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Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 31 January 2012

Session 4

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HEALTH AND SPORT COMMITTEE
5th Meeting 2012, Session 4

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Jackson Carlaw (West Scotland) (Con)
*Jim Eadie (Edinburgh Southern) (SNP)
*Richard Lyle (Central Scotland) (SNP)
Fiona McLeod (Strathkelvin and Bearsden) (SNP)
*Gil Paterson (Clydebank and Milngavie) (SNP)
*Dr Richard Simpson (Mid Scotland and Fife) (Lab)
*Drew Smith (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alan McCreadie (Law Society of Scotland)
Jim McLean (Law Society of Scotland)
Dennis Robertson (Aberdeenshire West) (SNP) (Committee Substitute)
Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy)

CLERK TO THE COMMITTEE

Douglas Wands

LOCATION

Committee Room 1

Scottish Parliament
Health and Sport Committee

Tuesday 31 January 2012

[The Convener *opened the meeting at 10:00*]

Subordinate Legislation

National Health Service (Travelling Expenses and Remission Charges) (Scotland) (No 2) Amendment Regulations 2011 (SSI 2011/449)

The Convener (Duncan McNeil): Good morning and welcome to the fifth meeting in 2012 of the Health and Sport Committee. I remind all those present to turn off mobile phones and BlackBerrys as they can interfere with the sound system.

I welcome Dennis Robertson to the committee this morning. Dennis is substituting for Bob Doris. We also have apologies from Fiona McLeod.

The first item is consideration of a Scottish statutory instrument. The Subordinate Legislation Committee has made no comments on the instrument. If there are no comments from members, do we agree that we do not wish to make any recommendations to the Parliament on the instrument?

Members *indicated agreement.*

Alcohol (Minimum Pricing) (Scotland) Bill: Stage 1

10:01

The Convener: The next agenda item is our fifth evidence session on the bill. I welcome Alan McCreddie, deputy director of law reform at the Law Society of Scotland, and Jim McLean, a consultant at Balfour and Manson and also representing the Law Society of Scotland.

Gil Paterson (Clydebank and Milngavie) (SNP): Some witnesses have told us in evidence that the introduction of a minimum unit price would cause Scotland to be in breach of European law. Can you explain what that law is trying to achieve?

Jim McLean (Law Society of Scotland): That is a reference to articles 34 and 36 of the Treaty on the Functioning of the European Union. The EU is trying to ensure that there is interference with imports and exports only when there are certain justifications for that, and in no other circumstances.

Gil Paterson: Is it the main purpose of those articles to prevent a member state from discriminating in favour of home produce or against produce from another member state?

Jim McLean: Yes. It is to stop trade barriers being erected that do not look like trade barriers at first sight, but that operate as such. A relevant example is Germany's law on beer purity. The law was such that beer could be made only from female hops and water and no other ingredients. If it was made of anything else it could not be called beer in Germany. The European Court of Justice said that such a law was completely disproportionate and that people could be perfectly well informed by a labelling system.

Gil Paterson: Does that lead me to believe that minimum pricing is not discriminatory because it applies to any product, no matter where that product is made?

Jim McLean: Minimum pricing might not discriminate, but it can affect the market. Minimum pricing would be considered as raising an article 34 question because it denies to the exporter possible cost advantages and the ability to price a particular product more competitively. There is an issue. The question is how that is dealt with.

Gil Paterson: The last part of this question is how that interacts with the public health aspect. What weight is given to public health?

Jim McLean: Article 36 deals with that leg of the question. The rule against restrictions on imports

"shall not preclude prohibitions or restrictions"

for a number of reasons, one of which is “the protection of health and life of humans”.

That is a possible way of justifying something, but we cannot just turn around and say, “This is a health measure, so it’s okay. End of story.” We must go further than that. It must first be shown that the view that the measure might protect health has been reached by a proper process and by consideration of a lot of evidence. Having got that far, the next stage would be to answer the question whether there was a simpler way of doing that that was less disruptive of trade.

No one has ever really had a go at justifying the use of minimum unit pricing. People have just said that it is a health measure. The response to that has tended to be to say that the obvious way of dealing with the matter would be to put up duty or to ban loss-leading—selling below cost—and to ask why that is not done. Anyone who wants to try to get a minimum pricing measure through must answer that question, because the proportionality test is whether the measure is indispensable. It does not have to be the only conceivable way of addressing the problem, but a real effort must be made to show that it could work, that there is reason to think that it could work, and that it is not disproportionate.

Gil Paterson: Finally, I will ask you, but not as lawyers—perhaps you can keep a wee legal hat on—whether the measure that the Government is trying to proceed with is all to do with public health?

Jim McLean: I think that it is a health measure, but the difficult question is whether it is proportionate. Given the context and everything that led up to it, it would be difficult to say that it is not a health measure. It is not one of those measures in respect of which people say, “Ha ha, I’ve found the answer. I can protect this industry by calling this a health measure.” The context and history of the bill suggest that nothing was further from people’s minds. The really difficult question is that of proportionality.

Gil Paterson: Thanks very much for that.

The Convener: Do you wish to add anything, Mr McCreadie?

Alan McCreadie (Law Society of Scotland): There is nothing that I can usefully add. The matter hangs on the interpretation of article 36 of the Treaty on the Functioning of the European Union and the proportionality issue.

The Convener: Okay. Thanks very much. Opening up that matter right away has been helpful.

I will ask for Richard Lyle’s indulgence. Are you going to pursue—

Richard Lyle (Central Scotland) (SNP): I want to follow up on the points that Gil Paterson made.

The Convener: That will be useful, as a number of others want to come in on the issue. I hope that we can cover the area properly.

Richard Lyle: A comment was made about excise duty and raising prices. If, as seems likely, the United Kingdom Government declines the Scottish Government’s request to use the Scotland Bill to transfer to it powers on excise duty, what pricing alternatives realistically remain for the Scottish Government? European law generally points towards taxation being the preferable option, but the Scottish Government will not have that power. Jim McLean said that excise duty could be raised, but we cannot do that, because it is a reserved matter. Realistically, what can we do?

Jim McLean: It is important to focus that issue. Under European Union law, the question is about trade with a member state, and the member state in question is the United Kingdom, although we are talking about just a part of it. The internal arrangements in a member state and the granting or withholding of powers in it are of no interest at all to European Union law. It is of no consequence that the answer to the question why duty was not raised or why loss leading was not banned is, “Because we couldn’t.”

Richard Lyle: If the UK Government said that it would not put up the price, are you suggesting that that would be us—we would be stymied and we could do nothing?

Jim McLean: No, I am not suggesting that. I am saying that the question whether minimum pricing is an appropriate and proportionate response to a perceived problem that complies with article 36 relates to trade into and out of the United Kingdom and does not concern the internal arrangements in the United Kingdom. The question whether such a power should or could exist is different and would not be addressed in litigation on the measure.

Drew Smith (Glasgow) (Lab): One test of proportionality will be the price itself. You have outlined some of the initial problems and where a challenge might come from.

We have discussed how the price would be varied in the future. The consensus is that it would need to be varied to remain useful. Raising the price by the inflation rate has been suggested, but that is not the only suggestion that we have heard. Index linking the price to inflation would have simplicity. It has also been suggested that we might wish to do modelling again or to set the price in another way.

It is not entirely clear how the Government proposes to vary the price. Are you concerned that

any subsequent price changes would raise the same possibility of legal challenge as the initial price would?

Jim McLean: A process of review—possibly continuous—would be needed to see that whatever was being done remained proportionate, if it had been considered proportionate in the first place. I will expand on that slightly. One difficulty is that, as far as I know, nothing quite like the proposal has been tried, although some measures in Canada have not been a million miles away from it. That means that people cannot point at evidence and say, “This is what happens when you have a minimum price.” What can be done is modelling, which has been done, with a great deal of care.

As time passes, I presume that a body of evidence will be collated about the impact. The European Court of Justice might be concerned that, if it said that minimum pricing was okay but the evidence over time did not stack up to back that up, it might have allowed an awkward situation to arise. Those involved might want to consider whether to build in some way of keeping the situation moving.

Drew Smith: My second question is about the operation of the measure. I do not know whether the convener wants to take other members first and come back to me.

The Convener: We will keep on the current theme, if you do not mind. I will of course let you back in later.

Jackson Carlaw (West Scotland) (Con): I will ask a question back to front, in a way. The committee has received an interesting report from the Subordinate Legislation Committee that makes the point that it is that committee’s responsibility to establish not just whether the bill could be within the Parliament’s legislative competence but whether it is within that competence.

As I have said in other evidence sessions, the Government has a majority and wishes to proceed with the policy. How do we establish whether it is legal rather than debate—as Gil Paterson sought to—whether it might be legal? Can that be established only once a case or an action has taken place? It has been suggested to us that the measure could be notified in the first instance and that a determination could be established. I am interested to know how, in order to give clarity, we would establish whether the measure is legal.

10:15

Jim McLean: Lawyers often come up against the fact that they are telling people how to manage an element of legal uncertainty rather than giving certainty. I do not think that certainty is on offer in

this regard. In what way could the measure be notified?

Jackson Carlaw: I understand from evidence that we have received from other parties that it would be open to the Government to notify the European Commission of the intention to implement the policy, which would allow the Commission to determine ahead of the policy being enacted whether it fell within the competence of the Parliament or contravened any of the trade barrier laws to which you referred a moment ago.

That suggestion is new to me, and I am interested to know whether you are familiar with it. Obviously, we can sense the Government’s intention to proceed, but the Parliament must be satisfied as to whether the measure is legal. Are you saying that we will not know until it is tested in the courts, or is there a process by which a determination can be arrived at before that point?

Jim McLean: There are some obligatory notifications. If the measure involves state aid, for example, there would be an obligatory notification, but there is no state aid in this case because there is no transfer of resources except from the consumer.

An obligatory notification would apply if you were implementing standards, such as the German beer purity law that I mentioned earlier. A minimum alcohol content—would you believe it, that was once tried—would also be a standards issue, and there is an obligation both at European Union and World Trade Organization level to notify such a policy.

This measure, however, is none of those things. If someone just wanted to sound out the Commission, or even ask on a more formal basis, they would simply get an opinion from the Commission. That would be highly authoritative, and very much to be considered, but it would not be the last word. The Commission is not always right.

The cases that go before courts in general and the Court of Justice in particular have been brought usually because people have not been completely sure. Sometimes it is because they are trying it on, but I do not think that that applies in this regard.

Jackson Carlaw: To sum up that position, if we were able to notify the Commission of the policy intention, its opinion might offer the Parliament further reassurance, but it would not offer the Parliament certainty. Ultimately that certainty will be established only if the policy is subsequently challenged in court.

Jim McLean: I think so. It is always possible that the Commission might react by suggesting

what might be modified or done to make the policy more palatable; it is not unknown for that kind of conversation to happen. Ultimately, however, it would take litigation to get an absolute, 100 per cent definite view.

Jackson Carlaw: Thank you.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I have had sight of some correspondence from the Commission—I am not at liberty to say between whom at this point—which says that the proposal is:

“in principle, notifiable under Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations.”

I think that we just alluded to that. The letter goes on to say:

“The Commission always reminds Member States of their duty to notify. However, it falls under the Member States’ competence to decide if and at what stage they will notify a draft national rule.”

The letter goes further and says:

“According to the Court of Justice case-law, the adoption of a technical regulation in breach of Directive 98/34/EC constitutes a procedural defect, which renders it inapplicable and unenforceable against individuals.”

That is quite a technical matter, but Jackson Carlaw asked about the general principle of notification. It appears to be helpful if notification is undertaken, but beyond that it appears that if notification is not made and the regulation is regarded as a breach of the directive, the law will fall. Am I misinterpreting the letter in saying that?

Jim McLean: I am aware of the obligation to notify a technical regulation, but I am not sure why people think that the proposal is a technical regulation. “Technical regulation” means:

“technical specifications and other requirements or rules on services, including the relevant administrative provisions, the observance of which is compulsory, de jure or de facto, in the case of marketing, provision of a service, establishment of a service operator”

et cetera. The definition goes on to include

“technical specifications or other requirements or rules on services which are linked to fiscal or financial measures affecting the consumption of products or services by encouraging compliance with such technical specifications”.

For example, there could be a situation in which a technical specification was put down that in fact operated as a kind of barrier.

I do not see that the minimum pricing of the product is a technical regulation in that sense. Other people might take a different view.

Dr Simpson: The Commission certainly takes a different view—

Jim McLean: So it would seem—

Dr Simpson: I presume that the Commission will be asked to comment at some point.

If the Government was certain about its legal position, surely it would be appropriate for it to ensure that all the boxes were ticked by notifying at an early stage. If the Government was comfortable with the policy, notifying would at least remove the possibility of the law being overturned on a procedural matter.

Jim McLean: The Government will take its own advice on that. As I said, I do not see a basis for an obligatory notification under directive 98/34/EC. As you said, someone at the Commission has taken a different view. I have come across people arguing about the obligation in other contexts, so I am not surprised that someone has raised the issue.

Dr Simpson: At the end of the day, it will be up to stakeholders to go before a national court and say that a technical regulation has been adopted without previous notification. From what you said, I understand that the stakeholders would have to prove, first, that the minimum pricing proposal was a technical regulation—they would cite the Commission’s support in that. If they proved that it was a technical regulation and notification had not been given, the national court might strike it down.

Jim McLean: Indeed, but, as I said, I find it difficult to see how it would be argued that it is a technical regulation, because it has nothing to do with the substance of the product or permitting the product to be on the market at all; it is purely about the price at which a product may be sold.

Dr Simpson: Thank you.

Dennis Robertson (Aberdeenshire West) (SNP): In relation to competence and barriers, is there any link between minimum unit pricing and tobacco, in the context of article 36 and the health aspects of measures? If we continue to look at the potential health benefits of minimum unit pricing, will there be any alignment with what has happened on tobacco pricing and measures that try to restrict the use of tobacco for the sake of people’s health?

Jim McLean: There have been cases on tobacco—I think that that is what you are alluding to—from which has emerged the idea that it is not enough simply to assert a health point. However, those cases were not to do with articles 34 and 36 of the treaty; they were about compliance with the tobacco duty directive, which is structured significantly differently from the alcohol duty directive. In the structure of tobacco duties, the freedom to set a retail price is a given. Therefore if someone introduced a minimum price for tobacco they would upset the way in which the duties system is supposed to work. That is not true of alcohol, so I think that there is a difference.

Dennis Robertson: So there is no direct alignment between the two.

Jim McLean: No. There are obviously resonances and ideas that flow between them but, on the direct point that the tobacco cases were on, the position on alcohol is not the same.

Jim Eadie (Edinburgh Southern) (SNP): In your submission, you referred to the Tobacco and Primary Medical Services (Scotland) Act 2010. What point were you making about tobacco and its relation to minimum pricing?

Jim McLean: It was a competence point.

Jim Eadie: We understand that taking such action was within the Parliament's competence, but what was the link that you were making with minimum pricing?

Jim McLean: That was not so much a European point as a devolution point. There is a view in some quarters that the reservation of consumer law to Westminster affects the issue. The way in which it has been put is that here is something that affects the sale of goods to consumers. The issue of the scope of that reservation has been before the court, in the Imperial Tobacco—

Alan McCreadie: It went before the Court of Session as part of a petition for judicial review on the competence of the Scottish Parliament.

Jim McLean: That case is under appeal, but an interesting judgment was made on it, which included a remark about the reservation of consumer law being about the terms of sales rather than the environment of sales. That is true. In that context, I see exactly what Lord Bracadale was driving at.

There is a view that that is a major issue, but I do not agree with it.

Jim Eadie: That is helpful but, for the benefit of the non-lawyers on the committee, what was Lord Bracadale driving at?

Jim McLean: He was driving at the idea that a consumer law reservation does not have anything to do with whether you can have vending machines and so on, which is to do with the sales environment. A consumer law reservation is about the labelling of products, the information that is provided and, primarily, the terms and conditions of supply to a consumer. It comes through in the judgment that he had in mind things such as the Unfair Terms in Consumer Contracts Regulations 1999, which mean that certain exclusion clauses, liability exclusions and so on that might be possible in a sale of goods that is negotiated between businesses are not acceptable in a consumer contract. That was the kind of area of law that Lord Bracadale had in mind.

When a consumer, with his weaker bargaining power, is faced with standard terms and conditions, how should the law deal with that? My view is that that is the scope of the reservation. It is about that sort of law, rather than law about price. Such law does not cover the appropriateness of a price. That view is based on the judgment in the House of Lords on the Lloyds TSB case, in which there was a huge argument about the scope of the Unfair Terms in Consumer Contracts Regulations 1999. It was held that they did not apply to the price. There is room for argument; people take different views on that.

Jim Eadie: That was helpful.

The Scotch Whisky Association was quite explicit and unequivocal in its view that minimum unit pricing would be illegal. You have mentioned legal uncertainty. Do you have a view on the Scotch Whisky Association's opinion?

Jim McLean: I would hesitate to rush in with a view one way or the other. I have sought to identify the issues. Much will depend on how impressed people are by the arguments that only minimum pricing can meet the particular objectives and that duty or a ban on loss leading could not. That is the main issue.

10:30

Jim Eadie: Your written evidence states that the issue is not just about compatibility with the EC duty directives, because minimum pricing could have an impact on the free movement of alcohol. Will you explain what you meant by that?

Jim McLean: That was another way of putting the same point—it is not a separate point.

Richard Lyle: Everyone is quoting acts and legislation, so I will quote a Law Society submission. It states:

“the Society notes that the minimum price of alcohol is set as the purchase price available to the purchaser and calculated in accordance with the formula as set out in Schedule 3, 6A(3) of the Licensing (Scotland) Act 2005 ('The 2005 Act') as amended by Section 1(2) of the Bill where, in terms of paragraph 6A(4), the minimum price per unit is such price as Scottish Ministers may by order specify.

It can therefore be construed as not being a matter of competition law as effectively Scottish Ministers fix the price as opposed to licence holders.

Accordingly this is a devolved matter within the legislative competence of the Scottish parliament.”

Will you clarify that?

Jim McLean: That was a heavily condensed passage. The question was raised at some stage as to whether there is a competition law issue. In my view, there is not a competition law issue because there is no voluntary involvement in the

price setting. The policy memorandum that accompanies the bill contains a remark about article 101 and, I think, article 102 of the Treaty on the Functioning of the European Union. The point is that, if the industry was involved in price setting, there would undoubtedly be a competition law issue, but it is not involved. Because the price is state imposed and is obligatory or compulsory and because the measure is a real exercise of state power rather than rubber stamping, there is no competition law issue.

Richard Lyle: Does the Scottish Government have that power?

Jim McLean: Competition is a reserved matter. If it had been a competition matter, that would have exceeded devolved powers. We take the view that it is not a competition law issue.

Dr Simpson: We heard from Professor Stockwell, who works in Canada, to which Jim McLean referred. The situation there is different, because the Government controls everything. The wholesale supply of all alcohol is done through the Government, and it sets the price. One interesting point that Professor Stockwell made was that there are 5,500 products.

The second last paragraph of the Law Society submission indicates concern about the enforceability of the proposed law, but I want to go down a slightly different route. Let us say that there are 5,500 products in Scotland, although the number might be more or less. In determining the proportionality of the proposal, should the Government consider the particular brands that are affected? If the majority of affected brands—it might even be a substantial majority—are manufactured abroad, the adverse effect on imported products could play a significant part.

Before we get to the final stage of the bill, should the Government produce an addendum to the explanatory notes that lists the products that are for sale in Scotland that are likely to be affected by whatever minimum price the Government eventually decides on? That would allow us to come to a view on the effect on imported alcohol.

Jim McLean: The idea being that, if minimum pricing had a disproportionate effect on imports, that would itself be discriminatory?

Dr Simpson: Yes.

Jim McLean: I think that that is an aspect of the proportionality issue. In a court case, one of the things in the background, which is not always avowed, is whether a measure is really a protectionist exercise. As far as I am aware, that has not featured in any debate on this matter. If anyone thought that, that is the kind of inquiry that they would want to make. I would think that the

Scottish Government would find it pretty daunting to try to go through 5,000 or so products. If it were true that imported products might be more heavily affected, that would not be irrelevant, but it would not be the complete determinant.

Dr Simpson: You say that going through 5,000 products would be a daunting task, but if any ban is going to be properly enforced, the Government will have to do that anyway, so that it can decide which are above and which are below the minimum price.

I see that you are frowning. If it is going to ban—

Jim McLean: If you say that the minimum price is X, there is an enforcement issue, and you will have to find out whether it is being sold at X. That is very much like the other kinds of enforcement issues that arise in this context, is it not?

Dr Simpson: But the Government will have to check every product on the shelf to ensure that it is not breaking the law, if the price is 45p a unit or whatever it is going to be.

Jim McLean: I think that Alan McCreadie can answer this point.

Alan McCreadie: That is a licensing issue, as far as I understand it. The Law Society is pointing out that, if minimum pricing becomes law—if it meets all the challenge to do with competence and European compatibility—a practical problem will arise around enforcement. A breach of the minimum pricing legislation will not be an offence. The provision is an amendment to the mandatory conditions of licence, and there will be practical issues to do with enforcement, as those conditions are enforced by licensing standards officers on everyone who has a licence to sell alcohol.

We want to highlight that there might be practical issues to do with enforcement. We would put it no higher than that.

Dr Simpson: One of the concerns of the Commission will be whether the measure could prevent new competitors coming into the field—in other words, whether it might interfere with the market in a way that would prevent a highly efficient producer coming in and offering its product, which is identical to an existing product, at a lower price. Could that be an issue here?

Jim McLean: That is the issue that makes this a European law issue at all. The fact that someone might not be able to get the full benefit of their own efficiency is the reason why there is an article 34 issue in the first place. Everything that I have read on this seems to accept that that is an issue. The question is whether there is a health answer to it.

Drew Smith: The Law Society's evidence talks about whether people who sell alcohol might be encouraged to sell larger measures, which might

bring them in breach of the 2005 act. Why do you raise that point?

Alan McCreadie: Again, it is just a practical point in relation to something that might come up if we have a minimum unit price. Under the mandatory conditions of licence, it is regarded as an irresponsible promotion if you are seeking to encourage someone to buy a larger measure. I appreciate that this point applies only to the on-trade, but it might arise in a situation in which there is a meal deal, and the price of the food that is served is brought down to meet the statutory minimum unit price of the alcohol. In a situation in which the price of the food is reduced to a great extent—which it would have to be, if the price of the meal deal is to be kept the same—it could be assumed that the customer is being encouraged to buy, as part of the meal deal, alcohol that they might not have bought otherwise. As I understand it, because of the changes in the Alcohol etc (Scotland) Act 2010, the mandatory condition of a premises licence applies only to the on-trade.

Drew Smith: I suppose that you are therefore anticipating the possibility of a market response that might take people into ordering larger measures.

Alan McCreadie: There may be a market response whereby the statutory minimum price is included in the meal deal. I would put it no higher than that.

Drew Smith: In the final part of your evidence, you said that section 2 is redundant, but in the course of our discussions so far it has emerged that we might not wish to regard it as such in our evaluation of these matters.

Alan McCreadie: We said that it is redundant in that it means nothing in terms of the 2010 act because that does not apply to minimum pricing. We appreciate that that was an issue at stage 3 of its passage. As regards the current bill, it is debatable whether there should be a sunset clause, or even a review clause, to monitor the effects of minimum pricing and whether it is properly targeted as a health measure. That is a matter that parliamentarians might want to consider.

Drew Smith: You said that if the EU opened the door to this kind of measure and it then proved to be ineffective, the EU would be somewhat disappointed that it had done that. Would the addition of a sunset clause be likely to influence matters on the European side?

Jim McLean: I think that it might. There is some question as to whether the full sunset review would be required, but an acknowledgement that this is a moving target and that evidence will be created would be extremely helpful.

Dennis Robertson: Can I clarify this point? Dr Simpson talked about various brands. If minimum unit pricing is to be based on volume and strength in terms of proof, can we not ignore the branding aspect?

Jim McLean: I am not sure whether that was the point.

Dr Simpson: I was not suggesting that the Government was making a specific attack on a brand but that the practical effect of the minimum unit price might be to exclude, disproportionately, a very efficient producer who is an importer. In other words, the practical effect of the policy might be to discriminate disproportionately against importers, and it could therefore be seen as an import control measure.

Dennis Robertson: My point is not about specific branding but the strength of the alcohol in terms of volume. If minimum pricing is based on that, I cannot see how it would involve any discrimination because it would apply right across the board.

Jim McLean: It would apply across the board, but that board might have more importers than native producers. This involves an article 34 issue, and that might form part of the argument. For me, however, the nub of the matter is whether this is a genuine health measure that is justifiable on the basis that it can do things that could not be done by any of the apparent alternative measures.

Richard Lyle: Have the licensing officers had any difficulty in enforcing the multiple discount ban or the smoking ban?

Alan McCreadie: I have no information about that, although I could certainly find out. I do not know how well the discount ban that was brought in by the 2010 act is working in practice. One could ask local authorities, because they employ the licensing standards officers.

Richard Lyle: As far as the smoking ban is concerned, all you need to do is go past any pub and see everyone standing outside.

Alan McCreadie: I certainly have anecdotal evidence in that respect. I frequent pubs from time to time myself and have noticed as much.

10:45

Richard Lyle: Of course, I am talking about smokers, not drinkers. Most pubs are free of pollution from smoking.

If the convener allows me, I will ask one more question. We have heard much this morning about whether the measure will be opposed, whether people will go to the law and so on. Now that the wagons are circling and people are coming after the bill, does the Law Society consider the

possibility of a challenge to the bill in Europe as significant justification for not passing it in the first place?

Jim McLean: I think that that is a policy issue.

Richard Lyle: You are a lawyer—give me your views on that question.

The Convener: There are two lawyers present, Richard, so you are in danger of getting two opinions. I am sure that both views will be personal.

Richard Lyle: With the greatest respect to the Law Society and lawyers, the fact is that if I have 10 accountants, 10 lawyers or 10 whatever, I will get 10 different opinions.

Jim McLean: We are trying to help with a risk assessment, but we are not the people who are taking the risk. Is this an appropriate time to mention where or how this might be litigated?

Richard Lyle: I am sorry—what did you say?

Jim McLean: I do not know whether a corollary of your question is how this might be litigated. After all, a procedural aspect that should be kept in mind is that the European Court of Justice likes national courts to do their work. It likes them to examine the assessment, look at the facts, reason the thing through and come to a view whether there is compliance, proportionality and all that sort of thing and, whenever it can, it says that national courts should just get on with that. Frequently, however, national courts do not do so. When that happens, the European Court of Justice in effect says, “Well, if no one else is going to do it, we’ll have to,” and does the work instead. Wherever this goes, if there is litigation, it will be incumbent on the Scottish courts to ensure that everyone concerned has gone through the arguments fully and that there is an opportunity for a really thorough analysis because it will make the job of whatever court reviews the matter much easier.

Moreover, you should not simply assume that the matter will go to Luxembourg. Like the House of Lords, the Supreme Court has been quite keen on the doctrine known as *acte clair*, under which it decides that the law and how it applies in a particular situation are pretty clear and does not feel the need to pass the matter on. In theory, such a decision is reviewable but, on quite a few occasions, the Supreme Court and the House of Lords have made up their own minds and the matter has never gone to Luxembourg.

Richard Lyle: So in your personal opinion if this bill were to be passed and then contested it would be contested only in Scottish law courts and the House of Lords and might not go to Luxembourg.

Jim McLean: It might not. However, given what I heard earlier, if the Commission has taken a view that there should have been a notification, it might intervene and take it to Luxembourg. In that case, the matter would be out of everyone’s hands.

Richard Lyle: Thank you very much.

The Convener: Is the measure more likely to be challenged if the minimum unit price is set at, say, 75p rather than 45p and if it is linked to inflation? Does it all depend on impact? If a challenge resulted in our having to reduce this almost to a token measure in order to get it passed and implemented, would that not render it almost meaningless as a health policy?

Jim McLean: If it were a token measure, that would probably count against it legally.

The Convener: Right.

Jim McLean: There is going to have to be a demonstration of the likely modelled effect of various possible price rises. As far as I can see, in the absence of actual evidence, modelling is all that can be done. It is really a kind of benefit analysis—if we fix the price at that, it will do this; if we fix it a bit higher, it will do that—and we need to analyse all that and draw conclusions about the balance between interference with trade and social benefit. That will be quite a task.

The Convener: Last week, one of the key players in this—the University of Sheffield—made it clear to us that, although it can provide information, the setting of the minimum unit price is ultimately a political decision.

Jim McLean: It is, but it is made within certain constraints of evidence-based objective justification for whatever price is being suggested.

Dennis Robertson: Given how subjective some of the evidence is, it is a difficult issue, but does support for minimum unit pricing from the medical profession—and, from a criminal justice perspective, the police—have any weight and help the argument for such a move? Indeed, might the support primarily of the health profession—after all, health is the important element in all of this—move us away from any prospect of a challenge?

Jim McLean: The health profession thinks that there is a problem and that this looks like a way of dealing with it. The question whether the response is proportionate is not a medical issue.

Dennis Robertson: But people in the profession have to witness and deal with the impact of excessive drinking.

Jim McLean: No one is contesting the notion of excessive drinking as a social problem. The question is whether the bill is an appropriate response to it.

The Convener: As members have no more questions, I thank both gentlemen for attending this morning and the Law Society for its previous input and the written evidence that it submitted this time round.

10:52

Meeting suspended.

10:55

On resuming—

The Convener: I welcome our second panel of witnesses on the Alcohol (Minimum Pricing) (Scotland) Bill. Nicola Sturgeon, the Cabinet Secretary for Health, Wellbeing and Cities Strategy, is accompanied by officials from the Scottish Government: Donald Henderson, head of the public health division; Marjorie Marshall, economic adviser on public health; and Edythe Murie, principal legal officer for health and community care.

I thank them for attending and invite questions from Gil Paterson.

Gil Paterson: Thank you, convener. Good morning to the cabinet secretary and her officials.

The Convener: I am sorry, Gil. In my rush, I did not offer the cabinet secretary an opportunity to make an opening statement. I believe that she has one.

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): It is in your hands, convener. I am more than happy to say a few words of introduction.

The Convener: I think that that would be better. My apologies.

Nicola Sturgeon: That is all right. Thank you for the opportunity to give evidence to the committee today. I have followed your stage 1 consideration of the bill with interest, so I look forward to our discussion.

I will emphasise why we need to introduce minimum pricing to tackle the problem that we have in Scotland with alcohol misuse. The facts speak for themselves: alcohol misuse burdens our health service and police and it has a considerable knock-on effect on our economic potential and on families, who often bear the brunt of it.

The facts are stark. Excessive consumption costs Scots some £3.6 billion every year, which equates to £900 for every adult in Scotland. Alcohol-related death rates have doubled since the early 1990s and hospital admissions have quadrupled since the early 1980s.

The link to crime is clear: in 2009, half of Scottish prisoners—including 77 per cent of young offenders—said that they were drunk at the time that they committed their offences.

Those high levels of harm are directly related to high levels of drinking. Each and every week since 2000, enough alcohol has been sold in Scotland to allow every adult to exceed the recommended weekly limit for men. Scots are now drinking almost a quarter more than their counterparts in England and Wales.

There has been a significant shift over the past 15 years towards off-trade sales. Nearly 70 per cent of alcohol is now sold through the off-trade and, although the average price of a unit of alcohol in the on-trade in 2010 was £1.34, in the off-trade, it was 45p.

I have made it clear on many occasions, and do so again today, that I do not and will not argue that minimum pricing is a silver bullet and the answer to all those problems. It needs to be viewed within the context of the much wider package of measures that is contained in our framework for action. That package includes measures on education, support for families and communities and preventive public health measures. All of those taken together can help to create the cultural shift that is required to deal with our relationship with alcohol.

However, I believe—in fact, I know—that there is a substantial amount of evidence that shows the link between price and consumption and between consumption and harm. Much of that evidence, including Professor Stockwell's evidence on Canada, has already been presented to the committee. Although there is no direct read-across from Canada to Scotland, Professor Stockwell's work provides us with the first empirical evidence of the effects of minimum pricing. It shows a consistent relationship between price and consumption: when prices go down, people drink more and, when prices go up, people drink less.

Therefore, I am convinced that minimum pricing is the right approach. The support for the policy from doctors, nurses, the police, academics, children's charities and others is overwhelming. Minimum pricing can help us to stem the flow of cheap alcohol and—what is important—to redress some of the imbalance that has emerged in recent years between the on-trade and the off-trade.

I reiterate that I am not yet in a position to say what the minimum unit price will be, but I was keen for the committee to see the updated Sheffield report before today's session, so we did all that we could to have that report finalised for publication and to allow the committee to see it. I am happy to answer the committee's questions.

11:00

Gil Paterson: Good morning again. When we had a session with supermarket witnesses, I took it from what the Tesco representative said that supermarkets could see some benefits for consumers. Did I detect a softening up? Probably.

I have been involved in trading for a long time. One practical issue that has been raised in relation to minimum pricing of alcohol—although it applies to any commodity—is that, at the end of a selling period, the retailer is left with stock that it cannot move on. If minimum pricing is introduced, it might restrict businesses in doing what they normally do in practice, which is—to be frank—dumping product or pricing it so that they can sell it on. I know that Canada has a system to deal with that, which I believe applies to 1 per cent of turnover.

I detected a shift in the rhetoric, if nothing else, from the supermarkets. They may have a practical problem. Helping them in some way to run their normal business might assist the Government. I am sure that supermarkets do not want to do anything other than assist the Government. Does the Government have views on that?

Nicola Sturgeon: The question is interesting. I recognise very much that there is no single opinion in the supermarket sector—there are variances in opinion. Some supermarkets have supported the policy more than others have. I am keen to continue to work with supermarkets and the wider industry—that comment applies to the entire alcohol industry, although I am directing it to supermarkets at the moment. None of the motivation behind the policy is an intention to damage legitimate business interests. The alcohol industry is extremely important to Scotland. Our intention is to deal with the harms that are done by alcohol misuse.

I am aware of the system in parts of Canada that allows what Gil Paterson described—exempting products at the end of a line from the minimum price regime. I will make two initial comments by way of observation more than opinion—that certainly applies to the first comment. The market here is different from that in Canada, where the Government has in effect a monopoly on the sale of alcohol in all jurisdictions. We have supermarkets that I am sure are extremely efficient in their stock control.

A general comment is that, through not just minimum pricing but our entire approach to alcohol misuse, we are trying to make the point that alcohol is not a normal commodity. That is why we must treat it differently in some respects.

That said, we have not looked in any great detail at the issue that Gil Paterson raises. I am more than happy to give him and the committee an undertaking to go away and look at it in more

detail. After we have done so, we will come back to the committee with more considered thoughts. It is certainly an interesting question to have raised.

Gil Paterson: The difficulty is that, as you highlighted, the controls in the Canadian model are somewhat different. However, every business, no matter how big it is, gets left with unsold stock. I am sure that Tesco and all the other supermarkets would love to find a way to sell all their items at the full price. However, I believe that the Government is thinking in the right way about how to address some of the problems. The fact that the cabinet secretary has said that she will consider the issue sends a good signal to people in the marketplace that we are considering the problems that might arise from minimum unit pricing.

Nicola Sturgeon: As I said, I am happy to do that.

Richard Lyle: Good morning, cabinet secretary. May I turn to the issue of the social responsibility levy? A number of people have concerns about the fact that the firms that will be affected by minimum pricing might have a windfall of more than £100 million. We have suggested that we may recoup the cost of dealing with alcohol misuse. In that regard, I note the figures that you gave for the costs to the health service. The Scottish Government indicated previously that it did not intend to take forward the levy. Would you consider introducing the levy to take money from firms that will make more than £100 million and invest it in the health service?

Nicola Sturgeon: I will introduce my answer with a few observations. The Parliament and the predecessor committee discussed this issue at some length when we considered the previous bill. I conceded then, and I concede now, that we want to find a route to deal with the issue.

I repeat that the figures in the previous Sheffield report and the updated Sheffield report on increased revenue as a result of minimum pricing are not just about increased revenue for supermarkets. In the debate previously, people have often suggested that all the increased revenue would go into the supermarkets' pockets, but that is not the case. The Sheffield report does not break down how increased revenue would affect different parts of the alcohol industry; I do not think that that information is available. However, the effects would be shared by the producers, small retailers, large retailers and wholesale distributors—the entire chain of alcohol distribution.

One of the benefits of minimum pricing is the levelling of the playing field between the large retailers and the smaller retailers, who often find themselves completely priced out of the market by

the big supermarkets. That is not just a feature of minimum pricing. The figures in the Sheffield report looked at increased revenue from minimum pricing and at a ban on quantity discounts. We passed a law to introduce a ban on quantity discounts that is now in force and has a levelling impact, too. Parliament did not consider that in and of itself to be a reason not to do something that would have a significant and positive health impact.

Richard Lyle's specific question was about the social responsibility levy. One of the changes since that levy was first proposed is the introduction of the public health levy by the Cabinet Secretary for Finance, Employment and Sustainable Growth. We have always said that we wanted to introduce the social responsibility levy when we considered the economic conditions to be right. We continue to live in a very difficult economic climate, so it is right that we continue to consider carefully the introduction of the levy. I have said previously, and I say again, that the social responsibility levy is a potential route for dealing with the issue of increased revenue. If people think that it is an important route, I remain open to considering how we could shape it so that it would have that effect.

The final point that I was going to make has gone completely out of my head. If I remember it, I will come back after you have asked your supplementary question.

Richard Lyle: I have two more questions. There are plans for an all-Ireland minimum price for alcohol. Last Thursday, there was a meeting between the Northern Ireland Minister for Health, Social Services and Public Safety, Edwin Poots, and the Republic of Ireland's Minister for Health, Dr James Reilly, and Minister of State in the Department of Health, Roisin Shortall. They are hoping to agree a minimum price, and they are watching Scotland closely. What is your view on the proposal?

Nicola Sturgeon: I have spoken to Edwin Poots about the proposal. During the past couple of weeks we have heard a lot about the world watching Scotland, for different reasons. Whatever the reason, it is a thoroughly good thing that the world is watching.

I know that, on alcohol, many countries regard Scotland as a leader in our public health approach, as we were rightly regarded when the previous Administration brought in the ban on smoking in public places. Northern Ireland, the Republic of Ireland and England are looking closely at what we are doing on minimum pricing. I am firmly of the view that where Scotland leads, other countries will follow.

Richard Lyle: Various organisations say—you yourself have said—that there might be a legal challenge to the legislation. Witnesses from the Law Society of Scotland told us this morning that the measure might be challenged in the Scottish courts and might go to the Supreme Court, but they thought that a case might not go to Luxembourg. What is your view on a legal challenge?

Nicola Sturgeon: Any act of the Scottish Parliament is potentially subject to legal challenge—that is a fact. The legislation that introduced the ban on smoking in public places was challenged in the courts, and the more recent legislation on display bans is still being challenged in the courts. This is simply my opinion, but I hope that if the Parliament passes the bill, people who might be considering such a challenge will respect the will of the Parliament, because we will have made a clear decision.

Whether there is to be a legal challenge is for other people to decide; my job is to ensure that the Government does everything that it is our responsibility to do to ensure that our defence in any legal challenge is successful. That is why, for example—indeed, this is the most important example—we are taking such care about the setting of the minimum unit price, as we did during the passage of the Alcohol etc (Scotland) Bill. The updated Sheffield model is one of the factors that we will take account of in coming to that decision; there is a range of other factors.

I listened briefly to part of the meeting before I arrived. I heard the witness from the Law Society run through the legal position and talk about the need to ensure that we show health impact and consider proportionality. We need to take great care around those factors. I am convinced—as I was during the passage of the previous bill—that our policy is perfectly capable of complying with European law. I will visit Brussels next week and I hope to have a number of meetings to discuss the policy with various interests in the European Union.

Jackson Carlaw: I associate myself with what you said in your opening remarks about the whole issue of alcohol misuse. I will not spend time debating the merits of the policy, but I will ask about one or two consequences of it.

We took evidence from the Sheffield team last week and we have subsequently received the updated model—thank you for allowing us to have it. I asked a question of Professor Brennan, and I will quote his reply; I would not normally do that, but what he said underpins the substance of my question. He said:

"I will meet you halfway. My personal perspective is that evidence should be used in policy making to as great an

extent as possible. Evidence is not the only part of life, but when we have it, it is wrong to ignore it.

It is wrong to say that the Sheffield model is the only evidence. It is a tool that synthesises all the evidence that is available from various different studies, data sets and all the rest of it, in an effort to answer your question. It is not the only evidence.

If minimum pricing turns out to be completely ineffective or a counterproductive policy, for reasons that are not included in the modelling and which have not been included elsewhere, that is evidence, and evidence should be included in policy making. What you do with legislation is way beyond my ken, but evidence is evidence and all evidence should be considered.”—[*Official Report, Health and Sport Committee*, 24 January 2012; c 919.]

Do you agree with Professor Brennan’s summation that, if the policy proves to be ineffective or counterproductive, that is evidence in itself? It is not what you are expecting—I am prepared to accept that—and, given that the Government can get the policy through Parliament, I have to hope that it works. However, in the event that it does not, do you agree with Professor Brennan that that would then become evidence and should inform policy? What conclusion would that lead you to in policy terms?

11:15

Nicola Sturgeon: First, I absolutely agree with Professor Brennan. We discussed that issue in the predecessor committee, in which Richard Simpson and I had many exchanges. The Sheffield study involves modelling: there is a lack of hard evidence around minimum pricing because no other country has done it in the form that we are proposing. However, the Sheffield model certainly points us very firmly in the direction of believing that it will have not only an impact, but a significant impact on the harms that we see from alcohol misuse.

Once the policy is introduced, it is vital that we evaluate it. I may be wrong, but I think that the committee has had some detail from NHS Health Scotland about how, as part of the overall MESAS—monitoring and evaluating Scotland’s alcohol strategy—suite of projects, it intends to go about evaluating the impact of minimum pricing.

I believe firmly and passionately that minimum pricing will be effective, and all the evidence from those who support the policy agrees with that. Of course, we need to look at hard evidence and continue to demonstrate the on-going effectiveness of the policy to ensure that it passes all the tests that it needs to.

The benefit of that hard evidence creates the real interest around Professor Stockwell’s Canadian work. I am not suggesting that we can just read across from Canada to Scotland, because the systems that Canada has in place are different from the system that we propose.

Nevertheless, Professor Stockwell’s work is the first empirical evidence that we have had that demonstrates and proves the link between price and consumption, and it is therefore very valuable.

We will continue to evaluate the policy: it is vital that we do so, for the reasons that Jackson Carlaw quoted.

Jackson Carlaw: I am interested to know where it may lead in policy terms. Colleagues have discussed the evaluation in strong terms, and they will possibly do so in their questioning, so I will leave that to them.

It was interesting to hear the legal people in the previous evidence session raise the question of whether a sunset clause would be useful. There is no such clause in the current bill, but there was one in the previous bill. Would the inclusion of such a clause be a backstop against the possibility that the policy proves to be ineffective?

Nicola Sturgeon: I am open to persuasion on that point. There was a sunset clause in the previous bill, which I proposed in one of my various attempts last time round to persuade people to give the policy a chance.

Last time round, I kept being hit with the statement that you have just made—I know that you were not trying to hit me with it. People said, “We don’t know that this works, because nobody’s ever done it”. My response was, “Well, you’ll never find out if nobody is prepared to try it.”

In effect, the sunset clause was an attempt at saying, “Okay—you have this view, I have that view. Let’s try it and if it doesn’t work—if you’re right—we have the sunset clause.” We are going to evaluate the policy. On balance, I decided not to put the sunset clause in the bill as it is drafted, but I remain open to persuasion. If that makes it easier for people to support the bill—even if they have reservations and remain sceptical in a way that I am not—I am happy to discuss that at a future stage of the bill process.

Jackson Carlaw: Thank you. It is certainly not my style to try to hit you with anything, cabinet secretary. I will leave that issue there.

On the legal matter that Richard Lyle raised, I read with interest your exchange with the Subordinate Legislation Committee, which approached the issue in quite a methodical manner. The committee stated in its report that the Parliament must be satisfied to the best of its ability that the policy “would” rather than “could” be legally competent, as I think that you acknowledged.

In your response to Richard Lyle you said—as I have heard you say elsewhere—that you would not be surprised if a legal challenge should follow. We accept that, given the arithmetic in the

Parliament, the policy will be passed, and therefore it will be open to people to challenge it.

I wonder what you mean when you say that it is the Government's responsibility to do everything that it can. I will touch on the notification issue, which I had not appreciated fully, and the Government's thinking on seeking to have the best possible opinion on how the legal position might unfold ahead of Parliament passing the legislation. Does that approach have merit? I know that it would go beyond the Government's natural responsibility, because the bill does not meet the criteria that would oblige you to notify, but nonetheless you could do so. Alternatively, is it your preference that the Parliament should pass the bill and, if it is challenged legally, so be it—we simply await that challenge and a resolution thereafter?

Nicola Sturgeon: Should the issue of notification arise, it will relate to the regulations, as we have already introduced the bill, which will be a piece of enabling legislation. Our firm view is that we are not obliged to give notification of the measure, by which I mean the bill and the regulations that will follow from it. In short, the reason for that is that the directive relates to standards for products. The measure is not state aid, nor is it setting a standard for alcohol. If, for example, we were to set regulations on the content of alcohol, they would fall within the definition of a measure that required notification. However, the measure that we are discussing does not set a standard. We are clear about that, and my understanding is that the UK Government agrees with our interpretation.

It is open to us to notify the European Commission of the regulations anyway, and I certainly do not rule that out. We are considering that and we might do it. However, that should in no way suggest, or lead to anybody's suggestion, that we are obliged to do so—I am clear that we are not.

Jackson Carlaw: I understand that, and I couched my question in those terms. I am interested to hear you say that, notwithstanding the fact that the Government does not regard itself as being obliged to undertake notification, it has not ruled out the possibility that it might choose to do so.

Nicola Sturgeon: We might come to the conclusion that, for a range of reasons, it is better simply to notify the European Commission. As I said, I have not ruled that out.

Dr Simpson: I thank the cabinet secretary for providing a draft of the latest Sheffield report, which is helpful. The tone of her introductory remarks was also helpful; she has taken a balanced view of the Canadian situation, which

gives us information, but is different from that in Scotland, because in Canada wholesale supply and prices are controlled by the Government. Minimum pricing has been applied differentially not just to different types of alcohol, but to different products of the same type. Other than that, we have only the econometric model, backed by a lot of opinion. I think that it was Bertrand Russell who said that opinion, however frequently repeated, is still not evidence. Therefore, the cabinet secretary's balanced and measured approach is extremely welcome.

I want to address one or two issues about a law that we have already passed before I come on to the bill. We have heard about the social responsibility levy. I welcome the fact that the cabinet secretary will consider introducing the levy, because I am concerned about the market response to the introduction of minimum pricing as retailers adjust their prices.

I also want to touch on the discounting ban. I was surprised to learn that the ban is not being applied to multipacks and that your officials apparently briefed the industry, prior to the passing of the Alcohol etc (Scotland) Act 2010, that that would be the case. It is partly my and the predecessor committee's fault for not spotting this, but I thought that we had passed a bill with the principle that people should not be encouraged, by the price being lower for their acquiring large volumes, to buy greater volumes of alcohol. We have that in the on-trade, and I thought that we had introduced it in the off-trade through the Alcohol etc (Scotland) Act, but it turns out that, provided that a retailer does not sell single cans of beer, for example, they can sell multipacks of four cans at £4 and 20-packs can be sold at £13—those are actual prices from a supermarket. As Gil Paterson said, the only problem for retailers is that, if the packs are broken, the cans cannot be sold at a lower price because they become single cans again.

In effect, what we seem to have achieved through the ban on discounting, in the way in which it has been implemented, is a situation in which single cans are no longer available in most supermarkets and other outlets, because if a single can is sold, the multibuy packs must be sold at a multiple of the cost of a single can. I am sorry to go on at length, but it is because I am so disappointed that the one measure that we agreed on in the Alcohol etc (Scotland) Bill has not turned out to be quite the measure that we thought it would be. Would you like to comment on that?

Nicola Sturgeon: I would be happy to comment. I am not making any judgment when I say that I was very clear about what we were passing—indeed, I recall discussions in Parliament about the restrictions and the

limitations of what we were passing. Before I go on to those, I make it clear that I think that the legislation that we passed was a big step forward and that it is good. We went as far as we could on the discount ban in that legislation. It was because of devolved and reserved competence issues that we could not go as far as we perhaps wanted to. The fact that the regulation of price indications is reserved took us into difficulties in having what I would describe as a comprehensive discount ban. Even if we had been able to go that far with the discount ban, I was always of the view—I remain of the view—that a discount ban will be most effective when it is used in conjunction with a minimum unit price. If we have a minimum unit price, that will give us the optimal situation of those two policies working in tandem.

Dr Simpson: Thank you for that.

I want to move on and get your opinion on the effects of the policy. It is clear that the medical profession is deeply concerned about harmful drinking and that it has some concerns about hazardous drinking, which is my major concern. We know that a minimum unit price of 45p or 50p will have an effect on seriously harmful drinkers.

However, we heard again from the University of Sheffield that one group—one of the major problem groups—that it seems minimum pricing will not affect to any great extent is 18 to 24-year-olds. It appears that there will be a minimal effect on hazardous drinkers in that group—I think that the predicted reduction, at a minimum price of 45p, is 0.7 per cent, which would be a tiny reduction. Do you agree that binge drinking among that group, which may lead to serious alcohol problems, is an important issue? As a consultant addictions specialist, in recent years I have seen youngsters with cirrhosis at 22 or 23, which I did not see when I practised in addictions in the 70s. What is your view of that?

Nicola Sturgeon: As was the case with the previous Sheffield report, the updated Sheffield report—I appreciate that perhaps not all members have had a chance to study it in detail—shows that the impact of a minimum unit price increases as we go up the scale from moderate to hazardous drinkers. That is the case at most of the prices that are identified. The overall impact and the impact on particular groups depends, to some extent, on the level at which the price is set.

Younger drinkers tend to drink cheaper alcohol, so I think that a minimum unit price would have an effect on them. When we come to set the price, we will want to look at the level at which we will have the optimal impact, without going to the extreme of distorting the market, on as many of the problem groups—if I can call them that—as possible.

I suppose that the rest of my answer to that question takes me back to something that I said at the outset. Minimum pricing, in and of itself, is not the whole answer. I appreciate that we have spent a lot of time debating minimum pricing in isolation, but it is not the whole answer. I think that that might be particularly the case with younger drinkers. I am not saying that I do not think that minimum pricing will have an impact on younger drinkers—I think that it will—but, for younger drinkers, there are other measures in our alcohol framework that are particularly important from the point of view of changing attitudes and changing the culture around alcohol. That puts a big emphasis on some of the educational provisions in our alcohol framework.

There will be an impact on younger drinkers, and the fact that there might be a greater impact on other groups, such as harmful and hazardous drinkers, is not an argument against minimum pricing; it is an argument for ensuring that it is a part of a bigger package of measures, which is what we are trying to do.

11:30

Dr Simpson: I want to put on record the fact that the new Sheffield report shows that the effect is greater for hazardous drinkers as a whole than for hazardous drinkers in the 18 to 24-year-old group, which is the group that I was concerned about, with their binge drinking, their part in the night economy and the damage and crime that they commit.

The overall reduction in the amount that would be consumed by the hazardous drinkers is about a schooner—that is one of the new measures—of alcohol a week. That does not seem to be a significant reduction. I do not think that, given a consumption rate of 35 to 50 units a week, a reduction of 67 units a year will have a big effect.

Nicola Sturgeon: Unless the convener wants me to, I do not want to delve into the fine detail of the Sheffield report, because I think that we would quickly start to lose each other. The fact that the impact on the hazardous drinkers as a whole would be greater than the impact on a certain subgroup of hazardous drinkers is not an argument against the policy. As I said, it is an argument for ensuring that the policy is part of a wider approach.

The Sheffield report contains a lot of fine detail, which is helpful, but if you consider, for the sake of argument, the overall impact of the 45p-per-unit price that we indicated previously is our preferred price, you can see that there would be a significant overall impact on every area—the financial aspects, deaths, hospital discharges, reduction in crime and so on—and that that impact increases

as you go from the moderate drinkers to the hazardous and harmful drinkers. That is the real benefit of minimum pricing. It helps us to target where the problems are.

The impact on some problem areas will be greater than the impact in other problem areas. However—as was noted by the representatives of the Institute for Fiscal Studies when they gave evidence—the benefit is that it helps us to target those who are in the problem category; those who drink more alcohol in general, but who also drink more of the alcohol products that will be more affected by minimum pricing.

Dr Simpson: The revised Sheffield report shows that there has been a slight reduction in the effects on alcohol consumption that are predicted by the model—given a 50p minimum price, the reduction is 7.8 per cent instead of 8.7 per cent. That is, I presume, at least partly due to the increases in VAT and duty that were brought in by the Labour Government and, again, by the coalition Government. Of course, we know that, in April, there will be a further increase of 7.2 per cent—that is, the rise in the retail price index plus 2 per cent, which is a policy that the coalition has continued. Would it not have been helpful to have at least asked the University of Sheffield to say whether that might cause a further reduction in the likely gain from the introduction of minimum unit pricing?

The figures that I referred to relate to a situation in which there is the minimum unit price as well as the discount ban that has already been brought in, which is already having a significant effect and might have reduced consumption by around 3.5 per cent. If the effect is reducing because of the increased prices and the discount ban, the effect of minimum unit pricing will be squeezed.

Nicola Sturgeon: To be fair to Richard Simpson, I think that he made the point himself that the reduction that he is talking about is slight. When it is put in the context of the problem that we face and the harms that I spoke about earlier, it seems even slighter. Richard Simpson is right that one of the reasons is price changes, but it is not the only factor. The other inputs that Sheffield updated were consumption data, purchase data, price, distribution data, mortality data, hospitalisation data, latest crime statistics data and labour force survey data. Sheffield took into account a variety of updated factors in order to produce its report.

I do not know what the answer will be, so I do not want to raise expectations. I am happy to investigate with those at Sheffield whether they could carry out the exercise that Richard Simpson suggested on projections based on further increases in price to see whether they can answer

the question, although I do not know whether they will be willing to do that.

Drew Smith: I will move on to the mechanism for changing the minimum unit price. I asked the cabinet secretary about this in my previous role as a member of the Subordinate Legislation Committee. From all the evidence, we know that if the minimum unit price were to remain the same, the law of diminishing returns would affect the effectiveness of the policy. There must therefore be a mechanism for changing the price. Will you take us through your thoughts on how that will work?

Nicola Sturgeon: I think Drew Smith asked me the question when I attended the Subordinate Legislation Committee. Two broad options are open to us. I dare say that there are variations on both, but I will stick to the broad options, at the moment. First, we could use an inflation-linked mechanism that went up in line with RPI or RPI plus a certain factor. Secondly, we could commit to reviewing the policy biannually or every five years. We are still considering what the best approach would be. Professor Stockwell has said that an automatic link to inflation would be best because the increase would happen automatically and people would get used to it. That argument has some force. Canada, of course, does not have to deal with EU law; we, on the other hand, are not necessarily sure that an approach whereby the price simply rose with inflation would retain proportionality, as is required by EU law. For example, inflation could be going up and consumption could be coming down.

That takes me more towards the alternative whereby there would at set intervals be a review of the policy that would, in effect, do what Sheffield has done in its updated report by taking account of all the different factors that might have changed and coming to a balanced judgment on that basis. That is a summary of my thinking at this stage; it is not a final decision. If the committee has views that it wants to express, I will be happy to hear them.

Drew Smith: That is extremely helpful. We have discussed the matter with other witnesses, and it seems to be reasonable to take that approach, for the reasons that you have outlined. Some witnesses suggested that the price should change much more regularly than you are considering. At what stage will Parliament know what your plans are?

Nicola Sturgeon: Regarding reviewing of the minimum price, I am happy to give the committee a commitment that before we get to the final stage of the bill we will come to a final view on our approach, because Parliament should have the chance to reflect on and comment on that. As with

setting the price initially, it will be a balanced judgment; it is important that we get it right.

Some people have said that the review of the price should be more regular. I understand the arguments for that, but there is a counter-argument that says that reviews should be less frequent in order to give the industry greater stability. The most important overall consideration is to ensure, on an on-going basis, that the minimum price is set at a level that delivers the kind of benefits that we want it to deliver—for obvious reasons—and the benefits that it must deliver in order to pass the tests that it needs to pass.

The Convener: Would you go as far as to say that you agree with Dr Rice that the mechanism is more important than the price that is set?

Nicola Sturgeon: I have not seen exactly what Dr Rice said about that. The mechanism is equally important but I would not, to be fair, say that it is more important, because how we initially set the price is how we initially pitch the policy. However, it will certainly be important thereafter to keep the policy and the price up to date. That is why it is right to give the committee the commitment that we will come to a final decision before we get to stage 3 of the bill.

The Convener: We welcome your invitation to respond on the matter, but it gives us a wee bit of a challenge because we have not considered it specifically, so we will need to discuss it, perhaps in today's post-evidence session. Are there any other questions?

Dennis Robertson: I will return to the social implications of minimum unit pricing. Your opening remarks on the consequences of abusive drinking were quite disturbing. To do nothing would be wrong. Dr Simpson said that some of the impacts of minimum pricing would be minimal, but that would be better than nothing.

Do we have a duty to listen to our medical profession, police, third sector, victim support units and children's charities and to do something now to try to make as much of a social impact as possible in order to benefit the most vulnerable people in our communities? As you rightly said, minimum unit pricing is not a silver bullet, but it is a way forward and a step forward.

Nicola Sturgeon: Yes, I agree strongly with that. To be clear, I do not believe that the impact of minimum pricing would be minimal. To be fair to Dr Simpson, I am not sure that he argued that either; he argued that the impacts of minimum pricing are variable, which is a fair observation to make.

Dennis Robertson is absolutely right. I concede the point that opinion is not evidence but,

nevertheless, we have a duty to listen to the opinion of people who work day to day with the effects of alcohol misuse, whether in the health service, the criminal justice system or the family support and child protection system. Sometimes, although that experience does not give us hard evidence, it gives us a lot of information to work on.

I hope that I am not misattributing this, but I think that it was Dr Rice's work with hazardous drinkers that showed that, contrary to what some people might think, such drinkers are affected by increases in the price of alcohol because they are no longer able to trade down, for example. Such opinions are hugely important. When we have a coalition of opinion that embraces the police, virtually everybody that I can think of in the medical and wider health professions, public health experts, children's charities and growing sectors of the alcohol industry itself, we have a duty to listen. I hope that, this time round, the Parliament will listen.

Jim Eadie: I return to why the Scottish Government is introducing the measure in the first place. When I look at the highly respected updated econometric modelling from the University of Sheffield, it strikes me that one of the most telling estimates in that document is the number of lives that would be saved in the first year of minimum unit pricing, which is estimated at 33. That is 33 human beings whose lives would be saved and 33 families who would not lose a loved one. It is important that we remember that when we discuss the policy. I will ask two questions. I understand that there are other factors, and we have heard about the need to demonstrate proportionality when setting the price and justifying the policy to the European Union, but will you consider carefully the number of lives that would be saved when you arrive at a minimum unit price? Secondly, when will you announce the minimum unit price?

Nicola Sturgeon: The straight answer to your first question is yes. The relationship between a particular price and the harm reduction that results from it is a central factor. That is why we have set such store by the Sheffield report. As you indicated, that report is not the only factor that we take into account—we need to consider a range of other factors, such as alcohol price—but the modelling in it that suggests the benefits that would flow from set prices is a key part of our consideration.

We are getting close to a decision on the price. Like the committee, we have just received the updated Sheffield report, so it will take us a bit of time properly to analyse, digest and reflect on it. However, I am of the view that we will name the price during stage 2, and certainly before stage 3, of the bill.

11:45

Jim Eadie: Finally, I will ask about the public health levy on large retailers. We know from experience—Richard Simpson was eloquent on the subject earlier—about supermarkets' ability to get round, if not the letter of the law, then at least the spirit and intention of the law, in their behaviour. What measures are you putting in place to monitor the effectiveness of the levy and to ensure that the supermarkets do not seek to undermine it? In answering that, will you touch on how the Government envisages the money will be invested to tackle alcohol misuse and take forward the specific measures in the alcohol framework?

Nicola Sturgeon: The public health levy that John Swinney introduced is part of the business rates regime, so there are clear criteria for those who are subject to it. It is important that the levy be applied according to those criteria, and it will be. The income goes to local authorities and the measure is part of the approach that we have tried to take to assist local authorities, working with their health partners, to be more preventative in how they spend money. As with all our policies, we will monitor the impact of that.

The wider aspect of Jim Eadie's question was about the supermarkets' approach to policy. I would never suggest that supermarkets do not abide by the law. They do. However, they benefit. For me, one of the simplest attractions of minimum pricing is that it is applicable across the board and it does not discriminate. It is a price per unit of alcohol and it applies to the bottle of cider in the same way as it applies to the bottle of wine. It is a per unit price, so it is directly related to strength.

The other point is one that was not necessarily taken seriously enough or given enough consideration during previous consideration of the measure. Cheap alcohol comes at a price—not just the price that we are talking about—which relates to lives, health impact and crimes that are committed. Consumers—people who go to a supermarket for their weekly shop—pay the price of cheap alcohol through higher prices for other things that they buy, because supermarkets' loss lead on things. Without being flippant, I point out that bananas cost more if alcohol is deep discounted. Minimum pricing also has the benefit that we will not see other goods becoming more expensive to subsidise cheap alcohol.

The Convener: Given the session that we have just had with the Law Society, are you getting into deep water there? Do we need to be careful in looking not just at the health outcomes but at supermarkets' pricing policies or, as you mentioned earlier, whether it is unfair on smaller supermarkets that big ones can beat them competitively through selling drink? Is that

dangerous territory for us? Does it take us out of the health agenda?

Nicola Sturgeon: No. I say with respect that we are getting into that territory, convener. I argued earlier that because a minimum price for alcohol will apply regardless of where alcohol is sold and regardless of the type of alcohol, one of the side benefits—it is not the motivation for the policy, but it is a benefit—is that it levels the playing field between the corner shop and the big supermarket. At present, the big supermarket can cut the price of alcohol and absorb the costs elsewhere, but corner shops cannot do that to the same extent, so they can find themselves under severe competition from supermarkets. The minimum price policy will, as a natural consequence, level that playing field.

The Convener: That is a bit contradictory, though, in terms of the outbreak of corner shop supermarkets and the need to sell alcohol at a higher price in some of our poorest estates. The bill will not prevent them from making a business out of it.

Nicola Sturgeon: Sure—but the point is that the minimum price will apply across the board, so nobody will be able to sell alcohol below that price. That will level the playing field. Corner shops are already, by and large, more expensive places in which to buy alcohol. Minimum pricing will not make them cheaper, but will make the bigger retailers more expensive.

There is no doubt—the convener is right—about the impact of alcohol in some of our most deprived communities. That is one of the big motivations behind the policy.

The Convener: You referred earlier to engagement with Europe and your proposed visit there. What preparation have your officials and officials in Europe done to make the policy more accessible and to sell it to commissioners and European officials?

Nicola Sturgeon: The aim is not really to sell the policy to commissioners. The view of commissioners and the Commission is influential but, ultimately, it is not the Commission but the courts that decide whether something is legal. Our responsibility, on which we have expended and will continue to expend the bulk of our efforts, is to get it right in setting a price that ensures that the policy complies with European law.

There are lots of discussions between my officials, European officials and UK Government officials. As I said, I will go to Brussels next week. It is not the Commission's job to give us legal advice, either. It is important that we continue to discuss our intentions, why we believe that the bill is perfectly capable of complying with European law and why our ultimate price will comply with it. I

am due to meet the European Commissioner for Health and Consumer Policy next week and I hope to meet the commissioner or senior officials in the directorate-general enterprise and industry as well. I look forward to those discussions.

Ultimately, we must make the judgments on the basis of the best evidence and advice that are available and we must take into account all the points that people are making.

The Convener: That is entirely sensible. As you have said, Canada does not need to take European law into account, but we do. I am not an expert on engagement with Europe, but I know from experience that it is wise and sensible when we are pursuing a policy. I have heard many a minister and cabinet secretary explain in the Parliament that, although they did not have a definitive legal position on a given issue—I am thinking of competition and ferries, which affected my constituency—they had a strong opinion from commissioners. I presume that that will be part of your discussion next week and that, before you go to Europe, your officials will have had some engagement on and discussion about what minimum price would be proportionate and what mechanism would be proportionate to keep the price relevant. Is that the case?

Nicola Sturgeon: There is on-going and regular engagement between Scottish Government officials and European officials. That is right as we move through legislating and, I hope, into implementing the policy.

The position under European law is clear. European law does not prohibit minimum pricing of alcohol, although the minimum price must pass certain tests to be compliant. The decision about the price, based on all the evidence that we have, is one that we require to take.

You are absolutely right—the importance of good engagement at ministerial and official levels speaks for itself. We have prepared and will continue to prepare for that. I will have the discussions next week and, after that, we will continue to engage with Europe as closely as is appropriate.

The Convener: As I said, such engagement is entirely sensible, but the consequence is that Europe will influence the general policy. It would be silly to have discussions with officials otherwise. You are going out to Europe next week, the preparations have been made and you have some idea of what the Commission will say about the minimum price that will be set and about the mechanism. I presume that you agree that the paper on evaluation plans post-minimum pricing would also be helpful. Will you share with the committee the nature of the discussions that have

taken place and the parameters that have been discussed?

Nicola Sturgeon: The Commission is not going to say to us, “Set a minimum price at this level and you’ll be fine; set it at that level and you won’t.” That is not the nature of the discussions. The discussions that we have had and will continue to have will, along with all the other things that we are considering, be part of the process of reaching our view. I am clear in my mind that minimum pricing is not prohibited by the European Union but that there are certain tests that we must pass. The discussions will be part of the process that we will go through in coming to our decision, but they will not be the only part and we are not going to have the European Commission be definitive with us about where we should set the minimum price.

The Convener: I understand that completely, but I take it that we are agreed that the EC will influence the debate, otherwise what is the point of you and officials visiting the Commission? What is the point of having detailed discussions if they are not genuine? Having the discussions is entirely sensible, cabinet secretary.

Nicola Sturgeon: I know. I always do my best to be helpful to the committee, but I am not entirely sure what you are asking me to say beyond what I have already said. As I am sure members will appreciate, part of the reason for my visit is courtesy in order to keep the Commission and other interests in the European Union up to date with the development of our policy and the factors that we are taking into account. Yes, another part is to hear any observations or comments and, although I think that it is unlikely that they will give us advice, if they were to do so, we would hear it. All of that will, of course, become part of the decision-making process in which we are engaged, but it would be wrong to say that engagement with Europe or my meetings next week will be the deciding factor.

The Convener: You continue to use the phrase “deciding factor”. I am suggesting not that the discussions will be the deciding factor but that it is entirely sensible to have them and that the European commissioners will influence the outcome of the Government’s policy. It would be daft otherwise, would it not?

Nicola Sturgeon: Okay. I am genuinely trying to be helpful here; I am not trying to be adversarial with the convener in any way. It might be easier to answer the question about the influence that the discussions might have after I have had them. If it would be helpful to the committee, I am certainly happy to update you in that regard.

The Convener: Thank you, cabinet secretary.

Richard Lyle has his hand up.

Richard Lyle: On the point that the convener has just made, I am sure that the European commissioners have an opinion on everything. They might even have an opinion on how to save the euro—probably or hopefully—but I do not know.

On the issue of legal challenge, one of the first questions that I asked you, cabinet secretary, was about the fact that the Law Society has said that minimum pricing may be challenged in Scotland and could be challenged in the House of Lords but will not be challenged in Luxembourg. What advice has the Scottish Government received from its own or external lawyers about the possibility of legal challenges to the bill in the Scottish courts or the House of Lords?

Nicola Sturgeon: As the committee knows, I want to be as helpful as possible, but I do not necessarily want to read out the ministerial code. The committee knows the constraints on my discussing the content of legal advice. The same position applies to us in that regard as has applied to previous ministers in previous Administrations. I assume that the committee has had access to the very detailed summary of what we consider the legal position to be, which I provided to the predecessor committee when it considered the previous bill. It ran to, I think, about 10 pages of detailed advice. If members have not had a chance to look at it, I certainly advise them to do so because it is a full description.

As I have already said on the issue of court challenges, I would hope that people would respect the will of the Parliament. It is not for me to say whether there will be a court challenge or to comment on what level that might get to.

Richard Lyle: Thank you.

12:00

Dr Simpson: Can I move us on to evaluation? I very much welcome the information that we have received from NHS Scotland and the movement on the study to be done by Queen Margaret University and Professor Chick, so that there will be a control group in Newcastle, which is what Professor Stockwell also recommended in response to a question that I asked. Of course, that relates to harmful drinkers, which I fully appreciate are the group that the doctors want to affect.

Hazardous drinking will be more difficult to tease out from the general population's alcohol consumption, but seems to me to be, nevertheless, quite important. There are general practice databases—I should perhaps declare an interest, as my son works on one such database—with information on working with people who, for example, require brief interventions, and I wonder

whether the cabinet secretary will ask NHS Health Scotland to consider whether some matching work on hazardous drinkers could be carried out with, say, the University of Nottingham, which has formulated a very good approach to this issue. I am not saying that doing that would be possible but it would be helpful to explore the idea.

Another question, which is also raised in the Finance Committee's report, relates to the effect on low-income groups. As the cabinet secretary knows, I have been pursuing this issue almost above all others. My concern all along has related to the fact that the number of hazardous drinkers in each decile of income increases as income increases and the consumption of cheap alcohol increases as income decreases. I know that there are issues with the very lowest-income groups, because of the higher numbers of abstainers, but that is the general pattern. The fairly logical conclusion is that a minimum unit price is more likely to affect the lower-income groups, particularly as the higher-income groups have up to now tended to get their cheaper alcohol through discounting rather than by buying the very cheap alcohol that is around. Will there be, as the Finance Committee has recommended to this committee, a really close study of the effect of the measure in particular on the lowest three income groups, to determine whether the adverse effects that I suggest will be felt by moderate drinkers in the low-income groups have actually arisen?

Nicola Sturgeon: I absolutely take your point about hazardous drinkers and, although I do not know whether it will be possible to carry out the sort of work that you suggest, I am happy to ask NHS Health Scotland to find out. I will also ensure that your point about the evaluation of low-income groups is factored into evaluation plans.

As for low-income groups in general, I realise that we have had this discussion before; nevertheless, the issue remains very relevant and I would like to make a number of points about it. First, we know from work that has been carried out that people in low-income groups are more likely than those in other groups not to drink at all or to drink very moderately. At the other end of the scale, however, those in low-income groups are more likely to be hazardous or harmful drinkers.

According to the Ludbrook paper, which we discussed at the tail end of the previous bill's consideration, all income groups purchase low-price off-sales alcohol. The relationship between income group and the amount purchased at the cheapest price—by which I mean below 30p a unit—is not absolutely straightforward; the lowest-income group buys more than the highest at that price, but there is not a lot of difference between middle-income groups and the lowest-income groups. Indeed, at a unit price of between 30p and

40p and between 40p and 50p, the amount purchased tends to increase with income and middle to higher-income groups are the main purchasers of alcohol priced between 30p and 50p. I hope that I am quoting it correctly but in its evidence the IFS said that it did not think that there was

“a substantially greater impact on”

low-income

“groups”—[*Official Report, Health and Sport Committee, 24 January 2012; c 910.*]

However, we need to evaluate all that, just as we need to evaluate other aspects of the policy.

You cannot look just at the impact of minimum pricing on any particular group; you have to look at the other side of the coin, which is the harm caused by alcohol misuse. As we know, those who suffer the greatest harm from alcohol are those in lower-income groups and we must weigh in the equation the fact that someone in the lowest-income section of the population is something like five times more likely to die from alcohol-related causes than someone in the top income bracket.

Dr Simpson: Although I accept some of those points, I point out that the lowest two of the seven socioeconomic groups have a much higher death rate from alcohol cirrhosis. My personal experience—and none of the doctors has contradicted this—is that many of the people concerned start in higher-income groups with a good income, a house, a family and employment. When they become really harmful drinkers—and start, for example, to drink the 197 units a week mentioned in Jonathan Chick’s study—just about every one of them will have drifted into the lowest-income group by the time of their death. I have challenged the college on this on a number of occasions but it does not seem to know the answer. It has not said that that is the case, but it thinks that it might be a possibility.

Undoubtedly various legal issues and the effects of the measure itself will depend partly on the minimum unit price. In the last round of debate on this matter, cabinet secretary, you named the price at stage 3. I do not imagine that you are going to tell us what the price is today, but are you going to name it at stage 2, at stage 3 or in regulations?

Nicola Sturgeon: I answered that earlier.

Dr Simpson: I am sorry—I must have missed that.

Nicola Sturgeon: We hope to name the price at stage 2 but certainly before we reach stage 3.

Dennis Robertson: We all accept that our relationship with alcohol could at times be much better. Do you accept that some of our past education and awareness programmes have not

been particularly effective? If so, can we do anything to make education and awareness more effective in relation to the minimum pricing proposals?

Nicola Sturgeon: The alcohol framework suggests a lot of different initiatives to tackle alcohol misuse, and education is an important one. The honest answer to your question is that the success of previous educational approaches has been variable. I am a great believer in the importance of education in all of this but experience tells us that it will not solve the problem on its own; indeed, if that were the case, one might assume that the problem would be on its way to being solved by now. Education is really important and people better qualified than I am are able to suggest the best ways of approaching young people and pitching these messages in the most effective possible way. It has a huge role to play, but it must be part of a bigger package that, in my view, must include pricing.

Dennis Robertson: But it is something that you are happy to promote and see more of.

Nicola Sturgeon: Absolutely.

The Convener: As members have no more questions, I thank the cabinet secretary and her officials for their attendance. We now move into private session.

12:07

Meeting continued in private until 12:23.

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