Passage of the

Breastfeeding etc. (Scotland) Bill 2003

SPPB 74
Passage of the

Breastfeeding etc. (Scotland) Bill 2003

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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. Extracts from the Official Report are re-printed as corrected for the archive version of the Official Report.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.
After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the *Guidance on Public Bills* published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Clerking and Reporting Directorate. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

*Notes on this volume*

The passage of this short Member’s Bill was straightforward.

Under the Parliament’s Standing Orders at the time of the Member’s proposal for this Bill, a Member’s Bill could be introduced if at least 11 MSPs indicated support for a proposal lodged by the Member intending to introduce the Bill. Elaine Smith’s proposal, together with the names of those who supported it, is reproduced at the beginning of this volume.

It was also not a requirement at that time for Members’ Bills to be accompanied by Explanatory Notes or a Policy Memorandum on introduction, although they could be provided if the Member wished. In this case, a Policy Memorandum was provided, but Explanatory Notes were not.

The Finance Committee reported to the Health Committee on the Bill at Stage 1. Its report is included in Annex A of the Stage 1 Report. However, the oral evidence and also a written submission considered by this committee were not included in the Stage 1 Report, and are therefore included in this volume after that Report.

Amendments were lodged at Stage 2 but none were agreed to and consequently there was no Bill (As Amended at Stage 2).
Forthcoming titles

The next titles in this series will be:

- SPPB 75: Emergency Workers (Scotland) Bill 2004
- SPPB 76: Water Services etc. (Scotland) Bill 2004
- SPPB 77: Budget (Scotland) (No.2) Bill 2005
- SPPB 78: Fire (Scotland) Bill 2004
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- SPPB 78: Fire (Scotland) Bill 2004
Elaine Smith: Proposed Child Health and Breastfeeding (Scotland) Bill-
Proposal for a Bill to promote child health by making it an offence to prevent a
child, who is permitted to be in a public place or licensed premises from being
fed milk in that place or on those premises, and to impose certain duties on
Scottish Ministers to encourage, support and promote breastfeeding. (lodged
19 June 2003)

Supported by: Dennis Canavan, Margo MacDonald, Ms Rosemary Byrne,
Dr Sylvia Jackson, Rhona Brankin, Mrs Margaret Smith, Mr Jamie Stone,
Nora Radcliffe, Patrick Harvie, Bristow Muldoon, Marlyn Glen, Maureen
Macmillan, Mr John Home Robertson, Karen Gillon, Susan Deacon,
Carolyn Leckie, Frances Curran, Rosie Kane, Tommy Sheridan, Michael
Matheson, Roseanna Cunningham, Colin Fox, Christine Grahame, Helen
Eadie, Chris Ballance
ACCOMPANYING DOCUMENTS
A Financial Memorandum (and Presiding Officer’s statement on legislative competence) is printed separately as SP Bill 15-FM. A Policy Memorandum is printed separately as SP Bill 15-PM.

Breastfeeding etc. (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make it an offence to prevent or stop a child who is permitted to be in a public place or licensed premises from being fed milk in that place or on those premises; to make provision in relation to the promotion of breastfeeding; and for connected purposes.

1 Offence of preventing or stopping a child from being fed milk

(1) Subject to subsection (2), it is an offence deliberately to prevent or stop a person in charge of a child from feeding milk to that child in a public place or on licensed premises.

(2) Subsection (1) does not apply if the child, at the material time, is not lawfully permitted to be in the public place or on the licensed premises otherwise than for the purpose of being fed milk.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) In this section—

“child” means a person who has not yet attained the age of two years;

“feeding” includes—

(a) breastfeeding; and

(b) feeding from a bottle or other container;

“licensed premises” means premises licensed under—

(a) section 12 of the Theatres Act 1968 (c.54);

(b) Part II of the Licensing (Scotland) Act 1976 (c.66);

(c) Part II of the Civic Government (Scotland) Act 1982 (c.45); or

(d) section 1 of the Cinemas Act 1985 (c.13);

“milk” means breastmilk, cow’s milk or infant formula;

“public place” means any place to which, at the material time, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
2 Vicarious liability

(1) Anything done by a person in the course of that person’s employment shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that person’s employer, whether or not it was done with the employer’s knowledge or approval.

(2) Anything done by a person as agent for another person with the authority (whether express or implied and whether precedent or subsequent) of that other person shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that other person.

(3) In proceedings brought under this Act against an employer in respect of an offence under section 1 alleged to have been done by an employee of the employer, it shall be a defence for the employer to prove that the employer took such steps as were reasonably practicable to prevent the employee from committing such an offence in the course of the employee’s employment.

(4) In this section, “employment” means employment under a contract of service or of apprenticeship or a contract personally to do any work; and related expressions are to be construed accordingly.

3 Offence of bodies corporate and partnerships

(1) If an offence under section 1 committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on that officer’s part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1), “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with that member’s functions of management as if the member were a director of the body corporate.

(4) If any offence under any provision of this Act committed by a partnership is proved—

(a) to have been committed with the consent or connivance of a partner; or

(b) to be attributable to any neglect on that partner’s part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In subsection (4), “partner” includes a person purporting to act as a partner.
4 Promotion and support of breastfeeding

After section 38 of the National Health Service (Scotland) Act 1978 (c.29) insert—

“38A Breastfeeding

(1) The Scottish Ministers shall make arrangements, to such extent as they consider necessary to meet all reasonable requirements, for the purpose of supporting and encouraging the breastfeeding of children by their mothers.

(2) The Scottish Ministers shall have the power to disseminate, by whatever means, information promoting and encouraging breastfeeding.”.

5 Commencement and short title

(1) Sections 1 to 4 of this Act shall come into force two months after the date of Royal Assent or on such earlier day as the Scottish Ministers may, by order made by statutory instrument, appoint.

(2) This Act may be cited as the Breastfeeding etc. (Scotland) Act 2004.
Breastfeeding etc. (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make it an offence to prevent or stop a child who is permitted to be in a public place or licensed premises from being fed milk in that place or on those premises; to make provision in relation to the promotion of breastfeeding; and for connected purposes.

Introduced by: Elaine Smith
On: 16 December 2003
Bill type: Member’s Bill
These documents relate to the Breastfeeding etc. (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 16 December 2003

BREASTFEEDING ETC. (SCOTLAND) BILL

FINANCIAL MEMORANDUM

(AND PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE)

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Breastfeeding etc. (Scotland) Bill introduced in the Scottish Parliament on 16 December 2003. It has been prepared by Govan Law Centre on behalf of Elaine Smith MSP, who is the member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

A Policy Memorandum is printed separately as SP Bill 15–PM.

COSTS ON THE SCOTTISH ADMINISTRATION

2. The main costs from sections 1 to 3 of the Bill relate to the extra burdens placed on the police and Procurator Fiscal Service. However, it is anticipated that these burdens will be modest and will not require the recruitment of additional staff. Ultimately, it is anticipated that affected private and public bodies will audit existing practices and policies to ensure compliance with the Bill, and therefore, the number of prosecutions is expected to be extremely low.

3. The Scottish Ministers presently promote and support breastfeeding as part of general health promotion strategies and the provisions of this Bill would complement and enhance ongoing work. Additional investment will be needed to ensure that the duty imposed by section 4 (introducing new section 38A to the National Health Service (Scotland) Act 1978 (c.29)) is complied with. Current expenditure on the promotion and support of breastfeeding through NHS health boards varies widely. Additional investment could be found, without any new money, from more efficient deployment and/or ring-fencing of current resources within the following

Scottish Executive budgets: Healthy Living Campaign, Health Improvement Fund, Early Years Funding, Social Inclusion Funding, and Sure Start Scotland. The figure for likely additional costs cannot be precisely estimated at present due to a lack of information about the amount currently spent on supporting breastfeeding, but the annual additional costs involved are unlikely to be significant.

COSTS ON LOCAL AUTHORITIES

4. It is not anticipated that the Bill will impose any additional costs. A number of local authority employees would require training on the provisions of the Bill. However, such training could be given along side existing general staff training.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

5. It is not anticipated that the Bill will impose any additional costs. Overall, it is expected that all bodies will be able to meet any costs arising from the creation of the offence of preventing or stopping a child from being fed milk from within existing resources. A number of employees would require training on the provisions of the Bill. However, such training could be given along side existing general staff training.

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PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

6. On 15 December 2003, the Presiding Officer (George Reid) made the following statement:

“In my view, the provisions of the Breastfeeding etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
BREASTFEEDING ETC. (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Breastfeeding etc. (Scotland) Bill introduced in the Scottish Parliament on 16 December 2003. It has been prepared by Govan Law Centre on behalf of Elaine Smith MSP, who is the member in charge of the Bill, under Rule 9.3.3A(b) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. A Financial Memorandum (and Presiding Officer’s statement on legislative competence) is published separately as SP Bill 15–FM.

POLICY OBJECTIVES OF THE BILL

2. The purpose of section 1 of the Bill is to safeguard the right of a child under the age of two years of age to be fed milk in a public place or licensed premises, where the child is otherwise lawfully permitted to be. Accordingly, the Bill does not affect Scottish licensing law, nor does it prevent a business from excluding breastfeeding on its premises where the lawful custom or practice is to exclude children generally. Where a child is lawfully permitted to be in a public place or licensed premises, that child may be fed bottled milk, and the child’s mother (or any other woman who has charge of the child) will be entitled to breastfeed him or her if she so chooses. Any person who deliberately prevents or stops (or attempts to prevent or stop) a person from bottlefeeding or breastfeeding a child in such circumstances will be guilty of an offence, liable on conviction to fine not exceeding level 4 on the standard scale (currently £2,500).

3. The health benefits of breastfeeding for both mothers and babies are increasingly recognised, both worldwide and in the UK. By recognising and protecting a child’s right to be breastfed, the Bill would support the take up and duration rates of breastfeeding. Section 4 of the Bill requires the Scottish Ministers to directly promote and support breastfeeding. This new duty would help Ministers meet their own targets. Since 1991 there has been a national initiative to increase breastfeeding rates, which in some areas are as low as 13% at around six days of newborn life. The then Scottish Office set a target in 1994 of “more than 50% of women to be still breastfeeding their babies at 6 weeks of life by 2005”. More recently, the Scottish Diet Action Plan (1996), the Priorities and Planning Guidance for the NHS in Scotland 1999-2002 (1998) and the White Paper Towards a Healthier Scotland (1999) have reiterated the need to

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encourage and support breastfeeding. In 1995, only 36% of Scottish mothers breastfed at 6 weeks of life, while in 2000 the proportion had increased to 40%.\(^4\) A recent Scottish audit of NHS health board action on breastfeeding suggests there is wide variance in the promotion and support of breastfeeding across Scotland. Two of Scotland’s 15 health boards did not have a breastfeeding strategy.\(^5\) Section 4 of the Bill would help the Scottish Ministers achieve uniformity in the support and promotion of breastfeeding in Scotland.

4. Where a mother, father or carer decide to bottlefeed their child the Bill ensures that this can be done without hindrance in certain public or licensed premises. Often the reason why carers decide to bottlefeed their child is because of social and cultural attitudes.\(^6\) The Bill aims to help tackle and address negative attitudes in Scotland. Such attitudes can be detected not only in the low incidence and duration of breastfeeding but also in the response of partners, family, friends and the general public towards breastfeeding mothers. Media reports highlight hostility to mothers who breastfeed in public settings\(^7\), but in general the media represent bottle-feeding as normal, whilst breastfeeding is represented as problematic, humorous and associated with middle-class or celebrity mothers.\(^8\) A breastfeeding mother can experience negative comment or be asked to stop feeding and resume feeding in the public toilets. This has a negative effect on breastfeeding both in the short and the long term and causes distress to mother and baby. Embarrassment is commonly cited as a major factor for choosing not to breastfeed.\(^9\) Recent research has shown that there is still a lack of knowledge about the benefits of breastfeeding in the general public.\(^10\)

5. Many state legislatures in the United States of America have introduced legislation to encourage and support breastfeeding.\(^11\) While a variety of approaches have been taken, some states have adopted a similar stance to the Breastfeeding etc. (Scotland) Bill. For example, the Minnesota State Legislature passed a law in April 1998 which provides that: “A mother may breastfeed in any location, public or private, where the mother and child are otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast-feeding”.\(^12\) Many states in the US have introduced breastfeeding laws to support and encourage breastfeeding for major health and economic reasons. For example, section 1 of the State of Washington’s Second Substitute House Bill 1590 of 2001 affirms that: “(a) Breastfeeding is one of the most important contributors to infant health; (b) Breastfeeding provides a range of benefits for the infant’s growth, immunity, and development; and (c)


\(^6\) Infant Feeding Survey, cited above.

\(^7\) “Breastfeeding mother in bus ban”, Scotland on Sunday, 8 August 1999.


\(^9\) Infant Feeding Survey, cited above.


\(^12\) 1998 Minn. ALS 407; 1998 Minn. Chapter Law 407; 1997 Minn. S.F. No. 3346; Minn. Stat. § 145.905
Breastfeeding improves maternal health and contributes economic benefits to the family, health care system, and workplace.13

ALTERNATIVE APPROACHES

6. Some state legislatures have promoted breastfeeding as part of a wider anti-discrimination strategy. For example in Australia, the Queensland Anti-Discrimination Act 1991 (ADA) prohibits discrimination against women on the grounds of gender, and specifically breastfeeding.14 With regard to breastfeeding the ADA initially only applied to the “provision of goods and services”.15 In other words, those not supplying goods or services (for example, a member of the public sitting in a café) appeared not subject to the ADA.16 However, full protection under the ADA (including in the workplace) was extended to breastfeeding by the Discrimination Law Amendment Act 2002.17 The ADA is underpinned by a significant legal and administrative infrastructure. Complaints under the ADA are investigated and pursued by an Anti-Discrimination Commission18, and ultimately may be determined by a specialist Anti-Discrimination Tribunal.19 The tribunal has a range of disposals available including compensatory awards.

7. Legislation relating directly to equal opportunities and sex discrimination law is a reserved matter in terms of Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46) and, therefore, beyond the legislative competence of the Scottish Parliament. Accordingly, it is not possible for an anti-discrimination approach to be considered. Following a wide ranging consultation,20 the member in charge of the Bill agreed that, as the purpose of the Bill was to improve child health by recognising a child’s right to fed milk, the Bill should follow the approach adopted by many USA state legislatures. That approach typically amends criminal law statutes, and makes provision for legal recognition (and clarification) of the child’s right to be fed milk in public places where the carer and child are otherwise permitted.21 The Bill adopts a gender neutral approach. The right of men and women to feed their child milk in certain public and licensed premises is recognised and protected. Matters of Scots criminal and private law are generally devolved to the Scottish Parliament.22 Scots criminal law provides a more effective and efficient vehicle than Scots private law as there is already an enforcement and administrative infrastructure in place.23

15 Section 7(2), of the 1991 Act, cited above.
16 See section 46(1) of the 1991 Act, cited above.
19 Decision of the Queensland ADA tribunal are available on-line: http://www.austlii.edu.au/au/cases/qld/QADT.
20 Consultation details are discussed in paragraph 9.
21 See footnote 10 above.
22 Certain home affairs matters (such as drug trafficking) are expressly reserved by Head B of Part II of Schedule 5 to the Scotland Act 1998 (c.46) – available on-line at: http://www.hmso.gov.uk/acts/acts1998/19980046.htm
23 If the Bill had pursued a Scots civil law route aggrieved individuals could have been provided with a compensatory remedy, with the inherent problem that many people in Scotland would not qualify for civil legal aid (or would qualify with the need to pay a significant financial contribution), and would not be able to raise civil proceedings.
8. In the context of providing support and encouragement to mothers’ breastfeeding the World Health Organisation (WHO) has called for action on a number of initiatives. Key initiatives of the WHO strategy include:

- all governments should develop and implement a comprehensive policy on infant and young child feeding, in the context of national policies for nutrition, child and reproductive health, and poverty reduction.
- all mothers should have access to skilled support to initiate and sustain exclusive breastfeeding for 6 months and ensure the timely introduction of adequate and safe complementary foods with continued breastfeeding up to two years or beyond.
- health workers should be empowered to provide effective feeding counselling, and their services be extended in the community by trained lay or peer counsellors.
- governments should review progress in national implementation of the International Code of Marketing of Breastmilk Substitutes, and consider new legislation or additional measures as needed to protect families from adverse commercial influences.
- governments should enact imaginative legislation protecting the breastfeeding rights of working women and establishing means for its enforcement in accordance with international labour standards.

Not all these initiatives are within the competency of the Scottish Parliament, for example, legislation affecting employment law is reserved to the UK Parliament. A fundamental WHO policy approach is that non-governmental agencies, and community-based groups should play a part in encouraging breastfeeding. The new section 38A(2) (introduced by section 4 of the Bill) would enable Scottish Ministers to disseminate promotional information on breastfeeding by whatever means, including statutory and voluntary sectors.

CONSULTATION

9. In August 2002, the sponsoring member undertook a wide ranging public consultation on the Bill’s principles. Responses were received from 25 NHS authorities, 12 local authorities, 4 elected members, 12 trade unions and associations, 14 midwife or breastfeeding groups, and 93 individuals. Support for the Bill was overwhelming. The Bill itself was drafted in consultation with an advisory group, which included the National Breastfeeding Advisor, Jenny Warren OBE, along with various academics, health visitors, licensing law officials, an ex-Strathclyde police officer, Govan Law Centre, La Leche League, Scottish Consumer Council, Gorbals Health Centre, the Royal College of Midwives, the National Childbirth Trust, the Child Poverty Action Group, UNICEF, the STUC, and UNISON. The Bill’s proposal received cross-party support from the following MSPs: Dennis Canavan, Margo MacDonald, Ms Rosemary Byrne, Dr Sylvia Jackson, Rhona Brankin, Mrs Margaret Smith, Mr Jamie Stone, Nora Radcliffe, Patrick Harvie, Bristow Muldoon, Marilyn Glen, Maureen Macmillan, Mr John Home Robertson, Karen Gillon.

25 Respondents were asked for comments on 10 key issues, including a child’s right to be breastfed and bottlefed, and the need to support and encourage breastfeeding. The consultation paper is available on-line at http://www.babyfriendly.org.uk/pdfs/consultationpaper.pdf
26 A detailed analysis of consultation responses will shortly be available on http://www.elaine-smith.co.uk.
This document relates to the Breastfeeding etc. (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 16 December 2003

Susan Deacon, Carolyn Leckie, Frances Curran, Rosie Kane, Tommy Sheridan, Michael Matheson, Roseanna Cunningham, Colin Fox, Christine Grahame, Helen Eadie, Chris Ballance.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

10. While the purpose of the Bill is to safeguard a child’s right to fed milk in a public place (where that child is otherwise lawfully permitted to be) the Bill should also help to encourage the take-up and duration of breastfeeding. Any increase in the take-up and duration of breastfeeding in Scotland would assist the health and opportunities of children generally.

11. The Ontario Human Rights Commission has recently sponsored INFACT Canada to promote the rights of children to breastfeed. The message promoted is “Don't think of it as a woman's right to breastfeed. Think of it as a baby's right to eat”. The Bill would recognise and protect this right as well as the right of a child to be bottlefed milk. The Convention on the Rights of the Child (CRC) guarantees parents and children access to information and support in the use of basic knowledge of the advantages of breastfeeding. Breastfeeding can be seen as “adequate food”, the right to which is set forth in Article 25 of the 1948 Universal Declaration of Human Rights and Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights. Article 6.1 of the International Code of Conduct on the Human Right to Adequate Food provides “The state must also protect the right of women to breastfeed their babies for at least six months of life”. The Bill would help to provide such protection.

12. The Bill has no specific or particular implications for island communities, local government or sustainable development.

27 INFACT Canada poster can be viewed on-line at: http://www.infactcanada.ca/HRLegislation.html
Health Committee

14th Report 2004 (Session 2)

Stage 1 Report on the Breastfeeding etc. (Scotland) Bill
Health Committee

14th Report, 2004 (Session 2)

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11 May 2004 (13th Meeting, Session 2 (2004))

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National Childbirth Trust
Breastfeeding Network
Association of Chief Police Officers in Scotland
Scottish Police Federation
Scottish Licensed Trade Association
Oral Evidence
Rosemary Dodds (National Childbirth Trust)
Leah Granat (Breastfeeding Network)
Deputy Chief Constable David Mellor (Association of Chief Police Officers in Scotland)
Norman Macleod (Scottish Police Federation)
Colin Wilkinson (Scottish Licensed Trade Association)

Additional Written Evidence
Scottish Police Federation

1 June 2004 (14th Meeting, Session 2 (2004))

Written Evidence
Scottish Executive
National Breastfeeding Adviser
Highlands and Islands Research Institute
Dundee Council
City of Edinburgh Council
Fife Council
Perth and Kinross Council
Elaine Smith MSP

Oral Evidence
Minister for Health and Community Care
Jenny Warren (National Breastfeeding Adviser)
Dr Pat Hoddinott (Highlands and Islands Research Institute)
David Barrie (Dundee Council)
Ellen Kelly (City of Edinburgh Council)
Vivienne Brown (Fife Council)
Gillian Grant (Perth and Kinross)
Elaine Smith MSP

Additional Evidence
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Scottish Executive

8 June 2004 (15th Meeting, Session 2 (2004))

Written Evidence
Mike Dailly, Govan Law Centre

Oral Evidence
Shona Barrie(Crown Office)
Elaine Smith MSP

ANNEX D: ADDITIONAL WRITTEN EVIDENCE

Amicus Community Practitioners' and Health Visitors' Association
BMA
Breastfeeding Welcome Award
Child Poverty Action Group in Scotland
Confederation of Passenger Transport
Dietitians Working in Obesity Management (UK)
Edinburgh for Under Fives
Equal Opportunities Commission
Forth Valley NHS Board
Infant and Dietetic Foods Association
Lactation Consultants of Great Britain
Scottish Consumer Council
Scottish Human Rights Centre
Scottish NHS Confederation
Scottish Trades Union Congress
Transport and General Workers’ Union Scotland
Unison Scotland
Union of Shop, Distributive and Allied Workers
Volunteer Development Scotland

Isabel Archibold
Katherine Butcher
Kathryn Congdon
Ninna Crisp
Irene Fenske
Dr Laura Joffe
Catriona McCallum
Claire Muir
Scot Murphy
Nina Robertson
Pauline Rush
Lesley Smith
Phoebe Tait
Claire Thomson
Kathleen Ward
Tracey Weaver
Health Committee

Remit and membership

Remit:
To consider and report on matters relating to health policy and the National Health Service in Scotland and such other matters as fall within the responsibility of the Minister for Health and Community Care.

Membership:
Christine Grahame (Convener)
Mr David Davidson
Helen Eadie
Janis Hughes (Deputy Convener)
Kate Maclean
Duncan McNeil
Shona Robison
Mr Mike Rumbles
Dr Jean Turner

Committee Clerking Team:
Clerk to the Committee
Jennifer Smart

Senior Assistant Clerk
Tracey White

Assistant Clerk
Roz Wheeler
INTRODUCTION

1. The Breastfeeding etc (Scotland) Bill (SP Bill 15) was introduced in the Parliament on 16 December 2003 by Elaine Smith MSP. The Parliamentary Bureau subsequently referred the bill to the Health Committee as lead committee.

2. The provisions of the bill conferring power to make subordinate legislation were referred to the Subordinate Legislation Committee under Standing Orders Rule 9.6.2. Under Standing Orders Rule 9.6.3, the Finance Committee considered the Financial Memorandum to the bill. The reports of both these committees are attached at Annex A.

BACKGROUND AND CONSULTATION

3. The Breastfeeding etc. (Scotland) Bill, if enacted, would make it an offence to prevent or stop a child under the age of two years who is permitted to be in a public place or licenced premises from being fed milk in that place. The bill also seeks to impose on Scottish Ministers a specific duty to support and encourage the breastfeeding of children by their mothers.

4. The Policy Memorandum accompanying the Breastfeeding etc. (Scotland) Bill states that, “The purpose of section 1 of the bill is to safeguard the right of a child under the age of two years of age to be fed milk in a public place or licenced premises, where the child is otherwise lawfully permitted to be” and that “Where a child is lawfully permitted to be in a public place or licenced premises, that child may be fed bottled milk, and the child’s mother (or any other woman who has charge of the child) will be entitled to breastfeed him or her if she so chooses”. It goes on to state that “Any person who deliberately prevents or stops (or attempts to prevent or stop) a person from bottlefeeding or breastfeeding a child in such circumstances will be guilty of an offence, liable on conviction to a fine not exceeding level 4 on the standard scale”.

5. The Policy Memorandum goes on to state that, “The health benefits of breastfeeding for both mothers and babies are increasingly recognised, both...
worldwide and in the UK. By recognising and protecting a child’s right to be breastfed, the bill would support take up and duration of breastfeeding.” A wide range of academic literature exists to support this view. Similarly studies have identified cost savings to the NHS associated with breastfeeding as well as cost savings to employers as parents take less time off to look after sick children\(^1\). The World Health Organisation recommends that mothers should breastfeed exclusively for the first six months of an infant’s life, then breastfeed with the introduction of complementary foods up to two years of age and beyond. According to the 2000 UK Infant Feeding Survey, in Scotland 63% of mothers breastfeed their babies at birth. That figure declines to 30% at four months of age, 24% at six months of age and 15% at 9 months of age\(^2\).

6. The bill seeks to tackle negative social and cultural attitudes to breastfeeding in Scotland. With regard to the proposed new duties on Scottish Ministers, the Policy Memorandum states “Section 4 of the bill requires the Scottish Ministers to directly promote and support breastfeeding. This new duty would help Ministers meet their own [breastfeeding] targets”.

7. The Policy Memorandum indicates that the member in charge of the bill undertook a wide-ranging public consultation in August 2002. 189 responses were received, 126 of which were from individuals and the remainder from a range of organisations. Basic analysis of the responses, carried out by the Scottish Parliament Information Centre (SPiCe) at the beginning of 2003, revealed that 67% of respondents expressed support for the proposed bill, 10% expressed comments against it and the remaining 23% did not make their opinions clear.

8. The bill was drafted on behalf of the member in charge by Mike Dailly of the Govan Law Centre, in consultation with an advisory group with broad ranging membership\(^3\). The Committee is content with the level of consultation.

EVIDENCE TAKEN BY THE COMMITTEE

9. The Health Committee issued an open call for written evidence in January 2004 and received 48 responses. All but three of the written submissions broadly supported the general principles of the bill.

10. The Committee took oral evidence over the course of three meetings. Evidence was heard from representatives of the following organisations: the National Childbirth Trust (NCT), the Breastfeeding Network (TBN), the Association of Chief Police Officers in Scotland (ACPOS), the Scottish Police Federation (SPF), the Scottish Licensed Trade Association (SLTA), the Crown Office, the City of Edinburgh Council, Perth and Kinross Council, Dundee City Council, and Fife Council. The Committee also heard oral evidence from Jenny Warren, the NHS Scotland National Breastfeeding Adviser, from Dr Pat Hoddinot of the Highlands and Islands Health Research Institute, and from Malcolm Chisholm MSP, the

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\(^1\) For details see SPiCe Briefing 04/34
\(^2\) Ibid
\(^3\) The composition of the advisory group is detailed in paragraph 9, page 4 of the Policy Memorandum
Minister for Health and Community Care. Elaine Smith MSP gave oral evidence at two committee meetings, supported both times by Mike Dailly and on one occasion by Kay Sillars, Researcher.

11. The Committee is grateful to our various witnesses for taking time to give evidence and, where appropriate, for submitting written evidence for the Committee’s consideration. Their oral and written evidence is set out in Annex C to this report. Annex B contains extracts from the minutes of Committee meetings.

12. The Committee would also like to record its thanks to others who responded to its call for written evidence. Their submissions can be found in Annex D to this report.

GENERAL PRINCIPLES OF THE BILL

13. In considering the general principles of the bill, the Committee sought to address a number of issues, including:

- Whether there is evidence that mothers, and other persons in charge of a child under two, are likely to encounter adverse behaviour in reaction to their feeding milk to that child in a public place or licenced premises where the child is otherwise entitled to be;
- Whether any such adverse behaviour is likely to inhibit the take up and duration rate of breastfeeding;
- Whether making it a criminal offence to deliberately prevent or stop a person in charge of a child from feeding milk to that child in these circumstances is likely to support the take up and duration rates of breastfeeding;
- The extent to which such an offence would be enforceable; and
- The likely impact of an amendment to the National Health Service (Scotland) Act 1978 obliging Scottish Ministers to promote and support breastfeeding.

Public reaction to breastfeeding

14. The Committee was interested in ascertaining how common an experience it is for women to be asked to leave a public place or to go elsewhere to breastfeed and sought information from a number of witnesses about the availability of research evidence in this area.

15. Witnesses from NCT and TBN told the Committee that they were unaware of any published quantitative research but indicated that in the course of their work they are regularly in contact with women who have encountered problems when breast feeding in public.

16. Rosemary Dodds of NCT told the Committee –

I deal with a slow but steady stream of concerned women who have been asked to leave premises. For example, they have been told they cannot breastfeed in various restaurants and shops. Last week, women were told
in a law court and in a job centre that they were not allowed to breastfeed. (Col 853)

17. Describing her experience in setting up a Breastfeeding Welcome Award in the Maryhill area of Glasgow, Leah Granat of TBN told the Committee –

   The management of various public places committed themselves to supporting breastfeeding women on their premises and allowing breastfeeding to take place. Volunteers then went to check the places. They went in the guise of ordinary customers visiting the premises, breastfed their children as appropriate and reported their findings. Even in public places where the management had committed themselves to supporting breastfeeding, four mothers experienced a bad time and were told by members of staff, “you can’t breastfeed here,” or, “if you want to do that you’ll have to go off to the toilet.” (Col 854)

18. Similarly, Jenny Warren, the NHS Scotland National Breastfeeding Adviser indicated that in her dealings with women in breastfeeding support groups she had been made aware that some women feel unable to breastfeed in public because of the hostility that they fear they will encounter having heard anecdotally about other women’s experiences.

19. In her written submission Dr Pat Hoddinot, of the Highlands and Islands Research Institute, cited evidence from the Office of National Statistics 2000 Infant Feeding Survey which reports that 39% of breastfeeding mothers and 21% of bottle feeding mothers in the UK had difficulty finding somewhere to feed their baby in public. In oral evidence she indicated that in the course of her own action research study on the implementation of peer coaching for breastfeeding in Banff and Buchan she had not measured the incidence of adverse experiences with public breastfeeding. She had, however, observed anecdotal evidence in this area and indicated that every breastfeeding group had experiences of women being asked to leave public places or to go to toilets to breastfeed.

**Conclusion**

20. Based on the written and oral submissions it received, the Committee accepts that there is evidence, although much of it is anecdotal, of adverse reactions to breastfeeding in public.

**Impact on breastfeeding uptake and duration**

21. On the issue of the impact of actual or anticipated adverse responses to breastfeeding in public, there was a consensus among those witnesses asked to address this question that concern about the reaction of others inhibits take up and duration of breastfeeding.

22. One witness referred to a survey carried out by NOP Research Ltd that found that of approximately 1,000 adults who were questioned throughout the UK only 15% said that they would object to breastfeeding in a public place. However, two thirds of women asked said they thought that there would be objections to
their breastfeeding in public. This would suggest that the minority who are likely to object have a disproportionate impact on women’s perceptions.

Conclusion

23. The Committee accepts that there is evidence, although much of it is anecdotal, that adverse reaction or fear of adverse reaction to breastfeeding in public may impact negatively on take up and duration rates of breastfeeding.

An offence of preventing or stopping a child from being fed milk

24. The Committee was keen to establish whether making it a criminal offence to deliberately prevent or stop a person from feeding milk to a child under two in a public place or licensed premises where that child is otherwise entitled to be is an appropriate response to concerns about existing take up and duration rates of breastfeeding. Views were, therefore, sought from witnesses on a number of areas, including:

- Whether a right already exists to feed milk to children in places that they are entitled to be;
- Whether the proposed offence is likely to exacerbate negative attitudes towards breastfeeding mothers;
- Whether action to regulate for or promote better facilities for breastfeeding would be a suitable and appropriate alternative to the introduction of the proposed offence;
- Whether the fact that the bill seeks to introduce similar protections in relation to the feeding of milk from bottles and containers to children under two dilutes its potential impact on breastfeeding; and
- Whether legislation is an appropriate mechanism to influence a change in culture.

Existing rights

25. The Committee heard evidence from police representatives, which confirmed that people feeding milk to children in public have the same right as any other person not to be assaulted or threatened. They indicated that complaints about assaults and threats in these circumstances would therefore be pursued under the common law as appropriate.

26. Jenny Warren also acknowledged that people currently have the right to feed milk to children in public. However she went on to indicate her view that there is a lack of clarity in this area and that making it a specific offence to prevent or stop someone pursuing this right would have a beneficial impact. She suggested to the Committee that the proposed legislation would make women with babies more confident about feeding in public, whether they chose to breast- or bottle-feed their babies. She went on to indicate that this might positively influence breastfeeding duration rates, pointing out that harassing women about breastfeeding can interfere with the process of lactation.
27. In his oral evidence the Minister told the Committee –

The reality is that the bill adds a new dimension to the rights of women and children…..the distinctive contribution of the bill is to do with the rights of women and children to breastfeed wherever the mother wishes. (Col 893)

**Exacerbation of Negative Attitudes**

28. Asked about the potential for the bill to lead to negative attitudes towards breastfeeding mothers the Health Minister told the Committee –

The bill intends to promote positive rather than negative attitudes. In the end, the effect that one feels that the bill will have is a balance of judgement. However, I tend to the view that it will be positive rather than negative. (Col 886)

29. Other witnesses who were asked to address this question concurred with this view. Dr Hoddinot, for example, cited research evidence from Scandinavia and the USA, showing that a multifaceted approach to promoting breastfeeding through such legislation can work. Jenny Warren told the Committee -

A few people will always react negatively to such legislation, but they are terribly negative about breastfeeding as things stand. I think that such people will be few and far between. (Col 908)

30. Deputy Chief Constable Mellor indicted, however, that while his ACPOS colleagues unequivocally support the bill’s objectives there is a divergence of views in relation to the creation of a criminal offence.

**Regulation or promotion of breastfeeding facilities**

31. In its written submission to the Committee ACPOS proposed that an alternative to going down the criminal-law route might be to pursue the licensing route, pointing out that powers of enforcement can be attached to licences.

32. The member in charge of the bill indicated that she did not favour this route as it would have a more limited impact. She told the Committee -

The main thrust of the bill is about ensuring that parents can go out and about in public with their children and access public services without being challenged about the way they feed their children. (Col 933)

33. The bill does not require those who own, manage or operate public places or licenced premises where children are entitled to be to provide special facilities for those feeding milk to children. However, the results of the 2000 Infant Feeding Survey show that half of women who had breastfed in public stated they would prefer to feed in private mother and baby facilities.

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4 For details see SPICE Briefing 04/34
provision of such facilities would offer a preferable option to the introduction of the
offence specified in the bill.

34. The Committee sought information from Perth and Kinross Council about
the application of its licencing board policy on conditions attached to Children’s
Certificates which states that “nothing shall be done to prevent or dissuade
breastfeeding from taking place”. In a written response the Council indicated that
this condition had been in place since 1991 and, as far as it is aware, the condition
had no effect on the number of certificates issued. The Council also indicated that
it has never had to take any enforcement action due to a breach of this condition.

35. Colin Wilkinson, Secretary of the SLTA, indicated that it was the
experience of those of his members who are licenced to allow children in their
premises that most women preferred there to be private facilities available. Where
it was practical these facilities would be provided. However, he also suggested to
the Committee that the introduction of additional regulations, for example a
requirement to provide private feeding facilities, would discourage his members
from applying for a licence to allow them to cater for children. He cited recent
experience in Edinburgh in relation to the introduction of Children’s Certificates, in
evidence to the Committee –

When Children’s Certificates were created we thought that they would
encourage more premises to make provision. Edinburgh has 1,300 licenced
premises and only 75 Children’s Certificates, simply because of the
conditions that were attached to the certificates, which put many licencees
off providing catering facilities for children. (Col 876)

36. Other witnesses who addressed this issue stressed the importance of
providing a choice for parents over where they feed their children, as a means of
establishing breastfeeding as a ‘normal’ part of everyday life. Vivienne Brown,
Health Improvement Adviser for Fife Council, described to the Committee two local
initiatives designed to promote breastfeeding: a ‘breastfeeding-friendly’ directory
and a ‘healthy choices’ award. She told the Committee that –

Neither of those two initiatives suggest that there needs to be a separate
facility for breastfeeding mothers, unless it is specifically asked for. Both
initiatives are targeted at changing attitudes to breastfeeding by making
breastfeeding acceptable within the main areas of restaurants, cafes or
services. (Col 922)

37. The Committee believes that encouraging the provision of special
breastfeeding facilities should not be regarded as an alternative to the
provisions of the bill. Encouraging better provision is complementary to the
bill’s aims. The Committee believes that improved provision of
breastfeeding facilities should be encouraged where appropriate and so far
as practicable.

Milk from bottles and other containers
38. Given the bill’s emphasis on the promotion of breastfeeding, the Committee
also sought views on the establishment of an offence in relation to actions to
prevent or stop any person in charge of a child under the age of two from feeding milk to that child from a bottle or container.

39. The member in charge of the bill justified this inclusion in terms of supporting feeding choices. She told the Committee –

   The bill is child centred, so it is about the right of children under the age of two to be fed in public places. It is also about supporting feeding choices once those choices have been made. (Col 932)

40. In addition Mike Dailly told the Committee –

   The first draft was very specific and would have kept the bill nice and short and to the point. However, because it dealt only with women, issues of discrimination arose….The view was taken that the bill would not be competent. (Col 944)

41. This approach was acknowledged by Dr Hoddinot as important from the point of view of supporting informed choice about methods of feeding. She cited evidence from the Office for National Statistics showing that the number of women who are prepared to bottle feed their baby in public has declined since 1990, suggesting an increased reluctance to feed children in a public place. She told the Committee –

   My qualitative research shows that women time their trips to shops in between feeds and also that many women perceive that it is unacceptable to have a crying baby in public … they will do anything to avoid their baby crying in a public place because it is hungry. That is an important point to consider in relation to including formula feeding as well as breastfeeding in the bill. (Col 912)

42. Dr Hoddinot also suggested to the Committee that removing references to “person” and “bottle” in the bill may have the adverse impact of increasing the gender divide in families.

43. Other witnesses spoke in favour of including references to bottles and other containers for feeding milk both from the point of view of avoiding discrimination and to support mothers who choose to express milk.

44. The Committee notes the explanation given by the member in charge for the inclusion of an offence in relation to feeding from a bottle or other container in order to ensure the bill’s competency. The Committee also notes that in the initial consultation opinion was divided on this inclusion. The Committee is keen to support feeding choices. However, the Committee has some concerns that the inclusion of other forms of feeding may cause confusion or dilute one of the main aims of the bill, the promotion of breastfeeding.
Legislation as a means to secure cultural change

45. A number of witnesses acknowledged that an attitudinal shift would be required to secure improvements in the rate and duration of breastfeeding and the Committee was keen to take views on whether legislation in this area was an appropriate element in achieving this shift.

46. In his evidence Deputy Chief Constable Mellor indicated acceptance that a range of approaches require to be considered when seeking to change culture and attitudes and that the creation of criminal offences has been effective in the past. He told the Committee –

   The seat-belt law is a classic example: there were concerns about civil liberties before that legislation was enacted, but the overwhelming view is that the law saves lives and is unequivocally a good thing. It is perfectly legitimate to create a criminal offence as part of a strategy to change attitudes. However, I sense that the creation of a criminal offence in this bill seem to be principally a symbolic act, although I accept that the existence on the statute book of an offence that means that people can threaten to use the criminal law is a convincing way of changing attitudes and behaviours. (Col 866)

47. Ellen Kelly, Equalities Manager for the City of Edinburgh Council highlighted a parallel with the promotion of equalities suggesting that advances in this area have been underpinned by a legislative approach. She indicated that the bill was analogous to the Disability Discrimination Act 1995, which made people think about their behaviour by having compulsion.

48. The Committee did not receive any evidence to suggest that legislation was not an appropriate element in changing attitudes.

49. The Committee accepts that some legislation may assist in promoting a shift in attitude and behaviour.

Conclusion

50. The Committee accepts that there is some evidence that the establishment of the criminal offence proposed in the bill may support the take up and duration of breastfeeding. The Committee believes that this is likely to be most effective when backed by an appropriate education and awareness campaign.

Enforcement issues

51. The Committee gave close consideration to a range of issues relating to the enforcement of the proposed criminal offence, including:

   • Whether the police and procurators fiscal would be willing to pursue prosecutions under the act;
   • Whether the definition of ‘public place’ is appropriate;
   • Whether the definition of ‘prevent’ is appropriate;
   • Whether the definition of a ‘child’ is appropriate; and
• What witnesses are required and how will evidence be corroborated.

Prosecutions under the act
52. While both police representatives stressed in oral evidence to the Committee that once a criminal offence is enacted in legislation it is the duty of the police to enforce the law, they raised a number of points about how they might respond to a complaint under the proposed legislation.

53. Deputy Chief Constable Mellor told the Committee -

Given the range of calls we receive, including emergency calls, although a call of that nature would be treated entirely seriously, it would probably not be a priority. We probably could not guarantee a quick response unless there was some aggravating factor such as assaults or threats, which would probably take the matter into other areas of the criminal law. (Col 865)

54. Norman Macleod, Deputy General Secretary of SPF, told the Committee -

Police officers will attend to complaints under the bill from members of the public and, if appropriate, we will report them to the procurator fiscal, although I think that the circumstances would have to be extreme before the procurator fiscal would deal with such a matter. Operational police officers try to conciliate at every opportunity and that is how we would start off. (Col 865)

55. Both witnesses indicated that they anticipated that prosecutions under the proposed legislation would be few. Deputy Chief Constable Mellor went on to indicate that he accepted that the existence on the statute book of an offence means that people can threaten to use the criminal law as a means of convincing other to change attitudes and behaviours. The member in charge of the bill also expressed this view. Elaine Smith MSP told the Committee -

The bill is largely about creating a deterrent. However, the law would be largely symbolic because, at the end of the day, there would be few prosecutions. (Col 930)

56. The Committee also heard evidence about the potential contribution to enforcement from local authority licensing boards. In response to questions about how licensing boards were likely to act in a situation where a licensee is reported to the police in relation to an offence under the legislation but the procurator fiscal decides not to pursue the matter to prosecution, David Barrie, a solicitor from Dundee City Council, told the Committee -

Very often – in our experience – there are circumstances in which the police will not put a case through the criminal machine, as it were, but will refer the matter as a complaint to the licensing board. I assume that the police feel that the board has more effective remedies for dealing with such matters. Ultimately, the board can suspend or revoke a licence. (Col 924)
57. David Barrie indicated to the Committee that in these circumstances licencing board were likely to test the relevant evidence against civil, rather than criminal, standards of proof.

58. The Committee accepts the evidence that there are likely to be few prosecutions under the act. The Committee also believes that the act may produce a deterrent effect. In addition, the Committee recommends that licencing boards issue guidance for applicants if the bill is enacted.

Definition of public place

59. The bill defines a public place as “any place to which, at the material time, the public or any section of the public has access, on payment or otherwise, as a right or by virtue of express or implied permission”.

60. Norman Macleod raised a concern about the potential difficulties to be faced by his members as a consequence of the wide definition of public place. On this issue Shona Barrie, from the Crown Office, told the Committee -

The enforcement issues concern the scope of the phrase “public place”. Clarity is needed, given that any person in any public place at any time would come within the scope of the proposed offence provisions. (Col 998)

61. In a written submission to Committee Mike Dailly clarified that the definition of public place in the bill was broadly the same definition as contained in section 49(7) of the Criminal Law (Consolidation) (Scotland) Act 19955.

Definition of Prevent

62. The Committee heard evidence from the Crown Office that the definition of ‘prevent’ requires further debate and clarity.

63. In an earlier evidence session police representatives indicated that if preventing someone from breastfeeding involved a physical intervention and assault would have in effect been committed and could, therefore, be addressed in existing criminal law. Shona Barrie indicated that it was less clear what type of non-physical acts would be included.

64. On this issue some witnesses indicated that acts that would prevent or stop some women from breastfeeding would not hinder others and to that extent ‘prevent’ is a subjective concept.

65. In responding to this point, the member in charge highlighted the bill’s use of the term ‘deliberately to prevent’. It was suggested that the courts would interpret ‘deliberately’ in an objective way as they would the words ‘willful’ and ‘reckless’. Mike Dailly told the Committee -

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5 The legislation deals with the statutory offence of carrying objects with a blade or point in a ‘public place’
In drafting the bill, I chose the word “deliberately” because my understanding is that this is an objective concept. (Col 1005)

66. He acknowledged that the test had to be objective to allow uniformity in its application and suggested that it is necessary to establish that there is a sufficient degree of intent. He told the Committee -

Someone must be trying to stop the person from breastfeeding. It is not that they are curious and are staring at the person, or that they are making a noise; they must be going beyond that and doing something that, I guess would be getting on for quite abusive. (Col 1006)

67. The Committee found the clarification given on the definition of ‘prevent’ to be helpful and acknowledges that procurators fiscal and courts will require to act on the facts and circumstances of individual cases.

Definition of Child

68. The bill defines ‘child’ as a person who has not yet attained the age of two. The Committee heard a range of views about whether it is appropriate to apply this definition for the purposes of the bill.

69. Witnesses from the NCT and TBN suggested that no age limit should apply as the health benefits of breastfeeding beyond the age of two are established and the age at which breastfeeding ceases should be a matter for the mother and the child. Dr Hoddinot similarly expressed views against the inclusion of an age limit but told the Committee -

It is absolutely crucial that the bill is supported. If that entails a cut-off age of two years, I support it. (Col 913)

70. Norman Macleod highlighted a policing issue in relation to the age limit. While he acknowledged that establishing a child’s age would not be a problem should a complaint reach the prosecution stage, it is often difficult to gauge a child’s age without documentary evidence.

71. Jenny Warren acknowledged that many people are unhappy about the inclusion of an age limit. The two year limit had been chosen because the WHO’s Global Strategy for Infant and Young Child Feeding refers to ‘two years and beyond’.

72. The Committee believes that the inclusion of an age limit in the definition of a child is appropriate for the purposes of the bill.

Corroboration of Evidence

73. The Committee sought information from the Crown Office as to whether the bill makes suitable provision for what witnesses are required and how their evidence will be corroborated.
74. On this issue Shona Barrie indicated contentment with the provisions. She went on to indicate that if the bill is enacted the Crown Office may seek to provide guidance about prosecution policy to prosecutors.

Conclusion
75. On the basis of evidence received from the Crown Office and others, the Committee has few concerns about the enforceability of the bill.

Promotion and support of breastfeeding

76. The Committee was keen to ascertain the likely impact of the imposition of a duty on Scottish Ministers to support and encourage the breastfeeding of children by their mothers.

77. A written submission to the Committee from the member in charge of the bill indicates that, “The provisions imposed by section 4 of the bill, namely introducing section 38A to the National Health Service (Scotland) Act 1978 (c29), are proposed with the intention of complementing and enhancing both the current and future work of the Scottish Executive in the area of breastfeeding promotion and support. It allows the Scottish Executive to promote breastfeeding in a standardised way across Scotland”.

78. Other witnesses acknowledged the work currently being undertaken by the Scottish Executive. Jenny Warren expressed a view that, “…section 4 would be a further spur to the current work”.

79. In response to questions on this issue the Minister suggested to the Committee that, given the general duty to promote health improvement contained in the recent Health Service Reform (Scotland) Bill, it may be unnecessary to introduce a specific duty in relation to the promotion of breastfeeding. While acknowledging a need to avoid complacency he said that he did not think that the relevant section of the bill would add substantially to the work the Executive is already doing in this area. In the context of the general duty to promote health improvement, he raised a question about whether it was appropriate to pick out one thing to promote in legislation.

80. The Committee also sought information from the Minister about whether he has powers to instruct health service providers to develop and implement positive policies on breastfeeding. In a written submission, he confirmed that with the new duty to promote health improvement in the NHS Reform Bill he will be in a position to instruct health boards to develop policies in regard to breastfeeding. However, this power to instruct will only extend to GPs and dentists where they are in the employment of the boards.

Conclusion
81. The Committee supports the measures contained in the bill to promote take up and duration of breastfeeding.
FINANCIAL MEMORANDUM

82. Under Rule 9.6.3 the Committee is required to consider and report on the bill’s Financial Memorandum, taking into account any views submitted by the Finance Committee.

83. The Financial Memorandum published to accompany the bill states that the implementation of its provisions will give rise to minor additional costs to the Scottish Administration and that these can be found within existing resources.

84. The Committee accepts the Finance Committee’s conclusion, as set out in its report at Annex A, that it is content with the level of detail and costs set out in the Financial Memorandum.

SUBORDINATE LEGISLATION

85. The Committee is required to consider and report on proposed powers to make subordinate legislation, taking into account any views submitted by the Subordinate Legislation Committee.

86. The Committee notes the Subordinate Legislation Committee’s conclusion, as set out in its report at Annex A, that it approves the delegated power set out in section 5(1) of the Act.

SUMMARY OF MAIN CONCLUSIONS

87. Based on the written and oral submissions it received, the Committee accepts that there is evidence, although much of it is anecdotal, of adverse reactions to breastfeeding in public.

88. The Committee accepts that there is evidence, although much of it is anecdotal, that adverse reaction or fear of adverse reaction to breastfeeding in public may impact negatively on take up and duration rates of breastfeeding.

89. The Committee believes that encouraging the provision of special breastfeeding facilities should not be regarded as an alternative to the provisions of the bill. Encouraging better provision is complementary to the bill’s aims. The Committee believes that improved provision of breastfeeding facilities should be encouraged where appropriate and so far as practicable.

90. The Committee notes the explanation given by the member in charge for the inclusion of an offence in relation to feeding from a bottle or other container in order to ensure the bill’s competency. The Committee also notes that in the initial consultation opinion was divided on this inclusion. The Committee is keen to support feeding choices. However, the Committee has some concerns that the inclusion of other forms of feeding may cause confusion or dilute the main aims of the bill, the promotion of breastfeeding.

91. The Committee accepts that some legislation may assist in promoting a shift in attitude and behaviour.
92. The Committee accepts that there is some evidence that the establishment of the criminal offence proposed in the bill may support the take up and duration of breastfeeding. The Committee believes that this is likely to be most effective when backed by an appropriate education and awareness campaign.

93. The Committee accepts the evidence that there are likely to be few prosecutions under the act. The Committee also believes that the act may produce a deterrent effect. In addition, the Committee recommends that licensing boards issue guidance for applicants if the bill is enacted.

94. The Committee found the clarification given on the definition of ‘prevent’ to be helpful and acknowledges that procurators fiscal and courts will require to act on the facts and circumstances of individual cases.

95. The Committee believes that the inclusion of an age limit in the definition of a child is appropriate for the purposes of the bill.

96. On the basis of evidence received from the Crown Office and others, the Committee has few concerns about the enforceability of the bill.

97. The Committee supports the measures contained in the bill to promote take up and duration of breastfeeding.

98. The Committee recommends that the Parliament approves the general principles of the bill.⁶

⁶ David Davidson dissented from this recommendation on the basis that he had reservations about the establishment of a criminal offence.
ANNEX A: REPORTS FROM SECONDARY COMMITTEES

Finance Committee

Report on the Financial Memorandum of the Breastfeeding etc. (Scotland) Bill

The Committee reports to the Health Committee as follows—

Background

1. Under Standing Orders, Rule 9.6, the lead committee in relation to a Bill must consider and report on the Bill’s Financial Memorandum at Stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee in relation to the Financial Memorandum on the Breastfeeding etc. (Scotland) Bill, for which the Health Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

Introduction

3. At its meeting on 27 April 2004, the Finance Committee took oral evidence on the Financial Memorandum from Elaine Smith, MSP, Member in Charge of the Bill.

4. In addition, the Committee considered written evidence submitted by the Equal Opportunities Commission, Association of Chief Police Officers in Scotland, FSB Scotland, the Women and Children’s Unit of the Scottish Executive’s Health Department, Elaine Smith MSP, and the Crown Office and Procurator Fiscal’s Service. These submissions are attached at Appendix 1.

5. The Committee would like to express its gratitude to all those who took the time to provide evidence in relation to this Financial Memorandum.

Financial Memorandum

6. The Bill seeks to preserve the right of a child under two years to be fed milk in a public place or licensed premises. Section one of the Bill makes it an offence to prevent a child from being fed milk in a public place or licensed premises. Feeding is defined as being either breastfed or fed from a bottle and milk includes breastmilk, cow’s milk or formula milk.

7. Section four of the Bill requires Ministers to directly promote and support breastfeeding by amending section 38 of the National Health Service (Scotland) Act 1978. It is intended that this provision will build on, and formalise, various initiatives and strategies that the Scottish Executive currently has in place.
8. The Financial Memorandum published to accompany the Bill states that the implementation of its provisions will give rise to minor additional costs and that these can be found within existing resources. After consideration of the evidence, the Committee is content that these costs are sufficient to enable the Bill’s implementation.

Summary of Evidence

Potential Savings for the National Health Service

9. In her written submission, Elaine Smith MSP highlighted research that found breastfeeding could provide significant savings for the National Health Service (NHS)\(^7\) and the Committee was keen to explore the issue of these potential savings.

10. In oral evidence, Elaine Smith MSP stated that the annual savings of £3.82m for the NHS quoted in her submission related to the effects of breastfeeding in preventing bottle-baby gastroenteritis\(^8\) and that it could be assumed that there are other significant savings that may be made:

“The benefit of breastfeeding is what it can prevent in the future. Looking beyond gastroenteritis, I am sure that much more than that amount of money could be saved. We have a big problem with childhood obesity, for example, and it would be interesting to find out whether any research is being undertaken into breastfeeding in that regard. The positive impact that breastfeeding can have on mothers’ health is also something on which I do not have specific figures. I cite the figure of £3.82m because there is some research to back it up”.\(^9\)

11. The Committee accepted these savings and agreed that there may be potential for other savings resulting from the promotion of breastfeeding and an increase in the number of children who are breastfed. The Committee also noted an American research paper relating to a US study into the economic benefits identified with breastfeeding, which Elaine Smith provided as supplementary written evidence.\(^10\)

Provision of Information by the Scottish Executive

12. The Committee noted Elaine Smith’s comments regarding the degree of research and information from the Scottish Executive available to members proposing a Members’ Bill and feels that this point gives further weight to its argument that the Scottish Executive should routinely provide information on both the policy and financial implications of proposed Members’ Bills prior to introduction and during stage one of the legislative process.

13. Elaine Smith commented that most of her figures are based on information supplied by the Scottish Executive in response to her written parliamentary questions. The Committee feels that had this and further information been more

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\(^7\) M Broadfoot, ‘The Economic Consequences of Breastfeeding for Less Than Three Months’, referred to in written submission from Elaine Smith MSP.


accessible to Elaine Smith, more comprehensive accompanying documents could have been produced. The Committee recommends that the Scottish Executive considers making further information available in future as this would enable the Parliament to more fully scrutinise the policy and financial implications of a Bill.

14. In addition, the Committee would welcome a financial statement from the Scottish Executive, setting out the context of its current spending in the relevant policy area. This will facilitate the Committee’s scrutiny of the likely financial implications of the Bill. Thus, the Committee repeats the recommendation it made in its report on the Financial Memorandum of the Fire Sprinklers in Residential Premises (Scotland) Bill for such an assessment to be automatically provided by the Scottish Executive.

Training
15. Elaine Murray MSP raised the issue of whether additional money would be required to provide training on the provisions brought in by the Bill.11

16. Elaine Smith responded that it is not anticipated that training will be an intensive or costly process and that it is expected to be a matter of ensuring that staff are aware of the legislation and its provisions.

Provision of Facilities for Breastfeeding
17. Elaine Murray also raised a point made by the Equal Opportunities Commission in its written submission to the lead committee that costs may fall to employers and businesses if they are required to make suitable areas available for children to be breastfed.

18. When questioned on this, Elaine Smith said that the Bill does not seek to make provision of such areas a legal requirement. Instead, the legislation aims to engender a culture change within Scotland to create a more open and acceptable environment towards breastfeeding in public:

“The aim of the bill is to try to make breastfeeding in public more visible. That would have an impact on women as they make choices about feeding. If areas for breastfeeding were to be provided, that could equate to telling women ‘I’m afraid that you can’t sit here to breast-feed. We have an area,’ and so the segregation might continue. The bill does not necessitate the provision of such areas”.12

Conclusion and Recommendation
19. The Committee was content with the level of detail and costs set out in the Financial Memorandum.

20. In addition, the Committee repeats the recommendation it made in its report on the Financial Memorandum of the Fire Sprinklers in Residential Premises (Scotland) Bill that the Scottish Executive produces an assessment of the financial impact of members’ bills to inform the Committee’s consideration of Financial Memoranda.

SUBMISSION FROM THE EQUAL OPPORTUNITIES COMMISSION

The Equal Opportunities Commission (EOC) was set up by the Sex Discrimination Act 1975 (the SDA). Its duties are to work towards the elimination of discrimination between women and men, to promote equality of opportunity between women and men generally, and to keep under review the workings of the Sex Discrimination and Equal Pay Acts. The Equal Opportunities Commission (EOC) is a non-departmental public body, funded through grant-in-aid. Our sponsor department is the Women and Equality Unit at the Department for Trade and Industry. The Equal Opportunities Commission is the leading agency working to eliminate sex discrimination in 21st Century Britain.

The EOC’s statutory responsibility relates specifically to gender equality, and that is where the Commission’s main expertise is. However, issues of gender equality are integral to all other equality groups, including those areas regulated by statute and those identified in Schedule 5 of The Scotland Act.

The Commission welcomes the introduction of the Breastfeeding Bill and commends the Elaine Smith MSP and the Health Committee in advancing this Bill. There is compelling evidence about the benefits of breastfeeding children and it is important that this need is acknowledged and provided for in public places.

Consultation

In reading the report on responses, it is clear that the consultation process has provided a useful range of views and has assisted in identifying some complex issues around balancing individual rights and respecting different views and cultures. While it may be regrettable that legislation has to be introduced in this area, the experience of many women underlines the fact that a voluntary code was not sufficient.

Resources

One of the points we would raise is about resources. The Financial Memorandum suggests that enforcement costs will be minimal and that promotional costs can be accommodated under health programmes. However, consideration could also be given to the costs to service providers in terms of training their staff and also in respect of providing or adapting a space/area to make it suitable for feeding children. Employers/service providers might be faced with balancing the needs of parents and the provision of services to others and may opt to have a designated space. A grant system to encourage provision is worth considering in the initial stages of establishing new practice.
SUBMISSION FROM THE ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

I refer to your correspondence dated 25 March 2004, in relation to the above subject, which has been considered by members of the Finance and Best Value Standing Committee and can now offer the following by way of comment.

Members agree that any additional costs to Scottish police forces would be minimal and could be absorbed within force budgets. Furthermore there does not appear to be any significant implications for forces in relation to conditions of service for staff.

I trust that the foregoing is of assistance to you.

Assistant Secretary

SUBMISSION FROM THE FEDERATION OF SMALL BUSINESSES

Basically, the only extra cost on small businesses as a result of the Bill that is immediately apparent to us is the extra training for employees; however, we are unable to quantify the cost of that.

Deputy Parliamentary Officer

SUBMISSION FROM THE WOMEN AND CHILDREN’S UNIT, HEALTH DEPARTMENT, SCOTTISH EXECUTIVE

Breastfeeding Funding Details for Financial Years 1999/00-2003/04. (£'s)

<table>
<thead>
<tr>
<th>Year end</th>
<th>CSO 1</th>
<th>SBG 2</th>
<th>NBA 3</th>
<th>Section 16B 4</th>
<th>Social Justice 5</th>
<th>Total (SE) 6</th>
<th>NHS Health 7</th>
<th>Total (All) 8</th>
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<tbody>
<tr>
<td>2000</td>
<td>5000</td>
<td>32,000</td>
<td>4000</td>
<td></td>
<td></td>
<td>37,004</td>
<td>35,000</td>
<td>76,000</td>
</tr>
<tr>
<td>2001</td>
<td>20,836</td>
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<td>60,000</td>
<td>116,227</td>
<td>70,000</td>
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</tr>
<tr>
<td>2004</td>
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<td>5000</td>
<td>32,000</td>
<td>2000</td>
<td></td>
<td>302,917</td>
<td>230,000</td>
<td>569,882</td>
</tr>
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</table>

p-provisional
This represents research funding allocated by the Chief Scientists Office (CSO) of the Scottish Executive Health Department.

This represents funding allocated by the Scottish Executive Health Department for the work of the Scottish Breastfeeding Group.

This represents funding allocated by the Scottish Executive Health Department for the work of the National Breastfeeding Advisor.

This represents funding given to support breastfeeding through the Section 16b voluntary organisation funding stream.

This represents Social Justice monies given to NHS Ayrshire and Arran.

This represents the total monies spent directly on breastfeeding by the Scottish Executive.

This represents the monies spent by NHS Health Scotland on breastfeeding support and promotion.

This represents the total monies spent on breastfeeding, both directly by the Scottish Executive and through NHS Health Scotland.

Further Explanation and Scope of Funding

1. Breastfeeding projects funded by CSO (since 2000)

<table>
<thead>
<tr>
<th>Project Title</th>
<th>Applicant</th>
<th>Amount Funded (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A theoretically based assessment of knowledge and attitudes towards breastfeeding and bottle feeding among secondary pupils in Scotland</td>
<td>Dr Harden Carter, The University of Stirling. 2000</td>
<td>20,836</td>
</tr>
<tr>
<td>Descriptive Study of peer support programmes for breastfeeding in Scotland</td>
<td>Dr Rhona McInnes, The University of Glasgow. 2002</td>
<td>19,394</td>
</tr>
<tr>
<td>Breastfeeding opinions, knowledge, management practices and training of Scottish Midwives</td>
<td>Dr Jane Scott, The University of Glasgow. 2002</td>
<td>19,563</td>
</tr>
<tr>
<td>How can breastfeeding initiation, duration and maternal satisfaction with breastfeeding be improved in Scotland</td>
<td>Dr Pat Hoddinott, The University of Aberdeen. 2004</td>
<td>302,880</td>
</tr>
</tbody>
</table>

2. The Scottish Executive funds and supports the Scottish Breastfeeding Group (SBG). The SBG is a multi-disciplinary group which aims to raise awareness about breastfeeding issues in Scotland and improve the care and support available for breastfeeding mothers and their babies through support for NHS staff in
developing and delivering local strategies in support of breastfeeding. There are now 150 breastfeeding support groups across Scotland, and 5 breastfeeding peer support projects. 13 NHS Health Boards have a breastfeeding strategy in place, 1 has a breastfeeding policy and 1 has breastfeeding guidance in place.

3. The Scottish Executive funds and supports the post of National Breastfeeding Advisor (NBA) who actively promotes breastfeeding throughout the country. The NBA works with stakeholders to develop breastfeeding strategies and policies.

4. Two voluntary organisations, the Breastfeeding Network and the National Childbirth Trust, are grant-funded under Section 16 B of the NHS (Scotland) Act 1978, as amended, to support their work in promoting breastfeeding.

5. Mary Mulligan, the then Deputy Minister for Health and Community Care, met with the Scottish Breastfeeding Group and representatives of the NHS Boards’ Breastfeeding Strategy Groups at their joint meeting on 4 December 2002. She announced Executive funding of £60,000 to NHS Ayrshire and Arran for the development of peer support projects in areas of multiple disadvantage. The breastfeeding target of 50% of new mothers breastfeeding at 6 weeks by 2005 is a Social Justice milestone.

6. It is important to note that the Executive also funds and supports many initiatives where breastfeeding support and promotion forms part of a larger project or initiative. These initiatives include The Starting Well Demonstration Project, The Have a Heart Paisley Demonstration Project and the Scottish Healthy Choice Awards. It is not possible to quantify the funds which are allocated/spent on breastfeeding in these cases.

7. NHS Health Scotland plays a vital role in encouraging women to breastfeed and to promote positive public attitudes towards breastfeeding. This includes support for Breastfeeding Awareness Week, and all year round activity with production of breastfeeding support materials for mothers/families and training resources for health professionals. NHS Health Scotland also funded a national television advertising campaign Breastmilk- the world’s best food which aimed to promote breastfeeding and importantly to break down cultural barriers by educating women and the public generally. NHS Health Scotland is launching a new breastfeeding campaign for Breastfeeding Awareness Week 2004 consisting of a new television advert and set of posters. NHS Health Scotland has also produced guidelines on breastfeeding and returning to work for public and private employers and separately for mothers returning to work.

SEHD: Women and Children’s Unit
20 April 2004
SUBMISSION FROM ELAINE SMITH, MSP, MEMBER IN CHARGE OF THE BILL

In advance of the Finance Committee’s consideration of the financial memorandum for the Breastfeeding etc. (Scotland) Bill, I have been asked to provide a written submission covering the costs set out in that document.

This submission briefly outlines the origins of the information and hypotheses used to estimate the costs in the financial memorandum. This information is detailed further in the appendix.

Costs on the Scottish Administration

With regards to the provisions imposed by section 4 of the bill, namely introducing section 38A to the National Health Service (Scotland) Act 1978 (c.29), these provisions are proposed with the intention of complementing and enhancing both the current and future work of the Scottish Executive in the area of breastfeeding promotion and support; and as such, any additional expenditure would remain a discretionary matter for the Scottish Executive.

At present, general funding for breastfeeding promotion and support is derived from a number of disparate sources across various government departments. The Chief Scientist’s Office research fund, the Health Improvement Fund and the section 16b voluntary sector funding stream have all been identified as potential funding sources within the Health Department, whilst the Sure Start Initiative and the Changing Children’s Services Fund have been deemed appropriate by the Education Department for the same purposes. The Scottish Executive’s Development Department have used Social Justice monies in the support of breastfeeding in recent years.

With regards to specific Scottish Executive funding for Breastfeeding promotion and support, a sum of £5,000 is ring-fenced annually for the work of the Scottish Breastfeeding Group and £32,000 is allocated on a yearly basis for the work of the National Breastfeeding Adviser. 13

To date, no specific funding has been allocated from the Health Department to NHS Boards in Scotland to support Breastfeeding.14 Since such expenditure is met via each Board’s annual unified budget, or through bidding processes, local approaches towards breastfeeding are likely to be determined by the level of conviction and commitment of individual Health Boards15 in the face of other more immediate demands and, as a result, expenditure varies across Scotland.

13 Written Answers, (S2W-5498). 26th January 2004

14 Written Answers, (S2W-5498). 26th Jan 2004

The most recent Audit of NHS Health Boards Action on Breastfeeding in March 2003 highlighted that fact that since the Scottish breastfeeding target was set in November 1994 for 50% of mothers to be still breastfeeding their babies at six weeks of life by 2005 (NHS MEL 1994) progress has varied throughout the country.

Since 1996 the National Breastfeeding Adviser (NBA) has worked with NHS Boards to stimulate the development of strategies to support breastfeeding. In 2003, 13 out of 15 NHS Boards had developed and begun to implement strategies. Whilst one additional Board indicated plans to commence work on a strategy in May 2003; the remaining NHS Board has retained guidelines which are unlikely to have the necessary influence to bring about changes to promote and support breastfeeding effectively and has not implemented a strategy.

The Audit of 2003, and its precursor in 2002, highlighted principal concerns as the:

- need to communicate and reaffirm the importance of breastfeeding in the context of funding applications. The importance of breastfeeding may need to be reaffirmed and communicated to those who influence how funding is spent. Those applying for funding may need further support and information about appropriate sources of funding.

- The need for guidance and support on issues surrounding the WHO Code (International Code of Marketing of Breast-milk Substitutes) and the sale of formula milk in NHS premises.

It is envisaged that Section 4 of the Bill will work to provide Ministers with sufficient powers to address these concerns. Any additional investment is obviously favourable and would be welcomed; however, this would remain a matter for the Scottish Executive’s discretion. Funding for additional, or the development of, strategies could be found within the existing budgets already detailed, through more efficient deployment and/or ring fencing of monies, dependant on the scope of Scottish Executive action.

At this point it is also significant to note that research has indicated that successful Breastfeeding promotion can produce significant savings for the NHS. The

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potential savings for the NHS in Scotland following a change in breastfeeding rates have been estimated at £3.82 million annually\textsuperscript{21}.

The cost effectiveness of breastfeeding is clearly also an issue of interest for the Scottish Executive as Researchers at the Highlands and Islands Health Research Institute (HIHRI) have been recently commissioned to undertake a three-year study, which is being funded from awards from the Scottish Executive Health Department (SEHD) Chief Scientist Office, \textsuperscript{22}to evaluate the clinical and cost effectiveness of breastfeeding support groups in improving breastfeeding initiation, duration and satisfaction.

Should the bill become law, the Scottish Executive may wish to initiate an awareness raising campaign. The scale and nature of any such campaign would obviously be determined by the Scottish Executive and NHS Health Scotland (formerly HEBS). NHS Health Scotland do currently have a responsibility to address national priorities and have utilised funds for the promotion of Breastfeeding in the past.\textsuperscript{23} The costs of any necessary awareness campaign could therefore be met by the funds already available to NHS Health Scotland.

Elaine Smith MSP
April 2004

SCOTTISH PARLIAMENT
WRITTEN ANSWER

26 January 2004

Index Heading: Health Department

Elaine Smith (Coatbridge and Chryston) (Lab): To ask the Scottish Executive what funding it allocated specifically to support and promote breastfeeding in each year since May 1999, expressed also as a percentage of the total health budget in each year.

(S2W-05498)

Malcolm Chisholm:

The following table contains information regarding funding the Scottish Executive has allocated specifically to support and promote breastfeeding in each year since May 1999, expressed also as a percentage of the total health budget in each year.

This table only contains information about funding specifically and solely for breastfeeding support and promotion. The Scottish Executive also fund initiatives where breastfeeding support and promotion forms part of a larger project,

\textsuperscript{21} Broadfoot M (1995). The Economic Consequences of Breastfeeding for less than 3 months, New Generation Digest December: 5.

\textsuperscript{22} Details available on the Chief Scientist's Office website at: http://www.show.scot.nhs.uk/cso/

\textsuperscript{23} Written Answer, (S2W-5500) 26\textsuperscript{th} January 2004
including the Starting Well Demonstration Project and the Scottish Healthy Choice Awards.

It is also important to note that no specific funding has been allocated to NHS Boards to support breastfeeding. NHS Boards are given an annual unified budget to meet the health care needs of their resident populations. It is for Boards to determine, within the funds available, how to manage and deliver local health care services to meet these needs taking account of national and local priorities.

<table>
<thead>
<tr>
<th>Year end</th>
<th>CSO 1 (£)</th>
<th>SBG 2 (£)</th>
<th>NBA 3 (£)</th>
<th>Other 4 (£)</th>
<th>Total (£)</th>
<th>Total Health Budget (£Billion)</th>
<th>Percentage of Total Health Budget</th>
</tr>
</thead>
<tbody>
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<td></td>
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<td>32,000</td>
<td>60,000</td>
<td>339,880</td>
<td>7.241</td>
</tr>
</tbody>
</table>

1. This represents research funding allocated by the Chief Scientists Office (CSO) of the Scottish Executive.

2. This represents research funding allocated by the Scottish Executive for the work of the Scottish Breastfeeding Group.

3. This represents research funding allocated by the Scottish Executive for the work of the National Breastfeeding Advisor.

4. This represents funding given to NHS Ayrshire and Arran for the development of peer support projects in areas of multiple disadvantage, though this was not funded by the Health Department and as such is not included in the total spend or percentage of total health budget.

SCOTTISH PARLIAMENT

WRITTEN ANSWER

26 January 2004

Index Heading: Health Department

Elaine Smith (Coatbridge and Chryston) (Lab): To ask the Scottish Executive what funding it allocated specifically to support breastfeeding in each NHS board area in each year since May 1999.

(S2W-05499)

Malcolm Chisholm:
No specific funding has been allocated to NHS Boards to support breastfeeding. NHS Boards are given an annual unified budget to meet the health care needs of their resident populations. It is for Boards to determine, within the funds available, how to manage and deliver local health care services to meet these needs taking account of national and local priorities.

I also refer the member to the answer given to question S2W-05498 for further information about breastfeeding funding. All answers to written PQs are available on the Parliament’s website, the search facility for which can be found at http://www.scottish.parliament.uk/webapp/search_wa.

SCOTTISH PARLIAMENT
WRITTEN ANSWER
3 February 2004 (holding reply issued 29 January 2004)

Index Heading: Health Department

Elaine Smith (Coatbridge and Chryston) (Lab): To ask the Scottish Executive which funding streams in each of its departments have been considered as appropriate funding sources to support and promote breastfeeding.

(S2W-05503)

Malcolm Chisholm:

The Health, Education and Development Departments within the Scottish Executive all have an interest in the support and promotion of breastfeeding.

Within the Health Department the Chief Scientists Office research fund, the Health Improvement Fund and the Section 16b voluntary sector funding stream, have all been considered as appropriate sources of funding.

Within the Education Department the Sure Start Initiative and the Changing Children’s Services Fund have been considered as appropriate sources of funding. Within the Development Department Social Justice monies have also been used in the support breastfeeding.

SCOTTISH PARLIAMENT
WRITTEN ANSWER
26 January 2004

Index Heading: Health Department

Elaine Smith (Coatbridge and Chryston) (Lab): To ask the Scottish Executive how much funding has been allocated to NHS Health Scotland, and its
predecessor organisations, for the promotion of breastfeeding in each year since May 1999.

(S2W-05500)

Malcolm Chisholm:

No funding has been allocated to NHS Health Scotland and its predecessor organisations specifically to promote breastfeeding. It is for NHS Health Scotland to determine how it uses its funding, whilst taking into account national priorities.

The following table shows the funds that NHS Health Scotland and its predecessor organisations have used for the promotion of breastfeeding in each year since year end 2000.

<table>
<thead>
<tr>
<th>Year End</th>
<th>Organisation</th>
<th>Amount (£k)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>Health Education Board for Scotland</td>
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</tr>
<tr>
<td>2001</td>
<td>Health Education Board for Scotland</td>
<td>195</td>
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<td>2002</td>
<td>Health Education Board for Scotland</td>
<td>426</td>
</tr>
<tr>
<td>2003</td>
<td>Health Education Board for Scotland</td>
<td>70</td>
</tr>
<tr>
<td>2004</td>
<td>NHS Health Scotland</td>
<td>230</td>
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</tbody>
</table>
The Committee reports to the Health Committee as follows—

1. At its meeting on 22nd June 2004 the Subordinate Legislation Committee considered the delegated powers provision in the Breastfeeding etc. (Scotland) Bill. The Committee submits this report to the Health Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Order

Committee remit

1. Under the terms of its remit, the Committee considers and reports on proposed powers to make subordinate legislation in particular Bills or other proposed legislation and on whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

2. The term “subordinate legislation” carries the same definition in the Standing Orders as in the Interpretation Act 1978. Section 21(1) of that Act defines subordinate legislation as meaning “Orders in Council, orders, rules, regulations, schemes, warrants, bye-laws and other instruments made or to be made under any Act”. “Act” for this purpose includes an Act of the Scottish Parliament. The Committee therefore considers not only powers to make statutory instruments as such contained in a Bill but also all other proposed provisions conferring delegated powers of a legislative nature.

Report

Introduction

3. This Member’s Bill introduced by Elaine Smith MSP aims to encourage breastfeeding by creating a new offence of preventing a child being fed milk in a public place or licensed premises.

4. The Bill also amends the National Health Service (Scotland) Act 1978 to impose a duty on the Scottish Ministers to support and encourage breastfeeding of
children by their mothers and to empower the Ministers to disseminate information promoting and encouraging breastfeeding.

5. The Bill contains one delegated power (section 5(1)) and has therefore been referred to the Committee under Rule 9.6.2.

6. As this is a Member’s Bill no Memorandum was provided for the information of the Committee.

Delegated power provision

Section 5(1) Commencement

7. Section 5(1) provides that sections 1 to 4 of the Bill are to come into force two months after the date of Royal Assent but authorises the Scottish Ministers to commence those sections on an earlier day by order made by statutory instrument. The reason for the drafting of section 5(1) in this way was not clear to the Committee. However the provision as drafted does no harm and achieves its purpose as a commencement provision. The Committee therefore approves the delegation of power as drafted.
ANNEX B: EXTRACT FROM MINUTES

HEALTH COMMITTEE

EXTRACT FROM MINUTES

8th Meeting, 2004 (Session 2)

Tuesday 16 March 2004

Present:
Mr David Davidson  Christine Grahame (Convener)
Helen Eadie          Janis Hughes (Deputy Convener)
Kate Maclean         Mr Duncan McNeil
Shona Robison        Mike Rumbles
Dr Jean Turner

The meeting opened at 2.01 pm

1. **Item in private:** The Committee agreed (by division: For 7, Against 1, Abstentions 0) to take item 5 in private.

5. **Members’ Bills (in private):** The Committee considered further action in relation to evidence and agreed to write to a selection of organisations.

The meeting closed at 2.43 pm

Jennifer Smart
Clerk to the Committee
HEALTH COMMITTEE

EXTRACT FROM MINUTES

10th Meeting, 2004 (Session 2)

Tuesday 20 April 2004

Present:

Mr David Davidson
Helen Eadie
Kate Maclean
Shona Robison
Dr Jean Turner

Christine Grahame (Convener)
Janis Hughes (Deputy Convener)
Mr Duncan McNeil
Mike Rumbles

The meeting opened at 2.02 pm

1. **Items in private:** The Committee agreed (by division: For 7, Against 1, Abstentions 1) to take item 4 in private. The Committee agreed (by division: For 7, Against 1, Abstentions 0) to take item 5 in private. The Committee agreed (by division: For 8, Against 1, Abstentions 0) to take item 6 in private.

6. **Breastfeeding etc. (Scotland) Bill:** The Committee considered possible witnesses for Stage 1.

The meeting closed at 4.49 pm

Jennifer Smart
Clerk to the Committee
HEALTH COMMITTEE
EXTRACT FROM MINUTES
13th Meeting, 2004 (Session 2)
Tuesday 11 May 2004

Present:
Mr David Davidson Christine Grahame (Convener)
Helen Eadie Janis Hughes (Deputy Convener)
Kate Maclean Mr Duncan McNeil
Shona Robison Dr Jean Turner

Also present: Elaine Smith

Apologies: Mike Rumbles

The meeting opened at 2.07 pm

4. **Breastfeeding etc. (Scotland) Bill:** The Committee took evidence from—

   **Panel 1**
   Rosemary Dodds, Policy Research Officer, National Childbirth Trust
   Leah Granat, Breastfeeding Network;

   **Panel 2**
   Deputy Chief Constable David Mellor, Secretary, Association of Chief Police Officers in Scotland
   Norman Macleod, Deputy General Secretary, Scottish Police Federation; and

   **Panel 3**
   Colin Wilkinson, Secretary, Scottish Licensed Trade Association.

The meeting continued in private at 4.08 pm.

Jennifer Smart
Clerk to the Committee
HEALTH COMMITTEE

EXTRACT FROM MINUTES

14th Meeting, 2004 (Session 2)

Tuesday 1 June 2004

Present:

Mr David Davidson  Christine Grahame (Convener)
Helen Eadie  Janis Hughes (Deputy Convener)
Kate Maclean  Mr Duncan McNeil
Shona Robison  Mike Rumbles
Dr Jean Turner

Also present: Elaine Smith.

The meeting opened at 2.01pm

3. **Breastfeeding etc. (Scotland) Bill:** The Committee took evidence from—

Panel 1
Minister for Health and Community Care
Dr Linda De Caestecker, Head of Women and Children's Unit, Health Department
Joanna Wright, Women and Children's Unit, Health Department
Jan Marshall, Solicitor, OSSE;

Panel 2
Jenny Warren, National Breastfeeding Adviser
Dr Pat Hoddinott, General Practitioner and Research Fellow, Highlands and Islands Health Research Institute, University of Aberdeen;

Panel 3
David Barrie, Solicitor, Legal Team, Dundee Council
Ellen Kelly, Equalities Manager, City of Edinburgh Council
Vivienne Brown, Health Improvement Adviser, Fife Council
Gillian Grant, Health Improvement Manager, Perth and Kinross Council;

Panel 4
Elaine Smith MSP
Mike Dailly, Govan Law Centre
Kay Sillars, Researcher

The meeting closed at 5.26 pm

Jennifer Smart
Clerk to the Committee
HEALTH COMMITTEE

EXTRACT FROM MINUTES

15th Meeting, 2004 (Session 2)

Tuesday 8 June 2004

Present:

Mr David Davidson
Helen Eadie
Kate Maclean
Shona Robison

Christine Grahame (Convener)
Janis Hughes (Deputy Convener)
Mr Duncan McNeil
Mike Rumbles

Also present: Stewart Maxwell and Elaine Smith.

Apologies: Jean Turner.

The meeting opened at 2.01pm

3. **Breastfeeding etc. (Scotland) Bill:** The Committee took evidence from—

Panel 1
Shona Barrie, Head of Victims, Witnesses and Vulnerable Accused Team, Policy Office, Crown Office; and

Panel 2
Elaine Smith MSP
Mike Dailly, Govan Law Centre.

The meeting closed at 5.08pm

Jennifer Smart
Clerk to the Committee
HEALTH COMMITTEE

EXTRACT OF MINUTES

17th Meeting, 2004 (Session 2)

Tuesday 22 June 2004

Present:

Mr David Davidson Christine Grahame (Convener)
Helen Eadie Janis Hughes (Deputy Convener)
Kate Maclean Mr Duncan McNeil
Shona Robison Jean Turner

Also present: Stewart Maxwell

Apologies: Mike Rumbles

The meeting opened at 2.01pm

1. **Items in private:** The Committee agreed to take items 4 and 5 in private. The Committee also agreed to consider its Stage 1 Report on the Breastfeeding etc. (Scotland) Bill in private at its next meeting.

4. **Breastfeeding etc. (Scotland) Bill (in private):** The Committee considered a draft Stage 1 report.

The meeting closed at 4.42 pm

Jennifer Smart
Clerk to the Committee
HEALTH COMMITTEE

MINUTES

18th Meeting, 2004 (Session 2)

Tuesday 29 June 2004

Present:

Mr David Davidson  Christine Grahame (Convener)
Helen Eadie  Janis Hughes (Deputy Convener)
Kate Maclean  Mr Duncan McNeil
Shona Robison  Mike Rumbles
Jean Turner

Also present: Stewart Maxwell

The meeting opened at 2.05 pm

2. **Breastfeeding etc. (Scotland) Bill (in private):** The Committee agreed its Stage 1 Report subject to specified changes being made.

The meeting closed at 5.15 pm

Jennifer Smart
Clerk to the Committee
ANNEX C: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

11 May 2004 (13th Meeting, Session 2 (2004)), Written Evidence

SUBMISSION BY NATIONAL CHILDBIRTH TRUST

1. Support for the general principles of the bill

1.1 The National Childbirth Trust is the largest and best-known childbirth charity in Europe reaching over 300,000 parents. For over 40 years, it has offered wide-ranging information and support across the UK and locally through its network of over 350 branches. Consulted by decision makers on all aspects of pregnancy, birth and early parenting, the NCT works hard for improved maternity care and better services and facilities for new parents. The NCT currently has over 40,000 members.

1.2 The NCT welcomes Elaine Smith MSP’s Breastfeeding Etc. (Scotland) Bill, which proposes to make it an offence to deliberately prevent or stop (or attempt to do so) a person from breastfeeding or bottle-feeding a child in a public place or licensed premises, where a child is lawfully permitted to be on such premises.

The NCT also supports provisions in the Bill, which would impose certain duties on Scottish Ministers to encourage, support and promote breastfeeding.

1.3 The NCT aims to make breastfeeding a normal part of everyday life because breastfeeding is the natural, healthy way to feed a baby. The health benefits for babies include reduced rates of gastroenteritis and respiratory disease needing admission to hospital; in the longer-term, breastfeeding is shown to lead to lower rates of diabetes and obesity in children. The benefits of breastfeeding for mothers are notable: women who do not breastfeed have higher rates of breast and ovarian cancer for instance.

1.4 The NCT wants women to feel comfortable, confident and supported to breastfeed, so we back breastfeeding initiatives. The NCT wants breastfeeding to be a normal part of everyday life, in a society that understands and values its benefits.

1.5 The NCT believes that mothers should be able to breastfeed their babies in public places without fear of hostility or negative attitudes from other members of the public. Most breastfeeding mothers are so discreet that people do not notice they are breastfeeding at all. This actually exacerbates the problem as other women feel they are unusual in breastfeeding when they are out. The absence of a law which safeguards the right of an infant to be fed milk in a public place, has meant that some mothers who do choose to breastfeed in public places have been subject to negative comments and aggression. Being asked to stop breastfeeding can have deleterious effects in both the short and the long term: the breastfeeding mother will feel embarrassed and both mother and baby may become distressed.

1.6 Public hostility towards mothers who breastfeed in public also has a negative impact on the take up and duration of breastfeeding. Research evidence indicates this is particularly likely to affect young and disadvantaged women who are least likely to start or continue breastfeeding. This is a particularly negative consequence because formula feeding is known to increase the likelihood of many common infections in babies and has a negative effect on long-term health, thereby increasing inequalities in health.

1.7 The NCT believes that a law, which would make it an offence to deliberately prevent or stop (or attempt to do so) a person from breastfeeding or bottle-feeding a child in a public place or licensed premises, where a child is lawfully permitted to be on such premises, will have both positive impacts upon the number of women choosing to breastfeed in public, and on the take-up and duration of breastfeeding rates in Scotland.
2. Omissions from the bill

2.1 The NCT is concerned that the Bill safeguards only the right of a child under the age of two years of age to be fed milk in a public place or licensed premises.

2.2 The World Health Organisation ‘Global Strategy on Infant and Young Child Feeding’, which was adopted at the 2002 World Health Assembly, was very careful not to set an upper limit on the duration of breastfeeding; the NCT believes it would be a very retrograde step, in such a positive piece of legislation, to introduce an artificial limit in Scotland. This may not be the intention of the Bill as drafted, but it is likely that this limit would be picked up by the media and the effect would be a perception that breastfeeding should not continue after two years or that it is legitimate to discriminate against women who choose to do so.

2.3 Although continued breastfeeding is unusual in the UK, there is a great deal of anecdotal evidence that women hide their breastfeeding of toddlers. They may have personal experience of negative comments or just be sensitive to others’ perception that breastfeeding an older baby is less publicly acceptable.

2.4 The NCT believes that introducing an artificial limit on the duration of breastfeeding may discourage mothers from continuing to breastfeed their babies. This provision would create a perception that breastfeeding should not continue after two years. We believe that no upper age limit is necessary. Bottle feeding after one year is discouraged and children are unlikely to be drinking milk from a cup in a public place unless it is a café, restaurant or similar where eating is also acceptable.

2.5 The NCT would also like to see an increase in the Breastfeeding Advisor’s budget as a means of funding and supporting other initiatives, which will encourage, support and promote breastfeeding in Scotland.

3. Quality of the consultation and implementation of key concerns

3.1 The NCT welcomes the decision of the Scottish Parliament’s Health Committee to call for evidence seeking views from all interested parties on the general principles of the Breastfeeding etc. (Scotland) Bill. The NCT would welcome the opportunity to provide further oral or written evidence to the Health Committee if requested.

4. Practical implications of putting these provisions in place and consideration of alternative approaches

4.1 If the Bill is passed in its current stage, it will obviously be important to inform expectant parents and new families of the additional protection of their right to feed their babies as well as disseminating this information to public venues, local councils, health boards and other premises where children and likely to be.

Susan Solanki, Parliamentary Officer, National Childbirth Trust
The Breastfeeding Network supports the implementation of measures designed to protect and promote breastfeeding.

We believe that the consequences of being asked to leave or being physically removed from a public place or premises has a negative impact, not only on breastfeeding but in other aspects of life (see attached evidence, appendix 1).

We welcome the intention to support breastfeeding and the inherent support that the Breastfeeding etc. (Scotland) Bill would give to women who breastfeed. However we do have some concerns about restricting the Bill to those children under 2 years as described in the definition of the word "child" Section 1 point (4) states "Child" means a person who has not yet attained the age of two years.

The United Kingdom supported the Global Strategy on Infant and young child feeding at the 55th World Health Assembly in 2002 which recommends that breastfeeding continues "for up to two years of age or beyond". We are concerned that The Breastfeeding etc. (Scotland) Bill does not offer any provisions for those breastfeeding in a public place or licensed premises after 2 years of age.

This is one of many Scottish initiatives to support breastfeeding and we are pleased to see the provisions in Section 4 on the Promotion and support of breastfeeding. We also feel it would be useful to see mention of the World Health Organisation / UNICEF International Code of Marketing of Breastmilk Substitutes incorporated within this section.

Appendix 1

The woman who provided this evidence comments on her feelings in the early months after the birth of her first child and how weak she felt both physically and emotionally as a new mother. During these first few months she was out with her baby in a café with an acquaintance who also had a baby. During the course of the meal her acquaintance’s baby started to cry and she produced a bottle and began to feed the baby. A few minutes later her own baby started to cry and she began to breastfeed. She was wearing a large T-shirt and was facing the wall with her back to the other customers in the café. The Manageress came over and told her she would “have to do that somewhere else”. She was shell shocked and she describes her acquaintance as being totally embarrassed.

In the months that followed she stopped wanting to go out and became depressed, as a direct result of this experience. This began to impact on her marriage, which began to deteriorate. She went out with her husband one evening to the pub and she describes her feelings of disbelief when a strippogram arrived for someone else in the pub. Around the same time there was being shown on television a new Dennis Potter drama ‘Black Eyes’. In this the actress is shown repeatedly removing her bra and being topless. She felt as if the world had gone mad. Other women were being encouraged to show their breasts but yet she was stopped for using her breasts to feed her baby.

Eventually the depression lifted and they decided to have a second baby but towards the end of the pregnancy she began to feel, as she describes “emotionally wobbly”. Soon after the birth of her second child she separated from her husband.

She feels “unbearably sad” about what happened and feels the emotional impact of the experience, in the café was a big contributing factor in the breakdown of her marriage. She feels very strongly that women must have their right to feed their babies in public, protected in law. She is very concerned that even though her experience was 14 years ago that women are still being “kicked out of places for breastfeeding”. 
Dear Ms. Smart,

**Breastfeeding etc (Scotland) Bill**

I refer to your correspondence relative to the above and forward the following observations for your information and consideration.

At the outset, members considered the principle of the Bill laudable and voiced support for the improvement of the health and well being of Scotland’s children. As breastfeeding constitutes neither an affront to public decency nor a breach of the peace, reservations were expressed regarding the use of legislation to reinforce what is in effect a mother’s right and a freedom of choice.

Members commented that the use of criminal legislation as a mechanism to protect lieges, perhaps with a view to engineering social change in relation to public order or safety issues, is to be supported. However they questioned whether the creation of a specific criminal offence, in relation to preventing a mother breastfeeding in a public place, is the best way to effect change. Members felt that it would be a punitive and combative method of addressing the problem without actually presenting a viable solution.

It is considered that if long standing change is to be effected then perhaps a two-fold approach is required, consisting of statutory provisions and public education. Should a criminal offence be created then it would be investigated and reported by the police with subsequent penalties being imposed by the courts. However this form of negative conditioning may not create a positive public attitude towards breastfeeding.

Members therefore suggested that the most effective way forward would be to enshrine a statutory obligation where the rights of breastfeeding mothers are incorporated into the charters and licences of all public organisations, outlets or establishments. This could be forwarded and monitored by local authorities and central government, in conjunction with a public education campaign, and would support the aims of the UN Convention on the Rights of the Child.

I trust the foregoing is of assistance.

Yours sincerely

David Mellor
Deputy Chief Constable
ACPOS
Dear Ms Smart,

Breastfeeding Etc (Scotland) Bill

Thank you for the opportunity to comment on the above consultation on behalf of the Scottish Police Federation, which is the staff association that represents 98% of all police officers in Scotland.

On this occasion we have no comment to make on the proposed legislation.

Yours sincerely,

Douglas J. Keil QPM
General Secretary

The Scottish Licensed Trade Association welcomes the opportunity to officially respond to the consultation on the "Breastfeeding etc. (Scotland) Bill".

The Scottish Licensed Trade Association was established in 1880 and counts within its membership Public Houses, Hotels, Restaurants, Entertainment and Off-Sale Licence Holders. The Association is the only body representing all sectors of the industry in Scotland and its three key roles are Trade Development, Trade Liaison and Trade Protection. The Association currently represents nearly 2000 independent Licensed Trade Premises and is seen by many as the "Voice" of the trade in Scotland.

The Association has already made its views known to Elaine Smith MSP, through the "Holyrood" magazine, where we were invited to respond on two occasions, to Elaine Smith's letters on this topic and our response is based on these original replies.

Obviously the Association's response focuses on Licensed Premises, which are deemed to be public places. It is very important to remember that, under current legislation, no-one under the age of fourteen is permitted to be in the bar area of Licensed Premises unless a Children's Certificate, issued by the local Licensing Board, is in force. Many Boards attach conditions to Children's Certificates, and the fact that many of their conditions are both impractical and non-viable for licensees, has resulted in very few being issued. Therefore, there are actually very few licensed establishment where infants would be permitted to be on the premises.

The Association obviously recognises that no special requirements of facilities are needed for breastfeeding, except perhaps privacy for mothers requesting such a facility. The fact is that no matter what the age of the child, a licensee is legally required to comply with conditions set by the respective Licensing Board.

Turning to the relatively few premises that do have the facilities to cater for children, no-one can doubt the health benefits of breastfeeding for both mother and child, or deny that it constitutes an important bond.
Responsible licensees who cater for children will try to make efforts to accommodate mothers who wish to breastfeed. However, they also have to cater for a whole range of customers in their premises. I have no control over individual's views or actions, whether legislation exists or not. On speaking some of our members who have Children's Certificates, we found little resistance to accommodating mothers wishing to breastfeed their babies, as they have had to comply with various conditions to cater for all children in the first place. There was concern however, on introducing legislation rather than encouraging a change in attitude. It was also pointed out, that in their experience, the majority of mothers do not wish to breastfeed in view of all and prefer to use appropriate facilities.

The diversity of services and facilities provided by public houses has been revolutionised over the last 20-30 years, mostly in part by a cultural change in attitudes and that is what is needed in this case. The Licensed Trade at present, is being bombarded with various proposed changes to legislation which are perceived by many as "nanny state" politics and we are deeply concerned that such moves, in fact, have an adverse affect on what is trying to be achieved.

For example, the Dundee Licensing Board recently introduced, without any consultation, a policy of no smoking at anytime, in any area of a public house, applying for a Children's Certificate. Despite any licensees having introduced no-smoking areas, proper ventilation and other good practices, on a voluntary basis, this was totally ignored. The result was that every application was withdrawn and none of the premises in question now cater for families.

Should legislation be introduced, rather than encourage a change in attitude, we fear the same result would apply and be another backward step for an industry which has and continues to accommodate a very diverse customer base with very diverse views.

Colin A Wilkinson
STLA
Breastfeeding etc (Scotland) Bill: Stage 1

14:24

The Convener: Item 4 is the Breastfeeding etc (Scotland) Bill. I ask members to turn to briefing papers HC/S2/04/13/2 to HC/S2/04/13/5, which have been circulated.

I welcome our first panel of witnesses. We have Rosemary Dodds, the policy research officer of the National Childbirth Trust, and Leah Granat, from The Breastfeeding Network. I hope that I pronounced your surname properly.

Leah Granat (The Breastfeeding Network): That is fine.

The Convener: I was close.

In your experience, how common an occurrence is it for women to be asked to leave a public place and go elsewhere to breastfeed? Much evidence about the issue is anecdotal, but has any research explored it?

Leah Granat: I am not aware of any research.

Only a minority of women are asked to leave or receive adverse comments, but those bad experiences impact greatly on their breastfeeding experience, their relationship with their children and other areas of their lives.

Rosemary Dodds (National Childbirth Trust): I work at the National Childbirth Trust office for the UK—I receive phone calls from women who have heard of the trust and who know that we are interested in breastfeeding. I deal with a slow but steady stream of concerned women who have been asked to leave premises. For example, they have been told that they cannot breastfeed in various restaurants and shops. Last week, women were told in a law court and in a job centre that they were not allowed to breastfeed.

There is some qualitative evidence from focus groups of women. The most interesting evidence has come from a group of women in Glasgow, at which the breastfeeding peer support project talked to women about their experiences of breastfeeding. Quite a high proportion of them had been so hesitant to breastfeed when they were out and about that it influenced their decision to breastfeed in the first place. The problem is not just that women are asked to leave premises because they are breastfeeding—I agree with Leah that that happens only in a minority of cases—it is also that that stops them breastfeeding in the first place.

NOP Research Ltd carried out a survey last year and found that of approximately 1,000 adults who were questioned throughout the UK only 15 per cent said that they would object to breastfeeding in a public place. However, when women were asked whether they thought that people would object, two thirds of them thought that there would be objections to their breastfeeding in public. The tiny 15 per cent minority seems to be having an unbalanced effect on women's perceptions, such that they feel they cannot go out and breastfeed.

Leah Granat: I have been involved in setting up the breastfeeding welcome award in the Maryhill area of Glasgow. It was a pilot study that set out to achieve on a voluntary basis what the Breastfeeding etc (Scotland) Bill aims to do in a legally enforceable way. The management of various public places committed themselves to supporting breastfeeding women on their premises and to allowing breastfeeding to take place. Volunteers then went out to check the places. They went in the guise of ordinary customers visiting the premises, breastfed their children as appropriate and reported their findings. Even in public places where the management had committed themselves to supporting breastfeeding, four mothers experienced a bad time and were told by members of staff, “You can't breastfeed here,” or, “If you want to do that you'll have to go off to the toilet.” The breastfeeding welcome award has submitted that evidence to the committee.

We are not talking about an issue that is up in the air and that people talk about but does not happen. Like Rosemary Dodds, I am in contact with women regularly. Slowly the calls come in and slowly the women talk face to face, but such incidents do happen. Although it is good to say that we can approach the issue in a cultural way and through voluntary schemes—there are voluntary schemes like the breastfeeding welcome award scattered throughout Scotland—that will not solve the problem for women. Our society accepts bottle feeding as the norm and although we hope that breastfeeding will become an everyday occurrence, it will take a long time to happen.

As well as creating a situation in which somebody who prevented a woman from breastfeeding in public could be taken to court, the legislation would allow the Parliament to lead from the front in changing the culture. Parliament would be making a strong statement about what the culture of Scotland ought to be.

14:30

Kate Maclean (Dundee West) (Lab): Have things improved or got worse in recent years? When I was a child, it was quite common to see people breastfeeding babies but, when I had my own daughter, I was once asked to leave a well known up-market Edinburgh store because I was breastfeeding. At the same time, an assistant in
the powder room was giving somebody a bowl of water for their dog. That was 24 years ago.

The National Childbirth Trust has been around a long time and you will have been able to monitor the situation. Have public attitudes towards breastfeeding got worse? Is there evidence that people experience more difficulty and less acceptance of breastfeeding now than they did 10 or 20 years ago?

Rosemary Dodds: Things are not getting any better, which is disappointing. The statistics on breastfeeding have been pretty level since about the 1970s. In Scotland, the last national survey showed only a slight increase.

These days, we hear more about women who are expressing their breast milk and putting it in a bottle so that they can go out. I had not come across that before; it is a terrible indictment of our society. Some women also say that they cannot breastfeed in front of their parents or their partner. We never used to hear that, although it may be that women are more honest now—i cannot tell.

Leah Granat: The statistics are affected by the gap in the encouragement of breastfeeding. For many years, up to the beginning of the previous century, breastfeeding was the way that babies were fed. Then, as infant feeding became more medicalised and as infant formula became more common, people lost the experience of seeing babies being breastfed. Several generations now have not had that experience. Mothers today face a public who are not used to seeing babies being breastfed and who do not realise that breastfed babies are not fed every four hours for 10 or 20 minutes. People have not grown up from childhood knowing that breastfed babies do not feed to a routine. The mother might be in the supermarket and then go down the road to the library and the baby might need to be fed in both places, but then not again for a few hours.

The Convener: Several people on the committee know that from personal experience, so you are speaking to the converted.

Shona, has your question been answered?

Shona Robison: Yes, it has been answered in part. You said that the current culture influences whether a woman chooses to breastfeed or not, and that that is a problem. Those who heard Lesley Riddoch's programme yesterday will be under no illusion. Entrenched attitudes exist, although when I breastfed last year, I was quite fortunate not to have any negative experiences. Would the witnesses like to add anything on the culture and its influence on breastfeeding?

Leah Granat: If you walk into any newsagent or supermarket and look at the wrapping paper for gifts for new babies, or the cards for new babies, you will find that very few do not have an image of a baby's bottle. That is an indication of how much this society associates babies with bottles. Breastfeeding mothers are bombarded—by television and newspapers and other media—with images of bottle-feeding. In the supermarket, there are rows and rows of shelves of infant formula, often with reduced prices, which is not permitted under United Kingdom law.

Another cultural issue is the age until which children are fed. In the draft bill, I would like to highlight—

The Convener: We will come on to that. You have plenty of time.

Dr Turner: You obviously accept that there is a need to legislate to enable people to breastfeed in public if they want to. However, I remember many people being dissuaded from breastfeeding by the hospitals. Because nurses were so busy, it was much easier to give the babies bottles. I wonder whether you are absolutely sure that there has been an improvement in the hospital side of things, with people being 100 per cent encouraged to breastfeed, and that the problem is totally with people accepting breastfeeding outside hospital.

Rosemary Dodds: There has been a huge improvement in the support for breastfeeding in hospitals. The way in which the Scottish Executive and the chief nurse have supported the baby-friendly initiative has been influential in improving the support and information that mothers get in the early days. However, I would not say that the problem has been solved. There probably needs to be a lot more training and debriefing of health professionals so that they can leave their own experiences behind.

The bill is a complementary measure that would make a big difference to the perception of breastfeeding. When studies have been carried out, such as the peer-support schemes in which women have been given additional support to breastfeed, the feedback has been that it is the culture that is difficult to change. Even where better information and support can be provided, we are still battling against the culture. There needs to be a multipronged approach.

Dr Turner: Where do you see the best help coming from in the education process? I am thinking about primary care, which is very important in the first few weeks after a woman has had her baby, when she has finished dealing with the hospital nurses and has to deal with the health visitors. I know that some practices have, over the years, been running classes for first-time mums and single-parent mums, to give them encouragement. Do you think that that is still a good way of beginning to change the culture? Do you think that you would stand a better chance of
doing so if primary care was behind you? Are there other ways forward that you can see?

Rosemary Dodds: Consistency of information is important. If the midwives in hospital are supportive but the general practitioners and the health visitors are not—or vice versa—parents get confused. Women say that they are always receiving contradictory information and conflicting advice, which is not helpful. That is why the multidisciplinary training is so important. Everybody receives the same information and has the opportunity to discuss it with their colleagues. They then present that good-quality, up-to-date, evidence-based information to the parents.

Janis Hughes: The infant feeding survey that was carried out in 2000 showed that half the women who breastfed in public stated that they would prefer to feed in private mother-and-baby facilities. Some lobbyists argue that, as opposed to focusing on breastfeeding in public, it would be preferable to encourage businesses to provide private facilities for breastfeeding mothers. How do you feel about that suggestion?

Leah Granat: It is significant that half the mothers who were questioned said that they would prefer to breastfeed in private facilities. The research that has been done in that area seems to show an even split. Half the mothers would prefer a pleasant, private area in which to sit and breastfeed their babies; the other half of breastfeeding women would prefer just to be able to get on with it where they are—sitting in the cafe with their cup of tea or coffee, sitting in the library, perching on a chair in the supermarket, or wherever they feel comfortable doing it. Both groups of women need to be adequately provided for.

Janis Hughes: So you think that the main aspect of the bill is the provision of choice: it would give mothers a choice about where to feed rather than encourage businesses to provide private facilities. You say that it is more important that people have choice.

Leah Granat: It is important that people have choice and therefore that private facilities are available for women who want them. It is equally important that women who are happier staying in a public area do not feel that they will be shunted off to a private room somewhere, even if it is a pleasant room. Nowadays, such rooms are often not pleasant—women are sent to the toilets to breastfeed.

Rosemary Dodds: The bill is important because it does not hide breastfeeding in the corner. If we are going to change attitudes, it is important that young people become more accustomed to seeing breastfeeding as a normal part of everyday life. Half of women may say that they prefer to breastfeed in a private place and, indeed, some babies may prefer to breastfeed in private because otherwise they look around and wonder what is going on. However, that figure might change if the bill becomes law. The measures in the bill are more important than a legislative requirement to provide breastfeeding facilities would be. Providing comfortable private facilities should be an optional extra or good practice, but the most important thing is to give women the right not to be asked to leave just because they are feeding their baby in the most natural way possible.

The Convener: As the long title shows, the bill is not just about providing facilities or allowing breastfeeding in public places; it also aims to promote breastfeeding. In considering the bill, we tend to forget that it is two pronged in that sense, which is the point that you are making.

Mr Davidson: I am a former community pharmacist and in my chain of pharmacies we had waiting areas, which had chairs for the elderly and disabled, for example. However, not every small business can provide such facilities. I want to clear up the issue of the statutory provision of facilities. The provision of facilities is one thing in a shopping centre where there is a lot of space and the cost can be shared among the businesses, but it is another thing for most of the small businesses in Scotland. I do not think that small businesses are complaining, but I would be worried about a compulsion to provide choice. I do not read the bill as saying that choice must be provided, but will you clarify your organisation’s view on that issue?

Leah Granat: We must recognise that breastfeeding does not need equipment or space, other than where the mother is with her baby, nor does it need any input of money or building work to provide extra rooms. As I understand it, under the bill, a woman who is walking round a supermarket and who has not asked for extra facilities would be able to breastfeed her baby, if she was comfortable, either at the side of one of the aisles or, as some women can do, as she continued shopping—I have done that myself. There does not need to be provision of material facilities, but a strong input is necessary to provide a pleasant and supportive attitude from staff, which will encourage the same attitude in people who are visiting the premises. If the staff are supportive of breastfeeding mothers, that will become the ethos of the business, whether it is large or small.

The Convener: The bill is called the Breastfeeding etc (Scotland) Bill, but the definition of milk includes “cow’s milk or infant formula”.

"cow’s milk or infant formula".
Is it appropriate that the bill, given its title, also applies to bottle feeding?

14:45

Leah Granat: Yes, because, as Rosemary Dodds mentioned, some mothers choose to express milk and give it to a baby in a bottle or a cup. Other mothers may breastfeed for part of the day and bottle feed for the rest. I would feel comfortable with a culture in which a mother can go out with her baby and feel supported in the way in which she mothers. As you said, convener, the bill includes provisions on the promotion of breastfeeding, which I strongly endorse, but if a mother gives her baby milk of any kind in a bottle, she should be able to do that in a public place.

Rosemary Dodds: I second that and add that it is important that we do not move from discriminating against one group to discriminating against another, which would be the danger if the bill did not cover other types of milk.

The Convener: The definition of a child in the bill is “a person who has not yet attained the age of two years”.

I do not know many women who breastfeed their child until they are two. Certainly in our culture, women do pretty well if they get up to 12 months. Is it necessary to have an age limit?

Rosemary Dodds: Absolutely not. The National Childbirth Trust feels strongly that it would set a dangerous precedent if the Parliament supported that provision. The World Health Organisation has stated that children should be breastfed up to two years and beyond—it was careful not to state an upper limit when breastfeeding should stop. Although it may not be common for us to see women breastfeeding babies of two and over at present, that does not mean that it does not happen. We know that many women who breastfeed older toddlers do so at home because they do not feel that it is acceptable when they are out. Again, that is hiding breastfeeding away. There is no scientific or medical reason to doubt the benefits of continuing to breastfeed. In fact, the anti-infective properties of breast milk increase as a baby gets older and takes less breast milk.

The Convener: But we would have to define “child” in some way.

Rosemary Dodds: Why do we have to define “child” in some way?

The Convener: Elsewhere in the law, there are definitions of what a child is and is not. If we are going to introduce a criminal offence of preventing or stopping a child being fed milk, there must be some definition of where childhood ends. If we take it to an extreme, a disturbance might be caused if—not to be too rude about it—a very old child was being breastfed in a public place. We surely must have some kind of definition.

Rosemary Dodds: I am not convinced of that. I am not a lawyer, but I have not seen another definition of a child as a person up to the age of two; when we talk of a child in terms of legal competency, ages of eight or 16 are given. It is highly unlikely that a child of school age will be breastfed in public, although I would not object to that.

You must think of the bill as having international interest. Women in Scotland will benefit, but the world is watching and, if the bill gives an upper age of two, you will be saying that it is not recommended to continue breastfeeding a child over the age of two and that women will not be welcome in public places if they are breastfeeding older children. I understand that some women who have been breastfeeding older children responded to the consultation on the bill and that no one has responded in favour of an upper age limit of two years. All the organisations and individuals that have responded have said that two years is too young.

The Convener: What happens in other countries that have similar legislation? Do other European nations have age limits?

Rosemary Dodds: I am not aware of any upper age limits.

Leah Granat: We have to remember that breastfeeding is a self-limiting experience. Adolescents have been mentioned, but I do not think that there are any breastfeeding adolescents.

The Convener: I would not have thought so.

Leah Granat: The length of a breastfeeding experience varies from one mother and baby to the next. Even within a family, a mother may breastfeed different children for different lengths of time, but at some point the mother and the child will end that part of the relationship of their own accord. I suggest that it would be enough for the bill to accept the definition as “a child who is still breastfeeding” and leave the limits of each breastfeeding relationship to the mother and her child—that is, her child, not her baby.

Kate Maclean: I know mothers who have breastfed children up to school age, but it is not necessarily the best thing for a four or five-year-old to be breastfed in front of his or her peers, because of the attitudes of other children or, possibly, other adults. Babies need to be fed and they need to be fed when they need to be fed. At that point, all the food that they have is milk, whether breast milk or bottle milk. By the time they get to the age of two or three, they can drink fruit juice and eat food, so I would not have thought
that it was imperative for them to be able to be breastfed in any public place. No babies should be denied the right to be fed whenever they need to be fed wherever their mothers are, but the difference between a baby and a child of two, three, four or five is that the child can be fed food.

**Leah Granat:** There is something important in what you say. Many children who are still breastfed at that age will not ask to be breastfed in front of their peers—that is partly the child’s choice. When the child is old enough to reason with, many mothers will say, “Not now, but when we get home,” or, “Not now, but a bit later,” if the child asks for a breastfeed at an inconvenient time. However, it would be a retrograde step to close the door. I ask you to consider a situation in which a child—perhaps a four-year-old or an older child who is still breastfed—trips and falls while they are out in the park playing. Often, babies and children breastfeed for comfort and security as well as for nutrients. If there were an upper limit of two years, the mother would be outside the security and protection of the bill if an older child, having fallen and hurt themselves, turned to her for a breastfeed.

**Kate Maclean:** You are talking about something entirely different. The bill is about feeding children in public places, not about comforting them in public places. I am not saying that there should be an upper age limit in the bill, but I feel a bit uncomfortable about what we are trying to do.

**Leah Granat:** The bill is called the Breastfeeding etc (Scotland) Bill. Everyone needs to recognise that breastfeeding is absolutely the best way of nourishing a baby, but breastfeeding goes beyond nutrition. It involves a relationship that encompasses feeding, as in giving nutrition, but it also involves a bonding relationship; it is a way of caring and a way of comforting. It is impossible to split one aspect of breastfeeding from another.

**The Convener:** The problem is that the bill creates an open-ended criminal offence. It says:

> “it is an offence deliberately to prevent or stop a person in charge of a child from feeding milk to that child in a public place or on licensed premises.”

It goes on to say:

> “A person guilty of an offence under subsection (1) is liable on summary conviction to a fine”.

I am concerned about older children. That might be at the extreme end of things, but the bill creates a criminal offence and the provision is mandatory—it does not take account of the facts and circumstances of the case. A person could go up to someone and say, “I think that that child is a bit too old, and I find what you’re doing a bit offensive. I do not mind babies being breastfed, but that child is about six.” If the age limit is taken out of the bill, that person would be guilty of a criminal offence.

**Leah Granat:** Is there any difference between breastfeeding a baby and breastfeeding a young child? We are talking about a change of culture and the issue is to do with the extent of that change.

**Shona Robison:** Given the fact that too few women breastfeed in Scotland because we have a culture that does not encourage breastfeeding, we have to accept the baseline that we are starting from and try to take as many people as possible with us. Although I respect the views that our witnesses have just aired, I suggest that that discussion will not help in changing the attitudes of the majority of those who remain to be persuaded about breastfeeding. We do not want the vision of an older child breastfeeding in public to be associated with the bill. The bill centres on the breastfeeding of babies and I suggest that focusing on breastfeeding older children probably undermines that cause.

Nobody is suggesting that people should not express their views but, given that many people remain to be persuaded about breastfeeding, it makes better tactical sense to focus on the arguments that are most likely to persuade people. In order to do that, I suggest that there needs to be an upper age limit. I think that most people would believe that a child ceases to be a baby somewhere around the age of two. A big public education exercise needs to be undertaken and I am not sure that the discussion that we have just had will help in that regard.

**Rosemary Dodds:** You are right in saying that a big cultural change is necessary. However, the danger of setting an upper age limit of two is that you would perpetuate the idea that breastfeeding older babies is not acceptable. Including that age limit in the legislation would reinforce the idea that people should stop breastfeeding when their child reaches the age of two. Having no age limit in the bill would mean that, because people understand that breastfeeding is something that happens in the early years, their perception of the bill would be that it protects the right of women to breastfeed babies and young toddlers. If an age limit is included, there will be too much focus on issues relating to age. That is why I argue that there should be no age limit in the bill.

**Dr Turner:** I think that we might have to accept the suggestion that there be no age limit in the bill. I doubt whether even doctors would know exactly the age of a baby simply by looking at it. Some babies are born looking like they have been in the world for nine months already. It might be better simply to leave out any reference to age and let things take their course. I accept everything that Kate Maclean and Shona Robison have said, but,
given that we are talking about creating an offence, such practical difficulties are important.

Mr Davidson: While we have these witnesses before us, we have to deal with the impact that the bill would have if it were passed. Is the bill absolutely clear about which actions will be deemed to be offences? What do you think constitutes the prevention of someone breastfeeding in public?

Leah Granat: I would say that preventing or stopping somebody feeding a child in public is a subjective notion. What will prevent or stop one woman might not hinder another woman. We are talking about not approaching a woman and saying, “You can’t do that here,” and not doing anything unpleasant or harmful to that woman and her baby. Some women have had unpleasant experiences. At the extreme end of the scale, I remember a case from a few years back when a shopkeeper poured a bucket of dirty water over a woman who was sitting breastfeeding her baby.

Mr Davidson: The physical intervention is already covered in law, because it will be some form of assault. What we want from you is your definition of “prevent or stop”. Did that notion come from a simple agreement, when the bill was being written, about what constitutes an action to prevent breastfeeding? Are we talking about a sign on a shopfront that says, “Breastfeeding mothers not welcome”? Are we talking about someone challenging a woman—however discreetly and politely—or suggesting to her that there is a lovely baby-feeding facility and saying, “Would you care to do it there, please, as that’s why we’ve provided it”? Would that be an offence? You have talked about choice and about whether mothers should go to a private place. Where should the line be drawn?

Leah Granat: The line should be the point at which the mother is made to feel uncomfortable. There might be a choice of using a mother-and-baby room—a private facility where the mother could breastfeed her baby if she chose to do so. Perhaps people who work in public places could think about making mothers aware of such facilities by putting stickers on the door, rather than having a member of staff approach the mother. Mothers have said to me that, when somebody came up to them, while they were sitting and feeding their baby, to ask, “Do you know there’s a mother-and-baby room?” they felt as though they were being told that they had to go there. I would say that that makes a woman feel that she cannot breastfeed in that public place. There should be indications of any available facilities for women who wish to feed in private. Stickers or signs would be perfectly adequate for that.

The Convener: Before we move on, could I just correct you? The bill does not say “a mother”. It says:

“it is an offence deliberately to prevent or stop a person in charge of a child from feeding milk to that child”.

That expands the circumstances.

Leah Granat: I apologise—you are quite right. That is an important aspect of the bill. It concerns not just mothers.

Rosemary Dodds: I agree with Leah Granat. I would not interpret the bill as covering asking a woman to move to a private place. I understand that one of the respondents to the consultation thought that asking a woman to move was an acceptable thing to do. However, it is not on to expect a woman with older children, perhaps with a buggy or a double buggy with twins, to fit into a broom cupboard, which is often all that is provided. A woman might be there for an hour by the time she has breastfed the baby and changed their nappy, especially if the baby is very new. I do not think that asking a woman to move under those circumstances constitutes a welcoming attitude towards breastfeeding, which I hoped the bill would support.

Mr Davidson: If you are starting to talk about nappy changing in the same context, I would make the point that a totally different set of circumstances apply. Perhaps you would like to revise what you just said.

Rosemary Dodds: No—I am talking about the whole episode of breastfeeding. If a woman is being asked to go into a private room with a very new baby, breastfeeding can sometimes take a long while. Entertaining older children at the same time is difficult for a woman if they are asked to breastfeed in a closed space with nothing else going on. That is what I was trying to explain.

The Convener: Thank you both very much for your evidence. We will now move to the next set of witnesses.

I welcome Deputy Chief Constable David Mellor, the secretary of the Association of Chief Police Officers in Scotland, and Norman Macleod, the deputy general secretary of the Scottish Police Federation. I will launch straight away.

I do not know whether you heard the previous evidence—it will be helpful if you did because you would have heard us talking about enforcement, difficulties in collecting evidence and so on. We were right into your field. I have a big broad question for you to start off with. Do you think that the police and procurators fiscal would be willing to pursue prosecutions under the bill?
Deputy Chief Constable David Mellor (Association of Chief Police Officers in Scotland): If a criminal offence has been created, it is the duty of the police to enforce the law. If, under the bill, we received a complaint from a person who was in charge of a child whom they had been prevented from breastfeeding, we would have a duty to act. My best guess at how we would deal with such a complaint is that it would probably not be a priority. Given the range of calls that we receive, including emergency calls, although a call of that nature would be treated entirely seriously, it probably would not be a priority. We probably could not guarantee a quick response unless there was some aggravating factor such as assault or threats, which would probably take the matter into other areas of criminal law anyway.

The Convener: You would not prosecute under the bill; you would prosecute under the common law.

Deputy Chief Constable Mellor: In those circumstances—yes.

A police officer who was dealing with such a complaint would probably, in the first instance, try to conciliate. That is often what we find ourselves doing in disputes or conflicts; we try to resolve conflict if we can. I do not think it likely that many reports would go to the procurator fiscal. I read in the financial memorandum to the bill that it is anticipated that there would probably not be a large number of prosecutions. That said, I support fully the objectives of the bill, on behalf of the Association of Chief Police Officers in Scotland.

Norman Macleod (Scottish Police Federation): I endorse Deputy Chief Constable Mellor’s comments. Police officers will attend to complaints under the bill from members of the public and, if appropriate, we will report to the procurator fiscal, although I think that the circumstances would have to be extreme before the procurator fiscal would deal with such a matter. Operational police officers try to conciliate at every opportunity and that is how we would start off.

We would like it to be made clear what will be expected of police officers in relation to the bill. The bill is quite wide ranging and police officers need to be clear about what will be expected of them.

The Convener: We will develop that in other questions. I welcome Elaine Smith, whose member’s bill it is, to the committee. If you want to ask questions, Elaine, please bid like every other member.

Shona Robison: You said that you do not envisage many prosecutions taking place. Is not that the whole point of the bill? In your written evidence, you say:

“Members commented that the use of criminal legislation as a mechanism to protect lieges, perhaps with a view to engineering social change in relation to public order or safety issues, is to be supported.”

The issue might not necessarily be about public order or safety, but it is very much about social change. Is not that an argument in favour of the bill? It would send out a strong message that an attitudinal change must happen, particularly among people who manage public places. The number of prosecutions is likely to be very small. Do you accept that?

Deputy Chief Constable Mellor: I accept that if we are trying to change culture and attitudes, we need to consider a range of approaches, and I accept that the creation of a series of criminal offences has proved in the past to be effective in changing attitudes. The seat-belt law is a classic example: there were concerns about civil liberties before that legislation was enacted, but the overwhelming view now is that the law saves lives and is unequivocally a good thing. It is perfectly legitimate to create a criminal offence as part of a strategy to change attitudes.

However, I sense that the creation of a criminal offence in this bill seems to be principally a symbolic act, although I accept that the existence on the statute book of an offence that means that people can threaten to use the criminal law is a convincing way of changing attitudes and behaviours.

Shona Robison: Perhaps an analogy can be made with disability legislation—Elaine Smith has made that analogy. Although there might not be many prosecutions of people who fail to provide disabled access to their premises, it is important that the message has gone out that disabled access is a requirement. In the context of the bill, the standard that will be required from those who provide public places will be that breastfeeding mothers should be allowed to feed their babies in such places. Do you accept that comparison?

Deputy Chief Constable Mellor: Yes—that is a perfectly satisfactory comparison and I accept fully the points that you make. My comments were made in response to the convener’s question about the extent to which the police service would be likely to report offences to the procurator fiscal.

Mr Davidson: You said that it was likely that there would be a low level of police involvement and an even lower level of procurator fiscal involvement. Your written submission says:

“Members therefore suggested that the most effective way forward would be to enshrine a statutory obligation where the rights of breastfeeding mothers are incorporated
into the charters and licences of all public organisations, outlets or establishments."

In other words, responsibility would lie with the local authority, which already has powers in relation to safety, for example. Is that a firm view? I appreciate that we are arguing not about the principle of breastfeeding but about the mechanics of the practical application of the proposals in the bill.

Deputy Chief Constable Mellor: There was divergence among my ACPOS colleagues’ views. They supported unequivocally the bill’s objectives, but some supported the creation of a criminal offence and others did not. An alternative to going down the criminal-law route might be to go down the licensing route—powers of enforcement can be attached to licences, but that is a potential way forward that has not been explored in the bill. On my reading of the bill, the approach seems to be either civil—that would require the person in charge of the child to initiate proceedings, which would be quite hard to have to do—or criminal. There might be a middle way, so the suggestion in our submission was intended to be a helpful contribution to the debate.

15:15

Mr Davidson: Will you clarify what percentage of your members supported that notion?

Deputy Chief Constable Mellor: Every chief officer to whom I wrote supported the principle of the bill. Of the eight of us—there are eight forces in Scotland—I recall that two or three supported the proposal that there should be a specific offence in criminal law.

Mr Davidson: Were the rest supportive of taking the local authority route?

Deputy Chief Constable Mellor: No. They advanced arguments against the use of criminal law. It was one of my correspondents who made that suggestion, which we thought merited inclusion in our evidence.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): There are some good examples that are comparable with making prevention of breastfeeding in public a criminal offence in order to change our culture. We did not introduce fines for not wearing seat belts; I remember the strapline of that advertising campaign, which was “Clunk-click, every trip”—we need to raise awareness in such ways. Despite the fact that there were laws in place to prevent one person from assaulting another, we had to raise awareness of violence against women. In that way, we won public support and condemnation of such violence.

I am worried about the belief in what politicians can do without the consent of the community, as Shona Robison mentioned during earlier questions. We must convince the public and we must communicate effectively what needs to be done because there is no short cut to changing culture simply by introducing legal measures. Do you disagree with that?

Deputy Chief Constable Mellor: I do not disagree; it is true that there is no short cut to changing attitudes and the culture of a country. When I referred to the seat-belt law, I meant that it is possible to change attitudes. That was an example in which the creation of a specific offence was one of many measures that changed attitudes. The advertising campaign to which Duncan McNeil referred worked well—you can still remember its strapline—and is an example of advertising’s being particularly useful. The domestic abuse example was also a good one; we have had a very lengthy campaign to change attitudes to domestic violence. We still have some way to go, despite the facts that we have a perfectly adequate legal system to tackle domestic violence and have had good publicity over a number of years. Creation of a criminal offence is only one aspect of changing attitudes and behaviour.

Mr McNeil: What would have to happen before you could get the majority of those eight very important chief police officers to give their support to creating a criminal offence?

Deputy Chief Constable Mellor: The police enforce the law; if prevention of breastfeeding in public becomes an offence under criminal law, the police will have a responsibility to enforce it. We will do that diligently—that is one of the roles that we play in society.

The Convener: With respect, we all appreciate that. We are asking whether the bill will be good law. Law is only proper and enforceable if it has the consent of the public. One does not want bad laws. I think that that is what Duncan McNeil is asking. Would such a law go with the grain of society?

Deputy Chief Constable Mellor: My view is that it would be good law in that it would be symbolic, it would reinforce the aims of the bill and it would exist as a threat. Sometimes people need a threat so that they change their attitudes and behaviour. In support of the bill, I say simply—this echoes the financial memorandum—that I anticipate that prosecutions would be few in number.

Norman Macleod: I will pick up where I left off on the difficulties that will be faced by our members, especially at the front end. As I read it, the bill applies to any public place, which might
mean a seat on the Royal Mile or in a public park. The definition is so wide that it causes us concern. Would it be a crime to watch a lady breastfeed?

Elaine Smith (Coatbridge and Chryston) (Lab): I apologise for my absence—I had to speak to amendments at the Local Government and Transport Committee.

In its submission, ACPOS states:

“reservations were expressed regarding the use of legislation to reinforce what is in effect a mother’s right and a freedom of choice.”

I appreciate that point, but do you agree that that right is not at present fully recognised? We know about harassment and segregation of mothers with babies. Legislation is often needed to protect against discriminatory practices and abuses. Symbolism is important, but do you consider that rather than simply being symbolic the bill could act as a deterrent against the abuses that are taking place at the moment?

Deputy Chief Constable Mellor: Yes. I declare a personal interest—my daughter is a National Childbirth Trust breastfeeding counsellor.

The Convener: That should have been declared at the outset. Never mind—no charges will follow.

Deputy Chief Constable Mellor: Thank you. My daughter was denied access to her local council offices to breastfeed my youngest granddaughter. Because she is an assertive and confident person, she thought that the best way in which to deal with the matter was to go to the local press. She did so and an article was published, which did the trick: the council changed its attitude. In fact, the council had facilities for breastfeeding, but the staff were not properly briefed about that, as is often the case.

I accept that the introduction of a criminal law offence would be persuasive. Elaine Smith made the very good point that we are dealing with a form of discrimination. I understand that, because issues relating to discrimination are reserved, it was not possible for the Scottish Parliament to go down that road and that consequently a criminal law approach was taken in the bill. However, the point that the member made about discrimination is a strong one.

Elaine Smith: Public education campaigns have been tried for many years, but there is still intolerance, even though the bill has been in the public domain for some time. I return to the point that Shona Robison made about the Disability Discrimination Act 1995. You say that you are concerned that the introduction of a statutory offence may be seen as punitive and may create a negative attitude to breastfeeding. Do you think that the Disability Discrimination Act 1995 has created a negative attitude to disabled people?

How many charges have been brought as a result of that act? If the number is small, what is your view on that? I do not think that offences that were introduced by the DDA, especially under part 5 of the act, have created a negative attitude. The rationale of the legislation is deterrence—it is about disabled persons’ rights in public places. Do you agree that the Breastfeeding (Scotland) Bill is about children’s rights to feed in public places?

Deputy Chief Constable Mellor: Is the question directed at me?

Elaine Smith: Yes. In your submission, you refer to negative conditioning. Has the DDA, especially part 5 of the act, resulted in negative conditioning?

Deputy Chief Constable Mellor: No.

Elaine Smith: The Breastfeeding (Scotland) Bill is about protecting children’s rights to feed in public places. Why might it create a negative attitude?

Deputy Chief Constable Mellor: I suggested only that that was a possible adverse outcome. I have no evidence that the Disability Discrimination Act 1995 has resulted in negative conditioning. We raised the issue in our written evidence merely as a possible undesirable effect. After all, we might have to deal with certain conflict situations. As we obviously have no control over how the media would report such matters, any adverse reports could trivialise the issue and have a negative impact. That said, I do not think that the risk is a major one.

The Convener: On the definitions that are used in the bill, the committee had quite a long discussion about the word “child”, which is defined as

“a person who has not yet attained the age of two years”.

What is your view of that definition? I had the sense that committee members had difficulties with that part of the bill.

Norman Macleod: That issue also highlights a difficulty in enforcing the legislation. It has already been pointed out that all children look different at different stages of their lives. We would have to prove the child’s age, which would mean our producing documentary evidence to the court. That in itself would not be difficult, as we have to do the same in other circumstances; however, it is another route that we would have to take. Age limits are extremely difficult and problematic. Indeed, when I walk into licensed premises, I find it difficult to tell who is under 18 and who is over 18.

The Convener: Are you suggesting that there should be no upper age limit?
Norman Macleod: I am not suggesting anything one way or the other.

The Convener: But we are seeking your guidance as police officers who will have to enforce the law.

Norman Macleod: Age limits can be difficult to enforce.

The Convener: We know that, but it still does not help us with this issue. Should there be no age limit or is it better to put a figure on such things?

Norman Macleod: My view is that there should be no age limit.

Deputy Chief Constable Mellor: Although I know that the issue provoked considerable debate earlier, I do not think that it poses a major problem. I presume that the phrase “two years” would mean two years and 364 days, which I would have thought would be enough time. I do not think that an age limit would make much difference to enforcement; after all, the major issue is the denying of the person in charge of the baby the opportunity to breastfeed. I would have thought that, in 99 per cent of cases, we would be talking about a mother and her baby.

The Convener: Of course, a problem is that the bill does not say that. It simply mentions “person in charge”. Perhaps we can discuss that later.

I should also point out that, under the bill’s definition of child, the phrase “two years” would mean up to one year and 364 days.

Deputy Chief Constable Mellor: Right. I am glad that you clarified that.

The Convener: David, do you have a question on specifics?

Mr Davidson: For a moment, I thought that we were about to discuss introducing identity cards for babies.

You said that if preventing someone from feeding their child is made a criminal offence you will be obliged to investigate such complaints. If, for example, there was a movement to ensure that all public premises were visited and their breastfeeding policies challenged, that would tie up a lot of police time. What would it cost to carry out such investigations, which would, after all, have to be made long before the matter went to the procurator fiscal?

Deputy Chief Constable Mellor: I expect the costs would be minimal. I accept your point that it would be possible for interested parties to make greater use of the legislation than we might have expected. However, I would not have thought that the amount of police resources involved would be a major issue.

Mr Davidson: Are the bill’s definitions specific enough about the offence of preventing the person in charge from feeding milk to a child? Are more definitions needed and, if so, what would you like to be included in the bill?

15:30

Deputy Chief Constable Mellor: The definition is important, but I do not have any particularly strong views on it. If there was behaviour that took the case into the criminal law arena, we would be clear about our responsibilities under the criminal law. Creating a criminal offence in the bill is catering for those cases that would not involve an offence under the current criminal law. It would be undesirable if there were no criminal offence and police officers were expected to make use of the criminal law by, for example, using breach of the peace as a mechanism for giving enforcement teeth to the bill. That would put police officers in an unfair position. In a number of areas, we are required to use breach of the peace a little too elastically at times. It would not be fair for that to be expected of us in these circumstances. I know that that was not your question.

Mr Davidson: Convener, I wonder whether you might suggest to our witnesses, on behalf of the committee, that they should feel free to send in further thinking on that. I get the impression that there is discomfort about what the final wording will be. Their organisations may wish to take legal advice about the definition. It is important that this committee especially gets good support and opinion, as the bill will go to one of the justice committees after we have finished with it. As has been stated already, the Parliament will need clarity on the definition.

I have a final question. Do you feel that the fine structure—

The Convener: David, there is no secondary committee for the bill. The justice committees will not consider the bill’s enforcement—that will be for us.

Mr Davidson: Thank you for correcting me. I did not know that.

Let us move on to the fine scale. Do you think that the fines are an appropriate deterrent? Do you have any views on their level?

Deputy Chief Constable Mellor: No. The setting of fine scales is not really the police’s territory. I have no opinion to offer on that.

Kate Maclean: I have a small question that relates to what I am going to ask the Scottish Licensed Trade Association. In its written evidence, the association states:

“Responsible licensees who cater for children will try to make efforts to accommodate mothers”
who wish to breastfeed.

"However, they also have to cater for a whole range of customers in their premises"

and

"have no control over individuals' views or actions, whether legislation exists or not."

Is that the case for licensees? I would have thought that licensees would have to control over certain things otherwise they would be liable to be reported to the licensing board and lose their licence.

Deputy Chief Constable Mellor: You make a fair point. The licensed trade has perhaps expressed its point in rather too general terms. The holder of a liquor licence has a number of responsibilities under liquor licensing laws and other laws on discrimination, for example. Although I do not wish to criticise fellow consultees, that seems to be a rather broad statement.

Kate Maclean: If the bill became legislation, licensees would have some responsibility to ensure that it was adhered to.

Deputy Chief Constable Mellor: I cannot recall what the legislation says about vicarious liability, but it contains some comments about that.

The Convener: I have concerns about the evidential requirements of the bill. I take it that the evidence has to be corroborated, as is usual under criminal law. The bill may get tightened up at stages 2 and 3, but as it is drafted, do you see it posing problems for police in the gathering of evidence to present to the procurator fiscal?

Deputy Chief Constable Mellor: Yes. I imagine that there would be some difficulties because, in many cases, we would be dealing with the matter after the event. In those circumstances, if we were preparing a report for the procurator fiscal, we would need to take statements from the persons who were involved. It might not be easy in all cases to gain the necessary corroboration under Scots law if we were investigating matters after the event. As I said, in such cases we would probably find ourselves looking to conciliate as a first step—if we were attending the scene—albeit that we would always be mindful of our requirement to enforce the law of the land.

Norman Macleod: Operational police officers would have a certain amount of difficulty obtaining the necessary evidence, even down to people's interpretation of "act", into which a certain amount of subjectivity enters. There could be difficulties, although they may not be insurmountable.

The Convener: Thank you. That completes this part of the evidence session.

I welcome Colin Wilkinson, secretary of the Scottish Licensed Trade Association. I presume that you will have heard both previous sets of evidence; that is very helpful.

I will kick off with the first question. To what extent do licensed premises currently experience complaints about breastfeeding mothers?

Colin Wilkinson (Scottish Licensed Trade Association): We have had very few complaints from our members, who represent about a quarter of the public houses in Scotland. It is not something that has come up in our many regular meetings. Licensees who cater for children have certain conditions to follow that have been attached by licensing boards and they try to cater as best as they can for children.

The Convener: I appreciate that there are certain licence regulations for children: do those apply to a mother and baby?

Colin Wilkinson: Yes.

The Convener: So the existing legislation already applies to them.

Colin Wilkinson: A licensee would have to have a children's certificate no matter what age the child is; it must be for the purpose of consuming a meal.

Shona Robison: How would complaints from customers about a mother breastfeeding usually be dealt with in licensed premises?

Colin Wilkinson: The association has not had any complaints from individuals who have visited licensed premises. Our membership is individual licensees who operate their own businesses independent of the association. We are there to promote best practice and so on.

Shona Robison: Have you been an owner of licensed premises?

Colin Wilkinson: No.

Shona Robison: How would you envisage that the situation would be dealt with by one of your members? What do you envisage that they would do in such a situation?

Colin Wilkinson: A situation could arise in which a complaint is made against a member because they stop someone from breastfeeding on licensed premises. Very few premises cater for children, so the issue will not arise often. Overall, our members who cater for children would have to take the issue into consideration. The association would ask them to consider all the issues. That is all that I can say. It is not a situation that we have come across before in the licensed trade, so it is difficult to answer that question.

Shona Robison: Okay. That is fair enough.
The Convener: I will ask a supplementary question because I think that I have misunderstood. If I were a mother with a four-week-old child in a wee carrier and I wanted to have a half pint in the afternoon and not to buy any food, the existing legislation would not allow me into licensed premises with the baby. Is that correct?

Colin Wilkinson: That is correct.

The Convener: Fine.

Janis Hughes: I have noted the comments in your submission. Did you canvass opinion from your members on your submission? If so, were the responses for or against the bill?

Colin Wilkinson: We have regular meetings of representatives who cover the whole of Scotland, so we had a good poll from which to gather opinion. Their experience of catering for somebody who wants to feed a child is that they are asked for privacy, if they have facilities for that. As I said, our members have not reported complaints about that. If members catered for children, they would make every effort to provide the facilities that were requested. As for facilities in public, most of our members were of the opinion that as mothers had asked for private facilities in the past, that is what they would cater for.

Janis Hughes: What does catering for requests mean? Your submission says that most of your members would accommodate people who sought private facilities in which to breastfeed. What does that mean? Part of the problem is that such facilities are often a broom cupboard, as has been said, or somewhere that is unsatisfactory and is not a suitable environment. How accommodating would your members be?

Colin Wilkinson: Obviously, our members must comply with the local conditions that licensing boards set on the facilities that they must provide to obtain a children’s certificate. It is not a case of having a broom cupboard. Various amenities must be provided. Our members say that if they have the facilities for mothers to feed privately, they would be happy to accommodate mothers.

Janis Hughes: I take it that you mean something like a changing facility, which is often a toilet. Do you consider that satisfactory?

Colin Wilkinson: I cannot comment on whether a toilet is satisfactory. Personally, I have two daughters and I would not feed them in a toilet, but premises must provide more than just changing facilities. It is difficult to say what level the facility should be at. I cannot comment more. What premises provide would be up to individuals.

Elaine Smith: You said that in your members’ experience, most women ask for somewhere private to breastfeed. I take it that we are talking about restaurants. In your members’ experience, would a woman who is out with friends and family having a meal at a table want to leave that social situation to go away and hide to breastfeed? I ask that because that is not my experience of breastfeeding in such circumstances, or that of the people who speak to me. Some people would want to do what is described. The bill places no onus on premises to provide private facilities. I also wonder how children’s certificates would be affected.

Colin Wilkinson: Most of our members are public houses and hotels. It is far easier for hoteliers to provide separate facilities, if they are requested. I described the comments and experiences of our members from all areas of Scotland.

Dr Turner: Do you agree that the bill could benefit the licensed trade, as it would encourage more young families to frequent premises that hold children’s certificates? I have seen a culture change. More families eat out nowadays. Many establishments now are not just straight square restaurants and would allow women to breastfeed at a table.

Colin Wilkinson: When children’s certificates were created, we thought that they would encourage more premises to make provision. Edinburgh has 1,300 licensed premises and only 75 children’s certificates, simply because of the conditions that were attached to the certificates, which put many licensees off providing catering facilities for children. The bill would create another condition that will not encourage licensees to cater for children.

Dr Turner: Do you think so?

Colin Wilkinson: Yes.

Dr Turner: Have licensees expressed an opinion?

Colin Wilkinson: They expressed it when children’s certificates were first introduced: there was very little uptake of them.

Dr Turner: That is interesting.

15:45

The Convener: I think that you said that the bill would be compliant with existing licensing legislation concerning children. Am I correct?

Colin Wilkinson: Yes.

The Convener: If only 75 licensed premises in Edinburgh have children’s certificates, only 75 could comply with the bill, so what will we do about all the others?

Colin Wilkinson: That is the present situation under the current legislation, but you will be aware
of the Nicholson report, which recommends that we should no longer have separate licences for certain types of operation, but one licence. We are concerned that, under that regime, more licensees will decide to opt out of providing facilities for children. That is coupled with other proposed changes.

The Convener: But licensees could not opt out if the bill were to become law, could they?

Colin Wilkinson: Yes, they could, because they would not renew their children's certificates and children would not be allowed on the premises.

The Convener: Thank you for clarifying that.

Kate Maclean: I think that you have probably heard my question. In your written submission, you say that licensees have to "cater for a range of customers in their premises" and "have no control over individual's views or actions, whether legislation exists or not."

That is not really the case, because there is some legislation that licensees have to ensure is upheld. If the bill is enacted, will that not make things easier for licensees to deal with customers who make complaints about mothers breastfeeding? For instance, if a customer goes up to a bar and tries to buy somebody who is obviously under age a drink, the licensee can say, "No, that's against the law," and, if somebody were to complain about a mother breastfeeding in a pub that had a children's certificate, the licensee could say to them, "That's the law. They are allowed to do that."

Colin Wilkinson: The reason that I included that comment in the submission—I accept that it might be an open comment—is that a lot of people comment not only to the licensee, but to other customers in the premises. We are concerned that an individual in licensed premises could make a comment without the licensee knowing about it and concerned about what could happen to such customers. I stand to be corrected if I am wrong, but if customers made comments or tried to stop a woman from breastfeeding, would they be prosecuted?

Kate Maclean: I presume that it is up to the licensee to ensure that he is able to act lawfully and, if a customer is preventing that, to deal with that customer in the same way as he would deal with a customer who was trying to buy an underage person a drink, selling drugs or breaking any other laws on his premises. To keep his licence, the licensee would not want any reports of problems with the law being upheld in his pub to be made to the licensing board.

In the second-last paragraph of your submission, you say:

"The Licensed Trade ... is being bombarded with various proposed changes to legislation which are perceived by many as 'nanny state' politics,"

and you give the example of Dundee City Council's licensing board's introduction of a no-smoking policy in pubs that apply for children's certificates. Because I am the MSP for Dundee West, I am aware of that and was interested to follow that story in the press. I was glad that I was no longer a member of the licensing board, because it was a controversial policy, but is that policy comparable to the bill? The licensing board is saying that it does not want children to sit in areas where there is smoking or to walk through such areas to get to the toilet. Is that comparable to the introduction of legislation on breastfeeding?

As far as I am aware, there is no such thing as passive breastfeeding—when a mother breastfeeds a child, that does not affect anybody else.

Colin Wilkinson: I do not wish to digress, but in the Dundee case, the licensees were not permitted to allow smoking on the premises at any time, even if children were not allowed in the premises, for example, in the evening. Our members in the area considered that to be a totally ridiculous situation. The action that they took was simply to cease their children's certificates. There is a concern that if the bill is seen as another condition that is attached to licences, businesses may well take that action again.

Kate Maclean: There is a difference between smoking and breastfeeding.

Colin Wilkinson: Yes, but the surrounding issue is about children's certificates.

Mr McNeil: There is an issue about politicians wishing those in the licensed trade to get into the trenches to change Scottish culture. It would be a difficult message to communicate at that level if there is resistance. That is why we are discussing the proposed legislation. For instance, we would be replacing smoking areas with breastfeeding areas in pubs in Scotland. Do you think that that would confuse the message?

Colin Wilkinson: Yes, it certainly would.

The Convener: I am sorry to labour the point, but I return to my earlier question. The long title states that the bill is

"An Act of the Scottish Parliament to make it an offence to prevent or stop a child who is permitted to be in a public place or licensed premises from being fed milk."

The key point is that the child must be permitted to be in the place. You are saying that, at present,
that is fairly fluid because licensing legislation is changing.

**Colin Wilkinson:** Yes.

**The Convener:** So we would have to keep our eye on other legislation.

**Colin Wilkinson:** Yes.

**The Convener:** My second point is about vicarious liability when somebody else is on the premises. In fairness, the bill makes it plain that the licensee would be liable only in certain circumstances, for example, if the person was an agent or employee. Obviously, a person cannot be liable for everybody who is on the premises.

Thirdly, I would like your comments on the age issue, as the other witnesses have commented on it. In the bill, “child” means a person who has not yet attained the age of two years.

Does your trade have views on whether there should be no limit or an upper limit?

**Colin Wilkinson:** We have no views on that.

**Elaine Smith:** I am a bit puzzled about what conditions licensees would need to comply with. What kind of red tape is there? Duncan McNeil has suggested the creation of breastfeeding areas. However, that would be counterproductive, as we are trying to change attitudes and make people see breastfeeding as the norm. Are you of the opinion that the bill would mean that you would have to provide special areas, which might be considered to represent a further cost to licensees?

**Colin Wilkinson:** Yes.

**The Convener:** My second point is about vicarious liability when somebody else is on the premises. In fairness, the bill makes it plain that the licensee would be liable only in certain circumstances, for example, if the person was an agent or employee. Obviously, a person cannot be liable for everybody who is on the premises.

**Shona Robison:** Do you want more licensed premises to cater for families?

**Colin Wilkinson:** Yes, definitely. I said that in our written submission.

**Shona Robison:** But you are concerned that an unintended consequence of all these changes could be a significant reduction in the number of licensed premises that cater for families.

**Colin Wilkinson:** Yes—that and other things that are going ahead at present.

**Shona Robison:** What would be the way forward to try to overcome that, given the fact that there are health issues that have to be dealt with when children are on any premises? What do you suggest as a way forward?

**Colin Wilkinson:** As was stated by the previous witnesses, there needs to be a culture change. It took the licensed trade a great deal of time to change from what were probably classified as drinking dens to what we have now. We feel that that is a far better way to go.

**Elaine Smith:** There has been some emphasis in the press on licensed premises, although the bill covers all public areas, and public services are extremely important. The convener mentioned that the bill is to cover premises on which children are permitted—so, we are talking about premises with children’s certificates. You said earlier that the bill would impose another condition. Are you saying that licensees are unlikely to apply for children’s certificates because they might have to allow and tolerate breastfeeding mothers and their babies?

**Colin Wilkinson:** I am not saying that; I am saying that certain conditions already exist and that that would be seen as another requirement that licensees would have to comply with. It would be up to them to decide whether they wanted to continue to provide that facility.

**Elaine Smith:** I am a bit puzzled about what conditions licensees would need to comply with. What kind of red tape is there? Duncan McNeil has suggested the creation of breastfeeding areas. However, that would be counterproductive, as we are trying to change attitudes and make people see breastfeeding as the norm. Are you of the opinion that the bill would mean that you would have to provide special areas, which might be considered to represent a further cost to licensees?

**Colin Wilkinson:** No. I do not see it as requiring an area to be provided for that. However, on top of what licensees have to comply with at present, licensees may see this as an additional requirement that might put them off applying for children’s certificates. We have experienced that in the past.

**Elaine Smith:** Would the same be said of bottle feeding, or is it just breastfeeding? The bill provides for both.

**Colin Wilkinson:** Yes. That could be an issue for some, but I cannot answer without consulting. I do not see that being an issue.

**Mr McNeil:** Elaine Smith was attending another committee when we heard in previous evidence that it is important that a choice is available to women. The people who support the bill believe that there should be special areas for those women who want them as well as the ability to breastfeed in general. I was just pursuing that point.

**The Convener:** Thank you for that clarification.

I thank our witnesses for their evidence to the committee.

That completes our business in public and we will move into private session after a 10-minute break.

15:56

*Meeting suspended until 16:08 and thereafter continued in private until 17:03.*
SUBMISSION BY SCOTTISH POLICE FEDERATION

The Scottish Police Federation wishes to thank the committee for the opportunity afforded us to give oral evidence to the committee relative to the above Bill, which they did on 11th May 2004.

When reflecting on the evidence giving session, however, we have come to the conclusion that there were a number of issues in relation to enforcement which were possibly not made as clear as they might have been and we submit this letter by way of clarification.

As we said we offer no view as to the necessity of this legislation and take the view that, although our members have very rarely had complaints of this nature drawn to their attention there are others more qualified than we who can decide if adding to the criminal law available is the best way to proceed.

We would wish the committee to be aware that, in creating the new criminal offence contained in the Bill they will be criminalising conduct that previously would not have been criminal and which makes offenders liable to considerable financial penalties in the form of fines and, in certain circumstances, they may be liable to arrest and imprisonment. It would be desirable from an enforcement point of view for the legislation to make clear exactly how far Parliament wishes to go in this and which types of conduct it wishes to criminalise.

As we said in our evidence, examples given to the committee such as emptying water over a woman feeding a child would already be covered by the common law crime of assault. Likewise, in circumstances where the conduct of the accused was serious enough to prove a charge of Breach of the Peace then again the common law would already suffice. It is only in relation to conduct beyond these circumstances which would not currently constitute a crime for which Parliament may wish to legislate.

The Bill currently only describes this conduct as "... to prevent or stop a person in charge of a child from feeding milk to that child in a public place or on licensed premises. " When considering conduct which is not currently criminal the words "prevent or stop" can be construed fairly subjectively, in that conduct which may stop or prevent a person in charge of a child feeding that child in certain circumstances may not do so if the person in charge of the child were of more robust determination.

In our original note we exampled circumstances where a woman could be prevented from breastfeeding out of embarrassment by someone simply watching her or by someone holding up some sort of screen to prevent embarrassment to her own husband or son. There are many other circumstances one can think of which currently amount to perfectly lawful conduct but which are capable of being construed as criminal by virtue of the proposed wording of the Bill: such as children or youths playing ballgames in a park too close to a mother who is breastfeeding.

Members of the public have a right to know what types of conduct will, for the first time, become criminal offences and it is only if this is clarified that effective enforcement by our members will succeed.

Within licensed premises it is likely that the circumstances will be a little clearer, but proprietors may try to circumvent the provisions of the Bill by simply refusing admission to all children less than two years of age.

The other question raised during the evidence session was the question of the age of the child to which the legislation would apply. We would confirm that, although this does not present an insurmountable problem, it is a factor which would have to be proved in court and which may not readily be available in evidence to a police officer at the time of an offence when the officer has to decide whether to charge or even arrest a possible offender who is refusing to desist.
There may also be a certain lack of logic when considering that a child of 1 year and 364 days would be covered by the legislation and another of 1 year and 365/6 days would not. We therefore, if offered a choice, would prefer that the age consideration were removed.

We trust this of assistance to you.

Yours sincerely,
Norman MacLeod,
Deputy General Secretary.
1 June 2004 (14th Meeting, Session 2 (2004)), Written Evidence

SUBMISSION BY SCOTTISH EXECUTIVE

I have attached an Executive Memorandum in response to the Breastfeeding Etc. (Scotland) Bill which was introduced by Elaine Smith MSP on 16 December 2003. I understand that the Parliamentary Bureau has assigned this Bill to your Committee for consideration.

The memorandum provides some background to, and sets out the Executive’s view on the Bill. It confirms that the Scottish Executive supports this Bill, in principle, but that there are a number of issues that would need to be resolved before it would be considered entirely acceptable. The reasons for this are described in detail in the attached Memorandum.

MALCOLM CHISHOLM

Memorandum by the Scottish Executive to the Health Committee of the Scottish Parliament

Purpose

1. This memorandum has been prepared by the Scottish Executive to assist consideration by the Health Committee of the Breastfeeding Etc. (Scotland) Bill. It sets out the Executive’s thoughts on the Bill, which was introduced on 16 December 2003.

Background

2. Breastfeeding gives a mother and her baby many advantages over formula feeding. The antibodies in breast milk protect infants from a wider range of infections and stimulate the baby’s fledging immune system. The nutritional quality of human breastmilk remains high regardless of the mother’s own diet.

3. Elaine Smith MSP has introduced a Bill to promote child health by making it an offence to prevent a child under the age of 2, who is permitted to be in a public place or licensed premises from being fed milk in that place or on those premises, and to impose certain duties on Scottish Ministers to encourage, support and promote breastfeeding.

4. Ms Smith made similar proposals in the first session of the Scottish Parliament and consulted widely at this time receiving 146 responses. The majority of responses agreed that society has a duty to support mothers and their children in relation to breastfeeding, that a legislative framework would encourage more women to try and continue breastfeeding, and that the Bill would provide clarity to role of the police in disputes. There were also strong, but fewer, views against the Bill including concern that the Bill may harden views against breastfeeding and make bottle-feeding parents feel inadequate. However, the wording of Ms Smith’s Bill, as introduced, remedies this by referring to a child being fed milk rather than being breastfed.

Discussion: Promotion and Support of Breastfeeding

5. Section 1 of the National Health Service (Scotland) Act 1978 already imposes a general duty on the Scottish Ministers to promote a comprehensive and integrated health care service designed to secure the improvement of the physical and mental health of the people of Scotland. In addition, the NHS Reform Bill contains a duty to promote health improvement; breastfeeding is one of the areas that would be covered by this. As such the Scottish Ministers already have the power to promote health improvement and with respect to breastfeeding are already doing so.
6. The Scottish Executive has a strong and long-term commitment to encourage and support breastfeeding as the best way of helping babies' healthy development, whilst recognising the need to support all new mothers in whatever means they choose to feed their child. This work is taken forward in 4 main ways:

- The National Breastfeeding Advisor who encourages, supports and audits NHS Boards in the development of Breastfeeding strategies.
- The Scottish Breastfeeding Group who work together to share information about and raise awareness of breastfeeding.
- The Breastfeeding Website which gives parents and practitioners access to a wide range of information including news, statistics, good practice and research.
- The work of NHS Health Scotland including the development of promotional materials, resources for parents, training materials for health professionals and supporting evidence based policy making through networking and research.

7. With respect to this we feel that Section 4 of the Breastfeeding Etc. (Scotland) Bill is not necessary. We would also question the message that the introduction of duties in relation to a specific health improving behaviour for a specific section of the population sends out in relation to other aspects of healthcare – ie are they less important?

Enforcement

8. Although the Scottish Executive is supportive of the aims of the Bill we feel there are a number of areas which need to be explored further. The Crown Office and Procurator Fiscal Service and the Association of Chief Police Officers in Scotland, have raised the following issues in relation to enforcement:

- Who the accused is?
- What is the definition of a public place?
- What is the definition of ‘prevents’?
- Are current provisions (Harassment / Breach of the Peace) sufficient?
- Who will enforce this legislation?
- Which witnesses will be required / how corroborated?

Financial Implications

9. As we do not know the extent of the problem which this Bill aims to resolve it is difficult to predict the impact upon the police and the courts. However given current birth-rates and breastfeeding rates in Scotland we would predict it would not be substantial. However, if the Bill is successfully passed, there will be a requirement to ensure that all employers affected by the Bill are informed of the new legislation so that they may take the appropriate steps to ensure compliance. Again it is difficult to assess at this stage how much this would cost.

Interested Parties

10. The Health Committee have now taken evidence from both the Association of Chief Police Officers in Scotland and from the License Trade Association. We will be interested to see the Committees conclusions from these sessions.

Conclusion

11. In line with existing commitments to encourage and support parents to feed their child by whatever means they choose, the Scottish Executive is supportive of the aim of the Breastfeeding Etc. (Scotland) Bill. However, in our deliberations of this Bill we recognise that there are significant issues to be resolved around enforcement and as such we have set out above the above the key issues the Health Committee will have to seek to resolve to the satisfaction of the relevant enforcement agencies. Unless these issues are resolved the Executive would be unable to support the terms of this Bill.

Scottish Executive Health Department
27 May 2004
Background

A healthy diet and lifestyle are key to improving the health of the Scottish people and it is becoming increasingly clear that healthy eating should start in infancy. Breastfeeding is the optimal method of infant feeding and has major health advantages for both mother and baby. The benefits of being breastfed have been shown to last into childhood and beyond. There are also considerable cost benefits to NHS Scotland from increased breastfeeding. The longitudinal Dundee infant feeding research, begun in the late 1980s, continues to track the young adults who were part of the original study. Most recent findings show that those babies who were breastfed in social class 5 were healthier than those who were bottle fed in social class 1. This finding demonstrates an impressive health gain for babies and children, born into deprived circumstances, if they are breastfed.

Government and NHS Support

The Scottish Executive has supported breastfeeding through various initiatives, policy statements and the setting of a national breastfeeding target for more than 50% of mothers to be still breastfeeding at 6 weeks of life by the year 2005. Clear messages about the value of breastfeeding and a willingness to work in partnership with others, have contributed to the increase in the initiation and duration of breastfeeding in Scotland in recent years. NHS Health Scotland is the premier organisation for health promotion in Scotland. In recent years, NHS Health Scotland has invested in breastfeeding resource development for mothers and families, health professionals and the first of the UK countries to invest in breastfeeding advertisements through the medium of television. Scotland is recognised throughout the UK and beyond as a country which has an innovative and effective approach to increasing and supporting breastfeeding.

Cultural Influences

Social and cultural attitudes are important influencing factors in the decision to breast or bottle feed. The media represents bottle feeding as normal, unproblematic and associated with ‘ordinary’ families whilst breastfeeding is represented as problematic, humorous and associated with middle class or celebrity mothers. It is true to say that the female breast is still represented as sexual as opposed to nurturing in function, a message confirmed by the British censors recent decision to remove the nipple from a visual of a baby breastfeeding from a European Union advertisement about choice in voting. No other European country objected to this image.

Human beings, like all mammals, were designed to breastfeed and to be breastfed. In humans, the process of lactation can be enhanced by a culture which values and supports breastfeeding. Although there is evidence that the Scottish people are becoming more positive in their attitudes towards breastfeeding, the experience of mothers themselves, does not always reflect this attitude change. Some women have had negative, embarrassing or frightening experiences when breastfeeding in public; many more state that they fear being challenged should they attempt to breastfeed in a public setting. Mothers who breastfeed and are from deprived communities often report disapproval of breastfeeding from their partners and families. The very mothers and babies who have most to gain from breastfeeding are more likely to be subject to disapproval in their own homes, on public transport and in public settings. Scotland’s 150 breastfeeding support groups and 11 peers support initiatives provide some social, emotional and practical support for these mothers. Confidence that they could safely breastfeed in public settings would be a further, welcome support.
Effects of Undermining the Hormonal Influence on Lactation

Confidence is key to successful breastfeeding. When breastfeeding mothers feel threatened, embarrassed or upset, the hormones which govern lactation are disrupted. Should a mother have a negative experience whilst breastfeeding in public the milk release mechanism can fail, the baby will cry as he cannot access more than a little breastmilk. The mother is less likely to attempt breastfeeding in public again. This fear of having to breastfeed outwith the home or other safe setting can be conditioned to such an extent that the milk release mechanism can become faulty at other times with a detrimental effect on the mother’s ability to breastfeed in the longer term. Mothers who choose to formula feed their babies also report difficulties with finding somewhere to feed their babies when they are in public settings. However their difficulties are much more likely to be of a practical and mechanical nature rather than the emotionally charged experiences reported by breastfeeding mothers.

Conclusion

Mothers who have most to gain in terms of their own and their baby’s health, are less likely to breastfeed because of their own deprived social circumstances. All barriers to successful breastfeeding should continue to be challenged. Public acceptance of breastfeeding as a nurturing maternal behaviour should be valued and welcomed by the Scottish people.

Jenny Warren
National Breastfeeding Adviser
May 27th 2004.

SUBMISSION BY THE HIGHLANDS AND ISLANDS RESEARCH INSTITUTE

I personally believe that bottle feeding mothers as well as breastfeeding mothers should be included, based on the evidence from the Office for National Statistics 2000 Infant Feeding Survey1, which reports that 39% of breastfeeding mothers and 21% of bottle feeding mothers in the UK had difficulty finding somewhere to feed their baby in public. What is of concern is that a smaller number of women in the 2000 survey (72%) had even attempted to feed (breast or bottle) their baby outside the home compared to the 1990 survey data (79%). It is reported that 8% of breastfeeding mothers do not feed in public places, however, this figure has decreased from 11% in 1995 and 17% in 1990, which would suggest that the situation is improving and that there is an increasing readiness over the last decade for breastfeeding mothers to breastfeed in public places. However the converse if not true for bottle feeding mothers. In 2000 35% of bottle feeders do not feed in public places, compared to 26% in 1995 and 24% in 1990. These figures are for the UK as a whole. It would be of great interest to examine the figures for Scotland to see how they compare with the UK and these data should be available from the Office for National Statistics. I believe that these figures demonstrate the inadequacy of public facilities in catering for early life nutrition and this in turn results in low levels of maternal confidence when outside the home with their young babies.

In Banff and Buchan, we have conducted an action research study to implement peer coaching for breastfeeding both through breastfeeding groups and one-to-one peer support. This study was funded by Grampian Primary Care Trust and the Scottish Executive Health Department. The study was designed to increase women’s experiential learning about breastfeeding and particularly aimed to introduce pregnant women to breastfeeding mothers to share experiences. As part of the study we conducted a 15 question survey on women’s views about the last occasion when they had seen a woman breastfeeding. We also recorded details about who they knew and had seen breastfeeding, how often and how recently. Data entry is currently in progress. We also conducted 20 in depth semi-structured interviews with women who initiated breastfeeding and participated in the coaching programme. We observed several breastfeeding groups in operation. From an interim analysis of 232 pregnant women who responded to the survey, it appears that the majority of women report not feeling embarrassed or disgusted seeing a mother and baby breastfeeding and the majority of women find it acceptable and appropriate. However, the interview data from breastfeeding mothers suggest that many women feel embarrassed when breastfeeding in public. For some women the definition of “public” can mean their own living room, where friends, family or
neighbours pop in or visit. Women describe how breastfeeding groups play an important role in building up their confidence to breastfeed in front of others. They share experiences, discuss comments made by others and which clothes are easiest to wear to enable discrete breastfeeding. They describe learning how to breastfeed with others present by breastfeeding firstly at the woman-only group. This then builds their confidence to try breastfeeding in front of other people.

We heard some reports of negative comments made by others to women when they breastfed their baby in a public place. We heard a few stories from women who were asked to leave café’s, restaurants or shops when they started to breastfeed their baby. Some reported that the only private facilities available for feeding their baby were toilets. A few women expressed a view that somewhere with guaranteed privacy, like a personal dressing room in a department store, was important for them. A few women preferred the guaranteed privacy of a toilet with a lockable door to a more communal area, where someone unknown could enter. Some women described how they would prefer to breastfeed their baby in a car in the super-market car park rather than breastfeed in a communal baby changing area in a supermarket or large store. There was a strongly expressed view by many that breastfeeding should be discrete. It was seen as a private time between mother and baby which became stressful if and when a mother did not have any control over the other people present.

In Banff and Buchan, which is a rural area of Scotland, women felt that there was no-where they could go to feed their babies. Some of the towns had “out-of-town” supermarkets with baby changing areas, however many women did not have access to their own transport during weekdays and did not feel these facilities were meeting their needs on a day to day basis. They described a lack of facilities in town centres, where they were likely to go more regularly.

To address this, we compiled a list of places in Banff and Buchan where breastfeeding is welcomed and the type of facilities on offer. This leaflet was put in a breastfeeding pack and given to interested women during pregnancy or after birth. When we evaluated the breastfeeding pack, this leaflet was very popular with women. As a result, NHS Grampian has produced a booklet for the whole of Grampian, with detail about whether breastfeeding can take place in a public area, a specific area or a private area and whether changing facilities are provided.

Earlier qualitative research which I undertook with women who left full time education <18 years, suggests that making breastfeeding more visible in our society is likely to influence women’s decisions more than just reading about it or hearing about it from health professionals. Women’s level of confidence in their ability to breastfeed and their commitment to breastfeeding was often related to who they knew who had breastfed and who they had seen breastfeeding. A hypothesis arising from this study suggested that breastfeeding rates might improve if breastfeeding was more visible and seen as part of normal everyday life, rather than something happening largely behind closed doors.

Dr Pat Hoddinott

Reference


SUBMISSION BY DUNDEE CITY COUNCIL

In response to your correspondence regarding the above, I write to confirm that Dundee City Council broadly supports this Bill in principle. In fact the current Dundee Joint Health Improvement highlights the priority of increasing the level of breastfeeding in new mothers.

Nevertheless I would highlight one area of concern regarding the proposed Bill. A large number of licensed premises also allow smoking within their confines. In these circumstances breastfeeding infants would be exposed to environmental tobacco smoke.
This is an area of particular interest locally as Dundee City Council Licensing Board recently introduced a ‘no smoking’ condition attracted to the granting of Children’s Certificates to licensed premises in September 2003.

I trust you will find these comments constructive.

Alex Stephen  
Dundee City Council

SUBMISSION BY CITY OF EDINBURGH COUNCIL

This note sets out the position of the Council in relation to breastfeeding and is submitted to the Parliament’s Health Committee. The Council’s experience may be of some benefit to the Committee in considering the Breastfeeding etc. (Scotland) Bill.

The Council has had breastfeeding policies in place since its inception. These cover both members of the public and staff returning from maternity leave.

The former Edinburgh District Council had a breastfeeding policy in operation covering breastfeeding in Council venues. This was adopted by the City Council and extended to all City Council premises. In terms of both staff and public, the policies have given rise to no known difficulties. There has been no instance of a staff grievance arising as a result of the breastfeeding policy and there is only one recorded complaint, from some years ago, from a member of the public who objected to a mother breastfeeding in a library.

Employees

The policy for employees, which has been in operation since 1997, is that mothers who wish to breastfeed on their return to work will be supported wherever practicable. Mothers may have paid time off and access to a private room/area to express milk and to a refrigerator to store milk. Additionally, mothers who wish to breastfeed their baby in a location close to their workplace may have unpaid time off for this purpose.

Members of the Public

Mothers who wish to breastfeed on Council premises, including libraries and public offices, are free to do so. Wherever possible, a chair and a private or semi-private area is provided. Where a third party is responsible for managing premises, such as management committees for community education centres, the third party is requested to support the Council’s breastfeeding policy. To date there has been no known difficulty with this.

The Council’s experience would seem to confirm that the objectives of the Breastfeeding etc. (Scotland) Bill are not only desirable but wholly achievable and should be supported.

Ellen Kelly  
Equalities Manager

SUBMISSION BY FIFE COUNCIL

• Do you support the general principles of the Bill and the key provision it sets out?

Fife Council welcomes the Bill in that it supports its Community Planning milestone of ‘improving the health of mothers and babies’ and its underlying target to increase breastfeeding.
The content of the Bill supports the work of Fife Breastfeeding Forum to introduce a directory of Breastfeeding/Baby Friendly premises, which we are hoping to extend to include more Council premises and public places.

It also endorses the work NHS Fife has done in implementing its Employee Breastfeeding Policy, which Fife Council is now in the process of developing and adopting through its Human Resources Policy Board.

We also welcome the fact that the Bill is inclusive of all people in charge of a child.

• Are there any omissions from the Bill that you would like to see added.

The Bill seems to be a positive foundation for local work to build on.

However there is no explanation/definition of 'deliberately preventing or stopping a person in charge of a child from feeding milk to that child'.

For example a premise could overtly welcome feeding, whilst making the environment un-user friendly eg by having the facility to do so in a smoking area, or in a toilet.

It would seem that the Bill would still enable premises to indirectly discriminate against people who want to feed their baby.

• What are your views on the quality of consultation, and the implementation of key concerns?

Not aware of what consultation has occurred prior to the call for written evidence.

• Have you any comments of the practical implications of putting the provisions in place and the consideration of alternative approaches?

The Bill will support current ongoing work around breastfeeding. However the level of breastfeeding is bound up with other key determinants of health and other work needs to continue to support those mothers least likely to breastfeed.

The Joint Health Improvement Plan in Fife recognises this through targeting breastfeeding support within regeneration areas and at young mothers. The dissemination of information, and promoting and encouraging breastfeeding, is of course helpful, but is unlikely to narrow the gap between breastfeeding rates within more affluent and most disadvantaged communities.

Therefore there needs to be recognition of alternative approaches such as work by midwives, health visitors and public health nurses; breastfeeding peer support worker projects; direct work in schools and cross-generational work with family members - all of which are resource intensive.

It would be useful to have public information about the Bill, at the relevant time, to encourage premises to take action to make their premises baby-friendly.

Vivienne Brown
Health Improvement Adviser
Abstract
This report details a proposed preliminary response from Perth and Kinross Council to the proposed Breastfeeding (Scotland) Bill.

1. Recommendations
1.1 It is recommended that the Social Justice Member Officer Group express broad support for the proposals as outlined in the consultation document (attached) and await with interest further details to follow in the final bill.

2. Introduction
2.1 It is well evidenced that, whenever possible, breastfeeding is the best way to feed a baby. It confers health advantages beyond infancy, into childhood and possible adult life, as well as having a positive influence on the future wellbeing of breastfeeding mothers.

2.2 In Scottish society, women who have the greatest health and social deficits are least likely to choose to breastfeed and site embarrassment as a major factor. They are more likely to depend on public transport and lack the confidence to breastfeed in public.

2.3 It is not currently illegal to request that a breastfeeding mother and baby leave public places or licensed premises and on occasion, breastfeeding mothers and babies are sometimes asked to feed in a toilet or other similarly unsuitable place.

2.4 There is some evidence to the claim that changes in law are often required in order to effect long term changes in public attitude e.g. the wearing of seat belts and part V of the Disability Discrimination Act 1995, which created a level 4 offence for failing to comply with public transport access requirements for disabled people.

3. Background
3.1 On June 10th 2002 the “Proposal for a bill to make it an offence to prevent a mother from breastfeeding her baby in any public place, or licensed premises where children are otherwise permitted and to make provision for criminal penalties” was outlined in the Scottish Parliament’s Business Bulletin.

3.2 If the bill proposal is enacted, the bill will validate the right of every child to be breastfed in public within Scottish law.

3.3 The proposal will be lodged in the forthcoming session for the Parliament’s consideration. A period of public and corporate consultation is currently being carried out in order to obtain a comprehensive overview of the attitudes towards this proposal.

4. Support for the Proposed Bill
4.1 There is a high level of cross-party MSP support for the proposal and a multi agency steering group has been established to guide the bill through Parliament.

4.2 It is suggested that whilst Perth and Kinross Council may support the ethos underpinning the proposed bill, sight of more detailed proposals would be required in order to make a final judgement. This will allow any possible implications for council services to be explored in full. It is however suggested that the Social Justice Member Officer Group express their support, in principle, for the ethos behind the proposed bill.
Health Committee, 14th Report, 2004 (Session 2) - ANNEX C

5. Conclusions

5.1 Perth and Kinross Council recognise the health benefits of breastfeeding for both children and mothers and therefore accept the need to make breastfeeding as easy an option as possible for all mothers.

6. Consultation

6.1 All Council Services have been consulted in the preparation of this report.

7. Financial Implications

7.1 There are no financial implications arising from this report.

Bernadette Malone
Head of Performance Planning and Management

SUBMISSION BY ELAINE SMITH MSP

The Breastfeeding etc. (Scotland) Bill is to ensure that breast and bottle-feeding mothers and babies are given equal and unimpeded access to public services and spaces, where children are entitled to be and to encourage and make provision in relation to the promotion of breastfeeding.

This Bill is about supporting, protecting and empowering infants, their mothers and carers in the feeding choices made. The bill does not dictate to parents how to feed their children. It supports the choices made, including bottle-feeding, since it is child-centred in its approach.

This bill is about assisting a change in cultural attitudes towards a more child-friendly approach and to be more tolerant of breastfeeding. This Bill does not purport to be a panacea for increasing breastfeeding rates in Scotland. It must be viewed in the context of a multi-faceted approach, which includes support, promotion and legislative protection.

This bill is about removing the anomaly whereby Government, the health sector and other organisations encourage breastfeeding by setting targets and advertising to promote the “breast is best” message yet tacitly allow segregation and harassment of infants and their mothers in public places. It is not about undue influence by Government since it seeks to support choices made which may have been influenced by government action.

This bill is about a wide range of public places and public services. This bill is not about cafes and restaurants. Whilst it is no doubt nice for some parents to access such facilities for lunch or coffee, it is imperative for most parents to access their GP practice, the rent office, the local bus service, the health clinic, the dentist, the job centre, the school etc.

This bill is about providing a deterrent to foster a change in public attitudes. This bill is not about prosecuting public authorities, businesses and individuals. Evidence suggests that prosecutions would be minimal. There is historical precedence for using legislation to effect a change in prevailing cultural attitudes. The fines, which are an established way of giving teeth to criminal legislation, will not be used unless the law is broken.

This Bill is about the Scottish Parliament leading the way in the UK. This bill is not about an unnecessary piece of legislation since evidence shows that preventing and stopping breastfeeding happens to many infants and their mothers. The health benefits of supporting and promoting breastfeeding are well documented. If Parliament does not enact the Bill then this could be seen to be sending a message out that every mother who has submitted evidence of segregation and harassment in public places can suffer such degradation and humiliation with no attempt by their elected members to use their powers to put a stop to such treatment.
This Bill is about sending a powerful message that our Scottish legislature bestows an official blessing on breastfeeding and will no longer tolerate the distasteful practice of preventing, stopping or segregating breastfeeding infants and their mothers in public places and whilst using vital public services. This Bill is about our fledgling parliament showing vision and leadership.

“Ministers [had written] to Lothian Regional Transport, as it was then, but under current laws [they did] not have powers to enforce anything on a bus company in that regard” Malcolm Chisolm MSP, minister for health

“I am determined that where we can take action to strengthen the legal framework in favour of our children, we will take such action” Jack McConnell MSP, First Minister.

The principal aims of the Bill are:

- To ensure that breast and bottle-feeding mothers and babies are given equal and unimpeded access to public services and spaces, where children are entitled to be.
- To encourage and make provision in relation to the promotion of breastfeeding.

1.1 In 1943, a Ministry of Health report on breastfeeding expressed concern that only 80% of hospital-born babies were breastfed, compared to 95% of home-born babies. More than half a century later, and despite an overwhelming increase in scientific evidence confirming the resultant health benefits, only approximately 50% of children in Scotland are now breastfed at six days old, falling to 40% at six weeks.

1.2 Coatbridge, the main town within my constituency has, historically, had some of the lowest breastfeeding rates in Scotland. Guthrie Statistics indicate that from 1990 until its closure in 2001 the main maternity hospital serving Coatbridge: Bellshill Maternity, consistently recorded the lowest percentage of breastfeeding mothers in Scotland.

In recent years, indicators have pointed towards some signs of tentative progress, however, breastfeeding rates in Coatbridge continue to remain as low as 18% of infants breastfed at six weeks. Research does appear to suggest that expectant mothers understand the health benefits. Therefore it must be assumed that there are other factors involved in the low incidence of breastfeeding in Scotland.

1.3 One of these factors is a societal attitude, which favours formula feeding as the cultural norm. Changing public perception takes time and, as has been found in the past, often requires legislation to assist such change (e.g. seatbelt law). This bill proposal is a simple measure, principally involved with protecting and promoting breastfeeding, which is likely, over time, to help change public attitudes. The Association of Chief Police Officers representative at the Health Committee agreed that this approach is not uncommon when he said, “It is perfectly legitimate to create a criminal offence as part of a strategy to change attitudes.”

1.4 There is currently an anomaly in Scotland whereby government, the health sector and other agencies are promoting the “breast is best” message yet, at the same time government is failing to address the extent to which the prevalent culture in our country undermines the health argument.

One example where the influence of culture on breastfeeding is acknowledged can be found in the Innocenti Declaration (to which the UK is a signatory), which urges governments to reinforce a breastfeeding culture and remove the “constraints and influences that manipulate perceptions and behaviour towards breastfeeding, often by subtle and indirect means”.

A report which evaluated activity by HEBS aimed at promoting breastfeeding concluded that: “the most effective method of promoting breastfeeding is to encourage a culture of acceptance of breastfeeding aimed at getting breastfeeding accepted outside the home, targeted at the whole population.”
1.5 Following my Private Members debate of May 2001, where I raised the issue of a mother who was put off a bus in Edinburgh for breastfeeding, and was informed by Malcolm Chisholm that “Ministers [had written] to Lothian Regional Transport, as it was then, but under current laws [they did] not have powers to enforce anything on a bus company in that regard”, I decided to investigate the possibility of introducing measures which would ensure greater protection for mothers and babies whilst feeding.

1.6 In 2002, I set up a consultative Steering Group to examine the possibility of a Private Members Bill, which would seek to take measures, over and above those already being progressed by the health sector, to attempt to redress the balance between bottle-feeding and breast-feeding in Scotland.

Membership of the Steering Group comprised local and national health sector representatives, national and international charities, trade unions, local authority representatives, poverty campaigners, consumer representatives and a former Strathclyde Police officer. Since its inception in 2002 the group has informed every aspect of the Bill’s progress and has been responsible for determining the principal aims of The Breastfeeding etc. (Scotland) Bill. Mike Dailly of the Govan Law Centre drafted the bill.

1.7 This bill is child-centred and therefore includes all forms of infant feeding of milk. However, it does focus on breastfeeding on account of that being the practice that most frequently presents problems for mothers attempting to feed infants in public. It also provides powers for promotion since the current situation results in differing levels of service provision across Scotland and requires a more strategic approach.

Protection

2.1 There are clearly a number of possible reasons for the falling rates of breastfeeding over the last half century. The rise in the numbers of women returning to paid employment, the widespread promotion of formula milk and the prevalent sexualisation of women's breasts, are just some of the factors which could be contributed to the general move away from breastfeeding as a cultural norm.

2.2 An example of how breastfeeding is viewed in Britain at present can be seen in the recent decision of the Cinema Advertising Association to edit a promotional film encouraging people to vote in the European elections which has an opening shot of a baby breast-feeding. The advert begins screening in cinemas around the country next Friday, but has been changed from the original for British viewing.

SPICE confirmed for me that the CAA has taken the decision that for the film to go on general release they could not show a “full screen side view shot of a breast with an erect nipple”. The reason given to SPICE was that the CAA felt that it would have required a certificate and then be shown alongside appropriate films. Such certificates are usually reserved for films with scenes of nudity and/or scenes of a sexual nature. It would appear then, that even in this context, breasts are viewed in a sexual way in Britain, since that would seem to be the reason for the decision that the original footage, to be shown elsewhere in Europe, required a certificate for British audiences.

2.3 A further example of cultural attitudes can be shown by an excerpt from an email communication sent to me recently, which amongst other things, stated that; “I recently learnt of your Private Members Bill on Breastfeeding Mums and must strongly agree that such women should be "shamed and embarrassed" whilst frequenting public areas. Although I support breastfeeding in the first instance there are simply times and places for these needs to be carried out and some women simply fail to know where and when these are. Such women are most inconsiderate, or are there merely exhibitionists seeking attention. Either way they tend to be a certain class of poor upbringing and low standards who insist in breastfeeding in public. Have these women no shame?” Many other examples of such attitudes can be found in my original consultation, which I believe the Committee has access to.
2.4 Factors such as embarrassment and or apprehension about breastfeeding in public do also appear to impact upon women’s feeding choices. A survey published by the Department of Health in May this year showed that 67% of women believe that the general public find breastfeeding unacceptable, whilst 87% of people questioned thought it was fine for mothers to breastfeed their babies discreetly in public in front of others. The use of the word “discreetly” in this survey is noteworthy. From this data it is possible to conclude then that the 13% of the population who do find breastfeeding in public unacceptable clearly have a disproportionate influence on mothers choices.

2.5 There are a number of examples of breastfeeding mothers and babies being asked to leave premises or being made to feel uncomfortable whilst feeding. The woman put off a bus in Edinburgh, the mother in England who had dirty water thrown over her and the mother and baby subjected to the embarrassment of a public announcement in a Glasgow shopping mall requesting their relocation to a baby changing room, provide just a snapshot of some of the extreme attitudes which exist.

Some of the more recent examples of women who have contacted me regarding their experiences include mothers who have encountered resistance in city centre shops, as well, as in dental and doctor’s surgeries. Whilst admittedly anecdotal, in that it has not as yet been collated and subjected to empirical research, this evidence remains to be a true representation of some women’s experiences in Scotland and for this reason cannot, and should not be dismissed.

Rosemary Dodds, NCT also reported in evidence to the committee on May 11th 2004 that; “I deal with a slow but steady stream of concerned women who have been asked to leave premises.” No doubt such calls provide a snapshot of what is going on and are likely to represent a small proportion of all such incidents, many of which will remain unreported to anyone.

2.6 Such evidence highlights the fact that within our society breastfeeding is all too often viewed in contentious terms. Breastfeeding mothers are commonly subjected to practices which fall little short of segregation; being asked to leave premises or being excluded from everyday life by the expectation that they should feed their children at home, in rooms set aside or in toilets. If women cannot feed in public without fear of such attitudes and behaviour then they are left with these impractical and unacceptable locations for feeding due to the nature of breastfeeding on demand. This can then make bottle-feeding appear to be a more convenient and appealing option.

Whilst it would be widely considered deplorable to ask someone to leave a public place on account of a factor such as disability or race, as a society we continue to view the segregation or exclusion of breastfeeding mothers and babies as acceptable if we fail to take action.

2.7 For many mothers such enforced segregation can be hugely dispiriting and can induce feelings of embarrassment, vulnerability and even shame. Discouraging looks and negative remarks are also common and can, due to the nature of the letdown reflex, affect a mothers’ physical ability to feed. As a result, the decision to feed children formula milk is often influenced by prevailing social and cultural attitudes and embarrassment is commonly cited as a major factor for choosing not to breastfeed.

For those who do choose to breastfeed, negative experiences and attitudes can lead to a cycle of feeding in private which can then reinforce the belief that it is something which should only take place in private. If breastfeeding remains a largely invisible activity in our society then there will be no benefit from the positive influence on the feeding choices of future mothers of seeing women breastfeed as a normal, everyday practice.

Promotion

3.1 The provisions imposed by section 4 of the bill, namely introducing section 38A to the National Health Service (Scotland) Act 1978 (c.29), are proposed with the intention of complementing and enhancing both the current and future work of the Scottish Executive in the area of breastfeeding promotion and support. It allows for the Scottish Executive to promote breastfeeding in a standardised way across Scotland.
3.2 The extent and quality of the medical research that exists in support of Breastfeeding certainly puts forward an impressive and persuasive case for the practice and the potential recompense for wider society of governmental promotion.

3.3 Epidemiological research indicates that breastfeeding confers advantages for the general health, growth, and development of children, whilst at the same time significantly decreasing the risk of a large number of acute and chronic diseases. Research in the United States, Canada, Europe, and other western countries provides strong evidence that human milk feeding decreases the incidence and/or severity of huge number of conditions such as diarrhea, lower respiratory infection, bacterial meningitis, urinary tract infection, and necrotizing enterocolitis. There are also a number of studies that highlight the possible protective effect of human milk feeding against sudden infant death syndrome, insulin-dependent diabetes mellitus, Crohn’s disease, ulcerative colitis, lymphoma, allergic diseases, and other chronic digestive diseases. Breastfeeding has also been related to possible enhancement of cognitive development.

3.4 A number of studies also indicate health benefits for mothers. It has been acknowledged that breastfeeding increases levels of oxytocin, resulting in less postpartum bleeding and a more rapid return to pre-pregnancy health and weight. Research also demonstrates that lactating women display a more delayed resumption of ovulation resulting in increased child spacing, whilst also benefiting from improved bone remineralization and a reduction in hip fractures in the postmenopausal period, as well as a reduced risk of ovarian cancer and premenopausal breast cancer.

3.5 Given the proven health benefits, which confer advantages beyond infancy, into childhood and possibly adult life, the issue of breastfeeding undoubtedly takes on an increased resonance when viewed in terms of the social justice agenda. An estimated 30% of Scottish children live in poverty, with all the associated health inequalities. The importance of encouraging breastfeeding as an integral part of a wider strategy to tackle the effects of poverty, bad diet and social exclusion must be recognised, not only by government but also by wider Scottish society.

3.6 From research, one factor that is clear is the correlation between areas of higher deprivation and poverty and low rates of breastfeeding. Research in 1994 showed that breastfeeding rates varied between postcode zones in Glasgow, ranging from around 9% in more deprived areas to 75% in more affluent areas. The lowest breastfeeding rates have also been shown to correlate with younger mothers, lower socio-economic status and early withdrawal from formal education.

3.7 Jenny Warren, the National Breastfeeding Advisor, in her comments for the bill proposal consultation paper makes the following observations: “... many women give up breastfeeding during the early weeks and at six weeks following birth, 90% of women who had stopped breastfeeding said they had given up before they wanted to. This reflects a variety of negative influences including the difficulty of identifying somewhere to feed out with the home. Breastfeeding women are significantly more likely to experience this problem than bottle-feeding mothers.”

“Women who are older, affluent, in full-time education beyond the age of 18 years and do not smoke are more likely to breastfeed (Hamlyn, et al, 2002). The mothers who have most to gain in terms of their own and their babies’ health, namely the young, poor and least educated, are least likely to breastfeed.”

“Women in Scottish society who have the greatest health and social deficits are least likely to choose to breastfeed and cite embarrassment as a major factor (Hamlyn B et al 2002). They are more likely to be dependant on public transport and lack the confidence to breastfeed in public. Such barriers could be avoided by an increased public acceptance of breastfeeding as a loving and nurturing maternal behaviour.”

3.8 Breastfeeding mothers are in the minority in Scotland and it is often viewed as a practice reserved for middle-class or celebrity mothers, a view perpetrated by media portrayals of bottle-feeding as the norm. Given the importance of breastfeeding for the future health of our nation, alongside other healthy diet and lifestyle initiatives being encouraged by the Scottish Executive, it
is entirely appropriate that they promote breastfeeding as an integral part of government policy and practice in the pursuance of a healthier nation.

Legislation

4.1 A number of possible vehicles for such a measure to protect breastfeeding mothers and babies were initially considered by the steering group, including a change in civil law or alternatively the creation of a statutory obligation. However these were considered inappropriate for a number of reasons.

Firstly, should any such measure involve a change in civil law, the onus would rest firmly upon mothers to engage in civil action; thus having to endure the associated costs, time and effort involved in such cases.

Secondly, with regard to the suggestion of using licensing law to support breastfeeding, it was considered imperative that any proposed measures provide adequate protection for mothers and babies whilst accessing public services. Many public places do not require a license and the Bill is concerned with all public places where a child under the age of two is permitted.

In addition, as licensing law is a matter for local government, this route would not necessarily deliver a standard system across the country. Hence the decision was taken to seek a solution via criminal legislation.

4.2 The legislation would apply to infants under 2 years of age. For older children, the status quo would prevail in that it would not be illegal to nurse them in public.

This age was arrived at after debate and discussion at the Steering Group. It is based on the WHO recommendation that children be breastfed to 2 years and beyond. Given that WHO stated an age, and given that the bill is about protecting infants who need to be fed when they are hungry or thirsty, it seemed to be a logical cut-off point for legislative purposes.

The police would, of course, have to apply their discretion in any situation whereby feeding in public was being challenged but no prosecution could follow if the child was over 2 years. Such situations are reasonably common, for example with regard to under age consumption of alcohol or purchase of cigarettes.

Concern has been expressed that if an age limit is put on this legislation then the feeding of children over 2 years may be frowned upon. However, in enacting legislation to protect and promote breastfeeding, the subsequent change in cultural attitudes to the rights of children in this regard would be likely over time to make all breastfeeding in public more acceptable as normal, nurturing maternal behaviour.

4.3 It is not envisaged that this legislation will result in many prosecutions since the main aim of imposing a criminal sanction is to act as a deterrent. Indeed, in evidence to the committee the representative from ACPOS appeared to concur when he said;

“My view is that it would be good law in that it would be symbolic, it would reinforce the aims of the bill and it would exist as a threat. Sometimes people need a threat so that they change their attitudes and behaviour. In support of the bill, I say simply—this echoes the financial memorandum—that I anticipate that prosecutions would be few in number.” (Deputy Chief Constable Mellor)

4.4 The fines attached to the bill are based on those currently existing in disability legislation and up to a maximum of level 4 on the standard scale. Criminal legislation without any sanctions would be most unusual. Of course, only those who persist in preventing or stopping breastfeeding in a public place or licensed premises where the child is permitted to be and are found guilty on summary conviction will be liable to pay a fine if this legislation is enacted.
4.5 Whilst this bill would be a first for Britain, many other countries have enacted legislation to protect breastfeeding in public and to promote the benefits of breastfeeding. This includes many state legislatures in the U.S.A.

A variety of approaches have been taken, however, some states have adopted a stance similar to this bill. For example, in Minnesota the state legislature passed a law in April 1998 which provides that “A mother may breastfeed in any location, public or private, where the mother and child are otherwise authorized to be, irrespective of whether the nipple of the mother’s breast is uncovered during or incidental to the breastfeeding.”

4.6 I believe that strengthening legislation with regard to the rights of breastfed children is a step that should be taken in Scotland. It would help us to meet our duties under the UN Convention on the Rights of the Child and would allow us to respond in a pro-active and positive manner to the World Health Organisation’s call for governments to adopt imaginative national policies and strategies to support breastfeeding throughout society.

If we accept that “breast is best” then it seems reasonable to commit to providing legal protection for children being fed in this way whilst in public.

Conclusion

5.1 Changing the law should not be undertaken lightly by a responsible Parliament. However, as previously outlined, it is sometimes irresponsible not to change the law when it can help to effect major social and cultural benefit. Indeed, the First Minister speaking on 30th May 2002 said “I am determined that where we can take action to strengthen the legal framework in favour of our children, we will take such action”.

5.2 Of course a change in law will not immediately effect a change in attitude, however, I believe that, given the luxury of time, this legislation would be successful in achieving such sea change. In the meantime, by legislating on this issue, Scottish society would make an explicit commitment toward breastfeeding mothers and babies; send out a strong message that Scotland supports breastfeeding and will not tolerate the exclusion, segregation and harassment of mothers and babies that currently is legally permitted. It would bestow an official blessing on breastfeeding and would demonstrate vision and leadership.

A mother, Shelley Joffre, in the Sunday Herald on 23rd May highlighted the need for legislation when she said, “The simple fact is, if you can’t do it in public, then you face weeks of living under house arrest”

5.3 Importantly, whilst this legislation is primarily aimed at protecting and promoting breastfeeding it also protects all infant feeding of milk in public places to ensure no difference is made and to support parental choice in methods of feeding. It aims to level the playing field to make it every bit as easy to breastfeed your child in public as it currently is to bottle-feed whilst accessing vital public services.

5.4 Clearly, given the low figures and a target of 50% at 6 weeks by 2005, the “breast is best” message is not impacting sufficiently despite copious evidence of the benefits of breastfeeding and the efforts of the Scottish Executive. This legislation would form an integral part of a multi-faceted approach to promoting and protecting breastfeeding and would serve to complement other Executive initiatives to improve the health of our nation.

Elaine Smith MSP
Submission to the Health Committee
1st June 2004
The Breastfeeding etc. (Scotland) Bill
Key Quotes from Qualitative Studies

Alison: “The actual action of doing it wouldn’t bother me at all. I would feel embarrassed in front of his family. I would. Say I was in the middle of town and you get those mothers that formula feed their babies, or even breastfeed them, I just couldn’t breastfeed a baby in the middle of town. (21 unemployed formula feeder) (Earle 2002)

Rebecca: I wouldn’t do it in public, I just couldn’t get my body out anywhere for anybody. Its more private, isn’t it? (age 23 assistant buyer formula feeding) (Earle 2002)

Linda: I just didn’t fancy the idea of breastfeeding, the inconvenience of it really... I just couldn’t breastfeed in front of anybody, no way, some people can, but I don’t think I could. It was that that made my mind up. (age 28 financial administrator formula feeding) (Earle 2002)

Kelly: Well I couldn’t do it in public like some people, you know some people don’t have a problem.... I’d just feel uncomfortable I think. Its the way society looks at it as well, the way people see things like that. They’d think it was wrong I think. A lot of people think you should do that sort of thing in private (age 24 laboratory assistant formula feeding) (Earle 2002)

Charmaine I have thought about it a lot.... I always get the impression that they are permanently latched there. I want to get out and about and do things (age 23 admin. assistant formula feeding) (Earle 2002)

Linda: About 18 months ago my sister in law had a baby and she was feeding all the time. She was always up in the bedroom feeding to me it was as if she lost her identity, she was this baby’s feeding machine (28 financial administrator formula feeding) (Earle 2002)

“I would take the pump out with me and express in the toilets, and that's not very nice”. (Scott et al 2003)

“ It got to the stage I was put off visiting them. I got to the stage that I would express milk and if I was ever in that situation I could give a bottle.” (Scott et al 2003)

“ No more! I spent most of the time sitting in my home and I thought no, I’m not doing it. Breastfeeding my child, there’s absolutely nothing filthy about it. It’s everyone else that has the problem with it. I’m not going round flashing it around, it’s all done as very discretely as possible. The more people see it the more natural it is. (Scott et al 2003)

It wasn’t till a good few months, 4 months. I was at the shops and she needed a feed. I thought “oh no” You know you are sweating. “What am I going to do?” But I did sit in a corner. That was the first time I fed outside. Well you can’t see anything you are hidden its just…” (Scott et al 2003)

At the beginning I found it embarrassing but I’ve got over that stage. I’ve had to. Glaswegian’s are so old fashioned. They are behind the times. (Scott et al 2003)

Summary

The following report is based on a short desk based review of existing literature on attitudes and experience of breastfeeding by women and the role of public policy and legislation in its promotion.

- Contact with women who have successfully breastfed increases women’s chances of breastfeeding their own infants.
- “The low level of prior exposure to breastfeeding is a major contributing factor to the low uptake, and the early cessation of breastfeeding among Glaswegian women.”

- Infant feeding choices are made before conception.

- There are people who feel very strongly that breastfeeding in public is disgusting and do not want to see it.

- Women are unsure about breastfeeding in public and this affects their infant feeding choices.

- Breastfeeding mothers restrict their movements because of difficulties feeding in public.

- Media coverage of infant feeding rarely shows breastfeeding and when it is shown it is problematic or funny and by middle-class or celebrity mothers.

- Low breastfeeding rates cost a great deal of money: England and Wales would save £500 000 for every one percent increase in breastfeeding on gastro-enteritis treatment alone.

**Brief**

Elaine Smith MSP introduced a private members bill to the Scottish Parliament on 16th December 2003. The aim of the Bill was to protect the rights of children to be fed milk in public places where they are otherwise allowed to be present. The aim of the research is to identify recent publications on the (non-health) issues that affect women’s choices on infant feeding regimes and provide a written briefing covering the key findings. The briefing will inform the passage of the Bill through stage one of the parliamentary process. Funding for this project was provided by Unison.

**Methodology**

The research took the form of a desk-based review of current literature on women’s perceptions of breastfeeding, non-nutritional factors affecting their choice of infant feeding regime and the role of public policy in changing practice.

**Introduction**

Breastfeeding provides a wide range of health benefits for both mother and child. These health benefits are not in dispute. The World Health Organisation (WHO) recommends that wherever possible infants should be fed exclusively on breast milk from birth to 6 months old. (WHO 2002). Increasing breastfeeding rates, particularly in low income communities, is identified by the Health Development Agency as a way of “assisting improvements in health as well as the reduction of health inequalities among mothers and children in the UK” (Health Development Agency 2003).

The Scottish Executive has identified increasing breastfeeding rates as an objective in the Social Justice Strategy (2002 Scottish Executive). Breastfeeding rates have increased by three percent in the UK since 1995. In Scotland the increase is higher at eight percent. Scotland is the only part of the UK to record an increase beyond birth and now has the UK’s highest breastfeeding rate at all ages beyond four months. Significantly Scotland has also seen a rise of seven percent in breastfeeding initiation in social class five. (Unicef 2002). While this is good news nine out of ten women who gave up breastfeeding in the first six weeks said that they did so before they wanted to. Support is therefore vital not just for women to initiate breastfeeding at birth but also to maintain it.

The Bill aims to clarify the position for women feeding their children and to support their feeding choices.
Is the reaction of others to breastfeeding in public affecting women’s feeding choices?

There is evidence that public breastfeeding is not popular:

Research with teenagers in Northern Ireland (Greene J et al 2003) shows that 63% of teenagers think that breastfeeding should be banned in public. Ruwei L et al (2002) found that in the United States of America 27% of people thought breastfeeding in public was embarrassing.

Research indicates that these attitudes to impact on women's infant feeding choices:Ellen McIntyre (1998) found that embarrassment and unacceptability of breastfeeding in public was a key determinant influencing infant feeding in Australia.

Scott et al (2003) found that

“virtually all the women interviewed in our study were embarrassed with the prospect of breastfeeding in public and often went to great lengths to avoid having to do so”

and that this leads to mothers of young children restricting their movement.

There is also evidence that people don't like seeing breastfeeding and react strongly to it. The SPICe (2004) briefing states that

“a proportion of the group likened breastfeeding to the excretion of other bodily substances and therefore regarded it as inappropriate for a public setting. A few people thought it would be akin to them defecating, urinating or having sexual intercourse in pubs and restaurants”

and that

“it could put mothers at risk from those “unbalanced in their sexual responses” with the possibility of arousing men and women being raped”

While there are no academic studies collating the times and places where women have been prevented from feeding, anecdotal and academic evidence suggests it is not unusual and that women fear it.

It wasn’t ‘til a good few months, 4 months. I was at the shops and she needed a feed. I thought “oh no” You know you are sweating. “What am I going to do?” But I did sit in a corner. That was the first time I fed outside. Well you can’t see anything you are hidden its just…” Scott et al 2003

Is legislation the right way to tackle the problem?

Zoë Williams wrote in the Guardian (16/2/03) that

“anecdotal evidence would suggest that people who disapprove tend not to do so openly, but obliquely, with snooty looks and you can’t legislate against that”.

While there is also anecdotal evidence that the reaction is more than “snooty looks” the “snooty looks” or expectation of them do affect women’s choices. Legislation is necessary to protect women and also to give those who worry about others reactions the confidence that they have a right to do so.

There are other countries that protect women’s rights in order to promote breastfeeding: 26 US states have legislation to protect breastfeeding in public and federal law protects women’s rights to breastfeed on federal property.

The Executive’s Social Justice Strategy has increasing the number of women breastfeeding as a target and there is evidence to show that contact with breastfeeding women makes women more likely to breastfeed themselves. It could also be argued that the Bill could break the chicken and egg cycle where no one does it in public because they do not see anyone do it in public:
“to make breast feeding in public acceptable the perception that breast feeding in public is a
normal occurrence must be strongly promoted” (Khoudry et al 2002 page 129)

There is evidence that infant feeding decisions are made long before conception and that attitudes
to breastfeeding have a bearing on the decisions. Shaker et al (2004) found a strong link between
found that 50% of breast and 36% of bottle feeders had decided on their feeding method pre
conception. Earle (2002) also found that feeding decisions were made preconception.

When this is tied to the research that shows that seeing breastfeeding can promote it as a choice
for others. It could be argued that the more public breastfeeding there is then the greater likelihood
women may consider it. The more women (and men) see breastfeeding in public the greater the
likelihood that they think it is something that could work for them and their child.

Greene (2003) found that 32% of those who had been exposed to breastfeeding intended to
breastfeed as opposed to 11% of those who had not. Hoddinott and Pill (1999) also found that
women who had encountered breastfeeding in their daily lives were more likely to initiate
breastfeeding. Scott (et al 2003) found that

"The low level of prior exposure to breastfeeding is a major contributing factor to the low uptake,
and the early cessation of breastfeeding among Glaswegian women"

Successful breastfeeding is invisible. Henderson et al’s (2000) research into infant feeding
representation in the media and found that “media coverage implies that breast feeding is
problematic funny and embarrassing” (20002 page 1198). Bottle feeding was shown more often, as
less problematic and associated with normal families. Breastfeeding was for celebrities and middle-
class women. In constituencies such as Shettleston the breastfeeding rate is 21% at six weeks old
(Public Health Institute of Scotland 2004) so few women in this area have an opportunity to see
successful breastfeeding in their everyday lives or in the media

Earle (2002) also found that the majority of women in her study found breastfeeding to be
embarrassing and inconvenient.

On the other hand Khoudry et al (2002) found that a video for low income women which
emphasised the following messages worked well in addressing the barriers to breast feeding. The
messages were: breastfeeding was not embarrassing, all mothers including those who work can do
it and friends and families can be supportive

Would the Bill make life easier for those women who have chosen to breastfeed to continue
to do so?

According to Unicef nine out of ten women who gave up breastfeeding did so before they wanted
to. While the reasons for this are many and complex over a quarter of those who did so between
six weeks and six months did so because they returned to work. Guaranteeing the right to
breastfeed in public would help women get on with their lives. Children could be fed on the
bus/train on the way to work and home, in public in break times etc.

Some of the critical reaction to the Bill has been from the licensed trade and from members of the
public who think its not something they want to see while they are eating. The Bill will clarify the
position for licensees if there is a complaint and will cost nothing unless they break the Law. Clarity
about the range of public places where women with young children have to visit could help show
why the bill is necessary. Women have to go out and buy food; they have to go to work. They have
to find/go to work, visit government offices such as benefits agencies tax offices, and get to child
minders and nurseries. They need to use public transport, visit shopping centres, and queue at the
housing department. In order to live women have to go out. The official advice on breastfeeding is
to feed on demand and that means taking your child with you and feeding it when and where it
demands it.
“frequent irregular feeds are normal for many babies” p94 HEBS 1999

The perception that these tasks are difficult to combine with breastfeeding is impacting on breastfeeding rates. Many mothers avoid/give up breastfeeding because of the perceived inconvenience (Sheppard et al 2000). Ruowei L et al (2002) found that 45% of Americans surveyed thought that breastfeeding mothers had to give up lifestyle habits. This was more prevalent amongst women under 30 and those on low incomes.

Khoudry et al found that “time and social constraints presented barriers to fewer women than embarrassment issues.” (2002 p129) Women need to be confident that they can breastfeed in public.

The Bill would ensure that women knew they had the right to feed their child wherever they took them and could remove some of the perception that breastfeeding was inconvenient.

Scott et al (2003) also found that because of limited exposure to breastfeeding women who started had unrealistic expectations. This led to feelings of failure and difficulty coping. Women often then change feeding method in order to regain control. Women also stay at home until they are confident. Increasing the invisibility of breastfeeding. More public breastfeeding may be able to help overcome this cycle (and help breastfeeding women with social isolation). This could help those who are trying keep it up and encouraging more women to see it as something women like them can do.

Other Legislation to protect right to breast feed

US Department of Health is keen to promote breastfeeding as part of health promotion campaigns. Like Scotland the US is not reaching WHO targets particularly for those on low incomes. In the US women have a right to breastfeed on all federal property. Various states exempt breastfeeding women from indecent exposure statutes. Women also have the right to breastfeed in public in Australia. As stated above there is as yet no research linking this right to increased rates. Countries with a high rate such as Sweden do not have any legislation in this area. It does seem though that public breastfeeding is though common place.

Cost

The license trade has attacked the Bill suggesting it has cost implications. The Bill does not ask for any special provisions unlike the disability discrimination act so there would be no costs other than fines for those who break the law. There is though evidence of money that could be saved through increased breastfeeding. Weimer (2001) estimates that $3.6 billion would be saved in the USA if breastfeeding rates increased to 75% at birth and 50% at 6 months (the targets set by the Surgeon General). This is based on reductions on the rates of 3 childhood illnesses: otitis media, gastro-enteritis and necrotising enterocolitis. The same process for England and Wales gave savings of £500 000 for every one percent increase in breastfeeding on gastro-enteritis alone. (Unicef 2004). Finding the costs of these illnesses in Scotland could give a value for savings in Scotland. There are of course many savings to be made if all the other health benefits over both mother and child’s lifetime is taken into account.

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Breastfeeding etc (Scotland) Bill: Stage 1

14:05

**The Convener:** Item 3 is consideration of the Breastfeeding etc (Scotland) Bill at stage 1. The minister is remaining for this part of the meeting. I will allow time for the other witnesses to join him. I remind members that they have an Executive memorandum from the minister.

I welcome Dr Linda de Caestecker—please advise me if I mispronounce your name—the head of the Health Department women and children’s unit; Joanna Wright, from the women and children’s unit; and Jan Marshall, a solicitor from Scottish Executive Legal and Parliamentary Services.

**Shona Robison (Dundee East) (SNP):** Minister, will the bill have an effect on breastfeeding rates in Scotland?

**Malcolm Chisholm:** As the Executive memorandum states, we are certainly very positive about the bill in principle. The bill can be approached from many points of view. I suppose it can be regarded simply as promoting a woman’s right to breastfeed—and a child’s right to be breastfed—wherever she wishes. That may be the primary argument in favour of the bill. However, I would expect that, in so far as the bill changed attitudes towards breastfeeding to some extent and possibly encouraged more women to do it, the bill would have a positive effect on breastfeeding rates.

As this is the first question, I should just say that there are two parts to the memorandum: a general, positive welcome of the bill in principle; but also a flagging up of enforcement issues that the Crown Office has raised.

**The Convener:** We will come to those.

**Malcolm Chisholm:** If you are coming to those issues later, that is all that I need to say by way of introduction.

**Shona Robison:** I know that we are coming to the enforcement issues later, but I have a general supplementary question on them. How satisfied will you have to be with the responses on the enforcement issues before you are persuaded to support the bill? According to your evidence, if you are not sufficiently satisfied, you will not support the bill.

**Malcolm Chisholm:** I was going on to make the point previously that it is the Crown Office that has very much flagged up the enforcement issues. I would not in any way seek to tell the Health Committee how to go about its business, but I feel that witnesses from the Crown Office would have to describe in more detail what their concerns are. I am not a lawyer. I could certainly talk in general terms about the concerns that the Crown Office has raised and I can see, even from a layman’s point of view, why the Crown Office is homing in on the definition of “prevents”. However, issues about who the accused is, corroboration and so on are very much a matter for the Crown Office.

I am not trying to duck your question, but I am conscious that I approach the issues as a layman. I would obviously have to be guided by advice from the Crown Office on enforcement. That is not to say that I might not challenge or question points that the Crown Office made. However, in general terms, I would have to be guided by what it said about matters such as enforcement.

**Shona Robison:** As the Minister for Health and Community Care, how do you balance your responsibility to improve the health of the nation—you acknowledged that the bill has the potential to do that—with enforcement issues that a different department has raised? How do you balance those and determine what is most important?

**Malcolm Chisholm:** That is the nub of the matter as far as the Executive as a whole is concerned. The questions that the Crown Office raised are not academic questions but practical ones. We could take the view that the bill is positive and would have certain beneficial effects. However, if we take the view that the bill could not work in practice—I emphasise “if”—presumably all the good things about the bill would automatically fall because it would not work. That is speaking rather hypothetically, but you will understand the point that I am making. It is only in so far as the bill could be enforced that it would have positive effects.

**Mr Davidson:** I refer you to the letter that you sent to the committee. I take it that the attached memorandum which, as the letter says, gives “the Executive’s view”, may be treated as evidence that you are submitting on behalf of the Executive. I would therefore like to press you on how the committee will get the evidence that it requires on enforcement, which is covered in paragraph 8 of the memorandum. You have just said to us that it is not for you to comment on it but, as far as I understand, you are the lead minister on the bill. How will that evidence come to the committee?

**Malcolm Chisholm:** I am perfectly happy to make comments and the lawyer sitting to my right might also be willing to make comments. However, I will preface them with the caveat that many of the matters that have been raised on enforcement are legal points that have been raised by the Crown Office, about which I do not necessarily have detailed knowledge or experience. I am quite happy to try to answer questions, but I imagine
that it would be helpful to take separate evidence from Crown Office officials if the committee wishes a more detailed legal explanation, rather than a more general, layman’s explanation, which I am quite happy to—

Mr Davidson: It is not for me to argue about the procedures, which is the job of the convener, but this is supposed to be our final evidence-taking session. If you have somebody with you, then I would be grateful—

Malcolm Chisholm: I would also make the point that—as far as I know—nobody from the Crown Office was invited to the committee. The Executive solicitor with me can obviously speak about the law, but the views in that part of the memorandum come directly from the Crown Office.

Mr Davidson: In that case, convener, could I ask—

The Convener: Just a minute—I have just been trying to confirm whether the Crown Office responded to our call for written evidence. To our knowledge, it did not, but we will check that. This is the last oral evidence-taking session on the bill, but we can have the Crown Office involved at stage 2. However, we cannot deal with the matter today, as this is the last session for evidence at stage 1.

I can confirm that we did not receive a response from the Crown Office. Did you receive a response on the bill directly from the Crown Office, minister?

Malcolm Chisholm: As part of the Executive’s consideration, we got comments from the Crown Office to inform our consideration.

The Convener: Well, the Crown Office did not respond to us. We will take that matter up.

Mr Davidson: All that I was going to ask was whether it would be possible to request a piece of written evidence from the Crown Office before the next stage, in advance of decisions being taken at stage 2?

The Convener: There is nothing preventing us from doing that, but we must clarify whether the Crown Office, despite having responded to the minister, did not respond to the committee’s call for evidence, which would cause me some concern. We are perhaps at fault ourselves to some extent, for not having thought of this sooner, but this has been exposed as being an area that we will have to investigate further.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I know that this is the last scheduled oral evidence session on the bill, but there is no pressing reason why we cannot ask someone from the Crown Office to come before us to pursue the matter—and still at stage 1, which is the most appropriate point at which to pursue the matter. There is no time limit to which we must adhere, as I understand it.

The Convener: We would have to ask the Parliamentary Bureau to defer the stage 1 debate by a week. Could we leave the matter until we see what we get from the Crown Office in the form of a written response? It may be that we will then require to have somebody from the Crown Office before us to give evidence. We want to give the matter proper scrutiny, so we will find the mechanics and the procedures to deal with it. First, we will have to establish what responses we got, and whether we got one from the Crown Office at all.

Malcolm Chisholm: I have spoken to the Lord Advocate, who was willing and keen for his officials to speak to the committee.

The Convener: I am just surprised that we had no notification from the Crown Office.

Janis Hughes (Glasgow Rutherglen) (Lab): As you are aware, minister, the bill seeks “to make it an offence to prevent or stop a child ... from being fed milk” in public. Do you think that the use of criminal legislation in this way could lead to negative attitudes towards breastfeeding mothers?

Malcolm Chisholm: Opinion is obviously divided on that. I do not personally share that view, but I accept that some other people might take that view.

Janis Hughes: Given the Health Department’s wish to encourage breastfeeding as the best start for a baby, will mothers not be further stigmatised by negative attitudes towards them, which will contradict the Executive’s wish to promote breastfeeding?

14:15

Malcolm Chisholm: The bill intends to promote positive rather than negative attitudes. In the end, the effect that one feels that the bill will have is a balance of judgment. However, I tend to the view that it will be positive rather than negative.

Mike Rumbles: There is another point of view. Although most people would like to encourage a positive view of breastfeeding as natural and normal, is the creation of a new criminal offence the right way to go about that? That leads on from the previous question, but from a slightly different angle. Are we not seeking to create another criminal offence that is not necessary? If we are trying to create positive attitudes, why create a criminal offence?

Malcolm Chisholm: The Executive is conducting a programme of work on breastfeeding, which we can describe. Your next
witness is the national breastfeeding adviser, who can do that in even more detail. The bill is by no means the only action that is being taken, but you have to judge whether it would complement or enhance what is already being done, or whether it would be counterproductive. That is entirely a matter of judgment but, having read all the written and oral evidence that has been submitted and given quite a lot of thought to it, I feel that the balance of the evidence is that the bill would be positive, help women and send out a strong signal.

There is some international evidence from states in America that have breastfeeding legislation that breastfeeding becomes more of an accepted part of the culture in such states. That is not to say that a bill is the only way to change attitudes, but there is evidence that a bill would be helpful, although not in isolation.

Kate Maclean (Dundee West) (Lab): You have probably seen the Official Report of the committee’s last meeting, at which there was quite a bit of discussion around the age limit of two that is in the bill. What do you think of that? If you end up supporting the bill, will you support the age limit?

Malcolm Chisholm: I read with great interest the arguments on that issue. It is not a matter about which I have tremendously strong feelings. I understand the argument that there should not be an age limit, but I also understood the point that Shona Robison made about tactics. I do not have strong feelings, but in principle there probably should not be an age limit. There seems to be some suggestion that one is required to clarify the bill and the law, but I cannot answer that question. I do not know whether my legal colleague can. I see no reason why there should be an age limit in the bill, but I do not have strong feelings about it.

Dr Linda de Caestecker (Scottish Executive Health Department): I agree. It is recommended that women should breastfeed for up to six months exclusively, but there is no reason why they cannot breastfeed for longer.

Kate Maclean: The debate was not about whether people should breastfeed for as long as they want and as long as the mother and child are happy with it. The point is that women are entitled to feed their babies and babies are entitled to be fed wherever they are, but once children get to the age of two or older, the child does not need to be breastfed. Mothers may still be breastfeeding at certain times of day, but a child of that age can and does eat and drink different things, so there is not the same necessity to be breastfed in public. The issue is not how long a mother chooses to breastfeed, but what is appropriate at what age. I would have thought that there are no health benefits from breastfeeding a child in a restaurant or a public place once they are older than two, because they can drink juice and eat food, and be breastfed at another time.

Dr de Caestecker: That is a reasonable point. We do not have strong views on whether the age should be two, although we do not want to stigmatise women who want to breastfeed for longer than two years.

Mr Duncan McNel (Greenock and Inverclyde) (Lab): Both the minister and Dr de Caestecker have said that they have no strong views but that they are inclined to go along with the good will for the bill and to legislate in order to promote a campaign for breastfeeding. Would seeing a woman breastfeeding a four or five-year-old in a public place encourage other women to breastfeed? Would that aid the campaign?

Malcolm Chisholm: Shona Robison made that point in last week’s meeting—I understand the argument. A tactical judgment must be made but, at the end of the day, the bill is not ours, so we are not required to give a firm view. Jan Marshall might want to give a view, because there may be legal reasons why the age limit should be two. We should hear why that is the case from a solicitor’s point of view.

Jan Marshall (Scottish Executive Legal and Parliamentary Services): Ultimately, the matter is a policy one and I understand the objective behind having an age limit. The Crown Office may have a view because the matter relates to prosecution. The view may be taken that, in the interests of legal certainty, there ought to be an age limit so that people know what the criminal offence is and who is liable to commit it.

Mr McNeil: To return to the point, given that we are proposing to take the unusual action of legislating to promote a campaign, we are not simply talking in legalistic terms. Would it aid the promotion of the campaign to give the impression that if a woman begins breastfeeding, they could be involved in that process for four, five or six years? I have spoken to women about the issue and I know that the thought of that would not encourage them to start breastfeeding or to continue doing so.

Malcolm Chisholm: It sounds as if you are making a good tactical point. We must imagine how breastfeeding will be portrayed and what effect the bill will have. The point is relevant. If people want to attack the bill by distorting and caricaturing it, the measure may give them an opening. I understand the argument entirely, but I genuinely do not have strong feelings about the issue—I understand both sides of the argument. Given that the bill is not mine, I do not have to make a decision about the matter at this point.

Dr Jean Turner (Strathkelvin and Beardsden) (Ind): It is difficult to judge how old a child is.
would love to hear what the legal background would be to prosecuting somebody. Would people look at birth certificates and check whether a child was two years and one day? We are talking about a criminal offence. There are medical reasons why people might breastfeed their child beyond two, but they probably would not want to do it in a public place. We are talking about making it a criminal offence to do it beyond the age of two, but given that young babies can look much older, the bill could create problems for the legal administration.

Malcolm Chisholm: I have nothing further to add. There is a danger that the media will get sidetracked on to the issue. I understand both sides of the argument and I do not have strong views about the issue. The committee and ultimately the Parliament may have to make a tactical judgment.

The Convener: Perhaps the question should be whether your bill would include an age limit. That is a straightforward question.

Malcolm Chisholm: As no work has been done to advance an Executive bill on the subject, I cannot answer that question. All my thinking on the matter has been done in the past week on the basis of the evidence that the committee heard.

Jan Marshall: There was heated discussion about the age limit that was used in the anti-smacking provisions in the Criminal Justice (Scotland) Bill. The analogy is that the discussion was about the criminal offence of smacking a child. There was a lot of debate about where the line should be drawn, if a line was to be drawn. Ultimately, that is a policy matter.

The Convener: We will move on from that. It is another issue that we might want to raise with the Crown Office. We are checking whether someone from the Crown Office will be available next week, and, because Elaine Smith is giving evidence today, we intend for her to have the opportunity to respond to the evidence from the Crown Office, if she is able to come to that meeting as well. That is all hypothetical at the moment, but we are trying to set it up.

Elaine Smith (Coatbridge and Chryston) (Lab): Sorry, convener, do you expect me to come to that meeting as well as give my evidence today?

The Convener: Yes. I expect you to give evidence today, but if we hear additional evidence from the Crown Office, as we probably will, it would be only appropriate to give you the opportunity to respond to it. However, it is all hypothetical; we are trying to arrange it.

Elaine Smith: I do not know about the protocol of this because it is not a point of order, but Jean Turner talked about the bill making it a criminal offence to breastfeed a child beyond two and the bill does not make that an offence.

The Convener: We will come to that in your evidence to us; you will get your shot at the end.

Helen Eadie (Dunfermline East) (Lab): In spite of all the controversy that surrounds the bill, should it apply equally to bottle-fed babies?

Malcolm Chisholm: My understanding is that that is part of the bill and that that is a change from the earlier version of the bill. I have no objections to that.

Helen Eadie: I will add to what other members have said on whether there should be a new criminal offence. Do you not think that it should be a criminal offence for a mother to be evicted from a big department store for wanting to feed her baby in public and for attendants in the store to say that breastfeeding is not allowed there? If you were a father sitting with a mother who was breastfeeding a baby, you would say, "Gosh, that’s a crime. That mother should be allowed to feed her baby in that store. She shouldn’t be put out of the store for that." Do you not think that the public will react empathetically towards mothers and that we ought to say that it is a crime for a woman to be put out of a department store? A mother might well find herself in a department store or on a train, as I was when I travelled up and down from London regularly. We are talking not about promoting a campaign, but about the right of a baby to be fed and the right of a mother to feed. It is other people’s job to promote a campaign; we are talking about a bill to uphold the human right to be fed.

Malcolm Chisholm: I agree with every word that you have said. That is my view of the bill. The basic reason why I support the bill is because of fundamental human rights. I hope that the majority of people would empathise with the woman in the situation that you described and I would be rather horrified if they did not, but the fact is that some people do not empathise with her, and that is the problem that Elaine Smith is trying to address.

The Convener: I remind members and the minister that the bill refers not to "a mother" but to "a person", so the right will apply to a range of people.

Helen Eadie: The person who was breastfeeding would be a mother.

The Convener: The bill covers bottle feeding as well as breastfeeding, so we must remember that the right applies to a range of people. That may raise issues that we will want to take up with the Crown Office, because it might not be apparent who the person feeding the child is—I am getting myself in knots, but I know what I mean.
Helen Eadie: I agree in the instance of a bottle-fed baby, but the point is superfluous for a mother.

The Convener: That speaks for itself, but I am going where I do not want to go.

Mr McNeil: The bill would place a duty on the Scottish ministers to promote breastfeeding, but I note from your memorandum, minister, that you say that you are doing that already and that you could gain nothing from that provision in the bill. That is why I made my earlier point about whether it is essential for us to promote breastfeeding in public. I believe that there are other barriers to breastfeeding that, particularly in deprived areas, are equally as important as the attitude towards breastfeeding in public, if not more important than it.

The committee needs to be convinced that the bill would change the situation in some of our deprived areas, in which, despite everything that you have in place—you say that you can get nothing out of the bill that would help to promote breastfeeding more—breastfeeding rates are as low as 9 per cent, which compares with 75 per cent in affluent areas.

Section 4 is on the promotion and support of breastfeeding, about which what we are currently doing is not enough. To suggest that it is enough is complacent and to suggest that the bill could not focus or direct the work of the Executive is complacent and not acceptable. That is where I stand on the bill. Given all the benefits of breastfeeding to mothers and children, we should be doing all that we can to promote it. However, is the bill in this form necessary to promote breastfeeding and change the terrible figures in areas of deprivation?

14:30

Malcolm Chisholm: That section of the bill is about the promotion of breastfeeding in general, which we strongly support. I do not say that complacently and I am not saying that we are doing everything that we can do. Nevertheless, significant progress has been made in promoting breastfeeding in Scotland over the past few years, led by Jenny Warren, the breastfeeding adviser, who is your next witness. It is recognised at a United Kingdom level that Scotland has been more proactive in that area.

On the issue that you have raised, action in deprived areas is crucial. In particular, peer support groups are important. I visited a peer support group in Elaine Smith's constituency some time ago. In May, I launched the recent advert on breastfeeding, which you have probably seen on the television, in the greater Pilton area in my constituency. The launch was attended by local women who were acting as peer support for other women in the area in an initiative that is being promoted by NHS Lothian. That kind of activity is absolutely crucial in the promotion of breastfeeding.

We need to promote breastfeeding as we are doing and beyond that. However, there is a question about whether the bill needs to talk about a specific duty to promote breastfeeding. As members will remember, there is a duty to promote health improvement in the recent National Health Service Reform (Scotland) Bill. The argument could be made—you might regard it as a weak or a strong one—that, if we have a general duty to promote health improvement, we should not pick out one thing. People might ask why only one thing is mentioned in legislation in the context of the promotion of health improvement, with other things left general. However, that is a weak argument. It is not that we do not support the promotion of breastfeeding; it is just that we have already legislated for the promotion of health improvement. Why should we pick out one thing to promote in legislation when we also want to promote physical exercise, healthier diet and so on? That point is made in paragraphs 5 and 7 of the Executive memorandum.

Mr McNeil: You point out a contradiction. You support the general principle of legislating in this area, but you would not necessarily support legislation for other health promotion initiatives. We are singling out breastfeeding. How will the bill change the low level of breastfeeding in deprived areas? How will it assist your programme?

Malcolm Chisholm: I remind you that it is not an Executive bill. We are doing a lot of things to promote breastfeeding, although I am not saying that there are not more things that we should be doing. I do not think that Elaine Smith is presenting the bill as a panacea. We need a range of measures to promote breastfeeding, which perhaps Jenny Warren will be able to describe if we are not asked about them.

The reality is that the bill adds a new dimension to the rights of women and children. It also contains a section about the general duty to promote breastfeeding. You can make a judgment about whether that section would, of itself, help all the other activities in deprived areas, for example. However, I do not think that it would, as we already have a duty to promote health improvement. We also have, as paragraph 5 of the Executive memorandum reminds us, a more general duty, under the National Health Service (Scotland) Act 1978, “to promote a comprehensive and integrated health care service designed to secure the improvement of the physical and mental health of the people of Scotland.”

I do not feel that section 4 will, in itself, make a difference. The distinctive contribution of the bill is
to do with the rights of women and children to breastfeed wherever the mother wishes.

Mr McNeil: Do you agree that, as we have been asked to support the bill, we should have some expectation that it will make a difference in the areas where there is a 9 per cent breastfeeding rate?

Malcolm Chisholm: We have every intention of making a difference and we have been focusing our efforts on that. I say for the third time that we need to do more; it is proving difficult to make progress on the issue. The point that I am making is that we will do more regardless of whether the bill is passed, but the distinctive contribution of the bill is to reinforce the rights of women and children in this area.

The Convener: Are you saying that because of the general duty under the 1978 act no other health legislation has in it sections similar to section 4 of the bill?

Malcolm Chisholm: The National Health Service Reform (Scotland) Bill, which was passed three weeks ago, made more specific the general duty to promote health improvement, but no other bills provide for a duty to promote a particular aspect of health improvement. That is the point that I am making. The other point that I should add to what I just said about the rights of women and children is that the general culture—

The Convener: That is not the point that I am making; I am making more of a technical point. Are you saying that other stand-alone pieces of legislation have in them sections similar to section 4 of the bill?

Malcolm Chisholm: No. I am saying that they do not.

The Convener: Right. That is the point that I am making. That is because the provisions in section 4 are caught up in the general duty. That was just a technical point, rather than a substantive point.

Malcolm Chisholm: I think that Jan Marshall wants to say something on that.

Jan Marshall: As the minister said, we have recently amended the 1978 act to reinforce the general duty on health improvement. The convener asked whether there were specific measures, either in the 1978 act or elsewhere, that provide for a specific duty in relation to particular matters. I refer for example to section 38 of the 1978 act, which places a duty on Scottish ministers

"to make arrangements, to such extent as"

they consider

"necessary, for the care, including in particular medical and dental care, of expectant mothers and nursing mothers and of young children."

Perhaps that is what the convener had in mind.

The Convener: Yes. I just wonder whether you would not include in stand-alone bills provisions such as those in section 4 as a matter of principle because there is already a catch-all general duty. Are you saying that there are such provisions elsewhere?

Jan Marshall: I am unable to assist the committee as to the policy intentions at the time when section 38 of the 1978 act was put on the statute book. Certainly, as the minister has said, the general duties would be sufficient to—

The Convener: I am not debating that. I just wonder whether that prevents our including specific sections in bills, which is much more useful in my view in drawing attention to something than is a general catch-all. It was just a technical point. Perhaps when I read the Official Report I will follow that technical argument.

Dr Turner: Minister, do you agree that the bill might enhance the work that you are doing in promoting breastfeeding? You might succeed in promoting breastfeeding of very young children, but something that holds back women from breastfeeding, whether they are wealthy or in a poorer wage bracket, is the prospect of getting back to work and getting out into the real world again. Many women feel that if they were to continue breastfeeding could not get back among the public, doing their everyday things.

There is possibly a niche for the bill to enhance what the Executive is doing, because although it is doing a lot on many fronts, I know how difficult it is to promote breastfeeding successfully. Not all women can breastfeed and I would hate the bill to make other women feel that they were failures because they could not. However, for those who can, the bill is probably essential in allowing them to get back to work and to their everyday lives. Do you think that the bill would enhance what you are already doing in that respect?

Malcolm Chisholm: It would. Perhaps I was not as clear as I should have been. The point that I was trying to make in the previous series of exchanges was that I did not think that section 4 of the bill would in itself add anything to what we are doing. However, I think that the bill as a whole will do so. I talked about the matter in terms of rights, but the other big issue that I began to talk about a moment ago is changing the culture, which is fundamental. I think that you are talking about a further strand—about making women feel more able to go back to work or to go out to various places that they might not feel able to go to. I believe that the main thrust of the bill will have an important effect in helping to change the culture, by making women feel that they have more freedom to do what they want to do. To clarify the
point that I was trying to make, I do not think that section 4 will do that. It is the central thrust of the bill that will have that general positive effect, whereas the words of section 4 duplicate what we already have in more general legislation.

Shona Robison: I get the feeling that you are a bit half-hearted and woolly about the bill. One minute you are kind of for it and the next you are saying that it will not really do much to improve what we are doing already. I return to what you said about the duty to promote breastfeeding. You said that we are already promoting it, but if people believed that that was the case, surely we would not have the bill in front of us. There is clearly a feeling that not everything that could be done to promote breastfeeding is being done.

We have just had another week of stories and concerns about obesity and we know that breastfeeding is an important tool in reducing childhood obesity. Is there a case for saying that the duty to promote breastfeeding should rise above the more general duty to promote health improvement? How important is breastfeeding compared with other health improvement measures? Do you see it as being at the top of the list?

Malcolm Chisholm: It is extremely important, but a broad range of health improvement measures relating to diet, exercise, smoking and alcohol are all also important. That is my only reservation. It is slightly unfair to use the language that you have used to describe my attitude to the bill, because I have certainly been a lot more positive about the bill than a lot of people might have expected or supposed. I am making the point that there is a broad health improvement agenda and that is why I might have some reservations about picking one thing out of that general range of measures. However, that does not diminish in any way the importance that I attach to breastfeeding.

You made a good point. All the publicity that, quite correctly, surrounds the issue of obesity provides another argument in favour of breastfeeding. Linda de Caestecker and others can speak better than I can about the evidence for that, but I think that there is certainly evidence that breastfeeding contributes to the attack on obesity.

Dr de Caestecker: As the minister says, we are supportive of breastfeeding because of its health impact, about which the committee knows. However, we support it within the whole context of improving nutrition for children. It is not the case that breastfeeding is the only important part of improving children's nutrition; we must ensure that women wean at the appropriate time with the appropriate foods and that they have access to those foods. Breastfeeding is one part of a healthy nutrition strategy, but there are many other parts to it.

Shona Robison: Can I ask one final supplementary question?

The Convener: You said that so pleasingly.

Shona Robison: Is it the minister's hope and desire that the Crown Office's concerns be addressed, so that he and the Executive can support the bill?

Malcolm Chisholm: Absolutely.

Mr Davidson: I would like to pick up some of the comments made by the minister and his colleagues about other aspects of nutritional care. If the bill were passed in its current form, it would put a specific duty on you, minister, to promote breastfeeding. If that would require additional resources, how would you feel about the bill telling you what you ought to spend money on and where would you take the money from? In other words, you would be forced to reprioritise your objectives. I reinforce Shona Robison's question, to which your answer was less than specific. Where in the ranking of things do you place the bill and what importance do you place on the delivery of its objectives?

14:45

Malcolm Chisholm: Again, although I would be interested in the legal view of the matter, I am not clear that section 4 would necessarily lead to any of those things. We could argue legitimately that we are promoting breastfeeding, although that is not to say that we could not promote it more.

If we look at what has been done over the past few years, it would be hard to argue that the Executive does not promote breastfeeding. A whole programme of work has been done on the subject, not only centrally but by the boards. Jenny Warren will comprehensively describe that work in the next panel session.

Section 4 makes provision for a general duty to promote breastfeeding and, as a layman, I am not sure what difference it would make. As I said, the Executive promotes breastfeeding. Obviously, we can do more of it, but the wording of section 4 will not, of itself, make us do more of it.

Mr Davidson: Are you saying that the bill is not necessary to achieve the objectives that you have set out to deliver?

Malcolm Chisholm: I am aware that I am repeating myself, but section 4 would not make a difference although the rest of the bill would. In summary, my view is that the main thrust of the bill is in section 1 and it is section 1 that would help to change the culture and have the effect that Jean Turner described. Section 1 enshrines the rights of
women and children, whereas, as I said, section 4 would not, of itself, change anything.

Mr Davidson: In that case, is section 4 not necessary?

Malcolm Chisholm: That is what we have argued in our memorandum. We think that we have the general duties already and that we are promoting breastfeeding. I am perfectly willing to admit that we should promote breastfeeding more, but that is not what the bill says. Section 4 provides for the general duty, which is one that we discharge already.

The Convener: The bill also says that the Executive “shall make arrangements”, which is a mandatory duty. Surely that would involve you in reprioritising.

Malcolm Chisholm: I am aware that I am repeating myself again. My comment is subject to legal views, but the reality is that we take action on breastfeeding already. I am not sure whether implicit in section 4 is the requirement for the Executive to spend so many millions of pounds on its promotion.

The Convener: “Shall” is mandatory; the word is not “may”.

Malcolm Chisholm: I know, but my point is that we promote breastfeeding already.

Mike Rumbles: I want to develop the point somewhat. You are in favour of section 1, which sets out the right of a person to feed milk to a child under the age of two in a public place. You have just told us that you believe that the Crown Office has a problem with and doubts about enforcement when someone breaches the rights that the bill establishes. You have further confirmed that you think that section 4 is completely irrelevant. Is that a correct summary of your position?

Malcolm Chisholm: I am in danger of seeming to contradict myself, but I am not contradicting myself. The reality is that I could live with section 4, as it would not change anything.

Mike Rumbles: Is the provision good legislation if it does not achieve anything?

Malcolm Chisholm: My view is that, as the memorandum makes clear, section 4 is not necessary. It repeats what is stated elsewhere in law in general terms. Including it in the bill will not, of itself, change anything. At the same time, it does not do any harm.

Mike Rumbles: I want to pursue the point about whether we legislate for public-relations reasons instead of because we want to do something in reality. I think that Duncan McNeil hinted at that. I return to section 1, which is the section that you support whole-heartedly. If we give a person the right in law to feed milk to someone under the age of two, nobody would have a difficulty with that. The problem that has come to the fore is what should be done if someone steps in to prevent a person from doing that. It is clear from her question that Helen Eadie takes the view that that is a crime. I suppose that that is what the bill is all about. My fundamental question is whether it is right for us to legislate to turn people who do that into criminals or whether our attitude should be that we disapprove of them. I know that the bill is a member’s bill and not an Executive bill, but are we in danger of producing a piece of legislation that is basically window dressing?

Malcolm Chisholm: It is not my judgment that the bill would be window dressing. I do not suppose that anyone would support the bill if they thought that it was window dressing. If you have read all the written evidence, you will know that there are some horrific examples of people being told not to breastfeed in certain places. I was horrified that two or three of those cases occurred on health service premises—albeit that, in the main, they involved independent contractors. Given that it was horrifying just to read about that, if we use Helen Eadie’s language of empathising with the women concerned, we can understand why people might want to take some action to tackle the problem.

Mike Rumbles: Should the health service be prosecuted for doing that? Is that your view?

Malcolm Chisholm: I gave two or three examples. As far as I remember, they included a dentist’s and a general practitioner’s surgery. In sections 2 and 3, the bill describes in detail who would be liable in such situations. There is obviously an issue of enforcement and fines; I do not think that we are talking about measures such as sending people to prison.

A judgment has to be made. Given that we think that breastfeeding is a major health issue and that women should be given every support to breastfeed if they want to, there is a reasonable health argument that they should have the backing to enable them to do what they want to do.

Mike Rumbles: My point is not about that but about the penalty. I want to focus on the penalty, not the rights.

Malcolm Chisholm: That is a different kind of legal question. Even a layman such as me can understand the concept that it is difficult to enforce a law if there is not some kind of penalty.

Helen Eadie: Among all the evidence that we have received is information advising us that, in Australia, there is legislation that enables women to breastfeed in public and that, in the United States, women have a right to breastfeed on all federal property. Would it be possible for your officials to provide us with information about other
countries in which legislation has been enacted to give women the right to breastfeed in public?

I would also like to know whether costings of the health benefits have been done. The submissions that we have received suggest that there is evidence that money could be saved through higher rates of breastfeeding. Weimer’s 2001 study estimated that, in the United States, $3.6 billion would be saved if breastfeeding rates increased to 75 per cent at birth and 50 per cent at six months. Those targets were set by the surgeon general. Has the health service in Scotland done any costings of the longitudinal health benefits that would accrue if mothers had the right to breastfeed in public?

Dr de Caestecker: Some evidence has been published on what the health benefits and the savings to the health service would be if more people breastfed. The figures are quite large—they amount to £3 million or £4 million—but they are not completely accurate. They are based on assumptions about reduced numbers of cases of asthma and some of the other problems that we know that breastfeeding can prevent. There have been some research studies on that, although they were conducted a few years ago. I agree that, if breastfeeding rates went up, the savings to the health service could be measured and would be substantial.

Dr de Caestecker: Jenny Warren, who is a member of the next panel, might be able to answer in more detail on that. I think that the figures are for Scotland, although they might be for the NHS as a whole. I would be happy to look out some of that research and pass it on to the committee.

The Convener: Do we have the figures for Scotland?

Dr de Caestecker: In her evidence, Dr Pat Hoddinott from the Highlands and Islands health research institute said that an action research study had been conducted. Interviews with families revealed that a number of women had been asked to leave cafes, restaurants and shops when they started to breastfeed. One of the issues is poverty. Women in more affluent families, who have cars, can go to their car and breastfeed in privacy there but, for women who do not have a car, the fact that buses are no use for that presents a problem. Should a mother leave her baby screaming its head off or should she allow the bus conductor to evict her from the bus because she is feeding her baby? That raises the question whether it should be a criminal offence to evict a mother from a bus when she is feeding her baby.

Malcolm Chisholm: We do not in relation to any health service premises. I am never quite sure about the position of independent contractors. Linda de Caestecker might be able to tell you more about that situation.

Dr de Caestecker: We are asking GPs, dentists and the rest of the NHS to become part of the baby-friendly initiative, which would ensure that they had facilities in which a woman could breastfeed a baby.

Mr McNeil: I just wonder why we cannot simply instruct them to do so.

Dr de Caestecker: The Convener: We expect NHS boards to have breastfeeding strategies. We talk about the NHS being a good employer and allowing its many female employees to get additional breaks to enable them to breastfeed when they return to work. We expect that to happen, but it is not in legislation.

Mr McNeil: Do you have the powers to instruct the NHS to make it happen?

Malcolm Chisholm: My understanding is that we can instruct the NHS in that regard—if I am wrong, I will write to you to let you know. I am not aware that horrific situations such as the one in the written evidence, which involved someone being asked not to breastfeed in a dentist’s or GP’s surgery, are happening to any great extent. The fact that dentists and GPs are independent contractors might mean that we are unable to instruct them to act in a certain way. However, I will look into the matter and write to you later.

Dr Turner: Do you agree with the financial memorandum to the bill, which states that the new duty on ministers to promote breastfeeding will not require additional expenditure and that additional costs can be met through the redeployment of current resources? Paragraph 9 of your memorandum to the committee says:
"As we do not know the extent of the problem which this Bill aims to resolve it is difficult to predict the impact upon the police and the courts. However given current birth-rates and breastfeeding rates in Scotland we would predict it would not be substantial."

You then go on to say that it is difficult to assess how much it would cost to ensure that, if the bill were passed, all employers affected by the bill were informed of the new legislation so that they could take the appropriate steps to ensure compliance. Could you clarify your position?

Malcolm Chisholm: Paragraph 9 addresses the consequences of section 1 of the bill, which is the main section. My understanding—and that of the Finance Committee—is that there would not be huge cost implications because it is unlikely that there would be a large number of prosecutions.

The more important point about finance that you raise has to do with the promotion of breastfeeding more generally. As with most health expenditure, there are two parts to that question. There is some central health expenditure on breastfeeding, which we can itemise, but the most significant expenditure on breastfeeding comes from health boards. You will be familiar with those two dimensions from your work on the budget.

I do not think that any automatic financial consequences flow from section 4 of the bill, if that is what you are asking. Obviously, that is a continuum. We are doing something to promote breastfeeding but, as I said before, I do not think that anything in section 4 automatically has millions of pound signs written above it.

Dr Turner: Do you think that your literature covers the issue already? I have seen some posters that promote breastfeeding.

Malcolm Chisholm: We have been proactive in promoting breastfeeding. I hope that Jenny Warren has the opportunity to tell you about that work when you speak to her this afternoon. A lot of work has been done at health board level; nationally, there is the breastfeeding adviser and the Scottish breastfeeding group. NHS Health Scotland, which is funded out of the health budget, has done a lot of promotion work and produced the recent advert.

15:00

The Convener: I think that we have already been over this ground, and I am trying to move the committee along a bit. Mike Rumbles can ask a brief question; I will then invite Elaine Smith to ask some questions.

Mike Rumbles: The financial memorandum states that

"the number of prosecutions is expected to be extremely low."

Do you think that there will be any prosecutions?

Malcolm Chisholm: It is not for me to say, although somebody who recently described to me the situation in a state in America basically said that there were no prosecutions. I think that the intention of the bill is for there not to be any prosecutions, because breastfeeding in public places will become part of the culture. In the American state whose situation was described to me, the woman’s ability to say, “This is my right,” should stop the offence happening. That is the intention of the bill and that is what we would like to happen, so there will be no need for prosecutions.

Elaine Smith: I return to section 4. Despite the excellent work done by the national breastfeeding adviser and the Scottish breastfeeding group—as you said in response to an earlier question—work carried out at a local level entirely depends on the commitment of local health authorities. As a result, services tend to vary across the country. Jenny Warren might wish to comment on the number of boards that have strategies and on whether all boards have them.

Do you think that the ring fencing of funding could assist in the promotion of breastfeeding? That might relate to Duncan McNeil’s point about it being imperative to try to get the breastfeeding rate up. I note that the funding for the peer support projects in Ayrshire and Argyll came out of the social justice budget. Even with section 4, the bill does not put any funding requirements on the Scottish Executive. There are different pockets from which funding could come. Might section 4 help in that regard?

Malcolm Chisholm: That is an important point for us to consider. Jenny Warren produced a good audit of NHS boards’ activity, which is available on the web. We can show that there has been a lot of significant activity by NHS boards, the vast majority of which have strategies.

You ask about the extent and implications of section 4. Does it necessarily mean that every board will have to do certain things or that certain sums of money will have to be spent? I may be wrong, but my reading of the measures is that they are written in a general sense and that they do not necessarily imply the ring fencing of funding. There would be implications if ring-fenced funding was specified. If funding is ring fenced for anything, that will ensure that money will be spent on it—no one can dispute that. When we consider the budget, we have discussions all the time about the extent to which we should simply give money to boards and the extent to which we should ring fence funds for specific purposes. An argument can be made for ring fencing funding for any part of health policy, as that means that the centre can ensure that the policy is carried out. Equally, David
Davidson and others will claim that such ring fencing is more centralising control freakery from the centre.

The Convener: David Davidson does not get a right of reply to that comment.

Malcolm Chisholm: That argument can never be won—people get caught whatever they do. The point is that I do not think that section 4 implies ring fencing. My judgment is that, in itself, section 4 will not make a difference in that regard.

Elaine Smith: I move on to the issue of the nanny-state approach. You said that you have been promoting breastfeeding in hospitals and so on, which we know. Having persuaded women to breastfeed, does the state then have the duty to support that choice? To return to the beginning of the process—which now seems many years ago—a lot of people said that the problems that we have been discussing do not exist. The NHS Health Scotland advertisement targets feeding in public places. We have perhaps reached a stage at which we know that problems exist, which we recognise as off-putting for people.

To reiterate, do you have a duty to support and protect breastfeeding in public, having promoted it? What would the Executive do to tackle the issue if the bill were not passed?

Malcolm Chisholm: There is a whole programme of activity for carrying things forward from where we are now, which Linda de Caestecker and Jenny Warren might wish to comment on. Peer support is a key area that we want to develop. We also plan to reform the activities of the Scottish breastfeeding group, which Linda de Caestecker will describe. We certainly want to continue promoting breastfeeding. Whether or not the bill is passed, I hope that the substance of section 4 will be carried out but, obviously, we cannot deal with the substance of section 1 without the bill.

Dr de Caestecker: We are doing a great deal on issues such as staff training, the provision of facilities for breastfeeding and peer support, but changing the level of acceptability of breastfeeding among women in deprived areas is the issue on which we are making least impact. Women are not starting to breastfeed. We have done a lot to support women who start breastfeeding so that they now continue breastfeeding for up to six weeks, but we need to increase the visibility and acceptability of breastfeeding. Many of those young women who have babies will not have seen their mothers breastfeed, so we need to do more work with schools and education departments. The issue is the responsibility not just of the national health service but of other agencies as well. The bill is important because it would help to increase the acceptability of breastfeeding, so that people see breastfeeding as much more normal.

Elaine Smith: I do not want to hog too much of the committee’s time, but I have one final point. At the breastfeeding conference that I spoke at on Friday, the public health director who spoke after me apologised to the health service workers in the room who, as has been mentioned, do a lot of hard work in supporting breastfeeding once it has been initiated—indeed, the importance of their work is indisputable. However, he highlighted the fact that getting women to initiate breastfeeding is far beyond the ability of health service staff. He said that such changes to the culture depend on other things—he mentioned my bill—for which there needs to be a political will if we are to move society towards a breastfeeding-friendly culture. Obviously, such changes take time and do not happen immediately. I accept that the bill is not a panacea and must be part of a multifaceted approach, but do you agree that it could make a difference to initiation rates, given that those are clearly affected by many other cultural attitudes?

Malcolm Chisholm: As I have said already, the bill will certainly help to change cultural attitudes. Of itself, the bill will not change the culture, but we judge that the bill will have a positive impact by helping to do so and by promoting more positive attitudes towards breastfeeding.

The Convener: I thank the minister and his officials for giving evidence today.

While we wait for our second panel of witnesses, I remind committee members that, as I am trying to keep to a timetable for their sakes, it would be helpful if they could keep their questions short. I intend to allow Elaine Smith to ask questions as appropriate at the end of each evidence-taking session. She can sweep up any issues that we might have missed, as we often do.

Before next week’s meeting, we hope to receive written evidence from the Crown Office, but it has not yet been resolved whether we will be able to take oral evidence from Crown Office representatives. We should know that by the end of tonight. Depending on members’ views, I think that we should take oral evidence from the Crown Office in any event, notwithstanding whether we receive written evidence because—if members are listening to me and I am not speaking to myself—there are too many subtleties involved. If we cannot keep to the timetable, we will seek the leave of the Parliamentary Bureau to postpone the stage 1 debate for another week. The Crown Office evidence is too important to ignore.

That throws up another issue, which is that we have not heard from the Crown Office on the Prohibition of Smoking in Regulated Areas (Scotland) Bill either. We perhaps need to put the
Crown Office down on our list of usual suspects, if I may call our witnesses that.

Mr Davidson: I suggest that the convener write to the Lord Advocate on the committee’s behalf to point out how our progress is being thwarted.

The Convener: It is disappointing that the Crown Office did not provide us with a response, but I understand that it did not respond to the minister either. It is not that the Lord Advocate has written to the minister and not to us, so we must not feel peeved, although there may have been a chat or discussion. Nevertheless, now that we have been alerted to the issue, we can write in the terms that I have described. Thank you. That has filled in the time while our witnesses were taking their seats.

I welcome Jenny Warren, national breastfeeding adviser, and Dr Pat Hoddinott, general practitioner and research fellow at the Highlands and Islands health research institute of the University of Aberdeen. Both were present for the evidence that we just heard.

Helen Eadie: The National Childbirth Trust has told us of research that found that hesitation and uncertainty over breastfeeding in public prevented women from choosing to breastfeed in the first place. Do you agree with the general principles of the bill?

Jenny Warren (National Breastfeeding Adviser): I welcome anything that removes a barrier that prevents women from being able to feed their babies in a public setting.

The National Childbirth Trust is right. During the past few weeks, I have made a point of speaking to women from breastfeeding support groups in deprived areas and they clearly feel unable to breastfeed in public because of the hostility that they fear they will meet.

The Convener: I am sure that members will have seen paper HC/S2/04/14/5, which is Dr Hoddinott’s written submission.

Mr Davidson: I refer to Dr Hoddinott’s paper. To what extent do the witnesses’ organisations believe that the current culture is deterring mothers? Dr Hoddinott talks about the number of people who seek privacy and about how that is a vital issue for them, partly because of the intimacy of their relationship with the child and partly because of their inherent embarrassment, even with neighbours and family members. I ask Dr Hoddinott to expand on that, because there are no statistics in her paper that indicate the extent of that finding.

The Convener: Before Dr Hoddinott answers, I apologise for not mentioning Jenny Warren’s paper, which is numbered HC/S2/04/14/4.

Dr Pat Hoddinott (University of Aberdeen): Most of my research has been qualitative research using in-depth interviews, so statistics have not been a part of it. Banff and Buchan is quite a deprived area and has the lowest rates of breastfeeding in Grampian, where the rates are below the Scottish average. It is clear that each woman has her own definition of what is private breastfeeding and what is public. I have talked to women for whom breastfeeding in front of their own mother would be too big a hurdle.

We have set up breastfeeding peer support groups in Banff and Buchan where we invited pregnant women who are interested in breastfeeding to come to meet and talk with breastfeeding mothers. From the point of view of the research, the hidden agenda was to get them to watch breastfeeding. From that work, it came out clearly that women are not very confident about watching breastfeeding. If you observe such a group, you will see women who do not know where to look when they see a woman breastfeeding. However, after they have attended the group a few times, they are able to look slightly more closely. Many women have described to us how that has helped them to breastfeed in what they would call more risky situations—in front of fathers, fathers-in-law and their partner’s friends, for example. The groups have been used as a rehearsal for breastfeeding in front of other people. Quite strong research evidence about that is to be published.

Mr Davidson: I know Banff and Buchan extremely well; some of my family come from there. There are two sides to the area: the deprived communities in and around Peterhead and Fraserburgh and one or two of the smaller coastal villages; and the rural hinterland. In your qualitative research, did you find any difference in the levels of acceptance of breastfeeding between the agricultural and coastal communities?

Dr Hoddinott: Yes. When we started the project, the breastfeeding rates were higher in the inland, agricultural communities than they were on the coast. However, we undertook a quantitative project in which we measured before-and-after breastfeeding initiation and duration rates as a result of our peer support programme. Results showed that there was a statistically significant increased rate of breastfeeding at two weeks. What is fascinating is that the biggest increase took place in Fraserburgh, which was the most deprived of the communities and had the lowest breastfeeding initiation rate to begin with. Guthrie data show that, when we introduced the project in 2000, only 28 per cent of women were breastfeeding at seven days. When we ended the project, that figure had increased by 6.8 per cent, which was statistically significant when compared with what happened in the rest of Scotland over
the same nine-month period. That research is unpublished, but we hope to publish it later in the year.

15:15

Mr Davidson: I have a final question. I appreciate that your research has been mostly qualitative. However, have you spoken to business owners and non-breastfeeding mothers in the community or chatted generally to people in the street?

Dr Hoddinott: Only as a GP. I have not done so as part of any qualitative research.

The Convener: Thank you for telling me that that was your final question, David. I think that conveners decide that.

Miss Warren, do you have any comments on this subject?

Jenny Warren: We now have about 150 breastfeeding support groups around Scotland, whereas 10 years ago we had only four. When I carried out a small study into the effect of those groups, the overwhelming message from the women was that being together gave them confidence and enabled them to look at and support one another while they breastfed. We hope that that gives them confidence to do the same when they go out into their communities.

Shona Robison: Dr Hoddinott, you have provided statistics on the percentage of women who feel comfortable feeding in public and so on. However, I see no figures for the number of women who have had bad experiences with public breastfeeding. Did you measure that in your study?

Dr Hoddinott: No, we did not measure that in the Banff and Buchan study. The statistics in my written evidence were taken from the Office for National Statistics' five-yearly survey, which gives the number of breastfeeding women who had problems with breastfeeding in public and the number of bottle-feeding women who had problems with bottle feeding in public.

Shona Robison: During your research, did you gather anecdotal evidence from women about their experiences?

Dr Hoddinott: Yes, very much so.

Shona Robison: What was the general picture? Were bad experiences common?

Dr Hoddinott: A minority of women reported bad experiences, but a majority of women were not even venturing out because they could not go anywhere to breastfeed. Because rural areas and, in particular, towns such as Fraserburgh do not have stores such as Mothercare or John Lewis and because the supermarkets in those areas are outside town, women tended to shop at weekends with their partner when they had access to a car. The almost universal comment that I heard was, "There is nowhere to go to breastfeed my baby."

Shona Robison: So the barriers that you identified had more to do with comfortable locations for breastfeeding rather than with attitudes that people had experienced or stories that they had heard from other women.

Dr Hoddinott: Negative stories travel fast. All the groups had stories in which women who were breastfeeding were asked to leave restaurants and public places or were asked to go to the toilets. However, we did not measure that quantitatively. Indeed, in small rural communities, it is very difficult to find out the exact number of women who are represented in such stories or whether everyone is talking about the same woman.

Jenny Warren: When women experience problems, they do not complain formally. As Dr Hoddinott pointed out, we do not have a good feel for how often these incidents happen. When, during the 25 years that I have worked with breastfeeding women, I have offered to take the matter up on their behalf in various contexts, they have told me not to. They have not wanted things to be taken forward for various reasons and would prefer not to try to breastfeed in public.

The Convener: I was just thinking about John Lewis and Mothercare. We are happy that they have been mentioned, but perhaps there are other stores, too, although I do not want you to go through them.

Janis Hughes: As it currently stands, the bill would make it an offence to prevent—or stop—a child from being fed milk. Might the use of criminal legislation in such a way lead to a negative attitude towards breastfeeding mothers?

Jenny Warren: The legislation will make women feel confident about going out, as they will feel that they have the right to breastfeed wherever they have a right to be. Equally, a mother who is bottle feeding will feel that she can feed her child in public and be accepted. A few people will always react negatively to such legislation, but they are people who are terribly negative about breastfeeding as things stand. I think that such people will be few and far between.

Dr Hoddinott: I agree. When one considers the research evidence about what works in other countries—in Scandinavia, for example, and in states in America—it is important to remember that multifaceted approaches to promoting breastfeeding through such legislation are often seen as important, as opposed to simply leaving it to the health service to promote breastfeeding.
Mike Rumbles: I suppose that, with the previous witnesses, I fell into the trap of saying that the bill would give a right to people to feed milk to children. Of course, people already have that right under the common law in Scotland, so the bill does not do that. It simply concentrates on one thing—making it a criminal offence to prevent somebody from feeding milk to a child. I want to ask you about that. I think that everybody in the room would agree that the objective is to ensure that breastfeeding is regarded as nurturing, maternal behaviour that should be valued and welcomed by the Scottish people. However, is it right to create criminals through such legislation?

Dr Hoddinott: That is one way of looking at things. We heard earlier that the minister very much hopes that no prosecutions will result from the legislation. Again, I state that it is extremely important to support women in Scotland in being able to breastfeed their babies and in having a right to feed their babies when they are hungry. I support the bill whole-heartedly. Some people might be prosecuted and made criminals as a result of the legislation, but it is a baby's right to be fed breast milk and it is a mother's right to feed.

Mike Rumbles: But do not they have such rights at the moment?

Dr Hoddinott: Yes, but I still think that those rights are not widely acknowledged. Bringing the bill into the public arena will promote and raise the profile of breastfeeding in Scotland, which will benefit the health of mothers and babies.

Jenny Warren: I am not sure that a woman's right to breastfeed her child in a public setting is explicit in law. Breastfeeding can be construed as an indecent act or an act that is likely to promote controversy of some kind—it has even been suggested that it can promote a breach of the peace.

Mike Rumbles: But surely the evidence that we have from the police is that that is not the case.

Jenny Warren: I do not think that the situation is very clear. The police may have said that, but women and people in various public settings are obviously not clear about what the law says and what it does not say. Women have the right to breastfeed under human rights legislation in other countries. In the United States of America, 20 states have made it explicit in law that a woman has the right to breastfeed her baby in public. That was done to make it clear that breastfeeding is not a criminal offence, an act of indecent exposure or an act of nudity.

Clearly, other countries have felt the need to go further than say that breastfeeding is enshrined in human rights. The other side of that is that if a mother has a problem breastfeeding in a public setting in countries in which there is no explicit legislation—for example, Australia and Canada—she must make a formal complaint to a human rights commission or whatever. That puts the onus on the mother. As I said earlier, many women just want to scurry away—they do not want to face the people who have given them a hard time. I suppose that that is why the women regard the bill's proposals as supportive.

The Convener: The bill does not change the onus, of course, which will still be on the person feeding the child to say that somebody tried to prevent them from doing so. Such prevention would be a criminal offence, so I presume that it would have to rely on the evidential test of beyond reasonable doubt.

Jenny Warren: The women would perceive that they were being supported to—

The Convener: I understand that, but you said that the onus is on women to report the fact that somebody prevented them from breastfeeding. Under the bill, the onus would still be on women to report that someone had tried to stop them breastfeeding. They would still have to report it.

Jenny Warren: There would be differences if the bill became law. For example, the establishment concerned would be able to support the mother in doing something about the situation, whereas, at present, she can be asked to leave.

The Convener: I am also getting at the fact that, because there would be a criminal offence, the evidential test would be that of beyond reasonable doubt, which is quite high. We will obviously have to go into the matter of corroboration in Scots law with the Crown Office.

Mr Davidson: I have a question for both witnesses. If the bill is passed and a criminal offence is created—with all the things that surround that—what percentage increase do you expect to see in the breastfeeding rate in Scotland over the next five to 10 years?

Jenny Warren: I would not hazard a guess, but I wait with interest to see what would happen. The strong message that comes from women almost everywhere in Scotland is that they fear the repercussions of breastfeeding in public. However, if they saw that there was further protection, that might well influence them to breastfeed in public settings. I indicated briefly in my short written submission that, if we interfere with the process of lactation by harassing women about breastfeeding, that can interfere with their hormones in the short and long term and could have an influence on long-term breastfeeding.

Dr Hoddinott: A further point is that once breastfeeding became acceptable in public, we would be more likely to see it on soaps such as Eastenders and Coronation Street, in which bottle
feeding is the norm at the moment. I undertook research in which I asked women whether they had ever seen breastfeeding on television. The majority had not, although I must admit that the situation has improved greatly with the recent NHS Health Scotland adverts, which were shown during breastfeeding week last year and this year.

We are looking for a cultural shift. As people who work for the health service, we would welcome the support of Parliament and legislation for all the hard work that we do to promote breastfeeding. Once we get breastfeeding on to soap operas, we will be running ahead. However, we are a long way from that and making breastfeeding part of normal, everyday experience is the first step forward.

**Dr Turner:** I agree with that, although I am supposed to be asking questions.

**The Convener:** Yes—short questions.

**Dr Turner:** I have a very short question. What do you think about the bill’s stipulation that it will apply only to children who are up to two years old? Do you envisage any problems with that?

**Dr Hoddinott:** Personally, I do. I feel that having a cut-off age of two will make life very difficult. I believe that it is every woman’s right to breastfeed her baby regardless of the child’s age. Certainly, the World Health Organisation supports breastfeeding for children of two years and older. Personally, I am not in favour of having an age limit in the bill for breastfed children.

**The Convener:** I remind witnesses that the bill is not just about mothers breastfeeding. It is far broader than that, because it refers to “a person … feeding from a bottle or other container”.

**15:30**

**Jenny Warren:** Many people are unhappy about the inclusion of an age limit. The only reason for the age limit being two years is because the World Health Organisation’s “Global Strategy for Infant and Young Child Feeding” refers to “two years or beyond”. It was felt that there had to be an age in law.

**The Convener:** Does not the bill’s reference to bottle feeding and feeding from containers muddy the waters? I see a bill called the Breastfeeding etc (Scotland) Bill and think that it is about breastfeeding, but it is not.

**Dr Hoddinott:** It is important to include bottle feeding.

**The Convener:** It also refers to other containers.

**Dr Hoddinott:** Yes, it refers to milk from any container. The bill is about informed choice. I stated in my written evidence that the trend in the survey from the Office for National Statistics shows that the number of women who are prepared to bottle feed their baby in public has declined since 1990. The percentage of women who did not bottle feed in a public place was 24 per cent in 1990, 26 per cent in 1995 and 35 per cent in 2000, which suggests that the issue is feeding a baby any sort of milk in a public place.

My qualitative research shows that women time their trips to shops in between feeds and also that many women perceive that it is unacceptable to have a crying baby in public—that has not been mentioned at all. They will do anything to avoid their baby crying in a public place because it is hungry. That is an important point to consider in relation to including formula feeding as well as breastfeeding in the bill.

**The Convener:** Are the figures that you quoted figures for the UK?

**Dr Hoddinott:** Yes.

**The Convener:** Can we get figures for Scotland?

**Dr Hoddinott:** I have not asked the Office for National Statistics for them.

**The Convener:** Perhaps we should. It would be helpful for the committee to have figures, because we are legislating only for Scotland.

**Dr Hoddinott:** The survey was conducted when women’s babies were five months old. As far as I am aware, the total sample in the UK was 9,492, of whom 2,274 were Scottish mothers.

**The Convener:** But there may be demographic differences.

**Dr Hoddinott:** The ONS would be able to separate out those statistics.

**Jenny Warren:** The problems experienced by families who give formula by bottle are much more likely to be mechanical and practical—for example, some people like to give the bottle of milk warmed—whereas for breastfeeding women the problems are emotional.

**Shona Robison:** I return to the age limit. Could it not be counterproductive to say that there should be no upper age limit for breastfeeding? You said that in a town such as Fraserburgh breastfeeding rates are low. If the legislation was perceived as enabling or allowing a woman to breastfeed a child of school age, for example, would that enhance the breastfeeding rates in Fraserburgh or elsewhere, or could it be counterproductive to encouraging women to breastfeed?

**Dr Hoddinott:** One of the strengths of the peer support groups that we have set up in towns such as Fraserburgh is that those matters are openly
discussed. The groups are woman-centred. There is no doubt that, for some women, seeing an older child—even one who is much younger than a school-age child, for example a 10-month-old baby—being breastfed is off-putting. However, that is partly because so little breastfeeding is visible in our communities. Once it has been seen once, twice and three times, it becomes more acceptable.

I still feel that to have an arbitrary cut-off age of two years is not constructive in conveying the overall message that we are trying to get across, which is that breastfeeding one’s baby for any length of time is of positive benefit to the baby’s health.

Shona Robison: At what age does a child stop being a baby?

Dr Hoddinott: I cannot answer that question. When does an infant become a baby?

Shona Robison: That is important, because we are making legislation. You refer to a baby, but I would not describe a three-year-old as a baby. What is your definition of a baby?

Dr Hoddinott: I would say that a baby is under a year old and an infant is aged between one and two years and becomes a child after two years. That needs further consideration, but I return to the question of human rights. It is every mother’s right to feed her baby in the way that she chooses and that needs to be protected.

The Convener: I asked you about restricting the wording to “mother” and “breastfeeding” and removing references to “a person” and bottle feeding.

Dr Hoddinott: I have concerns about taking out references to “person” and “bottle” from the point of view of fathers and partners. I would hate to see legislation that increased the gender divide in families.

Mike Rumbles: The convener used the word “casual” about the bill—we cannot ask casual questions or have casualness from the people who answer the questions. The bill does not give rights to women to breastfeed. We should consider what deputy chief constable David Mellor of the Association of Chief Police Officers in Scotland said: breastfeeding constitutes neither an affront to public decency nor a breach of the peace. It is, in effect, a mother’s right and her freedom of choice to breastfeed in public, and that is covered by Scots common law.

The bill focuses specifically on making it

“an offence deliberately to prevent or stop a person in charge of a child from feeding milk to that child in a public place or on licensed premises”,

which is contrary to common-law rights. I am conscious that today’s questions and answers have focused not on what the bill is about, but on giving rights to people that they have already.

Jenny Warren: Most breastfeeding is baby led. Indeed, most feeding is child led, because children behave differently around food and they have different nutritional needs from the rest of us. Therefore, often it is babies who make the request to be fed, please, and feeding is not something over which the parent or other person has much control. That is particularly true with breastfeeding. We have all been happy to see children being silenced by getting the food that they request—they can be very noisy if their needs are not met.

Mike Rumbles: You have not answered the point that I was making. We have to examine the bill that is before us, which focuses specifically on making it a criminal offence to prevent somebody from exercising rights that they already have. I am not terribly happy with the responses that we have received, which seem to indicate that people think that the bill gives rights, which people already have. That is the point that I asked you to address.

Dr Hoddinott: We have heard countless stories from women about their being asked to leave a place when their baby is hungry—they have not been allowed to exercise their right to feed. It is important to address that. I support the bill because it would make people into criminals for asking a woman to leave premises.
Mike Rumbles: That is exactly what I am focusing on. We must be clear that the bill would not give people rights.

The Convener: I cannot stop myself from saying that the bill mentions “a person”, not “a woman”. The focus is much broader. I know why the witnesses are focusing on women, but the bill is about more than that.

Janis Hughes: The witnesses may have heard the minister’s view that section 4 is unnecessary because breastfeeding is already promoted. What is their view about placing a duty on ministers to promote breastfeeding? Is section 4 necessary?

Jenny Warren: It would lend further support to the work that has been going on since the early 1990s and which is gathering momentum. The bill would contribute to, support and help to inform that work, but the minister was correct to say that much work is already going on and is bearing fruit. Women in Scotland are now more likely to continue breastfeeding than are women in any other area of the UK. Scotland is looked up to by every other country in the UK because we are making an effort and being innovative in supporting breastfeeding.

Janis Hughes: Will you elaborate on how the duty would be carried out? You are working to promote breastfeeding, but what work would be done if a statutory duty was placed on the Executive to promote breastfeeding, as defined in the bill?

Jenny Warren: The appropriate people would get round a table to discuss what further work should be done. The measure would create a focus, but that work is likely to be going on already. If the measure was introduced and there was an onus on the Scottish Executive to introduce a change, the important point would be that all the parties would get round the table. We are trying to include people from further afield. As has been said, we are trying to promote breastfeeding not only as a health issue but as something for which we are all responsible. Increasingly, that is happening, but section 4 would be a further spur to the current work.

Janis Hughes: To be clear, you think that more could be done that is not already being done.

Jenny Warren: Because of the nature of my commitment to my work, I would always say that there is more to be done. I take opportunities to make that known, fairly bluntly at times, to those who need to know.

The Convener: The minister’s submission states that section 4 is unnecessary because the general duty under the National Health Service (Scotland) Act 1978 suffices. He also states that he would “question the message that the introduction of duties in relation to a specific health improving behaviour”—that is, breastfeeding—“sends out in relation to other aspects of healthcare—ie are they less important?”

Will you comment on that?

Jenny Warren: Because of the nature of my post, I focus on infant feeding. A lot of research has shown that how we are fed as infants and small children has a huge impact on our health, not only at that time but possibly throughout life. The Dundee study, as we all call it, has been going on since the late 1980s. Researchers are finding that formula-fed children—and, in particular, children to whom solid food was introduced early—have higher blood pressures, are fatter and have higher cholesterol levels. It looks as if the impact of infant feeding on adult health is greater than we previously thought. Therefore, optimal infant feeding deserves our focus as part of healthy eating. There is a campaign on healthy eating and healthy living: perhaps breastfeeding can be slotted into that. Such things should be discussed.

15:45

Dr Turner: Do you have any figures on mothers’ mental health? Producing such figures would be an extension of the work that ministers and the NHS are doing. It is important that mothers continue with their everyday life. Postnatal depression may not always be apparent right at the beginning, but often, as people are forced into their own home and are unable to mix with others, depression increases. Do you have any figures on that, based on the work that you have done?

Jenny Warren: Some statistics may be available, and Pat Hoddinott might be able to comment on them. Often, women who have had postnatal depression have been told by their general practitioners that they must stop breastfeeding so that they can be given drug treatment. I know of one mother who made a serious suicide attempt because she interpreted that advice as meaning that she was no good for anything. Breastfeeding was the last positive thing that she had to hold on to. Women can be more prone to depression if they are isolated.

Dr Turner: Figures could help to prove that being able to live a normal life with a young baby improves women’s mental health.

Jenny Warren: I am sorry, but I do not have such figures to hand. However, there is information available.

Dr Hoddinott: The last time that I looked at the research evidence, I found it to be contradictory. In Banff and Buchan, we have collected a lot of...
figures on postnatal depression, but they are still being entered into the computer so I have not had time to analyse them. In qualitative studies, we have reports of women saying things such as, “Going to a breastfeeding group prevented me from going mad. It got me out of the house.” Such groups can offer women a place to have a cup of coffee and get support from other women. However, the issue of postnatal depression is not clear cut.

Kate Maclean: If the bill is passed, the people who uphold it and police it will have to know exactly the definition of “preventing or stopping” someone from feeding a child. What do you think constitutes preventing or stopping someone feeding a child? Does the definition in the bill cover it? From your responses to previous questions, it would seem to be more than simply saying to somebody, “You’re not allowed to do that here.” Obviously, there are other ways of preventing people from doing things.

Dr Hoddinott: I must admit that, when I read the written evidence, I realised that a very careful definition would be required. Does making negative comments constitute preventing somebody from breastfeeding? If a woman perceives a comment to be negative, she can lose confidence. If a woman becomes very anxious, her milk supply can dry up, impeding breastfeeding. A very careful definition is required, but I admit that I would find it difficult to comment further.

Jenny Warren: I agree. I would prefer to leave that to others.

Kate Maclean: Do you accept that prevention is difficult to define?

Jenny Warren: Yes.

Kate Maclean: If the proprietor of an establishment was standing with their arms folded, staring and tapping their feet impatiently while somebody was breastfeeding, that could be construed as preventing breastfeeding, although that would not be the situation in law.

Dr Hoddinott: If the bill is passed, there will be some negative responses. However, as breastfeeding becomes the norm in our society, one would hope that negative comments would decline and that women would feel empowered and more confident to resist such comments and to continue to feed their babies in public.

Mr Davidson: If premises were marketed as providing a high-quality breastfeeding area, would that imply to you that somebody would have to go to a specific area for breastfeeding? From the research that you have undertaken, do you think that that would be seen as negative?

Dr Hoddinott: Every woman should have a choice. My original research was about how women decide how to feed their babies. At the moment, quite a lot of women would prefer to have a private space, but those attitudes will change with time. It is ironic that, in our society, we have individual cubicles for trying on clothes in a fashion store, but baby-changing and baby-feeding areas are often in toilet areas of stores. I hope that, with time, and with the normalisation of breastfeeding in public places, more options will become available for people to feed their babies in whatever situation they choose.

I hope that the number of child-friendly eating areas will increase, because Britain as a whole—not just Scotland—does not cater for mothers who want to feed new babies, in particular babies who are under six months and who tend to cry a lot. People have very few places to go that are comfortable, allow them to feel confident that they will not disturb others and where they perceive that other people will not have negative feelings. Part of the problem is what women perceive other people to be thinking about them, whether that is true or not. The culture out there is negative. Women say that when their baby cries, they feel that everybody is looking at them and thinking what a dreadful mother they are.

The Convener: Quite a lot of us have been there.

Dr Hoddinott: That is a powerful feeling. The evidence from the Office for National Statistics is that those women stay at home rather than risk being in a public place with their baby crying. That is terribly sad and is likely to have an adverse effect on women’s emotional and mental health.

The Convener: To keep to some kind of timetable, I will ask Elaine Smith to address points in her evidence session, rather than to ask questions now, as I have another two panels of witnesses. I thank the witnesses for their evidence. I will suspend proceedings until 5 past 4—we are almost on schedule.

15:53
Meeting suspended.

16:07
On resuming—

The Convener: I welcome our third panel of witnesses. We have before us David Barrie, a solicitor in the legal team of Dundee City Council, Ellen Kelly, equalities manager of City of Edinburgh Council, Vivienne Brown, health improvement adviser from Fife Council, and Gillian Grant, health improvement manager of Perth and Kinross Council. I thank you all for your written
submissions, which are in the papers that are before us.

Helen Eadie: I congratulate the witnesses on their evidence papers, which seem to show that they are doing a lot of positive work and policy development on promotion of breastfeeding.

I have a specific question for Perth and Kinross Council. I understand that the council places a condition in respect of breastfeeding on granting of children’s certificates. Will you tell us about your experience of that condition?

Gillian Grant (Perth and Kinross Council): I think that you are talking about Dundee City Council.

Helen Eadie: I think it is Perth and Kinross Council. The submission says “nothing shall be done to prevent or dissuade breastfeeding from taking place”.

It says that Perth and Kinross—

The Convener: I am sorry Helen—we are still trying to clarify from the written submissions which council has said what. I am sure that the witnesses know the answer while I am scrabbling around to find it.

David Barrie (Dundee City Council): In Dundee, the relevant condition states that during the hours when a children’s certificate is in force, smoking shall be prohibited in all parts of the licensed premises of which the premises specified in the application for the children’s certificate forms part. Dundee City Council is simply considering the prohibition of smoking in those parts of licensed premises that have a children’s certificate in force. There is no breastfeeding provision in Dundee’s conditions on children’s certificates.

Helen Eadie: The document that I have read states that Perth and Kinross Council already places a condition on the granting of children’s certificates that requires that “nothing shall be done to prevent or dissuade breastfeeding from taking place.”

Gillian Grant: I am from Perth and Kinross Council. I am new to my post, but my predecessor, who is on maternity leave, submitted a written statement. I have read that statement and what you say does not ring a bell with me. I am sorry, but if that is the evidence from my council, I cannot respond to that.

Helen Eadie: So you cannot—

The Convener: Please bear with me for a minute. We are all in a tangle here. You said that Dundee City Council’s submission related to smoking. Where is the reference to that?

Helen Eadie: It is in the document that we all have in front of us.

Kate Maclean: Can I ask a supplementary question of the witness from Dundee City Council?

The Convener: Please do, while I sort myself out.

Kate Maclean: Being a member for Dundee, I have been contacted by various people who run public houses. I understand that the effect of allowing smoking is that licensees have not been applying for children’s certificates. Is that the case? Do you think that the bill, if passed, would stop more people applying for children’s certificates?

David Barrie: In the short term, our experience has been that, given the choice, licensees tend to choose to have smokers rather than children in their premises.

Kate Maclean: Smokers spend more money.

David Barrie: I have to say, however, that that is the very short-term experience that we have had since last October, when first we introduced the condition. I suppose that the question of whether there would be a further disincentive to apply for children’s certificates if the bill became law is a matter for speculation. My view is, regrettably, that it might be cited as another excuse for not applying for a children’s certificate, given the potential risk of prosecution.

Kate Maclean: How is the council monitoring compliance with the specific condition about smoking?

David Barrie: Given that a breach of that condition would be a criminal offence, it would be a matter for the police.

Shona Robison: What work—if any—is planned or is taking place to work with the licensed trade to turn that situation around? The aim that we all share is obviously to have more premises that welcome children, but the fewer children’s certificates there are, the more the trend is in the opposite direction. Is there a plan to work with the licensed trade to encourage licensees to work around what they perceive as being the obstacles that are being put in their way?

David Barrie: I am sure that it is the licensing board’s position that it would wish to encourage as many licensees as possible to apply for children’s certificates and to comply with the condition. However, I am not aware of any specific work that is being carried out with the licensed trade in Dundee at present.

Shona Robison: Have you ever had to take enforcement action as a result of a breach of the condition?
David Barrie: The board is not aware of any breach of the condition to date. I should explain that the introduction of the condition was not, as it were, a big bang on a single day, when it suddenly applied to every public house or hotel in Dundee. The condition is being imposed as and when the parent licence is up for renewal on a three-yearly basis. Between last October and now, a small percentage of licensed premises that could be covered by the condition have been covered by it.

Janis Hughes: In our previous evidence-taking session, we heard from representatives of the Association of Chief Police Officers in Scotland, who suggested that it might be preferable to include provision in the charters and licences of public establishments, rather than to create a criminal offence. What is your view on that?

Helen Eadie: Have you received that clarification, Helen?

Yes.

I would disagree with the police evidence. If there is to be legislation to cover this activity, it should be clearly stated in criminal law rather than in more vague and aspirational non-statutory material.

Janis Hughes: Have you arrived at your opinion with the benefit of hindsight? Has that approach been tried and found to fail?

David Barrie: I am not sure whether that approach has been tried. I expect that such provision has not been included expressly in any charter or other piece of aspirational documentation.

On enforceability—for example, if a licensing board wanted to take action against licensees who were guilty of misconduct—a clear statement in criminal law would be advantageous.

The Convener: We have clarified where the information about Perth and Kinross came from. Have you received that clarification, Helen?

Helen Eadie: Yes.

The Convener: Do you want to return to the issue now?

Helen Eadie: The Scottish Licensed Trade Association gave an example of a situation in which Perth and Kinross Council attached to its guidance note to establishments the condition that “nothing shall be done to prevent or dissuade breastfeeding from taking place.”

However, in the light of the fact that the young officer has only recently taken up her post, I do not know whether she will be able to answer my question, which relates to whether that condition has had an effect on the number of certificates that have been issued. Perhaps she could get back to us.

Gillian Grant: Certainly.

Mr Davidson: This week and last week, witnesses have told us that it would be preferable to encourage businesses to provide accommodation for feeding babies. Earlier, Dr Hoddinott said that she would like breastfeeding facilities to be available as a matter of choice. Have any of you discussed with businesses in your council areas provision of facilities for breastfeeding or bottle feeding of babies? Do any of you think—particularly in the light of David Barrie’s comment a minute ago—that there should be statutory guidance relating to such facilities, perhaps depending on the size of the premises?

Gillian Grant: Breastfeeding is a priority in our joint health improvement plan and we are working with our community planning partners in the Tayside joint breastfeeding initiative to examine the possibility of increasing the number of breastfeeding-friendly premises in Perth and Kinross. We have not had conversations with businesses yet, but we will explore that in the coming couple of years as part of our health improvement plan.

On private facilities, we agree that women should have a choice. However, they should not be made to feel that they must use those facilities—“private facilities” often means simply the toilet. We will continue to work in this area, but the initiative is a new one for us.

Vivienne Brown (Fife Council): In Fife, we have a breastfeeding-friendly directory, in which premises from any sector can be listed. We are also working with people who are involved in the Scottish healthy choices award, which dictates that premises that receive the award must be supportive of mothers’ right to breastfeed, and gives guidance on how to deal with customers who complain about breastfeeding mothers. Neither of those two initiatives suggests that there needs to be a separate facility for breastfeeding mothers, unless it is specifically asked for. Both initiatives are targeted at changing attitudes to breastfeeding by making breastfeeding acceptable within the main areas of restaurants, cafes or services.

Ellen Kelly (City of Edinburgh Council): I have no specific comment to make on private businesses in Edinburgh. I say merely that the council—horror and scandal—is a very large business with a great number of outlets; there are more than 20 libraries and more than 23 community centres, many of which run restaurants and cafes. Trusts such as Edinburgh Leisure also run restaurants and cafes. Our position has always been clearly stated: we will provide, or attempt to provide, a private or semi-private place that is not a toilet. However, in the vast majority of cases, mothers simply breastfeed wherever
seems to be most appropriate to them. Some mothers feel more comfortable tucked away in a corner of a library on a chair, whereas others are quite content simply to sit at one of the children’s reading tables because they are there to facilitate their child’s participation in reading sessions, for instance.

Mr Davidson: I have a general question for anybody who wants to answer it. Gillian Grant mentioned health improvement plans, in which all councils are involved. She suggested that there will be a two-year programme. Will the bill, if passed, pre-empt your developing your own policies and strategies?

Vivienne Brown: Fife Council already has policies in place and we are moving towards developing more to encourage breastfeeding. That is, however, different from ensuring that people take on responsibilities for not preventing mothers from breastfeeding. The policies, guidance or support that Fife Council has provided until now have been about encouraging and promoting breastfeeding, which is all that the council has the power to do and is probably separate from what the bill suggests.

The Convener: Licensed premises will have a proactive role if the bill becomes law. If a procurator fiscal decides not to prosecute someone who is in breach of the legislation, but you have the option to revoke a licence, what would the standard of proof for that be?

David Barrie: I am pretty confident that the standard of proof in such circumstances would be not the criminal standard of proof but the civil standard of proof, which is the balance of probability.

The Convener: I take it that a business’s licence would be revoked and that it would be given a different kind of licence; there would be options open to you. The penalty to owners of businesses would be that they might lose some of their livelihood or suffer disruption to their businesses on the basis that a lower standard of proof would be required than if a criminal offence was being pursued. I see a conflict there.

David Barrie: Yes, but that is the position with regard to every instance of misconduct that might be a criminal offence. The same circumstances may form the basis of a suspension of a liquor licence or a civic government licence. However, the law seems to be that, in revoking or suspending a licence—which I accept might have the consequences that you described—a lower standard of proof is required than for criminal cases.

The Convener: That must cause difficulties. There are perhaps difficulties with definitions. Quite rightly, there is no definition of “stopping” or “preventing” in the bill: that will be determined in individual cases or in the findings of licensing boards. Do you have any such definitions that you would use if you were sitting on a licensing board and a case came before you?

David Barrie: One could conceive of an infinite number of examples of how someone may directly or indirectly stop or prevent a person from doing something. Examples were given earlier, including that of a person standing beside another person and tapping their foot. To go from one end of the spectrum to the other, another example might be that of a bouncer simply enforcing the house policy. I would have great difficulty in assisting the committee with a comprehensive definition of “preventing or stopping” a person from doing anything.

The Convener: I did not really mean that you should give me a comprehensive definition—even a judge or a sheriff could not possibly do that. I would just like to have an idea of any difficulties that you see in the bill, particularly given your role with the licensing board. Let us say that the board has to decide on the balance of probabilities whether a woman who has been breastfeeding was prevented from, or was stopped, breastfeeding her child and whether the person whom she has accused has done so. Can you see difficulties for boards in dealing with such cases?

David Barrie: As a lawyer, I foresee difficulties in cases in which attempts were made to provide a helpful definition to a licensing board as to what would constitute “preventing or stopping”.

The Convener: Am I correct to say that there is no necessity for corroboration?

David Barrie: That is correct. There is no necessity for corroboration in the civil setting of a licensing board hearing.

The Convener: Okay. So there would be evidential difficulties for boards.

David Barrie: I am pretty sure that, in some cases, there would be a difficulty at the margins in respect of the terms that are used in the bill.

The Convener: Thank you.

Mr Davidson: To develop the convener’s point, let us say that a lady makes a complaint that she has not been allowed to feed her child. The lady takes her complaint to the police, they pass it to the procurator fiscal, but the procurator fiscal refuses to take action. If the bill is passed, the offence would have to go through the due process of criminal law. What would give councils the right to take a second bite at that particular cherry?

David Barrie: I am sure that I can speak for all licensing boards. Very often—in our experience—there are circumstances in which the police will not
put a case through the criminal machine, as it were, but will refer the matter as a complaint to the licensing board. I assume that the police feel that the board has more effective remedies for dealing with such matters. Ultimately, the board can suspend or revoke a licence.

Mr Davidson: So, despite the fact that—if the bill is passed—the offence would be a criminal offence, licensing boards could take action in such cases even if the criminal process did not happen.

David Barrie: Yes—that happens frequently with regard to other areas of criminal law.

Mr Davidson: Thank you.

Dr Turner: I do not know much about the law in such cases, but I wonder whether, if the bill were passed, there could be a honeymoon period, so to speak, in which the offence would not be criminal. In effect, could the act be brought gently into use, unlike the legislation on use of telephones in cars, in respect of which everybody thinks they will not be charged if they are on the phone, although the reality is that they will be charged if they are seen by a policeman? Do you envisage that, if the bill is passed, criminal charges might not be made in the first year or two?

David Barrie: There may well be a period of grace, although it would—of course—be a non-statutory period of grace. The police might make the active choice to refer an offence to the licensing board, rather than take the criminal law route.

The Convener: If the bill becomes law, will licensing boards issue guidance? Would they think that they had an obligation to do that? Perhaps national guidance could be issued on what constitutes stopping or preventing, in order that boards are given assistance and know where they are. Such guidance would also ensure that there was a level playing field throughout Scotland. I assume that if a licensing board in one area were to say something different from what is being said in other areas, a case could go to appeal at the sheriff court, and so forth.

David Barrie: Normally, the guidance that we, as lawyers, receive is guidance on interpretation of the law, which we receive from the courts. We also rely on central Government guidance by way of circulars. It may even be that it would be an error of law for licensing boards to state in advance what they would do in any given set of circumstances, because boards must deal with each case on its merits.

The Convener: That said, do you think that section 4 should remain, which would remove the financial burden from local authorities? The section states that

“The Scottish Ministers shall make arrangements”

and that “The Scottish Ministers shall have the power to disseminate, by whatever means, information promoting and encouraging breastfeeding.”

Would ministers not be able to issue guidance under that section? There would be national guidance on what constitutes “preventing or stopping”.

16:30

David Barrie: There is scope in section 4 for Scottish ministers to provide such guidance.

The Convener: Do you support that provision?

David Barrie: Certainly.

Dr Turner: The bill is not meant to impose any additional financial costs on local authorities. Do you believe that it may do so?

Vivienne Brown: Any bill that is about changing attitudes and culture has resource implications. Reference was made to a cooling-off period during which people would get to understand the bill’s implications. There would be an opportunity to raise awareness, to train people and to provide guidance. Local authorities, along with their community planning partners, would have a key role in that work, which could not be done without resources. The financial memorandum suggests that the bill would impose no additional costs, but no change to environment and culture comes without costs. Someone must raise awareness and provide training, leaflets and information, so that people do not unknowingly commit an offence. People must be supported in understanding the benefits of not committing that offence and why it is important that people be able to feed their babies milk in a public place. That will take a great deal of time and energy. If it does not happen, the bill will merely criminalise people for doing something that they are not clear about.

Dr Turner: If the bill were passed, would you expect financial help from central Government in order that you could do such work?

Vivienne Brown: Yes. One of my concerns was that the financial memorandum suggested ring fencing money that is already provided, or seeking money from the health improvement fund or the sure start programme. Those money is already committed, sometimes to projects relating to breastfeeding among the most disadvantaged mothers. If we had to put some of that money—decisions about which are taken by community planning partners, rather than NHS boards—into raising awareness of a new act and into auditing and enforcing the law, resources might have to come from projects such as breastfeeding peer support groups that we already fund.
At the risk of disagreeing slightly with colleagues, I point out that much of the bill is analogous to other equalities law. Local authorities already have a duty to promote race equality. Later this year they will have a duty to promote disability equality. Local authorities and all other public authorities will be liable for both duties. We do not receive any additional resources for that, but are expected to adjust our work programmes accordingly.

I cannot comment on the situation in other areas, but in Edinburgh the licensing board does not meet in grandeur and act apart from its constituency of interest. There is an advisory group and there are liaison groups. There is considerable interface between licensees and the council and not just in the strictly formal sense, within the board. My staff already work with groups of licensees to provide training and advice to them on disability discrimination. The reasonable adjustment concept is flexible. No set of premises is the same as another, so the adjustment that must be made to meet the requirements of the Disability Discrimination Act 1995 must be flexible—bearing it in mind that the primary purpose is to facilitate equal access, on equal terms, by disabled people. We receive no additional money for that, and it would be unreasonable to expect any.

I am not qualified to talk about criminality and will not do so, but if the objective of the bill is to promote a culture that is inclusive and accepts breastfeeding of children in public places as being natural, then local and other public authorities must play their part in that process. In principle, it is no different from promoting race equality—a much wider issue—and disability equality.

Shona Robison: Have we had any clarification of Perth and Kinross Council’s written statement on breastfeeding and children’s certificates?

Helen Eadie: I clarified that that comment came from the Scottish Licensed Trade Association’s guidelines to licensing boards, which was mentioned in a Scottish Parliament information centre briefing note that—

Shona Robison: Was it only in the evidence from the Scottish Licensed Trade Association?

Helen Eadie: It was.

The Convener: I will let the clerk answer, because it was part of the background papers.

Jennifer Smart (Clerk): My understanding is that Perth and Kinross Council’s licensing board issues children’s certificates under the condition that breastfeeding not be prevented, but perhaps the officer who gave evidence was unaware of that.

Shona Robison: It is not the officer’s fault, because she is new. I suggest that we drop a note to Bernadette Malone, because she does not mention the breastfeeding condition in her written evidence, although it would seem to be the most pertinent point for Perth and Kinross Council to give evidence on. That put the council’s representative in a bit of an awkward position. It would be helpful to write to the council for clarification on that.

The Convener: We will write, but I suspect that Bernadette Malone will read the Official Report of the meeting, knowing that her name has been mentioned.

Mr Davidson: Ellen Kelly made a comment on freedom for those with disabilities to conduct a certain activity. I know that you do not want to talk about criminalisation, but you are here to represent a council; if you cannot answer my question, perhaps somebody will drop us a note about it. Is it necessary to go as far as to introduce the criminal offences that the bill proposes, or should breastfeeding simply be left as an ideal to be promoted?

Ellen Kelly: After more than 25 years in local government, I can say that people do not do things unless they are compelled to do so, particularly in the field of equality. No advance in equality has been achieved without accompanying legislation and it is not often stated that people are committing offences. For instance, an employment tribunal to which an employer might be taken on the ground of sex discrimination is a court and makes a legal judgment. The bill would have exactly the same element of compulsion. What has been said this afternoon makes it clear that the compulsion should be a last resort; in that way, the bill is analogous to the Disability Discrimination Act 1995, under which compulsion is a last resort. Most people do not change, because it is not convenient for them to do so; to many people, change means having to think about a well-known process and it can sometimes mean expense. Above all, changing one’s attitude requires one to think about the issue in the first place, and most people are not good at putting themselves in others’ shoes.

The Convener: We have considered the role of the licensing boards, but I do not know how far we can consider public places other than licensed premises. Would it have been useful to consider civil penalties of some kind for breaching the law? There is an issue about criminalisation. Perhaps the bill uses a hammer to crack a walnut.

David Barrie: It might be an option to consider creating a civil offence of preventing a person from feeding milk to a child and to make the offence a matter for the sheriffs to decide.
The Convener: That would also ease the burden of proof.

David Barrie: We would be looking at the balance of probabilities.

The Convener: The evidence would be easier.

David Barrie: It would be less stringent.

The Convener: Perhaps “easier” was the wrong word to use.

I thank the witnesses on the panel for coming and for waiting so long.

I welcome Elaine Smith MSP, Mike Dailly, who is from the Govan Law Centre, and Kay Sillars, who is a researcher. They are our final panellists of the evening—which it almost is.

Janis Hughes: I have asked a few witnesses this question today. What is your view on the criminalisation element of the bill in relation to breastfeeding in public places? Could it lead to a negative attitude towards breastfeeding mothers?

Elaine Smith: We live in a culture that is negative towards breastfeeding, and we have to take things from that starting point—unfortunately, Scotland has a non-breastfeeding culture at the moment. There were various reasons for taking the criminalisation route, and many of the decisions were arrived at after much discussion in the steering group, which was made up of a wide range of people and organisations. Civil legislation would put the onus on the woman—or the parent, as the convener keeps pointing out; the bill is now wider in scope than it was originally. The route of statutory obligations would be difficult, and I think that the provisions would be more wide ranging.

The bill seeks to protect people who choose to breastfeed and carry out other forms of feeding in public, and to protect children. It also seeks to act as a deterrent. If we have criminal legislation, we must define the sanctions to go with it. I will ask Mike Dailly to comment further on that, if members do not mind.

The Convener: Absolutely—we will go to the lawyer sitting at the end.

Mike Dailly (Govan Law Centre): Coming from Govan Law Centre, I can tell you that, over the years, the availability of civil legal aid has decreased. The only people who want to raise civil litigation and who qualify for legal aid are incredibly poor or incredibly well off. I would not raise civil litigation, for fear of the consequences. To be realistic, I would say that the civil route could be a good way to go, but only if people were able to raise litigation. We know that financial exclusion would play a part, because even those who are on a low wage have to pay a big contribution to the Scottish Legal Aid Board to get civil legal aid. That is a question of priorities for the Legal Aid Board—it is a harsh fact of life.

If we accept as a starting point the fact that the bill needs to have some teeth, and if we accept that the civil system would be extremely problematic and would result in financial exclusion, the only thing that we have left, other than the question of licensing, is the criminal system, which seems the obvious route.

Helen Eadie: I turn to the issue of deterrence and ensuring that people comply with the law. Deputy Chief Constable David Mellor’s view was that the bill “would be good law in that it would be symbolic, it would reinforce the aims of the bill and it would exist as a threat.”

Do you think that people sometimes need a threat so that they change their attitudes and their behaviour? Speaking in support of the bill, David Mellor went on to say:

“I anticipate that prosecutions would be few in number.”—[Official Report, Health Committee, 11 May 2004; c 868.]

Elaine Smith: David Mellor also said:

“It is perfectly legitimate to create a criminal offence as part of a strategy to change attitudes.”—[Official Report, Health Committee, 11 May 2004; c 868.]

The bill is largely about creating a deterrent. However, the law would be symbolic because, at the end of the day, there would be few prosecutions. Mike Dailly will answer in more detail.

Mike Dailly: There are few prosecutions for not wearing seatbelts or for using a mobile phone in a car, for example. However, I believe that the relevant laws act as deterrents. That is what the Breastfeeding etc (Scotland) Bill is trying to do.

16:45

The Convener: I heard what you said about choices and I know all about the difficulties of obtaining civil legal aid. However, why would the person who was feeding the child necessarily have to pursue a civil action? The bill refers to “in a public place”: an obligation could be placed on the proprietor, or whatever, of a public place—for example, a local authority that is responsible for a park or a commercial company that owns a shop—to be the party who pursued the case on behalf of the mother, who could simply be a witness in the cause. That would lift the burden off the individual. I am sure that you have explored that idea and that you will tell me why you ditched it.

Mike Dailly: Indeed. The big problem is that nobody wants to spend the money to raise litigation. For example, I deal a lot with noise
nuisance cases in Govan Law Centre. Local authorities serve section 80 notices under the Environmental Protection Act 1990 on people who cause noise problems. It is rare even for a council to raise summary application proceedings, because doing so costs a fortune and they run the risk of getting caught up in lengthy litigation.

What you suggested for the bill could be a solution in principle, given all the practicalities, but the problem is that it would probably result in piecemeal application of the bill throughout the country, because prosecutions would depend on individual organisations and different people. I must state candidly that I do not believe that such folk would want to use their own funds to raise an action in a sheriff court.

The Convener: You are saying that the function of the criminal consequences that would arise from the bill is to be a deterrent. You do not expect there to be many prosecutions.

Mike Dailly: Indeed, convener.

Elaine Smith: The Association of Chief Police Officers in Scotland said in evidence that it did not think that the civil route was appropriate. I am sure that that is in the Official Report.

The Convener: I appreciate what ACPOS said, but I am interested in how the provisions in the bill developed. Did you have a hand in drafting the bill?

Mike Dailly: I drafted the bill.

The Convener: I am interested in knowing why you included certain things rather than others and why you went down the criminal route rather than the civil route.

Mr Davidson: My question is for Elaine Smith. I understand that the principle behind the bill is the promotion of breastfeeding. Paragraph 3.3 of your written submission gives a list of conditions that would be minimised, if not avoided, if more children were breastfed. To achieve that aim, you want to go down the criminal route. If you support the notion of using the criminal route to change societal approaches to what is basically health provision for babies, is there any particular reason why you did not include in the bill, for example, making it a criminal offence for a mother to smoke while she is breastfeeding or while there is a child in the home? Those behaviours, equally, have huge effects on children’s later lives because of the transmission of chemicals through skin contact and so on. If you are going to use the criminal route to solve a health problem, do you agree that it should also be used to change societal attitudes?

Elaine Smith: As Duncan McNeil said earlier, the bill is not, in and of itself, legislation to promote a campaign; it is legislation to ensure that the right to feed infants and children in public is protected and that there is a deterrent to support that. That is what section 1 of the bill is about. The bill is very much about saying that we, as a society, will no longer thole women and other people who are feeding children being put out of public places for doing so. That relates specifically to breastfeeding, because the anecdotal evidence is about breastfeeding mothers having such problems.

Of course, other issues are involved. For example, the previous panel of witnesses asked whether allowing smoking in restaurants would somehow prevent breastfeeding in those places. However, the issue is about parents making choices rather than anyone dictating to them; once those choices have been made, it is about how to feed the infant or child. The important thing then is for society to support the choice to feed in public.

Much time has been spent considering the bill’s impact on cafes and restaurants, but the bill would apply to all public places. Earlier, Pat Hoddinott asked whether people thought that preventing someone from breastfeeding should be viewed as a crime, but that is what the bill is about. Under the bill, it would be a crime to tell someone, “Sorry, you can’t do that here. Please leave.” Feeding choices are up to parents, but the bill is about supporting those choices once they have been made.

Mr Davidson: I notice that you did not use the parallel that I suggested. For the record, will you clarify that the bill is not about promoting children’s health but about giving mothers the right to feed a child under the age of two, whether by bottle or by breast, anywhere that they chose?

Elaine Smith: The bill is child centred, so it is about the right of children under the age of two to be fed in public places. It is also about supporting feeding choices once those choices have been made. Section 4 deals with promotion of breastfeeding, which the committee has spent some time discussing with the minister and with other witnesses. Paragraph 3.3 of my submission explains the need for that promotion section in the bill and why it is good for children to have breast milk. However, section 1 establishes a criminal offence and is definitely about acting as a deterrent.

Mr Davidson: However, the issue that is covered in paragraph 3.3 of your submission is incidental to the bill’s main objective.

Elaine Smith: The bill is not a panacea but, as part of a multifaceted approach, it will help improve the rates of breastfeeding, which research shows has many health benefits. As such, the bill will be a positive factor in the health of future generations in Scotland. The bill and my submission embrace a lot of issues—perhaps my
Although some research suggests your view on that? the statutory provision on breastfeeding in the licences from ACPOS, but it also suggested that, rather than make the prohibition of breastfeeding a criminal offence, it might be preferable to include a provision in licences would make no requirement for such facilities on any public places or licensed premises. If we are to have a more breastfeeding-friendly culture in which we encourage people to think about breastfeeding as the norm, it is important that we see breastfeeding going on round about us as we do when we go to many other countries. Kay Sillars might want to comment on public attitudes.

Kay Sillars: Although some research suggests that it is half and half whether women want to breastfeed in private, the research has not explored why that is the case. Other research indicates that more than two thirds of women believe that other people find breastfeeding in public unacceptable. Although they would happily breastfeed in public if they knew the response that they would get, they say that they would rather do it in private because they fear other people’s responses.

As regards the other half of the bill, which is about increasing the breastfeeding rates in Scotland, there is a lot of evidence that suggests that the more people view breastfeeding as part of normal life, the more they are likely to consider it as a choice for themselves. If the bill had gone down the road of demanding more private spaces for women to breastfeed in, that would not have enabled women to see breastfeeding as something that they can do easily as part of their lives and therefore as something that they would consider for themselves. That applies in particular to women from low income areas, who do not get to see breastfeeding in more private places, such as their homes or the homes of their friends and family.

The Convener: I am not suggesting that it is a question of having breastfeeding in private or breastfeeding in public but, if both were possible, we might find that, incrementally, women who would not have breastfed at all will start off using a facility and that that will give them the self-

Janis Hughes: You mentioned the evidence from ACPOS, but it also suggested that, rather than make the prohibition of breastfeeding a criminal offence, it might be preferable to include a statutory provision on breastfeeding in the licences and charters of public establishments. What is your view on that?

Elaine Smith: That would be rather more limited. The media in particular have sometimes misconstrued the bill as applying only to cafes and restaurants, but although it is nice that people can go out for lunch, it is imperative that they have access to public services. Going down the route that has been suggested would be rather limiting, because it would not encompass the amount of public places that would be covered by the bill. Mike Dailly will give the committee more detail on that.

Mike Dailly: To repeat what Elaine Smith has said, simply including a provision in licences would mean that public places would be missed out. For example, if someone is standing at a bus stop, they are not in a place that is licensed. The bill tries to encompass all public places and licensed places where persons might want to feed their child.

Mr Davidson: This question follows on from the previous one. We heard today that half of breastfeeding women would prefer to feed their children in a private place. Would it be preferable to encourage businesses and public premises to provide separate facilities for breastfeeding and bottle feeding, both of which are mentioned in the bill?

Elaine Smith: It is important to make it clear that the bill would make no requirement for such facilities. At the moment, 50 per cent of women might say that they would prefer to have private places, but that might be because of public attitudes. Is it preferable to hide in a private place because cultural attitudes mean that people fear that they will be embarrassed by someone telling them, “You cannot do that here—please stop”?

We are talking about a mixture. If mothers and parents want to choose to go somewhere private and there is somewhere for them to go, that is fine, but the bill imposes no requirement in that regard. I understand that some places—such as Boots the chemist—are considering such provision. I will probably get a rap from the convener for mentioning a company.

The Convener: No, that is fine.

Elaine Smith: Such companies are considering the provision of nicer private facilities for people to access.

The other problem is that, if a woman is breastfeeding in the cafe of a department store and someone tells her that the store has a private breastfeeding room and asks whether she would like to go there, that can often upset the milk. It might seem that the woman is being told that she must go there. If such choices are on offer and women know about them, they can make their choice freely. That is fair enough, but I reiterate that the bill does not seek to impose the provision of such facilities on any public places or licensed premises. If we are to have a more breastfeeding-friendly culture in which we encourage people to think about breastfeeding as the norm, it is important that we see breastfeeding going on round about us as we do when we go to many other countries. Kay Sillars might want to comment on public attitudes.

Kay Sillars: Although some research suggests that it is half and half whether women want to breastfeed in private, the research has not explored why that is the case. Other research indicates that more than two thirds of women believe that other people find breastfeeding in public unacceptable. Although they would happily breastfeed in public if they knew the response that they would get, they say that they would rather do it in private because they fear other people’s responses.

As regards the other half of the bill, which is about increasing the breastfeeding rates in Scotland, there is a lot of evidence that suggests that the more people view breastfeeding as part of normal life, the more they are likely to consider it as a choice for themselves. If the bill had gone down the road of demanding more private spaces for women to breastfeed in, that would not have enabled women to see breastfeeding as something that they can do easily as part of their lives and therefore as something that they would consider for themselves. That applies in particular to women from low income areas, who do not get to see breastfeeding in more private places, such as their homes or the homes of their friends and family.

The Convener: I am not suggesting that it is a question of having breastfeeding in private or breastfeeding in public but, if both were possible, we might find that, incrementally, women who would not have breastfed at all will start off using a facility and that that will give them the self-
My experience of breastfeeding is steering group had exactly the same debate over much debate and differing views, because the surprised that the matter has been the subject of 17:00

be an advantage.

confidence to move into public spaces. That could be an advantage.

Kay Sillars: My experience of breastfeeding is that women go through different stages—at some times and in some places they are quite happy to breastfeed, whereas at other times and in other places they might need a more private space. I do not think that, as part of the bill, it is being suggested that the provision of breastfeeding rooms is necessarily a bad thing.

Shona Robison: On that point, breastfeeding is surely a matter of choice. As you have just said, sometimes a woman might want peace and quiet and to be away from other folk, but at other times she might not. I would have thought that it would be a good thing if one of the bill’s consequences was that more quality private areas would be provided for the women who chose to use them when they wanted to. Even if it is not a stated intention of the bill, would it not be a positive consequence if, in addition to encouraging women to breastfeed in public, the bill produced an improvement in the quality of private areas and an increase in their number?

Elaine Smith: I reiterate that the bill is about supporting choices—it is about supporting the feeding choices that are made and the availability of choice when women are out and about in public. At the moment, there are not many comfortable places to go to. As I think I told the Finance Committee, in Ayrshire I saw a notice on a wall that said, “Ladies and nursing mothers”. When I went to investigate, I found that it was referring to a public toilet. That is just not acceptable; it sends out a very bad message. If places are available and people choose to use them, that is fine. The bill would add to the good work that people in the health service, the Executive and the voluntary sector are doing. If it helped over time to make Scotland’s culture more breastfeeding friendly, people might have less need to seek out private places.

17:00

Helen Eadie: One area of controversy in relation to the bill is the proposed age limit. Some witnesses agree that an age limit should be set and others say that it should not. Would the age limit make people think that it was illegal or wrong to feed in public a baby who was over that age limit? The World Health Organisation has not set an upper age limit, but it quotes 4.2 years as the average natural weaning age for a child. Will you comment on that?

Elaine Smith: I am happy to comment. I am not surprised that the matter has been the subject of much debate and differing views, because the steering group had exactly the same debate over a few meetings. The age that has been chosen is not arbitrary. The WHO refers to two years and beyond; it does not say three years, four years or one year and beyond. I have no particular feelings about the age at which babies choose to wean or mums think that it is time to wean them. That matter is entirely between mothers and their children. That can also be a cultural issue. However, in discussion of the bill, we felt that it would be better for clarity in the law to set an age limit, so we had to decide what age made sense. The figure was not plucked from the air.

The bill would not make it illegal to breastfeed or bottle feed in public a child who was more than two years old. The status quo would prevail. We must make progress in small stages. We have problems now because wee hungry babies are being thrown out of public places and licensed premises. If we can create a breastfeeding-friendly culture over time, that may have a positive effect on whether people see breastfeeding as acceptable.

Dr Turner: Do you see no practical problems with the age limit of two years, given that the bill will create a criminal offence?

Elaine Smith: Other legislation has age limits. Mike Dailly will comment from a legal point of view.

Mike Dailly: We need to define the word “child” in the bill as a matter of good law. The age of a child is a matter for Parliament. I think that you have said that the age limit of two could be difficult if a baby happened to look older than that. However, that is the position with under-age drinking when under-age people buy alcohol unlawfully. If a shopkeeper is to be prosecuted, birth certificates will be lodged in evidence, if the prosecution goes that far. For an offence under the bill, the situation would be no different. The question is: what age should the Parliament decide on? The word “child” needs to be defined, as otherwise it would be meaningless as a term in the bill. We must grapple with that issue, which is a matter for Parliament.

Dr Turner: We are trying to de-stress a woman in such a situation. Thinking about the age of her child, what her child looks like and whether that will pose a problem could stress a woman. You talked about under-age drinking—do people not have identity cards? Is a woman to carry her child’s birth certificate around with her?

The Convener: I think that identity cards for babies were a Conservative suggestion.

Mike Dailly: To be fair, I do not expect the situation that Jean Turner described to happen.

Dr Turner: So you expect no difficulties.
Mike Dailly: Apart from the reasons that Elaine Smith gave, one reason for setting the age at two or under was that we wanted to take as many people with the bill as possible. We need to be realistic—some people might be especially offended if older children were being fed. I am the father of a two-and-a-third-year-old child. The point has been made that if a person has a wee baby, they cannot negotiate with it about feeding—

The Convener: We all know that.

Mike Dailly: I am preaching to the converted—I will say no more.

Elaine Smith: If the bill goes to stage 2, I would be happy to discuss amendments. I can only tell the committee my reasons for putting an age in the bill.

Shona Robison: Mike Dailly hit the nail on the head. We are talking about whether a woman who is breastfeeding a four-year-old could be asked to leave a place because the legislation had an age limit of two or under. However, to return to a point that was made earlier, the bill is about public perception. A mass of the public will not know the ins and outs and the details of the bill, but they will see how it is perceived and presented. It would be unfortunate if the bill’s good elements were lost because of a hang-up or obsession with the fact that a mother who was breastfeeding a 10-year-old could not be thrown out of a restaurant. I use that as an extreme example, but some people will use such examples to undermine the bill. Evidence that we have heard from people who have suggested that there should be no upper age limit is perhaps a tactical mistake on their part because we must start from where people are and take them with us, as Mike Dailly pointed out. I take it that Mike Dailly would agree with that.

The Convener: David Davidson has a question.

Mr Davidson: Right. I am sorry—I was waiting for an answer to what Shona Robison said.

Mike Dailly mentioned underage drinking. Many premises now display signs that say “Proof of age required”, for example, and everybody says that that is a good thing. Under the bill, if a sign were put up in premises that said, for example, that breastfeeding and feeding milk from a receptacle are fine and are permitted for children up to the age of two and that proof of age may be required, that would be in the spirit of the bill in practical terms. Somebody might become very upset because of the attitude that that would display but, according to the bill, it would be legal. Somebody could go down the road, get very upset, write to the press, go to the local bobby or whatever else and get the answer, “No matter how sensitive you are about the situation, that’s what the law says.” Have you considered that that could happen?

Elaine Smith: With due respect, people could put up such notices now, without the bill, for all infants and children, but I am not sure that that happens. People tend to put up notices that say that breastfeeding is welcome in premises. The committee heard earlier about peer support groups going round and trying to identify places from which mothers and babies will not be thrown out and in which they will not be treated disparagingly, harassed or segregated. That said, things do not always work in practice. When mystery breastfeeding mothers try to find premises, what people have said and what signs say do not always turn out to be true. I would be surprised if anybody would take the time to put up such notices but, over time, I would hope that such attitudes would change anyway once the bill is embedded in Scottish law.

Mr Davidson: I raised the matter simply because what I described would still be legal within the definition in the bill. Before the bill is ever considered by the Parliament, we must decide whether it is reasonable and properly written and whether all the objectives have been thought about.

Elaine Smith: Perhaps I could ask the person who drafted the bill to say something, if you do not mind.

Mike Dailly: I do not see a problem with having a notice that says “Breastfeeding mothers welcome”. The notice that David Davidson described might not be as nice as that, but the point is that a notice can be put up that says “Breastfeeding mothers welcome”.

In fact, the bill is quite neutral in respect of not altering licensing law or, indeed, the law in any respect. The key point about the bill is that it will apply only in places in which a child is lawfully permitted, which is why we need to bring the debate back to the reality of commerce. There has been a bit of a red herring to do with how the bill will affect pubs. The committee has heard evidence that most pubs do not apply for children’s certificates. I assume that that is because they want people to smoke and to buy booze—fair enough; that is what pubs do. A small number of pubs want to attract a niche market of families and kids. That is a matter for them and of course the bill will in no way alter that or tell anyone what to do. The bill will merely engage with pubs that have a policy of allowing children under two on the premises; it will have no relevance for pubs that lawfully do not allow kids under two on the premises.

Mr Davidson: The council officers who gave evidence earlier said that someone might not be prosecuted for an offence under the bill, but a licensing board might take a different view. Will you comment on that?
**The Convener:** I take it as a compliment when Conservatives ask my supplementary questions.

**Mr Davidson:** I am glad. I am just getting my revenge because you regularly do that to me.

**Mike Dailly:** I was not convinced that what the council officers said was an accurate statement of the law, because the bill will create a criminal statutory offence and not a civil law wrong, which is different. For example, the Rent (Scotland) Act 1984 creates an unlawful offence—

**The Convener:** The officers suggested that the licensee would have to comply with certain conditions of the licence.

**Mike Dailly:** That would be a different matter. If a condition were made—

**The Convener:** The comments were made in the context of the mystery that arose earlier about Perth and Kinross Council’s policy. I am sorry to interrupt you, but I just wanted to explain what the discussion was about.

**Mike Dailly:** It would not be unreasonable to make it a condition of the licence that the licensee must comply with the provisions of the bill. However, the licensing system has an appeals procedure. Licensing boards must comply with the Human Rights Act 1998 and be impartial and fair. People would get a chance to say, “Hang on. Is this proportionate?” For example, there might be a human rights issue if the revocation of a licence would deprive someone of their livelihood. Councils would have to tread carefully, because someone’s livelihood could be taken away on the basis of a small piece of evidence. That might cause problems in the context of the Human Rights Act 1998.

I am not convinced that there would be a big problem. The minister sought clarification on various issues and perhaps it would be legitimate to consider the matter. No one has asked me to do so.

**Shona Robison:** Has anyone from the Crown Office been in touch with you to discuss enforcement?

**Mike Dailly:** No.

**Shona Robison:** For the record, I find it strange that the Crown Office has not discussed with the bill’s proposers some of its concerns to do with enforcement. I would have thought that that would be its first port of call.

Concerns have been expressed that the bill does not specify what is meant by “to prevent or stop a person in charge of a child from feeding milk to that child”.

Earlier, a witness envisaged a situation in which someone was tapping their feet and staring at a person with the clear intention of making them feel uncomfortable. Would that be an offence?

**The Convener:** No—I try that approach from the chair and it does not prevent or stop members from doing anything.

**Mike Dailly:** It is legitimate to ask those questions. The minister said that he needs to be satisfied that various matters are resolved and I might be able to resolve that issue now. The position is not complicated, but there has perhaps been a misunderstanding about it.

People have asked what “prevent” means and who would be the accused. The bill uses the phrase, “deliberately to prevent”. As the convener knows, the word “prevent” relates to the actus reus of the offence—the physical action—but to convict someone of an offence, there must also be the mens rea—the intention—which is reflected in the word “deliberately”. Section 1 of the Protection of Wild Mammals (Scotland) Act 2002 uses the same terminology.

If a woman on a bus were breastfeeding her baby and a person on the bus disapproved and decided to stare at her, would that person be committing an offence under section 1 of the bill? The answer would be, on the face of it, no, because it would have to be shown that the person was deliberately trying to stop the feeding of the child. Some people might stare just because they are a nosey parker or they are curious, so one would need to go beyond that. If the person on the bus then said—

**The Convener:** Can I stop you for a minute? Does the Protection of Wild Mammals (Scotland) Act 2002 say “deliberately to prevent” or does it just say “to prevent”, with “deliberately” implied?

**Mike Dailly:** The word is there—“deliberately”.

**The Convener:** But it is not in the bill.

**Mike Dailly:** It is in section 1(1).

**The Convener:** I beg your pardon. I see it. It has been a long day.

17:15

**Mike Dailly:** The Crown Office knows the law, so I am surprised that it is asking who the accused is and who will enforce the bill—obviously, it will be enforced by the criminal justice system. The law currently uses the concept of “deliberately to prevent”. Other examples of words that are used include “wilfully”, “knowingly” or “recklessly”. That is the mens rea, or intention part of it.

If the situation that has been described happened, and the woman on the bus said, “That’s disgusting. Get off this bus right now. That’s outrageous,” I think, given their evidence,
that the police would have a word with that person and say, “Come on, don’t you realise that this is now the law? You can’t do that any more,” and send them on their way. In more serious persistent cases an offence might have been committed. There might also be a breach of the peace, if the situation is that serious.

The Convener: It is a question of degree.

Dr Turner: Would it not need a great deal of publicity to make a campaign accompanying the bill work and would that not have financial implications? The public need to be educated about the bill. As Shona Robison said, nobody is going to read the detail, but it will come out at them if the bill is passed.

Elaine Smith: I looked into this. You mentioned previously the law on the use of mobile phones in cars. That was publicised through the usual channels: the media and the usual advertising methods. NHS Health Scotland has an advertising process, which it uses during breastfeeding awareness week—the committee might have seen the current advert. One previous campaign asked, “What is this miracle food?” and was about how good breast milk is. The current campaign has picked up on problems associated with breastfeeding in public. Public education could be provided through such advertising. Awareness could also be raised through normal training procedures, which could state briefly, “This is the law,” or there could be more intensive training that is part of equal opportunities or induction training. Ellen Kelly said a little bit about that.

The financial memorandum states that the bill would not put an onus on the Scottish Executive to spend a lot of money promoting breastfeeding, other than what it currently spends. If it wished to promote breastfeeding, that would be a good thing. It would be a matter of getting media coverage of the fact that the bill had become law—some people already think that it is law, given the coverage of the fact that the bill had become law—some people already think that it is law, given the coverage that the subject has received over the past couple of years.

Prosecutions would be few and far between, given what Mike Dailly just said. The police indicated that they would always try to mediate before they used the ultimate sanction.

The Convener: In its report on the bill, the Finance Committee repeated the recommendation that it made on the financial memorandum to the Fire Sprinklers in Residential Premises (Scotland) Bill, which was that the Executive should provide an assessment of the financial impact of members’ bills to inform committees. That is only fair, because you do not have the resources that ministers have. Many of us would like to see that happening with members’ bills.

Mr Davidson: I refer members to Keith Harding’s Dog Fouling (Scotland) Bill in the first session. The Executive offered its support when the bill got to a certain stage, but it also put up a pot of money—I am not sure whether it was £200,000 or £300,000, but the amount was of that order—for councils to spread the gospel that the law existed, so that people were not ignorant and had no excuse or defence that they did not know. Presumably, you will require the same for your bill.

Elaine Smith: In my answer to Jean Turner, I said that the bill does not absolutely require that kind of funding. However, given that the Executive provided funding for the bill on dog fouling—which involved fines, if I remember correctly—it would be most welcome if it wanted to do something similar with this bill, to help with promotional work. However, there is nothing in the bill that absolutely requires the Executive to spend any money. The Finance Committee has agreed with my analysis of that. However, we could make the point to the Executive that the costs of any promotional work could be offset against the health benefits that would result from an increase in breastfeeding. I was a little disappointed in the Executive’s submission. It talked about some of the costs but did not talk about the kind of savings that could be made from encouraging an increase in breastfeeding.

Mr Davidson: Convener, may I ask a question about the example Mike Dailly used of a lady on a bus?

The Convener: Yes—although I have a question to ask that has not been asked before.

Mr Davidson: Is it expected that a member of the public who caused problems would be prosecuted? The bus driver might not be able to see what is going on and the bus company would not be involved if it was not a member of staff who had said something. What would happen in that situation?

Mike Dailly: If there were a stushie on a bus, I would have thought that the bus driver would know the position. As Elaine Smith has said, such training can be tagged on to existing induction courses for employees, and people have to keep up to date with health and safety obligations.

If the bill becomes law, I would think that a driver would be able to say to a member of the public who was protesting, “You can’t do that, because it’s against the law.” I would hope that that would resolve the problem. If someone was being abusive—and let us be honest, that can happen—to someone who was feeding their child, the bus driver might pick up the radio and get the police. However, I think that most people would calm down before that stage was reached.
Elaine Smith: That is the opposite of the situation that we had a few years ago in Edinburgh, when a woman was put off the bus for the heinous crime of breastfeeding a baby. As the minister Malcolm Chisholm said at the time, there were no powers to do anything about that. This bill will provide those powers. In my view, the Parliament would show vision by passing it.

The Convener: I am uncomfortable with the "etc" in the title of the bill—the Breastfeeding etc (Scotland) Bill—which is there because you include bottle feeding and other stuff. The information that we received from SPICe talks about

"a division of opinion among respondents"

about including bottle feeding. I do not think that it was in the bill the first time that you proposed it. What was the division? Was it 50:50? I know that not all opinions have the same weight, but what was the division?

Elaine Smith: I do not think that it was 50:50 at all. People had various reasons for feeling that bottle feeding should or should not be included but, if I remember correctly, most respondents felt that it should be included.

Mike Dailly: I think that that is right. However, it is reasonable to say that if the bill had not been inclusive, it would have been beyond the competence of this Parliament under the Scotland Act 1998.

The Convener: So the reason is technical.

Mike Dailly: There are several reasons and inclusivity is one of them. An issue arises over the suggestion that women who are bottle feeding should really be breastfeeding and that, if they are not, they are not being a good mum. However, the technical legal reason is that, because the bill deals not only with breastfeeding mothers but with breastfeeding women and people who are feeding milk to a baby, it can come within the ambit of the Scotland Act 1998.

The Convener: In the SPICe briefing, one of the arguments against including bottle feeding is that doing so would

"equate the benefits of breast milk with formula milk".

We know that that is not the case. You are promoting breastfeeding, but it seems to me that you are getting a bit politically correct by including everything. I would have preferred the bill to be simply a breastfeeding bill, without the other stuff. The bill could then have been tested for its inclusivity with the Executive.

Elaine Smith: The bill was tested with the Presiding Officer, who has to decide whether a bill is competent before it can progress. In the previous session, when the bill was drafted as you suggest it should be, it was decided that it was not competent for this Parliament and was a matter for Westminster. That was a matter of opinion, but that was the opinion that was given. The bill was then redrafted and the current Presiding Officer decided that the redrafted version was competent under the Scotland Act 1998.

The bill was redrafted to make it child centred—which I think is right—and to ensure that people were supported once they had made their choices.

The Convener: Why was the first bill deemed competent only for Westminster?

Elaine Smith: It is a matter of legal opinion, but equal opportunities issues arise if the bill is only on breastfeeding.

Mike Dailly: The first draft was very specific and would have kept the bill nice and short and to the point. However, because it dealt only with women, issues of discrimination arose. There are things that the Scottish Parliament can do to promote equal opportunities, but it cannot change laws on discrimination. The view was taken that the bill would not be competent. We were faced with the possibility that Elaine would never be able to push this issue forward in the Scottish Parliament, which would have been unfortunate and incredibly frustrating. However, we managed to come up—as lawyers often do—with a solution.

The Convener: That is very helpful. You have explained why bottle feeding is included; I am still a bit uncomfortable with that, but I now know why it is there.

Thank you for your evidence. It has been a long haul, but I hope that we have done our bit in testing the bill today.

Meeting closed at 17:26.
Dear Ms Grahame

Breastfeeding etc (Scotland) Bill

I refer to your letter of 2 June 2004 regarding the Health Committee meeting of 1 June 2004.

Perth & Kinross Council sent Gillian Grant, Health Improvement Officer, to answer questions with regards to the Council’s response to a request for expressions of interest in the development of the Breastfeeding etc (Scotland) Bill.

Our response did not include any reference to Licensing matters.

Ms Grant was well briefed to answer any questions relating to Perth & Kinross Council’s response which majors on the health benefits of breastfeeding. My understanding is that the questions relating to Perth and Kinross Licensing Board policies emanated from a response from the Scottish Licensed Trade Association and not Perth and Kinross Council’s response. If we had prior notice with regards to the Licensing related questions, we would be pleased to ask a representative of Perth and Kinross Licensing Board to attend the Health Committee on 1 June 2004.

With regards to your specific questions regarding Perth and Kinross Licensing Board granting of Children’s Certificates, the answers are as follows:

1. When did you introduce the conditions of grant to the award of Children’s Certificate and is considered to have an effect on the number of certificates issued.

The introduction of the conditions took place in 1991 which was almost immediately after the introduction of Children’s Certificates as a concept. As far as we are aware, the conditions had no effect on the number of Certificates issued.

2. How do you monitor compliance with the condition?

Compliance with the condition is monitored by regular inspection of all premises with a Certificate and also through monitoring of complaints. One complaint has been received in approximately 1994 and was dealt with by discussing the matter with the Licensee.

3. Have you ever had to take any enforcement action due to a breach of this condition?

No.

Yours sincerely

Bernadette Malone
Chief Executive

SUBMISSION BY SCOTTISH EXECUTIVE

During the Breastfeeding (Scotland) Bill evidence session on 1 June 2004 I advised the Committee that I would write clarifying my powers to instruct NHSScotland to develop and implement positive policies on breastfeeding for those providing or accessing health services.
Under section 2(5) of the NHS (Scotland) Act 1978 Ministers have the power to issue directions to Health Boards in relation to the exercise of any function which they have under this Act. The NHS Reform Bill will amend the 1978 Act and add a duty to promote health improvement. This means that when the Reform Bill is enacted it would be possible for me to exercise this new duty, and could instruct Boards to develop policies in regard to breastfeeding.

Committee members asked specifically whether this would extend to GP’s and dentists. Unless in the employment of Boards, these practitioners are deemed to be independent contractors and as such they would not be covered by this legislation. Nonetheless we would exhort the support of breastfeeding as best practice for all those working within the health sector.

Hope this is of use to you and your colleagues.

MALCOLM CHISHOLM
Dear Madam

Crown Office issues on the enforcement of the Breastfeeding etc., (Scotland) Bill – Written summary of response on behalf of Elaine Smith MSP

It is understood that representatives of the Crown Office will address your committee today on enforcement issues, as set forth in the Scottish Executive’s Memorandum dated 27 May 2004. While the bill’s sponsoring member, Elaine Smith MSP and myself have kindly been invited to respond to Crown Office evidence, it may be helpful to provide a written response in summary form.

The following relates to the issues raised in corresponding sequence to paragraph 8 of the Scottish Executive’s Memorandum on the Breastfeeding etc., (Scotland) Bill.

Who the accused is?

The accused would be the legal person who deliberately prevents or stops a person from feeding milk to a child in terms of section 1 of the Bill. This could be a member of the public, or it could be a member of staff or manager where feeding takes place in licensed premises or a public place. However, it would be necessary for the Procurator Fiscal to look at each case on its merits. For example, where a member of staff deliberately breaches section 1 of the Bill in certain circumstances the employer may be liable (section 2 – which provides a ‘reasonable steps’ defence) or a senior officer of the organisation (section 3). Again, the engagement of sections 1, 2 and 3 would be a matter for the Procurator Fiscal to determine on the evidence.

What is the definition of a public place?

We have used broadly the same definition in section 49(7) of the Criminal Law (Consolidation) (Scotland) Act 1995 (which deals with the statutory offence of carrying objects with a blade or point in a ‘public place’).

What is the definition of ‘prevents’?

A person who does something unintentionally to prevent or stop a person breastfeeding does not commit an offence under section 1. The word ‘prevent’ is the actus reus element of the offence – physically and positively doing something. However, in order to constitute an offence a person must have sufficient intention – the mens rea requirement of the offence – and that is made clear by the use of the word ‘deliberately’ in section 1.

Whether someone does something deliberately to prevent/stop a person breastfeeding will depend on the circumstances of the case, but any conduct would need to be sufficiently serious and wilful in determination in order to evidence sufficient intent.

The word ‘deliberately’ is used frequently in other criminal law statutes – and brings in an objective test. For example, section 1 of the Protection of Wild Mammals (Scotland) Act 2002 provides that ‘A person who deliberately hunts a wild mammal with a dog commits an offence’. Many other statutes use this expression or comparables such as ‘wilful’ or ‘knowingly’, or ‘recklessly’. These are all requirements of intent. Whether a person acted in a way to deliberately prevent or stop a person from feeding milk to a child in terms of section 1 would be a question of fact and degree – like all criminal prosecutions.
Are the current provisions (Harassment/Breach of the Peace) sufficient?

With respect, no. Firstly, section 8 of Protection from Harassment Act 1997 may enable a person to raise civil proceedings to seek a non-harassment order (with the power of arrest). Before such an order can be granted the pursuer must show that there has been at least two incidents of ‘harassment’. This Act was originally introduced in part to tackle the problem of stalkers, and is not appropriate to the subject matter of the Bill. Like all civil litigation, the 1997 Act also requires the applicant to fund their own action (either privately or through the civil legal aid system).

Secondly, the broad common law offence of breach of the peace is not sufficient to deliver the aims of the Bill. It is not a breach of the peace in Scots law to politely ask a person breastfeeding milk to their child to leave a public place or licensed premises – even where children are otherwise permitted.

Who will enforce this legislation?

The Scottish criminal justice system.

Which witnesses will be required/how corroborated?

Offences prosecuted under the Bill would proceed in the same way for any Scots law common or statutory offence. Each fact would require to be corroborated by two independent pieces of evidence, as is the key evidential principle of our criminal justice system. In practice, for example, this could be established by a breastfeeding women, together with a witness – for example, a friend, member of the public, or member of staff; where such people directly witnessed the incident complained off.

Yours sincerely

Mike Dailly
Principal Solicitor
On resuming—

Breastfeeding etc (Scotland) Bill:
Stage 1

The Convener: I welcome Shona Barrie, who is head of the victims, witnesses and vulnerable accused team in the policy office of the Crown Office. She will make a short opening statement.

Shona Barrie (Crown Office): I want to provide some context to clarify an issue that arose at the committee’s previous meeting when the Minister for Health and Community Care was present. There was some confusion about whether the Crown Office made a submission. As I understand it, we received no formal invitation to do so. Obviously, as an Executive department, we were invited by the minister to offer our views, so the memorandum that the minister submitted incorporated the views of the Crown Office.

The Convener: There were crossed wires. We are required to ask for a response specifically from the Crown Office.

Shona Barrie: It would seem so.

The Convener: Thank you.

I refer members to Mike Dailly’s letter dated 8 June—it is not yet in the public domain—which gives some definitions. Mike Dailly is the principal solicitor assisting Elaine Smith with her bill.

Helen Eadie will ask the first question.

Helen Eadie: I beg your pardon. My mind was elsewhere.

The Convener: We have no time to halt. You need to be on the ball because 10 minutes is all that you will get.

Helen Eadie: The Scottish Executive’s written submission states that the Crown Office and Procurator Fiscal Service and the Association of Chief Police Officers in Scotland raised issues about the enforcement of the bill’s provisions. In particular, the submission notes problems with definitions of “public place” and “prevent”. What is the Crown Office’s position on the standard of the definitions that Mike Dailly has supplied?

Shona Barrie: I, too, have only just now seen Mike Dailly’s helpful supplementary paper. The paper addresses the definition of “public place” by using a definition that is already recognised in knife legislation. That is all good and well.

The enforcement issues concern the scope of the phrase “public place”. Clarity is needed, given that any person in any public place at any time
would come within the scope of the proposed offence provisions.

The issues around the definition of “prevent” and “stop” are more complicated and require further debate and clarity. It is clear from the evidence that ACPOS offered that, if preventing someone from breastfeeding involved a physical intervention, an assault would in effect be committed. There are also issues about what would constitute preventing someone from breastfeeding. If such prevention is not restricted to physical intervention, what acts would be involved? Would any reaction on the part of the carer be required? Would the act of feeding be required to have been prevented or stopped or to have come to an end? Those aspects of the definition need to be clarified.

Helen Eadie: I hesitated before asking my question because I was hurriedly trying to read Mike Dailly’s letter, too. In fact, it goes on to clarify some of those points. We have heard it from the Crown Office but we have also heard it from Mike Dailly.

The Convener: Obviously, Elaine Smith will have an opportunity to respond on the matter later.

Janis Hughes: What concerns does the Crown Office have in relation to the identification of the accused in the bill? What problems might arise in relation to enforcing the bill?

Shona Barrie: I think that the problems are likely to be less acute in commercial premises, particularly in relation to a member of staff who has done whatever act is required to constitute stopping or preventing someone from breastfeeding. However, someone in a public park, on a bus or in some other public place is unlikely to hang around and wait for the police once they have said whatever they want to say to the carer of the child. The offence might have been committed and offence might have been caused, but there will be no enforcement procedure to follow.

16:45

The Convener: Could you expand on your view about the current provisions for harassment, breach of the peace and assault? Would they be sufficient or would there need to be a statutory offence?

Shona Barrie: There would be circumstances in which it could be said that a breach of the peace had been committed. To an extent, I concur with the view of ACPOS that whether something is a breach of the peace has to be decided separately in each case. The test for breach of the peace, which relates to whether alarm and distress have been caused, is well known. On assault, cases in which there was physical intervention would tend to stand out.

I agree with what Mike Dailly said about harassment. The provisions for non-harassment orders and the relevant case law are quite clear that there must be at least two cases of breach of the peace or harassment before the prosecutor can make any motion for a non-harassment order to be granted.

The Convener: There would have to be a serial preventer of breastfeeding at large.

Shona Barrie: Yes. The provision might be some sort of inhibitor for those who run commercial premises, but the test has a high threshold.

Mike Rumbles: I have a question about the word “prevent”. If someone physically prevents someone from breastfeeding, the situation is quite clear—the common law relating to assault would deal with that. However, what if a proprietor said to someone, “Hey, you can’t do that in here.” In doing so, they would be putting pressure on the person and I would imagine that the word “prevent” would apply in that circumstance. That is a situation in which the bill would cover something that other legislation does not.

Shona Barrie: Yes. There is a lacuna. The common-law offence of assault requires a different actus reus from the scenario that you have depicted. I am not clear about what the situation would be if the proprietor said, “We have a private facility for breastfeeding, would you please move through there?” I do not know whether that would constitute “preventing or stopping” or would fall within the present offence provision. If the policy intent is to prevent such a situation, that issue needs to be examined further.

Mr Davidson: What is the position of the Crown Office with regard to the corroboration of witnesses’ evidence? Does the bill make suitable provision for which witnesses’ evidence is required to be corroborated and exactly how that should be carried out? Presumably, the Crown Office will have to issue a definition in that regard, if the bill is passed.

Shona Barrie: Once the offence had been committed, there would have to be two sources of evidence pointing to the fact that there had been an intervention and that the accused was the perpetrator. Those are standards at common law and it is perfectly natural and absolutely standard for offence provisions not to reiterate those requirements. I am comfortable with that. Procurators fiscal are certainly well versed in those requirements. If the offence provision reaches the statute books, the Crown Office might well seek to provide guidance about prosecution policy to prosecutors. However, we are all quite
comfortable with the requirements for corroboration.

Mr Davidson: In other words, the requirement is standard in common law.

Shona Robison: You said that you were not sure about the situation in which a proprietor made the person who was breastfeeding aware that they had a private facility. Surely that would depend on several things. For example, if the person said that they were happy to feed where they were and the proprietor then said, “I am telling you that you have to move,” at that point—

Shona Barrie: The provisions would kick in.

Shona Robison: Yes. So I suppose that a bit of common sense would have to be applied in that situation. As Mike Dailly’s letter says, “any conduct would need to be sufficiently serious and wilful in determination in order to evidence sufficient intent.” Therefore, making someone aware that there is a private facility would not be regarded as an offence, but pressuring the issue once the person feeding had made it clear that they were happy where they were and almost instructing them to move would surely come into the category of sufficient intent. Is that reasonable?

Shona Barrie: I think so.

The Convener: We will stop right there, then.

Shona Robison: Okay—“reasonable” is good.

We heard from the Minister for Health and Community Care that he is sympathetic to the aims of the bill. However, he cited the Crown Office’s concerns as the main barrier to Executive support for the bill. The issue is all in your hands.

Shona Barrie: Nobody made that clear to me.

Shona Robison: As a representative of the Crown Office, do you have a view about whether the bill could be amended at stage 2 to address the Crown Office’s concerns so that the Executive can support the bill?

Shona Barrie: On the part of the Crown Office, I would align myself with the aims of the bill and say that they would be supported. The Crown Office is an Executive department and, if we foresee any difficulties with enforceability, we have the responsibility to raise them. I do not know that it is within my gift to give you all the answers that you are looking for.

The Convener: I thought that you were going to be indiscreet for a moment. We were all waiting for it.

Shona Robison: I do not want to press you, but do you think that it is practically possible to amend the bill at stage 2 to address the Crown Office’s concerns?

Shona Barrie: Those would be matters for the office of the solicitor to the Scottish Executive and the drafters, who have more expertise than I do. I can speak only from the prosecution point of view, if you like, about the obstacles that we could identify and that we would like to be overcome to assist us in implementing a piece of legislation.

The Convener: Have you found the letter from Mike Dailly helpful? Has it clarified issues for the Crown Office?

Shona Barrie: It is useful in that it sets out the underpinning principles of law.

The Convener: Has it satisfied the concerns about enforcement raised in paragraph 8 of the Scottish Executive’s memorandum to the committee? Have you seen that?

Shona Barrie: Yes. There are probably several aspects that need clarity.

The Convener: The definition of “prevent” would be one, for example.

Shona Barrie: Yes, there needs to be clarity on the definition of “prevent or stop”.

I am just looking through my papers to return to the offence provisions.

The Convener: I am trying to clear up the outstanding issues. The definition of “prevent” is one, although we have cited Mike Dailly’s letter.

Shona Barrie: We seek clarity that the offence provision requires an objective assessment of the accused’s actions, rather than a reaction in the carer. The same set of circumstances could provoke different reactions in different people. It is likely that the offence provision would quickly become the subject of an appeal court comment. We need to disentangle the element of subjective reaction.

The Convener: That is extremely useful. One person might react well or quietly to an invitation to go to a private place to feed a child, whereas someone else might react badly. That is an interesting point for us to consider.

Mr Davidson: As I am a slow reader, I have just got to the second page of Mike Dailly’s letter, which contains comments about harassment. Is the Crown Office happy about the interpretation of harassment? For the sake of argument, let us assume that a couple of customers in a shop start tutting. Is part of the issue the reaction of the person with the child? Is the bill clear on harassment? Is harassment definable and not just a matter of the opinion of the person who alleges that they have been harassed?

The Convener: For clarification, is it correct that harassment is a statutory, rather than a common-law, offence?
Shona Barrie: It is a difficult notion. English law has a statutory offence of harassment; in Scotland, if there are multiple charges of breach of the peace, a non-harassment order can be attached. However, for purposes of court recording, the crime is recorded as, “Breach of the peace (harassment).” One important distinction between practice in Scotland and practice down south is that there is no statutory offence of harassment in Scotland.

Mr Davidson: What is your view, as a Crown Office representative, of the apparent ambiguity in the bill?

Shona Barrie: It would create a difficult evidence area.

Mr Davidson: The matter depends very much on individual interpretation.

Shona Barrie: Yes. One carer might feel inhibited by pressure from members of the public who are tutting, throwing disparaging glances or making comments, whereas that might not inhibit another carer. The matter will turn on individual facts and circumstances, therefore it is about the subjective reaction of the carer.

Mr Davidson: Should there be a duty on the person who complains about harassment to prove conclusively to the police and, if necessary, the procurator fiscal that something has happened?

Shona Barrie: Our public prosecution system is such that it would not be for the person who made the complaint to prove anything; it would be for the police to gather evidence. The underpinning concern that ACPOS and the Crown Office fed into the exercise was that there could be difficulties with gathering evidence. People do not remain in shop premises and may have departed, which means that there could be difficulty with identifying the accused and finding witnesses to support the carer’s account.

Mike Rumbles: I asked the Minister for Health and Community Care how many people he thought would be prosecuted for the offence in the bill. After a while, he came to the conclusion that nobody would be prosecuted. Is that the Crown Office’s view?

Shona Barrie: Our view is that we would expect to receive very few reports.

Mike Rumbles: How many is very few?

Shona Barrie: That would be entering the realm of speculation. I do not know, but I suppose that to a large extent the matter would be down to the publicity that was associated with the legislation.

Mike Rumbles: I asked the question because of the worries that have been expressed about the interpretation of “prevent”, whether cases would go to the appeal court and all that stuff. If no prosecutions are going to take place, however, surely those points of law are academic?

17:00

Shona Barrie: As the police have said, they have an obligation to investigate cases. If there is sufficient evidence, their obligation is to report that to procurators fiscal across the country. Unfortunately, we have no means of gauging what the uptake might be.

Another matter that is in the balance is the public interest test. If we are to assume that sufficient evidence is found, does the public interest lie in a prosecution being made? Of course, a range of alternatives to prosecution is available to procurators fiscal.

Mike Rumbles: You said that the Crown Office would pursue a case only if there was a range of evidence. If there is such an accumulation of evidence, what is the concern about “prevent”? You seem to be saying that the bill, as it is drafted, is not specific enough.

Shona Barrie: It is simply that we have a responsibility to ensure that, if law is to be put on the statute book, it is as good as it can be.

Mike Rumbles: Absolutely.

Helen Eadie: Last week we heard evidence from—if my memory serves me right—Dr Pat Hoddinott. Reference was made to the international scene and I recollect that Australia was mentioned as one of the countries in which the right to breastfeed in public has been established; I cannot remember the other country that was mentioned. Has any research been undertaken on the number of prosecutions that have taken place in those countries? If not, will the Crown Office and Procurator Fiscal Service make some inquiries to see how many prosecutions have taken place?

Shona Barrie: Research has certainly not been done on the part of the Crown Office and Procurator Fiscal Service. However, it might be something that the sponsoring department or the Health Department could look into.

The Convener: We can ask the Executive about that.

Elaine Smith is here to give evidence. I am not sure whether you can ask questions and give evidence, so it might be better if you simply gave evidence. However, I am in the hands of the committee on the matter and, on looking round, it seems to me that members are quite relaxed about your doing both. Off you go.

Elaine Smith (Coatbridge and Chryston) (Lab): Thank you, convener. I waited until I had heard the questions that the committee wanted to
ask. I have a small question for Shona Barrie. Given that we are talking about the number of prosecutions—whether there would be any or whether there would be few—do you think that the bill will have a deterrent effect?

Shona Barrie: I am probably about to step a little out with my bailiwick. Once more, if we assume that appropriate publicity would be given to the issue, the bill could have an impact on the attitudes and actions of those who operate commercial premises. I really do not know.

Elaine Smith: Thank you.

The Convener: I thank Elaine Smith and Mike Dailly for coming to the meeting at short notice. We will have a brief session in which members can ask questions of Elaine Smith and Mike Dailly in the light of what has been said by the Crown Office and to tidy up on any points that arise from the letter that the committee received.

Helen Eadie: In light of the various points that have been made, particularly in relation to the definition of “prevent”, are there issues that you want to highlight and on which you might come back to us?

Elaine Smith: I am glad that the Crown Office was able to give evidence today and that you have asked us to give evidence again. It is important to ensure that a bill covers everything and that it is drafted properly. The bill uses the term “deliberately to prevent”. Mike Dailly will go into more detail on the definition.

Mike Dailly (Govan Law Centre): The Crown Office evidence that was given today has been helpful. One key problem—the definition of “prevent or stop”—seems to remain. I understand that the courts interpret the word “deliberately” on an objective basis, as they would interpret the word “wilful” or “reckless”.

Shona Barrie’s concern—rightly—was to ensure that the courts would apply an objective test in those cases. My understanding is that the way in which the bill is drafted would deliver that. However, if the Crown Office wants certainty on that issue, it would not be particularly difficult to put that beyond doubt at stage 2. In drafting the bill, I chose the word “deliberately” because my understanding is that that is an objective concept. The difficulty is not insurmountable.

The Convener: As I understand it, the point that was being made was that whether an offer to direct a feeding mother, a person or a carer to another area was seen as offensive or inoffensive would depend on evidence of the manner in which the offer was made.

Mike Dailly: Yes.

Shona Robison: What amendment would you suggest at stage 2 to address that concern?

Mike Dailly: My primary position is that it is my understanding, as a solicitor, that “deliberately” would be interpreted on an objective basis. If the Crown Office wanted that put beyond doubt, it would not be difficult to produce an amendment that would spell out that “deliberately” in section 1(1) would be looked at objectively.

Mike Rumbles: As the convener said, who could object to an inoffensive offer of facilities elsewhere? However, one person’s inoffensive offer can be interpreted by somebody else—the recipient—as an offensive offer. Is that not the key to the issue? I am not sure that you provide the answer by saying that the test is objective. How do you form that test?

Mike Dailly: The test has to be objective because there has to be uniformity. As we discussed at the meeting last week, it is necessary to ensure that there is a sufficient degree of intent. Someone must be trying to stop the person from breastfeeding. It is not that they are curious and are staring at the person, or that they are making a noise; they must be going beyond that and doing something that, I guess, would be getting on for being quite abusive.

The Crown Office said that it was concerned about what would happen if someone was told to go to private facilities, which was a brilliant example. As Shona Robison said, it is fair enough to tell a person who is feeding a child that private facilities are available, but if someone insisted that that person had to use a different place, section 1 would engage.

We focused on the issue in debate with the Parliament’s legislation team. In section 1(2), we have the get-out that the child has to be “lawfully permitted” to be in the place before section 1 engages. We use the phrase “otherwise than for the purpose of being fed milk.”

to ensure that somebody cannot say, “Okay, you can have a kid under two in here, but our policy excludes breastfeeding.” If a child under two is allowed to be in a particular area, breastfeeding or bottle feeding is allowed in that area; someone cannot pick or choose where breastfeeding is permitted. I think that that is clear. Shona Robison picked up on that issue. I do not think that that is a problem; the key issue is the definition of “prevent”.

The Convener: I found that helpful.

Thank you both for coming back to the committee. We will consider our draft report shortly.

Meeting closed at 17:08.
ANNEX D: ADDITIONAL WRITTEN EVIDENCE

SUBMISSION BY AMICUS COMMUNITY PRACTITIONERS’ AND HEALTH VISITORS’ ASSOCIATION

Amicus CPHVA support the act of Scottish Parliament which proposes to make it an offence to prevent or stop a child who is permitted to be in a public place or licensed premises from being fed milk in that place or on those premises; to make provision in relation to the promotion of breastfeeding; and for connected purposes.

In particular, the right of women to breastfeed within the community should be encouraged. Arguably the entrenchment of a bottle-feeding culture has created obstacles for women to optimally breastfeed their babies. Public policy, institutionalised practices and negative attitudes towards breastfeeding have all minimised and undervalued the contribution breastfeeding women make to the health and well-being of their societies. It is unfortunate that we are at appoint legislation is required to protect a natural choice and to minimise uncertainty for breastfeeding mothers.

Observation and anecdotal evidence suggests there is considerable variability in the support of breastfeeding by managers of restaurants, shopping centres, recreational facilities and public amenities. Suitable facilities (to the mother/parents also) should be made available to allow mothers to nurse their baby in an environment that is conducive to supporting breastfeeding within the community. It is unacceptable that mothers should be expected to breastfeed their baby in toilets, for example. No one would reasonably suggest that an adult should eat his/her lunch in a public toilet.

Consideration should be given to the implementation of the Code of Practice (UNICEF) Baby friendly Initiative Good Practice Standards with associated staff training to raise awareness. These standards have been demonstrated to have a positive influence on the initiation and duration of breastfeeding.

Communities need to be sensitised in ways that they can actively support breastfeeding. Norway provides good example of how government policies have supported families and nurtured a positive attitude and culture for breastfeeding, these include parental leave, assisted childcare and here it is legal to breastfeed your baby in public everywhere. A review of how breastfeeding is presented (often with a degree of negativity) within the media should be undertaken in Scotland. The benefits of breastfeeding for the child are often well known. However, the benefits to the mother of breastfeeding include a reduced risk of breast and ovarian cancers, may be less appreciated. Also, through supporting more women to breastfeed when they are out and about, it would help break the cycle that keeps breastfeeding hidden and perpetuate the bottle-feeding culture.

Arguably, negative attitudes from community members are an infringement of the human rights of breastfeeding mothers and may be construed as discrimination on the basis of gender.

There is a role for education and health to develop creative approaches to encourage positive attitudes relating to breastfeeding within children and young people for future generation.

This is also an issue for employers as breastfeeding, in addition to other health behaviours, is influenced by labour market decisions and public policies. Research indicates suggest that maternal employment is negatively associated with both breastfeeding initiation and duration. Employers and employees should be clear of their respective responsibilities and rights as they relate to health and safety legislation. The law requires employers to give breastfeeding women a place to rest, access to a private room to express milk, and somewhere to store milk Good practice must be encouraged and for employers to recognise that it makes sense to give women who want to continue breastfeeding after returning to work some flexibility to enable them to do so. The practical reality of modern mothers’ lives means that many return to work while they are breastfeeding. Amicus CPHVA believe that they should be protected from discrimination on grounds of maternity in the same way as women on maternity leave.
The World Health Organisation also recognises that the encouragement and protection of breastfeeding is an important part of the health, nutrition and other social measures required to promote healthy growth and development of infants and young children; and that breastfeeding is an important aspect of primary health care. It appreciates that there are a number of social and economic factors affecting breastfeeding, and that, accordingly, governments should develop social support systems to protect, facilitate and encourage it, and that they should create an environment that fosters breastfeeding, provides appropriate family and community support, and protects mothers from factors that inhibit breastfeeding.

Provisions should be made to allow parents to bottle-feed their baby within the community, e.g., bottle heating facilities, and for there to be appropriate (smoke free and with a degree of privacy), safe and sanitary changing facilities available to all parents.

Prepared by
Anna Daley, Professional Officer for Scotland,
AMICUS

SUBMISSION BY BMA

Introduction

The British Medical Association in Scotland represents doctors from all branches of medicine. It is a registered trade union and a voluntary association with more than 80% of practicing doctors in membership. The BMA represents over 13,000 doctors in Scotland and in the UK has a total membership of around 124,000.

The BMA welcomes the opportunity to comment on the Breastfeeding etc (Scotland) Bill which we believe will encourage and support breastfeeding amongst mothers in Scotland. The BMA believes that legislation would help to effect a change in public attitudes, as it would send out a strong message that not only is it acceptable for women to breastfeed, but that it should be positively encouraged.

1. Do you support the general principles of the Bill and the key provisions it sets out?

The BMA supports the general principles of the Bill and would welcome any initiative aiming to promote the rights of a mother to breastfeed her child.

Encouraging and supporting breastfeeding is an important public health activity. Breastfeeding in infancy has a protective effect against many childhood illnesses including gastro-intestinal infections, respiratory infections, urinary tract infection, ear infections, eczema, asthma and wheezing and insulin-dependent diabetes mellitus. Women who have breast fed have lower risks of pre-menopausal breast cancer, epithelial ovarian cancer and hip fracture in later life.

However, despite the numerous recognised advantages of breastfeeding over artificial feeding, breastfeeding rates remain low and are only slowly improving in Europe.

A national target, established in 1994, states that by the year 2005 more than 50% of women should still be breastfeeding their babies at six weeks. The figure currently stands at 37% and rates in the most deprived areas of Scotland are only 22%. The impact of deprivation on breastfeeding is therefore apparent.

In order to increase this figure, it is essential that breastfeeding, rather than bottle feeding, is seen as the normal way to feed a baby. This proposed legislation to make it illegal to prevent mothers from breastfeeding in areas where children are allowed, would help change negative attitudes towards this natural and health benefiting process.
2 Are there any omissions from the Bill that you would like to see added?

No.

3 What are your views on the quality of consultation, and the implementation of key concerns?

The BMA is satisfied with the level of consultation that accompanied this Bill and provided a response to the initial consultation in September 2002.

The BMA believes that more needs to be done to address the reasons for high drop off rates and to encourage women to continue breastfeeding for longer. Legislation should only be one part of an overall strategy; support and educational advice should also be widely available for parents.

4 Have you any comment on the practical implications of putting these provisions in place and the consideration of alternative approaches?

A general lack of support and information on breastfeeding could be a contributing factor to the UK having one of the lowest rates in Europe. The BMA welcomes legislation that would support and encourage breastfeeding and believes that the current situation is ambiguous.

Legislation would provide clear guidelines for proprietors to deal with a complaint relating to a breastfeeding mother and it also sends a clear message that the Scottish Executive actively supports and promotes breastfeeding.

While we are keen to encourage mothers to breastfeed, it is important that there remains a sense of balance. It is vital that those mothers who choose not to breastfeed are not left feeling guilty about that choice. The BMA recognises that there are circumstances where it is not possible for a mother to continue to breastfeed her baby. However, we believe that this Bill would encourage those who can, to continue.

We also recognize that enforcing this legislation would not be easy. Although it would be challenging, it will not be insurmountable and would clarify the rights of breastfeeding mothers.

Conclusion

While the Bill will not change attitudes alone, its adoption, accompanied with increased resources to promote the benefits of breastfeeding, is welcomed and supported by the BMA.

SUBMISSION BY BREASTFEEDING WELCOME AWARD

The general principles of the Breastfeeding Bill are very much in line with the pilot study we have carried out in the Maryhill and Woodside areas of Glasgow. The Breastfeeding Welcome Award is made to public places whose staff and management are welcoming to breastfeeding mothers, and who respect a mother’s right to breastfeed her child wherever she wishes within the building or grounds.

To date 23 public places have received the Award, having first applied and then been checked by volunteer mothers who visited in the guise of customers/clients and breastfed their children as appropriate.

In the main the initial response from staff and management has been positive, and this has been backed up by the volunteers’ reports. Some of the volunteers did have more negative experiences despite the management of those public places having said that mothers could breastfeed anywhere on the premises.
One volunteer wrote:

[The supermarket] were extremely unhelpful. No apology was offered. I was with my friend and her newborn baby. The baby was crying and hungry. I asked – just for a chair, so that my friend could feed her hungry baby. I was told that they had no facilities, even though I requested only a chair. The employee spoke in quite an unfriendly manner and offered no apology. We left, baby crying and quite annoyed at the total lack of care or support from this local store.

Another volunteer visiting the same store, after the manager had confirmed for a second time that it was store policy to support breastfeeding mothers and to permit breastfeeding anywhere they felt comfortable to do so, wrote:

‘I asked politely where I could feed my baby before I did some shopping. I was told by an unhelpful (though not impolite) lady that I could not feed her in the store. She said again that I could not feed my baby in the store and that I would have to leave.’

Of another store the volunteer wrote:

‘I did some shopping with a friend (who also had two babies), and asked an employee if there was anywhere I could feed. He directed me to the man on the cash tills. The man on the cash tills offered me the toilet.’

And another volunteer reported:

‘I asked politely where I could feed my baby. I was told by a very unhelpful young man that there was nowhere I could sit to feed my baby in the store. I asked again if there was nowhere at all and he said I could not feed her in the store. Altogether an exceptionally unfriendly and unhelpful environment and I was very surprised to be told so abruptly that I could not feed in the store. I left the store feeling angry and frustrated especially after having bought groceries there.’

Whilst these mothers’ experiences are the exception they are nonetheless significant. New mothers are often very sensitive to criticism, and feel generally uncertain and vulnerable. This type of response to breastfeeding might make the difference between a mother continuing to breastfeed or changing to bottle feeding. It might affect her confidence as a mother and her self esteem for the future.

Permitting, even encouraging breastfeeding in public places is not an initiative that requires additional financial or staff resources. All that is required is a polite, welcoming and friendly attitude on the part of staff and management to their customers/clients, a recognition and acceptance of the fact that breastfeeding is a normal, everyday activity, and that breastfed babies do not have a routine, but may need to be fed whilst a mother is out shopping, having a cup of coffee with friends, attending the doctor or dentist, visiting the library etc.

It would greatly benefit all mothers if, instead of piecemeal schemes such as our own and others scattered across Scotland, there was a single policy for the whole country. Mothers – and the management and staff of public places – would then be able to know clearly where they stand. The fact of legislation would also send a strong public message of support and respect for people bringing up their children, and would, unlike voluntary schemes, be legally enforceable.

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**SUBMISSION BY CHILD POVERTY ACTION GROUP IN SCOTLAND**

**Introduction**

Child Poverty Action Group (CPAG) in Scotland is a leading charity working to end poverty among children and young people in the UK. To achieve this goal:
We seek positive solutions through our lobbying and campaign work – using our expertise and evidence to influence government, policymakers and the media.

We publish research and information on the causes and effects of child poverty and seek radical and practical solutions.

We help ensure that families receive the financial support they are entitled to by providing expert advice, training and information on all aspects of the tax credit and social security systems.

CPAG in Scotland is grateful for the opportunity to give evidence on the Breastfeeding etc (Scotland) Bill.

General Principles and Key Provisions

CPAG in Scotland welcomes and supports the general principles of the Bill and the key provisions it contains.

Tackling the food and nutritional poverty faced by children living in low income households has been a key concern of CPAG for many years. CPAG campaigns and activity have often focussed on promoting access to healthy and nutritious diets for all children. As CPAG’s report Poverty Bites: food, health and poor families (Dowler, Turner and Dobson 2001) makes clear, it is well established that breastfeeding can play a vital role in ensuring the best start in life for new born children:

“Breastfeeding is fundamental both for the baby’s immediate wellbeing and for long term health. Infants grow very rapidly after birth, and breast milk supplies all the nutrients and energy needed, in the right balance, to enable healthy growth. It also contains immunoglobulins, antimicrobial agents and other protective factors against infection. Breastfeeding avoids early exposure to inappropriate dietary antigens (such as cows milk or gluten), and it lowers the risk of infections and of atopic diseases such as asthma. It probably also promotes brain and cognitive development.”

However, our report goes on to cite evidence that children living in, or at risk of, poverty are less likely be breastfed, with “breastfeeding rates in the lowest socio-economic groups ..about half of those in the highest”. Furthermore, “poorer educated, single and younger mothers are least likely to initiate breastfeeding and those who do, stop sooner.”

CPAG in Scotland believes this Bill, by removing barriers to breastfeeding and encouraging the promotion of breastfeeding, has the potential to contribute toward increasing the proportion of children living in low income households who benefit from breastfeeding. Increasing the number of poorer children who benefit from breastfeeding can play an important role in reducing health inequalities.

Implications of putting provisions in place

In relation to implementing the provisions within the Bill, particularly relating to the promotion of breastfeeding, it is important that particular attention is paid to lower income families and communities. There is evidence that breastfeeding is perceived as a middle class habit with media representations associating breastfeeding with middle class or celebrity mothers. (Henderson et al, 2001, Representing breastfeeding, BMJ 321). If the Bill is to successfully improve the diets of children in poverty, and contribute to a reduction in health inequalities, it is vital that a) policy and resources are focused on families and communities who experience poverty, and b) that promotional activity reflects the lifestyles and cultures of all sections of the community.

Summary

In summary CPAG in Scotland believes that the Breastfeeding etc (Scotland) Bill has, if enacted, the potential to play a role in reducing health inequalities relating to poverty. There is evidence that children in poor households are less likely to benefit from breastfeeding. By encouraging increased breastfeeding we believe the Bill can potentially contribute to increasing the life chances of some our most disadvantaged children.
Finally, CPAG in Scotland would be happy, if required, to provide further information on the evidence and views expressed above.

John Dickie
Head of Child Poverty Action Group in Scotland

SUBMISSION BY CONFEDERATION OF PASSENGER TRANSPORT

Thank you for your letter of 18 March 2004 giving the Confederation of Passenger Transport the opportunity to voice its views on the Breastfeeding etc. (Scotland) Bill.

We did scan the communication to members to seek their opinions -and received very limited response back.

We appreciate that the likelihood of a mother requiring to breastfeed on a short urban bus journey is highly unlikely, but could be a distinct possibility on longer inter urban coach journeys.

The only qualification we would have is that for safety reasons, we would not like nursing mothers to use exposed front seats. This would improve their relative safety (in any accident situation) whilst otherwise distracted. By sitting further back in the vehicles, they would also benefit from a greater degree of privacy.

Having stated this, we must also counterbalance it with the excellent safety records of travelling by bus and coach: we do not perceive high risk.

As a mother and a grandmother, may I give my personal support for this Bill.

CPT

SUBMISSION BY DIETITIANS WORKING IN OBESITY MANAGEMENT (UK)

Breastfeeding and obesity – the evidence base.

A position statement written by Julie Armstrong on behalf of the 'Dietitians working in Obesity Management (UK)'

An increasing number of studies suggest that breastfeeding may offer some protection against childhood obesity. A Scottish study examined data on over 32,000 children aged 39-42 months and found that significantly fewer of the exclusively breastfed children were obese, an association that persisted after adjustment for socioeconomic status, birthweight and gender. This study and others suggest the balance of evidence is for a protective effect of breast feeding for childhood obesity. However, there are a number of studies where no protective effect was detected and currently there is significant research, publication and debate on the issue. A systematic review published in 1999 found that most studies which attempted to test for associations between breastfeeding and later obesity risk were limited, notably by small sample size and failure to control for confounding variables. It was unclear if breastfeeding itself reduces obesity risk or if the protective effect is related to confounding factors such as socio-economic status (SES). Since that systematic review was published, one large study in Germany demonstrated a protective association of breastfeeding on obesity risk in 6 year olds. However, the authors were unable to adequately control for the confounding effect of SES. A study of children in the UK in the 1940’s found that any protective association between breastfeeding and obesity was not present when SES was considered, though it is worth noting that the environment was far less ‘obesogenic’ in the past than today, and prevalence of child and adult obesity much lower.

Two more recent studies of contemporary cohorts of American children and an accompanying editorial have increased interest in breastfeeding as a potential public health strategy for obesity reduction. Gillman investigated around 15,000 9-14 year old offspring from participants of the
Nurses Health Study II, a relatively highly selected sample. They included a number of potential confounders in their analysis, but variables were collected by self-report. They concluded that there was a protective effect of breastfeeding which was dose-dependent and which increased as more extreme definitions of overweight/obesity were used (e.g. >95th centile for body mass index BMI, rather than BMI >85th). Hediger reported a smaller study (n=2685) of breastfeeding and obesity risk in 3-5 year olds in the USA. Their sample was more representative of the US population (retrospective study of data from National Health and Nutrition Examination Survey III, 1988-1994), and the study was based largely on measurement of variables with correction for some potential confounders. Hediger et al found inconsistent associations between breastfeeding and overweight at age 3-5, and concluded that breastfeeding was not a promising target for obesity prevention strategies7. However, the results of these two recent studies in the US may not be so inconsistent as they first appear8, and the Hediger et al study7 may have been limited by small sample size8.

More recently there has been three studies which have added to the debate, two of which found a protective effect for obesity and one which did not. A study of the offspring from the 1958 British birth cohort found no evidence for a protective effect after adjusting for birthweight, mothers smoking during pregnancy, social class and parents body mass index. The numbers in this cross section survey were small (n=2584) and the duration of breast feeding was reported retrospectively. However in this study mean body mass index and obesity were consistently lower in those breast fed for 2-3 months, but the difference was not significant9. A study of a birth cohort in Brazil found no association between the duration of breast feeding and anthropometric measures of adiposity but did find a 50% reduction in obesity in participants breast fed for three to five months10. This finding appears to be contradictory but may be explained by breast feeding protecting against obesity by reducing the variability in BMI ie. leading to simultaneously lower rates of underweight and overweight in the population. The most recent study (February 2004) from America addresses this issue and shows a dose-response, protective relationship with the risk of overweight among non Hispanic whites11.

There are a number of plausible physiological and behavioural mechanisms by which breastfeeding might protect against obesity12. There are bioactive factors present in breast milk which modulate early growth, and growth patterns of breast fed babies differ from formula fed12-14. Breast fed infants have lower plasma concentrations of insulin compared to formula fed15. Breast fed infants may be more able to modulate energy balance, they tend to be weaned later which is associated with a lower BMI14.

In summary, the balance of evidence from the studies published on contemporary population groups with large number of prospectively collected measures of breast feeding suggest a protective effect of breast feeding for childhood obesity. What remains unclear is the importance of exclusive breast feeding, if and how this is modified by diet after milk feeding (no studies have adjusted for this) and the duration of the protective effect into later life stages. Breastfeeding is a health promoting strategy which has many benefits in addition to a possible protective effect on childhood obesity risk. This factor may be particularly important in populations where breast feeding rates are low.

**SUBMISSION BY EDINBURGH FOR UNDER FIVES**

I understand that the Scottish Parliament’s Health Committee is seeking views from all interested parties on the Breastfeeding etc. (Scotland) Bill, which was introduced by Elaine Smith MSP.

I am responding on behalf of ‘Edinburgh for Under Fives’ who whole heatedly agree with the bill.

‘Edinburgh for Under Fives’ aim is to provide a positive, unbiased comprehensive guide on everything Edinburgh has to offer for young children and make it accessible to all. Families must be made to feel welcome and that is why only establishments that welcome breastfeeding are included in the best selling guidebook (9th edition due out early May). How could we feature an establishment where a vulnerable first time Mum could run the risk of being ejected purely for feeding her baby?
There is no reason why implementation should be a problem. Staff and security are trained and updated continually in offices, shops etc. This would be a simple addition and to most people would need no explanation or justification.

Kathleen Taylor  
Convenor  
Edinburgh for Under Fives

SUBMISSION BY EQUAL OPPORTUNITIES COMMISSION

The Equal Opportunities Commission (EOC) was set up by the Sex Discrimination Act 1975 (the SDA). Its duties are to work towards the elimination of discrimination between women and men, to promote equality of opportunity between women and men generally, and to keep under review the workings of the Sex Discrimination and Equal Pay Acts. The Equal Opportunities Commission (EOC) is a non-departmental public body, funded through grant-in-aid. Our sponsor department is the Women and Equality Unit at the Department for Trade and Industry. The Equal Opportunities Commission is the leading agency working to eliminate sex discrimination in 21st Century Britain.

The EOC’s statutory responsibility relates specifically to gender equality, and that is where the Commission’s main expertise is. However, issues of gender equality are integral to all other equality groups, including those areas regulated by statute and those identified in Schedule 5 of The Scotland Act.

The Commission welcomes the introduction of the Breastfeeding Bill and commends the Elaine Smith MSP and the Health Committee in advancing this Bill. There is compelling evidence about the benefits of breastfeeding children and it is important that this need is acknowledged and provided for in public places.

Consultation

In reading the report on responses, it is clear that the consultation process has provided a useful range of views and has assisted in identifying some complex issues around balancing individual rights and respecting different views and cultures. While it may be regrettable that legislation has to be introduced in this area, the experience of many women underlines the fact that a voluntary code was not sufficient.

Resources

One of the points we would raise is about resources. The Financial Memorandum suggests that enforcement costs will be minimal and that promotional costs can be accommodated under health programmes. However, consideration could also be given to the costs to service providers in terms of training their staff and also in respect of providing or adapting a space/area to make it suitable for feeding children. Employers/service providers might be faced with balancing the needs of parents and the provision of services to others and may opt to have a designated space. A grant system to encourage provision is worth considering in the initial stages of establishing new practice.

SUBMISSION BY FORTH VALLEY NHS BOARD

Forth Valley NHS Board fully supports the proposal to impose certain duties on Scottish Ministers to encourage, support and promote breastfeeding in recognition of the significant influence that nutrition and appropriate feeding practices play in achieving optimal health outcomes.

The Convention on the Rights of the Child states that nutrition is a crucial and universally recognised component of a child’s right to enjoy the highest attainable standard of health. Breastfeeding provides the optimal way of providing this. Therefore, from this perspective it would
be preferable if the Bill made it purely an offence to stop a person from breastfeeding a child in a public place, rather than encompassing and incorporating the more global use of the terms ‘being fed milk’ in the proposal. This it is considered, would help to reinforce the value that Ministers place on the nutritional benefits of breastfeeding through the legislative framework.

Commitment from Ministers to support initiatives aiming to improve the nutritional status of infants and young children are warmly welcomed as this signals Ministers serious commitment to support and protect the health and nutritional well being of children and lactating women.

It is suggested that greater emphasis should be placed at a national level promoting positive messages about breastfeeding as an alternative approach to the punitive measures being proposed.

Dr Malcolm McWhirter
Director of Public Health

SUBMISSION BY INFANT AND DIETETIC FOODS ASSOCIATION

The Infant and Dietetic Foods Association welcomes the opportunity of commenting on this draft Bill. IDFA is supportive of any moves to facilitate infant feeding in public places but believes it is more appropriate to inform and educate rather than introduce legislation.

Breast milk is unquestionably the ideal first food for babies and mothers should not be stigmatised by their choice to breastfeed their babies in public. Equally mothers who wish to bottle feed in public should be able to do so freely and without recrimination.

The Bill also attempts to define the various options available for infant feeding and seeks amendment to the to the National Health Service (Scotland) Act 1978 to oblige Scottish Ministers to promote breastfeeding. We very much support these moves but would urge Ministers to ensure the needs of bottle feeding mothers are not forgotten. In particular the need to ensure that infant formula is used correctly and according to manufacturers’ instructions.

IDFA supports measures to encourage and promote breastfeeding but stresses the need for all mothers to be treated equally and supported in whichever way they choose to feed their baby.

Trade Association body for SMA

SUBMISSION BY LACTATION CONSULTANTS OF GREAT BRITAIN

On behalf of Lactation Consultants of Great Britain, and on my own behalf, I am writing to congratulate the Scottish Parliament for introducing a law protecting public breastfeeding. The bill is very comprehensive and needs little amendment.

The only point I would take issue with is the definition of “a child” as one up to the age of 2 years only. I do not see any need to put a time limit on the age of the child. The health advantages of breastfeeding and being breastfed continue beyond 2 years. Evolutionary and anthropological studies show that breastfeeding up to 6 years and even beyond has been important in the survival of the human race. It is uncommon, but still possible, to find Scottish children being breastfed beyond 2 years.

If such a limit is deemed necessary, an explanation should be given. If the explanation is that some limiting situation exists now which might not exist in the future, then it should be made clear that when that future arrives, the limit can be dropped.

Alison Blenkinsop Midwife, International Board Certified Lactation Consultant
SUBMISSION BY SCOTTISH CONSUMER COUNCIL

1. The Scottish Consumer Council welcomes the opportunity to provide written evidence on the Breastfeeding etc. (Scotland) Bill. The Bill focuses on the right of a child to be fed milk (cows milk, breast milk or infant formula) in a public place or licensed premises, making it an offence to deliberately prevent or stop a person in charge of a child from feeding milk to that child. The Scottish Consumer Council (SCC) supports the general principles of the Bill and the key provisions it sets out.

2. The SCC recognises that the Bill relates to the rights of a child to be fed milk by breastfeeding or using any suitable container, however the concerns of the SCC centre on breastfeeding babies and small children in public. We recognise that mothers often feel inhibited or are prohibited from breastfeeding in public places, thus preventing the child being fed. In relation to the principles of the Bill we agree that breastfeeding should be promoted. The SCC supports the public policy aim of encouraging women to feel confident about breastfeeding their child outside the home. Even at this stage the publicity around the Bill has been helpful in highlighting the unreasonableness of some businesses in prohibiting mothers from breastfeeding on the premises and thus preventing a mother from feeding her child.

3. There is a considerable drop off in the rate of mothers breastfeeding in Scotland, from 63% at birth to 40% of all mothers at six weeks and 30% at four months. The research evidence is that in the early weeks, babies rejecting the breast and sore nipples were the commonest reasons given for discontinuing. For mothers who breast fed for at least one week but gave up by four months, insufficient milk was cited as the most important factor. Successful breastfeeding depends on feeding on demand, as the amount of milk produced is directly related to the amount of time the baby spends at the breast. If mothers are prevented from feeding their babies on demand, it will be more difficult to maintain an adequate supply of milk. In later months returning to work was the major reason for mothers reducing breastfeeding.

4. Barriers to taking up breastfeeding could include embarrassment and lack of social acceptance and these could also contribute to the drop off rate of breastfeeding. Such barriers were recognised in “Eating for Health. A Diet Action Plan for Scotland” (Scottish Office, 1996), which recommended that a multifaceted approach should be adopted to shift public attitudes to accept breastfeeding in public places. The SCC was engaged in the development of the Diet Action Plan and has been involved in its implementation, in particular through the work of the Scottish Healthy Choices Award Scheme and the Scottish Community Diet Project.

5. The Scottish Healthy Choices Award Scheme, which operates under the auspices of the SCC, was established to encourage caterers to provide healthy choices in a healthy environment. To gain a Scottish Healthy Choices Award (at both Commended and Highly Commended level) applicants must have a policy that is supportive towards mothers who wish to breastfeed their babies on the premises. Breastfeeding is a natural and healthy way to feed a young baby. For this reason, it is important for all types of eating-places to respectfully allow mothers to breastfeed their babies on the premises. To be eligible for a Scottish Healthy Choices Award a mother should be allowed to breastfeed her baby at the table undisturbed by staff or other customers, and staff should respond positively when help is requested. The Award appreciates the need to ensure that mothers are made to feel comfortable and are not inhibited in any way. The independent evaluation of the Award scheme demonstrated increased take up of healthy meals in awarded premises and increase in financial turn over as well.

6. Mothers of children who are being breastfed should be given the support and confidence to feed their child in a public place. The SCC recognises that the Bill should act as a deterrent to service providers preventing a child from being fed breastmilk on their premises, and also the practice by some service providers of segregating (often into unsatisfactory accommodation) mothers who require to breastfeed their child.

7. It is important that initiatives aimed at encouraging and promoting informed choice for mothers, as well as the health benefits of breastfeeding, continue. Continued support must also be
given to activities designed to educate both parents (the support of the father is demonstrated to be a significant factor in mothers deciding to breastfeed) and the general public in order to increase awareness of the importance of breastfeeding and make breastfeeding even more widely accepted.

8. There are at least three possible approaches that could be taken to promoting change in the behaviour of service providers towards their customers. These can apply to public service providers as much as private business. These various approaches could be taken in isolation or combination. The three possible approaches are:

- Giving information to service users to enable them to make informed choices in the marketplace;
- Giving civil redress to individual customers affected by poor practice;
- Applying criminal sanctions to services continuing the undesired practice.

The Bill has focused on the third approach of criminal sanction. There are problems and issues with each possible approach and the balance has to be struck between the public benefit and the public cost, as well as the private benefit and private cost, of each.

9. SCC is concerned that problems could exist regarding the enforcement of the provisions of the Bill, in particular the willingness of the police and procurator fiscal service to undertake prosecutions. It is important that any law be enforced and that resources are available to do so. Otherwise the law as a whole runs the risk of falling into disrepute and undermining the general concept of 'lawful behaviour'.

10. The proposed law is aimed at achieving effective change in the attitude of some service providers (and some of their customers who may object to a child being breastfed in public). There are some positive examples of the criminal law being applied in this way, but there are also examples where such legislation has not been so effective – in relation to criminal sanctions for dropping litter, for example. It is difficult to judge what would be effective in advance of implementation.

11. The reluctance of service providers to leave themselves open to criminal prosecution could lead to unintended consequences. The risk adverse provider may seek to exclude children in general from their premises. It is recognised that sometimes regulation can reduce consumers' choices and any reduction would have to be balanced against the general consumer benefit.

March 2004

SUBMISSION BY SCOTTISH HUMAN RIGHTS CENTRE

The Scottish Human Rights Centre (SHRC) is a NGO, which exists to promote human rights in Scotland through the provision of advice and information, research, scrutiny of parliament and monitoring of international human rights obligations.

The Scottish Human Rights Centre welcomes the Breastfeeding etc. (Scotland) Bill and encourages the Scottish Parliament to pass the Bill to ensure that women, men and their families in Scotland can fully exercise their human rights. SHRC is supportive of the objectives and general provisions of the Bill. However, it also wishes to highlight some aspects of the Bill that could be refined.

SHRC responds to the following aspects of the call for evidence:

- **Do you support the general principles of the Bill and the key provisions it sets out?**

SHRC supports the general principles of the Bill and the key provisions it sets out. Although the Bill clearly applies to feeding by persons of any gender who are in charge of the child and ‘feeding’ him or her, it is clear that women are more likely to be affected by this Bill (whether as
breastfeeding or non-breastfeeding primary carers). The majority of the following submissions will pertain to the rights of women, particularly in relation to breastfeeding. However, clearly carers of any gender should be equally protected under the law and mention will be made, where appropriate, of rights pertaining to carers of either gender.

The majority of the submissions will also focus on breastfeeding, as opposed to bottle feeding. Yet, it is argued that the rights pertaining to women in relation to breastfeeding would be equally applicable to women who elect to bottle feed. Further, the Bill correctly covers breastfeeding or feeding by any woman, not just the biological mother of the child.

Background considerations

SHRC supports legislation that protects a woman’s right to breastfeed or bottle feed at a time and in a manner and place that she deems appropriate. SHRC accepts that limitations may be necessary in certain circumstances. However, such limitations should be strictly proportionate to the aim to be achieved that must be reasonably necessary in a democratic society. For example, in limited circumstance it may be appropriate to limit feeding of children in environments that may present a risk to their health, however, usually this is a matter for parental commonsense, rather than legislative regulation.

The proposed legislation would be an effective means to implement a number of the human rights obligations of the Scottish Parliament and the United Kingdom under the European Convention Human Rights (ECHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (UNCRC) and the International Covenant on Civil and Political Rights (ICCPR). The provisions in these instruments highlight that the issue of breastfeeding must necessarily be considered from a human rights perspective.

Every woman has the right to choose whether or not she will breastfeed her baby. Feeding from breast milk is one of the most basic and natural functions of the human body. It should be seen as a foundational function of human life that should be accorded respect and dignity. Women bear the greatest physical and (in the majority of cases) social burdens of child rearing. They bear these burdens for the benefit of society as a whole. Women give birth to, care for and sustain children and, in many circumstances, are primarily responsible for their survival and healthy development.

Historically, the critical function of women as child bearers and carers (amongst their many other abilities, functions and roles) has been downgraded and disrespected. These values permeate many embedded cultural views relating to women, the social significance of pregnancy and childbirth and the social worth of child rearing. They also dictated that such ‘female functions’ should be performed out of view and that women should be confined to the private domain. These views are interlinked with concepts of the female body that have been shaped by largely patriarchal perspectives on its functions and appropriate ‘use’.

Those who reject a woman’s right to breastfeed are necessarily sexualising the act of breastfeeding and imposing their own values on the activity. They are transforming what is essentially an act of sustaining and caring for a child into a sexual act that they judge to be ‘indecent’ or ‘inappropriate’. By rejecting the act of breastfeeding they are revealing their own preoccupations, fears and prejudices. Every person who rejects breastfeeding or bottle feeding was once themselves sustained by one of these activities. Due to the subordinate role of women in the past and due to the practical difficulties of transporting a baby and the need for frequent feeding, women have rarely been in a position to question or refuse to accept such prejudicial attitudes towards breastfeeding. This proposed legislation will support women to refuse to accept such discrimination and will, it is hoped, work to prevent such discrimination in the first place.

The modern reality is that women are exercising an ever-broadening range of social functions in the public domain. It is seen as natural and perfectly expected that women are using public transport, eating meals in restaurants, travelling, attending work and attending public events. Women who have had children, and may be nursing them, are engaging in such activities. Women have the right to fully participate in public life. For human rights to be truly meaningful, those rights must also respect the unique potential roles and capabilities of women, in the present case, to give birth and breastfeed.
Particular human rights obligations that support the right to breastfeed in public

From a human rights perspective, the right to choose to breastfeed without restriction as to time or place is a fundamental right that flows from the rights to freedom from discrimination on the basis of sex or family status, the right to special regard for nursing mothers, the positive obligations of the state to change cultural attitudes towards women, the rights of the child to family life and the right to freedom of expression.

The ICCPR, CEDAW and ECHR provide that individuals must be protected from discrimination on the basis of sex, amongst other grounds (a definition which must necessarily must include those functions that are particular to one sex, such as pregnancy and breastfeeding). The principle of non-discrimination is fundamental to human rights, and as a matter of general principle in international law, cannot be limited in any way. At a domestic level, legislation such as the Sex Discrimination Act 1975 (UK) do provide for strictly defined limitations, for example, it may be permissible for a pregnant women to be excluded from a particular occupation due to occupational safety issues.

The Sex Discrimination Act 1975 (UK) prohibits discrimination of the grounds of sex in the provision of (inter alia) goods, services and facilities. Complaints about a woman breastfeeding are not sufficient justification to discriminate against her by asking her and her family to leave the premises.

CEDAW imposes positive obligations on states to change cultural beliefs and patterns of behaviour that perpetuate stereotypes of women or which maintain their subordinate position. Article 5(b) of CEDAW provides that a state must take all appropriate measures ‘[t]o ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.’ More generally, Article 12(2) of CEDAW states that women shall have appropriate services in connection with pregnancy and breastfeeding.

Article 10(2) of ICESCR provides that special protection should be accorded to mothers during a reasonable period before and after childbirth.

Although many may disagree, breastfeeding can also properly be seen as an issue of freedom of expression. Expression under ICCPR and ECHR is not confined to artistic, political or other ‘formal’ modes of expression. Expression can also be a physical act that is an expression of a woman’s views and values and which represents her views on how she wishes to lead her life. She should not be prevented from expressing her views on how she wishes to raise her child, and it is argued that it would be extremely difficult to cogently argue that public morals, health, decency or other ‘public policy’ type grounds could be proportionately invoked to limit the exercise of this right.

The child also has a right to be fed milk, a right which is supported by particular positive duties under UNCR and by Article 11 of ICESCR. All individuals also have a right to privacy and family life under Article 8 of ECHR, which would cover the rights of all carers to feed and, in particular, the paternity rights of fathers to care for their children. The right to privacy and family life includes the right to care for children in a manner that the child's carers deem fit (unless, of course, it is harmful), and this right includes the right to feed the child at times that are appropriate for the particular family. This is an aspect of an individual's life that is a matter for personal choice and freedom.

These international and domestic legal obligations provide clear guidance that there is an obligation to fully uphold and provide for the free exercise of the right to feed a child in public place.

The general nature of the provisions

Evidently, the creation of an offence punishable by a fine up to the maximum of level 4 on the standard scale (currently £2,500) is a reasonably serious manner in which to encourage the
acceptance of a carer’s right to breastfeed or bottle feed. However, in the view of SHRC, the rights of the child and the carer that this Bill seeks to protect mean that this approach is a reasonable one to take. Therefore, this Bill would most likely be considered, under ECHR, as a ‘proportionate’ measure to protect those rights and it would not unduly limit the exercise of other rights. Any limitation to the right to property (in the case of licensed premises) or any other rights and interests would be limited.

However, it may be that the offence in Section 1 of the Bill should be made more specific. Whether a person has undertaken an act to ‘prevent or stop’ (or, indeed, ‘attempted to prevent or stop’) may, in certain cases, be difficult to assess. For example, waiter at licensed premises may make it apparent that breastfeeding is not appropriate in a particular manner or tells the customer that other customers have complained about the conduct. A woman may stop breastfeeding but it may be difficult to assess whether, in fact, she was prevented or stopped. The Bill could state the specific acts that are prohibited eg. refusal to provide service, asking a woman to stop or move from a certain place or interference (which could then be defined) with a person who is feeding a child.

As this Bill introduces a new offence, it is important that the prohibited acts are clearly defined. Vague legislation make it difficult to know how the law may be applied in practice and make it difficult for the law to have a ‘culture change’ impact, as people will not be clear on what they can and cannot do.

The duty proposed to be placed upon the Scottish Ministers to promote breastfeeding is a useful supplement to the main thrust of the proposed legislation. The Ministers could conceivably fulfil this duty by launching campaigns on the rights of carers to feed a child and the consequences for persons who deny this right. However, in framing this provision the rights of women to choose not to breastfeed should also be respected. Women should not be made to feel that they are neglecting their child or failing to perform their role as a mother if they cannot breastfeed due to personal, professional or financial reasons. SHRC believes that this Bill will make its most effective contribution by simply providing carers with as much freedom as practicable to make decisions as to the feeding of their child.

• Are there any omissions from the Bill that you would like to see added?

Please refer to discussion in relation to the definition of the offence, above.

• What are your views on the quality of consultation, and the implementation of key concerns?

The submission period has been less the three months, as the call for evidence was made on 22 January 2004. SHRC is generally concerned about the shortness of consultation periods in the Parliament and strongly urges the Committee to guarantee a minimum three months consultation period for each proposal, in line with published guidelines.

• Have you any comment on the practical implications of putting these provisions in place and the consideration of alternative approaches?

SHRC does not believe that there are any significant practical constraints on the implementation of the Bill. The Bill requires forbearance from discriminatory conduct and would not result in any costs or losses to individuals or organisations. As discussed above, the provisions would be most effective if accompanied by an education programme, a decision to be taken by the Scottish Ministers.

Conclusion

SHRC is supportive of the proposed legislation and submits that, with more precise definition of the offence, it will enable the greater exercise of human rights by women, men and their families.
• A number of international human rights treaties that bind the UK and the European Convention on Human Rights provide a basis for the right to feed a child at a time and place that the carer deems appropriate;
• In particular, the function of breastfeeding is a clearly protected human right;
• Apart from the clear legal obligation to bring these rights into effect by law or policy, this Bill is needed to address the discrimination and negative treatment that women experience when they feed their child in public. This issue needs to be addressed for the benefit of the Scottish community as a whole;
• The Bill is a positive initiative that will promote the enjoyment of human rights by women, men and their families;
• The Bill equally protects carers of either gender;
• The Acts prohibited by the Bill should be more clearly defined to ensure the legislation is as precise and effective as possible;
• The duty of the Scottish Ministers should also take into account the woman’s right to choose whether or not she breastfeeds and women who choose not to be breastfeed should not be made to feel they have failed as a parent. That duty should be directed to providing information and options to new mothers.

Rosemarie McIlwhan
Scottish Human Rights Centre

SUBMISSION BY SCOTTISH NHS CONFEDERATION

Introduction

1. The Scottish NHS Confederation represents NHS boards and special health boards in Scotland. We are pleased to be able to comment on this important Bill. Breastfeeding is a crucial public health issue in Scotland, and we congratulate Elaine Smith MSP for raising its profile through the introduction of her Bill.

2. The Confederation consulted its members widely on their views of the Bill. We circulated a briefing, which described the Bill's proposals and posed a number of questions:
• Do you support the aims of the Bill?
• Do you think that the Bill will help to increase the uptake of breastfeeding? Will it contribute to improving Scotland’s health?
• Should the scope of the Bill be restricted to breastmilk alone, or is it correct to include cow’s milk and infant formula as well?

3. We received a wide range of responses from individuals, groups and organisations, including: NHS Highland; South Ayrshire LHCC; Grampian Breastfeeding Strategy Implementation Group; the health visitors from East Ayrshire LHCC; the midwives at the Princess Royal Maternity Hospital in Glasgow; and the Early Years Team in the Health Promotion Department of Greater Glasgow NHS Board. Individual responses came from health care professionals including health visitors, midwives, GPs, dental consultants, medical and nursing directors, LHCC managers and health promotion staff.

Views on the Bill

4. The responses indicated overwhelming support for the Bill and its aims. Only three individual responses expressed disagreement or doubt about the Bill as an appropriate vehicle for promoting breastfeeding. The view of the remaining respondents was that increasing the uptake and duration of breastfeeding in Scotland is vital for health improvement, and that any measure that aims to promote this objective is to be welcomed.

5. Most respondents expressed the view that the Bill would, by removing barriers and making a clear pro-breastfeeding cultural statement, make a significant contribution to increasing the uptake and duration of breastfeeding in Scotland and, as a consequence, improving the long-term health of the nation. A small number, whilst supporting the aims of the Bill, questioned whether it,
on its own, would have a direct impact on increasing uptake of breastfeeding. However most of these also expressed the view that it would send a positive message about the acceptability of breastfeeding which could help to develop a breastfeeding culture in Scotland – something that was widely noted to be lacking at present:

“Scotland is a deeply entrenched formula feeding culture and any legislation that protects the right of mothers to feed their babies from the breast can only be welcomed…the Bill is warmly welcomed by midwives who have spent the last decade trying to encourage mothers to breastfeed their infants”

Midwives at Princess Royal Maternity Hospital.

6. On the question of whether it is appropriate to extend the scope of the Bill to protect the right to feed a child from a bottle with formula or cow’s milk as well as breastmilk, there was a clear split amongst our respondents. Of those responses which directly commented on this issue, many agreed that the Bill should be inclusive of bottle/formula feeding on the grounds that mothers who do not breastfeed should not be stigmatised or discriminated against.

“It is a fact of life that not every mother can breastfeed for a variety of reasons”
Clinical Service Manager

7. One respondent suggested that the scope of the Bill should also include the feeding of water. One health visitor supported the expansion of the Bill beyond breastfeeding alone, on the grounds that formula-fed babies should not be discriminated against, but pointed out that the inclusion of cow’s milk presents complex issues from a health point of view, which are not currently reflected in the Bill:

“There needs to be clarification that cow’s milk is unmodified cow’s milk and also that it is not semi-skimmed milk which should not be used in infant feeding under 2 years of age…The World Health Organisation say that too early introduction of unmodified cow’s milk is an important nutritional risk factor for the development of iron deficiency anaemia. Unmodified cow’s milk should not be introduced as a drink till after 9 months and should be increased gradually”

8. In contrast to this view, a slightly higher number of respondents expressed the view that the scope of the Bill should be restricted to breastfeeding and breast milk alone and that to include infant formula, in particular, would send the wrong message, re-inforce Scotland’s anti-breastfeeding culture and undermine the aims of the Bill. Several also argued that it is unnecessary to support the right to feed a child from a bottle as this is the cultural norm anyway and society has no objection to it:

“We need to raise the profile of breastfeeding and make sure that it is viewed as the best way to feed your baby. Scottish people have already decided that formula feeding in public is accepted”
Infant Feeding Adviser

9. Some respondents pointed out that the national arrangements for providing cheap or free infant formula to low-income mothers undermines the aim of promoting breastfeeding and improving health, and suggested that this was an issue that the Bill would do well to address. As one LHCC manager described it:

“A tension among many of the health professionals is the sale of cut price formula milk from our premises. This is a national arrangement and obviously one that sends mixed messages. It is difficult to encourage young mums to persevere with breastfeeding when they can see their mates coming and getting free/cut price milk from the next room in the health centre. If the MSPs were to take action in this area it might have a much bigger impact”

10. Another respondent suggested that guidance issued to NHS boards on breastfeeding should include consideration of what is and isn’t acceptable in terms of sponsorship or other promotional arrangements with baby formula companies.
Other issues

11. Several respondents raised the necessity of providing a suitable environment and facilities for breastfeeding, in order to support the aims of the Bill, and suggested that this was another issue that the Bill could address.

“Ensuring that all big shops/workplaces/NHS/local government premises had facilities to allow breastfeeding/expressing would make a much bigger contribution to the position…Do we know if the new parliament building has these facilities open to the public/civil servants?” Motherwell LHCC

12. Finally, a number of correspondents made the point that the legal protection of the right to breastfeed will not, on its own be sufficient and that the Bill must be supported and reinforced by education and campaigning at national and local level – and there were strong messages to MSPs and Ministers about their role in this work.

“Although the Memorandum names a number of MSPs who have given their support, there is a lot of work to be done if more children are to have the right to be breastfed- not merely in public places, but as a basic right to the best nutritional start in life” Health Visitor, South Ayrshire LHCC

The Confederation’s View

13. There has been considerable critical publicity and comment about the Breastfeeding Bill, suggesting that it is not a good use of the Scottish Parliament’s time. However, we found overwhelming support for the Bill and some strongly expressed views about why it is such an important piece of legislation, from a wide range of health professionals, all of whom are directly involved in trying to improve Scotland’s health. These are people who have first-hand experience of the challenge that health professionals face in trying to increase the uptake and duration of breastfeeding in Scotland in the face of persistent negative attitudes. They understand only too well that the right of a child to be given, as a health visitor from South Ayrshire LHCC put it, “the best nutritional start in life” is not yet a concept that is widely understood or accepted in Scottish society. They also understand that the aims of the Bill do not stand in isolation, but will support their wider work to improve health generally - as the midwives from the Princess Royal Maternity Hospital in Glasgow point out: “Breastfeeding can go a long way to improving the health of our nation as there would be a significant reduction in childhood obesity, asthma, gastric upsets, heart disease, pre-menopausal breast and ovarian cancers” A consultant in dental public health who responded to our consultation also pointed out the links between breastfeeding and dental health in children. Even the majority of those respondents who are unconvinced that the Bill itself will directly increase breastfeeding uptake, are nonetheless supportive of the principles behind it and the message that it sends about the place of breastfeeding in our society.

14. Establishing legal rights is often an important step towards changing culture and attitudes, leading in turn to a change in practices, and the Breastfeeding Bill could prove to be a powerful tool in that respect, particularly if the nation’s elected leaders throw their weight behind it. The Confederation commends the principles and primary purpose of this Bill to the Committee.

15. The one aspect of the Bill that proves less straightforward is its inclusion of infant formula and cow’s milk within the protected right to feed. There have been convincing arguments made on both sides of this question. Clearly any piece of legislation passed by the Scottish Parliament must avoid discriminating against any particular group and, if it is the case that parents who wish to feed their children from a bottle in public places have experienced negative reactions or challenges to their right to do so, then clearly they should enjoy equal protection under the Bill. It certainly should not be the case that women who choose not to or cannot breastfeed their infants should ever be made to feel humiliated or discriminated against for doing so – as women who breastfeed so often are now. Babies can of course also be fed breast milk from a bottle, often by a father or other carer, so it is crucial that bottle-feeding per se is not demonised.

16. However, the Confederation leans towards the view expressed by many of our respondents that the right to feed a baby from a bottle is already accepted, and that the inclusion of
foodstuffs other than breast milk could serve as a distraction from the Bill’s main aim. The central issue that the Bill sets out to address is the persistent cultural antipathy towards breastfeeding in Scottish society, particularly when it is carried out in public, and the deleterious effect that this has on breastfeeding rates and, as a consequence, the health of mothers and children. The establishment of the legal right of a mother to feed her child breast milk and for the child to be fed breast milk makes a powerful statement against that prevailing cultural trend, and the Confederation has some concern that extending the scope of the Bill beyond this central issue could dilute and confuse that message. We do not by any means believe that the inclusion of foodstuffs other than breast milk invalidates the Bill – it remains a commendable Bill and commands our support – but we do believe that this particular aspect of it requires further discussion, and that it would be helpful for the Committee to hear directly the views and experiences of health professionals who are involved in implementing NHS boards’ breastfeeding strategies.

17. We would also suggest that the Committee examines the practice of providing free or reduced-price infant formula to low-income mothers from NHS premises: this is clearly an issue which is a source of conflict for health professionals who are trying to encourage mothers to breastfeed. There may be better ways of supporting the nutritional health of mothers and their infants – for example, providing subsidised healthy food, as one of our respondents suggested, although it will remain crucial to protect the right of low-income mothers who are unable to breastfeed to receive free or low-price alternatives, perhaps on the basis of medical advice. As this UK programme is connected to the benefits system, there may be limits to the extent to which the Scottish Parliament can intervene, but it is nonetheless an issue of which members should be aware.

18. Finally, on the issue of providing a suitable environment for breastfeeding, which was raised by a number of our respondents, the Confederation would fully endorse the view that the lack of comfortable, safe and, above all, private areas for breastfeeding is a central factor affecting the uptake and, particularly, the duration of breastfeeding. We are not convinced that it can be tackled within the scope of this Bill - clearly, requiring commercial premises, workplaces and elsewhere to actually provide areas for breastfeeding, for example, is a more complex matter than simply establishing a legal right to breastfeed, and we would not like to see the passage of this important Bill delayed by further complicating the central issue that it addresses – but the Executive should certainly consider the introduction of other mechanisms to effect change on this matter.

The Scottish NHS Confederation

April 2004

Some further comments from the consultation responses

On the need for the Bill:
“The uptake of breastfeeding has increased over the last few years, and this is largely due to very positive action across the NHS. A continuation of ‘positive discrimination’ will be needed for some time till a situation is reached where breastfeeding is regarded as the norm”
Corporate administration manager

“We need to get more mums to breastfeed in the first place and the only way we can do this is to support and educate pregnant women…By encouraging mothers to breastfeed in public, our children will grow up seeing breastfeeding as the norm”
Infant feeding adviser

“I feel that this Bill may help to enforce the fact that breast is best and help women to feel that they are being supported in providing the best start in life for their babies and improving the future health of the nation, rather than being viewed as ‘disgusting or disgraceful exhibitionists’ (terms I have heard!)”
Development Officer for Antenatal and Postnatal Support for Vulnerable Families
“The Breastfeeding Bill, by removing some of the barriers to breastfeeding, could influence the number of mothers choosing to breastfeed and promote a better quality of life of life for breastfeeding mothers which could in turn enable them to breastfeed for longer”

Early Years Health Promotion Team

“Sadly, the evolved culture around breastfeeding in public areas does require this type of directive”

Dietician

“I fully support the aims of the Bill…You may consider it unusual for a dentist to comment on breastfeeding, but incorrect weaning can have a devastating effect on the dental health of very young children”

Consultant in Dental Public Health

On the scope of the Bill:
In favour of including formula and cow’s milk

“The fact that the Bill also includes infant formula emphasizes the fact that the feeding of children is not something that needs to take place in isolation from the rest of society”

NHS Highland

“I do not think that mothers who cannot or wish not to breastfeed should be made to feel guilty in society because of their preferred method of feeding”

Health visitor

“The Bill should aim to be as inclusive as possible and not exclude formula-fed babies”

South Ayrshire LHCC

“In terms of the inclusion of cow’s milk and infant formula, given our current climate I would say yes to this – maybe this could be reviewed in years to come”

Opposed to including formula and cow’s milk:
“We do not believe there is any necessity to include formula feeding in the Bill as it is the cultural norm and there has never been a reported case of a mother who was formula-feeding her baby being asked to leave a public place”

Midwives, Princess Royal Maternity Hospital

“We should be actively promoting the benefits of breast milk and not equate it in any terms with formula”

Grampian Breastfeeding Strategy Implementation Group

“There is no need to include other forms of food and drink within the definition of feeding. I think that this is an unnecessary diversion”

Consultant in Dental Public Health

“I have never heard anyone objecting to a baby being given a bottle. It’s acceptable to give a human baby animals’ milk in a plastic bottle and yet what it ultimately should be having, human milk from a breast, needs a bill through parliament. What a strange country we live in!”

Development Officer for Antenatal and Postnatal Support for Vulnerable Families

Other comment

“[I] would suggest that formula milk should not be provided by the state via any benefit system – replace this with the provision of free/subsidised healthy food for lactating mums”
Health Committee, 14th Report, 2004 (Session 2) - ANNEX D

Head of Clinical Effectiveness

“To promote freedom of choice, should there not be a suitable place/room that is appropriately furnished to allow people privacy if preferred? Hopefully this will eventually become normal practice”

Health visitors, East Ayrshire LHCC

“There is absolutely no doubt that it will contribute to improving Scotland’s health, but how it is promoted will be crucial. Where are the men in this? –government is full of them and they need to give it their backing”

Development Officer for Antenatal and Postnatal Support for Vulnerable Families

SUBMISSION BY SCOTTISH TRADES UNION CONGRESS

1  Introduction

1.1 The STUC is Scotland’s Trade Union Centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the Trade Union Movement in Scotland and, through the creation of real social partnership, to promote trade unionism, equality and social justice, the creation and maintenance of high quality jobs and the public sector delivery of services.

1.2 The STUC represents around 630,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy. Our representative structures are constructed to take account of the specific views of women members, young members, black/minority ethnic members, LGBT members, and members with a disability, as well as retired and unemployed workers.

1.3 The STUC contributed to Elaine Smith MSP’s consultation process for the draft Bill in September 2002. We note that the Health Committee is to consider submissions made to this consultation, and trust that our previous comments to Elaine Smith’s consultation will be taken into account. Therefore, we have directed our views on this occasion to the points raised by the Health Committee in its call for written evidence.

2  The General Principles of the Bill

2.1 The STUC fully supports the general principles of the Bill and the key provisions that it sets out. Breastfeeding is an entirely natural practice, mothers should be able to breastfeed their young children in public places. Breastfeeding mothers and babies should be treated with dignity and respect.

2.2 Children should have a right to be breastfed whenever and wherever required. Young babies need to be fed when they are hungry, this can mean mothers need to feed young children frequently so should be allowed to breastfeed babies in public places where children are permitted to be. Mothers and babies need to feel safe and comfortable to breastfeed, and evidence referred to in our previous submissions shows that this is not always the case.

2.3 The STUC recognises the significant health benefits for both mothers and children who breastfeed. Therefore mothers and babies should be encouraged and supported to breastfeed where possible. The STUC believes that we need clarity in the law to firmly establish the right for a baby to be breastfed. The most effective and efficient way to do this is through a change to the criminal law.

2.4 The STUC believes it is important to encourage breastfeeding as part of a broader scheme to tackle poverty, bad diet and social exclusion.
3 **Content of the Bill**

3.1 The STUC believes the Bill is comprehensive in its coverage and will achieve what it proposes to do. We particularly welcome the duty upon Scottish Ministers to make arrangements to support and encourage the breastfeeding of children, and to disseminate information promoting and encouraging breastfeeding.

4 **Quality of the Consultation**

4.1 As noted above, the STUC, along with a number of its affiliates, has taken part in an in-depth consultation process, and has participated in Breastfeeding Bill Steering Group meetings convened by Elaine Smith MSP. A range of organisations and individuals have had considerable opportunities to feed in views to the process.

5 **The Implementation of Key Concerns**

5.1 The STUC believes that the proposed Bill would very clearly validate the right to breastfeed in Scottish law, and would send a strong message that society supports and encourages breastfeeding.

5.2 Central to the Bill is raising awareness amongst society at large that breastfeeding of babies is acceptable, and that it is illegal to attempt to prevent a baby from being breastfeed in public places where children are normally allowed.

6 **The Practical Implications of Putting these provisions in place**

6.1 As with any new law, the general public, employers, workers, and people in positions of responsibility and authority, have to be aware of the new provisions, and their responsibilities in upholding the law.

6.2 Crucially new mothers should be made aware of the legal right and how they are able to enforce it, should they be prevented from feeding their babies. Women feeding their babies in public places may feel vulnerable and unable to challenge a person preventing them from breastfeeding. It is important that mothers are supported to raise these issues, and to report any persons who prevent them from feeding their babies.

6.3 Ignorance and fear are key reasons why some people will not breastfeed in public, and why others are afraid of their own reactions to breastfeeding mothers and babies. This Bill is an excellent means for sending out a clear message that breastfeeding is not only acceptable but should be encouraged.

6.4 The STUC welcomes work currently being done by the National Breastfeeding Advisor and the Scottish Breastfeeding Group’s Code of Practice on Breastfeeding and Returning to Work, which is being adopted by both the Scottish Executive and the NHS in Scotland. We believe that such Codes of Practice can assist in changing attitudes to Breastfeeding. These initiatives should continue and be fully supported and resourced by the Scottish Executive.

6.5 The additional duty on Scottish Ministers to make arrangements to support and encourage the breastfeeding of children, and to disseminate information promoting and encouraging breastfeeding should be carried out for example by:

- Public education, awareness and information campaigns,
- Information, support and advice for employers to make provisions for work place facilities to support working mothers to breastfeed their babies,
- Education resources in schools, colleges, and other learning centres,
- Greater resources invested in providing support for breastfeeding from nursing and community health centres.
7    Consideration of alternative approaches?

7.1 The STUC believes that the proposed Bill is the most appropriate and effective way of addressing this issue. Whilst we do not want to suggest alternative approaches, the Health Committee may wish to consider complementary approaches, that will support the objectives of the Bill.

7.2 The STUC is concerned that women returning to work around the time when their maternity leave runs out, no longer find it practical to continue breastfeeding due to a number of barriers relating to employment patterns and lack of adequate facilities in the workplace for expressing and storing milk. Within the section on “Promotion and support of breastfeeding” we would urge the Health Committee to consider specific recommendations on how employers might be encouraged to enable mothers returning to work to continue breastfeeding, by providing the appropriate facilities required.

7.3 We would also advocate an extension by the UK Government of the current statutory period of paid maternity leave to aid and extend a mother’s ability to continue breastfeeding their child for as long as possible.

SUBMISSION BY TRANSPORT AND GENERAL WORKERS’ UNION SCOTLAND

T&G Scotland welcome the opportunity to contribute to the Health Committee’s consultation on the general principles of the Bill. We are supportive of the broad principles of the proposed Breastfeeding etc (Scotland) Bill and the key provisions it sets out.

Our understanding of the main purpose of the Bill is to make it an offence to deliberately prevent or stop (or attempt to do so) a person from breastfeeding or bottle feeding a child in a public place or licensed premises, where a child is lawfully permitted to be on such premises. The Bill also proposes to impose certain duties on Scottish Minister’s to encourage, support and promote breastfeeding. It is also our understanding that the Bill does not intend to prevent businesses from excluding breastfeeding on its premises where the lawful practice is to exclude children generally.

As the Health Committee has indicated that for the purpose of this inquiry it is looking only for additional submissions relating to the Bill as introduced and on the following points.

• Do you support the general principles of the Bill and the key provisions it sets out.
• Are there any omissions from the bill that you would like to see added
• What are your views on the quality of consultation, and the implementation of key concerns?
• Have you any comment on the practical implications of putting the provisions in place and consideration of alternative approaches

T&G Scotland wish the following comments to be taken into account in the Committee’s Inquiry.

• T&G Scotland is of the view that the areas the Bill seeks to address surround important health issues and we are broadly supportive of the general principles of the bill and key provisions it sets out.

• As there has been a sustained effort both at Scottish and UK Government level, and through the National Health Service, in trying to promoting breastfeeding, we feel that the fact that there is no clear legal right to breastfeed in public and that it is not illegal to request that a breastfeeding mother and baby leave public places or licensed premises, is an anomaly.

• We recognise the fact that there has been no overt commitment made by our society towards breastfeeding – despite the efforts of government and other organisations to promote it. However, the proposed law would validate the right to breastfeed in Scots law and would send a strong message that society supports breastfeeding.
• We are aware that a number of studies have shown that breastfeeding has major health benefits for both mother and baby. Indeed, breastfed babies have a reduced risk of many common conditions, such as chest infections, and many of these benefits carry on throughout childhood and beyond.

• We are of the view that if government and society, on the whole, accepts the benefits of breastfeeding and promote these benefits, it seems reasonable to commit to that by passing legislation to make it illegal to stop a baby being breastfed in the places outlined in the bill.

• As a trade union that is conscious of the need to assist new mothers who wish to exercise the choice of returning to work at a time appropriate to them, we would welcome an extension in the scope of the bill to include the recognition of the need to determine procedures enabling mothers to return to work in a manner and with facilities, if required, that enables them to continue breastfeeding.

• T&G Scotland has previously welcomed the adoption of the Scottish Breast Feeding Group's code of practice on breastfeeding and returning to work, by both the Scottish Executive and the NHS in Scotland, and we believe such codes of practice can assist in changing attitudes towards breastfeeding. In terms of the proposed duties for Scottish Ministers to encourage support and promote breastfeeding, we believe that all employers should be encouraged to adopt the code of practice and provide facilities for returning mothers.

• T&G Scotland welcomes the production of the SPICe paper on the initial consultation on the Bill and the analysis of responses within it and hope that a sustained level of consultation on the Bill continues.

SUBMISSION BY UNISON SCOTLAND

Introduction

UNISON Scotland welcomes the opportunity to respond to the call for written evidence from the Scottish Parliament’s Health Committee regarding the above Bill. UNISON Scotland strongly supports the Bill, as we believe that it validates a woman’s right to breastfeed her child in public places where children are allowed.

Breastfeeding in Scotland

UNISON Scotland has already submitted a response to the Scottish Executive’s consultation on the Proposed Breastfeeding (Scotland) Bill, but it may be worth re-iterating some of the key issues to the Health Committee.

Scotland has amongst the lowest rates of breastfeeding in Europe. Research in 1994 showed that breastfeeding rates varied between postcode zones in Glasgow, going from around 9% in more deprived areas to 75% in more affluent areas. The World Health Organisation recommends that, when possible, infants should be exclusively fed on breast milk until they are 6 months of age. The health reasons for this advice are not contested. The Scottish Office set a target of more than 50% of women breastfeeding their babies at 6 weeks in 1994. (1) At the time just under 30% of women were breastfeeding at 6 weeks, increasing to 36% by 2001. (2) This contrasts poorly with Scandinavian rates of around 98%. (3)

Despite an overwhelming increase in scientific evidence confirming the resultant health benefits, only 53% of children in Scotland are now breastfed at birth, falling to around 40% at six weeks old. Increases in breastfeeding rates in Scotland are mainly dependent on the individual dedication and initiatives of Health sector workers in this field, many of whom are UNISON members. Without further substantiation from government and wider society, Scotland could retain its place amongst the lowest rates of breastfeeding in Europe.
Breastfeeding, Health and Wealth

Approximately 30% of Scottish children live in poverty, with all the associated health inequalities. The importance of encouraging breastfeeding as part of a broader scheme to tackle the results of poverty, bad diet, and social exclusion must be recognised. Social inclusion and breastfeeding are an important part of the Executive’s Social Justice Strategy, and whilst the Executive’s programme for Government does outline a pro-active approach to dietary health, it does not appear to give breastfeeding adequate emphasis. Any strategy relating to diet, nutrition and future health of our nation must have its beginnings rooted firmly in early stages of life. Many of UNISON’s members who work with mothers and babies believe that the Executive needs to do more to advocate breastfeeding in Scotland. This Bill is one step towards achieving this.

There is a huge amount of medical research emphasising breastfeeding as the natural way to feed babies. It is the simplest way of ensuring positive health advantages in infancy, childhood and adult life. In infancy, breastfeeding has a protective effect against ear infections, diarrhoeal illness and urinary tract infections. It aids mental development and reduces the incidence of eczema, asthma and diabetes in later life. For mothers it cuts the risk of breast and ovarian cancer and can help them regain their shape after pregnancy. Furthermore, significant research has indicated that by increasing breastfeeding rates, the NHS could save an estimated £3.82 million annually in addition to improved child health. (4)

A Legal Right to Breastfeed

Children should have a right to be breastfed whenever and wherever required. Young children need to be fed when they are hungry, this can mean mothers need to feed their young children frequently. Therefore we believe that mothers should be allowed to breastfeed their babies in public places where children are permitted to be. A mother needs to feel safe and comfortable to breastfeed her baby. This is not always the case, and results in many mothers’ decision to stop breastfeeding early, or not to breastfeed at all. Many US states have legislation to protect breastfeeding in public, and federal law protects women’s rights to breastfeed on federal property, so this Bill is not an unusual attempt to protect women’s rights. Here, there is no measure protecting mothers from being subjected to discrimination and segregation while breastfeeding in public. UNISON Scotland believes that a change in legislation will give out the right message to public bodies, businesses, public transport and to Scottish people.

Breastfeeding must be Culturally Acceptable

UNISON Scotland believes that ignorance and fear are the main reasons why certain people will not breastfeed in public. Much of this belief is due to ignorance of what breastfeeding a baby involves. Some people believe it is an exhibitionist activity and are afraid of their own reaction to a breastfeeding mother and child. Others have difficulty with the supposed conflict of breasts as sexual objects and a natural means of providing nourishment for a baby. This Bill is an excellent means for sending out a clear message that breastfeeding is not only acceptable, but should be encouraged. UNISON Scotland believes that a public campaign led by the Executive Health Department could also help to promote breastfeeding in Scotland. It would help to change a culture, which at times can be hostile and discriminatory to breastfeeding mothers.

Breastfeeding and the Workplace

UNISON Scotland negotiates and campaigns for improved workplace rights for mothers and families. This includes flexible working, extended maternity leave, parental leave rights, childcare facilities and time off for emergencies. Under health and safety legislation employers are required to provide pregnant and breastfeeding women with a place to rest. The Health and Safety Executive also recommends that employers provide women who are breastfeeding with suitable rest periods, access to a private room to express milk, and somewhere to store milk. Two thirds of UNISON’s members are women, and we have been at the forefront of negotiating for women’s rights. This includes negotiating for suitable areas for mothers to express and store breast milk, and for additional maternity leave to enable mothers to continue to breastfeed their babies for longer.
Conclusion

UNISON members are employed in the health service and in local government, many of whom are involved in supporting and assisting mothers in breastfeeding and nursing their babies. The majority of our members are women, and we therefore strongly support any course of action that would make women’s lives a little easier. UNISON Scotland very much welcomes the proposals as set out in the Breastfeeding etc. (Scotland) Bill. We believe that it is right that we should promote a culture that is supportive of breastfeeding, and encourages women to breastfeed their babies for as long as possible and/or appropriate.

References:

1 Warren J, Breastfeeding in Scotland Where are we now Health Bulletin 1998 56 (4): 772-9
2 Scottish Executive, Social Justice Annual Report 2002 page 27
3 Anderson Professor A, Journal of Human Nutrition and Dietetics 16 2003 p 27

SUBMISSION BY UNION OF SHOP, DISTRIBUTIVE AND ALLIED WORKERS

USDAW is a trade union with over 325,000 members. The majority of our members work in the retail industry, the largest private sector employer of women. Over two-thirds of our members are women and so we are well placed to help articulate the voices of working women. We welcome the introduction of legislation protecting a woman’s right to breast or bottle-feed her baby in public and believe the Bill has the potential to make a real difference to the lives of breastfeeding mothers in Scotland and set the standard for other countries to follow.

As a trade union, we can speak with some authority about the experience of women breastfeeding their babies in the workplace. However, as the Bill is concerned with women having the right to breastfeed in public, it is not directly within our remit. Having said this, we would like to take this opportunity to put on record our support of the general principles of the Bill and the key provisions it sets out.

The only other comments we wish to make concern the practical implications of putting the Bill’s provisions in place.

We assume that proposals already exist for the launch of an awareness-raising campaign to accompany the implementation of the legislation. Such a campaign must also aim to change negative attitudes towards women breastfeeding their children in public.

The campaign should be targeted at those premises where women have experienced problems, ie have been asked either to leave or go to the toilet. Women have to feel confident and supported if they are to breastfeed in public. We note and welcome the Bill’s proposals to impose duties on Ministers to encourage, support and promote breastfeeding.

Finally, any campaign must ensure that new mothers are aware of their legal right and how they can enforce it. Women feeding their babies in public are vulnerable and may often feel unable to challenge a person preventing them from breastfeeding. Any campaign must inform women of how they can practically enforce their right to breastfeed their babies in public, how they report a person or business that prevents them from feeding their baby in public, what the legal procedure is, what will be required of them and what the sanctions are. Targeting information via baby products or products designed for new mothers, such as breast pads, will help.
Volunteering in Health

I refer to the call for evidence dated 22 January 2004, and submit the undernoted comments on behalf of the Volunteering in Health team at Volunteer Development Scotland (VDS)

VDS seeks to promote volunteering in all areas of Scottish life and has had a dedicated health team since 1997. VDS did not submit comments to the earlier consultation.

1. General principles

VDS is strongly in support of the general principles of the Bill and the key provisions it sets out, for the following reasons:

• There is clear evidence of the health benefits accruing from the widest possible practice of breastfeeding
• The reactions to breastfeeding in some public places can deter uptake by mothers
• Volunteers can, and do, play a very significant role in promoting breastfeeding by acting as peer mentors. The provisions of this Bill will assist them in this work by removing some of the often-quoted disincentives to breastfeeding
• The Bill will assist in bringing Scotland up to breastfeeding rates comparable with countries in the vanguard of health improvement measures

2. Omissions

There are no omissions from the Bill to which VDS would draw attention but we would wish to see Section 4 (Promotion and support of breastfeeding) expressed in the strongest terms possible. We would be delighted to see reference in either Paras (1) or (2) of the insertion to Section 38 of the NHS (Scotland) Act 1978 of the words:

"and to promote volunteer support programmes for mothers choosing to breastfeed"

3. Consultation process

The consultation process attracted an encouraging number of responses, particularly from individuals. I have no doubt that the views expressed by members of support groups in Wishaw and Shotts could have been replicated many times over by similar groups throughout Scotland.

4. Practical implications

I have no specific comment on the practical implications of putting the provisions in place, other than to note the importance of developing still further the support mechanisms available to mothers who may experience difficulties in certain public places. The advocacy and mediation roles required of volunteers could increase, particularly in the early stages of implementation. Insofar as there is a need for actions to raise public awareness and address attitudes not conducive to breastfeeding in public, volunteers could play an enhanced role in public education work in hospitals, schools, clinics and elsewhere.

Philip Bryers
Senior Development Officer
Volunteering in Health
Volunteer Development Scotland
Dear Sir or Madam,

I recently read the article 'A Mother's Right' in the Feb26-Mar3, 2004 edition of the Big Issue and wanted to write to you in support of the Breastfeeding (Scotland) Bill. I am a mother of 3 children, all breastfed. The first was fed this way until 14 months old; the second to the age of 28 months and the third is still being breastfed at 22 months with no signs of wanting to stop! I was in my 30's before starting my family and can be classed as well educated / middle class. I had no strong breastfeeding role model to follow but decided that breastfeeding was the most natural way of feeding my babies. All three children are fit and healthy and it has been pointed out to me many times that they all speak very clearly and fluently - even the 'baby' already uses sentences appropriately. I was able to feed on demand as there was no pressure on me to return to work and have never been asked to stop feeding my babies in any public place. The embarrassment factor did play a part initially but time and experience have overcome this. I still feel a little uncomfortable amongst a group of non-feeding mums e.g. at the local toddler group when feeding my almost two-year-old, although no-one comments.

While I support the Bill I do think that the main problem mothers-to-be/new mums face is from family members - I remember my own mother asking 'when will you stop?' as the first baby approached a year old. Many women think they have to stop when the baby's teeth appear - not so. There are so many myths surrounding breastfeeding that need to be dispelled. Many health care professionals also have a bias against breastfeeding and even though their health board has a pro-breastfeeding policy they have their own ingrained (and often misinformed) ideas. I have heard a midwife comment on the detrimental effect long term feeding will have on a woman's breast size and shape but have had no personal experience of this. I would comment, however, on the positive benefits I have gained from breastfeeding - rapid and complete loss of weight gained as a result of pregnancy AND a very close bond with all three children.

I have heard of a peer support network being piloted in my local area, with mothers who have fed their babies for at least three months being asked to help new mums over the initial stages - this is a good start and should be encouraged with the funding it needs. Perhaps this would be a sensible next step after the current Bill?

I hope my rambling thoughts and comments are of interest and will help support the Bill,

Yours faithfully,

Isabel M. Archbold

SUBMISSION BY KATHERINE BUTCHER

I would like to say that I fully support the proposed Breastfeeding Bill. I do feel that it is unfortunate that we need a bill like this but from personal experience I feel it is essential. I run a voluntary website for mums, and we surveyed local restaurants, and as a breastfeeding mother I included questions about their attitudes about breastfeeding, although most were very positive, we found shocking evidence of anti-breastfeeding attitudes. Some said although they welcome babies, they would ask a mother to leave if they were breastfeeding, even if the family were eating a meal. It is essential to overcome these attitudes if babies health and wellbeing is to be protected.

I would like to also see moves to bring the UK law into line with the WHO code on the Marketing of Formula Milk, and also the current law enforced more strongly. I feel the current situation also has a detrimental effect on breast feeding initiation and continuation.

From a practical point of view I feel this will be very straightforward and feel it will have an immediate effect on protecting women and their babies from discrimination.

Miss Katherine Butcher
SUBMISSION BY KATHRYN CONGDON

My experiences of breastfeeding in public have been varied. At one place I my baby was crying and so I started to feed him in a quiet corner of a restaurant. The manager came up and asked me to leave. I didn't feel I could argue with him then and there and I was really embarrassed about the whole thing. The whole family had to leave because we couldn't sit there with a crying baby but I was being as discreet as possible and felt very cross that I was humiliated in this way. I would never go there again but experiences like this don't help when you are trying to get breastfeeding established. It is tricky enough as it is as you have to feed for so long and so often at first and people are going "give him a bottle he's hungry" all the time. You have to be really determined to actually stick at it so if you can't go out and about and feed in freedom it makes it so much harder.

Although there is a long way to go, it is becoming easier to breastfeed in public places. More and more establishments are welcoming breastfeeding mothers and babies and providing suitable facilities. Sadly, there are places where breastfeeding is still considered unacceptable. I am keen to challenge attitudes that question women's right to breastfeed their baby wherever they are together. I know that there are still far too many women who feel they either have to rush out between feeds, stay at home most of the time or stop breastfeeding.

If more women were supported to breastfeed when they were out and about with their baby, it would help to break the cycle that keeps breastfeeding hidden and perpetuates a bottle-feeding culture.

I am now feeding a two year old so the bill wouldn't help me now as he isn't included in the definition of a baby. I know it is less common but there are women out there feeding toddlers. Could they be included in the bill as well? Otherwise we will feel even odder then we are made to feel at the moment. I would never feed him in public now as I know people are funny about it but they shouldn't be - it is a totally natural thing to do which benefits us both.

More education is needed to support breastfeeding so this bill will hopefully be a step in the right direction.

Kathryn Congdon

SUBMISSION BY NINNA CRISP

To whom it may concern

I am writing to you as I am totally in shock, that we live in year 2004 and this bill is first going through now. How any law can condemn a mother to breastfeed in public ,and how a landlord has the right to throw her out for doing what is the most natural thing in the world, we are supposed to be encouraging mothers to breastfeed, and not stopping them or refuse they can have a nice meal in the pub, with her friends so I hope that this bill does go through. as a mum of 2 both breastfeed and still breastfeeding I feed where ever I need to and thankfully have never come across any bad feelings. I think that the consultation should be done very well and by the people whom have the knowledge of the benefits of breastfeeding i.e. health visitors, midwifes, doctors, breastfeeding counsellors from the breastfeeding groups i.e. la-leche association of breastfeeding mothers ect.and mums whom have breastfeed. Not by a load of politicians whom have never been educated on breastfeeding. Also I believe that breastfeeding rates in Scotland are at a very low compared to other places in Europe. And there should be a lot more "advertising" done to promote breastfeeding. I hope this bill does go through,

Yours faithfully

Ninna Crisp
We at Forth Park Hospital Kirkcaldy support the general principles of the bill and its provisions.

We recognise that all mothers who are breast or bottle feeding should be able to do so without any discrimination. The mother are at subject to the needs of their own baby to give the nutrition and nurturing when it is required by them.

In the case of a breast feeding mother she also has the added discomfort of a hormone response that reacts to her own baby’s behaviour. These hormones are to allow the ejection the milk as well as its production. They can give a physical response within the breast which gives sensations of tingling or discomfort and lead to leaking of the milk in response to the baby crying. This will give her a feeling of overwhelming need to put her baby to the breast and as soon as is possible. She will be looking for a comfortable area where she can sit and allow her baby to go to her breast. This feeding is normally carried out without fuss or obvious exposure of her breasts. Most women in Scotland have some degree of modesty! Once baby is attached at the breast and cuddled into her she can relax and allow both the baby and herself to enjoy the feeding experience.

It is both the baby and the mothers right for breast feeding to take place and should be accepted by the general public as a normal part of human behaviour. The mother has the right to feel comfortable where ever baby requires to be fed.

The members of the forth park breast feeding support group in general have not found a problem as they tend to feed in places that are familiar to them when they are out and about. They feel it is only acceptable to change a baby's nappy in a toilet area. The feeding should be allowed to take place in any other seated area on the premises offered to the general public.

As breast feeding co-coordinators who are trying to raise the awareness in both staff and mothers and general public we have liaised with our hospital chaplain the matter of support in breast feeding to be taken forward as a motion at the general assembly for the church of Scotland 2004.

We hope these comments are of value or interest. We look forwards to this bill being made law and with it raising the interest in infant feeding. The opportunity of giving the advantages, benefits and raising the profile of breast feeding should not be missed. it is essential the culture of Scotland is changed from the disapproval of breast feeding in public if we are to become a healthier nation.

Yours sincerely,
Irene Fenske - Breastfeeding Co-ordinator
Patricia Cobain - Breastfeeding Co-ordinator
Lianne Hood - Forth Park Breast Feeding Support Group

SUBMISSION BY DR LAURA JOFFE

I am writing in response to further consultation regarding the Breastfeeding (Scotland) Bill. I am concerned that the Bill’s definition of infant as being under two years of age may make it even more unacceptable to breastfeed an older child. Breastfeeding children is perfectly normal, beneficial to mothers, children and most importantly, the tax payer.

I would also like to see the Bill, or further legislation, to implement the WHO Code on the marketing of Breast milk Substitutes as UK, or at least Scots, law. The present legislation is weak, frequently not enforced, and often not understood even by those whose duty it is to enforce it.

Thank you,
Dr Laura Joffe
Having just read your article in last Wednesday's Morning Star on the Breastfeeding Scotland Bill, it prompted me to look up the Proposed Bill on the internet and I have to agree wholeheartedly with everything I have read. The only question has to be why has it taken so long??

I am currently breastfeeding my third baby of 10 months and one of the first questions people ask is "are ye still breastfeeding that wean?" the next question is "Whit age is he noo?" when the reply is 10 months the contempt and disgust on their face says it all!

This ignorance along with the widespread misconception that breast milk is not substantial enough for a hungry baby (my friends health visitor even told her this!) is in my experience the reason for many mothers giving up in the early stages. This coupled by the fact that if you do manage to master the art, going out and resuming some kind of normality is impossible due to the fact that there are very very few either designated places or places that tolerate breast feeding.

If the Bill is passed then will there also be designated breastfeeding rooms? Education has to be another key factor especially prior and immediately after the birth. It would be nice when choosing to breastfeed your new-born to have a nurse or even an experienced mother come along while you are still in hospital to talk about all aspects of breastfeeding as it is far more complicated than bottle feeding! By the same token mothers who choose to bottle feed should not just be handed a bottle she may choose to might reverse the decision if there was a "breastfeeding nurse" or experienced mother to talk things over with. If these things are an option at the moment it is something of which I was not aware. Excellent leaflets and phone numbers are given out which if are not misplaced are things I only turned to when I was having problems.

I will pursue this Bill with interest as it is a subject I feel strongly about I hope my experiences can be of some use feel free to e-mail me.

Yours faithfully

Catriona McCallum
Ardrossan.

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SUBMISSION BY CLAIRE MUIR

Dear Elaine Smith MSP,

I live in Dumbarton, where breastfeeding is particularly low.

Would like to ask why, at my doctor's surgery, I am not allowed to breastfeed yet they display signs saying "Breastfeeding Mothers welcome here".

It's bad enough being told in no uncertain terms (rudely) that I am not to breastfeed, when I asked if I could but to sit and suffer under such a sign is very, very bad. I didn't even want the doctor, I was asked to go for baby jabs. So I feel I had no choice but to go to the doctors.

Anyway, time has moved on and I have been breastfeeding for a year now and the doctors was the only place I encountered a problem. I've been positively encouraged elsewhere.

It's the sign I have issue with. Adds insult to injury.

Yours sincerely

Claire Muir
SUBMISSION BY SCOT MURPHY

I am not a citizen of the U.K., but it may interest you to know this bill has support on the American side of the ocean. Please pass it!

Scot Murphy

SUBMISSION BY NINA ROBERTSON

• Do you support the general principles of the Bill and the key provisions it sets out?

Yes, it is important to ensure that mothers and babies may breastfeed freely as they go about their normal lives in our society without worry of interference.

• Are there any omissions from the Bill that you would like to see added?

The physical workout of babies milking the breast, as opposed to delivery of human milk by other means (bottle, cups), is an important aspect of optimal child development.

This physical activity leads to natural development of oral and nasal passages, impacting the avoidance of all manner of health consequences of not breastfeeding: i.e. speech problems, respiratory problems including asthma, sleep apnoea that may be involved in SIDS as well as in later life, optimal development of teeth and room for natural alignment without orthodontic treatment. As with any physical activity, the regularity and overall number of workouts results in increased benefits. More about the anthropological research which has identified many of these issues can be found on the following website:  http://www.brianpalmerdds.com/

Inherent in direct delivery of human milk is the presence of the mother to respond to her baby’s needs, not only for food but for teaching about relationships and building trust in the world. It’s obvious to me that this can benefit wider society in reducing anti-social behaviour long term by providing a sound foundation in the early years. Who knows, this responsive parenting when the child is a baby may become habit-forming and children would more often grow up with a loving advocate for life! Of course, there are many issues involved in this aspect. Volumes have been written about it, but this article explores briefly some of the political and economic issues:

http://www.geocities.com/HotSprings/Spa/3156/experience.htm long article by Nutritionist, Ted Greiner, and talking about his experience of USA and Sweden

• What are your views on the quality of consultation, and the implementation of key concerns?

I would like to see this bill take a broad view that enables the reestablishment of breastfeeding as a normal part of human relationships, to strip away a century or more of commercial and political pressures that have eroded this natural parenting skill.

• Have you any comment on the practical implications of putting these provisions in place and the consideration of alternative approaches?

I am concerned that the definition of “child” in the bill has been restricted to someone under two years of age. This is an arbitrary figure and has no inherent significance to the purpose of this bill. The international (WHO) recommendations are that breastfeeding continue for two years and beyond. There is much research to show that health benefits of breastfeeding continue for years and should be a matter of choice for individual mothers and babies. Currently there are mothers and babies who breastfeed beyond the child’s second birthday. I would find it ludicrous for the 25-month-old child to be required to produce proof of age. Another difficulty might be that younger children who are “big” for their age may be hassled unduly and illegally if this bill were in force with this age limit. This “two years old” loophole is just the sort of thing that interfering persons may
want to use to hassle mothers and babies. Public support of breastfeeding should be legislated in principle, not particulars.


The WHO recommendation of two years breastfeeding is one that protects the lower natural weaning age – child developmental stages are variable with individuals – few children naturally wean before the age of two years and many continue for another couple of years. The present-day Scottish experience seldom includes natural weaning of children from the breast due to the political, commercial and social pressures that debilitate the health of the nation. The following is a quick and humorous comment on this state of affairs, showing a worldwide perspective.

http://www.geocities.com/HotSprings/Spa/3156/lesotho.htm  breastfeeding attitude quiz

I am happy to provide upon request many more references to support a broad view of breastfeeding and its incorporation into day-to-day human behaviour. Thank you for asking and good luck with this legislation.

Nina Robertson

SUBMISSION BY PAULINE RUSH

Dear Sir or Madam:

RE:” A Mother's Right' Big Issue Feb 26 - March 2, 2004

I would like to express my support for the Breastfeeding Scotland Bill, which I read about with great interest in the aforementioned article.

I, myself, was a breastfeeding mother and have experienced both praise and disdain for having done so. When I made the decision, prior to giving birth, to breastfeed my baby the only people who's feelings on the subject that I was interested in hearing were my two teenage sons. Had they not been comfortable with my decision I would have considered mixed feeding rather than elect to solely breastfeed. My feelings then were if two teenage boys could be mature enough to cope with my breastfeeding then so too could everyone else. I firmly believe that in order to establish successful, full time feeding you have to be very determined, sometimes thick skinned and a bit selfish.

I did feed my daughter when and where necessary, and I would say that the majority of the time very few people were even aware that I was doing so. Ignorance plays a big part in breastfeeding being frowned upon. People don’t seem to realise that there is no need to expose your breast in order to feed a baby. It is a very discreet action. I have fed my daughter on public transport and only once has anyone ever passed comment. That was an elderly lady who patted my shoulder as she got up to leave the bus and said what a good job I was doing and wished me good health! I know that that is not always the way of things, one day when my daughter was crying in her pram a woman asked why I didn't just give her a bottle. When I explained that I was on my way home and that I didn't have a bottle because I was breastfeeding she said "You are making " yourself no better than the beasts in the field." I replied that I was giving my daughter the best possible start, just as nature had intended. Her retort was that I was just trying to be "trendy, like the yuppie mothers". Some people do look upon you with disgust, as if you are doing something demeaning. One woman also told me that she herself had fed her son but could not feed her daughters because she felt it was unnatural to put a female to her breast. Something must be done to show people that there is nothing shameful about breastfeeding your children but how attitudes towards breastfeeding, such as the examples I experienced, can be changed I do not know. With regard to restaurants and cafes, I found the best approach to be asking what their policy on breastfeeding
was prior to ordering. I was never told that I couldn't feed my baby but one establishment did ask that I sat facing away from other diners. That didn't seem an unreasonable request.

The only way that women feeding their babies in public places will be considered "socially acceptable" will be when the majority of women choose to breastfeed. In the world we live in today it is difficult for a lot of women to make the choice to breastfeed their babies because of work commitments and outside pressures. It is not always easy and can be very time consuming to feed on demand if you have a hungry baby but for me the rewards far outweighed the drawbacks. I would urge every new 1mJm to try it, it's not right for everyone, but you'll never know unless you try. Self-confidence plays a major part in how successful any woman becomes at breastfeeding her baby, but if you adopt a positive attitude right at the start and don't allow yourself to be put down by other peoples misguided opinions you can succeed. I know; I did. I now have a happy; healthy four year old who can often be seen stuffing a doll under her jumper to have what she refers to as a "Mummy drink". Perhaps someday in the future she will breastfeed her children without fear of the stigma attached now.

Any bill promoting a positive attitude towards breastfeeding can only be a step in the right direction. The health benefits to both mother and child should be reason enough for Scotland to give a resounding "YES" to every mother having the right to choose when and where to feed her child.

Yours faithfully,
Pauline Rush

SUBMISSION BY LESLEY SMITH

As a breastfeeding mother I wish to add my whole hearted support for your Breastfeeding (Scotland) Bill.

I was recently asked not to feed my daughter in the waiting room of my dental surgery but was instead provided with a room in which to feed privately. While I have no objection to feeding in private I prefer to have the choice and my daughter and I would have been equally comfortable in the surgery waiting room.

I am an NHS patient and live within Ayrshire and Arran Health Board District. I believe that this contravenes NHS breastfeeding policy. Is there an organisation/person within the health service I should complain to about my treatment?

Thank you for your time.

Mrs Lesley Smith

SUBMISSION BY PHOEBE TAIT

I write in support of the proposed Bill which will make it an offence to require women to stop breastfeeding.

Sometimes it seems that everywhere I look, in the supermarket, at the movies, on posters, newspapers, TV, anywhere, there are provocative, sexual, images of women, often women's breasts. Sexual explicitness is all too often in your face. It's really offensive but that's the way of the world isn't it?

In a scenario where everyone is reading a page three and "tits" sell soup or car insurance why is a mother asked to feed her precious new baby in the toilet? Why is a mother asked to leave a cafe
because others may find her natural and loving act offensive, most of the girls are hardly contained by their wonder bras and doesn't everybody just love it! But mums and babies obscene?

What a world where you have to legislate against madness!
But you do. So I support this Bill.
I am a normal woman and proud to be a mother.

Phoebe Tait

SUBMISSION BY CLAIRE THOMSON

I was delighted to read in The Big Issue that there are plans to make it illegal to stop mothers breastfeeding their children in public places.

I have 2 children, a 2 yr old daughter and a son who is 1mth old. I breastfed my daughter until she was a year old and am currently breast feeding my son. I have never been asked to stop feeding and in many cases people have not even realised what I have been doing! However I do know that people do object-I just don't understand why.

I fully support the bill as we must make it easier for Mums to breast feed-it is so beneficial for Mum and child and totally natural. I have no concerns about feeding in a public place but I know a lot of people who would not. We want to support and encourage feeding and although in an ideal world people would not object, they do. Making a law means all parties know their rights.

It would be difficult to police but I think that fact that women know they have a right to breastfeed their children and others know they cannot by law prevent it, it will be enough. Most places would not want such adverse publicity and will co-operate.

We must improve Scotland's health and encouraging breast feeding is a positive step to help our children's health and their children's.

I would be happy to comment further on specific issues.

Claire Thomson

SUBMISSION BY DR KATHLEEN WARD

Dear Sir/ Madam

I wish to register my support for the Breastfeeding Etc. (Scotland) Bill.

Breastfeeding has a huge part to play in improving the health of children in Scotland, but one of the biggest problems in persuading mothers to breastfeed is that it is often seen as disgusting, socially unacceptable, or at best something that should only be done in private. Mothers are often embarrassed or afraid to breastfeed in public for fear of negative reactions, whereas with a bottle they encounter no such problems.

I believe this Bill can help by encouraging a change of attitudes, much in the same way that making the wearing of seatbelts compulsory eventually made it socially unacceptable to refuse to wear one.

Mothers will have the confidence to breastfeed in public knowing they will not be harassed and other members of the public will see babies being breastfed and realise just how normal this is. Prospective mothers will also benefit by seeing how breastfeeding is done; many women, including myself, find themselves trying to feed a newborn having never seen anyone breastfeed before; this makes it much more difficult to acquire a skill which in other societies comes naturally.
I hope this Bill will be passed and that we will soon see the benefits in the form of an increase in breastfeeding rates, both at birth and for the first 2 years of life, as recommended by the World Health Organisation.

Regards
Dr Kathleen Ward

SUBMISSION BY TRACEY WEAVER

I would first like to applaud the Scottish Parliament for planning to introduce the Breastfeeding etc. (Scotland) Bill – and I hope the English government will follow suit.

However there is one area which concerns me and this is the definition of a "child". By setting the age as under 2 this seems to be suggesting that breastfeeding an older child is somehow not acceptable. In my own case I am currently breastfeeding my youngest daughter who is now aged 2 years and 2 months and so the Bill as it stands at the moment would not apply to me or my right to breastfeed my child, in public if necessary. I feel it would be preferable to have no age specified.

Tracy Weaver
Thank you for your letter of 22 March 2004 inviting me or a colleague to give oral evidence to the Finance Committee on the Financial Memorandum of the Breastfeeding etc. (Scotland) Bill at its meeting on Tuesday 20 April 2004.

I understand that you discussed the matter further with my colleague Miss Anderson of the Policy Group last week and agreed that rather than officials providing oral evidence the Crown Office and Procurator Fiscal Service would provide a written statement. In your letter you indicated that the Committee is concerned specifically with the financial costs associated with the Bill and that members will be examining whether the cost assumptions contained within the Bill’s Financial Memorandum are accurate.

It is clear from the Policy memorandum of the Bill that the provisions are aimed more at commercial enterprises and public bodies, rather than individuals and the intent is to provide a deterrent to preventing or “socially isolating” a breastfeeding mother and baby. However as the provisions currently stand any person in any public place could be liable to be prosecuted if he or she deliberately prevents, or attempts to prevent a parent or carer from feeding his or her baby in a public place.

The Financial Memorandum states that the main costs of section 1 to 3 of the Bill relate to extra burdens placed on the police and the Crown Office and Procurator Fiscal Service but that these burdens are expected to be “modest”. It is unlikely that there will be many cases reported by the police to Procurators Fiscal for consideration of criminal proceedings under section 1 and it is not anticipated that where a report has been submitted there will be many instances where there will be a sufficiency of evidence to support a prosecution.

If the Procurator Fiscal is satisfied that there is sufficient evidence in any breach of the legislation reported, consideration will be given to whether, and if so what, action is required in the public interest such as the use of an alternative to prosecution or whether the public interest requires prosecution. In assessing that, regard will be had to the whole circumstances of the case. This will include consideration of such matters as the seriousness of the offence, the lapse of time since its commission, the interests of the victim and other witnesses, factors relating to the accused (such as age and previous record), as well as local community interests or general public opinion. There is no exhaustive list and discretion is employed according to the facts and circumstances of each case.

In all of the above circumstances, and given the range of alternatives to prosecution available to Procurators Fiscal, we do not consider that the financial burdens placed on COPFS will be anything other than “modest,” and can be met within COPFS’ existing budget provision.

Stephen Woodhouse
Director of Finance
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

13th Meeting, 2004 (Session 2)

Tuesday 27th April, 2004

Present:

Ms Wendy Alexander  Fergus Ewing (Deputy Convener)
Kate Maclean        Des McNulty (Convener)
Jim Mather          Dr Elaine Murray
Jeremy Purvis       John Swinburne

Apologies: Mr Ted Broicklebank

Breastfeeding etc. (Scotland) Bill: The Committee took evidence on the Bill's Financial Memorandum from-

Elaine Smith, MSP, Member in Charge
Breastfeeding etc (Scotland) Bill: Financial Memorandum

11:31

The Convener: Item 3 is consideration of the Breastfeeding etc (Scotland) Bill, which is a member's bill and was introduced on 16 December. I welcome Elaine Smith, who will answer questions as opposed to asking them—that will be an unusual experience. Members have a copy of Elaine Smith’s submission and of submissions from the Equal Opportunities Commission, the Association of Chief Police Officers in Scotland, the Federation of Small Businesses and the women and children’s unit of the Scottish Executive Health Department. I invite Elaine Smith to make an opening statement.

Elaine Smith (Coatbridge and Chryston) (Lab): Thank you. I have not given evidence to a committee before, so I am not sure about the protocol, but I presume that I should declare any interests in relation to the bill. I have had assistance from Govan Law Centre and the breastfeeding steering group, and Unison has provided money for a research project, which is being carried out by Kay Sillars. I take the opportunity to thank everyone else who has helped the bill to reach this stage.

Consultation began in 2002 around the possibility of establishing legal measures to protect the rights of mothers when they breastfeed their babies in public. Such measures would in effect end the practice of segregating or impeding mothers while they breastfeed in public, which can prevent them from accessing public services. For example, in one case in Edinburgh, a woman was put off a bus. That seems a pretty absurd and unsustainable approach in 21st century Scotland.

I have attempted to consult as widely as possible on the merits of the bill. I carried out a consultation exercise in August 2002, which sought views from, among others, local health care providers, local authorities, trade unions, elected representatives and representatives of the retail and leisure industries. Members might have read the analysis of consultation responses that the Scottish Parliament information centre kindly collated.

The associated costs of the proposed measures have not featured prominently in the consultation process. The limited research that I and my staff have carried out, for example by asking parliamentary questions, leads me to conclude that the bill will not require extensive public expenditure. I am satisfied that the requirements for the implementation of the bill could adequately be met through existing budgets and that additional public expenditure would remain a discretionary matter for the Scottish Executive.

Of course, additional funding for the promotion of breastfeeding would be gratefully received and I would welcome investment from the Executive in that area. Research appears to indicate that the Executive would be spending to save, because an increase in breastfeeding would have a positive impact on children's health, which would lead to savings for the public purse in the longer term. Given the low breastfeeding rates in more deprived communities, the bill could be regarded as a necessary tool in tackling the social exclusion and poor health that are linked to poverty and low incomes.

I am not a financial expert, but I am happy to try to answer questions that the committee might have.

The Convener: Obviously, the committee is concerned with financial issues, rather than with policy issues, which will be dealt with by a different committee.

Fergus Ewing: I congratulate Elaine Smith on the huge amount of work that she has done. In the written submission that she has provided, she identifies research that shows that successful promotion of breastfeeding can produce significant savings for the national health service. She goes on to state:

“potential savings for the NHS in Scotland following a change in breastfeeding rates have been estimated at £3.82 million annually.”

Can she give us a breakdown of where those savings would come from? Her written submission refers to research that has been undertaken by M Broadfoot, entitled “The Economic Consequences of Breastfeeding for less than 3 months”. I was intrigued by the scale of the savings. I think that I understand where some of them might derive from, but I would be interested to hear Elaine Smith’s views on the matter.

Elaine Smith: I thank Fergus Ewing for his kind words.

The figure was cited by the national breastfeeding adviser. When I looked into the background of it, I found that it comes from a paper entitled “The Economic Consequences of Breastfeeding for less than 3 months” by Mary Broadfoot, which details some of the hard facts and figures. I would be happy to circulate that paper to the committee. Interestingly, the figure relates only to the incidence of bottle-baby gastroenteritis; therefore, the savings could be much greater. The problem is in trying to find research into the matter. That is the only piece of research that I have been able to track down that puts a specific figure on what the experts think could be saved.
That is what I meant in my opening statement by spending to save. The benefit of breastfeeding is what it can prevent in the future. Looking beyond gastroenteritis, I am sure that much more than that amount of money could be saved. We have a big problem with childhood obesity, for example, and it would be interesting to find out whether any research is being undertaken into breastfeeding in that regard. The positive impact that breastfeeding can have on mothers' health is also something on which I do not have specific figures. I cite the figure of £3.82 million because there is some research to back it up.

Fergus Ewing: I am interested to hear that the figure of nearly £4 million a year relates simply to one possible way in which breastfeeding can improve health. You argue that breastfeeding can have all sorts of other benefits for both the baby and the mother, but especially for the baby and its development. I imagine that those benefits are extremely difficult to quantify because they are not measurable or attributable to that one aspect of bringing up a baby. Would you welcome the Executive's taking an interest in the matter and applying its firepower to the task of quantifying other benefits? When we considered Michael Matheson's member's bill, we did not have the benefit of the Executive's thoughts on the financial consequences of the bill. Similarly for this bill, we do not have the benefit of the Executive's financial thoughts, as there is no financial memorandum from the Executive.

I and my colleagues on the committee feel that it would be extremely helpful if the Executive could offer assistance and constructive criticism at an early stage when a member introduces a bill. There could be all sorts of other benefits of breastfeeding that the Executive might be able to quantify through the Health Department—the impact of breastfeeding on maternity services and public health, for example. Would you welcome such a contribution from the Executive, setting out its views on the costs and potential savings? Would you also welcome that input being given before the bill goes to the lead committee, so that you would have the benefit of the Executive's input early on in the parliamentary process rather than towards the end of the process?

Elaine Smith: Any member who is leading a bill through the Parliament would welcome such input from the Executive because members have limited resources, as you will be aware. I have received assistance from the Govan Law Centre, the breastfeeding steering group and my own researcher, Catherine Murphy. However, it is difficult to get the information as a back-bench member. Therefore, I would welcome such assistance. Some research can take a number of years to complete. The Dundee study has been going on for a number of years and has been following children from birth to find out how breastfeeding can impact on their health in adult life. Such studies take time. I would welcome anything from the Executive that helped to show the benefits of breastfeeding.

It is difficult to make arguments about savings over the longer term—they will not be seen immediately. I was approaching the financial memorandum from the perspective of whether or not the bill itself would have particular implications for the public purse.

Dr Murray: Some of the submissions on the financial consequences of the bill suggest that there could be issues with the cost of training. I was a bit surprised by that, as I could not see what additional training would be needed in relation to the bill, as opposed to the additional training that might be required to promote breastfeeding. I wonder whether you agree with that point. The Equal Opportunities Commission raised a further issue about the possible costs to employers of making areas suitable for the feeding of children. Do you have any comments on that?

You have done research around the issue of women not being permitted to breastfeed. I am aware that your bill also covers other forms of feeding, but I presume that most objections have been to breastfeeding. Do you have any indications from your research of how often the provisions of your bill might have to be implemented?

Elaine Smith: Those remarks are very helpful—thank you very much.

The fact that training might be required has been highlighted, but training because of the bill would not necessarily have to be intensive. If the Parliament passes the bill, then it might simply be a matter of providing induction training to raise awareness that the legislation exists.

I have been looking into how the recent campaign concerning mobile phones is being carried out and it seems that awareness about that change in the law is being raised through the normal channels of advertising and promotion. Training could be more intensive should employers want the bill's measures to be part of an equal opportunities package. Rather than simply point out that the legislation exists and making staff aware of it, the training could help to raise awareness about the benefits of breastfeeding.

I turn to the Equal Opportunities Commission's submission. The aim of the bill is to try to make breastfeeding in public more visible. That would have an impact on women as they make choices about feeding. If areas for breastfeeding were to be provided, that could equate to telling women, "I'm afraid you can't sit here to breast feed. We
have an area," and so the segregation might continue. The bill does not necessitate the provision of such areas. Of course, if employers or those in charge of public places wanted to provide them, to give women the choice, that would be fine.

There are examples in chemists’ shops and so on of certain areas being provided, but often they are next to baby-changing areas, which I would not say are particularly suitable. Recently I spoke on breastfeeding at a meeting of Ayrshire and Arran NHS Board, and I remember laughing about the fact that a notice had been put up in the town of Ayr saying “Ladies and Nursing Mothers”. I wondered what that was all about, since the place was a public toilet. The sign is still there now, unless the council has taken it down since I raised the issue. People might want to provide areas for breastfeeding, and mothers might choose to use them, but the bill in no way necessitates the provision of such areas.

Could you repeat the last part of your question?

11:45

Dr Murray: Does the research that you have done on women being prevented from breastfeeding in public indicate how often the bill might need to be used? The police say that the costs for them appear to be minimal.

Elaine Smith: I do not expect there to be a large number of prosecutions.

Dr Murray: So the bill would be a preventive measure.

Elaine Smith: That is how I see it. I mentioned the instance that was highlighted in the Parliament of a woman being put off a bus in Edinburgh. There have been examples of people being asked to leave dentists’ waiting rooms because of breastfeeding. The bill is not just about cafes and restaurants; it is also about accessing public services. That is an important point.

The bill is also about changing culture. If it is passed, that will send a message. It will say that we know about the health benefits of breastfeeding and, as a society, we want to support the feeding of children however people choose to do that. As Elaine Murray says, breastfeeding is generally the form of feeding that is frowned on. Such disapproval is not always overt as people saying that mothers must move or leave; there are also looks, glances and negative attitudes. It is difficult to legislate for those, but the bill aims to make breastfeeding much more publicly acceptable and visible. I hope that there will not need to be prosecutions, but the bill will provide protection for mothers. Many mothers cite embarrassment as a reason for either giving up breastfeeding or not starting at all. If we can create a culture that is breastfeeding friendly—which the bill will help to do—we can break down such barriers.

Jim Mather: I add my congratulations to Elaine Smith. The bill is a bit too late for my family and me, but I am grateful that it has been introduced.

I am interested in the fact that researchers at Highlands and Islands health research institute have been commissioned to carry out a three-year study that will evaluate the clinical effectiveness and cost-effectiveness of breastfeeding. I link that to any awareness-raising campaign that the Scottish Executive might wish to initiate. I have the feeling that breastfeeding may have implications beyond its direct clinical effectiveness and cost-effectiveness. It has implications for health, long-term nutritional awareness, education and, one could argue, enterprise. By allowing women to have better continuity at work, breastfeeding could trigger better nursery provision. Beyond that, the reinforcement of confidence and modern Scottish values are important. Are there plans to widen the remit of the Highlands and Islands health research institute’s study and to trigger the Executive, so that we get something much bigger than the research that was originally commissioned?

The Convener: I am not sure that that question is within the scope of the bill, but never mind.

Elaine Smith: I read about the study with interest and cited it in my submission. The media release announcing it states:

“Breastfeeding reduces childhood gastro-intestinal, respiratory, urine and ear infections”,

and refers to other health benefits. It continues:

“breastfeeding rates in Scotland are amongst the lowest in Europe and increasing them could produce significant savings for the NHS.”

I note Jim Mather’s comment about the economics of breastfeeding. In the policy memorandum that I produced for the bill, I referred to a bill that has been introduced in the state of Washington, which affirms:

“Breastfeeding improves maternal health and contributes economic benefits to the family, health care system, and workplace”.

It is interesting that that has been noted there.

The bill, like disability and seat-belt legislation, is about changing attitudes and culture. If it helped to focus more spending, that would be welcome. I am saying only that the bill does not place any additional strain on the public purse.

The Convener: I want to target the provisions in section 4 relating to the promotion of breastfeeding, as that might be the area in which the bill triggers a requirement for additional expenditure.
Presumably, as a long-term advocate of breastfeeding, you are not entirely happy that neither the Executive nor the health service is spending enough money on the promotion of breastfeeding. You seem to be saying that the bill will not of itself generate a requirement for increased spending, but you would welcome increased spending in that area. Is that a fair summary of your position?

Elaine Smith: Yes, that is an extremely fair summary. When questions are asked of the Executive, it is quite difficult to get information on funding for breastfeeding. The answer tends to be that it is up to individual NHS boards. Lots of different funding pots could be used for the promotion of breastfeeding.

If we were to look at individual NHS boards, we would see that there is no standard; the position varies across the country. Indeed, although most of the boards have a strategy, I think that there is one board that does not yet have one in place. If the Executive wants to meet its 50 per cent target by 2005, it would be helpful if it were to increase its spending on the promotion of breastfeeding, but, as the convener said, the bill puts no requirement on the Executive to do so.

I note that NHS Health Scotland—which used to be the Health Education Board for Scotland—plans to run a promotional advertising-type campaign for breastfeeding awareness week this year. It has also had successful campaigns in the past. If the bill is passed by the Parliament, I believe that awareness of the existence of the new legislation could be raised as part of that kind of campaign.

The Convener: As there are no further questions from members, I thank Elaine Smith for coming before the committee. We will produce our report on the financial implications of the bill, which will go to the lead committee. Our report will be made public and you will see it at the same time as the committee does.

Elaine Smith: Thank you.

Fergus Ewing: Do we want to take up the point about inviting the Executive to express its view on the financial implications of the bill? Surely that would help Elaine Smith. Following Michael Matheson’s evidence, I thought that we had formed a view that it is desirable for the Scottish Executive to provide its view on the financial consequences of any member’s bill before we consider the matter. If we had had that information today, we could have put the Executive’s views to Elaine Smith. Could we take up the matter again with the Executive? If so, could we seek a clear statement on whether the Executive agrees in principle that that is something that it should do in future?
Note: (DT) signifies a decision taken at Decision Time.

Breastfeeding etc. (Scotland) Bill: Elaine Smith moved S2M-1640—That the Parliament agrees to the general principles of the Breastfeeding etc. (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 80, Against 15, Abstentions 0).
Breastfeeding etc (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S2M-1640, in the name of Elaine Smith, on the general principles of the Breastfeeding etc (Scotland) Bill.

15:03

Elaine Smith (Coatbridge and Chryston) (Lab): I refer to my registered interests that relate to the bill, which include assistance from Mike Dailly of the Govan Law Centre and funding from Unison.

I welcome the visitors who are in the public gallery, particularly the mums and babies who have come along. I thank everyone who has helped the bill to get to this stage, including the Health Committee, which recommended that the bill proceed to stage 2, its officials and the secondary committees that have been involved.

I am pleased that my first speech in the new Parliament building is on my own piece of legislation. I add to the many positive comments that have been made about the building by commending its accessibility. The bill promotes accessibility for families in all public places in Scotland. The idea for the bill arose after my members’ business debate on breastfeeding in May 2001. It seemed to me that such an important health issue should not merely be mentioned once a year during breastfeeding awareness week, but deserved practical action by the Parliament. During that debate, I related the experiences of a mother who was put off a bus in Edinburgh for breastfeeding. In response, Malcolm Chisholm, the national breastfeeding adviser, makes the following observation:

“Ministers wrote to Lothian Regional Transport ... but under current laws we do not have powers to enforce anything on a bus company in that regard.”—[Official Report, 17 May 2001; c 902.]

Three years later, the Parliament has the opportunity to change that situation.

If we enact the bill, in future no mum will have to suffer the stress and indignity of being harassed, segregated or ejected from a public place merely for wishing to give their child the best start in life.

The principal aims of the bill are to ensure that breast and bottle feeding mothers are given equal and unimpeded access to public services and spaces where children are entitled to be, and to encourage and make provision for the promotion of breastfeeding.

I have been asked many times whether women actually experience such ill treatment. The simple answer is yes, they do. In evidence to the Health Committee, Rosemary Dodds of the National Childbirth Trust said:

“I deal with a slow but steady stream of concerned women who have been asked to leave premises.”—[Official Report, Health Committee, 11 May 2004; c 853.]

Indeed, Kate Maclean MSP recalls being frogmarched out of the powder room of an Edinburgh department store for breastfeeding while, at the same time, a staff member ran off to get water for a customer’s dog. Some of the many incidents that have been brought to my attention include a mother who was chastised over the tannoy in a Clydebank shopping mall, a women being slow handcuffed out of a Glasgow cafe and two women being asked to leave general practitioner and dental waiting rooms in Dumbarton and Ayrshire respectively.

Of even greater importance than those examples is the impact that they have on women’s choices for feeding their babies. Figures released by the Department of Health last May showed that more than two thirds—67 per cent—of women believed that the general public find breastfeeding in public to be unacceptable. That clearly indicates that the 16 per cent of people who objected to the idea of women breastfeeding babies discreetly—which was the word that was used in the question—in public have a significantly disproportionate influence on women’s perceptions. If we allow the barriers that make breastfeeding a largely hidden practice to remain unchallenged, future generations will be denied any positive reinforcement of breastfeeding as normal, everyday, maternal nurturing behaviour.

Scotland has one of the lowest breastfeeding rates in Europe and one of the highest rates of ill health. Coatbridge has one of the lowest breastfeeding rates in Scotland and—perhaps not coincidentally—has some of the highest rates of ill health in Scotland. It also has significant levels of deprivation. The correlation between areas of higher deprivation and poverty and low rates of breastfeeding is clear. Jenny Warren, the national breastfeeding adviser, makes the following observation:

“The mothers who have most to gain in terms of their own and their babies’ health, namely the young, poor and least educated, are least likely to breastfeed ... They are more likely to be dependant on public transport and lack the confidence to breastfeed in public.”

Given the importance of breastfeeding for the future health of our nation, it is vital that the Scottish Executive continues actively to promote breastfeeding. Section 4 of the Breastfeeding etc (Scotland) Bill will help with that.

Other members will no doubt expand on the many proven health benefits of breastfeeding. Suffice it for me to say that the wealth of scientific research into the benefits of breastfeeding
suggests that there would be massive societal recompense in increasing the levels of breastfeeding. Indeed, research indicates that improvements in the levels of breastfeeding could save the national health service in Scotland an estimated £3.82 million a year through associated reduction in gastro-intestinal infections alone. That does not begin to take into account the savings associated with all the other health benefits to mother and child.

While the legislation would undoubtedly help to achieve those goals, it has been suggested that there might be alternative means, such as changing the civil law. However, that would put the onus on mothers to engage in civil action and would force them to endure the associated cost and stress involved. Another suggestion is to take the licensing route. However, the bill is not simply to do with improving access to restaurants, cafe and leisure facilities; it is primarily about ensuring that all breastfeeding mothers are given equal access to public services and are able to visit local authority offices, use public transport, attend doctors’ appointments and so on. No one should be excluded from public areas because of the way in which they feed their baby and, as many of those areas are not subject to licensing laws, a change in that regard would have limited impact.

It is not envisaged that this legislation will result in many prosecutions. It is intended to act as a deterrent. Indeed, in evidence to the Health Committee, Deputy Chief Constable David Mellor, who was representing the Association of Chief Police Officers in Scotland, said:

“My view is that it would be good law in that it would be symbolic, it would reinforce the aims of the bill and it would exist as a threat. Sometimes people need a threat so that they change their attitudes and behaviour. In support of the bill, I say simply ... that I anticipate that prosecutions would be few in number.”—[Official Report, Health Committee, 11 May 2004; c 866.]

I hope that that gives comfort to anyone who might be putting their concern about fines before the need to protect vulnerable women and children.

In any case, the fines in the bill are based on the fines in current disability discrimination legislation and go up to a maximum of £2,500. The Scottish Human Rights Centre believes that “this approach is a reasonable one to take” and that it is likely to be “considered, under ECHR, as a ‘proportionate’ measure”.

The Conservatives’ spokesperson Nanette Milne said recently:

“Owners of cafes, shops and restaurants should be free to decide for themselves whether to allow breastfeeding or not on their premises.”

Surely she cannot be condoning the expulsion of breastfeeding babies and their mothers. The example of the mother from Dumbarton who was told to stop breastfeeding in her general practitioner’s waiting room while sitting under a sign that said “Breastfeeding mothers welcome here” shows that voluntary means have only limited success. In evidence to the Health Committee, Ellen Kelly from the City of Edinburgh Council said:

“After more than 25 years in local government, I can say that people do not do things unless they are compelled to do so, particularly in the field of equality. No advance in equality has been achieved without accompanying legislation”.—[Official Report, Health Committee, 1 June 2004; c 928.]

The issue is not party political but has support across the political spectrum. Winston Churchill said:

“There is no finer investment for any community than putting milk into babies.”

If we strengthen legislation, that will help us to meet our legal obligations under the United Nations Convention on the Rights of the Child and various other human rights obligations and it will allow us to respond proactively to the World Health Organisation’s call for Governments to adopt imaginative national policies and strategies to support breastfeeding.

A change in the law will not immediately effect the big shift in attitude that we need in Scotland, given our non-breastfeeding-friendly culture, but in time it will do just that. The Minister for Health and Community Care seems to agree. Malcolm Chisholm said in his evidence:

“the bill will certainly help to change cultural attitudes.”—[Official Report, Health Committee, 1 June 2004; c 904.]

In the meantime, by legislating we will send a strong message that Scotland supports breastfeeding and will not tolerate the exclusion, segregation and harassment of mothers and babies that are legally permitted at present.

The legislation’s primary aim is to protect and promote breastfeeding, but it protects all infant feeding of milk in public places. It is child centred and it is based on the protection of a child’s right to eat while accessing vital public services. Health professionals throughout the country do commendable work and should be proud of their success in improving uptake and duration rates, but by the new year we are supposed to meet the challenge of 50 per cent of mums to be breastfeeding at six weeks, and as we stand now the figure is less than 40 per cent. The extent of the challenge in turning the tide towards breastfeeding in Scotland means that those health professionals undoubtedly need the Parliament’s political support.

A mum, Shelley Joffre, highlighted the need for legislation when she said:
“The simple fact is, if you can’t do it in public, then you face weeks of living under house arrest.”

Breastfeeding should not have to be carried out in private as if it is something shameful. It should be supported, protected and celebrated in our society. The bill protects the right of hungry babies to eat—it is as simple as that. Today, the Parliament has the chance to take a practical step towards providing that protection and I urge all members to support the motion in my name.

I move,

That the Parliament agrees to the general principles of the Breastfeeding etc. (Scotland) Bill.

15:14

The Minister for Health and Community Care (Malcolm Chisholm): I am pleased to respond for the Executive today, as I did as deputy minister all those years ago in Elaine Smith’s previous debate on the subject. This is a welcome opportunity to discuss a subject that the Executive has supported, promoted and resourced since the establishment of the Scottish Parliament in 1999. I pay tribute to my predecessor Susan Deacon for all that she did in that regard. Perhaps we will hear from her in a moment.

We all want our children to be healthy and to grow up to be healthy adults, so we should do all that we can to ensure that children are well nourished from the minute that they are born. The bill will make it an offence to prevent or stop a child under the age of two years, who is permitted to be in a public or licensed premises, being fed milk in that place. It also seeks to impose on Scottish ministers a specific duty to support and encourage the breastfeeding of children by their mothers.

Elaine Smith’s preparatory work in introducing the bill and the Health Committee’s stage 1 deliberations have enabled us to explore some of the wider issues that affect a child’s right, and a woman’s ability and desire, to breastfeed. Although the bill centres on the child’s right to be fed any form of milk in its formative years, it is fair to say that one of the bill’s aims is to create a socially tolerant and safe environment in which a woman can breastfeed where and when it is most appropriate for her child, regardless of whether she is at home or in her local cafe. For that reason, I thank Elaine Smith for introducing the bill.

The reasons why the current Executive has supported breastfeeding throughout its time in power should be obvious, given that the health benefits of breastfeeding for both mother and baby are well accepted. The antibodies in breast milk protect against a wide range of infections and stimulate a baby’s immature immune system. Moreover, breastfeeding is known to provide the best nutrition for a baby, with advantages over formula feeding. As breastfed babies grow up, they have less chance of developing respiratory tract problems, gastroenteritis, ear infections, asthma, eczema, diabetes and obesity. Mothers who breastfeed are less likely to develop ovarian or breast cancer.

The Executive wants a Scotland in which all mothers who can and want to breastfeed do so and are given the information, support and encouragement that they need. To achieve that, we have implemented a wide programme of work that is delivered in four key ways. First, the national breastfeeding adviser, Jenny Warren, encourages, supports and audits national health service boards in developing breastfeeding strategies. Secondly, the Scottish breastfeeding group works across professional interests to share information on and to raise the profile of breastfeeding. It also takes forward pieces of work on breastfeeding. Thirdly, the breastfeeding website gives parents and practitioners news, statistics and information about good practice and research. Fourthly, the work of NHS Health Scotland includes the development of promotional materials and resources for parents, training materials for health professionals and support for evidence-based policy making through networking and research.

The good news in Scotland is that those strategies are producing positive results. Across NHS Scotland, most NHS boards are now implementing breastfeeding strategies. Of our maternity units, 11 have qualified for the United Nations International Children’s Emergency Fund—UNICEF—UK baby-friendly initiative. The remainder are at various stages of working towards that award and 10 have received a certificate of commitment to acknowledge their progress in doing so. To put that in context, it means that 38 per cent of our maternity units are fully compliant with the baby-friendly initiative. As a result, 48 per cent of Scottish babies will be born in a unit that provides the highest level of available support for breastfeeding. By comparison, the equivalent figure for England is only 10 per cent and for Northern Ireland and Wales only 34 per cent. We should all be proud of that and encouraged by it.

Progress is also being made within our communities. For example, Anniesland, Bearsden and Milngavie local health care co-operative received Scotland’s first UNICEF community award, which others are also working towards. Across the country, there are 150 breastfeeding support groups and a number of peer support initiatives and training strategies to ensure that health staff provide evidence-based and consistent advice and support to mothers.
Although there has been a steady upward trend in both the initiation and duration of breastfeeding in Scotland, the rates remain lower than we would like. In 1994, a national target was set with the aim that, by 2005, 50 per cent of mothers would still be breastfeeding their babies at six weeks of life. Our most recent data, for 2003, show a rate of 36.5 per cent, so we have some way to go to reach that target. I have asked officials in the Executive to develop a breastfeeding action plan to identify key areas for action for the next five years and to provide guidance on how the NHS can work with a range of key bodies and stakeholders to support delivery.

It is fair to say that, so far, work to promote breastfeeding has been largely concentrated within the health sector, but we appreciate that we need to involve other partners in early-years services if we are to give every child the best start in life. That is why breastfeeding will be a key, joint outcome measure in the Executive’s integrated early-years strategy.

The stage 1 consideration of the bill flagged up concerns that the Health Committee was able to explore in depth. I myself had raised concerns on behalf of the Executive about the bill’s enforceability. However, the Executive is content with the Health Committee’s conclusions on enforcement and for the bill to proceed.

While the Health Committee accepted that there are likely to be few prosecutions under the bill once enacted, it also concluded that the legislation may have a deterrent effect. The act will set out clearly the circumstances in which it will be an offence to prevent or stop a child being fed milk and it may empower women to make key decisions about their feeding choices. The Health Committee accepted that legislation can assist a shift in attitude and behaviour and that the bill could thus support the uptake and duration of breastfeeding. Although there may not be universal acceptance of the bill, consultation has proven that there is an extremely high level of support for it both in organisations and among the public across Scotland, with many people greatly saddened that such a bill is needed in the first place.

The committee concluded that, although much of the evidence is anecdotal, adverse reaction to breastfeeding in public, or fear of such reaction, may impact negatively on the take-up and duration rates of breastfeeding. Regardless of the excellent promotional work by NHS Health Scotland and health boards across Scotland, there are still those who feel embarrassed or offended by breastfeeding. Those views are based, of course, on ignorance and prejudice and must be challenged. What many people do not appreciate is the physiological impact that asking a mother to stop breastfeeding can have and the distress that that can cause. The debate and discussion around Elaine Smith’s bill have done much to address that.

The bill could also mean that more women will choose to breastfeed in public. That itself would bolster the image of breastfeeding as a normal, natural and socially acceptable life event, which we hope would encourage even more mothers in the future. We do not want mothers to be put off breastfeeding by feeling that it could constrain them in where they can take their baby. Breastfeeding is, after all, the ultimate convenience food.

The bill places Scottish ministers under a specific duty to support and encourage the breastfeeding of children by their mothers. However, I should point out that the National Health Service Reform (Scotland) Act 2004 has already introduced a general duty on Scottish ministers, health boards, special health boards and the Common Services Agency to promote health improvement. The relevant provision will come into force on 1 January 2005.

As I have indicated, I am content with the conclusions that the Health Committee reached on the bill and for the bill to proceed, but very much in the context of our overall policy and strategies to promote the best possible start in life for the children of Scotland. [Applause.]

The Deputy Presiding Officer: I remind members of the public that it is not appropriate to applaud.

15:23

Tricia Marwick (Mid Scotland and Fife) (SNP): I congratulate Elaine Smith and all who helped her to bring the bill to the Parliament. I know from personal experience the great deal of hard work that goes into a member’s bill. Only members with great personal commitment will embark on the process in the first place. I also pay tribute to the fine speech that Elaine Smith made.

Anybody who has read the bill and monitored its progress through stage 1 will be aware that the bill’s main thrust is to encourage a cultural change in Scotland with regard to views on breastfeeding. We in the Scottish National Party support that principle. The health benefits of breastfeeding are well known and I will discuss some of them later.

On a personal note, I feel that it is right to stress that I am not generally inclined to legislate in areas in which cultural change is needed. However, I believe that legislation is necessary in some cases and this is one such case. We must create a culture in which breastfeeding in public is accepted and, more important, regarded as the norm.
Elaine Smith referred earlier to Deputy Chief Constable David Mellor’s evidence. However, given that he is the deputy chief constable of Fife, it would be remiss of me not to quote him. He said in evidence to the Health Committee:

“It is perfectly legitimate to create a criminal offence as part of a strategy to change attitudes. However, I sense that the creation of a criminal offence in this bill seems to be principally a symbolic act, although I accept that the existence on the statute book of an offence that means that people can threaten to use the criminal law is a convincing way of changing attitudes and behaviours.”—[Official Report, Health Committee, 11 May 2004; c 866.]

It is my view that in doing that the bill will have a positive impact on breastfeeding rates in Scotland and there will be a subsequent improvement in the health of our children. However, such an improvement will not be possible if the bill exists in isolation. There must be greater a focus on narrowing the inequalities in breastfeeding rates that exist throughout Scotland. The bill must be supported through increased education and awareness campaigns that highlight the benefit of breastfeeding to both mother and child.

Elaine Smith: I am hopeful that the bill will be part of a multifaceted approach. Will the member join me in congratulating Rosehall High in Coatbridge, which is bringing in mothers from the community to work on educating first year pupils about, and highlighting the importance of, breastfeeding?

Tricia Marwick: I thank the member for that intervention. I have absolutely no hesitation in welcoming the initiative in Coatbridge and I hope that it will be followed in schools throughout Scotland.

I have no doubt that members are aware of the health benefits of breastfeeding to both children and mothers, but it never hurts to remind ourselves of some of the facts. Research has shown that breastfeeding can play a large role in reducing the number of childhood illnesses and in improving health in later life. A move to help our children get the best start in life must be welcomed. The World Health Organisation recommends, where possible, exclusive breastfeeding for infants up to the age of six months. Although Scotland might boast increasing breastfeeding rates, it is important to note that rates in poorer areas are worse than those in affluent ones, which Elaine Smith touched on. In Shettleston in Glasgow, a mere 21 per cent of mothers breastfeed six months after their child is born. It is in tackling that inequality that the benefits of the bill can be seen most clearly, by creating a culture that encourages breastfeeding among all social classes. There is evidence to suggest that prior exposure to breastfeeding or a positive role model in breastfeeding increases the likelihood of a new mother choosing to breastfeed her child. That evidence is true no matter which area or social class it is applied to.

Ending the negative attitudes towards breastfeeding and helping to create a culture across all sections of society where breastfeeding is the norm would be the bill’s most important achievement. However, just as the bill respects the right to breastfeed, we need to ensure that those mothers who cannot breastfeed for whatever reason are not made to feel inadequate. Childbirth is a traumatic enough experience without new mothers feeling pressured into breastfeeding in the first place.

At present, funding for breastfeeding promotion and support is spread across various departments. Investment in the promotion of breastfeeding will save money in the longer term. Research has shown that there could be savings in the national health service of £3.5 million if breastfeeding rates increase—a fact that the Executive must take into account when deciding on funding in this area.

In conclusion, I am happy to support the general principles of the bill. I believe that it can play a vital role in making breastfeeding more acceptable in our society, but legislation alone cannot achieve that. The bill can achieve its aims only if it is supported by a coherent national breastfeeding strategy and education campaign. I welcome Malcolm Chisholm’s remarks about a breastfeeding action plan, given that some health board areas do not have a strategy for breastfeeding. The action plan is long overdue and it will enhance the bill once it is enacted.

15:29

Mr David Davidson (North East Scotland) (Con): I acknowledge Elaine Smith’s commitment to this topic and the work that she has done, although that does not mean to say that we agree with everything in the bill.

I look at the subject from a slightly different angle; as I go through I will explain where I am coming from. The bill appears to be an attempt at socially engineering an attitudinal change in order to increase the practice of breastfeeding in Scotland. It promotes an ideal without providing the specifics of what antenatal professionals could or should do to encourage mothers to breastfeed and does not state that education authorities should get across during school years the message that breastfeeding is best. It makes no mention of midwives, health visitors or general practitioners encouraging mothers to extend the period for which they breastfeed. Surely, if children, who are the next generation of parents,
are not given the basic information on the benefits of breastfeeding, they will not be encouraged to take it up when they become parents and I ask why that was not included in the bill.

Elaine Smith: As Malcolm Chisholm has outlined, there is a lot of work going on in the Executive, and I have cited an example from a school in my constituency. The bill is part of a multifaceted approach; it is one way in which we hope that we can effect a change in cultural attitudes, which will help to increase breastfeeding rates.

Mr Davidson: The bill’s only specific mention of the promotion of breastfeeding is in section 4, which states that ministers

“shall make arrangements ... for the purpose of supporting and encouraging the breastfeeding of children by their mothers.”

However, that is qualified by the get-out-of-jail phrase,

“to such extent as they consider necessary to meet all reasonable requirements”.

When I wrote that comment, I was not aware of Malcolm Chisholm’s words, so he will be encouraged when I get to another part of the speech, which shows that he and I are coming from a similar position. Under current legislation, ministers already have a duty to take measures to improve health, so that role is already covered.

The Conservatives support the promotion of breastfeeding as best for baby and mother. Indeed, I was lucky that my five children were able to have the benefits of being breastfed by their mother, which she managed to do in all sorts of places around the world. Evidence exists that mothers who are able to breastfeed are less likely to develop certain types of cancer and postmenopausal hip fractures and that the baby is less likely to suffer from infections, allergies and childhood obesity, which can lead to early diabetes. That is of huge benefit in cost savings to the NHS, and children being healthier means less loss to the economy through parents taking time off work to look after ill children, which is not to mention the basic improvement in individual quality of life that the children will have over time.

We recognise the existence of a national breastfeeding adviser, a post that was set up by the Conservative Government in 1996 to work with health boards to provide tailor-made local solutions to develop and implement breastfeeding strategies. Thirteen of our 15 boards have a strategy, one has a policy and the other has a policy and guidelines. Evidence from various audit processes raised concerns about the target setting, the patchiness in peer support, the availability of funding, the implementation of the World Health Organisation’s international code of marketing of breast-milk substitutes and the sale of subsidised formula milk on NHS premises. In 1990, the Conservative Government signed the Innocenti declaration—the joint WHO-UNICEF piece of work that Malcolm Chisholm mentioned—which pledged to reinforce a breastfeeding culture within the health system, workplace and community.

Although breastfeeding rates are increasing, that is due to initiatives on the ground, not regulation. In 1994, the Scottish Office set a target of 50 per cent of mothers breastfeeding for at least six weeks. In 1990, 30 per cent of mothers did; in 1995, that rose to 36 per cent, as the minister mentioned; and in 2000, it was 40 per cent.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): Will David Davidson acknowledge the fact that, despite the excellent work of the national breastfeeding adviser—a post set up, as he rightly says, under a previous Conservative Administration—and all the excellent work that is being done in the health service and on the promotion of breastfeeding in a range of other settings, progress towards the target that the Conservative Government set has been much slower than any of us would want? If he is setting his face against the bill, perhaps he would like to tell us how we will accelerate progress towards the target that the Conservative Administration set.

Mr Davidson: On the progress over the past seven years, Susan Deacon must ask the ministers who preceded her in having control of the system and did not carry on working towards the target that was set. In fact, I am encouraged by what the minister said today and if he is playing catch up, I will help him if I can. I cannot breastfeed, unfortunately, but I can influence people.

None of what was achieved in the period up to 2000 was the result of introducing what I see as a legal cosh that is aimed at business owners and employers. The measure has nothing to do with promotion. It is not for business owners and employers to suggest to young mothers that they should breastfeed.

In Elaine Smith’s pre-legislative consultation, evidence was received that 92 per cent of the public think that it is acceptable to breastfeed discreetly in public. The Health Committee heard evidence that many women do not wish to breastfeed in public but would rather have access to quiet and clean facilities—not toilet areas—but Elaine Smith told the committee that she did not wish to add that burden to businesses.

Carolyn Leckie (Central Scotland) (SSP): Will the member be explicit about whether he defends the right of a cafe, restaurant or shop owner to ask a woman to leave because she is breastfeeding her baby?
Mr Davidson: I will answer that point when I come on to it in my speech.

There is no evidence that legislation such as the bill helps to encourage breastfeeding. In places where similar legislation is in place, such as many states of America, the breastfeeding rate has not improved and no cases have been identified as being brought under the breastfeeding laws.

The evidence to the Health Committee from the Association of Chief Police Officers in Scotland was that even if the bill became law, it would not be a priority for action and could lead to a negative attitude to breastfeeding. Procurators fiscal are already hard-pressed by current crime rates and would be unlikely to undertake prosecutions—the Scottish Consumer Council shares that view.

My answer to Carolyn Leckie is that the current law protects all citizens—including mothers and other adults who are taking care of children—from assault or being threatened. Police evidence suggests that forces would take action under common law as appropriate if an assault occurred or a threat was made. I also point out that no action has yet been taken under section 29 of the Sex Discrimination Act 1975.

In this modern society, we need to support better public information and education, not the use of negative legislation that is unlikely to be enforced and which does not promote breastfeeding to those who are not attracted to it or are simply unable to contribute.

The Parliament has a duty to pass sensible and practical legislation—not nanny-state measures that are seen to be politically correct. In the Health Committee, I said that I could not support the introduction of the proposed criminal offence. I believe that Elaine Smith genuinely seeks to promote breastfeeding—a laudable aim that all Conservatives share—but I give notice that we shall not support her bill in its current form. The inclusion of foodstuffs other than breast milk, albeit for technical reasons, has clouded the issue and invoked a negative response from health professionals.

The bill is unnecessary. It would overlap with existing legislation and would be unlikely to be applied. It would not be the best way to promote breastfeeding as the norm and it would not help more babies to be breastfed.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): First, I add my congratulations to Elaine Smith on introducing this small but important bill. She is using the Scottish Parliament’s processes as they were designed to be used. I cannot imagine the introduction of such a bill in pre-devolution Scotland.

I make it clear that no whip is being applied to the Liberal Democrats in the vote on the bill. It is a member’s bill and it is appropriate that members can vote on it outwith normal party-political discipline—members all know how keen I am on that.

The bill would make it an offence to prevent or stop a child who is under two from being fed milk in a public place. It is essential to stress that in Scots law, a child who is under two is already allowed to be fed milk in a public place. That is not what the bill is about. As members have heard, the police confirmed in evidence to the Health Committee that people who feed milk to children in public have the same right as anyone else has not to be assaulted or threatened.

The bill proposes to tackle the offence that is caused by people who insist on treating this natural and normal activity as though it were offensive. We should encourage and support the breastfeeding of children by their mothers. All members of the Health Committee, barring David Davidson, felt that the evidence that we received showed clearly that legislation to promote breastfeeding was necessary and important.

David Davidson could not answer the question that Carolyn Leckie asked him in her intervention. He cannot seriously defend the actions of a cafe owner who demands that a breastfeeding mother should leave the premises.

Mr Davidson: If Mr Rumbles had been paying attention, he would know that I did answer the question. Current law exists that can be used in such cases if an application is made to the police. Therefore, an extra piece of legislation is not required to cover such incidents. Of course I do not agree with such behaviour.

Mike Rumbles: Explaining David Davidson’s position to the general public is difficult—I hardly understand it myself. It is unfortunate that the committee’s report could not be unanimous, but there you are.

The passing of legislation to promote attitudinal change has a strong track record. How many people are prosecuted each year for not wearing car seat belts? We all know that we should wear car seat belts for our own safety, but passing a law requiring everyone to wear seat belts and creating a criminal offence with penalties for not doing so was felt to be necessary. That legislation has been very successful in changing people’s attitudes and leading to greater road safety.

The situation that we are discussing is similar. I hope that we do not have to charge anyone under the legislation, but it is necessary to have the
backing of the criminal law if we want to get the message across that insulting mothers by preventing them from breastfeeding their children in a public place is simply unacceptable.

I am sorry that we cannot all see the need for the legislation, and it is unfortunate, to say the least, that the Conservative party, for which David Davidson is speaking, seems to be stuck once again with attitudes that are more akin to those of the 19th century than those of the 21st century. That, of course, is a matter for the Conservative party, but I wish that it would at least recognise the offence that is given to many parents and that there is a need to take every opportunity to tackle the issue.

In conclusion, I sincerely congratulate Elaine Smith on introducing the bill and I urge colleagues from all parties—even Conservative members when they arrive for the vote this evening—to take a leap into the 21st century and support the bill.

15:42

Helen Eadie (Dunfermline East) (Lab): I congratulate Elaine Smith and her supporters on their hard work to get this member’s bill to this point and am pleased to rise in support of the bill, which has secured support in the Health Committee. The responses to the consultation were sound and helped the Health Committee to explore many of the issues in depth. There is no doubt in my mind that the bill is long overdue. I have also been delighted to learn this afternoon from the Minister for Health and Community Care, Malcolm Chisholm, that there will be Scottish backing of the criminal law if we want to get the message across that insulting mothers by preventing them from breastfeeding their children in a public place is simply unacceptable.

I know that Elaine Smith has travelled far and wide to speak at conferences on the issue and has given many radio interviews on it. For the benefit of anyone who is in any doubt that mothers and babies are currently denied the right in question, I would like to give one illustration of the sort of thing that happens.

I stress that the bill has two critically important features, one of which relates to the rights of mothers and babies or carers, while the other relates to promotion by the Government. I will deal with the claim that there should be a right and will take up a point that David Davidson made. He said that the bill is really about changing attitudes. To me, the bill, in the form in which it was presented to the Health Committee, clearly stated that it will be about rights.

I will illustrate the need for a right to be established by sharing the details of a case that underlines how vital the bill is. The most recent mother to contact the Parliament told how she was informed by the proprietor of a Stirlingshire restaurant that such “practices” were “better done in private”. I think that referring to “practices” is very offensive. The mother was compelled to leave the restaurant. In her e-mail, she said that the restaurant is commended by VisitScotland and that it is promoted as having no age restriction on child access. That begs the question whether we want tourists also to experience this unfortunate aspect of our culture. She tells us that her story appeared in the Stirling Observer earlier in the summer. The restaurant in question is the Conservatory at Ballachallan, near Callander, and it received a tourism award. The mother is a doctor, who clearly knows the value of breastfeeding as she has breastfed all three of her children.

As Mike Rumbles said, and as the mother said in her correspondence to the Parliament, that attitude belongs in the 19th century. It does not reflect the type of Scottish hospitality that we need and want to promote to visitors. I agree wholeheartedly with that doctor. She continued in her e-mail:

“Any mother or midwife will tell you that you need to be really committed to breast feed your baby for more than the first few days post partum, it is generally painful and uncomfortable and many women find feeding in public a stressful experience.”

That is a sentiment that anyone who has breastfed their babies in public would agree with—I know that I experienced that feeling. She continued:

“To be confronted as I was by the proprietor was not only embarrassing to me and the other customers it is also unacceptable at every level.”

She concluded:

“It has the potential to destroy a woman’s confidence breastfeeding.”

That is just one example, but it was replicated many times in the written evidence that came to the Health Committee. This is the point at which I diverge from the view of David Davidson. He said that the evidence that the Health Committee had received said that many mothers did not want to feed in public. In fact, the great majority of the written evidence indicated that many mothers wanted to have the right to feed in public. The witnesses who came along to the committee very much supported that view in their oral evidence.

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I believe that there is a need for the Parliament to legislate to require the Scottish Executive to promote breastfeeding, because there might not always be an Executive in power that is so thoroughly committed to this aspect of our life. Safeguards need always to be built in to ensure that, irrespective of whether individuals change, the policy is rooted in our legislation. I ask all members to give this vital bill a fair wind and to help turn what is evidently a sorely needed change into legislation.

15:47

Mr Bruce McFee (West of Scotland) (SNP): I congratulate Elaine Smith on bringing the bill before Parliament and on the work that she and others have undertaken for the bill to reach this point. As this is a stage 1 debate, we are being invited to support the general principles of the bill. Like the Liberals, the SNP has no whip on the matter—it is a free vote. I place on record my support for the general principles of the bill. I view the issue of breastfeeding not simply as one of promoting good health. It is also a matter of equality and choice. It is about the right of individuals to feed the children for whom they are responsible as they see best, without fear of being discriminated against, shamed or otherwise pressured into following a particular route.

We should recognise that, even in an ideal world, breastfeeding is neither possible nor desirable in some cases—in the unfortunate case where a mother has died, in the presence of certain medical conditions, where mothers do not wish to breastfeed for personal reasons, or where mothers have drug addictions. While we promote breastfeeding, we should ensure that those who cannot or do not wish to breastfeed are not subjected to the same culture of disapproval to which some mothers who choose to breastfeed are subjected at the moment.

Although it is generally understood that breastfeeding has many advantages, and although there has been some advance in the situation in recent years, the number of women choosing to breastfeed—and, significantly, those who choose to do so during the crucial first six months, as identified by the World Health Organisation—remains disappointingly low. The greatest barrier that many mothers face is social and cultural. There is wide variation across Scotland in the number of mothers who breastfeed at six to eight weeks. The figure is as low as 26 per cent in Lanarkshire but as high as 48 per cent in the Borders and Lothians.

There are some in this chamber who will argue that we cannot effect cultural change by legislation and that the state has no role in such matters. Although they are correct to say that legislative change alone cannot change cultural attitudes, they are wrong in assuming that it has no role whatever. We need to promote a more positive attitude to breastfeeding, we need to encourage and support women who wish to breastfeed and we must challenge the culture of disdain that unfortunately exists in certain sections of our community, promoting instead a positive acceptance of breastfeeding. We must also continue to develop breastfeeding strategies, as advocated by the WHO.

We must do all of those things, but we must do more. Positive promotion of breastfeeding is all very well, but there is a political role too. We need to send out the right signals from this Parliament. I believe that, in this instance, legislation can be used to promote social change and that that social change is desirable. By supporting the bill today, the Parliament will be sending out the right message. That is why I have great pleasure in supporting Elaine Smith’s bill this afternoon, and I hope that the Parliament does so too.

15:51

Eleanor Scott (Highlands and Islands) (Green): I am happy to speak in support of Elaine Smith’s bill. What I have to say will sound quite similar to what other members have said, because there is a lot of agreement and support, and I am glad about that. Before I begin, however, I want to pick up on something that David Davidson said about the use of existing laws to protect a woman who might be harassed by a proprietor while she is breastfeeding in a cafe. David Davidson may want to correct me, but it sounded to me as if she was breastfeeding in a cafe. David Davidson may want to correct me, but it sounded to me as if she would almost have to be physically assaulted before she could invoke that law. That is not what we are talking about. We are talking about people being disapproved of in a way that makes them feel uncomfortable when they are carrying out a natural act and I do not think that existing laws necessarily cover that.

Breastfeeding is a human rights issue. I am not talking specifically about the rights of the mother to breastfeed, although I support those. I am talking about the right of a child to be fed where it needs feeding and its right to be fed on human milk. The benefits of breastfeeding are well known. Other members have run through the short-term benefits for the baby, which include less gastroenteritis and fewer respiratory infections and allergies. There are longer-term effects for the baby as it grows older, with less asthma, fewer ear infections and less diabetes and obesity. There are also benefits for the mother, with a more rapid return of the body to its pre-pregnancy state, greater ease in regaining one’s figure and, in the long term, a lower instance of some cancers.

As I said, the benefits of breastfeeding are well known. Equally well known is Scotland’s poor rate
of breastfeeding. Despite the initiatives to promote breastfeeding that were mentioned by the minister and which I fully support, I feel that out there on the ground, rather than at strategic decision-making level, we have a tendency not to be as strong as we might be in promoting breastfeeding, because we do not want to make mothers who choose to feed their babies artificially feel guilty. Of course, we should not do that, but I believe that we still hold back a bit on actively promoting breastfeeding. Given our poor rates, particularly in some parts of the country, that is a pity.

It is true that, in our society, mothers must have the choice as to how to feed their infants, but let us make that a real choice and not a decision that is influenced unduly by the prejudices of those few people—the 16 per cent that Elaine Smith mentioned—who seem to find a natural act odd. Helen Eadie mentioned that an unfortunate experience, such as those that we have heard that certain people have suffered while breastfeeding, can destroy a woman’s confidence in breastfeeding. The fear of that happening could cause a woman never to start breastfeeding and the bill will remove that fear. For that reason alone, it is an excellent thing.

If breastfeeding is to be normalised—it is awful that we actually have to do that, but it is the reality—the bill will help to do it and our children will benefit. There is no doubt that we need to change attitudes in order to promote breastfeeding. The bill by itself will not do that, but it will prevent some of the obvious and unacceptable manifestations of negative attitudes to breastfeeding. It will send a powerful message about the rights of mothers and children in Scotland. The mothers in Scotland who are least likely to breastfeed are those for whom, paradoxically, breastfeeding is most important. Children of young disadvantaged mums are more likely to suffer from many of the common childhood infections that were mentioned at the beginning of the debate and that breastfeeding is known to reduce, but their mothers are most likely to be deterred from breastfeeding by negative attitudes. As well as a human rights issue, this is an issue of health inequality.

There are many things that must be done to support breastfeeding, including support from midwives and health visitors in the early stages. As other members have mentioned, breastfeeding is not always easy. Breastfeeding may be a natural act, but in many cases it is not one that can just happen without support to get it established. Other issues, such as maternity benefits and employment law, are outwith the scope of the Parliament, but the bill deals with an issue that is within our power. The bill is something that we can do to make it easier and more pleasant for Scottish mothers to breastfeed their children.

I believe that the bill will help to improve our attitudes to and, eventually, our rates of breastfeeding in Scotland. I urge the Parliament to support it.

15:55

Mr Kenneth Macintosh (Eastwood) (Lab): I thank Elaine Smith for bringing the bill before the Parliament and I will speak in favour of its general principles. Through this debate and the discussions that have taken place in the Health Committee and elsewhere, Elaine Smith has already achieved a great deal in sending a positive message to Scotland about our support for breastfeeding.

It is interesting to note that, as far as I am aware, during the consultation process and the parliamentary discussion of the bill no one has questioned the clear benefits of breastfeeding. It is widely accepted that breast is best and that, for the health of both the mother and the child, we should do more to encourage breastfeeding. The disagreements start over the issue of breastfeeding in public, which is why I believe the bill is needed. There is no doubt that some people have a strongly held view that breastfeeding in public, however discreet—I believe that it is nearly always discreet—is unacceptable. Even more worrying is the fact that a considerable number of people are not hostile to but awkward, uncomfortable or uneasy about breastfeeding. That is a debilitating attitude, because its effect is to discourage young mothers from breastfeeding their children.

The embarrassment factor—the fact that breastfeeding in public is still unacceptable to some and is not that commonplace—stops mothers even considering breastfeeding their children. The bill is necessary because it tries to change that negative attitude. The legislation confirms that breastfeeding is an everyday activity that we should accept as normal, rather than eccentric, and it gives support and protection to those who are occasionally made to feel small, despite the fact that they want to do the best for their child.

I will say a few words from a personal perspective. I will not pretend that my experience is typical, but I hope that it illuminates some of the difficulties that we face in promoting and encouraging breastfeeding as the healthiest option for young children. Some members will know that I have three young children. In fact, my wife, Claire, is currently expecting and is due in five weeks. I am thinking of applying to the First Minister for support under the fresh talent initiative.
I like to think that I have always been aware of the benefits of breastfeeding, but I remember vividly how awkward and uncomfortable I was when I first encountered it in practice. That happened only three or four years before my first child was born. I was visiting a friend, Sallyanne, just after the birth of her child, and I remember feeling that I could not enter her front room, because her husband, Brian, told me that she was breastfeeding. Sallyanne told me not to be stupid, but I had to work hard to get over my embarrassment.

As members might expect, I am a little more comfortable with breastfeeding after having three breastfed children of my own. I do not want members to think that I have undergone some sort of aversion therapy. The point that I am trying to make is that, despite my rational understanding of and support for breastfeeding, there are strong cultural and societal attitudes that influence our behaviour and to which we often conform despite ourselves.

We do not need legislation to tackle male embarrassment or social awkwardness. If we needed bills to deal with every tic in the Scottish male psyche, we might have to meet constantly for months on end. However, some negative attitudes to breastfeeding spill over into something far more damaging: prejudice, hostility, discrimination and even segregation. I believe that the bill will address those problems.

Of course, when I became a dad and Claire was breastfeeding our babies, the boot was on the other foot. I do not know how many times she—like so many other mums—had to put up with dirty looks and tuts of disapproval when she found herself stuck in the wrong place at the wrong time with a hungry baby who did not understand what some, laughingly, call manners, or so-called polite behaviour. I remember at least two occasions when I was with her or met her and noticed that she had become a little quiet or subdued. When I asked what the matter was, she said that she had just been given a row by a total stranger. On both occasions she had been asked to sit in the toilet while feeding.

Claire did not let those incidents—unpleasant though they might have been—change the way that she chose to feed her baby, but we are kidding ourselves if we think that such attitudes are not a significant factor in putting off nearly half of all mothers from ever breastfeeding. The bill offers those mothers some protection. This is not about prosecuting individuals who feel strongly that breastfeeding in public is unacceptable, but it is about supporting those who want to do what is best for their child. It is about trying to establish in every young mother’s mind the idea that, far from breaking a social taboo, they are doing what is right and, furthermore, what is normal.

Sadly, it is the case that the children who would most benefit from the best start in life and from the protection and help that we can offer are those who are most likely to miss out on the advantages of breastfeeding—a point made by Eleanor Scott a few minutes ago. Children born to families in areas of social deprivation are far more likely to be bottle fed than breastfed. Young mothers with little status, income or education are disadvantaged yet again by having the poorest access to safe public areas to breastfeed and not having the self-confidence to challenge public intolerance.

The evidence presented to the Health Committee was overwhelmingly in support of the bill. The submission from the Scottish NHS Confederation included a comment from a health worker, who said:

“It’s acceptable to give a human baby animals’ milk in a plastic bottle and yet what it ultimately should be having, human milk from a breast, needs a bill through parliament. What a strange country we live in!”

This Parliament, perhaps more than many other institutions, should recognise and understand the need to help our young people at the earliest stage in life to give them the best chances in life. I know that the Executive is committed to doing just that through many different programmes from nursery education and fresh fruit in schools to early intervention and books for babies. We are tackling child poverty and allowing all children the opportunity to develop to their full potential. Encouraging more women to breastfeed would be one of the strongest public health measures that we could introduce and it would improve the quality of life for millions of future Scots. It would improve our terrible dental health record and help to reduce obesity. It would reduce the risk of some cancers and it would tackle a whole list of chronic and acute diseases. What is more, breastfeeding is environmentally friendly and sustainable, it is accessible to nearly all and it is free. The bill marks a major step in the right direction: let us take it.

16:02

Carolyn Leckie (Central Scotland) (SSP): I congratulate Elaine Smith on getting this far and on achieving the support of the Executive. I look forward to the bill becoming law.

I start by addressing some of the remarks made by David Davidson. I have to say that to refer to health promotion and the benefits of breastfeeding, and to claim to be an advocate of breastfeeding and to support the achievement of a higher uptake of breastfeeding, but then to suggest that the bill will not assist in achieving those aims displays a degree of ignorance. He fails to take account of the effect that disapproval—even if it is only a dirty look—has on
the physiological process of breastfeeding. The let-down reflex sometimes does not happen if a woman feels sufficiently uncomfortable or embarrassed. David Davidson really ought to reconsider. Perhaps for the first time I am genuinely trying to dissuade him from his view.

David Davidson ignored the main reason why women might be reluctant to feed in public when he referred to women being unable to contribute—which whatever that meant. He ignores the fact that women might be reluctant to feed in public because those very attitudes exist in the first place. He uses the fact that some women who presented evidence to the Health Committee said that they would prefer to feed in private, but ignores the fact that that only reflects the prejudices that exist in society because we have done nothing to tackle them. Perhaps he might reconsider his position.

**Mr Davidson:** During the progress of the bill through the Health Committee, I was surprised that there was no attempt to use legislation to provide facilities for people—I mean decent facilities, not toilets and back rooms. It seems that we are coming at the issue from a different angle. We cannot encourage change just by legislating; we are coming at the issue from a different angle. We cannot encourage change just by legislating; we must start with the bottom of society, by which we mean young people from the knee—in fact, from the physiological process of breastfeeding. The let-down reflex sometimes does not happen if a woman feels sufficiently uncomfortable or embarrassed. David Davidson really ought to reconsider. Perhaps for the first time I am genuinely trying to dissuade him from his view.

David Davidson ignored the main reason why women might be reluctant to feed in public when he referred to women being unable to contribute—which whatever that meant. He ignores the fact that women might be reluctant to feed in public because those very attitudes exist in the first place. He uses the fact that some women who presented evidence to the Health Committee said that they would prefer to feed in private, but ignores the fact that that only reflects the prejudices that exist in society because we have done nothing to tackle them. Perhaps he might reconsider his position.

**Carolyn Leckie:** With due respect, the member’s point is another massive red herring.

The member said that the Tories appointed the national breastfeeding adviser. However, under the Tories, breastfeeding nurses who specialised in supporting women in maternity hospitals went out the door when staffing levels were reduced, so we are witnessing a wee bit of hypocrisy.

As Elaine Smith said, the bill represents just one approach. The Tories have not explained how their opposition to the bill will help to achieve the outcomes that they talk about. No one disagrees with the Tories when they say that they would like there to be more resources—which I take it the Tories would fund through direct taxation—to promote breastfeeding, employ more midwives and health visitors and give midwives more time to help the poorest and most vulnerable women to start breastfeeding. I am glad that David Davidson expressed support for such measures and I will remember that he did so when we are demanding more midwives, health visitors and resources to support breastfeeding.

Just as David Davidson raised concerns, I have some concerns that the bill will not go far enough. I whole-heartedly support the bill, but other measures should be taken, too. Ken Macintosh’s anecdote reminded me of my first militant breastfeed, which took place within 36 hours of the birth of my daughter. I had to confront the attitudes of my father-in-law—now my ex-father-in-law, thankfully. I was not in a restaurant, a cafe or another public place; I was in my bed, in the maternity hospital. I had to confront my father-in-law’s discomfort, embarrassment and tut-tutting at that stage, which demonstrates that there is a disproportionate need for a shift in attitudes among men. Dare I say that David Davidson might be one of those men?

I hope that Elaine Smith will consider supporting an amendment that I intend to lodge about the age limit in the bill. I breastfed both my daughters, who are now teenagers, thankfully—I can see the light at the end of the tunnel. I breastfed my first daughter until she was two years and two months old. I am sure that all members support the principles of baby-led feeding. We are trying to get the message across that breastfeeding cannot be artificially halted; it is a dynamic process between mother and child and no one has the right to interfere with it. I am concerned that the bill will set an arbitrary time limit, especially when we consider a conscious child at two years, who knows the words “breast” and “milk” and can make vocal demands. I am concerned that the bill will create a situation in which the day before a child’s second birthday, nobody would be able to interfere with her right to request a breastfeed, but a day later, people could interfere.

**Elaine Smith:** An age limit was included because it was thought that there should be a legal definition of the word “child”. I am sure that we can consider that at stage 2. We decided on a limit of two years—rather than one, three or four years—because WHO advice is to breastfeed for “up to two years and beyond”.

Of course, although it would not be illegal to prevent a child over two from being breastfed in public, the status quo would prevail. Once a cultural shift has taken place, I think that we will find that all breastfeeding is much more accepted in society.

**Carolyn Leckie:** I hope that we will be able to find a form of words in an amendment that achieves a wee bit of a compromise. That would be helpful.

As members are talking about changing attitudes through legislation, we should consider our own back yard. Yesterday we debated the Fraser inquiry report. I do not think that Enric Miralles had breastfeeding mothers in mind when he conceived his vision. We do not have a crèche for MSPs or staff and, to my knowledge, we do not have facilities to enable women who return to work to express or store milk on the premises. We have to look closer to home.
Unfortunately, that situation reflects the situation in many workplaces. We do not have sufficient maternity leave. Mothers do not have the right to time off to express milk or to the facilities to store expressed breast milk, and they do not have the right to leave work to go and feed their child when they have returned to work. All those things have to be tackled if we are to increase the rate of breastfeeding.

Even in maternity hospitals, midwives who return to work find it difficult to express and store milk and to get the time off to ensure that their child continues to be breastfed while they are supporting new mothers and helping them to establish breastfeeding. There is also an issue with staffing levels in maternity hospitals. In my experience, I often had to leave a distraught woman who was having difficulty establishing breastfeeding because I had to deal with an emergency somewhere else because there was no one else to deal with it. Midwives should not be forced to make those choices when they are attempting to deliver equal care. Women should not be left bereft and distraught without the support that could be available if the appropriate resources were devoted.

I make those comments to the Executive. There is lots to be done, specifically for the poorest and most vulnerable women, only 22 per cent of whom are breastfeeding at six weeks. We need to tackle the nutritional health of those children.

To finish, I refer back to David Davidson’s remarks about not doing anything about the promotion of formula milk. I absolutely agree with him and cannot believe that he shares my condemnation of companies such as Nestlé that promote the use of milk that leads to the death of children in the developing world and which put profits ahead of children’s health. I am glad that David Davidson agrees that that is inappropriate and I look forward to hearing the Tories’ proposals for tackling corporations such as Nestlé and preventing them from stalking the poorest children in our world.

I congratulate Elaine Smith again. We will support the bill, and I look forward to stage 2 when I hope that we can address some of our concerns. I am glad that she has brought this issue before the Parliament.

16:13

Maureen Macmillan (Highlands and Islands) (Lab): Like everyone else in the chamber—apart from David Davidson, possibly—I welcome this member’s bill, and I commend Elaine Smith for her hard work. I also commend the organisations and individuals who have supported her and helped her to get it to this stage.

Of course, the bill will not by itself change Scotland’s record on breastfeeding, but it will give strong support to breastfeeding mothers. Like other equalities legislation, it will send a strong signal to our society that babies have a right to be fed when and where they are hungry. I welcome what Malcolm Chisholm said about the Executive’s support for breastfeeding mothers. I will not rehearse the health, emotional and psychological benefits that breastfeeding brings to mothers and children, because I realise that everyone in the chamber is aware of them.

Our country’s reluctance to accept breastfeeding is not a new phenomenon; it has been growing for the past 60 years or so, so we have two or three generations of entrenched attitudes to overcome. When John Farquhar Munro was in the chamber earlier, I was going to suggest to him that the timescale paralleled the decline in Gaelic and I wondered whether there was any link. However, he is not here to be teased so what is the point?

Perversely enough, the establishment of the welfare state began the shift away from breastfeeding, with the availability of orange juice, which was good, cod liver oil, which was good, and national dried milk, which was not so good. I was lucky, because my mother breastfed me, and she was supported by my auntie, who was a midwife. In our family, babies were breastfed.

By the time that I had my four children in the mid-1960s to early 1970s, breastfeeding was almost a thing of the past. My children were born in rural hospitals, not urban hospitals, and each time I was one of only a couple of mothers in the ward who were breastfeeding their babies. There was tremendous pressure then to bottle feed. Unless mothers really insisted that they would get up in the middle of the night, the nurses would very kindly bottle feed their babies for them, believing that mothers would prefer to have a good night’s sleep. When women left hospital, they went away laden with packets of Cow & Gate and SMA and every kind of baby food. Mothers were given the impression that those were the best things to use.

I will tell members a story at which I hope they will not faint. When I went to my general practitioner for my post-natal check-up after my first child was born, I asked how I would know if my baby was getting enough milk. He said, “Oh, just get a red hot needle and enlarge the teat.” I said, “Pardon?” and he said, “Are you breastfeeding?” It was assumed that everybody bottle fed. I felt like some kind of weird person, because all the other women I knew would remark about it and say things like, “I thought it was only people with really large boobs who could breastfeed.” I thought, “Well, no, I’m not too bad.”
I was interested in recent surveys on attitudes to breastfeeding, which show that attitudes have not changed in 40 years. I did my own surveys back then, and asked mothers why they preferred bottle feeding. The answers then were similar to those now. First, it is perceived to be difficult to breastfeed. Sometimes it is difficult to establish it, but once someone is breastfeeding it is much easier than faffing about sterilising bottles and so on. There is the business about not knowing how much a baby has had, but it can be seen if the baby is thriving, although support from district nurses and health visitors is required.

Another issue, which Ken Macintosh touched on, is the attitude of partners and husbands. Unless women have the support of their male partner, they are unlikely to breastfeed. Sometimes, husbands thought that breastfeeding was dirty and they did not fancy what might happen, which made women uncomfortable with their own bodies. They talked about wanting their figure back and it not being very nice. There was an embarrassment factor. I do not blame women for that, because they are victims of our society. They do not have the attitude towards their bodies that allows them to breastfeed comfortably.

That attitude was illustrated in a recent poster campaign advertising the enlargement of the European Union. The poster showed a mother breastfeeding her baby, but for Britain the nipple had to be airbrushed out. That shows that our society is at once prudish and sex-mad. We have to examine our attitudes. I do not blame mothers, because they are responding to society’s attitudes, which have resulted in women being asked to leave buses, restaurants and shops. I have seen a nursing mother who was trying to feed her child on a train from Inverness to Edinburgh in tears, because she was being stared at disapprovingly by other passengers.

The bill will give babies rights—the right to be fed without harassment wherever they are. That means not in toilets or shitty, smelly nappy-changing rooms, as my daughter describes them, but where they and their mothers feel comfortable. Nursing mothers do not want to flaunt themselves or make exhibitions of themselves, but they do not want to be treated as freaks. They are doing the most natural thing in the world.

My daughter has just had her third baby and I am proud to say that she is breastfeeding him, as she did her other two babies. When I told her about the bill she was ecstatic, until she discovered that it would not apply in London, where she lives. She wants to know, “Why can’t we have it here, too?” In Scotland we are leading the way. I hope that, in time, the bill will change attitudes and help to give breastfeeding mothers the support that they need. Breastfeeding is a natural function that should be celebrated and supported for the health of our children and the health of our mothers.

16:20  
Nora Radcliffe (Gordon) (LD): I am delighted to speak in support of the bill. I commend Elaine Smith for the work that she has done in getting the bill before the Parliament today.

There has been criticism of the bill on a variety of fronts, from accusations of a nanny state—which is perhaps an unusually apt expression in this instance—to claims that it will interfere with business, to assertions that the issue is somehow too trivial for parliamentary action. I refute all these criticisms. It is entirely appropriate for Parliament to take action on the matter. We are not the first Parliament to legislate on this important issue. The considerable health benefits of breastfeeding to mother and child are well proven and significant. We should tackle anything that acts as a barrier to mothers choosing to breastfeed their babies. A baby has a right to be fed when it is hungry; therefore, it is important to establish the right of babies to be fed in public places where children are permitted to be, otherwise breastfeeding mothers will, in effect, be forced to stay at home.

Embarrassment and the apparent unacceptability of breastfeeding in public have been found to be key factors that influence choices in infant feeding and whether mothers breastfeed. According to UNICEF, nine out of 10 women who breastfeed give up breastfeeding before they want to do so. For a quarter of those women, the reason is that they are returning to work, and I presume that they feel that breastfeeding in or near the workplace is difficult or impossible. The introduction of legislation to ensure that babies can enjoy the best possible start in life without their mothers being housebound or banished to the less than savoury environs of the public toilet may seem like overkill, but sadly it has proved to be necessary. I cannot decide whether it is appalling or stupid that many mothers are put off the natural, healthy option because of the reaction of people such as shop and restaurant owners and managers to the perceived public disapproval of breastfeeding. I am saddened that mothers occasionally encounter public disapproval.

The bill will raise awareness of the importance of breastfeeding and encourage mothers to make the natural, healthy choice when it is possible for them to do so. Breastfeeding is not possible for every mother and, for a variety of reasons, some will choose not to breastfeed, but that should be for good and sufficient reasons, not because of actual or perceived public prejudice and ignorance. Breastfeeding can be done discreetly and need
embarrass no one—I sincerely hope that there will be a great deal more of it about soon.

16:23

Mike Rumbles: It is unusual for two Liberal Democrats to speak after each other.

There has not been a huge turnout of members for the debate, not because the bill lacks importance, but because it has a large measure of support from across the political spectrum, apart from the Conservatives. I do not understand why the members of the Conservative party have been largely absent from the debate, given that they oppose the bill. It is one thing for members who are content with the proposed legislation not to attend the debate, but it surprises me that the seats of the party that opposes the bill are largely empty.

The bill is not about so-called political correctness, nor is it about the nanny state, as Nora Radcliffe pointed out. It will not give mothers the right to breastfeed their children in public places, because they already have that right. However, the bill will make it a criminal offence to prevent a mother from feeding milk to her child in a public place. It will create a criminal offence to harass a mother in that way, which must be right.

We all want more children to be fed naturally. Everyone agrees that breast is best for the health of both mothers and babies. We must send a clear message to society that people’s attitudes to the subject must change.

People who prevent mothers from feeding breast milk to their children in a public place must not be able to do so. We need this legislation, just as we needed legislation to get people to wear seat belts in their cars, as I mentioned earlier. Educational campaigns were not enough in themselves to change people’s attitudes and they are not enough now. That is why we need this bill, which I urge members of all parties to support.

The Deputy Presiding Officer (Murray Tosh): I call Nanette Milne to close for the Conservatives. At this point, we are quite a bit ahead of the clock.

16:25

Mrs Nanette Milne (North East Scotland) (Con): I am sorry to disappoint you, Presiding Officer, but I think that my speech might not last the full length of time that is allotted to me.

We are all agreed that breastfeeding is good for babies and good for mothers. The health benefits of it are not in dispute and it should be encouraged whenever possible. I would welcome a return to a culture in which breastfeeding is the accepted norm and I applaud Elaine Smith for what she is trying to do and for the hard work that she has put in bringing her bill to this stage 1 debate. However, I remain to be persuaded that legislating to force proprietors to allow breastfeeding on their premises under threat of prosecution for a criminal offence is the way in which to win hearts and minds or to increase the number of mothers who breastfeed their infants. As David Davidson said, the civil law can cope with the worst examples that we have heard today. I have to say that I do not share Bruce McFee’s conviction that legislation will be effective in changing social attitudes.

In present-day society, many mothers find it more convenient to bottle feed for a number of reasons, such as wanting to share the burden of feeding, to get back to work, to have more time for themselves or to find out how much milk the baby is taking. It is also true that some mothers are put off by the fear of embarrassment if they breastfeed in public. However, many women have no desire to breastfeed or bottle feed in public and would rather have that enjoyable and intimate contact with their babies at home or in private when not at home. I would like more business proprietors to provide comfortable facilities for private breastfeeding on their premises.

Elaine Smith: Does Nanette Milne agree that providing private facilities forces women to be segregated from the rest of society? They might not be able to sit and have a coffee with their friends, for example. If they go to their GP’s practice, why should they have to be segregated? I tried to let Nanette Milne in when I was speaking, but she did not want to intervene. I ask the question again. When she says that shops and restaurants should be free to decide whether mothers should be allowed to breastfeed on their premises, is she condoning the expulsion of breastfeeding mums and babies?

Mrs Milne: I am not condoning arrogant attitudes to breastfeeding mums; I am saying that a number of mums do not want to breastfeed in public and I would like there to be private facilities for those mums who do not want to breastfeed or bottle feed in public.

Much has been done in recent years to promote breastfeeding in Scotland and I was pleased to hear the minister’s comments about the strategy to make further progress in that regard. In Scotland, rates of breastfeeding have increased by 8 per cent since 1995, which is more than double the rate of the increase across the United Kingdom. Even in areas of deprivation, the rate has increased by 7 per cent. We are moving in the right direction.

Public attitudes are changing. In recent surveys, a large majority of people said that they found discreet breastfeeding in public to be perfectly acceptable. That positive change in social
attitudes to feeding infants in public is welcome and has come about without Government intervention.

An increasing number of establishments welcome breastfeeding and I firmly believe that encouragement without coercion would lead to that becoming the norm. In countries where there is already legislation on breastfeeding, it is hard to find any evidence of the effect of that legislation on rates of or attitudes towards breastfeeding and there seem to be few examples of such a law being enforced. As we have heard, it is unlikely that the police and procurators fiscal will be willing to undertake prosecutions under the bill given that they have such a large amount of serious criminal work to deal with. Furthermore, there is a concern, as voiced by ACPOS, that the use of criminal legislation could lead to a negative attitude towards breastfeeding.

This afternoon, Elaine Smith, Helen Eadie and others recounted some appalling examples of bigotry and maltreatment of nursing mothers who wish to breastfeed in public. I do not condone what happened in those examples. I listened to the BBC this morning and a number of the e-mails that had been sent in made it clear that many people in the country deplore those bigoted attitudes. The desired cultural change is already under way. Of course, we have not heard about any good examples today, but I suppose that that is the nature of a debate such as this.

I point out to Carolyn Leckie that the formula milk that is provided to third-world countries as state aid has saved the lives of many babies whose mothers are starving and unable to provide the milk that their babies need. Formula milk is not all bad when it is sent to the third world.

I gently take exception to Eleanor Scott’s statement that a child has a right to be fed human milk. I am not sure whether she meant to say that, but the statement is upsetting to those mothers, such as adoptive mums, who are physically not capable of breastfeeding their children. I hope that she accepts that that is a fair comment.

To conclude, I speak for my party when I say that we fully support the promotion of breastfeeding in Scotland. We have no bias against breastfeeding in public and we welcome the change in public attitude. However, we do not see the necessity for a criminal law to move that change forward. Moreover, we do not think that such a law would be effective, because it would result in few, if any, prosecutions. I commend the work that Elaine Smith has done on the bill, but we remain of the opinion that we should encourage and assist the continuing evolutionary change in public attitudes to take its course. Therefore—I am sorry—we cannot support the general principles of the bill.

Linda Fabiani (Central Scotland) (SNP): Ken Macintosh said that no one is questioning the fact that it is best for children to be breastfed where that is possible. I agree. The question today is: by what route should we meet the targets?

To reflect what Elaine Smith said about compulsion, it is a fact that, in the field of equality, more than in any other field, we do not achieve anything unless we legislate for it. The equal pay legislation is a case in point. I think that we have had that legislation for 40 years but, even so, women are still paid a lot less than men in percentage terms. It is disingenuous to pretend that we do not need to do anything.

I point out to Nanette Milne that we are not talking about creating a branch of the police force—the breast police—who will run about so that folk can report any violation. Deputy Chief Constable Mellor said:

“I sense that the creation of a criminal offence in this bill seems to be principally a symbolic act.”—[Official Report, Health Committee, 11 May 2004, c 866.]

He accepts that the existence of an offence on the statute book means that people start to change their culture. That is what the bill is all about. The bill that Elaine Smith is promoting will never change attitudes if it does not have some teeth.

I mentioned equality legislation, but that is reserved to Westminster, so we cannot do anything about it here; Elaine Smith has not been able to go down the anti-discrimination route. It is a credit to her and Mike Dailly of the Govan Law Centre that they have come up with something as sensible as the bill that we are today considering at stage 1.

Section 1 of the bill does not affect Scottish licensing law; it does not say that any breastfeeding mother or anyone who wants to feed a baby with a bottle of milk can breenge into any premises and have the right to do so there. It does not “prevent a business from excluding breastfeeding on its premises where the lawful custom or practice is to exclude children generally.”

The bill is about places where children and babies already go and are entitled to go. It is about the right of a child to be fed in that way.

It is interesting to read the World Health Organisation’s international recommendations, which influence the targets that are set in this country. Not all the initiatives are possible, as Tricia Marwick said, but we can work towards achieving some of the targets that are reproduced in the policy memorandum to the bill. The Executive has started to go some way towards achieving those targets, but there is still a long
way to go. A bit more uniformity is required in the funding for the promotion of breastfeeding, but I think that all members are willing to work towards achieving that end.

I see that time is running out, so I will move on.

The Deputy Presiding Officer: Feel free to develop your arguments, if you wish.

Linda Fabiani: You do not say that very often, Presiding Officer. Okay, I will have a rant.

As Carolyn Leckie mentioned when she picked up on the issue that David Davidson raised about the powdered milk that was promoted in NHS premises in this country, it is ridiculous that powdered milk is still promoted in non-developed countries. It is all very well for Nanette Milne to say what she did, but we all know that some companies actively tell mothers in non-developed countries that breast milk is bad and that powdered milk is good. That is all about the companies promoting their products and their profits. Given that we are considering today whether the Parliament should legislate to provide rights in this country, I hope that all members will agree that we should take an interest in promoting fairness in that respect in undeveloped countries as well. It is a strange anomaly that powdered milk, which must be mixed with water, is actively promoted in countries in which one cannot be sure that the water supply is safe for drinking, let alone for mixing with powdered milk for babies.

Elaine Smith: On that point, does the member agree that it is amazing that companies make so much profit from ensuring that the artificial milk is as like a mother’s milk as possible, yet the world’s poorest and most oppressed people are women, who are the producers of the real thing?

Linda Fabiani: I agree that that is absolutely ridiculous. Of course the World Trade Organisation’s rules are ridiculous and bizarre. We are talking about ensuring equality and fairness for people in this country, but we should extend that by pushing our Governments to promote equality and fairness all over the world. Dealing with mothers and babies is surely a good place to start.

The Deputy Presiding Officer: I call on Susan Deacon to wind up the debate. I am happy to allow her the same latitude as I have given to other speakers.

16:37

Susan Deacon (Edinburgh East and Musselburgh) (Lab): It is not often that I am given latitude by the Presiding Officer, but I am happy to take it on this occasion.

I am pleased to close the debate and I thank Elaine Smith for giving me the opportunity to do so. I pay tribute to her for her work, commitment and sheer tenacity in promoting the bill. Frankly, she has been a real champion in the Parliament of breastfeeding. As Ken Macintosh said, the discussion surrounding the bill has already done a huge amount to raise awareness and to change culture and attitudes. That is a significant achievement in itself.

I thank members of the Health Committee for their assiduous consideration of the bill and for their thorough stage 1 report. I am delighted that the committee agreed to support the general principles of the bill. On behalf of all members in the chamber, I record our appreciation to all those—far too many to mention—who have given of their time and energy in their input to the initial consultation and in their evidence to the committee. I thank them for the information, evidence and anecdotes that they shared with us. That wealth of knowledge and experience has greatly aided our understanding both of the issues involved and of the real experiences of women across Scotland.

Finally, I thank all members who have contributed to today’s thoughtful debate. We have heard some well-informed and heartfelt speeches. I am sure that we all thank Maureen Macmillan, Carolyn Leckie and Ken Macintosh for sharing with us some personal, honest and humorous anecdotes, which brought to life some of the issues that are involved in the debate.

We said from the outset in this Parliament that we wanted to give all Scotland’s children the best possible start in life. That commitment has been a thread that has run through many Executive policies and much of the Parliament’s legislation. I was pleased to hear Malcolm Chisholm speak so fully and passionately about the issue and I very much welcome the extent of the Executive’s commitment to promote breastfeeding and the fact that it is happy to see the bill progress.

The importance of ensuring that babies get the right nurture and nutrition from the first days and weeks of their lives must not be underestimated. Common sense as well as a huge body of evidence tells us that the health and other life outcomes of our young are shaped from a very early stage. The bill addresses only one aspect of what is a big subject—the health and well-being of our young—but that aspect is vital.

The health benefits of breastfeeding for babies and mothers have long been established, as many members have said. There is also a long-established consensus within the public policy community and across the political spectrum that efforts should be made to promote breastfeeding and to encourage more women to breastfeed and to do so for longer. The question then arises as to how to make that happen.
As members have said, a great deal of progress has been made towards achieving the target that the Conservative Government set back in the 1990s of 50 per cent of mothers breastfeeding for six weeks or more by 2005. Malcolm Chisholm set out for us some of the excellent work that has been done in our maternity units—for example, through the UNICEF baby-friendly initiative. Other members referred to the work of health visitors and midwives in the community and to voluntary organisations working in the community. However, something still stands in the way of change.

I take this opportunity to endorse strongly the comments made by Tricia Marwick, Bruce McFee and Nora Radcliffe that a mother should, of course, always be respected for her choice of feeding method. That is a personal decision and no one should be made to feel guilty because they choose not to breastfeed or, in some cases, because they are unable to breastfeed. The fact remains that, despite all the support and information, many more women would like to breastfeed than do and many who breastfeed would like to do so for longer.

The Health Committee’s report and the evidence that was heard throughout the committee’s discussion of the bill have proven beyond any doubt that culture and attitudes lie at the heart of the question. Scotland has a culture that remains stubbornly unfriendly to breastfeeding. As Elaine Smith said, survey evidence shows that the majority of people are relaxed about seeing breastfeeding in public and are supportive of it, but women do not feel that they are. Ken Macintosh was honest in his account of what many individuals—men and women—grapple with, which is our rational perspective on these matters versus how we feel as products of our society’s deep-rooted cultural issues.

The feeling that breastfeeding is not publicly acceptable has been reinforced by the actions of some who have actively prevented women from breastfeeding their babies in public places. When the bill was first proposed, it was suggested that such incidents were isolated and that they were not a real issue for women. However, I would urge anyone who might still hold that view to read the evidence and the testimonies shared with the Health Committee and to listen to the sort of account that Helen Eadie shared with us earlier.

It is a fact that women across Scotland have been asked to get off buses, leave cafes, go into toilets in shops and, yes, even leave waiting rooms in doctors’ and dentists’ surgeries simply because they wanted to breastfeed their child. How can any of us claim, with any credibility, that we are working towards a national breastfeeding target, that we support breastfeeding or that we want to create a breastfeeding-friendly culture in Scotland while standing by saying that such practices are acceptable?

Given the support in the debate for Elaine Smith’s bill, I suspect that this is probably the point at which I should turn to those few members who have called into question the effectiveness of the measure. Let me deal with some of the points that David Davidson raised. He said that there was no evidence that such legislation was effective. I think that he is being selective in his reading. In the United States, for example, evidence has shown that four out of the five states that have achieved the highest increase in breastfeeding since 1992 had either introduced legislation that made it an offence to prevent a woman from breastfeeding in a public place or explicitly stated the rights of women to breastfeed in public. In Maine, after such a law had been in place for a year, there was a 20 per cent increase in breastfeeding. As others have said, evidence was heard throughout the Health Committee’s consideration of the matter that a vast number of experts and professionals in the field truly believe that the bill will result in a change in practice and an increase in the rate of breastfeeding in Scotland.

David Davidson, in his continued bid to cast around for reasons to oppose the bill because of his ideological dogma in this terrain, said that the bill was not about education and that it did not say enough about health professionals and the like. I have not heard any member today or anyone who has engaged in the discussion of the bill in committee and elsewhere say anything other than that the bill needs to be part of a package of measures to encourage, promote and support breastfeeding in Scotland.

Excellent work has been done in the health service, in maternity units and in communities and I believe that we are progressing in the direction in which we all want to go. It is incumbent on those who think that the bill will not be effective to say what measures they would propose to bring about the change that we all want to see.

Mr Davidson: The Conservatives support the role of breastfeeding, as we did when we were in government. We recognise its importance and believe that people should be encouraged and supported to breastfeed and to do so for longer. Our argument is not about the fact that the minister has taken up the initiative that we started when we were in government. As I said earlier, I welcome his comments on that.

However, responsibility for the issue has been in the hands of the Labour Westminster Government and the Executive for the past seven years. The Conservatives cannot take the blame for the fact that we have not reached where we would like to be. However, I find it refreshing that the minister is carrying on the work that we started. We started
off well; we got the rate up to 40 per cent without legislation.

I am suggesting that we get our professionals out there doing their job. The minister has to support that, because resources come from him. We need more people on the ground to deal with the matter. Vast sums of money have gone into the health service. Members should not point the finger at me.

Susan Deacon: I am genuinely disappointed by David Davidson’s approach, as shown in that intervention. If ever there was an issue over which we could come together, work together and try to find common cause and a way forward, surely to goodness it is a public health issue such as this.

I am not interested in apportioning blame to anybody, whether a Tory Government of the past, a Labour Government since then or a Labour-Liberal Democrat coalition Executive since then. I really do not care. What matters is how we achieve the target and ensure that Scotland genuinely becomes a much more breastfeeding-friendly place. All the information, evidence and anecdotes tell us that we are not yet there and that we will not get there unless we do something that will bring about a step change. The bill gives us an opportunity to do that.

I will be absolutely honest. Elaine Smith first discussed the proposal with me years ago when I was Minister for Health and Community Care. I was enthusiastic about the principle behind it, but I was terribly cautious about whether statutory change was the way forward. In matters of public health and lifestyle, it is right to tread carefully when considering whether to use the legislative powers of the Parliament and criminal law to bring about changes to behaviour. However, I believe absolutely that, just as in similar circumstances attitudes have shifted in the debate on smoking in public places, the consensus on breastfeeding has shifted not least because of the debate surrounding Elaine Smith’s bill. The process of investigation that the committee has taken forward has brought out a latent pool of support for the measure and, critically, that will make a real difference. Those combined considerations should be enough to make every one of us support the measure irrespective of our party-political associations.

Mr Davidson rose—

Susan Deacon: I think we still have a lot of time. Will I take another intervention from David Davidson?

Members: No.

Susan Deacon: My colleagues are rather less enthusiastic than I am about taking a further intervention from him.

I will end my comments on the Conservatives by saying something about the critical issue of whether we should condone people asking a woman to leave a place because she is breastfeeding. Nanette Milne has said on record that cafe and restaurant owners, for example, should be allowed to decide whether to allow breastfeeding. I disagree with her view. It is not akin to allowing the owner of a pub to bar a disorderly drunk or allowing a shop to ask an abusive customer to leave. Breastfeeding is not some kind of offensive behaviour and it should not be treated as such; it is literally the most natural thing in the world. It is the right of babies to be fed when and where they need to be and in a way and place that their mothers choose as appropriate.

I note in passing, as Maureen Macmillan did, the hypocrisy that exists in our society in that respect. We live in a society that is happy to see the female body in all its splendour displayed in all sorts of forms, media and places, so surely we can cope with the sight of an infant tucked discreetly under its mum’s jumper having a feed. That is what we want to promote and encourage through the bill, because we need to embed precisely that image in our culture as not only acceptable, but positive. As society becomes more comfortable with that image, women will become more comfortable and confident about breastfeeding their babies.

The debate is not esoteric, ideological or PC; it is about the real factors that influence women in their feeding choices. If a woman feels that she cannot breastfeed her baby in a park, shop, cafe or public library, she will either stay behind closed doors in her home, with all the implications that that has for her and the baby’s physical and mental well-being, or she will simply give up. The evidence shows us that that is precisely what is happening now in Scotland.

Too many women have sat in smelly, cramped toilets feeding their babies, too many women—those who can—have turned car parks into feeding areas and too many women have not breastfed or have stopped breastfeeding, not because they wanted to, but because they felt that those around them would not like them to. The bill and the legal protection that it will provide to the rights of a baby to be fed by breast or bottle when and where it needs to be are necessary and right. I urge members from all parties to vote for Elaine Smith’s motion to support the bill’s general principles and to allow it to pass to its second stage. In so doing, we will make a real difference to the future of our society and the well-being of our children.
Breastfeeding etc (Scotland) Bill, be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**FOR**
- Alexander, Ms Wendy (Paisley North) (Lab)
- Baillie, Jackie (Dumbarton) (Lab)
- Baird, Shiona (North East Scotland) (Green)
- Baker, Richard (North East Scotland) (Lab)
- Ballance, Chris (South of Scotland) (Green)
- Ballard, Mark (Lothians) (Green)
- Barrie, Scott (Dumfriesshire West) (Lab)
- Boyack, Sarah (Edinburgh Central) (Lab)
- Brankin, Rhona (Midlothian) (Lab)
- Brown, Robert (Glasgow) (LD)
- Butler, Bill (Glasgow Anniesland) (Lab)
- Byrne, Ms Rosemary (South of Scotland) (SSP)
- Canavan, Dennis (Falkirk West) (Ind)
- Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
- Curran, Frances (West of Scotland) (SSP)
- Curran, Ms Margaret (Glasgow Bailleieston) (Lab)
- Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
- Edie, Helen (Dumfriesshire East) (Lab)
- Fabiani, Linda (Central Scotland) (SNP)
- Ferguson, Patricia (Glasgow Maryhill) (Lab)
- Finnie, Ross (West of Scotland) (LD)
- Gillon, Karen (Clydesdale) (Lab)
- Godman, Trish (West Renfrewshire) (Lab)
- Gorrie, Donald (Central Scotland) (LD)
- Harper, Robin (Lothians) (Green)
- Harvie, Patrick (Glasgow) (Green)
- Henry, Hugh (Paisley South) (Lab)
- Home Robertson, Mr John (East Lothian) (Lab)
- Hughes, Janis (Glasgow Ruchherden) (Lab)
- Jackson, Dr Sylvia (Stirling) (Lab)
- Jackson, Gordon (Glasgow Govan) (Lab)
- Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
- Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
- Kerr, Mr Andy (East Kilbride) (Lab)
- Leckie, Carolyn (Central Scotland) (SSP)
- Livingstone, Marilyn (Kirkcaldy) (Lab)
- Lyon, George (Argyll and Bute) (LD)
- Macdonald, Lewis (Aberdeen Central) (Lab)
- MacDonald, Margo (Lothians) (Ind)
- Macintosh, Mr Kenneth (Eastwood) (Lab)
- Maclean, Kate (Dundee West) (Lab)
- Macmillan, Maureen (Highlands and Islands) (Lab)
- Martin, Campbell (West of Scotland) (Ind)
- Martin, Paul (Glasgow Springburn) (Lab)
- Marwick, Tricia (Mid Scotland and Fife) (SNP)
- Matheson, Michael (Central Scotland) (SNP)
- May, Christine (Central Fife) (Lab)
- McAvety, Mr Frank (Glasgow Shettleston) (Lab)
- McCabe, Mr Tom (Hamilton South) (Lab)
- McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
- McFee, Mr Bruce (West of Scotland) (SNP)
- McMahon, Michael (Hamilton North and Bellshill) (Lab)
- McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
- McNeill, Pauline (Glasgow Kelvin) (Lab)
- McNulty, Des (Clydebank and Milngavie) (Lab)
- Morrison, Mr Alasdair (Western Isles) (Lab)
- Muldoon, Bristow (Livingston) (Lab)
- Mulligan, Mrs Mary (Linlithgow) (Lab)
- Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
- Murray, Dr Elaine (Dumfries) (Lab)
- Oldfather, Irene (Cunninghame South) (Lab)

**The Deputy Presiding Officer:** The fifth question is, that motion S2M-1640, in the name of Elaine Smith, on the general principles of the...
The Deputy Presiding Officer: The result of the division is: For 80, Against 15, Abstentions 0.

Motion agreed to.

That the Parliament agrees to the general principles of the Breastfeeding etc. (Scotland) Bill.
The Bill will be considered in the following order—

Sections 1 to 5  Long Title

Section 1

Carolyn Leckie

1  In section 1, page 1, leave out line 15

Carolyn Leckie

2  In section 1, page 1, line 15, leave out <two> and insert <five>
Breastfeeding etc. (Scotland) Bill

Groupings of Amendments for Stage 2

Maximum age of the child
1, 2
HEALTH COMMITTEE

EXTRACT FROM THE MINUTES

24th Meeting, 2004 (Session 2)

Tuesday 2 November 2004

Present:

Roseanna Cunningham (Convener)  Mr David Davidson
Helen Eadie  Janis Hughes (Deputy Convener)
Kate Maclean  Mr Duncan McNeil
Shona Robison  Mike Rumbles
Jean Turner

Also present: Carolyn Leckie and Elaine Smith.

Breastfeeding etc. (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were disagreed to (by division)—
1 (For 0, Against 9, Abstentions 0)
2 (For 0, Against 9, Abstentions 0)

Sections 1, 2, 3, 4, and 5 and the long title were agreed to without amendment.

The Committee completed Stage 2 consideration of the Bill.
Breastfeeding etc (Scotland) Bill:
Stage 2

The Convener: I welcome Elaine Smith MSP, whose member’s bill we are considering at stage 2, and Carolyn Leckie, who has lodged amendments to the bill. I also welcome the Deputy Minister for Health and Community Care, Rhona Brankin, to her second Health Committee meeting in her new guise.

Section 1—Offence of preventing or stopping a child from being fed milk

The Convener: Amendment 1 is grouped with amendment 2.

Carolyn Leckie (Central Scotland) (SSP): Amendment 1 is my preferred one and I believe that it would be helpful. Elaine Smith and the committee have done a great job in getting the bill to this stage. I hope that their work has helped to put to rest some myths and prejudices and that we can now take the debate on the mother-baby dynamic a stage further.

I have lodged amendment 1 because I am a wee bit concerned that the bill’s definition of a child as being a person under two years conveys a retrograde message that would allow someone to challenge a mother who was nursing an older child. Obviously, the mother would be protected from harassment or assault by existing legislation, but the bill will not preserve her right not to be challenged in or removed from a public place or licensed premises when she is breastfeeding.

The breastfeeding relationship between a mother and a baby is a dynamic one that is about them alone, and no person or legislation should interfere in that by giving the impression that an acceptable time limit for breastfeeding has been set. It has been shown that breast milk adapts physiologically to the age and needs of a breastfed child. The composition of breast milk changes as a child grows—including children older than two.

As I said during the stage 1 debate, I breastfed both my children, and I breastfed my oldest daughter until she was two years and two months. At that age, children are articulate and can participate in a discussion. In general, children do not breastfeed often at that age, but breastfeeding can be a comfort if they fall over, for example. A scenario can be imagined in which a child falls over in a dining area, hurts themselves and wants a breastfeed as a comfort. One day before a child’s second birthday, that would be okay and...
nobody would be in a position to challenge what was happening—the mother and child would be protected by law. However, the day after the child’s second birthday, they could be challenged—although obviously not harassed. There is a potential contradiction, which could inhibit the mother-baby dynamic.

Not many mothers breastfeed children at the age of two, although I hope that the number who do so will increase. The lower the age limit in the bill, the more impetus there will be to wean as that age approaches, so that the child is no longer breastfeeding by that age. However, who would define a child as being two or under?

Children come in varying sizes. By setting the age limit at two, it is possible that mothers who have larger children who look as though they might be two will be asked their child’s age. I am a wee bit worried about that, which is why I want to remove the definition of “child”, to leave it open ended and to leave the decision in the domain of the mother-baby dynamic. I want to leave the definition up to the mother and the baby; I do not want to leave it up to anybody else to cast an opinion or to be able to make a challenge.

I have spoken to Elaine Smith and I appreciate the arguments for setting an age limit. That is why I lodged amendment 2, which might be necessary to set the age at five and so take the matter beyond the realm of being an issue. Setting the age at two could be an issue; it would leave a grey area and the potential for mothers and children to be challenged. It would also send out a wee bit of a negative message about breastfeeding older children. There is still prejudice about that, which needs to be challenged, because it is there only because of the sexual objectification of women and women’s breasts. Some people find the idea unpalatable, and that needs to be directly challenged.

I lodged amendment 1 so that there would be no definition and no interference. If amendment 1 is unacceptable, I will move amendment 2, which would take the age to five, taking it beyond the realm of possibility that anyone would be caught in the grey area that I mentioned.

I move amendment 1.

The Convener: If amendment 1 is agreed to, amendment 2 will be pre-empted. The amendments are grouped together, so we are dealing with them together.

Carolyn Leckie: I have moved amendment 1 and I will move amendment 2, but I prefer amendment 1.

The Convener: You cannot move amendment 2 yet.

Shona Robison: I oppose amendments 1 and 2. In particular, I oppose amendment 1, because we must consider where we are with breastfeeding in Scotland. Scotland is a nation with one of the worst breastfeeding rates in Europe because of public attitudes towards breastfeeding, particularly among young mothers, who—unfortunately—too often still see it as not for them. I have supported the bill because of the important public message that it sends out in reassuring people that breastfeeding is a normal activity that should be encouraged. My concern about amendment 1 is that it could send out a message that runs counter to that message, as it could be subject to ridicule. Elaine Smith has steered a careful path in the bill to ensure that breastfeeding is presented in comfortable terms.

We need to take a big step to increase breastfeeding rates, and I do not think that that would be helped by the impression—albeit an unfair impression—that there is no upper age limit on breastfeeding in public. That would be seized upon by those who would want to seize upon it for whatever reason. Such a provision could be severely misrepresented and could deeply damage the major thrust of the bill, and that would be a retrograde step.

I oppose amendment 1 on those grounds and I look forward to hearing what Elaine Smith has to say about it.

Mike Rumbles: It is important to put on the public record once again the fact that the bill will not introduce an upper age limit on breastfeeding. The bill is not about that; it does not give new rights to mothers and babies, because they already have those rights. Specifically, the bill creates a new criminal offence of deliberately preventing or stopping

“a person in charge of a child”

who is under two

“from feeding milk to that child in a public place”.

That is what the bill is about, so it is nonsense to talk about allowing children to be fed their mother’s milk at any age.

With the bill, we will create a criminal offence, which must be absolutely specific. Elaine Smith and those who have worked on the bill have done an awful lot of work on the issue. We will hear from Elaine Smith in a moment, but I think that it is better to go with what the proposer of the bill suggests rather than open a can of worms.

Kate Maclean: I do not support either of the amendments, but not because I am anti-breastfeeding—I am pro-breastfeeding and breastfed both my kids, about 25 years ago, when it was unfashionable to do so and not even many health professionals promoted it. It was difficult,
and I have experienced not being allowed to breastfeed a small baby in public.

We must set an age limit and I think that two is a good age. Beyond that age, kids can understand the concept that they will get something later on and can eat and drink through means other than breastfeeding. I know that one of Elaine Smith’s aims is to promote breastfeeding, but if we are talking simply about people being able to feed their babies in public, I do not think that it necessarily should be a criminal act to stop people breastfeeding a baby who is older than two, given that there are other methods of feeding such babies. As Mike Rumbles said, the bill will not introduce an upper age limit on breastfeeding. People should be allowed and encouraged to breastfeed their children for as long as that is suitable and beneficial for the child and the mother.

I am not comfortable with raising the limit in the bill to five and I understand that there would be legal problems if we had no limit. I am happy to support the bill—I supported it at stage 1—and I congratulate Elaine Smith on introducing it, but I am not prepared to support the amendments.

16:00

The Deputy Minister for Health and Community Care (Rhona Brankin): Like other women who have spoken, I breastfed both my daughters when they were little, in some quite difficult situations.

The Executive supports the bill. We are of the opinion that its primary aim is to improve children’s health. The Executive is committed to giving every child in Scotland the best possible start in life and to a programme of supporting and promoting breastfeeding, which includes the development of a breastfeeding strategy in the coming year. That work is important and I look forward to doing it.

I have considered Carolyn Leckie’s amendments, both of which we resist for similar reasons to those that members have given. There is a long way to go to encourage women to breastfeed. It is in no way a universally accepted part of our culture, and the rate of breastfeeding among women is still much lower than we would like. We do not yet have 50 per cent of women breastfeeding at six weeks, although it is in the first six weeks of a child’s life that the benefits of breastfeeding are most pronounced. Therefore, we feel that we must focus our promotional efforts at the very start of a child’s life; indeed, the World Health Organisation’s position emphasises the importance of the first two years.

The difficult issues surrounding the bill have been mentioned. Given the current lack of understanding among the general population about breastfeeding and its benefits, increasing the age limit could have negative consequences both for the bill and for the whole image of breastfeeding. Keeping an age limit of two years in no way makes breastfeeding in public beyond that age illegal. The huge challenge for us is to increase the number of women who want to breastfeed their babies and to encourage women to breastfeed for around six months. We feel that, for the purpose of the bill, the age limit of two years is appropriate and helpful and will offer protection to the vast majority of women who wish to breastfeed for longer than six months.

Elaine Smith (Coatbridge and Chryston) (Lab): I am pleased that Carolyn Leckie has lodged these amendments. The more that we debate the subject, the better that will be for raising awareness and making society consider and challenge the prejudices and misconceptions that it has about breastfeeding.

Research into the issue reveals that the norm around the world for weaning from breastfeeding is between two and four years. In some cultures, the child is older; for example, Indian custody law decrees that any child under six years must reside with their mother because they are considered to be of suckling age. Other primates feed their young for years rather than for months, and research that compares humans to primates suggests that humans’ natural weaning age from the breast is a minimum of two and a half years and a maximum of between six and seven years. There is a lot of variation. We humans might consider ourselves to be smarter than primates, but perhaps we are not as smart about infant nutrition as we might like to think that we are.

I have no doubt that, if a big drug company was making a profit from breast milk, we would all be well aware of the nutritional benefits of feeding our children for as long as the mother and child both want. Some research shows that the benefits continue for as long as breastfeeding continues—Carolyn Leckie mentioned that. Personally, I believe that it should be entirely up to mums and babies, with no stigma attached to it. It is normal, nurturing, maternal behaviour and should be supported as such by society.

However, we do not live in a breastfeeding culture in Scotland. The reality is that even small babies who are utterly dependent on their mother’s milk can be viewed askance when feeding in public and women and their babies can be segregated or ejected from public places and licensed premises; the committee will know that, having looked into the matter. The bill is intended to offer protection in the law and to promote breastfeeding, thus assisting a change in attitudes and empowering breastfeeding women and
children. As the minister said, changing attitudes is a big issue.

I turn specifically to the two amendments and address amendment 1 first. When changing the law, the legislation must be clear, unambiguous and precise. Leaving the term “child” undefined would not be good law. Without a definition, “child” could mean anyone from one day old to 18 years old. Carolyn Leckie asked how it could be proved that a child was older or younger than two. That would have to happen if a case was being prosecuted and a procurator fiscal was involved. We have other age-related laws—someone has to be 14 to go into certain licensed premises, 16 to buy cigarettes and 18 to buy alcohol—so there are precedents. As the bill creates a criminal offence, the term “child” needs to be defined so that everybody knows exactly what the offence entails. Therefore, amendment 1 must be rejected on the basic principles of good Scots law.

Amendment 2 deals with a more substantive issue. The steering group discussed various ages. At one point, I suggested the age of five years old, but that was pretty arbitrary; we could have chosen any age. We had many meetings and the issue was batted back and forth. According to the research on weaning, seven years old might be a more appropriate cut-off point, given that that is what the research on primates says. The age of two years old was put in the bill, because that is the age that the WHO recommends, rather than the ages of one year old or three years old. There was a logic to the choice of two years of age. In addition, the commonsense point was made—which Kate Maclean has reiterated—that most children who are under the age of two, unlike older children, cannot understand the concept of waiting for a feed. Older children can communicate their feelings, wants and needs; they do not breastfeed exclusively or as frequently as children who are under two; and they can eat other things. Ultimately, the bill seeks to safeguard and protect the right of very young children to feed.

The steering group took the decision to mention a specific age for the purposes of the bill. It thought that, given that the issue is highly contentious, the committee might want to consider the matter at stage 2, depending on the evidence that it had taken and its deliberations at stage 1. At stage 1, the committee concluded that it was appropriate to define “child” for the purposes of the bill.

Carolyn Leckie mentioned some of the reasons for the decline in breastfeeding in Scotland. I will not go into those, as I have outlined them before, but I think that the factor that affects societal views on the feeding of toddlers, in particular, is the result of the sexualisation of women’s breasts and prevailing cultural attitudes towards breastfeeding as a whole. If the bill is passed, the benefits that will accrue as regards changing attitudes and making breastfeeding more culturally acceptable will roll out to benefit children who are older than two.

As Mike Rumbles said, it should be noted that the status quo will prevail in relation to children who are older than two, so it will not be illegal to breastfeed children of that age. The Executive could perhaps turn its mind to promoting the benefits of breastfeeding for as long as mums and babies want to continue with it. That is a practical suggestion that the Executive could consider as part of its duty under the section on promotion.

Although some children are breastfed for more than two years, the majority are weaned off the breast far too early. That is evidenced by the fact that the Executive’s target on breastfeeding for next year is that 50 per cent of mothers should still be breastfeeding their babies at six weeks. That target is far from being met because, at present, less than 40 per cent of mothers are still breastfeeding at that stage.

The realpolitik of the situation is that it represents quite a quantum leap in the United Kingdom for a legislature to enshrine in law protection and promotion of breastfeeding; Scotland would be the first country in the UK to do that. Attitudes towards small, dependent children must be changed. I hope that that will mean that a situation evolves in which all breastfeeding will be embraced as normal, nurturing maternal behaviour.

At stage 1, the committee gave much time and thought to the definition of “child”, alongside all the other issues. It was right to conclude that an age should be included in the bill—the definition of “child” is appropriate for the purposes of the bill. If the committee decides to support amendment 2, I would be relaxed about that in that it is the committee’s prerogative to do so. However, I would want to ask why it should opt for an age limit of five rather than one of six, which, as I mentioned, applies in Indian culture, or one of seven years old, to which the research on primates points. Indeed, why not opt for a limit of eight years old?

I believe that society should support women in breastfeeding their children for as long as they want to do so, but I must stand by the definition that the bill sets out, which was agreed on by the steering group after many meetings and much deliberation. There is a certain logic to it.

I thank the committee for its scrutiny of the bill and for its robust stage 1 report.

Carolyn Leckie: I found the discussion illuminating. I point out that the WHO global strategy for infant and young child feeding, which
was adopted at the world health assembly in 2002, was careful not to set an upper limit on the duration of breast feeding.

Elaine Smith asked why not have an upper limit of six or seven years of age. That begs the question why have an upper limit of two years of age. My preference is that there should be no reference to an age limit, because breastfeeding is about the mother-baby dynamic. In lodging an amendment that defines “child” as a person who is under five years of age, I recognised the cultural reality in Britain, but sought to ensure that there would be no women who breastfeed their babies who might perceive themselves as being discriminated against by the bill.

I will deal with Mike Rumbles’s point. It would not be a criminal offence to challenge a breastfeeding mother of a child who is two years old and older, so that is discrimination, because it would be a criminal offence to challenge a mother who is breastfeeding a child aged under two. Why should there be that differentiation? Why should a mother and her baby’s relationship be protected when the baby is under the age of two but not when the baby is over the age of two? The onus should be on those who argue for that to explain why such an arbitrary age limit is necessary. If it is a crime to hit one person and not a crime to hit another, that is discrimination, and that is a potential problem with the bill.

On Kate Maclean’s point, there is limited understanding of what the breastfeeding relationship with an older child becomes. It is quite naive to use the argument that because the children are older, they understand and can wait for food and drink. In my experience as a health professional and a mother, and as someone who initiated a breastfeeding support group through the National Childbirth Trust when my children were small, the breastfeeding relationship moves from being an exclusively nutritional relationship to being a nutritional and emotional relationship, and by the time a child is older, the relationship can be predominantly an emotional one. When a child is looking for comfort—a child who is not breastfeeding might be comforted by a dummy till—it is not acceptable to say to the child, “You have hurt yourself. You are crying and upset, but you need to wait because we could be challenged in this place”. I am sure that there are people who know that when that kind of breastfeeding relationship has been established with their child, there is only one thing that can shut them up and stop them crying until they are weaned, and that is to breastfeed them. For some children, the mother-baby relationship could be damaged if it is artificially interrupted.

It is unfortunate that we have to define what a child is. I understand the pressures, but it would be helpful to leave the definition loose and not to convey any impression. I have chosen the age of five because I recognise the cultural realities in Britain and that it is unlikely that any mothers and children would still be breastfeeding by the time the child is of school age, or would feel that they were being discriminated against.

It is open to members to lodge other amendments and to choose another age—three, four, six or seven—at stage 3 if that is the argument; but I do not believe that that is the argument. If people ask me why I have proposed the age of five, I will ask “Why two?” because there are definitely still babies of that age being breastfed in this country, and I am sticking up for them.

The Convener: Are you pressing amendment 1?
Carolyn Leckie: I am pressing amendment 1.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.

AGAINST
Cunningham, Roseanna (Perth) (SNP)
Davidson, David (North East Scotland) (Con)
Eadie, Helen (Dumfriesshire East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Convener: The result of the division is: For 0, Against 9, Abstentions 0.

Amendment 1 disagreed to.

Amendment 2 moved—[Carolyn Leckie].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.

AGAINST
Cunningham, Roseanna (Perth) (SNP)
Davidson, David (North East Scotland) (Con)
Eadie, Helen (Dumfriesshire East) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Maclean, Kate (Dundee West) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Convener: The result of the division is: For 0, Against 9, Abstentions 0.

Amendment 2 disagreed to.

Sections 1 to 5 agreed to.
Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank everyone for coming along.
Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 5  Long Title

Section 1

Carolyn Leckie

1 In section 1, page 1, leave out line 15

Carolyn Leckie

2 In section 1, page 1, line 15, leave out <two> and insert <three>

Carolyn Leckie

3 In section 1, page 1, line 15, leave out <two> and insert <four>

Carolyn Leckie

4 In section 1, page 1, line 15, leave out <two> and insert <five>

Carolyn Leckie

5 In section 1, page 1, line 15, leave out <two> and insert <six>

Long Title

Elaine Smith

6 In the long title, page 1, line 1, leave out <child who is permitted to be in a public place or licensed premises from being fed milk> and insert <person in charge of a child who is otherwise permitted to be in a public place or licensed premises from feeding milk to that child>
Breastfeeding etc. (Scotland) Bill

Groupings of Amendments for Stage 3

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

*Group 1: Age of the child*
1, 2, 3, 4, 5

*Debate to end no later than 45 minutes after proceedings begin*

*Group 2: Long Title*
6

*Debate to end no later than 1 hour after proceedings begin*
Business Motion: Ms Margaret Curran, on behalf of the Parliamentary Bureau, moved S2M-2028—That the Parliament agrees that, during Stage 3 of the Breastfeeding etc. (Scotland) Bill, debate on each part of the proceedings shall be brought to a conclusion by the time-limits indicated (each time-limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress):

Group 1 – no later that 45 minutes

Group 2 – no later than 1 hour

Motion to pass the Bill – 2 hours

The motion was agreed to.

Breastfeeding etc. (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendment was agreed to without division: 6

The following amendments were disagreed to (by division)—

1 (For 7, Against 86, Abstentions 0)
2 (For 14, Against 79, Abstentions 0)
3 (For 13, Against 80, Abstentions 0)
4 (For 13, Against 79, Abstentions 0)
5 (For 12, Against 82, Abstentions 0)

Breastfeeding etc. (Scotland) Bill – Stage 3: Susan Deacon moved S2M-1968—That the Parliament agrees that the Breastfeeding etc. (Scotland) Bill be passed.

After debate, the motion was agreed to ((DT) by division: For 103, Against 13, Abstentions 0).
The Deputy Presiding Officer (Murray Tosh):
The next item of business is business motion S2M-2028, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for consideration of stage 3 of the Breastfeeding etc (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Breastfeeding etc. (Scotland) Bill, debate on each part of the proceedings shall be brought to a conclusion by the time-limits indicated (each time-limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress):

Group 1 – no later that 45 minutes
Group 2 – no later than 1 hour
Motion to pass the Bill – 2 hours—[Ms Margaret Curran.]

Motion agreed to.
Breastfeeding etc (Scotland) Bill: Stage 3

15:02

The Deputy Presiding Officer (Trish Godman): The next item of business is stage 3 of the Breastfeeding etc (Scotland) Bill. For the first part of the stage 3 proceedings members should have the bill—that is, SP bill 15—the marshalled list, which contains all amendments selected for debate, and the groupings of amendments. I will allow an extended voting period of two minutes for the first division and thereafter I will allow a voting period of one minute for the first division after a debate on a group. All other divisions will be 30 seconds.

Section 1—Offence of preventing or stopping a child from being fed milk

The Deputy Presiding Officer: Group 1 is on the maximum age of the child. Amendment 1, in the name of Carolyn Leckie, is grouped with amendments 2 to 5. If amendment 1 is agreed to, I cannot call amendments 2 to 5.

Carolyn Leckie (Central Scotland) (SSP): I congratulate Elaine Smith, who has worked fantastically hard to bring the bill to this stage, and I also congratulate all the helpers, supporters and organisations that have helped in that wonderful achievement. The bill will have a very positive impact on the promotion, incidence and continuance of breastfeeding, with its indisputable health and emotional benefits. My amendments are positive and constructive—as they were at stage 2—and are designed to ensure that no child or breastfeeding mother is discriminated against.

My preference is that there should be no definition of a child’s age in the bill. I believe that the mother-baby breastfeeding dynamic is exclusively the terrain of the mother and baby and that no one has a right to cast an opinion on when breastfeeding should cease. It would be wrong to dismiss the health benefits of breastfeeding a toddler or older child. Breast milk adapts to the exact needs of the child as it grows. Indeed, the concentration of antibodies and other anti-infective properties in breast milk increases as the amount of milk the child consumes declines. As a child grows and moves about it encounters hazards in the form of bacteria while it is on the floor in the kitchen or outside playing and breast milk adapts to take care of that development.

From an evolutionary perspective, there is no evidence that children should be weaned by a certain age. There are not only health benefits but emotional benefits and comfort for an articulate child who understands what it means to want a breastfeed. That is not just about fluid or food. By that age, an emotional relationship has been established and it should be up to the mother to decide when and where breastfeeding is necessary. I breastfed two children, one to two years and two months and one to about 16 months and that was their personal relationship with me. By that stage a child can need a breastfeed not just for food or fluid but for emotional comfort. A child might fall and bang its knee or its head and no one should be able to request its mother to stop breastfeeding that child for comfort in a public place, such as a restaurant or pub.

That is why the World Health Organisation, in its “Global Strategy for Infant and Young Child Feeding”, which was adopted at the 2002 world health assembly, was careful not to set an upper limit on the duration of breastfeeding. The National Childbirth Trust reports women breastfeeding older children in secret because of society’s intolerance—in fact, there is not just intolerance but abject hypocrisy when it comes to the display of breasts and nipples. There are tits all over the newspapers, tits all over newsagents’ shelves, tits all over the telly, tits in the cinema, tits on advertising hoardings and, no doubt, tits in the Parliament. Tits for titillation are okay, apparently—

The Deputy Presiding Officer: Ms Leckie, can I just stop for you for a minute? I was prepared to allow one such reference, but I think that we have got the message. Perhaps you could continue your speech without the use of that particular word. Thank you.

Carolyn Leckie: That was the last one. Thank you very much, Presiding Officer.

Prudishness kicks in when it comes to the nutritional and emotional needs of an articulate child, who will still be blissfully unaware of society’s double standards. Is the fact that the age has been set at two just pandering to that prejudice? I know that that is not Elaine Smith’s intention, but I am worried that that might be the effect. It might pander to prejudice both within the Parliament—I have heard comments in the corridors about my amendments, so I know that there is such prejudice—and without.

If we do not amend the age limit in the bill, mums and children will be discriminated against. There are children in our culture breastfeeding over the age of two. If it is a criminal offence to harass or intimidate a breastfeeding mother of a child under two, surely it should be the same for all. Who decides whether a child is two years, 20 months, or 18 months and quite big? Will a publican who believes that a child is two be free to ask a mother to leave even though the child is 18 months old but looks older? There is potential for
confusion. It is, rightly, against the law to assault someone. We would never countenance a law that meant that it was criminal to hit one person but not another, and we should avoid discrimination here.

My amendments allow members to decide how many breastfeeding toddlers they are prepared to avoid discriminating against. The higher the age, the greater the likelihood that no one will be left out. Prejudice should not be pandered to but needs to be confronted head on. Whose breasts are they anyway?

I move amendment 1.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** I oppose the amendments in Carolyn Leckie’s name. It should not surprise members that no Health Committee member supported similar amendments at stage 2.

Everybody should be clear about what the bill is and is not. The bill does not create a new right to feed milk to a child in a public place. People already have that right in Scots law—that was made clear in the evidence to the Health Committee. If that is not what the bill is about, what is it about? It is about creating the new and appropriate criminal offence of preventing a child from being fed milk in a public place. If we are creating a new criminal offence, it is essential to have clarity. The amendments would fudge that and create difficulties. Amendment 1, which would remove the age limit altogether, would certainly do that.

The committee was impressed by the member who introduced the bill and the work that had been done to settle on the age of two. I have formed the impression from the amendments that Carolyn Leckie has lodged at stages 2 and 3 that she does not mind what age is chosen; if she does not get one age, she will go for another. That is not the way to approach amendments. All the amendments that she has lodged should be opposed for the simple reason that clarity in the criminal law is needed.

**Stewart Stevenson (Banff and Buchan) (SNP):** I hope that members will accept that I am not a prude, although I would not feel particularly offended if they suggested that I was. I am deeply disappointed that the speech from the member who lodged the amendments was, frankly, no more than a design to appear on tomorrow’s front page of the *Daily Mirror*, *The Sun* or some other tabloid. The subject is serious and must be tackled appropriately. Carolyn Leckie’s failure to show maturity does the argument that she deploys no good.

I am surprised that such amendments have been lodged at stage 3. An inability to present a coherent argument for a single viewpoint at stage 3 shows a singular lack of intellectual rigour and commitment to a viewpoint.

**Carolyn Leckie:** Will the member give way?

**Stewart Stevenson:** The member will be able to sum up.

I wonder whether, in having five amendments, the five Scottish Socialist Party members in the chamber should each have reflected one of the five viewpoints that the party clearly has.

I congratulate Elaine Smith on introducing the bill, which will be a valuable addition when it is passed, as I am sure it will be. I will be happy to support the bill, but the amendments do not show the way to deal with a bill at stage 3.

15:15

**Fiona Hyslop (Lothians) (SNP):** I, too, remind members that we are at stage 3. The Parliament is a law-making place, so the decisions that we take when making laws must stand up in court. Carolyn Leckie has missed the point, as have the Conservatives in opposing the bill in toto. In many times and in many places, politics and legislation must be about compromise. It is striking that in the bill and in her response to the amendments in committee, the member in charge of the bill took a responsible approach based on compromise, to ensure that we take the country with us. We cannot have arguments such as those made by Carolyn Leckie, which divide people and distract them from the main point about what is needed.

I would have preferred us to take a different route: a position based on rights and antidiscrimination, such as was taken by Queensland in Australia. Had we done that, there would have been no need for Carolyn Leckie’s amendments. We cannot take such an approach, because the Parliament does not have the powers to pursue it. Members are sighing, but this is a serious point. The issue is the powers of the Parliament. Because we are not taking the rights-based approach in the bill, we are required to make use of the criminal law, as Mike Rumbles pointed out. In matters of criminal law, it is necessary to be exact, because a criminal case could be pursued. That is the intellectual argument that Carolyn Leckie will have to address when she sums up. At stage 3, members must be responsible in the arguments that they make and must address the points at issue.

There is a strong argument for rejecting the amendments and for accepting that, as a compromise position, it is right that the Parliament should take a view on the age of children who are covered by the bill. In committee Kate Maclean made the important point that at the age of two a child is able to understand that it can be fed later. This is a responsible piece of legislation.

Very few women breastfeed beyond six weeks. Even fewer women breastfeed beyond two years.
The bill is for the 80 per cent or more of women—working-class women—in West Lothian who do not breastfeed at all after six weeks. Let us take a responsible position, follow Elaine Smith’s lead and reject the amendments.

Mr Stewart Maxwell (West of Scotland) (SNP): I have a great deal of sympathy for the amendments and for Carolyn Leckie’s position. It is slightly strange that we should say to mothers that they can breastfeed their children in public places up to the age of two but can no longer do so and be protected by this legislation after the children reach their second birthday. However, the member did not do her case justice in her opening speech—the argument could have been made better.

The problem with the amendments is that we risk giving the opponents of the bill the opportunity to put in a cheap shot, so that they can undermine the bill and make it a laughing stock. It is extremely important that we do not do that. Although I have a great deal of sympathy with the amendments, which set out the position that we should hold in an ideal world, unfortunately that is not the situation.

Evidence from around the world suggests that many women breastfeed children who are over two years of age. However, Fiona Hyslop has made the point that that is not the situation in our society today. I thought that the purpose of the bill was to ensure that we sent out a strong message to the people of Scotland that we think that children should be breastfed, where possible, as that is good for children and mothers, and that we want to raise the number of children who are breastfed for longer periods. The critical point is that the bill is not about two years, but about six, seven and eight weeks.

The bill is too important to be lost because of attacks by some of our friends in the press and even by some of our friends in the chamber, who will use every possible avenue to attack and undermine the bill and its purpose. Although I sympathise with the amendments, they do not address the current situation. It is more important to pass the bill in its current form, to get it on to the statute book and to send out a strong message to women in Scotland that the Parliament is defending them and that we are doing the right thing by both mothers and children in our society.

Eleanor Scott (Highlands and Islands) (Green): I will support the amendments, because I have re-examined the provisions of the bill, which talks about “feeding milk”. That includes bottle feeding. I know that most children over the age of two or three are no longer bottle fed and that they can be told to wait if they demand to be breastfed or bottle fed. However, that is not the case for all children. Some children—especially children with special needs—are bottle fed milk for much longer and should not be missed out. We are not dealing with a large number of children, but they are a group that can be discriminated against. We should support the amendments, which will not undermine the bill. The amended provision will not be widely used or make a difference to many people, but it should be in the bill for the sake of completeness. I will support the amendments.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I congratulate Elaine Smith on introducing the bill and thank her for all the hours of work that she has put in over the past few years.

In opposing amendments 1 to 5 I will repeat some points that were made by colleagues. I have no sympathy for the amendments.

Carolyn Leckie: Fiona Hyslop talked about compromise, which is why the amendments were lodged in their current form. As I stated in my speech, my preference is for there to be no age definition at all, but amendments 1 to 5 allow members to avoid discriminating. Does Cathie Craigie believe that it should not be a criminal offence for a publican or a restaurant owner to ask a mother who is breastfeeding a child over two to stop or leave? Is she saying that she supports that?

Cathie Craigie: No, I am not saying that at all. I am saying that I do not support amendments 1 to 5. The Health Committee made the point that the age of the child is important, because at a certain age it could wait until it got home or went somewhere else.

I understand the situation well. I fed both my children for the first year of their lives, and I would do anything to encourage women to breastfeed their children. People who use bottles do not realise the benefits that they are missing out on, such as the closeness that a mother can experience when she breastfeeds her child, to which Carolyn Leckie referred. We have to get across to the 80 per cent of women who do not breastfeed their children that they do not have to be superwomen.

Breastfeeding is natural, but I am afraid that there are people out there who do not think that it is natural to feed a child aged six. To some people, supporting amendments 1 to 5 would be saying that we will be encouraging them to do that.

The bill takes us a great step forward, and shows that we will not allow women who are breastfeeding to be discriminated against. As other people have said, the amendments are more about publicity seeking than furthering the cause of encouraging women to breastfeed.

The Minister for Health and Community Care (Mr Andy Kerr): As noted at stage 2 by the
Deputy Minister for Health and Community Care, Rhona Brankin, the Executive is committed to giving every child the best possible start in life. Elaine Smith’s bill will contribute to that. We also feel that the bill’s age limit of two years is appropriate.

In Scotland, our rates of breastfeeding initiation and duration are low and even at the six-week review fewer than 40 per cent of mothers are breastfeeding their babies. The Executive is committed to supporting breastfeeding and driving those rates up, but we must remain realistic. The World Health Organisation refers to feeding for two years and beyond and there will be mothers who continue to breastfeed for longer than two years—and we support them in doing so—but we believe that we must concentrate our support and promotional efforts on the very earliest period of a child’s life. In particular, we believe the first six months to be the most important period and we encourage all women who can and choose to breastfeed to do so exclusively for the first six months. It is that early period that we will focus on when developing our national breastfeeding strategy in conjunction with the Scottish breastfeeding group over the coming year.

In choosing the two-year limit, the bill will offer protection to the majority of women who choose to breastfeed in Scotland. We must remember that keeping the age limit at two years in no way makes the act of breastfeeding in public illegal. There is the risk that removing or changing that limit could open up the bill to ill-deserved and ill-informed criticism. Elaine Smith has put in a great deal of work to get the bill to this stage. It would be a great shame if anything happened to jeopardise the bill—our bill—at this stage, and therefore the Executive will resist amendments 1 to 5.

Elaine Smith (Coatbridge and Chryston) (Lab): Similar and identical amendments to those that are being moved by Carolyn Leckie today were rejected unanimously by the Health Committee at stage 2, but I am happy to debate the issues once again, because the more the subject is debated, the better for raising awareness and challenging some of the prejudices and misconceptions about breastfeeding.

I will provide a bit of background. It seems from research that the norm for weaning from the breast around the world is between two and four years, although in some cultures it happens when children are older. For example, custody law in India decrees that any child under six years old must reside with the mother because such children are considered to be of suckling age. Research that compares humans with other primates suggests that humans’ natural weaning age is a minimum of two and a half years and a maximum of six to seven years. It should be entirely up to mothers and babies when they want to stop breastfeeding and there should be no stigma attached to that, because it is their choice.

However, we do not live in a breastfeeding culture in Scotland and there are, of course, cultural issues to address, to which Carolyn Leckie referred. The reality is that even a small baby who is utterly dependent on its mother’s milk can be looked at askance when feeding in public and can be segregated or ejected from public places and licensed premises. The bill is intended to offer them protection in law and to promote breastfeeding, thereby—I hope—assisting in changing attitudes and impacting positively over time on how society views all breastfeeding.

I turn to the amendments. When proposed legislation seeks to change existing law it must be clear, unambiguous and precise, as other members have said. To leave the term “child” undefined would not make good law. Without a definition, “child” might include anyone from one day old to 18 years old. Given that the bill will create a criminal offence, “child” must be defined so that everybody knows exactly what the offence entails. Carolyn Leckie’s amendment 1 must be rejected based on the basic tenets of good Scots law.

Carolyn Leckie’s other amendments relate to a more substantive issue, which the steering group that I set up with professionals discussed in several meetings. The group finally agreed to the age of two as a cut-off point. Given the research on weaning that I mentioned, we could argue that seven years would have been a more legitimate cut-off point; I note that Carolyn Leckie did not include the age of seven in her suggestions. The age limit of two years was inserted in the bill because the World Health Organisation recommends that children be breastfed up to two years and beyond. It does not set an upper limit, but it does mention two years. It does not recommend that children be breastfed up to a year and beyond, three years and beyond or four years and beyond; it mentions two years and beyond. The age is not entirely arbitrary and there is logic to it.

The commonsense point was made to the Health Committee that children under two years cannot understand the concept of waiting for a feed, whereas older children can, and can generally communicate their feelings, wants and needs.

Carolyn Leckie: It is important that we address the point about children waiting for a feed because they can understand the concept. Why should they wait? For whose benefit should they wait, especially if they have an emotional need for a breastfeed? Should they wait because of other people’s prejudices?
Elaine Smith: They will still be able to feed. There is a misconception about the bill, which will protect children up to two years old who are being breastfed in public; it will not make it illegal to feed them if they are aged over two years. Over time, we will begin to change the culture, to which Carolyn Leckie rightly referred.

The bill is about safeguarding and protecting the right of young children to feed. It will create a criminal offence that will ensure that babies have the unfettered right to feed in certain public places. After much deliberation, the steering group fixed the age at two years to define the meaning of “child” for the purposes of the bill. That decision is measured and proportionate. In considering the evidence at stage 1, the Health Committee concluded that to define “child” for the purposes of the bill was appropriate. In the vote at stage 2, it unanimously rejected leaving out the age or changing it to a higher age.

As I said in response to Carolyn Leckie’s intervention, if the bill is passed, benefits will accrue in changing attitudes, in making breastfeeding more culturally acceptable and in encouraging breastfeeding of children beyond the age of two. I reiterate that the status quo will prevail. It will not be illegal to breastfeed one’s child after the child is two years old; that is the misunderstanding.

Although some children are breastfed for longer than two years, the majority are weaned far too early, as is evidenced by the Executive’s target of having by next year 50 per cent of children still breastfeeding at six weeks. That target is far from being realised—we are at below 40 per cent at present. Attitudes have to change and I think that they will evolve to embrace all breastfeeding as normal and nurturing maternal behaviour.

We have to consider the realpolitik. It is a bit of a quantum leap in the United Kingdom to introduce legislation on the matter. The provision of legal protection for breastfeeding of children up to two years old is reasonable, sensible and realistic for the reasons that I have outlined. However, if members take a different view and wish to insert an age other than two, that is their prerogative. The bill is in their hands at the moment and I would be relaxed about such a change.

I do not know where members will set the age limit; I do not know which of the options they will pick or what logic they will use. However, I am clear that the term “child” must be defined. Although I think that women and children should make their own choices about weaning from the breast, I must stand by the definition that is set out in the bill, as was agreed at stage 2.

The Deputy Presiding Officer: I call Carolyn Leckie to wind up.

15:30

Carolyn Leckie: I was told that I would not get to wind up, so this is a surprise and I do not have anything written.

I have to challenge—[Interruption.] Members are getting all excited. I have to challenge the grossly unfair allegations about my speech, which demonstrate the abject hypocrisy that I described.

Members: They do not.

Carolyn Leckie: They absolutely do. Some—although not all—speeches proved the points that I made about prejudice and pandering to prejudice. [Interruption.] I support the bill. I am not going to oppose it. I started off by congratulating Elaine Smith, and I will end by congratulating Elaine Smith. We will support the bill, whether or not it is amended.

Elaine Smith made a substantive point about the logic of determining the age limit. Elaine knows that, at stage 2, I moved amendments for there to be no limit or for the age limit to be five years, which would take the limit to a logical age—the start of a child’s school years. The purpose of that was to bring as many children as possible under the definition of “child” in order to avoid discrimination. That is why I lodged amendments; Parliament can choose how many children from whom we want to remove any risk of their being discriminated against.

If members set the limit at the age of three, that will cover almost everybody. If they set the age limit at four, that will cover nearly 100 per cent. To go beyond that would concern very few more. I think that taking the limit to three years would be more logical in respect of the WHO’s recommendations about “two years and beyond”. The point is worth repeating: in its latest strategy document, the World Health Organisation deliberately avoided providing a definition. In that definition, “beyond” means beyond two. Surely, it would be most logical to insert an age limit of three; Parliament can make that choice.

I was challenged to propose a compromise, which is why my amendments are as they are. They allow the opportunity for compromise and what could be more democratic, inclusive and dynamic than that? At stage 2, Elaine Smith asked why the limit could not be seven, six, five or four. It was legitimate to ask that, but I have still not had a satisfactory answer to the question why the limit should be two. Children are breastfed beyond that age—[Interruption.]

Could you stop the interruptions, Presiding Officer? This really is not fair.

The Deputy Presiding Officer: You have a point, Ms Leckie.
I was about to say that, when a member is on their feet making a speech or a statement, it really is rude of you all to be talking, and you are doing a lot of that. Members should listen to what Ms Leckie is saying.

Carolyn Leckie: I do not mind having a conversation about the matter outside the chamber, but I did not think that we were supposed to have such conversations in here.

There are children in the public gallery today. No doubt, there are toddlers beyond the age of two in the gallery, very attentively watching the debate and listening to what is said. They will be disappointed with some of the remarks that have been made and with some of the prejudice that has been conveyed by some people. Instead of acknowledging that a stigma exists and setting the age limit at two because of that stigma, we should be challenging that stigma. I challenge Parliament to consider compromising on the matter, as Fiona Hyslop asked us to do, and at least to adopt “two years and beyond”. To my mind, “two years and beyond” is three. Please support that proposal.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Amendment 1 disagreed to.

Amendment 2 moved—[Carolyn Leckie].

The result of the division is: For 7, Against 86, Abstentions 0.

Amendment 1 disagreed to.

Amendment 2 moved—[Carolyn Leckie].

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?
The Deputy Presiding Officer: There will be a division.

For
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Curran, Frances (West of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Harvie, Patrick (Glasgow) (Green)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Sheridan, Tommy (Glasgow) (SSP)

Against
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Broklebank, Mr Ted (Mid Scotland and Fife) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craige, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Finnie, Ross (West of Scotland) (LD)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springsburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNei, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Unilithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlie, Cathy (Falkirk East) (Lab)
Radicltfe, Nora (Gordon) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Barrf and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Tosh, Murray (West of Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 14, Against 79, Abstentions 0.

Amendment 2 disagreed to.

Amendment 3 moved—[Carolyn Leckie].

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Curran, Frances (West of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Harvie, Patrick (Glasgow) (Green)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Sheridan, Tommy (Glasgow) (SSP)

Against
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Broklebank, Mr Ted (Mid Scotland and Fife) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
The Deputy Presiding Officer: The result of the division is: For 13, Against 80, Abstentions 0.

Amendment 3 disagreed to.

Amendment 4 moved—[Carolyn Leckie].

The Deputy Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baird, Shiona (North East Scotland) (SNP)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (LD)
Curran, Frances (West of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Harvie, Patrick (Glasgow) (Green)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dumfriesshire West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Dunn, Mr John (East Lothian) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Finnie, Ross (West of Scotland) (SNP)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Graeme, Christine (South of Scotland) (SNP)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
MacAskill, Mr Kenny (Lothians) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacAskill, Mr Kenny (Lothians) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
MacKintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
MacAskill, Mr Kenny (Lothians) (SNP)
MacEwen, Mr Frank (Glasgow Shettleston) (Lab)
McAveety, Mr Tom (Hamilton South) (Lab)
McEveety, Mr Frank (Glasgow Shettleston) (Lab)
Macleod, Donald (Lochaber) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNeice, Pauline (Glasgow Kelvin) (Lab)
McNeice, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Maire, Mr Mairi (North East Scotland) (Con)
Maire, Mr Mairi (North East Scotland) (Con)
Mairi, Mrs Nanette (North East Scotland) (Con)
Mairi, Mrs Nanette (North East Scotland) (Con)
Mairi, Mrs Mary (Linlithgow) (Lab)
Mairi, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (SNP)
Peacock, Peter (Highlands and Islands) (SNP)
Peattie, Cathy (Falkirk East) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Radcliffe, Nora (Gordon) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, John (Ayr) (Con)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinhun, John (Central Scotland) (SSCP)
Swinhun, John (Central Scotland) (SSCP)
Tosh, Paul (Stirling) (Lab)
Tosh, Paul (Stirling) (Lab)
Tosh, Paul (Stirling) (Lab)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Wallace, Mr Jim (Orkney) (LD)
Welsh, Ms Andrew (Angus) (SNP)
Welsh, Ms Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
The Deputy Presiding Officer: The result of the division is: For 13, Against 79, Abstentions 0.

Amendment 4 disagreed to.

Amendment 5 moved—[Carolyn Leckie].

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Curran, Frances (West of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Harvie, Patrick (Glasgow) (Green)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Amendment 5 disagreed to.

Long Title

Elaine Smith: Amendment 6 is a technical amendment that will merely—

The Deputy Presiding Officer: I am sorry, Ms Smith—members are being very noisy this afternoon. I will not tell you again to be quiet.

Elaine Smith: Amendment 6 will merely help the clarity of the bill on an issue that the Scottish Executive helpfully brought to my attention last week. I apologise to the Health Committee that the amendment was not considered at stage 2, but I hope that Parliament will agree that it is a practical amendment.

As it stands, the long title does not employ the exact wording of section 1. It is imperative that the bill be as precise as possible so that we end up with good law. The main thrust of the amendment is to replace “being fed milk” with “feeding milk” to ensure that there is no ambiguity. I ask Parliament to support the amendment.

I move amendment 6.

Mr Kerr: As Elaine Smith mentioned, the need for amendment 6 arose from the Executive’s final consideration of the bill prior to today’s meeting. The amendment, which is minor, was suggested to ensure consistency between the offence that is described in the long title and that which is described in section 1. The amendment will make no change to any significant aspects of the bill and, as such, the Executive supports it.

The long title currently refers to “preventing or stopping a child from being fed milk”, whereas section 1 refers to preventing or stopping “a person in charge of a child from feeding milk to that child”.

The amendment is simply a tidying-up exercise that will ensure that the bill is as good as it can be. The Executive was happy to help in ensuring that.

Amendment 6 agreed to.
Breastfeeding etc (Scotland) Bill

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S2M-1968, in the name of Elaine Smith, that the Breastfeeding etc (Scotland) Bill be passed. I call Susan Deacon to speak to and to move the motion.

15:45

Susan Deacon (Edinburgh East and Musselburgh) (Lab): The Breastfeeding etc (Scotland) Bill, if approved by Parliament today, will be a landmark piece of legislation for Scotland. I am delighted to open the debate, and I thank Elaine Smith for giving me the opportunity to do so.

A great many individuals and organisations have contributed to shaping the bill, and I know that Elaine Smith has a very long list of people whom she wants to thank in her closing remarks. I am sure that they all join me, as will colleagues in the chamber, in thanking Elaine for her supreme efforts in introducing the bill and for championing breastfeeding in Parliament. [Applause.]

Even before it has reached the statute book, the bill has raised awareness and changed attitudes. It has spawned debate and discussion, given us insight and understanding, and enabled us to get behind some deep-rooted and sensitive cultural issues in our society. It is worth remembering that, when Elaine Smith first mooted the proposal, many people thought that it was at best unnecessary and at worst daft. The usual suspects described it as political correctness gone mad, and even the more measured commentators said that it was just not a real issue. However, as letters appeared in the newspapers and submissions came in during the consultation process, it quickly became apparent that it is a real issue and that the oft-quoted cases of a woman being thrown off a Lothian bus for breastfeeding and of a woman being asked to leave the cafe in a well-known department store and to feed in the baby-changing room instead were not isolated incidents. It became clear that such experiences were real and had been shared by many women throughout Scotland.

It is testament to the efficacy of the workings of Parliament that through consideration of a bill proposal from a back-bench MSP, we were able to bring to the surface those experiences and give a voice to the women who had them. Not only that but, critically, through the personal stories and testimonies that emerged, we were able to identify a strong link between the feeding choices that are made by individual women and the attitudes, or perceived attitudes, of those around them. It is easy for politicians to sign up to targets and principles, but the key is always to find the complex mix of policy, action, investment and—yes—sometimes legislation that will actually make a difference.

No one in this chamber would dispute the health benefits of breastfeeding to mother and baby. No one would suggest that the Executive or Parliament should do anything other than promote breastfeeding, and I think that everyone across the political spectrum signs up for the national breastfeeding target. Indeed, David Davidson has never missed an opportunity to remind us that it was, in fact, a Conservative Government that set that target. However, setting targets is one thing; achieving them is another. As the bill has been discussed through the parliamentary process, it has become increasingly clear that, if the rates of breastfeeding in Scotland are to continue to increase, we need to do something more and something different.

Education and awareness are vital; so, too, is the tremendous work that is done by midwives and health visitors in our maternity units and in the community. All that work has had, and is having, an impact. We must continue to build on that and I welcome the Executive’s commitment to do so. However, all the evidence that was presented to us during the passage of the bill suggests that those efforts will not, in and of themselves, get us there. We need to go a step further in tackling culture and attitudes if Scotland is truly to become more breastfeeding friendly. The bill gives us a tremendous opportunity to do that.

Let me say for the avoidance of doubt that the bill is not about telling anyone what to do, least of all telling a woman how to feed her baby. That is a deeply personal choice and every woman should be respected for, and supported in, the decision that she makes, whether it be to feed from the breast or from the bottle. What the bill will do is provide legal protection for a baby to be fed where and when it needs to be fed, by breast or by bottle.

The detail of the bill has been subject to rigorous parliamentary and external scrutiny and the principles of the bill were overwhelmingly supported by Parliament at stage 1. Today, we need to take the next step and translate those provisions into the law of the land. In doing so, we will send out an important signal that, in a modern Scotland, we cannot allow breastfeeding to be treated as unacceptable or offensive behaviour. A woman should not be moved on from, or chucked out of, a public place for doing that most natural and necessary of things: feeding her baby. A woman should not have to go into a toilet or to sit in her car—if, indeed, she has one—simply to feed her baby. As one mother put it, a woman should not feel that she is under house arrest because
she feels that she is unable to feed her baby outside the privacy of her own home.

It is a fact—as we have heard during the bill’s passage—that too many women in Scotland have not breastfed or have stopped breastfeeding earlier than they would have liked, not because they did not want to breastfeed, but because they felt that those around them would not like them to breastfeed. Part of the reason why is that our culture and our law tolerate the practice of excluding women from public places simply because they want to feed their babies. We must tackle that situation and we must all learn to feel more at ease with the sight of a baby at its mother’s breast. Change will be gradual; it will not happen overnight. However, the bill will help us to bring about the much needed step-change in the culture and attitudes that I truly believe stand in the way not just of our achieving targets, but of our bringing about a genuine and positive societal shift in respect of breastfeeding in Scotland.

If we pass the bill, we will lead the way in the United Kingdom. However, we will not be in wholly uncharted terrain. Similar measures have been adopted in other countries and they have made a difference. I am in no doubt that we can also achieve such change in Scotland, partly through the range of measures and work that are already under way in the Executive, the health service, our schools and elsewhere but—crucially—we can also do so through the significant step forward of changing the law of our land through the bill. I believe that the bill is not only one of the most innovative measures that have been brought forward in Parliament, but one of the most practical and significant ones. The bill underscores our sincerity in wanting to give all our children the best possible start in life and in working tirelessly to improve the health of Scotland. The bill is an opportunity that we should grasp with both hands and take forward at decision time today.

I will end on a personal note. I genuinely appreciate Elaine Smith’s giving me the opportunity to contribute to a debate that, as she knows, has a particular resonance for me. Not a lot of people know this, but about six years ago I sat in front of a Labour Party Scottish Parliament selection panel. One of the standard questions, as many colleagues here will recall, was, “If you had the chance to take a member’s bill through the Scottish Parliament, what would it be?” At that time, I was a fairly new, bursting mum. Based on my experiences at that time, I waxed lyrical to the panel about how I would like to introduce a bill that would help to make breastfeeding more acceptable in Scotland, and about how important it was for us to change our culture and attitudes to make Scotland a more breastfeeding-friendly place. I got the knock-back from that particular selection panel and will never know whether my choice of bill had anything to do with that. However, I do know this: while I merely aspired to doing something, Elaine Smith has done it. For that, she has my heartfelt admiration and thanks, both as a politician and as a mum.

This is, potentially, a landmark occasion for Parliament. To agree to the bill is the right thing to do. It will make a difference, so I am pleased and proud to move the motion in Elaine Smith’s name.

I move,

That the Parliament agrees that the Breastfeeding etc. (Scotland) Bill be passed.

15:54

The Minister for Health and Community Care (Mr Andy Kerr): I congratulate Susan Deacon on her opening speech on behalf of Elaine Smith. We owe thanks to Susan for that and to Elaine for bringing the bill before us.

I am grateful for the opportunity to convey the Executive’s support for the bill. Although I was appointed to the health remit only recently, members may rest assured that I and my Cabinet colleagues have been following the progress of the bill throughout its time in Parliament.

I have been impressed by the level of support for and interest in the bill among members from across the political spectrum, which is good to see, although Conservative members demur from that. It is a great shame that they have been unable to support a measure that has the potential to have an important and valuable impact on the health and development of our youngest citizens.

The rest of the Parliament should be proud of the support that it has offered Elaine Smith in developing such unique legislation. I offer my thanks to Elaine and members of the Health Committee for the scrutiny and hard work that they have undertaken to progress the bill thus far.

The bill has stimulated discussion about breastfeeding throughout the country and has proven to be much more than simply a piece of legislation. In my view, it has been a valuable vehicle for raising the profile of breastfeeding, particularly among groups in our society who might not normally engage in discussion of such topics. The importance of that should not be underestimated; after all, communication is the key to change.

Effective communication is already working. Over the past 10 years, many more of us have learned about the benefits of breastfeeding. We know that breastfeeding is good for our children’s health and is also good for mothers’ health. I point especially to the evidence from the Dundee infant feeding study, led by Professor Stewart Forsyth and his colleagues, which found that breastfeeding...
can reduce health inequalities during childhood and might also alter the relationship between childhood socioeconomic disadvantage and poor adult health. All sorts of different aspects bring benefits for society at large. Therefore, we must do all that we can to improve breastfeeding rates in Scotland. That is why breastfeeding is a key part of the Executive’s public health agenda and why we support Elaine Smith's bill.

The bill has not been introduced to curb the activities of licence holders or owners of public premises; it has been introduced to encourage, support and protect our citizens’ rights to take part in vital health-promoting behaviour. The future act will create an environment throughout Scotland in which mothers feel free to participate in one of the most natural acts there is without fear of judgment and/or recrimination. It will mean that they can breastfeed where and when is most appropriate for them and their child—and, in future, without being in a smoky atmosphere. That is as it should be, because breast milk is the ultimate convenience food, to which the Executive and Elaine Smith lend their support.

The debate is not only about health, as we have heard from many members; just as important are the emotional and social bonds that are created between mother and child in the early years of infancy. Changes in attitude might not happen overnight, and the bill might not change the views of the most ardent critics, but it represents a major stepping-stone to achieving the behavioural and cultural shift that is needed in our country. It is only disappointing that the bill is required at all.

Last week, I was fortunate to be invited to speak at the United Nations Children’s Fund—UNICEF—UK baby-friendly initiative annual conference. It was a fantastic occasion, attended by 800 people from all over the UK who are involved in breastfeeding and breastfeeding promotion, including professionals, mothers, support workers and volunteers. When I spoke about Elaine Smith’s bill, the enthusiasm for the steps that we are taking in our Parliament was tangible. I was bolstered and reassured by the delegates’ comments about why the bill will be such important legislation.

We also celebrated the UNICEF UK baby-friendly initiative, which is an accreditation programme. Hospitals and, more recently, community settings, such as local health care cooperatives, are encouraged to work to the high standards set by the initiative, with the aim of providing the highest level of infant feeding advice and support to new mothers. It was the first such conference in Scotland and I was happy to be given the chance to inform the conference of our excellent track record in the promotion and support of breastfeeding in Scotland.

Currently, 86 per cent of our maternity units participate in the scheme, which results in 48 per cent of our babies being born in hospitals that operate to the highest standards of care and support. That is a truly impressive record when we compare it with the average of 16 per cent in the rest of the UK.

That does not mean that the other 52 per cent of babies and mothers do not receive a high level of support in other hospital and community settings—14 of our 15 NHS boards are implementing dedicated breastfeeding strategies with the assistance and guidance of our national breastfeeding adviser, Jenny Warren.

Those facts are impressive in their own right and are due in no small part to the highly trained, committed and dedicated midwives, health visitors and infant feeding advisers throughout our country. I commend all those people for their efforts.

I spoke to the conference about the many examples of innovation and exciting practice in NHS boards in Scotland. Lanarkshire NHS Board is reinforcing the value of breastfeeding by displaying the slogan “You can’t get fitter than a breastfed nipper” on 32 of its vehicles. Tayside NHS Board has produced a video and training package entitled, “Is she getting enough?”, which highlights the influence of partners, friends, extended family and health professionals on the decision whether to breastfeed. I visited stalls at the conference and I was impressed to see that Scottish material was being snapped up by delegates from the rest of the United Kingdom, because Scotland is regarded as the benchmark in the UK for the promotion of breastfeeding. Indeed, Greater Glasgow NHS Board hopes to win the first global UNICEF award for a paediatric unit. I also spoke about our national approach, through the work of the national breastfeeding adviser, the Scottish breastfeeding group and NHS Health Scotland.

Delegates were encouraged to hear about the work that I described, but delegates from the rest of the UK were most impressed by my references to the Breastfeeding etc (Scotland) Bill. I am aware that not just Scotland, but the rest of the UK, is watching the progress of the bill. By introducing the bill, Elaine Smith has put Scotland on the map in relation to infant feeding. We have a real opportunity to show the rest of the world the way by supporting and passing the bill.

The figures for the uptake and duration of breastfeeding might not be as we want them to be, but we are working to drive them up. I commend Elaine Smith for her hard work and urge all members to support the motion.
The Deputy Presiding Officer (Murray Tosh): I call Fiona Hyslop to open for the Scottish National Party.

16:01 Fiona Hyslop (Lothians) (SNP): I pay tribute to Elaine Smith for introducing the bill and, more important, for presenting the bill and arguing the case in a way that has persuaded people who might have been reluctant to support the bill at the start of the process. That is a tribute, because any member can progress a bill on proposals that have people's initial support, but the test is to persuade people during the process. During the debate on the stage 3 amendments, I talked about the compromises that many people have made to make the process work.

I should declare an active interest as a current breastfeeding mum of a five-month-old baby—don't wrinkle your nose, Presiding Officer. That is the point; we must address attitudes. As a breastfeeding mother, I know that my child is at less risk of gastrointestinal infections, respiratory infections, urinary tract infections, ear infections, allergic diseases, eczema, asthma, wheezing and insulin-dependent diabetes. I also know that I am at less risk of breast cancer, ovarian cancer, hip fractures and bone-density problems. I say to anyone who reports the debate that if they think that the issue is frivolous and should not be addressed by the Parliament, they should consider those statements. This is a serious issue.

The solutions for public health are not necessarily easy. We have to consider whether to pass laws that lay us open to accusations of a nanny-state approach. We must also consider whether law can lead public opinion. Elaine Smith has demonstrated that the progress of legislation can lead and persuade public opinion, which is an important point.

I want to talk about life-changing experiences. Not only did I have a baby earlier this year, but I passed a significant birthday. A few weeks after the birth of my baby and after my birthday—[Interruption.] It was my 21st birthday. A few weeks after that, I was mightily surprised to be asked to take part in a health promotion exercise for breastfeeding awareness. I was to star in a calendar. Before members start anything, I explain that I am talking about an alternative calendar, which will be launched at Livingston Football Club on 2 December. It shows ordinary women from West Lothian—including me—breastfeeding their children in ordinary situations. The best picture was taken at the club and shows rows and rows of people, including mothers and babies, all of whom are dressed in Livingston colours. The calendar shows that breastfeeding is natural and I commend it to members and the minister as a Christmas present. I took part in the promotion and was pleased to do so.

We should be relaxed about the issue—that is the whole point; we should not be uptight. That is where Carolyn Leckie misses the point—by getting so uptight. Breastfeeding is normal and natural.

What can we do to make a difference? How can we change perceptions? I have said before that I would prefer it if the legislation had been on the basis of antidiscrimination. The Queensland example is a good example of that, but we are not in that situation. I commend the committee for looking into the issue of criminal legislation and addressing it very seriously.

We have to address workplace situations. I would say to the Deputy Presiding Officer that continued breastfeeding in this place would be enhanced if, rather than the visitors' crèche, we had a workplace nursery. That might allow staff and MSPs to continue breastfeeding for longer than they would otherwise.

I refer the minister to section 4 on the promotion and support of breastfeeding. The UNICEF report was in July. One of the most serious issues that we will have to address—and I hope that the minister will do so—is the minister's powers under section 4. The 70 per cent of women who do not breastfeed after six weeks take that decision in the first few hours. Women are not being allowed to stay in hospital, with the support of midwives, in the early days after the birth of their child. They are not getting the medical provision that they need to continue breastfeeding. I appeal to the minister to examine the rates at which women are discharged from hospitals, because continued support by breastfeeding-supporting midwives would make a crucial difference.

Elaine Smith has done a marvellous job. She has persuaded people and that is the important thing. I hope that, in the days and years to come, we will have health ministers reporting that Scotland is leading the way rather than falling behind. Radical and considered measures are required and Elaine Smith should be congratulated on her proposals.

16:07 Mr David Davidson (North East Scotland) (Con): I, too, congratulate Elaine Smith on her dogged determination over several years—indeed, into her second session of Parliament—in pursuing her right as a backbencher to introduce a member's bill. I congratulate her on how she has gone about it. She has done so in a dignified manner, which does credit to the subject at heart.

We totally support the promotion of breastfeeding. There is no argument about that;
no one in this chamber would be against it. However, I want to hear a bit more from the Executive about how it will support pre-birth mothers in gaining confidence, so that breastfeeding becomes an enjoyable habit, because the health benefits for the child and mother are undoubted.

When Fiona Hyslop declared some of her personal details, she named a number of things that she could avoid in life. One that she did not mention is rheumatoid arthritis. My wife will kill me for saying this but, despite feeding five babies by breast, she has developed rheumatoid arthritis. She may be the exception to the rule.

Mike Rumbles made an important point about the right to feed in law. There is also a right in the common law in Scotland not to be abused, manhandled and so on. The evidence that the committee heard from the police was that they did not think that many criminal charges would be brought if the new legislation goes through. I was speaking to a former policewoman today who had breastfed her child. She said that common-law remedies exist. If the police were invited to deal with an incident, they could do so under current law. If all else failed, they could use the well-rounded breach of the peace legislation. That has been done.

Elaine Smith (Coatbridge and Chryston) (Lab): I recall from the evidence that was given to the committee that the Association of Chief Police Officers in Scotland said that it would not want to use breach of the peace legislation. The witnesses did not think that that was a realistic option.

Mr Davidson: The witnesses might have said that but, as I said, I talked to someone who was on the beat until very recently. They told me that the police were using the existing law. There is confusion on the subject.

As the minister rightly said, the key question is what we are going to do to increase the rates and duration of breastfeeding. Although I am pleased to hear that he wishes to promote both those things, his target of six months is adventurous, albeit that it is realistic. I wish him every success in trying to reach it.

The figures, which I also gave in the first debate on the subject, show that, following the targets that the Conservatives put in place, which have been supported by Government since that time, we reached 40 per cent in 2000. Unfortunately, since that time, the level has dropped to 36.5 per cent. The reasons for the drop in uptake must be examined carefully.

I agree with the comments that members have made about stigma. We need to ensure that legislation is practical, useful and delivers. The bill is supposed to be about encouraging more women to breastfeed for longer. It is about uptake and duration, not about the creation of a criminal offence that is unlikely ever to be invoked. In fact, where such regulations exist, including in many of the American states, almost no charges have been pressed and no increase in breastfeeding rates has resulted. Although I fully support the ideas behind Elaine Smith’s bid to improve breastfeeding rates, I cannot support the introduction of a criminal offence that, in all probability, will never be used.

16:11

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): On behalf of the Liberal Democrat group, I congratulate Elaine Smith on her achievement. It is quite something for a back bencher to change Scots law—subject to the vote this evening, of course.

David Davidson’s speech on behalf of the Conservatives was disappointing. Once again, the Conservative party is missing the point on the change from an offence in civil law to one in criminal law. At the moment, the onus is on the individual to fight a civil action through the court. Who would do that? Nobody. The practical objective of changing the offence from a civil offence to a criminal offence is to change attitudes.

Although I speak on behalf of the Liberal Democrats, I warn Elaine Smith that the vote is not a whipped vote. I have recommended that the Liberal Democrat group supports the motion, but that is all I can do—who knows, it might have been counterproductive of me to have done so.

The bill is an inclusive bill; it is not just about making a new criminal offence of preventing a woman from breastfeeding a child, but about making it a criminal offence to prevent a person from feeding milk to a child under two years of age in a public place. The bill is not an exclusive but an inclusive piece of legislation. [Interuption] I am glad to hear that one of the babies in the public gallery is supporting me. I hope that the Minister for Parliamentary Business has noticed my comment about the inclusivity of the bill, particularly in view of what I said yesterday.

The bill is not about making a change in the law to give new rights to breastfeed in public. As other members have said, that right is allowed under Scots law at the moment; we are talking about changing attitudes. Everyone must realise that we cannot have people being removed from a public place simply because they are feeding a youngster.

As I said, the bill moves the onus from civil to criminal law, which is a point that, unfortunately, the Conservatives have missed. The bill sends a
clear message to everyone that, if they prevent a person from feeding milk to a youngster in a public place, their offence in so doing is so bad that it needs to be a criminal offence.

Once again, I congratulate Elaine Smith on introducing the bill. I am sure that all my Liberal Democrats colleagues will vote for it at decision time.

16:14

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I congratulate Elaine Smith on the bill. My experience over many years has taught me the difficulty of persuading people to breastfeed. Although rates have been going up, too many people fail. One of the most important parts of the bill is section 4, on the promotion and support of breastfeeding—

The Deputy Presiding Officer: I am sorry, Dr Turner, but I will have to stop you. Although two microphones are turned on in front of you, I understand that some members are having difficulty in picking you up.

Dr Turner: I am sorry, what is the problem?

The Deputy Presiding Officer: Could you position yourself closer to one of the microphones, Dr Turner?

Dr Turner: Can you hear me now?

The Deputy Presiding Officer: I can. Please start again.

I congratulate Elaine Smith. The bill is wonderful and makes a great statement. All my working life, I have found it extremely difficult to persuade people to breastfeed. Fiona Hyslop, who has been close to the subject recently, raised the most important points, which relate to section 4. I hope that that section, on the promotion and support of breastfeeding, will result in a great deal of effort being put into those activities in the antenatal and postnatal periods, in particular in hospital, in the special 48 hours after the birth, which is when some people find it difficult to breastfeed. Support requires time and staff, which are expensive. We need to put in a lot of effort in the few hours after birth. Nowadays, people are more frequently discharged early from hospital and go home to all their responsibilities—perhaps they have other children. When the child is a first one, people need home support, which takes time and money. That requires money. I hope that section 4 will have an effect.

When people go home after giving birth, they often find that they have many well-intentioned relatives and friends who all want a wee share of the baby. They often persuade the mum that it would be much better if she bottle fed, because that would give them a bigger share of the child. A young mother in that situation who is not very assertive needs a lot of home support with breastfeeding.

At first, I had difficulty with the bill’s introduction of a criminal offence, but I have been persuaded about that. The culture in Scotland means that people do not talk about such matters and do not like to allow breastfeeding in public. Few people would ever make it difficult for a woman to breastfeed in public because, most of the time, we are not aware that people are breastfeeding, as it is done surreptitiously. It is odd that the Health Committee heard so much evidence about people having a bad time breastfeeding in public.

One good feature of the bill is that it raises awareness of the issue. In conversations, people have been telling me about their experiences 30, 20 and 10 years ago. It is about time that people in this country accepted breastfeeding as something physiological that is good for everybody. We all accept the benefits, which have been highlighted. Breastfeeding is good for the baby’s and the mother’s health and it should be promoted.

I thank Elaine Smith for all her hard work. I took on board her evidence and the other evidence that the committee took. I fully support her and I wish the bill well. I hope that ministers read section 4 and provide support for the promotion of breastfeeding at the crucial time, which is just before and just after the baby is born. Too many people give up too easily.

16:18

Janis Hughes (Glasgow Rutherglen) (Lab): I, too, thank Elaine Smith for introducing the bill and for the dedication that she has shown during the process. I also thank the Health Committee clerks for their hard work and support as we worked through the bill.

In scrutinising the bill, the committee sought to address several issues. The principal ones were whether evidence exists that mothers are likely to encounter adverse reactions to breastfeeding their child; whether such reactions are likely to inhibit the take-up and duration of breastfeeding; and whether introducing a criminal offence of deliberately preventing a person from breastfeeding would increase the take-up and duration of breastfeeding. It was difficult for the committee to access definitive research that details how common it is for women to be asked to leave a public place when breastfeeding. However, witnesses from the National Childbirth Trust and the Breastfeeding Network said that, in the course of their work, they were regularly in contact with women who have encountered such problems. While that evidence is clearly anecdotal,
the committee accepted that there is evidence to support the view that mothers often experience adverse reactions to breastfeeding in public. There was also a clear consensus among witnesses that such reactions—or, at least, the fear of provoking them—inhibited mothers from breastfeeding in public. Therefore, the committee accepted that such attitudes could have a negative impact on breastfeeding rates.

We have heard a lot today about the fact that the bill seeks to make it a criminal offence to prevent or stop a child being fed milk. The issues surrounding that criminalisation were more complex. Some witnesses were strongly of the view that criminalisation would make more women confident and assured about feeding in public, but others were not so sure. The committee heard from the Association of Chief Police Officers in Scotland that, rather than make the prevention of breastfeeding a criminal offence, it might be preferable to include a statutory provision on breastfeeding in the licences and charters of public establishments. However, we heard evidence from Elaine Smith and from Mike Dailly of the Govan Law Centre that that would mean that some public places would be missed out.

It can certainly be argued that the principal reason for the bill is not punitive and that the possibility of legal action should simply act as a deterrent. Elaine Smith is keen that the bill should not lead to a large number of prosecutions and intends the purpose to be to change attitudes and to make women feel more comfortable about breastfeeding in public. David Davidson commented that, in other places in the world where it is an offence to prevent breastfeeding, the law has not been invoked, but it is not a good argument to say that, because the law would never be used, the prevention of breastfeeding should not be made a criminal offence. The fact is that we seek to make it a criminal offence as a deterrent to those who seek to prevent or stop women breastfeeding in public places. There was little doubt in the committee that legislation can have a positive impact on changing attitudes and behaviour.

On the duty on Scottish ministers to support and encourage breastfeeding, Malcolm Chisholm, when he was Minister for Health and Community Care, told the committee that the Executive’s general commitment to promote health improvement in the National Health Service Reform (Scotland) Bill might render it unnecessary to include a specific duty on the promotion of breastfeeding. However, the committee fully supported the measures in the bill to promote the take-up and duration of breastfeeding and did not accept that the continuing discussions on the issue should hinder the bill’s progress.

The bill is not about making it illegal to breastfeed babies over a certain age; it is about ensuring that breastfeeding and bottle-feeding mothers and babies are given equal and unimpeded access to public services and spaces. It will also have a key role to play in changing attitudes and ensuring that mothers no longer feel inhibited about breastfeeding in public. Therefore, I am happy to give it my full support today and to recommend that the Parliament pass the bill.

16:23

Carolyn Leckie (Central Scotland) (SSP): Members need not be nervous, because I will not be using any provocative language.

I reiterate that I feel positive about the bill. It is a tremendous achievement and the Scottish Socialist Party will support it despite our amendments not being agreed to. It was important to press the arguments in those amendments, because it is clear that prejudice and stigma continue to exist and need to be addressed.

Elaine Smith knows that, as she has argued in the past, the bill is not a panacea that will ensure the promotion of breastfeeding; nor is it the only way to increase breastfeeding rates and the length of time for which babies are breastfed. I will concentrate some remarks on those issues.

Contrary to allegations made earlier, the last thing that the SSP needs this week is publicity. I have an extremely long record—since 1986—of promoting and supporting breastfeeding. In 1986, when my first daughter was born, I lived in Castlemilk in Glasgow, which is just the sort of community where breastfeeding rates are extremely low—even lower than they are now. I was 21 and just as bolshie as I am now, but perhaps in a different way. It took a lot of determination for a young, working-class woman in Castlemilk to breastfeed, surrounded as I was by bottle-feeding friends, families that all bottle fed and society’s attitudes towards breastfeeding.

I am immensely proud of doing that. It was the start of my promotion of and support for breastfeeding. I challenged my relatives, my friends and my community. In 1986 I established the first ever breastfeeding support group in Castlemilk with the help of the National Childbirth Trust and my local health visitor, who was excellent. It shames me that I cannot remember her name, but she is out there somewhere and she was very helpful. That started a long period of promoting breastfeeding and challenging stigma and it was mainly that experience that influenced my decision in 1992 to become a midwife. I was particularly interested in promoting choice for women in childbirth and an increase in support and resources for breastfeeding women.
Unfortunately, problems remain. I had many positive experiences as a midwife in the health service but I also had many negative experiences. I had to challenge the attitudes of fellow professionals and the medical establishment and I had to work in an under-resourced environment in which people are forced to make impossible choices, such as the choice between staying with a distraught early-breastfeeding mother who needs support and going to attend to an emergency. No midwife should have to make such choices, and that is my continuing challenge to the Executive. All those things need to be tackled if there is to be a real difference in the incidence and continuance of breastfeeding. Baby-friendly initiatives need to be backed up with resources and staff. Otherwise, they are just bits of paper.

I finish by again congratulating Elaine Smith. I want to make sure that no one makes the mistake of thinking that we do not support the bill—we absolutely do, but it is also normal and natural to breastfeed beyond the age of two.

16:27

Mr Kenneth Macintosh (Eastwood) (Lab): I too congratulate Elaine Smith on her determination and application in steering the bill through Parliament. Turning a member's bill into statute is not an easy matter and even with the support that she has been given both inside and outside the Parliament most of the burden must have fallen on her shoulders. I congratulate her on the commitment and effort that she has shown.

There have been many obstacles in the way of the bill, not least the negative and hostile attitudes that the proposal to encourage breastfeeding—or even just to normalise it—has provoked. It never ceases to amaze me, even in these relatively liberal and liberated times, how much work we have to do to overcome the dark forces of reaction, ignorance, antipathy and inertia—or the Tories, as we more affectionately call them. It is clear from the way in which David Davidson and his colleagues are voting this afternoon that we still have some way to go.

Of course, there are some behaviours that we cannot change. When I spoke during the stage 1 debate on the bill, I said that my interest was more than academic because my wife, Claire, was heavily pregnant. The good news is that she gave birth two weeks ago to a baby girl, Annie. As we speak, Claire is either breastfeeding, between feeds or, if she is incredibly lucky, catching up on some sleep while the baby rests. I was tempted to move an amendment at stage 2 to make it illegal for babies to feed between midnight and 6 o'clock in the morning. I have no doubt that that would do wonders for exhausted new mums and dads, but I recognise that babies are only doing what comes naturally. The same cannot be said of the prejudice, hostility and discrimination that are too often shown to breastfeeding mothers; those are entirely social attitudes and learned behaviours.

Before I get too sanctimonious, I should admit that I still have a distance to travel in challenging my own attitudes. The speeches at stage 1 were excellent—they were more personal than we are used to but all the more illuminating for that. As usual, a passionate contribution came from Carolyn Leckie, who spoke of her first militant breastfeeding against her father-in-law from her hospital bed. Unfortunately, my first reaction was to feel sorry for her father-in-law but perhaps, as I said, I have some way to travel.

The bill creates new criminal sanctions, but it is not its intention or my wish to criminalise otherwise law-abiding members of society. The aim is to change behaviour and to challenge negative attitudes. More than anything, the bill is about normalising and accepting absolutely natural behaviour.

I will conclude with another personal experience that is up to date. Last week, my wife, Claire, was in our local library with the kids at a storytelling event for children. Members can imagine that, after having four children, Claire is comfortable with breastfeeding. She asked the librarian, who is a lovely woman, whether it was all right to feed the new baby. The librarian said that she was fine with the idea, but that others might object, so she asked whether Claire would mind using the back room. The only things that should be put in the back room are old-fashioned and outdated attitudes. The bill will help to make that happen and I commend it to the Parliament.

16:30

Eleanor Scott (Highlands and Islands) (Green): I add my voice to those that have supported Elaine Smith and commended her for her work. When I had a word with her in the canteen queue the other day, she said that the culmination of three years' work had been reached. She has done an amazing amount of work on the bill, which will be a tremendous piece of legislation. I am happy to support it and to congratulate her on it.

In earlier debates, we heard upsetting stories of problems that mothers who feed their children in public places have faced in the recent past. I hope that the bill consigns such incidents to the past.

The health effects of breastfeeding are well-known and have been widely aired and discussed in the debate and at earlier stages. We all want the Scottish rate of 36 per cent breastfeeding at six weeks to increase. In some areas, the figure is better. The highest rate in Scotland is in Orkney,
where it is nearly 70 per cent. That can be partly attributed to the excellent support that mothers there receive. The same team of midwives and general practitioners looks after mothers antenatally as looks after mothers and children in hospital and postnatally. That is quality care that is different from that which is received in a large specialist unit. As the figures show, breastfeeding can have a lasting effect on all children's health by conferring on children positive benefits. Specialist units cannot always match such figures.

I hope that the bill will help us to improve Scotland's breastfeeding rates and that the national health service will be properly resourced to support mothers. That should include help for peer support groups at which breastfeeding mothers support one another. As others have said, professional time to help is limited and peer support can be extremely useful.

Attitudes do not change overnight, but by stopping negative attitudes from impacting directly on mothers and babies, I hope that we can start to move to the point at which a mother has a genuine choice about how to feed her child, rather than a choice that is constrained by fear, embarrassment or the fear of being publicly embarrassed. If the Parliament agrees to pass the bill, today will be one of the days when I go off in the train and think that we all did a really good thing. I am happy to be part of that and to add my support and that of my colleagues for the bill. I thank Elaine Smith.

16:33

Donald Gorrie (Central Scotland) (LD): It is clear that I can add no expert knowledge on the subject, but I am happy to support Elaine Smith's bill and to congratulate her on her success in taking it through the Parliament. My similar efforts resulted only in the addition of one section to somebody else's bill, so she has done much better than I did.

It is important to recognise that legislation can help to change attitudes only if it is part of a package—the bill is intended to be part of a package. If the bill is agreed to and it results in an increase in the number of Scottish mothers who breastfeed and in no prosecutions, it will have succeeded. That is the objective. It is a question of changing attitudes, which is difficult, as we all know. Prejudices exist and an anti-woman prejudice remains in our society.

Recently I came across an amusing example of that prejudice. I thought that I would try to help the cause, so I inquired of two august Scottish establishments why they had no women members. When I asked whether their rules prohibited women members, I was told that the rules said nothing of the sort. However, the rules said that all members had to be proposed, seconded and voted on by members. No woman had ever been proposed. Prejudice can be relatively subtle, but it is still strongly present. It is important that we send out the message that it is good for women to feed their babies and that we should accept and recognise that as a natural process. Feeding babies in public is a perfectly normal part of human behaviour.

In addition to the bill, there must be education in schools and education of old fagies such as me so that we accept that feeding of babies in public is normal. There is a long history of anti-feminism, of which opposition to breastfeeding is part. The bill is very welcome, but we must all help to address this problem. The Executive must put effort into teaching people to have more sensible, sensitive attitudes to such issues, so that in due course, long after I am dead, women can be remotely equal with men. Unfortunately, there is still a long way to go before that is achieved.

16:36

Mrs Nanette Milne (North East Scotland) (Con): I, too, congratulate Elaine Smith on the way in which she has piloted the bill through the parliamentary process and has kept members regularly informed about the detail as the bill has gone through its consultation and committee stages. I admire the member's tenacity in reintroducing the bill so soon after it fell at the end of the previous parliamentary session.

I am sorry that Conservative members cannot support the bill, but we believe that to make a potential criminal out of a proprietor who does not wish to allow breastfeeding to take place in public on his or her premises is a draconian measure and that what is needed to change attitudes is persuasion, not the threat of prosecution. We know from the police that there are likely to be very few prosecutions under the bill. Because the evidence shows that there will be enforcement difficulties, we think that it will not be particularly effective. Those are the reasons why we opposed the bill at stage 1 and the reasons why we will vote against it today.

However, we have no disagreement about the merits of breastfeeding. It is undoubtedly good for babies and for the long-term health of mothers. Every encouragement should be given to mums to start and to persevere with breastfeeding. As the minister said, national campaigns to promote breastfeeding, coupled with local support strategies, have resulted in a significant rise in breastfeeding rates during the past 10 years. An audit of health board strategies has concluded that significant progress has been made in developing and implementing those strategies and policies.
Campaigns to promote breastfeeding should continue and should be coupled with personal support and encouragement for mums to breastfeed in the early months of their children’s lives. However, I cannot see that legislation of the kind that is proposed will do anything to win over the bigoted people who tut-tut and criticise mums who breastfeed in public. Thankfully, those people are increasingly in the minority. Gradually but steadily, we are seeing a change in culture away from their Victorian attitudes, and breastfeeding is again becoming accepted as normal and unremarkable, wherever it takes place.

Many mums do not want to feed their babies either breast milk or bottled milk in public, but neither do they want to be relegated to a toilet or baby changing room to do that. Proprietors should be actively encouraged to provide comfortable facilities for those mums who wish to feed their babies on the premises but out of the public eye. I fully support Fiona Hyslop’s suggestion that there should be breastfeeding facilities in the crèche in this building, which would set a good example to other establishments.

Fiona Hyslop: There are breastfeeding facilities in this building. I encourage Conservative members to inspect them as part of their research. The point that I was making is that a workplace nursery is much more conducive than a visitors crèche to continuing breastfeeding.

Mrs Milne: I take the member’s point and am sorry for misunderstanding it.

I will be surprised if the bill makes a significant difference to the number of mums who decide to breastfeed, because the reasons why women decide not to breastfeed are many and varied. They are much more complex than the fear of being embarrassed by narrow-minded onlookers.

Public attitudes are changing. A recent survey showed that the majority of people find discreet breastfeeding in public perfectly acceptable. That positive change has come about without Government intervention. I am convinced that, with encouragement, more and more establishments will welcome breastfeeding mums, until it becomes unthinkable for them not to do so.

I reiterate what I said in the stage 1 debate. My colleagues and I fully support the promotion and encouragement of breastfeeding throughout Scotland, have absolutely no bias against breastfeeding or bottle feeding in public and welcome the positive and on-going change in public attitudes. However, we do not see the need for a criminal law to move the position on, and we do not think that the bill will influence most mothers’ decisions on how to feed their babies.

Mike Rumbles: Will the member give way?

Mrs Milne: I am sorry, but I am closing.

We fully understand why Elaine Smith has brought the bill to the Parliament, and we applaud her intentions and hard work. However, we remain of the opinion that the on-going evolutionary change in public attitudes will be more effective in the long run than the threat of prosecution. We will therefore be maintaining our opposition to the bill.

16:41

Mr Stewart Maxwell (West of Scotland) (SNP): Like every speaker so far, I pay tribute to Elaine Smith and the work that she has done on the bill over a number of years. I sympathise with her over the brickbats that she had to endure when she launched the bill. Similar comments were directed at me 18 months ago when I launched the idea of banning smoking in public places in Scotland. She had a worse time over a longer period, as Susan Deacon ably outlined in her opening remarks. It is difficult for a back bencher to introduce a bill. To get all the way to stage 3 and have the bill passed—which I hope it will be tonight—is an amazing achievement.

I also congratulate all the groups and individuals who helped Elaine Smith along the way by supporting both the bill and Elaine in her endeavours. I also put on the record my support for and recognition of the NCT and, in particular, its volunteer breastfeeding councillors, who do an amazing job for many women throughout the country. My daughter and wife received the benefits of their work a number of years ago.

As we have heard, Scotland has a national target that, by 2005, more than 50 per cent of women will be breastfeeding at six weeks. It is good that we have that target. I wish that the target was higher and covered a longer period, but we are where we are. It is important that we stride ever forward on that target. Data from the child health surveillance programme show that in 2003 only 36.5 per cent of mothers in Scotland were breastfeeding at six to eight weeks. However, the figures are not the same throughout the country. As others have said, 70 per cent of mothers in Orkney breastfeed, whereas in other areas, the rate is much lower. The lowest rates of breastfeeding are in Lanarkshire NHS Board area, with a figure of 26 per cent, and Ayrshire and Arran NHS Board area, with a figure of just over 27 per cent. There are higher rates in the Borders NHS Board and Lothian NHS Board areas, where the rate is 48 per cent.

Breastfeeding is a health equality issue, and it is important that we do not lose sight of that fact. There are enormous benefits for babies that have been outlined by many members, but they are worth repeating. Breastfed babies have better
neurological development, fewer respiratory and gastrointestinal infections, less allergic disease such as eczema and asthma and lower rates of diabetes and childhood obesity. Perhaps it can be seen as an example of joined-up thinking if we think of the bill as part of an anti-obesity strategy in its widest sense. Such a strategy is not just about exercise for older children and what they eat; it is about caring for their health from the day they are born and ensuring that they grow up as healthy young people.

There are also benefits for mothers. We have heard about less breast cancer, a lower risk of ovarian cancer and fewer hip fractures and bone density problems. Bone-density problems are on the increase in Scotland. They are often overlooked and we should pay them particular attention, because as our population gets older we will have to deal with the difficulties that they bring. It is important to use breastfeeding as part of a strategy to defeat bone density problems.

In July 2004 UNICEF revealed that new mothers in Scotland are more likely to receive effective breastfeeding help in maternity units than are mothers in maternity units elsewhere in the UK. We should be proud of that, but we must ask why Scotland has a lower breastfeeding rate than most of Europe. The answer is clear and relates to society’s attitude once a woman leaves the maternity unit and moves back home and into wider society.

The NCT has said that there is public hostility and has put on record many instances of negative comments and even aggression towards breastfeeding mothers in public places. Public hostility to mothers is likely to affect young and disadvantaged women, who are the least likely to start or to continue breastfeeding. That exacerbates the health inequalities that already exist in Scotland. It is critical that the bill changes public attitudes.

When my daughter was being fed as a young baby, we did not experience abuse or aggression and we were never thrown out of anywhere or asked to go into a toilet. However, when we sat in public places, whether a park or restaurant, the problem was the sideways glances and the strange looks that we got from other members of the public, who obviously felt that it was not acceptable to breastfeed in a public place, even though we were being extremely discreet—I was amazed that anyone even noticed that my daughter was being breastfed. We have to effect an attitude change.

On the criminality issue, I hope that we never see anyone charged with an offence under the bill because I want the outcome to be attitudinal change in our society, not a list of criminal offences for people who own certain licensed premises.

There will be a free vote on the bill for members of the SNP group, as there will be for Liberal Democrats members. I encourage all SNP members to accept the recommendation of the Health Committee and to vote to support the bill at 5 o’clock.

I quote the policy memorandum, as it sums up my view of what the bill is all about. On page 5 it states:

“The message promoted is ‘Don't think of it as a woman's right to breastfeed. Think of it as a baby's right to eat’.”

That is the critical message that we have to get across.

16:48

Mr Kerr: The debate has been good, informed and emotional and key points have been made. The bill is another plank in our public health strategy; it will contribute to the well-being of babies and their mothers. It is about giving children the best possible start in life and protecting mothers in that process.

Government has a role to play and I fully accept the responsibilities and duties that the bill would place on us. We are happy to meet the duties. We should acknowledge that we are doing a good job at the moment. Although members quite rightly want us to do better, key campaigners throughout the UK rate the Executive highly in their perception and understanding of the work that we are doing. Nevertheless, I absolutely accept our responsibility and we can, should and will better support mothers whether they choose to breastfeed or bottle feed. We need to acknowledge the difficult issues that mothers face and ensure that we provide as much support as we can.

It is also about empowerment. As Stewart Maxwell said, it is about empowering the baby to receive the best possible feed and empowering women to not feel uncomfortable about what is a natural process. The debate that we are having in society about this will help constructively to change attitudes towards breastfeeding.

Our breastfeeding strategy will focus on breastfeeding in the early stages. It will cover antenatal education and support and ensure that parental education supports breastfeeding and that information contained in our policies and strategies gets across to all mothers, particularly those in less well-off areas.

We recognise the role that breastfeeding can play in the health inequalities debate. I have mentioned NHS Tayside’s video, which has been circulated to all health boards in Scotland. It is about the prenatal decisions that a mother will take, and it aims to help family and friends buy into supporting the mother. We support that.
Fiona Hyslop mentioned her event on 2 December. I am not sure what my diary looks like for that day, but I would be happy to receive an invitation, if that is possible. She mentioned the need for us to be supportive of mothers at all stages, particularly the prenatal stage.

The decision about when mothers should leave hospital is largely made at the local level, with different policies in different places. There is an increasing demand for mothers to leave hospital to get back to their home environment as quickly as possible. Our strategies reflect that, ensuring that community midwives and health visitors, as well as the army of volunteers involved with breastfeeding, many of whom I have met, are there to support mothers at what can be a difficult and challenging time.

**Fiona Hyslop:** I realise that we need flexibility but, in my recent experience, many young women have problems with the latching-on process. That might not be possible until the milk comes in, which might happen several days after a mother has been discharged, if she has been discharged within a few hours. There is an issue about early discharge, which Jean Turner also raised.

**Mr Kerr:** I genuinely believe that our strategies address and understand that situation, and the work that we do in the community—involving a number of the organisations that we support and various voluntary organisations—supports that. We offer mothers 24-hour helplines to help them deal with that sort of problem. I accept the point that Fiona Hyslop makes. My officials and I will review the debate in its entirety to ensure that the good ideas that have come from all around the chamber will be reflected in our breastfeeding strategy, on which we will report to the Parliament.

I reiterate my admiration and support for Elaine Smith, who introduced the bill. We have heard some very good contributions from across the chamber. This is another health improvement measure that the Executive and the Parliament are supporting, which will give young people the best possible start in life. On the bigger issue of changing attitudes, what we have done today and throughout the bill process is attempt to present society with what is a very normal situation. Hopefully, attitudes will change, and more mothers will feel confident about their right to breastfeed.

I find it difficult to believe that we have now reached the final stage of the Breastfeeding etc (Scotland) Bill, the fate of which will be sealed at decision time. I have been working on the bill for the past three years, but certainly not alone, and I take this opportunity to thank everyone who has helped get the bill to this stage. When I first had the idea, I sought legal help for drafting a proposal from Mike Dailly of the Govan Law Centre, and he kindly agreed to assist. My thanks go to Mike for his hard work and commitment in turning my idea into a workable piece of legislation. I set up a steering group to advise me and to inform the process, and I invited a wide range of organisations to participate in it. In eliciting that support, I merely scratched the surface of the total number of people who work in the sector. That was enough, however, for me to witness the vast amounts of enthusiasm, dedication and commitment that Andy Kerr has spoken about. Those people deserve our support, and I hope that, if it is passed, the bill will go some way towards providing that. Unfortunately, time does not allow me to name all the individual members of the steering group. Suffice to say their help has been invaluable throughout the process.

Thanks are due to Unison for funding a piece of research and to Kay Sillars for producing it. I thank Boots and the Royal College of Nursing for sponsoring a reception tonight. I also thank the committees that considered the bill—particularly the Health Committee—and their clerks. The Health Committee’s scrutiny of the legislation and its robust stage 1 report evidenced an excellent understanding of the issues.

In his previous brief as Minister for Health and Community Care, Malcolm Chisholm scrutinised my proposal and my thanks go to him and the Scottish Executive for their support. I also thank my MSP colleagues and Jenny Warren, the national breastfeeding adviser.

My staff also deserve recognition. In the early days, Margaret McGregor, John Rowan and Frances Wright gave me important assistance and my current staff, Lesley Dobbin and Catherine Murphy, have provided invaluable help on the bill. Last, but far from least, my thanks go to Susan Deacon MSP and her researcher Ann Henderson. As Susan Deacon has pointed out, I first approached her with the idea when she was Minister for Health and Community Care, and in
that role, although naturally wary of how the legislation might work, she supported the principle. Over the years since that first conversation, Susan has been a source of help and advice, culminating in her agreeing to close for me in the stage 1 debate and to open in this debate. I am extremely grateful to her for that.

As the final hurdle approaches, I must address a few issues. On the whole, the bill has attracted positive support, but a minority has tried to undermine it by saying that it is a politically correct and trivial issue. In fact, this small, but important bill is a good example of how the members’ bills system can work under devolution and how it can allow members to take forward important constituency-led issues to effect legislative change for the benefit of Scotland as a whole, and to lead the way in the UK.

It was the discovery that Coatbridge had one of the lowest rates of breastfeeding in Scotland that provided me with the impetus to pursue the bill, so it arose directly from my constituency work. If the bill helps to encourage more women to breastfeed, it will have a significant effect on the future health of children and women in Coatbridge and Chryston and right across Scotland. I was also motivated by the Executive’s response that it had no powers to do anything about the incident of the woman who was put off the bus. Perhaps it will have those powers shortly.

The most controversial part of the bill seems to be that it provides legal protection only for children up to the age of two. It is regrettable that an age had to be included at all, but because it is criminal legislation, it must be clear and unambiguous and it must define what “child” means. We heard all the arguments during the discussion of amendments so I will only reiterate the point that the status quo prevails for children beyond the age of two, and it is not illegal to feed one’s child.

The bill is important in underpinning the sterling work of health professionals in the NHS and in providing encouragement to the Scottish Executive to focus on the way in which breastfeeding is promoted and supported by the Executive. Further, given the low breastfeeding rates in more deprived communities, the bill could also be regarded as another tool to help tackle the social exclusion and poor health that is linked to poverty and deprivation. Indeed, last week when Professor Stewart Forsyth was referring to follow-up data from the Dundee infant feeding study, he commented on breastfed babies from poorer backgrounds by saying:

“babies who were from poorer communities actually do better in terms of health outcomes than many of the children from the more affluent areas who were bottle-fed.”

I have never promoted the bill as a panacea. It is part of a wide-ranging approach that encompasses many different health departments, voluntary sector initiatives and Scottish Executive policies and programmes. If the bill is supported this evening, it will show that Scottish parliamentarians are prepared to play their part in helping to underpin the work being done elsewhere and send a clear message that breastfeeding is normal, nurturing and maternal behaviour and it ought to be supported.

I asked Susan Deacon to open the debate so that I could have the final word. If passed, the bill is not an end, but the beginning of the Parliament pursuing practical ways to support and encourage breastfeeding. Although I am having the final word in this debate, I assure Parliament, the minister and all those with an interest in breastfeeding that I will have much more to say on the subject during the rest of this parliamentary term and I am sure that many of my colleagues will too.

I am pleased to acknowledge the Executive’s commitment to breastfeeding and its current plan to produce a Scottish strategy. However, it falls upon us all to ensure scrutiny of the Executive; given the interest in the bill, I am sure that we will rise to that challenge during the coming months and years.

The leader in The Herald in August 2002 was about the bill and it carried the headline “Natural act is overdue official respectability”.

The article concluded:

“Signalling to society that breastfeeding is an acceptable part of modern life is a message that is long overdue in its delivery.”

Colleagues, at decision time, let us deliver that message.
The Deputy Presiding Officer: The fourth question is, that motion S2M-1968, in the name of Elaine Smith, that the Breastfeeding etc (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. Members should press their voting buttons now.

Mr Stewart Maxwell (West of Scotland) (SNP): Presiding Officer, my display shows that the vote is on the financial resolution for the Fire (Scotland) Bill. [Interruption.]

The Deputy Presiding Officer: I hope that we can now vote on motion S2M-1968, in the name of Elaine Smith.

FOR

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brown, Robert (Glassgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigh, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glassgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Edie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillies, Kate (North East Scotland) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Graham, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glassgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Mr David (Stirling) (LD)
Jackson, Gordon (Glassgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kane, Rosie (Glassgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Leckie, Carolyn (Central Scotland) (SSP)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Ms Betty (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)

AGAINST

Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (LD)
Martin, Campbell (West of Scotland) (Ind)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McGusty, Mrs CYDIB (Milibands and Bellshill) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Sheridan, Tommy (Glassgow) (SSP)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephan, Nic (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glassgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swimney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Welsh, Ms Sandra (Glassgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

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The Deputy Presiding Officer: There was some excitement with the software there, but we have a result. The result of the division is: For 103, Against 13, Abstentions 0.

Motion agreed to.

That the Parliament agrees that the Breastfeeding etc. (Scotland) Bill be passed.
Amendments to the Bill since the previous version are indicated by sidelined in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Breastfeeding etc. (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make it an offence to prevent or stop a person in charge of a child who is otherwise permitted to be in a public place or licensed premises from feeding milk to that child in that place or on those premises; to make provision in relation to the promotion of breastfeeding; and for connected purposes.

1 Offence of preventing or stopping a child from being fed milk

(1) Subject to subsection (2), it is an offence deliberately to prevent or stop a person in charge of a child from feeding milk to that child in a public place or on licensed premises.

(2) Subsection (1) does not apply if the child, at the material time, is not lawfully permitted to be in the public place or on the licensed premises otherwise than for the purpose of being fed milk.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) In this section—

“child” means a person who has not yet attained the age of two years;

“feeding” includes—

(a) breastfeeding; and

(b) feeding from a bottle or other container;

“licensed premises” means premises licensed under—

(a) section 12 of the Theatres Act 1968 (c.54);

(b) Part II of the Licensing (Scotland) Act 1976 (c.66);

(c) Part II of the Civic Government (Scotland) Act 1982 (c.45); or

(d) section 1 of the Cinemas Act 1985 (c.13);

“milk” means breastmilk, cow’s milk or infant formula;

“public place” means any place to which, at the material time, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
2 Vicarious liability

(1) Anything done by a person in the course of that person’s employment shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that person’s employer, whether or not it was done with the employer’s knowledge or approval.

(2) Anything done by a person as agent for another person with the authority (whether express or implied and whether precedent or subsequent) of that other person shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that other person.

(3) In proceedings brought under this Act against an employer in respect of an offence under section 1 alleged to have been done by an employee of the employer, it shall be a defence for the employer to prove that the employer took such steps as were reasonably practicable to prevent the employee from committing such an offence in the course of the employee’s employment.

(4) In this section, “employment” means employment under a contract of service or of apprenticeship or a contract personally to do any work; and related expressions are to be construed accordingly.

3 Offence of bodies corporate and partnerships

(1) If an offence under section 1 committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on that officer’s part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1), “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with that member’s functions of management as if the member were a director of the body corporate.

(4) If any offence under any provision of this Act committed by a partnership is proved—

(a) to have been committed with the consent or connivance of a partner; or

(b) to be attributable to any neglect on that partner’s part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In subsection (4), “partner” includes a person purporting to act as a partner.
4 Promotion and support of breastfeeding

After section 38 of the National Health Service (Scotland) Act 1978 (c.29) insert—

“38A Breastfeeding

(1) The Scottish Ministers shall make arrangements, to such extent as they consider necessary to meet all reasonable requirements, for the purpose of supporting and encouraging the breastfeeding of children by their mothers.

(2) The Scottish Ministers shall have the power to disseminate, by whatever means, information promoting and encouraging breastfeeding.”.

5 Commencement and short title

(1) Sections 1 to 4 of this Act shall come into force two months after the date of Royal Assent or on such earlier day as the Scottish Ministers may, by order made by statutory instrument, appoint.

(2) This Act may be cited as the Breastfeeding etc. (Scotland) Act 2004.
Breastfeeding etc. (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make it an offence to prevent or stop a person in charge of a child who is otherwise permitted to be in a public place or licensed premises from feeding milk to that child in that place or on those premises; to make provision in relation to the promotion of breastfeeding; and for connected purposes.

Introduced by: Elaine Smith
On: 16 December 2003
Bill type: Member's Bill