be in Alness in particular, such that people had to go out and buy a pint of milk on new year's day.

Graeme Ross: The difference between large and small stores in rural and remote locations is that, if someone is used to going to a large store, they will buy a quantity of shopping that might last them for up to a week. People do not shop for quantity in small stores. They come for top-up shopping or distress purchases. That is the difference.

Mr Maxwell: So the reason you open on new year's day in those places is community benefit, is it? Or do you make money?

Graeme Ross: In the vast majority of those stores, we will not lose money, but we will not make much money.

Mr Maxwell: If you did lose money, would you still open?

Graeme Ross: In certain locations, we probably would.

Mr Maxwell: That is interesting.

What are your views on the definition of a large shop as described in the bill?

16:30

Graeme Ross: The 3,000ft² threshold is widely recognised in the trade. A good example of that being used would be in the Sunday Trading Act 1994 in England, which limits the opening hours of shops that are larger than 3,000ft².

Mr Maxwell: I understand where the figure comes from. Maybe I did not ask the question correctly. Do you understand why that figure should be chosen? For example, what do you think about the fact that a large Tesco Extra would be closed but a small Tesco Metro should be open or that a large national chain such as Tierack could be open, because all its shops are small, while a largeish local store should be closed? Do you understand that logic?

Graeme Ross: If you open a large store, such as a Tesco Extra, you will create demand in that area, because such a store will also sell non-food items, such as clothing.

Mr Maxwell: Is it reasonable for people who work in a Tesco Metro to have to work while people who work in a Tesco Extra do not?

Graeme Ross: I cannot comment on what Tesco Metros or Tesco Extras might do.

Mr Maxwell: You have said that you support the bill. I want to know what you think about the split that I mentioned. Is it reasonable that people who work in stores that are larger than 3,000ft² should be protected while those who work in smaller stores are not?

Graeme Ross: As I already said, stores that are smaller than 3,000ft² are not creating a demand for large numbers of people to come out and do their shopping; rather, they are offering a service to the community.

Mr Maxwell: Mr Betts, what is your opinion?

Peter Betts: As I said earlier, I do not think that it is fair. I think that it is daft for one shop to be allowed to open and one not to be, even though they are selling the same things. Furthermore, what would be the position in relation to a retailer such as Argos, which sells from the warehouse?

Department stores sell jewellery and gifts and there are lots of wee shops under 3,000ft² that sell the same things.

The Convener: I point out to Jackie Baillie before she asks her question that Mr Betts has to leave soon.

Jackie Baillie: I will be quick.

I have learned a new term today: “distress purchasing” describes what I do: I purchase and then become distressed by the bill.

If the bill is enacted, any breach will be subject to a summary conviction—in other words, it will be a criminal offence—and a fine of up to £50,000. Do you think that the level of fine is appropriate and that it is appropriate that a breach should be a criminal offence?

Peter Betts: I have not thought about that to a great extent. My response would be the same as Fiona Moriarty’s: if that is the law, that is the law.

Graeme Ross: I would give the same response. We would not breach any law in any case. If that is what is laid down, that is what is laid down.

Karen Whitefield: Mr Betts said that he wanted parity with England and Wales in terms of trading. Do we currently have parity?

Peter Betts: At the moment, we do. However, if the bill is passed, England and Wales will have one extra trading day.

Karen Whitefield: Is not it the case that England and Wales already have fewer trading days than Scotland because they have protection on Easter Sunday, which we do not have?

Peter Betts: Yes—you are right. I stand corrected.

Karen Whitefield: Do you agree, therefore, that the bill would give parity to Scotland’s shop workers by giving them a guaranteed two holiday days?

Peter Betts: Yes—although the new year’s day trading level is a lot more significant than Easter Sunday’s.

Karen Whitefield: Since you want parity, I want to ask you another question. If our shops were closed on new year’s day, how many shoppers do you think would be likely to go off to England to shop rather than stay in Scotland?

Peter Betts: Not many would do that.

Karen Whitefield: Do not you think that, if we followed your argument about tourism, that would damage tourism? If we encouraged people to come to Scotland—they are, thankfully, coming to Scotland at new year in their droves—and most of them could not shop on new year’s day, they would be encouraged to stay longer in order to shop on 2 January. Would not that help tourism in Scotland? If we said that shops could open on 1 January, that would allow people to do their shopping and leave earlier, which might reduce tourism spend in Scotland.

Peter Betts: I am not an expert on tourism, but I know that a lot of the visitors who come for hogmanay are from England and that 2 January is not a public holiday in England. I suggest, therefore, that many of them would leave any way.

From a macroeconomic viewpoint, retail in Scotland is becoming more visitor focused. As you know, the population of Scotland is diminishing, which is a worry to us. Glasgow was the second-largest retail centre in the UK, but it is now third behind the Bullring in Birmingham city centre. We are passionate about growing tourism and increasing the number of visitors to Scotland from abroad and from down south. The value of tourism to our gross domestic product is double its value down south.

Karen Whitefield: I do not expect you to be able to answer this—it is perhaps a more appropriate question for VisitScotland—but I would have thought that England and Wales do not suffer disproportionately over the Easter weekend in terms of retail spend because the shops are closed. I suggest that we might find the same here if my bill were to be passed. Perhaps that is something for me to put to VisitScotland.

The Convener: Thank you, gentlemen, for your attendance and for your openness in answering the committee’s questions. If you wish to add to, correct or respond to anything that members of the committee have said, please write to the clerk.

We move to our next witnesses. Good afternoon, gentlemen, and thank you for attending. It is not our fault that there was a fire alarm—we all stayed calm, regardless. I welcome Riddell Graham, the director of strategy, partnerships and communications at VisitScotland; Alan Rankin, the chief executive of the Scottish Tourism Forum; and Martin Clarke, from the Edinburgh Woollen Mill (Group) Ltd.

My first question is for Martin Clarke. How many of your stores would be directly affected by the bill if it was passed?

Martin Clarke (Edinburgh Woollen Mill (Group) Ltd): In terms of the space issue, approximately 25 stores would be affected by the legislation.

The Convener: How many people work in those stores? What would be the direct economic impact of the bill on your group if the stores could not open?

Martin Clarke: As our written submission says, we have some 80 stores in Scotland, of which 20 to 30 regularly trade on new year's day. It is a case of reflecting the potential lost sales of those 20 to 30 stores. New year's day represents 15 per cent of the turnover in new year's week, which is above the average day's takings for that week. My fellow witnesses will probably be able to give you more detail on visitor numbers and so on, but for many stores, new year's week represents as big a week as any of the August weeks during the Edinburgh festivals, so we are talking about a significant proportion of the turnover of those stores.

The Convener: For the record, how many of your stores are in tourist facilities, as opposed to general shopping areas?

Martin Clarke: All the stores in question, which open on new year's day, are in tourist-driven locations; very few are in what we would recognise as general high-street locations.

The Convener: Does VisitScotland want to add anything to that? I have other questions, as does the committee.

Riddell Graham (VisitScotland): No, I will wait for the other questions, thank you.

Maureen Macmillan: Martin Clarke says that between 20 and 30 of the group's stores open on new year's day. Are those all large stores, or are some small?

Martin Clarke: It is a mix.

Maureen Macmillan: Can you give us a breakdown?

Martin Clarke: Of the 20 to 30 stores that open regularly on new year's day, just over 20 are in the 3,000ft²-plus category.

The Convener: Apart from Edinburgh Woollen Mill stores, how many retail stores would be affected dramatically throughout Scotland where they are focused very much on tourism?

Riddell Graham: We do not have a direct answer to that, but I can find out. We have been working hard to encourage people to come to

Scotland all year round for their tourism experience. In particular, we have been encouraging visitor attractions to open during the new year period, as there are visitors around then, as has been said. We are also keen to ensure that the link is made between visitor attractions and the retail experience. I do not have the figure that you request to hand, but I can try to get an estimate.

The Convener: It would be helpful if you could send that to the clerks. From a tourism perspective, do you feel that there is a trend towards wishing to open on the holidays during the festive season?

Riddell Graham: Yes, although that is much less the case in relation to Christmas day. VisitScotland has worked very hard to present Scotland in a particular light to visitors, and the hogmanay experience is iconic of Scotland, as we know. We have been pretty successful in that, as can be seen in the occupancy levels of hotel accommodation, especially in the cities but also throughout Scotland. In Edinburgh, there is 93 per cent occupancy of hotel accommodation over the new year period. The figure drops dramatically thereafter.

The hogmanay experience is not limited to staying in hotel accommodation, but extends to visitor attractions and the retail element. As we say in our written submission, one third of visitors to Scotland cite the retail experience as their reason for visiting the country. It is clearly a major element of the visitor experience.

The Convener: Mr Rankin, do you have anything to add to that?

Alan Rankin (Scottish Tourism Forum): I echo those comments. Significant investment has been made in the growth of tourism as a year-round industry in Scotland. The investment that has been made to create the hogmanay event in Scotland has been further underpinned by a number of strategies to generate the momentum for year-round tourism in Scotland. Through strategies such as the tourism framework for change right across to the route development fund, we are seeking to target overseas tourists coming to Scotland all year round.

Mrs Mulligan: I have a supplementary question for Martin Clarke. You talked about how many of your stores would be affected. Let us be clear about this: are all the stores to which you referred—the ones of 3,000ft² or more—in Scotland?

Martin Clarke: Yes.

Mrs Mulligan: How many of those are there?

Martin Clarke: I think that 23 stores in our portfolio are above 3,000ft².

Mrs Mulligan: Thank you. I just wanted to clarify that.

Karen Whitefield: I have a question for Riddell Graham. You said that many tourists who come to Scotland cite shopping as a reason for doing so. Does that information come from a survey that you carry out throughout the year, or have you been able to separate out the reason why tourists choose to come to Scotland during hogmanay? Is retail their number 1 reason for doing so?

16:45

Riddell Graham: We conduct regular surveys of all UK and international visitors to Scotland throughout the year, so that we can make a month-by-month comparison. We ask a series of questions: How much did you spend? Where did you go? Why did you come? The message that comes through consistently is that retail is a particularly significant element. I do not have the split with me, but I can provide the figure for new year. Visitors come to Scotland for the hogmanay experience, of which retail is one part—an important part that we must not underplay.

We have been set the ambitious target of growing tourism revenues by 50 per cent over the next 10 years. We are clear that that will not happen simply by bringing in 50 per cent more people; we must also in some way encourage them to spend more. As you said, that is about encouraging them to stay longer, but it is also about their spending more when they are here. We do not want to be in people's faces about retail, but we should be smarter at encouraging them to spend when they are here. That certainly applies during the new year period as much as it applies at other times of the year.

Karen Whitefield: It would be helpful if you could provide us with a breakdown of the reasons why tourists come to Scotland during the hogmanay period. Have you consulted other representatives of the leisure and recreational sectors that are competing for the same money over that period for their views on the distribution of spending? Tourists will have to decide whether they spend their money on visitor attractions, in pubs and restaurants or in shops.

Riddell Graham: Our mantra is that tourism is everyone's business, which is dead right. We do not particularly like to define what tourism is about, because it is everyone's business. The experience of a holiday in Scotland—at hogmanay or at any other time of the year—is enhanced or diminished by people's experience at the hands of all sectors. We recognise that the important issue is the benefit to the whole Scottish economy. All the sectors that you have identified are key to that. I am happy to try to provide the additional information that you have requested.

The Convener: That is helpful.

Jeremy Purvis: We have heard comparisons with England and Wales. Have you spoken to colleagues south of the border—in VisitBritain, for example—about whether the Christmas Day (Trading) Act 2004, which affects them, has had a negative impact?

Riddell Graham: I have not, but if such research is available through VisitBritain or any of the regional development agencies in England, I will try to provide the committee with it. I have not spoken specifically to colleagues about the issue.

Jeremy Purvis: That would be helpful.

Bill Butler: I will direct my questions at Mr Graham and Mr Rankin. What might be the indirect effect on other tourism-related businesses of stores such as those of the Edinburgh Woollen Mill being required to remain closed on new year's day? Is there any evidence of what the impact would be? I am referring not just to the overall quality of the tourism experience, but to cash and economic effects.

Riddell Graham: We have tried to build a holistic experience. My concern about any restriction—which the media may grab on to—is that it might create the perception that Scotland is closed on new year's day. That is the last message that we want to put out to visitors. I know from experience that there are a huge number of people in Scotland at new year and that they are looking for something to do, part of which involves retail. Previous witnesses have already alluded to that. It might detract from the appeal of Scotland at new year if there were a perception—members know what the media are like when it comes to putting out a message—that Scotland is closed. There could be a knock-on impact on places that open and have done well as a result of opening. We have worked hard with Historic Scotland and independent visitor attractions so that places open on new year's day and provide the experience that visitors come here for.

Bill Butler: I understand why perception is important, but have you or Mr Rankin done any work on possible effects on cold cash if businesses such as the Edinburgh Woollen Mill are required to remain closed? Would there be a cash impact?

Alan Rankin: I echo what Riddell Graham said about an holistic visitor experience. We are talking about a leisure activity that includes visitor attractions and retail outlets. As a past operator of tourist attractions, I know that retail is a vital part of a range of activities to attract families to such attractions. It is clearly a key plank of the visitor attraction sector.

We should also recognise that some key flagship visitor attractions in Scotland have retail

floor areas in excess of 3,000ft². As a result, there would be a direct impact on them.

Bill Butler: Can you quantify what that impact would be?

Alan Rankin: It would be impossible for me to do so, but I have certainly been aware of the retail share of visitor attractions' incomes, which is sizeable during holidays. It can be anything up to 33 per cent of an attraction's income.

Bill Butler: If the bill were enacted, do you think that it would have a detrimental effect on Scotland's economy as a whole? I refer specifically to tourism.

Alan Rankin: I do.

Riddell Graham: I think so, too. I am less concerned about Christmas day, which is less of an issue, but we have an edge over many other countries at new year, bearing in mind the winter festivals, the investment that has been made and the experience that already exists. It is recognised that coming to Scotland for new year is special, and the retail element is part of that special experience. If part of that experience were removed, the appeal of new year in Scotland would be diminished.

Bill Butler: It is obvious that people hold that view, but it strikes me as impressionistic in the absence of specific analysis to back it up. I am not saying that impressionistic views should be discarded, but do you agree that your view is impressionistic and based mainly on your experience and that there is no analysis to absolutely back it up?

Riddell Graham: Visitor spend over the winter festivals has been analysed in detail. We would be delighted to share that analysis with the committee if it does not have it. Such spend has been well studied. It has been asked why people come to Edinburgh for the winter festivals, what they do when they are here, what attracted them and what they spend. We will gladly get our hands on the research that has been done and share it with the committee so that members will be aware of the bill's potential impact.

Bill Butler: I am obliged to you.

Karen Whitefield: I have two questions that follow on from Bill Butler's questions. Shops in England and Wales cannot open on Easter Sunday. Is Scotland therefore a preferred tourist destination for tourists who come to the United Kingdom at Easter? It has been said that we should not send out a signal that Scotland is closed and is not welcoming people. I would never want that signal to be sent out—I want to encourage tourists to come to Scotland, and I think that people come because of the special nature of our new year celebrations. In

encouraging tourists to come to England and Wales, does VisitBritain have to overcome a barrier as a result of their being closed for business at the Easter weekend? That is certainly not my perception.

Riddell Graham: The important point is that 90 per cent of visitors to Scotland come from the United Kingdom. It is significant that more than 50 per cent of them have never before been to Scotland, so there is huge potential.

Our biggest market is not the American with the camera round his neck or the Japanese group or whatever; it is visitors from elsewhere in the UK. All our research suggests that that will continue to be the case. All the research that we have carried out shows clearly that people come here for Scotland first. They come for a reason—they come to do something. City breaks and the retail experience during city breaks are a very important draw. Then, people choose the location where they want to do that. We must not lose sight of the figures for UK visitors.

Interestingly, in all the promotional activity that VisitBritain does on behalf of Scotland and for the whole of Britain, the retail experience is an important element and it is highlighted. It is not the only one, and it is not the only reason why people come here, but it is a very important element. That is borne out clearly by the figures. At the moment, retail spend is very substantial indeed.

Karen Whitefield: I appreciate that, but you have not answered my questions. Does VisitBritain have a barrier to overcome? Is it the case that the wider population around the world think that England and Wales are closed for business over the Easter weekend because shops are not allowed to open up?

Riddell Graham: I am not aware that they do. I would suggest that the huge barrier that VisitBritain has to overcome is the fact that it is competing with 199 other countries in the world. Anything that is done to show that we are not welcoming or that we are closed is bound to be a negative element, which we could do without. That is the point as far as our evidence on new year is concerned.

Colin Fox: I make this point to Mr Graham and Mr Rankin in particular. There is a fascinating issue here. I am sure that both of you will understand that there is a wider consideration about hogmanay, which is an iconic event, and about what it is that makes Scotland different at that time of year. Is there a danger that we are not protecting the goose that lays the golden egg? Hogmanay is an iconic time, when people come from all over the world to Scotland, because the experience here is unique. If 90 per cent of the visitors come from the rest of Britain, where the

shops are open—which is fascinating—is there not a danger that we are trying to make just another experience that people can get anywhere? Your point was that retail is part of the experience.

Riddell Graham: I can speak only from personal experience. In the Borders, we worked very hard to develop a music festival over the new year period, and 300 people from Germany and Holland came to experience it. The one thing that we really struggled with, which was commented on time and again, was the fact that there was nothing to do on new year's day. We had to create something special for those visitors, and managed to convince Historic Scotland to open Melrose abbey on that day, when it had not been open before. That opened up the whole experience to them. They were here, and they wanted to experience the unique thing that is Scottish hogmanay. They did that but, suddenly, that was taken away from them on new year's day, when nothing was open. I am talking about the situation several years ago but the fact that we encouraged attractions and other outlets that had traditionally been closed to open, including eating places, brought us a major advantage to sell on in following years. If we consider the replication of that throughout the country, it goes back to the point that I made earlier about the holistic experience. There is a certain expectation and to detract from that experience, particularly at new year, would be a very negative thing.

Colin Fox: Are you both aware, Mr Graham and Mr Rankin, of the feeling that that iconic experience—to use your phrase, which I think is a good one—is already coming under pressure from commercial imperatives, in the same way that Christmas is also under pressure, as people sometimes complain? Are you aware of those feelings, not just from the tourism industry but from the Scottish perspective more widely?

Riddell Graham: I must say that I am not, but I can give only a personal view on that.

Alan Rankin: I am not aware of that feeling, but—not wishing to sound like a stuck record—I support what has been said about the modern consumer being a discerning consumer, with the choice to go anywhere in Europe at very short notice and at minimal cost. We must provide a product that can meet more and more discerning demands.

The growth in occupancy in Edinburgh in particular and the success of hogmanay has demonstrated the real product that we have to offer here in Scotland. If we take away aspects of the experience that appeal greatly to a certain segment of that audience, that will diminish the product. The industry would certainly not support something that diminished the work on developing hogmanay as an anchor for a year-round destination.

17:00

Colin Fox: Is it therefore the case that, without the bill, you expect tourist numbers in Scotland to rise?

Riddell Graham: Absolutely. Our target, which is ambitious, is to increase revenues by 50 per cent in the next 10 years. One element of that is a target for an increase of about 30 per cent in visitor numbers; the balance is to be made up through increased spend. Seasonality is a huge issue. As members know, historically, people have come in their droves during the summer, but we are trying to flatten out the peak and ensure that visitors come all year round. I am delighted to say that the winter period, particularly in the cities, but also throughout Scotland, is now popular. Hogmanay is a key element of that. We fully expect growth in numbers and spend in the next 10 years.

Alan Rankin: I add to that the issue of the sustainability of tourism as a year-round product. We aim to spread the business throughout the year, so that the visitor experience is not diminished by overloading in the key seasons. The industry and the Executive have put together the document "Scottish Tourism: The Next Decade—A Tourism Framework for Change", which is being implemented by the industry and the public sector. The industry wants sustainability to be underpinned by the targets for a 30 per cent increase in volume and 20 per cent added value. Retail is a key strand in delivering the added value element of the growth ambitions.

Colin Fox: My second and final question—

The Convener: Before you move on, two or three members have supplementary questions on the present issue.

Maureen Macmillan: I return to the point about Melrose abbey being open. That is fantastic and provides a wonderful tourist experience, but if 90 per cent of visitors come from the rest of the UK, going to Marks and Spencer, Debenhams or Tesco will surely not be a fantastic experience for them. What we should consider for tourism in Edinburgh is opening up Edinburgh castle on new year's day and inviting everybody to have a party there, rather than telling them to go to every shop in Princes Street.

Riddell Graham: In fact, through visitor-consumer demand pressure, Edinburgh castle is now open on new year's day. That tells us something special, which is that visitors wanted that. It is wrong to compare Melrose abbey with Marks and Spencer, because we do not have a Marks and Spencer in the Borders.

Maureen Macmillan: If there was a Marks and Spencer there, would people go there rather than Melrose abbey?

Riddell Graham: I cannot relate to the purchasing experiences of visitors. My point is about the holistic experience. We need to break through. I am sorry to use an example from the Borders again, but when I first started work in Selkirk, the shops closed on Saturdays, whereas they now open, because one opened and then the rest followed. That happened because people wanted it. The issue is about change, competition and responding to the needs of the customer, whatever they may be. As a result of the number of people who are in Edinburgh for the hogmanay experience, it was rightly decided to open Edinburgh castle on new year's day to provide that experience for people. I suspect that the same is true for the retail sector.

Mr Maxwell: I want to follow up some of your answers and Maureen Macmillan's point. Is there a halfway house on the tourism angle? Would it be possible and, if so, useful to amend the bill to create an exempt category for shops or retail outlets in tourist venues or visitor attractions? The high street shops would remain shut but, for the tourists who wanted to go Edinburgh castle and other tourist attractions, shops within them, such as the Edinburgh Woollen Mill, that sell tourist stuff, would remain open. Is that possible?

Riddell Graham: I do not know. I was in Stirling on new year's day last year and Debenhams was the only place where I could get something to eat and keep out of the rain because it was the only place that was open.

I go back to my point about tourism being everyone's business. The visitor does not distinguish between what is an attraction in the way in which we have defined it and a place that they want to visit. If people want visit Marks and Spencer on new year's day, I believe that they should be allowed to do so because it would form part of their experience. They would go home saying, "That was a wonderful experience; we went to Edinburgh Castle in the morning and Marks and Spencer in the afternoon." We should not think about peeling off parts of the retail sector.

Colin Fox: My other question is along the same lines. In your submission, you mention that "unique and quirky" stores form an important part of the visitor experience. By and large, those shops are already open at Christmas and new year. You mentioned competition. Is there not a danger that if the larger flagship stores open, that will be detrimental to the trading opportunities of the smaller stores that already open?

Riddell Graham: I do not know the simple answer to that, but my gut feeling is that if more shops open, more people will be attracted into them and people will be more attuned to the retail experience on those days. At the moment, people have to find shops that are open—it is not commonplace for shops to be open.

Colin Fox: I wonder what Mr Clarke thinks about that. Would it be beneficial to the Woollen Mill's tourist trade business at that time of year if most of your major high street competitors were open at the same time as 30 of your stores?

Martin Clarke: As my colleague from Debenhams said earlier, we welcome the build-up of critical mass in tourist locations. The more retailers that are open, the more attractions that are open. That adds to the width of experience on offer, which is no bad thing. The issue is more difficult in some locations, particularly those in more rural spots, where the Edinburgh Woollen Mill might well be the only retailer, full stop—never mind the only retailer that is open. However, in general critical mass is often a good thing.

Colin Fox: You do not think that if a bigger high street chain opened in the same street on the days in question, it would be likely to take some of the custom that you have to yourself at the moment.

Martin Clarke: It is a complex equation. That would take some of our custom, but it would help to grow footfall.

Colin Fox: You are saying that it is hard to say what the effect would be.

Martin Clarke: Yes.

Alan Rankin: If there is more to do, more time will be spent in an area. In retailing, there is a desire to extend what is called the dwell time. If people spend more time in an area, the spend is greater, which benefits the economy.

Colin Fox: In that case, let us hope that it does not rain.

Maureen Macmillan: Some of the issues that I wanted to ask about have already been covered.

Who are our competitors, in particular at new year? If people did not come to Scotland for new year, where would they go? Do those countries have the same trading restrictions that we have? Are all the shops open on new year's day in those other countries? If I wanted to go to Paris for new year, for example—

Colin Fox: Go, Maureen.

Jackie Baillie: I will come with you.

Maureen Macmillan:—would I find the shops there open or shut?

Riddell Graham: The simple answer is that I do not know. I reiterate what Alan Rankin said earlier. It is becoming increasingly simple for people to jump on a plane at the last minute and go anywhere in the world at very low cost. Competition is at the top of all our agendas; it is a key driver of what we do. The competition will not go away, but will get worse. I do not know the

answer to your question, but I know that we are competing for the 50 per cent of people in England who have never been to Scotland and all the people from overseas who want to come here but who have the choice of going somewhere else. I do not know whether the shops are open in our competing destinations, but I suspect that they are because a lot of the experience in Europe in particular is of retail businesses being open at times when visitors want them to be.

Maureen Macmillan: Well, I do not think so. For example, I have been to Paris—to cite it again—on a Sunday and the shops are all shut. I would be surprised if they were open on new year's day or Christmas day.

Riddell Graham: I am sorry, but I do not know the answer.

Maureen Macmillan: Is it possible to find that information? Do you have it somewhere in your organisation?

Riddell Graham: I doubt it, but I will certainly try to find out.

Maureen Macmillan: If I was going to go for a new year's holiday somewhere, I do not think that the first thing that I would ask myself would be whether the shops were open. I would want to know about the food and the drink, but I certainly would not care whether there was a Marks and Spencer, a Tesco or a Debenhams. [*Laughter.*] This should not get out of hand.

The Convener: We are getting into areas of personal declaration. We will have to be careful.

Maureen Macmillan: I am going to be reported to the Standards and Public Appointments Committee again.

The Convener: The trouble is that I would have to go with you. I am trying to keep this in order.

Maureen Macmillan: It would be interesting to know what other countries feel about shops opening on such days.

Riddell Graham: If I can find anything at all, I will certainly share it with the committee. However, I am not aware that we have that information to hand.

Mrs Mulligan: I am still puzzled by the idea that, if we have a product to sell to visitors to Scotland—perhaps Edinburgh castle, Melrose abbey or, dare I say it, Linlithgow palace—the fact that Debenhams or Marks and Spencer is open is going to affect those visitors. To be honest, if they are going to buy in those shops, they will not want to trudge all the stuff that they can buy there back to Birmingham when they can go to the Bullring and do the same. In Scotland, is there a difference between the high street stores and the more specialist stores that may be visitor attractions but

tend to be smaller and therefore would not be encompassed within the bill?

Riddell Graham: The other important factor is the huge importance of the cities to the Scottish tourism experience. Twenty-five per cent of visitors to Scotland come to Edinburgh, so the city experience—and the retail element of that experience—is crucial. There is no question but that, particularly for Edinburgh and Glasgow, the visitor experience is enhanced by the retail element. It may be that visitors are attracted because of new year, the hogmanay experience and the fact that shops are open and they can shop at the same time. Those three together make the city experience special, which does not necessarily apply to the rural parts of Scotland, where the appeal might be different. I accept that.

Mrs Mulligan: Do you accept that, as Karen Whitefield said earlier, there is also a difference between those who come for the shopping experience throughout the year and those who come for the hogmanay experience at new year? Even if the latter are fit to get up and shop on new year's day, it is not what actually brought them.

Riddell Graham: That could well be the case. We often find that the reason why people are attracted to Scotland in the first place may not be the reason why they stay or spend their money. That is one of the great appeals of Scotland; we attract visitors once for golf or to a conference and they come back because they have had a fantastic experience. We are trying to encourage repeat visits, which are strongly based on the visitors' experiences: the service; the way that they are welcomed, which is the tourism-is-everyone's-business element; and the retail part. Those are all part of the experience.

Mrs Mulligan: You mentioned the fact that Glasgow and Edinburgh are a big part of tourism business. To return to the discussion that we have just had, the shops in Rome are shut on a Sunday, but people still go to Rome because there are other attractions there. I wonder whether we are getting the matter out of perspective, because we are talking about one day in a break that will probably be two or three days long. How much information do we really have to support the idea that the bill could damage our tourism industry in any way?

17:15

Riddell Graham: I cannot speak for Rome, but I suspect that visitors to Rome would have a view. When they go home, they may say, "It was a pity that the shops weren't open because ..." I cannot comment on that. All I am saying is that shopping and the retail experience are a key part of a holiday experience in Scotland, particularly in the

cities. Anything that is put in the way of that would be detrimental, particularly at new year. I am much less concerned about the Christmas situation.

Alan Rankin: Edinburgh is a gateway to the rest of the country. If we diminish the experience in Edinburgh, the experience of the onward trip out of Edinburgh, as part of that holiday, could be diminished as well. The visitor who comes back is the cheapest visitor to attract.

Mrs Mulligan: I am not sure whether Edinburgh offers the best shopping experience in Scotland on which to judge a visit.

Alan Rankin: I could not comment on that.

Jeremy Purvis: As the local MSP, I am tempted to ask whether the shops in the Borders did a roaring trade when the German visitors were there, but I will not. Should the bill be scrapped completely or can it be amended? What would be beneficial for tourism?

Riddell Graham: We are much less concerned about the Christmas day element; therefore, if it were amended, I suspect that we would be happy with such a compromise. We are much more concerned about the negative impact of the new year proposal.

Alan Rankin: The Scottish Tourism Forum is of the same view regarding Christmas but has a strong view that tourism and the economy would suffer as a result and that the bill is not amendable.

Martin Clarke: I agree entirely. We touched earlier on the issue of 3,000ft² or 3,100ft² versus 2,900ft². There needs to be a line of demarcation, but it is one that is quite difficult to understand and live by.

Mr Maxwell: To return to an issue that was discussed by the previous panels, many people who support the bill feel that if shops were to open on the days in question, there would be a danger that staff would be directly or indirectly pressured into working. That has been a concern of USDAW and others. Is there any evidence that there is currently pressure to work on Sundays, or on new year's day in the case of stores that open then? Is there likely to be further pressure if the bill is not passed?

Martin Clarke: I am not aware of any pressure. As colleagues may have said earlier, a lot of what we would say is probably largely anecdotal. The Edinburgh Woollen Mill has traded very successfully on new year's day for many years. We have never had any problem getting management or staff to work on that day. Our staff can opt out of working on Sundays; in that respect, they are protected. That seems to work well. We do not like to run our business and our stores with cloak-and-dagger enforcement or pressure. We

look for volunteers to work on new year's day and bank holidays, and we try to balance things out, particularly, as my colleague from Debenhams said, over the Christmas break. We look at new year's day versus boxing day and so on. That works well in our stores.

Mr Maxwell: Is it not the case that that can work only when you open some of your stores and staff from other stores volunteer to move, or when you run less than full staffing, as some of the other retailers mentioned? If all or most stores opened, there was an increase in throughput and extra people came into the shop because all the shops were open, as has happened on Sundays, is it not inevitable that you would no longer have that room for manoeuvre? Staff would not have that flexibility, because you would need to open all your stores and to staff them to, or near, the maximum. Therefore, there would no longer be any room for staff to say, "I'm sorry, I'm not working on that day."

Martin Clarke: Obviously, it is difficult for me to speak for other retailers, but if that stage were ever reached, the whole package—how we go about recruiting people to work on Sundays or whatever day—would need to be considered. It may come with as many upsides as downsides.

Mr Maxwell: Do VisitScotland and the STF have a view on the pressures that may be brought to bear on staff?

Alan Rankin: We are not aware of any problems. Visitor attraction or activity providers—with the exception of Historic Scotland and the National Trust for Scotland—are not predominantly multiple providers. My experience is that it was not a problem to get staff in, mainly because staff in that service sector are used to working flexible hours.

Mr Maxwell: Some attractions have been open on new year's day for many years. Mr Clarke said that that was the case for the Edinburgh Woollen Mill. People may join such organisations knowing full well that they open on new year's day. However, what would happen if there were a sudden change and all the stores that used to shut suddenly opened, given that the staff who have joined such organisations did so expecting to get the day off? Does not the problem lie with that change, rather than with businesses such as the Edinburgh Woollen Mill, in which people expect to work on new year's day because that is the norm and has been for years?

Martin Clarke: Twenty to 30 of our stores regularly trade on new year's day, but the number is not fixed. Sometimes whether stores trade is dependent on the day on which new year's day falls. As more stores open, workforces that are not used to that pattern of work will be affected. It is

down to how retailers and local management handle such situations. As ever, the emphasis will be on our working through any difficulties as responsible and reasonable employers. At the end of the day, retail does not gain anything from having a flat, demotivated workforce that does not want to be at work. As with any other type of attraction, the imperative for us is to try to keep people motivated, focused and happy in their jobs. As romantic as that sounds, there is nothing to be gained for us from having a flat team.

Alan Rankin: The hotel sector is able to staff and manage its premises and businesses for 365 days of the year. That is indicative of the flexible, service nature of the tourism and leisure industry.

Karen Whitefield: I want to make a point of clarification about Sunday working. I do not want to comment on the way in which the Edinburgh Woollen Mill staffs its stores on Sundays, but Scotland's shop workers—irrespective of who employs them—have a right to opt out of Sunday working, under the Sunday Working (Scotland) Act 2003. That legislation was introduced because Argos sacked 12 employees who refused to work on a Sunday. We must remember that Scotland's shop workers have rights under existing legislation.

The Convener: That concludes this evidence-taking session. I thank the witnesses for their evidence. I apologise once again for the fire alert and wish them a safe journey home.

Subordinate Legislation

Civil Legal Aid (Scotland) Amendment (No 2) Regulations 2006 (SSI 2006/325)

17:24

The Convener: Do members agree to make no recommendation on the regulations?

Members indicated agreement.

The Convener: With the committee's permission, I will postpone consideration of item 5 until next week. The clerks assure me that we will be able to fit it in.

Members indicated agreement.

17:24

Meeting continued in private until 17:45.

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