



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# HEALTH AND SPORT COMMITTEE

Tuesday 27 October 2015



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**HEALTH AND SPORT COMMITTEE**

**28<sup>th</sup> Meeting 2015, Session 4**

**CONVENER**

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

**DEPUTY CONVENER**

\*Bob Doris (Glasgow) (SNP)

**COMMITTEE MEMBERS**

\*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

Rhoda Grant (Highlands and Islands) (Lab)

\*Colin Keir (Edinburgh Western) (SNP)

\*Richard Lyle (Central Scotland) (SNP)

\*Mike MacKenzie (Highlands and Islands) (SNP)

\*Nanette Milne (North East Scotland) (Con)

\*Dennis Robertson (Aberdeenshire West) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Douglas Campbell (Renfrewshire Licensing Board)

Douglas Froom (National Licensing Standards Officers Group)

John Lee (Scottish Grocers Federation)

Archie MacIver (Law Society of Scotland)

Councillor Cryle Shand (Aberdeenshire Council)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

**CLERK TO THE COMMITTEE**

Jane Williams

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Health and Sport Committee

*Tuesday 27 October 2015*

*[The Convener opened the meeting at 09:45]*

### Subordinate Legislation

#### **National Health Service (Payments and Remission of Charges) (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/333)**

**The Convener (Duncan McNeil):** Good morning and welcome to the Health and Sport Committee's 28th meeting in 2015. As usual, I ask everyone to switch off mobile phones as they can interfere with the sound system. The witness panel and others should note that some members and colleagues are using tablet devices instead of hard copies of our papers.

We have received apologies from Rhoda Grant; we expect Jayne Baxter to attend as her substitute.

Under our first agenda item, we have before us two negative instruments. The first is the National Health Service (Payments and Remission of Charges) (Miscellaneous Amendments) (Scotland) Regulations 2015. There has been no motion to annul and the Delegated Powers and Law Reform Committee has not made any comment on the instrument. Do members have any comments?

There are no comments. Can I take from that that we agree to make no recommendations?

**Members indicated agreement.**

#### **Mental Health Tribunal for Scotland (Practice and Procedure) (No 2) Amendment Rules 2015 (SSI 2015/334)**

**The Convener:** There has been no motion to annul the second instrument and the Delegated Powers and Law Reform Committee has made no comment on it. Do members have any comments?

Members have no comments. Does the committee agree to make no recommendations?

**Members indicated agreement.**

## Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill: Stage 1

09:47

**The Convener:** Under agenda item 2 we have our second evidence session on the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill. Richard Simpson is the member responsible for the bill. He is here and will have an opportunity to ask some questions at the end of the session.

Yesterday, to feed into the committee's consideration of the bill I, along with committee members Colin Keir, Nanette Milne and Malcolm Chisholm, undertook a fact-finding visit in Newcastle. We met representatives of the local authority, the national health service and the police, to learn more about their Alcoholwatch container-marking scheme and the super-strength scheme, which deals with super-strength drinks. I thank my colleagues who gave up their time yesterday to come to Newcastle and, more important, all the others who gave their time during the community police visits. We were very well received, which we appreciate very much. It was an informative and useful visit.

I welcome to the committee John Lee, head of public affairs, Scottish Grocers Federation; Douglas Froom, chairman, national licensing standards officers group; Archie MacIver, licensing law sub-committee convener, Law Society of Scotland; Councillor Cryle Shand, chair of the central licensing board, Aberdeenshire Council; and Douglas Campbell, assistant managing solicitor for licensing, Renfrewshire licensing board. Thank you very much for your attendance. As usual with a round-table discussion, the politicians expect to listen a bit more, rather than question. There will be questions, but the meeting will be successful if we can get a discussion among the various people here who represent the different views that have been expressed in the written evidence.

To kick us off, Richard Lyle will ask the first question.

**Richard Lyle (Central Scotland) (SNP):** I was a grocery manager for 14 years, so I was interested in the Scottish Grocers Federation submission. I direct my question to John Lee, but I hope that others will come in. The federation's submission says:

"We do not support the majority of the proposals included in the Bill and believe further changes to the licensing system will only add to the complexity of the existing system. Many of its proposals are either

unworkable or come very close to simply duplicating existing legislation.”

Which proposals are unworkable? What do others think of those proposals?

**John Lee (Scottish Grocers Federation):** Thank you for your question, Mr Lyle. I will focus on one of the key provisions, which is to develop a national container-marking scheme. We have some serious reservations about that. Container marking within a store is very time consuming; it is onerous. Unfortunately there is not a central way that containers can be marked. It cannot be done through the barcode that appears on the product, for example. A key concern about the measure is that it is ineffective in dealing with real issues such as the proxy purchase of alcohol products.

Therefore, we feel that the measure is both impractical and does not deliver any particular benefit in facing the real and tangible problems in communities such as the proxy purchase of alcohol, so it is one of the key proposals that the federation feels is unworkable.

We feel that some of the provisions related to advertising, for example, have already been dealt with. There are now quite serious restrictions on how a retailer can promote alcohol within retail premises. We feel that overall there is too close an overlap with existing provisions, and that some of what is proposed is unworkable.

**Richard Lyle:** Many politicians and councillors have concerns about kids purchasing alcohol, but it is very hard for the police to find out where they got it from. The container-marking proposal would identify a local shop and ensure that people could go back to the shop and say, “You must have sold this, because it has your mark on it.”

**John Lee:** It shows that the product originated in that shop, but it does not show how it got into the hands of the young person. There is a big issue with young people getting alcohol from their family—from parents, older siblings and so on—but that is not an indication of a lack of due diligence within the retail premises. Proxy purchase is extremely difficult for a retailer to deal with.

The Scottish Grocers Federation is currently involved in a campaign against proxy purchase in Motherwell and Wishaw. It has been highly successful, particularly because Police Scotland has been very committed to taking action on the matter. We have noticed a decline in antisocial behaviour and an increase in arrests and charges for proxy purchase offences. The issue can be dealt with only through a multi-agency approach that involves the police, social services, housing services, the local community, the community safety partnership and so on. Container marking is

a very blunt and ineffective instrument in trying to combat the issue of proxy purchase.

**The Convener:** Do other panel members agree that it is a blunt and ineffective instrument? I do not think that all the written evidence reflected that.

**Archie MacIver (Law Society of Scotland):** To a large extent the Law Society would support Mr Lee’s position. I should say at the outset that the society is very much behind any measures that will assist Scotland’s relationship with alcohol, just to make that absolutely clear. We are not gainsayers, if I can put it that way. Equally, any measures that will be introduced have to be effective and enforceable and have some tangible result.

Our concern is that the bottle-marking scheme would simply set people off on a false trail. At best, it would indicate that at some point the alcohol was purchased or acquired from a particular set of premises, but that is as far as it would go. If the police or other enforcement agencies come across kids drinking alcohol in the park and trace it back to a shop, all they can say is that at some point it was acquired at that shop. Was it acquired by the parents and the kids have pinched it from the house? Was it legally acquired by someone of age who passed it on to the kids? How did it get there? That is the best that container marking achieves. The Law Society’s position is that the provision does not go very far towards preventing alcohol from getting into the hands of underage drinkers.

**Douglas Campbell (Renfrewshire Licensing Board):** The points that have been made by the federation and Archie MacIver are demonstrative of the limits of using the system. We have given a broad, cautious welcome to some of the bill’s provisions, although any national initiative to deal with proxy purchasing and so on would be a step in the right direction. Police Scotland might see intelligence-gathering benefits, if it saw a pattern of alcohol coming from the same premises.

In specific cases, as Mr MacIver and the federation have said, it may not be enough just to say, “This bottle came from that shop,” because the bottle might have been purchased by someone on behalf of a young person and the shop might not have been able to deal with the matter directly. That could be used as mitigation; it could be a line of defence at a board meeting or elsewhere.

I am certainly aware that if a pattern emerged of alcohol coming from the same premises time and time again, our police partners would want to target their resources there. To that extent, we would probably have sympathy with the bill’s aims, but I add a note of caution.

**Councillor Cryle Shand (Aberdeenshire Council):** Aberdeenshire’s central licensing board wants to know how all the items in a multipack

would be marked, and not only cans but bottles would need to be thought about. It would be so onerous for grocers and others to mark them. Nowadays, the bulk of alcohol is bought through supermarkets, and I do not think that they have the infrastructure to mark individual cans—for example, lager comes in crates of 12. The approach must be targeted so that when there is a particular problem, such as kids hanging out in a particular area with a particular drink, that drink is traced. The bill is a sledgehammer to crack a nut.

**The Convener:** Malcolm Chisholm indicated that he wanted to say something, but I do not want him to talk about our visit yesterday, because it would be good to follow up Councillor Shand's points.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** My question relates to the main issue that has been discussed and to yesterday's visit. It is important to put on record that one of the main things that we saw yesterday was the use of the Alcoholwatch sticker. At the very least, that approach is part of the debate, whatever people may think about it. The reality is that the approach has been used extensively, particularly in the centre of Newcastle. In terms of the practicalities, the stickers are placed not by the grocer but by council officials. The stickers go on easily, but cannot be taken off. It would certainly be possible to adopt such an approach, and we were told that it would not cost a lot of money.

People would gain intelligence about where problems have arisen. It is obvious that you cannot just assume that an underage person bought the bottle, but important intelligence could still be gained. Interestingly, a lot of the stores were keen to be involved in the scheme. The Newcastle scheme is voluntary; what the bill suggests is different. No one is suggesting that it would be a panacea, but it would be wrong to rubbish the approach and to say that it is unworkable. Obviously, it is not perfect, and it would need to be complemented by other measures, but people should at least look at the evidence of where it has been applied and recognise the possibility that it has a contribution to make.

**The Convener:** Yesterday, we heard that the approach was targeted. As Councillor Shand said, not all but certain drinks were targeted, whether those be high-strength lagers or ciders, such as White Lightning. We also heard that the approach gave comfort to staff who worked outwith the city centre—because they were being watched, some of the pressure put on them was averted, particularly the pressure on young staff members from youths that they might know in the area or when large numbers of youths come into the grocery store. The scheme gave them a bit of

confidence. Of course, not everyone applied the approach; it was voluntary. The principle that they pursued was a good one.

Of course, the voluntary nature of the scheme limits opportunities, because people are continually open to legal challenge. I know that no one has been legally challenged up to now, but the prospect of such a challenge nevertheless exists, particularly the higher you go up the chain.

I simply put those reflections into the mix.

10:00

**John Lee:** If I picked him up correctly, Mr Chisholm made the very interesting comment that the markings could be applied by officials, who, I presume, would be trading standards or licensing standards officers. Although that would take away a lot of the hassle for retailers, I think that there would also be an issue with enforcement, because I am not sure that LSOs or trading standards would have the manpower to do that work. Recently there has been a lot of concern about the impact of cuts on those services, and I am really not sure whether they would have the manpower to take on that kind of work in any widespread way.

**Douglas Frood (National Licensing Standards Officers Group):** I could see where the conversation was going, and that is, indeed, one of my concerns. Mr Campbell rightly pointed out that when the approach is targeted, it is good for getting information and seeing whether there are any patterns. However, our members would obviously highlight the enforcement issue. If what has been suggested were to be a condition of a licence, meeting the requirement physically to check every can or bottle in a large supermarket, small grocer or whatever would be very difficult for us, doubled with our having to apply the stickers and markings to bottles. I also do not know how the requirement to apply the stickers would sit with our ability to serve a notice on a premises for breaching a licence condition.

**The Convener:** On the other hand, written evidence that we have received suggests that the lack of prosecutions for, say, underage drinking is a positive thing.

We do not seem to be confident that we have the resources to police any of this; indeed, we know from our case load and other sources that people who are getting access to alcohol are causing antisocial behaviour problems, not to speak of the health problems that are arising. Do we not already have a problem with regard to opportunities for enforcement in the current targeted approach?

**Douglas Frood:** As far as enforcement is concerned, I do not have any figures for the number of offences that have been prosecuted by the police in these targeted approaches.

**The Convener:** Our written evidence suggests that the number of prosecutions is down, and that has been highlighted as a positive. Did the Scottish Grocers Federation not give us some information about that?

**John Lee:** What we are picking up from the North Lanarkshire proxy purchase campaign in which we are involved is that problems seem to occur when, despite very positive action by the police, reports get marked “no proceedings” by the Crown Office and Procurator Fiscal Service. Even if the police are taking the matter seriously, I am not sure that the courts system is, and I do not think that there is always a good flow of information back to the police on whether cases have been proceeded with.

**The Convener:** That was a very useful clarification of the written evidence. Thank you.

Dennis Robertson will be next—he beat Bob Doris to it—after which we will hear from Councillor Shand.

**Dennis Robertson (Aberdeenshire West) (SNP):** The evidence that we have received suggests that Aberdeenshire Council trialled a marking scheme in the Ellon and district area. Perhaps Councillor Shand could tell us how effective the scheme was, and why the council decided to stop it.

**Councillor Shand:** I am happy to do so. The scheme must have been before my time, because I do not recall its implementation.

As well as being the chair of a licensing board, I am a councillor, and I am loth to incur extra expense for a council by putting in place some general mandatory scheme to mark every bottle. However, I would be content if the bill were permissive and gave LSOs, trading standards or even the police the ability to mark bottles or to request stores where the bottle type is a problem to do so in order to trace a bottle's history or to identify the period of time between purchase of a bottle and its consumption. That would have to be targeted to deal with a particular problem in a particular area—I do not think that a general mandatory scheme would work.

**The Convener:** Again, we are at an advantage because we had a fact-finding visit to Newcastle yesterday. I do not know whether anybody else has taken the time to do that. Newcastle has introduced minimum pricing in bars and initiatives on super-strength drinks. A lot of initiatives are taking place there. Rightly or wrongly, the authorities there have used their imagination and

initiative with the co-operation of businesses and grocers. It could be described as best practice. It is not for us to defend the scheme in Newcastle, but I suggest that the witnesses go down and test it.

**Bob Doris (Glasgow) (SNP):** That is an interesting comment, convener. Perhaps it shows the strength of a voluntary scheme rather than compulsion through legislation.

Irrespective of whether it is desirable to have the power to mark products under the bill, my understanding is that the power would be exercised at the request of the police, who would decide how the product should be marked, and that, if licensing boards did not comply with such a request, they would have to write to the chief constable to explain their reasons for not doing so. If the power is to be taken, would it be better for it to sit with licensing boards rather than with the police, given the fact that licensing boards and local authorities would have to incur the cost and deal with enforcement? If we were to introduce it as drafted, would we be starting to unpick who should have the strategic role in relation to the licensing strategy, implementation and enforcement?

**Archie MacIver:** The Law Society's written submission commented on that. We take the view that Parliament has entrusted licensing boards to regulate—for want of a better term—the sale and distribution of alcohol and, if it gives the police the power to promote the bottle-marking scheme, it will start to undo the fundamentals of the legislation whereby the boards are in control. It is interesting that, under the bill, if the police make a request and a licensing board decides, “No, that is not for us,” it is accountable to the police for why that is the case. If the power is given to the police, there is a danger that the power of licensing boards will be undermined slightly.

**Douglas Campbell:** I have some sympathy with what Mr MacIver said. Under the legislation, it is not normal for licensing boards to be required to give reasons to the police automatically. The only analogy that I can think of is that, under section 12 of the Licensing (Scotland) Act 2005, if the licensing board does not follow the local licensing forum's recommendation, it has to give an explanation for that. However, the police are another organisation and do not have quite the role that the licensing forum has, so I am inclined to agree with Mr MacIver.

**Councillor Shand:** The licensing board should be the ultimate determinant of what goes on within its remit. It is charged with licensing. If the police made a request because of a problem in a particular area, most boards would be happy to consent to them dealing with criminal activities. My board has a very good relationship with the police.



They sit in on all our board meetings and we meet them regularly on other matters. Co-operation between the board and the police is essential but the board must have the ultimate decision on alcohol.

**Colin Keir (Edinburgh Western) (SNP):** I am a wee bit concerned about what we have just heard because I do not think that there is any place for the board to consent to the policing of criminal activity—I do not know whether you meant it that way, Councillor Shand. That is the job of the police and I would not expect any licensing board to come into conflict with them on that.

On the comments about the licensing board consenting to marking bottles and so on, I understood from our visit yesterday that when the police identify a problem with a specific drink in a particular area they are starting to bring in approaches such as bottle labelling. The police should have such things in their toolkit to deal with criminal activity, so why would licensing boards need extra powers? I have been involved, not in liquor licensing but in other types of licensing in Edinburgh, and I would never have wanted a licensing committee to get in the way of the police's work to address criminal activity. That was not my job.

**Councillor Shand:** I agree that anything that relates to criminal activity, even failure to implement a licence properly, is a police matter. However, co-operation with a licensing board would be essential so that the board knew what was being planned—especially if it is the local authorities that will have to put the labels on the bottles. It is ultimately the police's responsibility to deal with criminal activity, and the means of operation is entirely a matter for the police. I do not think that licensing boards should be excluded from knowing what is going on if, for example, the police find a problem with a particular premises, given that the licence might eventually come before the board for review, but I agree that it is ultimately the police's responsibility to enforce the law.

**Colin Keir:** What seemed to come across in Newcastle was that the local licensing authority, the police and businesses are working to the same script, for the most part. I would not want a tool not to be available to the police just because someone on a licensing board did not like the idea of losing authority.

**Dennis Robertson:** There seems to be some disagreement about the proposal to extend the consultation period for licensed premises applications from 21 days to 42 days. I think that the Law Society is content for the period to remain at 21 days, as is the case for other planning applications, but councils, including Aberdeenshire

Council, are quite content for the period to be extended to 42 days. Can we examine that?

**Councillor Shand:** I do not think that there is a single policy for Aberdeenshire. I think that the north Aberdeenshire licensing division's consultation went for 21 days, but the central division's consultation went for 42 days.

The reason why we were happy with 42 days was that it would give community councils a chance to consider things. Community councils often run on a four-week cycle, and the 21-day period does not enable them to consider everything. An extension to 42 days does not seem particularly onerous for people who are applying for a licence—in our view, an extra 21 days will not make much of a difference. That is why we were happy to go along with a 42-day period.

**Archie MacIver:** The Law Society is not in favour of an extension. A difficulty that I suppose all parties to the process have is that we tend to base our decisions on our experience of our own little areas. I have not the slightest doubt that in some parts of the country applications are processed very quickly, but that is not uniform throughout Scotland. Let me put that in context. I had a meeting in a major city last week, and 14 of the 19 applications that were on the agenda had been lodged in excess of nine months prior to the meeting—a good bit more than nine months, in some cases.

10:15

There are already considerable delays in the processing of applications, which can have a major impact on businesses and stifle development. However, I remind members and the convener that under the previous legislation—the Licensing (Scotland) Act 1976—there was only five weeks' lead-in time from an application being lodged to it being dealt with by a licensing board but now we are talking about nine months or a year. Anything that will further that delay is, in the Law Society's view, a bad thing.

In my experience, those who sit on the Law Society committee and have contributed to the response—those of us who are practitioners on a day-to-day basis in this field—certainly do not find that people are slow to object within the 21-day period if they feel the desire and the requirement to do so. I understand that 21 days is also the planning lead-in time for objections. Again, I am sure that those of you who have experience in that field will readily accept that people take advantage of that 21-day period and lodge their objections. We really do not see any reason that would support increasing the period to 42 days.

**Douglas Campbell:** On the point that Mr MacIver has just made, I think that we reflected in our written response that some applications might take longer. I accept what Councillor Shand said about the community council cycle and the fact that community councils cannot respond unless they have had a chance to have their meeting.

We have not taken a strong position on the 42 days issue. In fact, we can understand the reasoning behind the proposal to extend the period to 42 days. However, as an officer, what would worry me more about the community involvement provisions is the proposal to extend the 4m radius to a 50m radius for premises for the neighbour notification requirement, which will have massive implications. I imagine that Mr Frood, as an LSO, might have a view on that.

We have a built-up area that contains loads of tenement flats and in which a community council is not active. The provision to have a 50m radius would not apply just to new premises licences. For example, increasing the capacity of a premises by 2m<sup>2</sup> would be a major variation and it would mean that everyone within a 50m radius of the premises, in what might be a built-up area, would have to be notified. In all likelihood, there would be huge implications for LSOs in trying to administer that system if it was introduced.

I can understand the sentiment behind the proposal and why it might seem attractive. However, it could mean LSOs spending vast amounts of their time on trying to implement that system rather than on dealing with enforcement matters that might be beneficial to the licensing system as a whole.

**Councillor Shand:** We thought that it would be excessive and totally onerous to extend the radius to 50m and that it would be virtually impossible to deal with it, particularly in a built-up area with high-rise flats, which would be a nightmare for licensing clerks and LSOs. We think that that would be totally out of proportion.

**Douglas Frood:** Mr Campbell referred to LSOs. There is great variance across licensing board areas in how LSOs carry out their duties. Many of our members would have no involvement with the application process in terms of notifications and so on. Depending on the local authority, the LSO might be involved in dealing with representations or objections before they go to the board, because a lot of people will object or make a representation while perhaps they do not fully understand the application. What is proposed in the bill might have an effect on some LSOs—I take that on board—but for many LSOs it would not. As a group, we did not make a response on the provision on extending the radius.

**Douglas Campbell:** I appreciate that it might be not just LSOs. However, somebody would have to deal with the notification, so I think that a resource issue would still be involved.

**Malcolm Chisholm:** I want to move the discussion on. That was an interesting discussion, but I suppose that there are intermediate options between 4m and 50m. A 4m radius seems ridiculously small.

I was interested in the evidence on advertising. People in general seem to be sympathetic towards the intention behind the proposal to restrict alcohol advertising but I noticed that the Law Society submission seemed to concentrate mainly on enforceability—it felt that the proposal was not enforceable. It would be interesting to hear about that. The national licensing standards officers group thought—again, I think without disagreeing with the principle of the proposal—that the proposal was not quite worded in a way that would deliver the intended result. I am interested in those submissions. It would also be interesting to hear people's views on the whole area of advertising and, particularly from the Law Society, some reflection on how the proposal relates to current good practice. I am not sure whether there is much—or any—legislation on that at all but there seem to be a lot of codes of practice and suchlike. How does the proposal relate to all of that? There seems to be a lot of general good will towards what is intended, but there are a lot of questions about the detail.

**Archie MacIver:** Yes, that is a fair way to summarise the situation. There is good will towards the proposal but perhaps the devil is in the detail—as is always trotted out in such discussions.

My first point is that legislation is already in force with regard to promotions. The Alcohol etc (Scotland) Act 2010 introduced provisions to cover promotions. To a large extent, those provisions almost replicate what the bill proposes. That raises the question whether we are getting into the realms of duplication.

The second point, which follows on from that, is that if we proceed with the bill proposals, there is a great deal of scope for confusion because we already have a definition of promotions in legislation but we have a different definition of advertising in the current proposals. The definitions are similar but not the same and there is plenty of room for complete and utter confusion. Where there is confusion, difficulties around enforceability naturally follow.

The Law Society's view is also founded upon the practical difficulties. If we were to accept the restriction on alcohol advertising within 200m from the boundary of a school or a crèche, what would

happen to existing premises if a crèche moved into the area? How would the existing business respond to that?

There is one aspect that I should correct because in my view, upon reflection, it is wrong. In our submission, we cited the example of somebody possibly committing an offence by turning up at the school gate wearing a football jersey with an alcohol sponsor. I accept that a person is not a “fixed place”—unless a very lazy parent stood there for days on end—so perhaps members could draw a line through that example.

**Dr Richard Simpson (Mid Scotland and Fife (Lab)):** Thank you.

**Archie MacIver:** That said, there are other aspects. We cited the example of posters referring to sporting events being put up in windows. We are not being flippant in any way, but one sees youngsters putting up posters in windows in the run-up to sporting events. The Scottish cup final was once—and perhaps still is, for all I know—sponsored by a very well-known drinks company. Technically, if a sporting event is sponsored by drinks companies, putting up a poster for it would really be putting up an advert in a fixed place. I am not for a second suggesting that the police are going to kick down the doors, but on the face of it, putting up such a poster would be a criminal offence. At best, a degree of tightening up is required; at worst, a serious look is needed at whether the provision is required, given the promotions restrictions that are already covered in existing legislation.

**John Lee:** I echo almost everything that Mr MacIver said. From the retailers’ point of view, the 2010 act already restricts the promotion of alcohol in retail premises. It seems that the provision in the bill just adds more ambiguity to that. The differences between promotions and advertising are not clear.

There are already very strictly defined restrictions on alcohol promotion in a store. Mr MacIver explained the potential problems with the new provision very well.

**Douglas Frood:** Mr Chisholm spoke about enforcement. Mr MacIver has stolen some of my thunder. As he said, provisions brought in by the Alcohol etc (Scotland) Act 2010 prevent premises from advertising outwith their alcohol display area. From our point of view, the 200m restriction might bring in the notion of people having to try to find out where those crèches, nurseries, play groups and so on are and where they may spring up.

In my experience, premises do not tend to advertise outwith the display area. Such advertising tends to be national and is put in place by providers and manufacturers of alcohol rather than by retailers. Those companies do not hold

premises licences, although they would still be committing an offence. As we have discussed, such circumstances would fall within the remit of an authorised officer rather than necessarily being dealt with by the police. Depending on the intention behind the provision, it may be brought within our remit.

**Douglas Campbell:** There is probably a fair bit of common ground among the witnesses on the need for the provision to be tightened up to ensure that the law of unintended consequences does not apply and that people are not unfairly criminalised.

We touched on that area in our response. I have looked at the submissions to the committee and it is clear that there are issues. For example, one premises may not be able to display an advertising placard outside, whereas another premises 10m down the road might be able to do so because it happens to be outwith the 200m radius from a crèche. The provision may need to be examined more closely.

**The Convener:** Does anyone else have any points relating to advertising? What sort of events should be covered? For example, should cultural events be covered?

No one wishes to comment, so I call Bob Doris.

**Bob Doris:** I want to move the discussion on. The bill is fairly wide ranging, and I am interested in hearing views on the provision on drinking banning orders and how that relates to existing legislation, given that antisocial behaviour orders already exist.

There is a lack of clarity around whether the provision applies to on-sales or off-sales and whether the area covered by a ban would be defined by postcode or by street names. What would come under the auspices of a drinking banning order? How would it be enforced?

From my reading of the bill, it appears that if someone was convicted of an offence in which alcohol played a part, the court would have to give reasons if it chose not to impose a drinking banning order. I may have got it wrong, but I think that that is what the bill says.

On the desirability—or undesirability—of moving towards the use of drinking banning orders, how much duplication would arise given the way in which the law currently operates? How workable would enforcement be? Should courts be driven towards considering the use of a drinking banning order in each case?

There is quite a lot in there, but it would be helpful if we could get some comments on those aspects.

**Councillor Shand:** We are generally supportive of banning orders, but the idea must be dealt with

cautiously, as there are some downsides and other problems could arise.

**Archie MacIver:** We are, to an extent, moving into the realms of potential duplication. Exclusion orders are already available under the existing legislation, and ASBOs—which have been mentioned in passing—are also available.

If we understand the position correctly, banning orders would apply only to premises where there was a licence for consumption on the premises. The general feedback that we get from the police and others is that much of the social fall-out from alcohol abuse tends to be centred on drinking in the home and alcohol that is obtained from off-sales premises. The current proposal, if we understand it correctly, does not appear to cover that area, so there is perhaps a slight gap.

We have touched on the question of resources. Although that is not a question for the Law Society, I understand that either the police or the local authority would have to seek a banning order, and I wonder whether, given the current budgetary constraints under which everyone is working, those bodies would have the financial wherewithal to pursue that route.

10:30

**Malcolm Chisholm:** Is there an overlap between the exclusion orders in the 2005 act and the banning orders, or are you saying that they are almost identical?

**Archie MacIver:** I suppose that the main difference is that exclusion orders cover situations in which a person has been convicted of a violent offence; it is really restricted to violence in or in the vicinity of licensed premises. I accept that Dr Simpson's proposal to some extent widens that to what you could class as antisocial behaviour, so there is a degree of difference.

Although I cannot give you any statistics, I am not aware of a huge use of exclusion orders. I guess that we come back to the point made earlier that it might be the case that the existing powers are not being used overmuch and that this might be yet another item on the statute book that, although available, is not actually used by anyone.

**The Convener:** So the powers are there, but they are not being used.

**Douglas Campbell:** We did not touch on the issue in the licensing board's submission, and I do not think that it is something that I would comment on directly. Obviously, I echo concerns about duplication and the use of resources, but I would not be directly involved in pursuing a drinking banning order. It would be a wider local authority matter.

**Councillor Shand:** I do not think that the matter directly affects boards—it is really a matter for the police and criminal justice authorities. However, we are in favour of it.

**Nanette Milne (North East Scotland) (Con):** I want to touch on a different subject: alcoholic drinks that contain caffeine. When I raised the matter yesterday with police in Newcastle, I was met with fairly blank looks. As far as I can gather, they have had no problems in that respect at all. Do the witnesses have any concerns about the consumption of, say, Buckfast or other caffeinated alcoholic drinks?

**John Lee:** It is a good question. In preparing our written submission in response to the committee's request for evidence, we could find no evidence of a problem with those products. We looked at the European Food Safety Authority panel's report on the matter, which concluded that

"caffeine is unlikely to mask the subjective perception of alcohol intoxication",

and we found several other research papers that suggested the same thing. In gathering evidence for our submission, we could find no substantive evidence of a particular problem with those products. Indeed, we are uncomfortable with particular products being targeted in such a way, and with mandatory licensing conditions that tell retailers that they cannot stock particular products. In short, there is not sufficient evidence to justify a ban on those drinks, and until that evidence becomes available, the proposal should not be taken forward.

**Archie MacIver:** The Law Society's position is slightly more technical. The first issue that we have is that the level of caffeine referred to is not to be decided in primary legislation but to be dealt with by ministers through subordinate legislation. I would suggest that that is a difficulty, because it goes to the very heart of the question that needs to be asked: what is the level of caffeine that we are talking about? At present, we are discussing the issue in the dark, and the fact is that the level that was set would have a major impact on manufacturers and retailers. If such a route is to be pursued, the first thing that should happen is that the level of caffeine should be stated in primary legislation.

Secondly, under the current proposal, we are talking about ready-mixed drinks. Let us assume that that is followed through, and that people are prohibited from buying a container in which vodka and an energy drink are mixed together. There is nothing to prevent a person from taking a bottle of vodka from one shelf and an energy drink from another, buying both and mixing them themselves thereafter.

Whether the proposal goes to the heart of the perceived problem, I do not know. We in the Law Society are not in a position to comment on whether caffeinated alcoholic drinks are a great issue. It has been interesting to hear Mr Lee's position, and I believe that I am correct in saying that, in the *Official Report* of the previous evidence session, there was a suggestion that only a fairly small percentage of sales fall into that category. I am not sure that it is the huge issue that it might seem to be.

**Councillor Shand:** Buckfast—I will not mince my words—is not really a problem up in the north-east. I could not find it on sale in my area, anyway. I had to go on an encyclopaedia site to find out how much caffeine is in it. I learned that there are brown bottles and green bottles. The Irish public use brown bottles and the United Kingdom public use green bottles, and the caffeine in it is equivalent to that in three cups of tea.

The proposal seems to be a sledgehammer to crack a nut. We have things such as energy drinks—I will not mention a particular brand, because supermarkets produce the same products at a much cheaper price than the standard brand leader. The proposal goes down the wrong road. There is a social problem with Buckfast in particular areas, and I do not think that it would make any difference whether it had caffeine in it or not. That is not the reason why the people who have such problems drink it. The sweetness of the drink and the ease of consumption are probably a bigger attraction than the caffeine content. I think that caffeine is a red herring.

**The Convener:** What is a mad drink in Aberdeen? You know what it is, don't you?

**Councillor Shand:** Aye.

**The Convener:** Well, tell me what it is then.

**Councillor Shand:** It used to be white cider. You could buy 3 litres for two quid, and it had never seen an orchard in its life. Apparently, it was made from corn syrup.

**The Convener:** I asked you that because I want to go back to your point about targeting particular drinks in certain localities. That could be White Lightning, Wham or, in certain areas, Buckfast. The focus in previous legislation has been on strong lagers and so on. Those drinks have been targeted because they are harmful not just to the individual but to wider society. Nobody disagrees that, if we want to tackle some of the antisocial behaviour and health problems, particular drinks need to be targeted through certain initiatives—do people disagree with that?

**John Lee:** It very much depends on the product. We are uncomfortable with particular

products being targeted in this way. There are complex reasons why people have problems with such products. To us, it seems the wrong approach to ban them—or to use licensing to in effect ban them—without robust, concrete evidence that those products are causing a problem. That is why we are uncomfortable with the proposal. As I said, when we look at the evidence, there does not seem to be any issue with caffeine and alcohol. There is a real challenge to the perception that such products are having the harmful effect that people think that they have. As Councillor Shand says, the issue is maybe nothing to do with the caffeine at all. We have to step back a little and gather more evidence before we ban particular products.

**The Convener:** Are you going to tell us your favourite mad drink, Dennis?

**Dennis Robertson:** I do not have one, but if I did, it would probably be a nice Cognac.

For some people, is it not the case that the issue is not caffeine or a particular product, but the price? The reason why people buy certain products is to do with what they can get cheapest, so there is no significant issue to do with caffeine or anything else. They want to get drunk—or bloated, or whatever the term might be.

**The Convener:** Richard Simpson is champing at the bit. I cannot bring him in now to respond to that, but he will have the opportunity to do so shortly.

**Councillor Shand:** Buckfast is not particularly cheap: from what I remember, it falls outwith the scope of the Alcohol (Minimum Pricing) (Scotland) Act 2012. The issue is not price—if it was, white cider might be a better buy in Glasgow. It is maybe we cheapskates up in Aberdeenshire who want to go for the cheap drink.

**The Convener:** They say that some Aberdonians know about good value. [*Laughter.*]

**John Lee:** I would echo Councillor Shand. The main product that we tend to talk about in this context is not particularly cheap and would not be affected by minimum unit pricing. I am not even sure that it is particularly strong; it is probably not as strong as we think it is. I am sure that much more potent products are available. In terms of price and strength, the product is probably not the problem that we think that it is.

**Richard Lyle:** My final question is about the proposal to notify an offender's general practitioner. The submission from Renfrewshire licensing board talks about

"an individual's right to privacy"

and questions whether the proposal

"is of any public benefit."

Will you comment on that, Mr Campbell?

**Douglas Campbell:** I am sorry. What are you are referring to?

**Richard Lyle:** The question is about notification of the GP after an offence involving alcohol, under section 31 of the bill.

**Douglas Campbell:** I am looking through our response for a reference to that—

**Richard Lyle:** I can help you. You

“stated that GPs would no doubt already be aware of a patient’s state of health as a result of misuse of alcohol and question the requirement for this provision. We also question whether such a provision is a necessary public interference with an individual’s right to privacy and accordingly whether it is of any public benefit.”

**Douglas Campbell:** I am not sure that that is my submission that is being quoted—

**Richard Lyle:** I am sorry. It says “Renfrewshire Licensing Board” at the top of the paper.

**Malcolm Chisholm:** That is wrong: that is the Law Society of Scotland’s submission.

**Richard Lyle:** I apologise. I would be interested to hear the panel’s views on the proposal.

**The Convener:** It is helpful that Richard Lyle has got that on the record. That quotation was from the Law Society’s response to section 31.

**Archie MacIver:** That comment is in the Law Society’s response and is just a general comment that in the context of alcohol misuse we expect that most GPs would already be aware of their patients’ state of health, and that given that there would be no requirement for the GP to do anything after receiving the intimation we question whether there would be any public benefit from the provision. Is it worth legislating to give GPs information about which they may choose not to do anything? That is the general thrust of the comment.

**Richard Lyle:** I apologise to Mr Campbell. My paper has the heading, “Renfrewshire Licensing Board.”

**The Convener:** Not guilty.

Does anyone else want to comment on GP notification?

**Councillor Shand:** Aberdeenshire Council is quite happy about notification of GPs, but we think that there is nothing that a GP could do with the information once they have it. I am maybe out of line with my colleagues on the licensing board, in that I feel that the provision would impinge on the doctor-patient relationship and confidentiality. I had reservations about other people saying, “This chap’s got a drink problem”—that is something

that a patient should disclose directly to their doctor. That is my personal view.

**The Convener:** Let me give a plug to a self-financing scheme in Newcastle that has been described as “a no-brainer”, in which half—£45—of the £90 drink-related fine is deferred and the offender is directed to the GP and attends a four-hour course. The people we met claimed great success for the scheme. That approach shows significant promise when we compare the reoffending rates of people who attend the course with those of people who do not attend it, and it also appears that the approach is self-financing—it does not cost any money. I recommend that you look at it.

**Malcolm Chisholm:** It was important to mention that, but that specifically relates to another proposal in the bill about alcohol awareness training as an alternative to fixed penalty fines, so it is an example of what is being proposed. The bill is proposing that for all fines, whereas Newcastle proposed it for half of the fines. It is the same principle and it seems to be effective: there is evidence that there is less reoffending among those who have been on the course than by those who have not.

10:45

**The Convener:** That is on the record now.

I would like briefly to address a couple of areas—the proposals on age discrimination and off-sales. Does anyone have comments on that? The written evidence showed more support for that: I take it that the witnesses’ silence confirms it.

**Councillor Shand:** Aberdeenshire Council does not think that age discrimination should play a part in the law. The age limit should be 18 for everything. We are not happy with the proposal that it should be 21 for some things.

**The Convener:** Do any of us know where those age restrictions have been applied?

**Archie MacIver:** In my experience, I have come across that on only two occasions, both of which followed premises licence review hearings in which the premises in question had failed at least two test purchases. Part of the sanction—for want of a better term—that the board imposed was a restriction on the age of people to whom alcohol could be sold. Both restrictions have subsequently been overturned, and those premises have gone back to a minimum age of 18.

**The Convener:** Is it a useful tool? I presume that the view was that it was.

**Archie MacIver:** It was a tool that that board thought to implement, but that is merely my experience.

**The Convener:** Mr Lee—do you know of any such cases?

**John Lee:** I am not familiar with the example, but the proposal would seem to make things clearer and more consistent, so we would be happy to support it.

**The Convener:** Another point on the general issues concerns a minimum price for packages that contain more than one alcoholic drink. Do the witnesses have any views on what those provisions might do to reduce alcohol consumption?

**Douglas Campbell:** Renfrewshire licensing board is generally supportive of the idea. Why should there be a restriction on the single can, as against four cans, and not between four cans and eight? I am not sure that the provision would introduce a complete linear pricing model, but that was not the intention, so we have expressed support for the provision.

**The Convener:** Are you confident that the measure could be enforced?

**Douglas Campbell:** The provision relates to a single can as opposed to four cans. If the restriction is to be that four cans being sold as a package should not be cheaper than four single cans, it seems to be logical that a loophole could be created simply by not stocking single cans. If we are going to have a restriction at all, it seems that it would be sensible to make it more coherent. As with all those matters, it is obviously a matter of time and resources for licensing standards officers and for others who are involved in enforcing such restrictions, and it is about how proactively they would be enforced, compared with other priorities. However, the logic makes sense to us as a board.

**Councillor Shand:** We are happy with the multiple-pack rules, but mixed packs would always be a way around them. By not packaging things like for like, people could always find a way around the restriction, if they wanted to. Nevertheless, we are happy with the general principle.

**Douglas Frood:** I agree completely. The licensing standards officers group is broadly supportive of the measure, which is a provision that has been lacking in the provisions on irresponsible promotions, in which, it is clear, there is no link between four-packs and eight-packs when single cans are available. As we say in our submission, the previous change to the legislation had the adverse effect of forcing smaller single cans off the shelf, so now a larger pint can is the smallest can that is available on the shelf. The measure could be implemented under schedule 3 to the 2005 act, so there is no real problem that we can see, although there may be workarounds by the trade.

**The Convener:** Thank you. We have a final question from Mike MacKenzie.

**Mike MacKenzie (Highlands and Islands (SNP):** As a representative of the Highlands and Islands, I feel bound to ask this general question. Perhaps our guests can exercise their imagination and consider whether the bill would have a detrimental effect, particularly in rural areas. Given that small rural shops, which are very often also the post offices for their areas, teeter on the brink of viability, will the burden that will be imposed by the legislation make the difference in terms of the viability of those small community facilities?

**John Lee:** That is a good question. I do not have the full answer, but I note that if the bill is enacted, it will be the sixth major piece of alcohol legislation since 2009. The retailers' view is that the licensing landscape is becoming increasingly complex and difficult to understand in-store. Whenever new legislation appears we, as a trade association, try to issue guidance to ensure that our members are compliant and are selling alcohol responsibly. However, that can be expensive and time consuming, and it is becoming increasingly difficult for all key stakeholders to get to grips fully with the complexity of licensing legislation in areas including promotion and advertising.

Another issue is training. In Scotland, all staff must undergo two hours of mandatory training before they can serve alcohol, and premises must have a premises licence holder. Things are becoming increasingly complex, and there is a case to be made for Parliament taking a step back to evaluate the impact of existing legislation before we go any further and enact yet more licensing law.

**Councillor Shand:** Our licensing board covers a vast rural area as well as towns, so I appreciate entirely what Mr MacKenzie is saying, but I think that the financial situation of remote village shops, country pubs and so on needs to be dealt with in a different way.

That said, I do not think that our legislation should be excessively onerous. Licensing law has become very complicated and is covered in several pieces of legislation. It is unfortunate that we cannot refer to a single act that contains everything. We are talking about amendments to the 2005 act here; the whole situation has become so piecemeal that it probably needs total reappraisal through a single act. I know that that is not where we are at the moment, and that we have to deal with diverse legislation, but I understand Mike MacKenzie's point exactly.

**Douglas Campbell:** The view that Councillor Shand and the Scottish Grocers Federation have set out is, I think, widely shared. It would be hugely helpful if all the pieces of legislation could

be put under one roof in a consolidating act. We have had more than 30 sets of regulations, and I cannot remember whether, including the 2005 act, we are now on the fifth or sixth act. We have had the 2005 act itself, the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol etc (Scotland) Act 2010 and the Air Weapons and Licensing (Scotland) Act 2015, whose provisions have not yet, in the main, been commenced. The landscape is becoming very complex; I feel the pain of the trade and the members of the federation in keeping track of matters. The situation is difficult enough for licensing lawyers across the country.

**Archie MacIver:** I echo those comments. We know the old adage that ignorance of the law is no defence, but that is fine only if the law itself is easily accessible. To be quite candid, I say that it is impossible for the average retailer to keep up with the amount of legislation and regulation that governs the trade. Law practitioners who do this day in and day out struggle to keep up, but for the chap who is trying to run his local corner shop—or indeed for the big high street supermarket; it does not matter—finding the appropriate legislation is bordering on impossible. The committee is hearing a real cry from the heart, and if you have any power in this regard—

**The Convener:** You understand that the Scottish Government has Parliament's support for tackling one of our biggest problems.

**Archie MacIver:** Absolutely—but the difficulty for the operator lies in finding the information. It would make such a difference if we had one consolidated piece of legislation.

**The Convener:** Do you have any other questions, Mike?

**Mike MacKenzie:** No, convener—but I note the very important point about the need for consolidation. Indeed, it was the very point that I was seeking to tease out.

**The Convener:** I think that the issue is reflected in the written evidence.

**Bob Doris:** Mr Lee talked about seeing how successful existing legislation has been. We have strong evidence that the multipack discount restrictions that the Scottish Government brought in have already led to a fall in consumption.

In relation to consolidation, would Dr Simpson's proposals simplify things? There are already restrictions on multipack sales, so we could keep things simple by adding a multiplier to the cost of one can and ensuring that there are no multipack discounts. I do not see how that would complicate matters for the trade; surely it would simplify them. I take on board Mr MacIver's point about having all the legislation that impacts on the trade in one

place, but surely it could be argued that Dr Simpson's proposals would simplify things for the retailer rather than make them more complex.

**John Lee:** We are seeing a constant raft of licensing legislation and it is difficult for retailers to get to grips with it. Our concern is that the multipack promotion proposal might have the unintended consequence of forcing people to upgrade. It is no longer really viable for retailers to offer single cans for sale. Customers might keep buying four, eight, ten or 12-packs of beer, although, as Mr Doris said, the evidence seems to be that consumption is declining.

We are concerned that a lot of the provisions in the bill need clarity—they are slightly ambiguous—and they overlap too much with existing provisions. I do not think that it would do any harm to pause the bill and review it later.

**The Convener:** With the committee's permission, I will allow Richard Simpson a few questions before we finish the session.

**Dr Simpson:** First, I thank all the witnesses. The written evidence and the commentary have been helpful.

The central tenet of my bill is that we already deal well with the very serious offenders through the current legislation. Most of what I am proposing, at least on the justice side, would move into the area of people who commit lesser offences. The drinking banning order, for example, is designed to deal not with violent offenders but with those whom the police and the prosecution identify as having repeat offences. Does Mr MacIver feel that the law currently deals with those people? Does anything require the court to make a commentary on repeat offenders who receive minimal intervention by the courts? There is nothing there at the moment.

**Archie MacIver:** There are the powers that we touched on—exclusion orders and the like. Our feedback is that they are not being followed up terribly actively. If that is the case with the more serious offender—to use Dr Simpson's term—that begs the question whether the courts would be likely to go down the road of a banning order for what might be perceived as a less serious offender. There is a question mark over whether in practice the order would be enforced, although the aim is undoubtedly perfectly laudable. I cannot answer that, because that is a matter for the courts, the police and the local authorities. However, the Law Society has reservations that, if the proposal ultimately becomes law, it might sit on the statute book and gather dust, as it were.

**Dr Simpson:** The banning order process is designed to be more like the drugs courts with the drug treatment and testing orders, when the courts



get more involved with the management of the case.

We have just discussed multipacks. Does anyone disagree with the principle, which the Parliament has supported in its legislation, that volume discounting should be banned? The bill is designed just to tighten that up. Supermarkets in particular have in effect got round the principle of banning volume discounting by not selling single cans and saying that the four, eight, 12 and 20-packs are all different. I would like to have it on the record if anyone thinks that volume discounting should not be banned. There is no response from the witnesses—that is helpful.

11:00

On caffeine, the problem is—as I think became clear in the evidence from Mr Lee—that the evidence is mainly from America and based on stuff such as wide-awake drugs, taking risks in driving and taking sexual risks, when people are more likely to be both predatory and responsive. All that is evident and clear in America, but the evidence is mainly from among college students.

The reason for putting the ban not in primary legislation but in secondary legislation is to allow the Government to introduce it as the evidence becomes clearer. If we set a fixed limit on caffeine in the primary legislation, that would be more difficult to change. Is that a valid point?

**Archie MacIver:** I understand the rationale behind what is being said, but I still think that the level of caffeine is so fundamental to the question that, to enable proper debate on the proposal, the primary legislation has to indicate what level of caffeine we are talking about. I submit that to leave it to be promulgated by secondary legislation would not afford those who are involved in the production and retail of the products the same amount of input. That is the danger.

**Dr Simpson:** So the legislation would need to be subject to the affirmative procedure.

**Archie MacIver:** I suggest so.

**Dr Simpson:** There is a voluntary ban on advertising within 100m of a school, which we know has been evaded in some cases. Do people think that 200m is a reasonable distance? The point is to denormalise alcohol to children.

**Archie MacIver:** We have the 200m anti-promotion legislation, so I come back to the question whether there would be an element of duplication.

**Dr Simpson:** The aim is to ban advertising as well as promotion; they are different things. I take the point about in-store advertising, so we will look

at section 8 again, because I do not think that we have got it quite right.

The consultation proposal is based on the New Zealand system, which requires far more intensive consultation with communities than we have at present. I take the point that Councillor Shand, Douglas Campbell and others made that, if a 50m radius included multistorey blocks, it would be quite onerous. However, the radius at the moment is 4m. If an area does not have a community council, which is predominantly the case in deprived areas, consultation is very narrow. Could we have a compromise with an amendment for something between 4m and 50m?

**Douglas Campbell:** I suppose that any distance of less than 50m would be better, but there could be cases in which that was still fairly onerous if it was in the vicinity of multistorey blocks. That would depend on what the distance was. We are perhaps again talking in loose terms without knowing exactly what might be proposed.

As I said, I know of one area where, if the distance was 50m, a small major variation application to slightly increase the capacity of an off-licence premises could mean so many notification letters having to be delivered that it would be a substantial amount of work for the local authority. I am not clear how many responses would ultimately come in and whether the benefit that was gained would be proportionate to the resources that were spent, which could take resources away from other priorities.

**Dr Simpson:** The provision would apply only in the 15 per cent of areas where no community council is active, so it would be limited.

**Douglas Campbell:** As I said, I have given this some consideration and we have one area where, if we had a major variation application, that could result in a substantial amount of work if a change to 50m was brought in. I appreciate that the provision would apply only where no community council was active. Nonetheless, a community council might be lacking in one of those areas, which might cause a great deal of work for not such a great reward.

I understand the principle behind what Dr Simpson is trying to achieve and the benefits of community empowerment more generally.

**Councillor Shand:** I understand Dr Simpson's intentions, but it would be onerous to inform so many people of a major variation. It might be possible to distinguish between a new premises establishing a provisional licence and a major variation to an existing licence. Different criteria might be needed to mitigate the worst effects of having to inform—possibly—dozens of people. In a local supermarket, extra shelf space might be deemed a major variation. In the case of new

premises, a greater distance might be justified. The problems for licensing clerks, who have to notify people about what is being done, might be a burden too far.

**Dr Simpson:** My last question is on bottle marking, which is where we started our discussion today. The critical issues are that bottle marking should focus on specific stores and that it should be designed to protect stores as much as to seek to punish them.

I have seen evidence that it was discovered, after marking, that stores that were thought to be selling alcohol to underage customers were not doing so. The proposal is about gathering intelligence and focusing on stores. We are not talking about a large number of stores—I am not proposing a national scheme. It is not a case of saying to all stores that they will be required to be involved.

An important point that has come out today is that bottle marking should focus on specific drinks. Another issue is that it should be temporary; it is not on-going. It is designed to allow the police to gather intelligence. There have been hardly any prosecutions for proxy purchasing because it is extremely difficult to detect. It is almost impossible for a retailer to know that they are selling to someone who will hand on the product.

I understand that some costs will be involved. In addition, working out precisely who will stick labels on bottles and cans is a matter for discussion and regulation.

Is the general feeling that bottle marking is a useful tool to allow police to gather intelligence, even if it requires a temporary imposition on stores, or is the feeling that bottle marking is a step too far? Proxy purchasing is one of our biggest problems and there have been almost no prosecutions for it because it is so difficult to detect.

**John Lee:** We are still not convinced that bottle marking is an effective way of dealing with proxy purchasing. Even when the police take positive action—even when they arrest and charge people and the reports are passed to the procurators fiscal—such cases tend not to be marked for court action. That seems to be a problem, as much as anything.

The problem can be solved only when the police work with retailers, social services, housing services and youth and diversionary services to get to grips with it. The issue is complex. A lot of the time, people who are involved in proxy purchase have problems with addiction and need fast injections of cash. That is why they are willing to proxy purchase. It is not something that a responsible person would do.

Unfortunately, the other scenario is that the people who are willing to proxy purchase want to cause harm to children and young people. The issue is complex and I am still not convinced that a bottle-marking scheme is the right way to address it. I would have sympathy with it if it was a voluntary scheme that had been worked out between the police and the retailers. However, if it were a national mandated scheme, I do not think that we could support it.

**Councillor Shand:** Proxy purchase implies that an adult is deliberately buying an alcoholic drink for someone who is under age, for a specific occasion. I imagine that most proxy purchases happen inadvertently, when parents come home with a trolley of supermarket drink and their children help themselves. Proxy purchases will happen either unbeknown to the parents or with the connivance of the parents—“Just help yourself to that bottle or case and off you go.” The issue is not particularly easy to deal with. I think that the vast majority of proxy purchases are inadvertent rather than deliberate.

**Dr Simpson:** Before any bottle-marking scheme was introduced, I would expect the police to talk to licence holders—they do not want to have a bad relationship with licence holders. The information that we got on the Dundee project was that it was cumbersome because a regulation was not allowed to be imposed. That would give the police the power if they feel that it is necessary but, if they do not feel that it is necessary and they can proceed on a voluntary basis, that is fine.

**The Convener:** I thank all the witnesses for their attendance and the valuable time that they have given the committee. The session has been helpful.

11:11

*Meeting continued in private until 12:44.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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