

FINANCE COMMITTEE

Tuesday 1 June 2004
(*Morning*)

Session 2

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FINANCE COMMITTEE

17th Meeting 2004, Session 2

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Kate Maclean (Dundee West) (Lab)

*Jim Mather (Highlands and Islands) (SNP)

*Dr Elaine Murray (Dumfries) (Lab)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

*John Swinburne (Central Scotland) (SSCUP)

COMMITTEE SUBSTITUTES

Mr Adam Ingram (South of Scotland) (SNP)

Gordon Jackson (Glasgow Govan) (Lab)

David Mundell (South of Scotland) (Con)

Iain Smith (North East Fife) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Colin Cook (Scottish Executive Health Department)

David Cullum (Scottish Parliament Non-Executive Bills Unit)

Mary Cuthbert (Scottish Executive Health Department)

Mr Stewart Maxwell (West of Scotland) (SNP)

Stuart Ross (Scottish Licensed Trade Association)

Calum Scott (Scottish Executive Health Department)

Colin Wilkinson (Scottish Licensed Trade Association)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Terry Shevlin

ASSISTANT CLERK

Emma Berry

LOCATION

Committee Room 2

Scottish Parliament

Finance Committee

Tuesday 1 June 2004

(Morning)

[THE CONVENER *opened the meeting at 10:02*]

Prohibition of Smoking in Regulated Areas (Scotland) Bill: Financial Memorandum

The Convener (Des McNulty): I welcome members of the press and public to the 17th meeting this year of the Finance Committee. As usual, I remind people to switch off all pagers and mobile phones. I think that Wendy Alexander and Jeremy Purvis will be joining us a bit late.

The first item on our agenda is consideration of the financial memorandum on the Prohibition of Smoking in Regulated Areas (Scotland) Bill, a member's bill that was introduced by Stewart Maxwell on 3 February 2004. Stewart Maxwell has joined us for today's three evidence sessions on the bill and will move seats when he becomes a witness for the third evidence session. Members have copies of the bill, the policy memorandum and the explanatory notes; we also have copies of written submissions from the Federation of Small Businesses in Scotland, the Scottish Executive and the Scottish Court Service.

I welcome our first set of witnesses, who are from the Scottish Licensed Trade Association: Stuart Ross is the chairman of the year and Colin Wilkinson is the secretary. I will give Stuart Ross the opportunity to make a short statement, if he wishes to do so. We will then move to questions, if that is okay.

Stuart Ross (Scottish Licensed Trade Association): Thank you for giving us the chance to be here to give evidence. I apologise to the committee for the fact that we were unable to provide a written submission in advance. We have prepared some material that we would like to present to you now and perhaps read through with you. Would that be okay?

The Convener: As long as it is not too long. We are a bit resistant to very lengthy statements.

Stuart Ross: It is not too long; it is a fairly succinct response. To share it with you, I will pass round copies, as that will make it easier to talk through.

The Convener: I would prefer it if you did not read out the whole submission; it would be helpful if you could summarise it. Our general practice is that we do not take read-out versions of submissions on the day.

Stuart Ross: I will do that. We are here to represent the Scottish Licensed Trade Association, which has a membership of 2,200 licensees. Most of our members are self-employed business people who are engaged in trading in pubs and hotels, but we also represent restaurateurs, club owners and take-home operators.

As you said in your introduction, convener, I am the chairman of the year, which is akin to a non-executive role on the board of directors of a company. I am also chief executive of the Belhaven Group plc—Scotland's largest regional brewery—the turnover of which is in excess of £100 million per annum and which has an estate of 240 pubs and more than 1,400 members of staff. I have been able to use my Belhaven experience to help the SLTA to prepare its submission. We are endeavouring to address the bill's financial implications, not just for the SLTA's membership, but for the wider field of the entire Scottish licensed trade, which includes sports and social clubs. I am joined by Colin Wilkinson, who is the association's secretary and the pivot of member services and administration, which are based in the west end of Edinburgh.

Our approach to the bill has been driven by three key questions. How would the trade react to the bill? What would be the capital cost of providing non-regulated areas? What would be the on-going annual revenue cost to the trade of compliance with the bill? The four options that we identified are listed in our submission. From our experience and from discussions with our members, we have concluded that, in licensed outlets that already have segregated areas, food would be served in one area, which would become regulated, and the other area would become a non-regulated area in which smoking was permitted. However, most premises do not have the segregated areas that the bill demands. We believe that, where practical, licensees would want to create such areas, to enable them to have a regulated area and a non-regulated area.

In the submission, we have tried to do the arithmetic on the capital cost of providing segregated areas and the on-going cost of running two bars instead of one—which, in effect, is what would be necessary. We calculate that, for the 5,000 of the 11,500 on-premises licensed outlets that would be affected, the capital cost would be £85 million. We used many guesstimates and estimates to determine that figure. We in Belhaven conducted research in 38 of our outlets and found

that, in seven of them, it would be impossible to comply with the terms of the Maxwell bill.

The creation of a segregated area and a separate bar brings into play many issues, one of which is whether the licensee could supervise the business effectively, in compliance with the Licensing (Scotland) Act 1976. We estimate that, in half the cases, a bar would have to be provided in the segregated area to enable supervision. That puts up the capital cost by quite a bit.

All the figures that we have prepared are clearly laid out in table 1 in our submission. Members might well question some of our assumptions—everyone has their views on these things—but, based on our review of our businesses, those are the sort of percentages that we think would apply.

As for the on-going running costs, by far the biggest cost in the provision of segregated areas is that of additional labour. The capital cost works out at a one-off figure of £85 million. Our calculation of the recurring costs is about £110 million, which, as I said, is mainly in additional labour costs.

We do not agree with the assumption that is made in paragraph 63 in the financial memorandum to the bill. The member in charge of the bill is clearly of the view that no adjustment in the manner that we have suggested would need to be made to licensed premises and we think that that is an unrealistic line to take. Because licensees would not want to lose trade, they would simply create segregated areas. If the licensees did not respond in that way, in effect all that the bill would do would be to create a divide in Scottish licensed trade premises between wet-driven smoking pubs and food-driven non-smoking pubs. I am not sure whether that is the objective of the member in charge of the bill, but the reaction of the trade would not be as he suggests.

We have not had time to challenge the important assertion that is made in paragraph 66 in the financial memorandum, which states:

“There is also clear evidence from other jurisdictions that there will be no loss of trade costs to businesses.”

We would like to ask the committee through the convener whether we could be allowed further time to study paragraphs 29 to 37 of the policy memorandum, in which details supporting that assertion are given, and to respond with our views at a later date. Perhaps the convener could tell us how to get hold of those paragraphs, as they are fundamental to an assessment of the financial implications of the bill to businesses. Perhaps that evidence could be made available to us.

Although there is a lot of anecdotal talk about what has happened in places such as New York, Australia and Ireland, I have not seen much

factual evidence. If there is any, the Scottish licensed trade would welcome the opportunity to study it. That sums up our preliminary statement.

The Convener: I do not understand why you have not seen the policy memorandum, as it is relatively freely available. On your comments about having further opportunities to submit evidence, the committee has to finalise its report at our meeting of 22 June. Any witnesses who wish to make further submissions can do so. That said, we would need to receive the evidence a good week before our meeting of 22 June so that it can be processed.

There is a huge gulf between what you and Stewart Maxwell are saying in respect of the financial memorandum. Can I just be clear about your view? One way of interpreting the information that is provided in your submission is that, at £85 million, the proposals under the bill represent a prohibitive cost for businesses. Another way of viewing it is to say that it represents an argument for going further than Stewart Maxwell's bill by going down the route, which I understand has been taken by both Ireland and Norway, of a complete ban on smoking in licensed premises. What is your view of going further than the bill and having a complete ban? Obviously, the bill has been introduced, but it can be amended.

10:15

Stuart Ross: Yes. We thought that the committee might ask us that question. The financial repercussions of a total ban would depend on whether businesses held on to their custom. The exercise in that respect is quite different from the approach that we took in the preparation of our submission. Everyone has their own views on what the impact of a total ban on smoking in public places would be on trade. The SLTA has made a submission on the Maxwell bill and there are various other submissions, but we have serious concerns about the damage that would be done to the licensed trade if there were a total ban.

There is already a couch-potato syndrome in Scotland: 40 per cent of beer sales are through the take-home trade in Scotland, compared with 8 per cent in Ireland, so there is a much stronger pub-going culture in Ireland than there is in Scotland. What concerns our members is whether a total smoking ban would further exacerbate the trend towards take-home drinking. That is a massive issue, which we would have to address.

We must consider how such a ban would impact on individual members of the SLTA. In the wider trade, how would a ban impact on companies such as Belhaven, which are totally reliant on the on-trade for their profitability? Such an assessment is

a huge exercise and it is all driven by fundamental assumptions about what the impact would be on the top line and how that would fall through to the bottom line. That is why I am saying that it is important to get fact-based evidence from countries where smoking bans have been implemented. There is far too much anecdotal talk in the press and in various papers; it is vital that fact-based evidence is studied before submissions are formally made.

Dr Elaine Murray (Dumfries) (Lab): My first question relates to table 1 in your submission. It states that there are approximately 11,500 on-premise licensed outlets in Scotland. How many of those premises serve food?

Stuart Ross: It is estimated that 65 to 70 per cent of those currently serve food. Obviously 100 per cent of hotels and restaurants serve food, but on the pub side about 65 per cent serve food.

Dr Murray: I am slightly surprised that you suggest that people would opt to have very expensive adaptations done to their premises. I would have thought that the easiest thing would be either to decide not to serve food because people want to continue to have smokers on the premises or to ban smoking. Some preliminary results from Ireland were mentioned on the radio this morning. Those suggest that the trade in Ireland has increased, as more people are going out to eat because they know that they will not be annoyed by smoking.

Stuart Ross: As I say, I am not prepared to respond to anecdotal evidence. In relation to someone deciding to stop serving food in a pub, it is important to note that food represents about 20 per cent of turnover in public houses and that it drives quite a bit of the wet sales. If someone was to stop serving food, that would have a big impact on the bottom line. If such premises were to become regulated areas, pubs that serve food would lose their drink trade, which generally kicks in from about 8 o'clock in the evening. If they lost a lot of their drink trade to pubs that were non-regulated areas, they would lose commercial advantage. Those are the two reasons why we make the assumption that we would favour segregated areas. I cannot speak for 2,200 members of the SLTA, although Colin Wilkinson can perhaps touch on research that the association has done, but I can talk for Belhaven and say that that is definitely the way that we would go.

Dr Murray: People do not tend to stay in the same licensed premises all night. Is it not possible that people would go to the place that served food in order to eat food and if they wanted to smoke they would go on to somewhere else that allowed smoking?

Stuart Ross: You do not understand the time point, which I have just made.

Dr Murray: They would possibly move later on.

Stuart Ross: A lot of trading in pubs is done between 8 pm and closing time. If pubs that serve food did not have segregated areas, they would not be allowed to have smokers in their bars at night. People generally go out in crowds and about 60 per cent of pub-goers smoke, so the chances are that, in any crowd, those people will be looking for a pub where smoking is permitted. Therefore, the pubs that are not regulated would have great commercial advantage over pubs that are regulated. That is the simple answer to your question.

The Convener: You said that 60 per cent of pub-goers smoke. Where does that statistic come from?

Stuart Ross: From research that has been done.

Colin Wilkinson (Scottish Licensed Trade Association): We surveyed our membership of 2,200 on the specific question of the number of customers who smoke on their premises. The answer was that roughly 62 per cent of customers smoke.

The Convener: How did you conduct that research?

Colin Wilkinson: We asked each of our licensed trade members to provide a specific questionnaire to their customers.

The Convener: How did they make a judgment? Did your members poll the people in their bars?

Colin Wilkinson: It was a ballot of pubs. The results will be announced officially next week.

Kate Maclean (Dundee West) (Lab): Stuart Ross asked about the policy memorandum and when he would get a copy. The memorandum is not based on anecdotal evidence; it is based on studies that have been done, some of which are listed in the memorandum, so he will be able to get hold of them. The conclusion of the independent surveys was that the bill would not have a negative effect on trade.

Colin Wilkinson said that 62 per cent of people who go to pubs smoke, but that does not reflect the population as a whole. I imagine that the reason why fewer non-smokers go to pubs is that the atmosphere is smoky. Those people who could not have a drink without a cigarette might drink at home, but other customers who would not normally go to a pub or a restaurant where smoking is permitted because they find it impossible or obnoxious to sit in such places might go to pubs with non-smoking areas. The evidence is that there is no negative financial impact on

businesses in places such as New York, where there has been a ban on smoking in public places for some time.

It could be argued that, if pubs were to become non-smoking establishments or have non-smoking areas, there would be far fewer costs for maintenance, redecoration and damage to furniture and fittings from cigarettes and that that would balance up some of the additional costs of capital works that would have to be done. In that respect, there would be an on-going saving rather than a one-off cost. What are your comments on that?

Colin Wilkinson: You mentioned the situation in New York. We have heard about that survey umpteen times in relation to the hospitality sector, but there was no focus on the pubs that were affected by the ban. We have had discussions with the equivalent licensed trade association in New York and it reports that its customer numbers are down by 20 per cent to 30 per cent. However, we are focusing on the pubs that the Maxwell bill would affect. That is a different story from what one hears in the press about the survey that was done in New York.

Kate Maclean: In a country that wants to attract tourism, many people would think that pubs should also be part of the hospitality sector, albeit that they offer a different type of service from the service that restaurants offer. Non-smoking pubs might attract people who would not normally go into pubs because they do not like smoking.

Colin Wilkinson: In New York, licensed traders report that customer numbers are down by 20 per cent or 30 per cent. The individuals whom you mention have not been replacing the smokers.

Kate Maclean: Which survey do you refer to? I would like to look at it.

Colin Wilkinson: It was by the United Restaurant and Tavern Owners of New York. I have the details here.

Stuart Ross: Kate Maclean makes a couple of decent points. If we were talking about having a total smoking ban, there would be a clear divide. There is no doubt that pubs would not be as badly hit in the more enlightened parts of society and there is merit in the argument that there are potential consumers who do not currently go to pubs but would go to them if the atmosphere in them was less smoky. However, members probably know that smoking is more predominant in the deprived areas of the community.

I am a member of Tom McCabe's working party on the tobacco action plan. At the previous meeting, Tom McCabe provided statistics that showed that around 43 per cent of people in the more deprived areas smoke, whereas, on

average, the figure is 30 per cent. There is no doubt that the businesses that would be worst hit would be community bars in deprived areas, most of which would suffer huge losses. There are always net gainers and net losers with any piece of legislation, but the key questions are where they would be and how much they would gain or lose. Those questions are difficult to answer, which is why it is important for Scotland's licensed trade fully to understand what the financial impact has been in countries in which total bans have been imposed and how that impact has been split between restaurant-type businesses for which there should be a net gain and bar businesses in community areas for which there will definitely be financial losses. Answering those questions is difficult—we are talking about crystal-ball stuff—but any fact-based evidence from other countries is welcome. I take the point that has been made.

I am not sure what is meant by cost savings in regulated areas. There would be a less smoky atmosphere and perhaps people would not have to paint places as often, but other than that I cannot see where any economic benefits would come from. Certainly, there would be atmospheric benefits, but the economic benefits are doubtful.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): The committee's job is to consider the bill's financial implications and not its rights and wrongs. As you know, that matter is for another committee.

Stuart Ross: That is what we have done.

Fergus Ewing: I appreciate that; indeed, the information that you have provided is extremely helpful. However, I am struck by the massive gulf between your evidence and Mr Maxwell's evidence. Mr Maxwell says that there would be virtually no costs, but you have identified capital costs of £85 million and additional costs of £110 million for labour, energy and cleaning. I presume that those costs are per annum.

Stuart Ross: Yes.

Fergus Ewing: That is before any allowance for loss of trade is considered, the implications of which you have begun to consider. By contrast, Mr Maxwell rather optimistically states that there would really be no impact. There is a huge gulf in the evidence. I noticed that the capital figure of £85 million in table 1 does not include provision for additional fire escapes, which might be necessary.

Stuart Ross: That is right—that is mentioned in a note on the table.

Fergus Ewing: In addition, the figure does not include the cost of providing access or egress for disabled customers. If a new space must be created, it is likely that building regulations would require additional costs in such areas that would

fall to be considered on top of the other figures that you have provided. You seem to contend that the worst-hit premises would be working men's pubs in small towns and villages in Scotland. If the capital costs per unit of £8,000—

Stuart Ross: May I intervene before you continue? Small community pubs would be worst hit only with a total smoking ban. Under the bill, the impact would be fairly neutral for them, as such pubs probably do not serve food anyway.

Fergus Ewing: I am grateful for that clarification. Let us consider premises that would require to decide what they should do and whether they should have only wet sales and should stop serving food, or whether they would want to continue with both in order to maintain the turnover if they have at least a substantial component from food sales. I want to consider the matter from the point of view of a small pub that wants to continue to serve food. You have set out capital costs of around £8,000 per unit for creating a non-regulated area and ventilation costs of £4,000 per unit, before extra labour costs are considered. Am I right in saying that many small pubs are, frankly, finding it difficult enough to survive and operate profitably and that, if they face those extra costs, they may well be forced to close their doors? If so, can you give us any quantitative evidence of how the members of the SLTA might be affected?

10:30

Stuart Ross: Those are good questions. In table 1 of our submission, we have listed the number of licensed outlets in Scotland by type. We have made the assumption that most leased tenanted pubs and managed pubs, which are generally owned by multiple plc-type companies, will try to adapt and will have the financial resources to do so. We have made a much more modest assumption about the number of independent pubs that would provide segregated areas for the reasons that you have stated: because they cannot afford it or because they are too small to justify it. It is difficult for us to say that the figures in our submission are accurate. We state that we can use only our best estimates—indeed, guesstimates—and you will appreciate the fact that we had only a short time between our being asked to study the matter and our reporting on it today.

Fergus Ewing: You have provided detailed figures in a short space of time. We appreciate that. You should also have had a chance to look at paragraphs 29 to 37 of the policy memo, which cover the comparative evidence from other countries.

I would like to pursue the effect of the bill on small, independent pubs. Since the bill's publication, have you conducted a survey of your members to find out how the bill will impact on them? If not, might you want to do that to assist the committee in determining as best we can—bearing in mind the fact that it will be a forecast—how your independent members with smaller licensed premises who wish to continue to provide food as well as wet sales will be affected by the bill?

I agree that the committee should not pay heed to anecdotal evidence when we are trying to assess the impact of the bill on businesses, which is the main aspect of the bill. I do not think that we should be listening to anecdotal evidence from the radio, who we spoke to last or what some newspaper says about what might be happening in Ireland. It would be very helpful to us if you could, perhaps through a survey, elicit what the specific impact of the bill will be on your members. I am sure that, at some point in the debate, that information would be of immense value to the Parliament in its consideration of the bill.

Colin Wilkinson: We would be happy to survey our members on that. From speaking to them, we know that if they cannot afford to change their premises to suit the conditions that are proposed in the bill, they are faced with the choice of losing the 20 to 25 per cent of their turnover that is based on food, or losing the 65 per cent of their customers who are smokers. Any business that faces a loss of 20 per cent of its turnover becomes unviable in today's climate.

Fergus Ewing: There seem to be quite a lot of pubs in Scotland that have a lounge bar and a public bar, with the bar serving area common to both. As I understand it, such an arrangement would not comply with the bill's requirements and there would need to be segregation. However, if an amendment to the bill provided that premises with separate public and lounge bars, but a common serving area, would not fall foul of the bill, that would, at a stroke, lessen the impact of the bill while allowing one of those areas to be non-smoking. Do you agree that common sense would dictate that we should at least explore that option? If so, could the proposal be put to your members to see whether, if an amendment to that effect were introduced, that would satisfy a reasonable proportion of them?

Stuart Ross: Yes. Such an amendment would be welcomed. Everybody has their view on what should be done to improve the health of Scotland—especially regarding the comfort of non-smokers in public places. Everyone in the Scottish licensed trade agrees that we want to move towards a healthier, smoke-free Scotland; however, the question is how we can ratchet in

that direction without impacting hugely on commerce. Obviously, we have a vested interest in that because, after all, we do not want our businesses to be knocked for six. Who would?

As I have said, we support the idea of a smoke-free Scotland and Stewart Maxwell's bill is a good piece of legislation that I think would find broad support in the trade. I should point out that, when I say that, I am not really speaking for the SLTA but for Stuart Ross of Belhaven. I do not know whether that is the case in the SLTA, because I have not really researched the matter. However, if the bill prohibited smoking when and where food was served, that would be a good step towards a smoke-free Scotland and would send smokers the message that they have to cut back on their habit.

That said, although the bill is not a bad idea, it is overly prescriptive. The problem for the Scottish licensed trade is that any sudden ban or action would have a financial impact. Although we must find ways of improving Scottish people's health, we must do so in a sensible and orderly way. In that respect, I would use the word "ratchet" to describe the kind of approach that we should take. One of the ways in which we could do that would be to amend the bill to ensure that smoking is prohibited where and when food is served and to forget the five-day prescribed period set out in section 1(4).

The Convener: Expanding on Fergus Ewing's point, I think that it would be useful to get financial projections that were as well founded as possible on the parameters within which legislation might be made. After all, members must take into account financial issues and issues of principle in considering how the bill might proceed.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I think that we all understand the cost implications that Stuart Ross has outlined. Indeed, the difference between his figures and the figures that Stewart Maxwell provided is staggering.

As Mr Ross has mentioned, however, we must take into account other costs, such as those to the nation's health. I am talking not only about customers in pubs being affected by passive smoking; bar staff and the people who work in those establishments also face health problems. For example, according to the Royal College of Physicians, passive smoking raises the likelihood of someone contracting lung cancer by up to 20 per cent and of someone having acute coronary events by up to 35 per cent. That evidence is not anecdotal. We need to address those problems in some shape or form.

Should legislation not emphasise creating segregated areas for smokers instead of creating such areas for eaters? In other words, the norm should be that people can enjoy a meal and have

a glass of wine in a smoke-free environment instead of trying to find an air-conditioned corner in a place full of smoke. Is the emphasis wrong? Should you not take that approach into account when you assess cost implications?

Stuart Ross: I agree. Indeed, we have done precisely what you have suggested and have said that there should be segregated smoking areas. However, I can speak about only Belhaven pubs. If you are asking me about my vision in that respect, I think that any segregated area would be a smaller area where smokers can go. We have to ensure that we do not alienate those people, but also that we improve the comfort and lot of the principal bar staff and the main body of customers.

Mr Brocklebank: Again, you mentioned anecdotal evidence. It is still early days to talk about New York and Ireland, because the ban on smoking was introduced there only relatively recently. However, it is in your interests to examine the activities of chains such as Pizza Hut, which decided a year or 18 months ago to have a total no smoking policy. The evidence should be starting to come through about how well Pizza Hut is doing compared with competitors such as Pizza Express. Clearly, you are interested in getting that from your members' point of view.

Stuart Ross: Indeed. I do not mean to be negative, but Pizza Hut is an out-and-out restaurant. In our businesses, 70 or 80 per cent of turnover is wet. We are not quite comparing apples with apples. The comparison is interesting, but it is not wholly pertinent.

Mr Brocklebank: However, it would be worth knowing about.

Stuart Ross: Absolutely.

John Swinburne (Central Scotland) (SSCUP): Presumably, you are here this morning on behalf of the Scottish Licensed Trade Association because you are worried about the profit margin that you will lose if the bill is enacted. Is that correct?

Stuart Ross: We are here because we were asked to appear before the committee. We are responding to an offer to give evidence. Obviously, we are concerned about any bill that impacts on our trade.

John Swinburne: You suggest that the amount of alcohol consumed could drop if the bill is enacted. That leads me to think that the bill is better than I originally thought. There are 300,000 people in Scotland who are alcohol dependent, which costs the national health service a fortune. Consumption of drink has doubled in the past 30 or 40 years. If we can reduce the amount of alcohol that is consumed as an offshoot of Stewart Maxwell's excellent bill on smoking, that is a

double whammy and would save the health service resources in the areas of both drinking and smoking. Do you agree?

Stuart Ross: Not at all. The trends in alcohol consumption very much favour the take-home trade, to which I have already referred. On-premises alcohol consumption is declining. The member is seeking to address alcoholism. That is not limited to the question of whether pubs allow smoking—it has many other facets.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I apologise to the committee and to the witnesses for arriving late. I hope that my question has not already been covered.

You said that the trend is towards an increase in the take-home trade. Do you have evidence of whether more people would be attracted to licensed premises if in future there were smoke-free food areas? That would be a way of reversing the trend to which I have referred and accessing the market of those who are turned off by pubs, perhaps because of smoking—although that may be the case for other reasons. Have you surveyed customers or staff on that issue?

Stuart Ross: At the moment most Scottish licensees are making greater provision for non-smokers, because we understand that there is demand for eating and drinking in smoke-free areas. If I may wear my Belhaven hat, most of our bars have an area that is set aside for non-smoking tables, although in many cases it is not practical to segregate or to have separate rooms for smokers and non-smokers, as the bill suggests. In almost all of our 90 managed houses, we have banned smoking at the bar counter. We are trying to move towards a situation in which smokers are made to feel that they should keep their habit to themselves and not interfere with non-smokers. There is definitely commercial advantage in that.

Colin Wilkinson: The independent trade is also going down the road of banning smoking at the bar and increasing the size of non-smoking areas.

Jeremy Purvis: Your decision is based purely on the business case that by providing a different environment you will attract more people from the take-home market.

The figures that you have provided are extremely helpful and we will question Stewart Maxwell on the basis of them. From your perspective, might a phased approach in legislation—which would be an extension or acceleration of what you are doing at the moment—assist on their way licensed members who are not moving down that road fast enough? That would achieve a balance for public health and licensed businesses, especially as all of us are attuned to the needs of the smaller operators

whom we have talked about. Would a phased approach be practical under the bill?

10:45

Stuart Ross: As I have said, Stewart Maxwell's bill would be a sound proposition were it not for the five-day rule. If smoking were banned where and when food was served, that would be a good step forward for the public's perception of the smoking habit in public places and would not have a heavy impact on commercial interests. In essence, we would support a ratcheted approach.

Jeremy Purvis: I was struck by what you said about the percentage of smokers in areas that are termed deprived. The phrase "deprived areas" is used quite a lot and it is hard to find out its meaning, but if we take that situation as read and if we say that smoking is one of the biggest causes of premature death in Scotland—I assume that you accept that—would it not be in your commercial interests that people should live longer so that they can go to the pub more? For argument's sake, if smoking causes death five years prematurely, I presume that you can work out how much your typical customer aged 65 in such an area spends on average in the licensed trade and add on another five year's-worth.

Stuart Ross: I read in a paper the other day that the life expectancy of the average male in a deprived area is 63 years, whereas the average throughout Scotland is 75. Your argument certainly has merit.

Jeremy Purvis: Would the industry research that?

Stuart Ross: It must be remembered that we have day jobs, too.

Jeremy Purvis: Absolutely.

Stuart Ross: The Scottish Licensed Trade Association is a relatively small organisation with five full-time employees. The resources that are available to us are not great. I was interested to note that the committee asked the Scottish Licensed Trade Association but not the Scottish Beer & Pub Association to give evidence, although it is mentioned in the bill. Greater resources are available to that association through the British Beer & Pub Association, so perhaps it could afford to undertake the research that the member looks for.

Such research is time consuming—that is a serious point. We work in a demanding and highly competitive industry. What the cost of Stewart Maxwell's bill would be seems a simple question, but it could be answered in 10 or 20 ways, all of which could be substantiated by decent assumptions and guesstimates. Answering such questions is not easy. That is not easy for

politicians either, and I sympathise with members, because assessing many of the issues that you deal with is a tough task. Research is time consuming and costly. I do not know who will bear the cost.

The Convener: It is normally Jim Mather who goes on about demographics, but Jeremy Purvis has pre-empted him a bit.

Jim Mather (Highlands and Islands) (SNP): I will endeavour not to disappoint the convener on that front. I am interested in Mr Ross's comments about the commercial implications for licensees. My two favoured howfs in the Highlands—the Lochailort Inn and the Glenuig Inn—are not smoky pubs, but I imagine that segregation in them would damage the ambience and have an impact on turnover. However, public opinion on the matter is shifting. I am interested in how you might expand on your ratchet idea and in how that might have a positive impact to put both sides in a win-win situation.

Colin Wilkinson: The trade has discussed more licensees banning smoking at the bar, after which a standard 20 or 30 per cent of licensed premises should be non-smoking areas. That percentage would be increased over one, two or three years to educate people that the trade wants to go in that direction. Those are the basics of what we would like to agree with the necessary bodies.

Stuart Ross: As you probably know, there will be a consultation period, during which the organisations that are involved in the voluntary charter will make a detailed submission on how we expect ratcheting to work, but I do not know whether the consultation paper from the Minister for Health and Community Care is out yet.

As Colin Wilkinson said, ratcheting will work mainly through the introduction of designated areas rather than segregated areas. The percentage of designated non-smoking areas would increase from 30 per cent to 100 per cent over a period of time, which would allow the politicians and the Executive to engage in parallel in a strong communications campaign. That is essential for getting the message across to the public. Ireland has had a strong communications campaign for many years now; the ban on smoking in Ireland is not sudden, because the Irish Government has been educating its public over a long period. If the two things go in tandem, I do not see what will prevent us from achieving a healthier, fitter Scotland without damaging the economy.

Jim Mather: I will build on that and on the point that Jeremy Purvis made earlier. At a recent lecture in the Allander series of lectures that Wendy Alexander initiated, Nicholas Crafts from the London School of Economics talked about

Scotland's life expectancy having been the eighth highest in Europe in the 1950s, the 14th highest in 1975 and the lowest in Europe from the 1990s to the present. He said that, if we could bring our life expectancy up to the English level—which is marginally below the level in Ireland, which has a higher preponderance of people who go to the pub—we would have an uplift in our economy that would be equivalent to 21.3 per cent of gross domestic product. With that in mind, does the SLTA have any other positive thoughts about how we might evolve the pub of the 21st century, emulate the Irish and help to create a healthy customer base that keeps coming back and using your premises?

Stuart Ross: I will make a few observations on that. If the Irish life expectancy is higher, perhaps Guinness is good for you, but if everybody is going to live to 85, the Chancellor might have a few problems with his pension provisions and I do not know how much tax we will all end up paying. I am glad that I just run Belhaven and that I am not a politician.

We have made our statement on how we can achieve what you suggest. The organisations that are involved in the voluntary charter will produce quite a detailed submission for regional seminars and a national seminar, which will be held on 9 September. We are positive about the subject; you may think that we come with a negative stance, but we do not. We support a smoke-free Scotland and we want to get there, because it will benefit everyone, but we want to ensure that our businesses do not get torpedoed in the process because we have a clear vested interest in that not happening.

Jim Mather: You are all careful, cautious, experienced and successful business people, but are you worried that, in the current climate—with the publicity and media attention that the bill has had—there might be a rash of legal action from staff and former staff that might create a problem for you?

Stuart Ross: Belhaven employs 1,400 people, 1,200 of whom are employed in retail, but I have not had a single complaint about the issue and it has never been raised with me at any of our internal meetings. I do not think that pub staff perceive the issue in the same way as the press do at the moment.

Fergus Ewing: I will ask about one specific provision of the bill, namely the five-day rule, which seems to me to be a rather odd rule. As I understand it, the bill's main aim is to ban smoking in places where food is supplied, but it also states that the period of the ban begins not when the food is being prepared or even when it is served, but five days before. I hope to ask Mr Maxwell about his rationale for that in a moment. Would

you welcome the removal of the five-day period so that, as well as designated areas, you could have the flexibility to have smoking bans for specific durations in the periods when your customers would be expected to want meals? Thereafter, once the period had come to an end, smoking would be permitted. There would be no emission of smoke, which I understand is the main concern of Mr Maxwell, and rightly so. What is your view of the five-day period? Would you like it to be removed from the bill?

Stuart Ross: Yes. It is over-prescriptive. I understand the rationale behind it, because there is lingering smoke. I am sure that Mr Maxwell will be perfectly able to answer on that for himself. However, as I said earlier, in terms of achieving the aim, we can do it all in one stage or we can move towards it. I have made clear my view that we should move towards it; therefore, the removal of the five-day rule would be of great help.

Mr Brocklebank: You say that designating certain tables as smoke free would be progress, but the smoke does not know which of the tables are smoke free. People might not be smoking at the bar, but they will be smoking elsewhere, and the smoke goes wherever it wishes to go. Personally, I get round that by using a little gadget that I saw Larry Hagman using, which is a little personal windmill. It blows the smoke back at the person who is blowing it at you. However, more of those would be needed to make a place smoke free. Smoke does not go where you decide it will go.

Colin Wilkinson: I hear that point. We have said that smoke-free areas should be coupled with good ventilation. We carried out research, because people say that ventilation does not work. In one of the premises that we looked at, fresh air was brought in where the staff were working at the bar and was extracted on the other side of the bar, which was where the smoking tables were. If the area is well planned with good ventilation, we are of the opinion that smoke can be controlled.

The Convener: If everybody had the windmills, there would be a local wind farm. I thank our witnesses for coming along today. I repeat the point that I made before—

Mr Stewart Maxwell (West of Scotland) (SNP): May I question the witnesses?

The Convener: We are taking you after them. I do not think that officially—

Mr Maxwell: It is unusual, but it is allowed.

The Convener: Go on.

Mr Maxwell: I will try not to detain the witnesses or the committee, but a number of points have been raised in the evidence that I want to cover.

Will the witnesses tell me where the bill forces premises to invest in separate areas?

Stuart Ross: It does not, but we were asked for a submission on the financial implications of the bill. You have assumed that the status quo would prevail, but we have made a totally different assumption. It is clear from our paper that there are four ways to respond to your bill. We think that the paper describes the way in which the licensed trade will respond.

Mr Maxwell: But you agree that the bill does not force licensed premises to spend a single penny.

Stuart Ross: It does not force any capital spend on anyone, but there would be serious revenue ramifications for premises if there was no capital spend.

Mr Maxwell: We will move on to the assumptions. The last statement was obviously an assumption about the loss of revenue. Can you tell us about any independent scientific and objective research that proves the assumption of the loss of turnover that you have talked about?

Stuart Ross: I am not sure to which loss of turnover you refer.

Mr Maxwell: You said at some point that between 20 and 30 per cent of your trade would go if a ban was introduced.

Stuart Ross: That is from research that we have—

Colin Wilkinson: It is from our equivalent in New York, from the pub owners themselves.

Mr Maxwell: But what independent scientific and objective research has been done to prove that there is a loss of trade from a smoking ban?

Stuart Ross: We just answered that. The research is independent of us.

Mr Maxwell: Sorry. It is not from you; it is from other licensed trade people.

Stuart Ross: It is from a licensed trade association, the members of which trade and have business revenues. It totals the revenues and tells one how they compare with last year. You can decide whether that is independent or not.

Mr Maxwell: Do you refute the New York figures that show that, after a year, business tax receipts from pubs and restaurants rose by 8.7 per cent?

Stuart Ross: That is a very good point, about which Deborah Arnott of Action on Smoking and Health wrote to me. I wrote back asking about the time lag between the trading and the collection of the tax receipts, but I still do not have an answer. Given the time lag in collecting taxes, we must ensure that, in comparing the periods pre and post

the change in legislation, we are not comparing apples and pears.

Mr Maxwell: We are comparing apples with apples. Do you refute the fact that an additional 10,600 jobs were created in New York and that there was an absolute gain of 2,500 in the restaurant and bar industry once figures were seasonally adjusted?

Colin Wilkinson: Those figures refer to the hospitality industry; we are talking about how the bill would affect public houses. We refute evidence of increasing staff levels and business in public houses.

11:00

Mr Maxwell: I want to focus on liquor licences in New York. At the end of 2003, there were 9,747 active liquor licences, compared with 9,513 at the end of 2002, which shows an absolute net gain of 234 during the period of the ban. Do you not accept those figures either?

Colin Wilkinson: We are talking about public houses, rather than the hospitality industry. You made a point about the increase in tax revenue. If I remember correctly, the increase was measured against the increase just after 9/11, after which there would not have been any increase in tax revenue in New York.

Stuart Ross: Given that Mr Maxwell is trying to use the situation in New York as a foundation for his arguments, it is important for the committee to realise that, as I understand it, within the New York legislation there is protection for smaller businesses that employ two or fewer staff at any given time, as the smoking ban is not implemented. Therefore, the impact on smaller businesses is not felt in New York in the way that it would be felt in Ireland. We are being asked questions as though we are experts. We are just guys who do daytime jobs who have come along here. We cannot be expected to know the ins and outs of New York legislation and I do not think that the questions are particularly fair.

The Convener: Stewart Maxwell will have the opportunity to make his points.

Stuart Ross: How would we know how many jobs have been created in New York or the reasons for that? I run Belhaven Brewery; I do not know anything about that.

Mr Maxwell: The witnesses have said that the bill is all about assumptions. I am giving research figures. It seems entirely reasonable to point out that there is a great deal of information and research on the issue. None of the figures that I quoted is based on assumptions. The latest research from Ireland, which was published yesterday, shows that trade has increased in

Ireland; more non-smokers have gone out and there has been no drop in the number of smokers attending pubs.

Stuart Ross: If that is the case, that is fine, but could you give us a chance to consider the evidence that has been gathered? We are not being negative; we are more than happy to consider all the research, as long as it is fact based and compares like with like. If what Stewart Maxwell presented is the news from Ireland, that is great. I have been to Galway since the ban came in to see what was happening there. It is certainly true that people there are obeying the smoking ban. Let us see the impact on commerce over 12 months, after the winter. The ban was introduced in April and what happens in Ireland is that everybody goes outside the pub to smoke. According to friends of mine there, marriages are being made outside the pub. We are talking about adapting practices. Let us see the statistics once the pubs have traded through a winter. We are not saying, "We're right and you're wrong." We have done research among our members and I can speak for Belhaven and tell you that 60 per cent of our customers smoke, so we are obviously concerned that if there was a smoking ban, 60 per cent of our customers would move elsewhere. Is that not a natural and reasonable assumption or fear to have?

The Convener: From the Finance Committee's point of view—it is our evidence-taking session after all—the issue is getting the best possible information to inform our report, which will be crucial in the bill's progress.

Mr Maxwell: The witnesses say that they have not had time to consider the evidence. I presume that they are aware of the *Scottish Licensed Trade News*—their trade newspaper—which has carried out a survey and states clearly that the Irish example has been a huge success. What do they think of that?

The Convener: To be fair, that is not a question for the Finance Committee.

Mr Maxwell: With all due respect, convener, my question was about the assumption that there would be a loss of trade, which I contest.

The Convener: Mr Maxwell asked whether the scheme in Ireland was a success, but the precise issue is about the loss of trade.

Stuart Ross: I have already answered the question. We must consider the matter over a 12-month period, which would include a winter. People do not fancy going outside in the winter as much as they do in the summer. I do not have a crystal ball. Who knows what would happen in Scotland? In making estimates, we must take a balanced view about the total number of smokers in Scotland and the drinking trends and culture.

The honest truth is that I know no better than the committee does what would happen.

The Convener: I thank Stuart Ross and Colin Wilkinson for their evidence. I reiterate that the more information that we are provided with, the better a job we and, ultimately, the Parliament can do. I accept that resources are limited, but organisations in the licensing trade should ensure that their views and projections are as well set out as possible. We are grateful for the written information that the witnesses have provided and for their oral responses. If they can provide us with any further information in the next couple of weeks, we would be pleased to receive it and to incorporate it into our report.

Stuart Ross: Point taken.

The Convener: We overran a little on our evidence taking from those witnesses. I ask members to be a little more restrained in questioning our next witnesses, who are from the Executive. I am particularly pleased that we have Executive officials before us today because, in dealing with members' bills in the past, there have been concerns that we have not received information from the Executive. I welcome Colin Cook, head of the substance misuse division; Mary Cuthbert, alcohol and smoking team leader; and Calum Scott, economic adviser from the analytical services division of the Health Department.

Colin, do you want to make a brief opening statement?

Colin Cook (Scottish Executive Health Department): If I may. I want to give some context to the basis on which we are here today. References have already been made to what the Executive is doing and I will try to clarify that.

The Executive launched a tobacco action plan in January, chapter 5 of which dealt with the approach that we are taking to minimise the impact of passive smoking in Scotland. That includes a programme of advertising and communication to raise awareness of the risks of passive smoking, followed by what the plan describes as an open public debate on the issue. As the plan states, we must be prepared to hear all shades of opinion in the argument. As part of the process, legislation along the lines that are outlined in the bill—and different approaches—will be considered, but we will also consider a renewed and strengthened approach to the voluntary measures that were mentioned earlier.

The public debate will include a conference with international speakers, who will share their experiences of the results of actions that have been taken to limit the impact of passive smoking. The process will also include regional debates, organised by the Scottish Civic Forum, and a

programme of research, which will involve reviews of international experience to get behind what has happened elsewhere. Detailed research will be carried out into current Scottish business practice and, given that the impact of action could go well beyond the licensed trade, into attitudes in a range of Scottish businesses. The research will also include an analysis of public opinion and an assessment of the likely health and economic impact on Scotland based on the evidence.

We believe that taking the time to examine those issues will give us the strongest basis on which to proceed. Therefore, we have adopted a neutral view on Stewart Maxwell's bill. Final decisions should be taken when we have considered all the opinions and evidence that we have gathered during the consultation process. In those circumstances, I hope that the committee understands that we cannot comment on the bill's policy intentions. However, we are more than happy to take questions on the likely financial implications from our perspective.

The Convener: That is welcome. Can I just ask about timescales for the consultation processes and for the various bits of work that you described. When would you expect them to be completed?

Colin Cook: The formal announcement of the open public debate phase will be made shortly; we will announce the date on which that consultation period will begin. At the beginning of the year, we began the process of advertising and communication of the issues around passive smoking.

The Convener: That was not an answer about the timescales, was it?

Colin Cook: As I said, the announcement of the date on which the debate is to start will be made to the Parliament in the near future.

The Convener: How long would a reasonable consultation period be likely to last?

Colin Cook: I think that the consultation period will last for about four months.

The Convener: Okay. That is helpful.

Dr Murray: We have heard claims from the Scottish Licensed Trade Association that the cost of adaptations could be as high as £85 million. Indeed, the Scottish Executive submission indicates that the financial memorandum does not take account of the cost of such structural alterations. I am not sure whether the Executive would have this information, but would you be able to provide us with an estimate of the cost to the trade if the bill was to be passed? Do you agree with the figures that the association has provided?

Calum Scott (Scottish Executive Health Department): We have not made a calculation of

the aggregate conversion costs because of the lack of evidence. Until Stuart Ross tabled the association's submission this morning, we were not aware of any estimate of the aggregate cost. If the convener was to push me for an opinion on the two different assumptions, I would have to say that it is likely that the figure would fall between the two. It is difficult to estimate the proportion of businesses that would have to convert. I have not seen the Scottish Licensed Trade Association's submission yet, but based on a quick calculation, it would appear that its assumption is that 65 per cent of the licensed premises that serve food would undergo conversion. I think that the figure might be high. We have not tried to replicate the association's calculation because of the lack of independent evidence on what businesses would do.

Dr Murray: We have been advised that 60 per cent of customers who go to public houses are smokers. That is twice the percentage of smokers in the Scottish population at large. Do you agree with those percentages? Do you have figures to substantiate that evidence?

Mary Cuthbert (Scottish Executive Health Department): No, we do not have any firm figures; we have only those that the licensed trade has produced. However, as we gather evidence over the next few months, we might do so. One of the pieces of consultation that we will do is a specific consultation with pub customers. That might reveal whether the association's estimate is a true estimate.

Colin Cook: Certainly, we will be able to cross-reference studies of public opinion and analyse in some detail the data on the number of people who hold different views—whether or not they are pub customers.

The Convener: One of the pieces of available evidence, which results from the Irish experiment, is the additional resources that the Irish Government has put into the process of inspection, regulation and enforcement. Will you say something about your estimate of £1.1 million costs for local authorities? Is the figure adequate? How does it relate to the provisions of the bill or to other options that might arise during the Parliament's consideration of the bill?

Calum Scott: I should perhaps start with a clarification or a correction of the figure, which should read £1.027 million instead of £1.156 million—although it is in the same ball park. We based that estimate on the assumption that one extra environmental health officer per local authority would be required to police the bill, at a cost of £32,100 per EHO, based on the current costs.

The Convener: Did you make the same assumptions for Clackmannanshire Council as you did for Glasgow City Council?

Calum Scott: Yes. We do not have hard evidence about the additional costs, but we provided that figure to illustrate the possible costs for local authorities of using additional EHOs to police the bill.

11:15

John Swinburne: What is your broad assessment of the cost implications for the health service? Would the implementation of the bill lead to savings for the health service, because fewer people would become ill with lung cancer and associated cancers?

Mary Cuthbert: That is always a difficult question to answer. There would not necessarily be immediate savings, but there might be long-term savings. We know that the cost of smoking-related diseases to the health service is an estimated £200 million, but there can be no hard and fast figure, given the types of diseases that are caused by smoking, such as heart disease and lung cancer. In the long term, if the ban were to lead to a reduction in smoking rates—there is clear evidence from elsewhere that that happens—savings on that figure of £200 million might well accrue.

Mr Brocklebank: I want to ask about the publicity campaigns about smoking. The financial memorandum says:

"NHS Health Scotland is allocated £1.5 million a year in order to target smoking prevention activity".

The memorandum also says that about £200,000 per year is spent to increase public awareness of issues around passive smoking. Are you surprised that only 39 organisations replied to your consultation document, although you sent out 145 copies? Are we getting value for money from all that publicity?

Colin Cook: I clarify that you are referring to the consultation on the bill that Mr Maxwell organised, not to the general consultation on passive smoking that the Executive is planning, which we hope will generate considerably more than 39 responses.

Mr Brocklebank: Will the current allocation of £1.5 million be increased in a much more targeted campaign? Evidence from the Scottish Licensed Trade Association suggests that there needs to be much more education to ensure that the public goes along with a ban, as they have done in Ireland. Are we getting value for money?

Mary Cuthbert: The figure of £1.5 million is the total cost of the tobacco-related activity that NHS Health Scotland undertakes. Since we launched the tobacco control action plan at the start of the

year, there has been more activity to raise awareness around passive smoking as part of the lead-in to that work. We said that there would be a two-phase consultation process and that the first phase would concentrate on raising awareness. I am not sure about the timing of the consultation on the bill, but I suspect that, when it was launched, many of the new activities, such as the new television adverts, had not had a chance to impact on people's awareness. However, the volume of correspondence that the Executive receives from members of the public has increased dramatically as a result of the publicity around the bill, the television adverts and other work.

Jeremy Purvis: You mention that an estimated £200 million per year is spent on treating smoking-related diseases and you have gone into the evidence on compliance rates in some detail. Do you have evidence from elsewhere of the impact of a ban on smoking levels? Have any studies been carried out on smoking levels? Is it still too early for indications from the areas where bans have been introduced?

Colin Cook: It is too early for us to make what might be described as a scientific judgment, but some anecdotal evidence and the research that Mr Maxwell has quoted suggest that part of the health impact from action in this area is a fall in overall smoking rates. We are in the middle of carrying out a comprehensive analysis of international evidence on the topic and we hope to draw that work together in the next couple of months as part of the consultation process.

Jeremy Purvis: Does the same hold true for compliance rates? Although the financial assumptions in the financial memorandum are based on evidence from New York, you say in your submission that the compliance rate in New York might be slightly less than the figure on which those assumptions were made. Would that have an impact? After all, the proposals in the bill might not be identical to the action that was introduced in New York. If the proposals in the bill that we are considering turn out to be more complicated, should you indicate that the compliance rate might be less than 98 per cent, but no less than the 90 per cent on which you have founded your parameters?

Calum Scott: It is fair to say that we expect the bill's complexity to impact on the compliance rate, which is why we have provided figures based on rates ranging from 90 to 100 per cent. However, those figures are included only for the purposes of illustration; we are not necessarily saying that the compliance rate could not be even less than 90 per cent. They are meant to give members an idea of the range of cost figures that we are talking about.

Jeremy Purvis: Other than being part of the group that was invited by the committee to give evidence this morning, have you been involved with Mr Maxwell in the process up to now?

Mary Cuthbert: No. We were aware of the bill, because a similar proposal had been made before. However, the bill's team has worked independently of the Executive, although I cannot say that we have not had discussions with officials on drafting matters.

Jeremy Purvis: Do you mean discussion on drafting the financial aspects?

Mary Cuthbert: Yes.

Jim Mather: I want to follow up an earlier comment about the input of Nicholas Crafts, who said recently that, if life expectancy in Scotland reached English levels, we would have a 21.3 per cent uplift in GDP. By my calculations, that comes to the very considerable sum of £16 billion. Have you carried out any actuarial work on the direct or subliminal effect of the bill's message about smoking?

Colin Cook: The modelling that we carry out as part of the research programme allows us to try to make some assumptions about the health and economic impact of the bill in Scotland. In the modelling, we will also try to examine the difficult issue of the dual impact of increasing overall life expectancy and closing the gap between the least and most deprived areas that we need to strive for with any health improvement measure. Although we will still make some assumptions, they will be founded on a review of the international evidence that we have been able to acquire.

Fergus Ewing: In two fairly brief paragraphs in its submission, the Executive comments on the costs on individuals, companies and other bodies. In its evidence, the SLTA has identified certain capital and revenue costs and made its views known on the possible adverse impact on trade for premises that wish to continue with food and wet sales. What information will be gathered in the consultation exercise about the impact on businesses?

Colin Cook: Our review of international research examines economic impact, which includes costs on businesses. It will consider both published peer review journal-type research and some of what might be described as the grey literature around the matter. Moreover, the conference that we are hoping to hold in September as part of the consultation process will include at least one Irish business representative who will talk to the audience about the impact of the ban on their industry and trade.

Fergus Ewing: I read a newspaper report recently that suggested that the Labour Party in

the UK is planning to include a commitment regarding this general topic in its manifesto for the next election. I presume that the consultation that you propose is to be carried out by the Scottish Executive. If so, how will that link in with any work that is to be carried out at Westminster?

Colin Cook: I am sorry, but I am unable to speak for the Westminster Government. In January, we set out for the first time our proposals for a Scottish action plan on tobacco, which includes the consultation period. I am sure that the Westminster Government and various people will look at the experience and the views that are expressed in Scotland, but there is no formal link in that sense.

Fergus Ewing: As has been pointed out, it is difficult to make international comparisons because different laws apply in different places—for example, the bill is perhaps more complicated than a bill in Ireland would be—and it seems that we are automatically comparing apples with pears. Further, the argument was made earlier that for a comparison to be of any use, it must be carried out over a fairly long period if the data are to be of value. The ban has only just been introduced in Ireland; therefore, it is difficult to see how any data—even from the next couple of years—on the impact and financial consequences of the legislation will be particularly informative or reliable.

In his detailed papers, Mr Maxwell has pointed out that, in several countries, bans have been in place for a long time. In paragraph 26 of the policy memorandum, we are told that a ban has been in place in Norway since 1995 and in Sweden for a longer period. Will the research that you are planning to undertake look closely at the experience in those countries, where a ban has been in place for a much longer period? Will it consider the effects of the ban on health and on mortality rates as well as the impact that there appears to have been on businesses? Will it consider the impact specifically on licensed premises rather than premises that are, problematically, lumped together as hospitality premises? The SLTA is talking primarily about pubs, not Pizza Hut and other restaurants. Compiling that research will be a difficult task, but I am concerned that there is a dearth of reliable data on which we can judge the bill.

Colin Cook: Yes, the research will draw on the experiences of Norway and other Scandinavian countries as well as the experiences of Australia, New Zealand and Canada, where different approaches have been operating for some time. Whether we will be able to break the industry figures down as you describe will be a question of how evidence has been gathered in those

countries. I do not know how that has been done in those areas.

The Convener: That is the end of the committee's questioning. It would be helpful if you could give us an indication of what research you expect to undertake. I know that it may be difficult for you to do that in advance of an announcement; however, given the fact that the bill is under way, it would be useful for us to get as much relevant information as we can as quickly as possible. That may not be in time for our consideration of the financial aspects, but I am sure that Stewart Maxwell and others would welcome any information that would inform the process in which we are engaged.

Stewart, do you have any questions that you want to ask the Executive?

Mr Maxwell: Perhaps unsurprisingly, I have some questions. However, I would like to clarify one point before I begin. The Executive's submission suggests that the prosecution rate would be 1.52 per cent. Where did you get that figure? We propose that the figure would be 7.6 per cent.

Calum Scott: The figure of 1.52 per cent is an annual figure based on the information in the bill. The figure of 7.6 per cent is the prosecution rate over a five-year period. For any one year, I assume that the prosecution rate is a fifth of that—1.52 per cent.

Mr Maxwell: Thank you for that clarification.

On costs in regard to prosecutions, you say in paragraph 6 of your written submission that the

"range of costs is comparatively small and could reasonably be absorbed within existing budgets."

Do you accept that, no matter whose figures we use—mine, yours or anybody else's—there will be no real cost implication for the Scottish courts or the prosecution service?

Mary Cuthbert: Yes—on the basis of the assumptions that we are working on. We are assuming that the costs would be low, but until the bill was implemented in practice we would not know that for certain.

11:30

Mr Maxwell: You would agree that so far, on the basis of the evidence from other parts of the world—including New York and Ireland—compliance rates run at significantly higher levels. Compliance rates of 98 per cent and 97 per cent are not uncommon.

Mary Cuthbert: The difficulty with your measures compared with the measure in Ireland, for example, is that there is a blanket ban in Ireland, which means that it is relatively easy to

know whether or not there is compliance. Some aspects of your bill are slightly more complicated. For example, with the five-day rule, how would one know that there had been no smoking for five days? That sort of thing makes matters slightly more difficult.

Mr Maxwell: Will you clarify what enforcement regime you believe that the bill proposes?

Mary Cuthbert: Perhaps I have read the bill wrongly, but it seems to propose a self-enforcing regime—in other words, the owner of the premises would be responsible for enforcement.

Mr Maxwell: I just wanted to clarify that there was a clear understanding of the enforcement regime.

Let us go on to consider your assumptions on the cost to local authorities. In effect, the bill's regime would be self-policing. The reporting of any complaints or any breaking of the law would be done through the normal procedure—offenders would be caught by individuals or reported by members of the public, or the police might go into premises for other reasons and see the law being broken. Given that that is the case, why did you decide to use the idea that we would have a raft of additional environmental health officers to enforce a measure that is self-enforcing, at a cost of in excess of £1 million?

Calum Scott: If there were no requirement for additional environmental health officers, we would not have estimated that additional cost. The evidence from Ireland suggests that it would not be unreasonable to assume that some extra environmental health officer resources would be needed. The figure that we have given, which I have since corrected slightly, is based on the assumption that one extra environmental health officer would be needed per local authority. That is the basis on which the figure has been included.

Mr Maxwell: That is not part of the enforcement regime that the bill proposes. It is based on an assumption on your part.

Colin Cook: We specify quite clearly that the financial memorandum assumes that no additional enforcement officers would be required.

Mr Maxwell: In paragraph 8, you mention that the provision of a helpline that people can use to report breaches is another potential cost and that such a helpline could cost between £50,000 and £100,000 in the first year. Why do you assume that that is something that we would have in Scotland?

Colin Cook: Again, we made that assumption on the basis of the Irish experience. I know that there is also a similar facility in New York, although I do not know how it is funded. It is a reasonable possibility for us to raise.

Mr Maxwell: Can you tell me which other laws we have a special phone line for? For example, is there a phone line for breaches of the law on the wearing of seat belts? Can you name one such law?

Colin Cook: I am not aware of any phone lines for specific laws, although that area is not within my expertise. However, I am aware that phone lines of that nature exist in other countries in which smoking bans operate.

Mr Maxwell: So you agree that the normal procedure is not to have phone lines but for people to phone the local police station.

Colin Cook: Yes—or, indeed, Crimestoppers or a similar organisation.

Mr Maxwell: You mention a figure of £50,000 to £100,000 a year. Are you aware of the figures from Ireland, which show that complaints represent about 44 per cent of the total number of calls that the phone line has received so far, that more than half of them were received in the first week alone and that only six per cent of them were received in week 5? Given that the Irish have already decided to scale down their phone line, because it is clear that it is not needed, do you think that £100,000 represents a reasonable assumption for the cost of a phone line in its first year?

Colin Cook: I think that it is reasonable to assume that we should consider the Irish experience and learn from it. If that is the experience in Ireland and other countries, we will make judgments on the basis of that experience. That is all that we have been saying.

Mr Maxwell: The policy memorandum and the explanatory notes mention studies from the around the world. Paragraph 10 of the Executive's submission mentions "other relevant factors" that might account for an increase in business for bars and restaurants in New York. Do you accept that all independent scientific research that is not funded by the tobacco industry has found that there has been no loss in trade? Such studies have been made not only in New York, but in virtually every part of the world. I am not using New York as the only example.

Colin Cook: I agree that a significant evidence base is emerging that suggests that there has been little or no significant impact on trade, but we want to look into the matter. There are specific issues with the New York research relating to the 9/11 factor, which Stuart Ross mentioned, and it is only right and proper that we have the most in-depth look at all the international research that we possibly can.

Mr Maxwell: Part of paragraph 1 of the Executive's submission is in bold, which I assume was intentional. That part states:

"A full Regulatory Impact Assessment has not been prepared on the Bill but this paper outlines officials' preliminary views on the assumptions made within the Financial Memorandum."

You are right to say that no RIA has been carried out on the bill, but I have figures from two RIAs that were carried out in Canada and the USA. Would you comment on the figures and say whether it would be reasonable to assume that there would be the same impact here?

Canada's regulatory impact analysis statement, which was prepared for the federal Non-smokers Health Act 1988, estimated that \$32.2 million could be saved from reduced smoke and related property damage, depreciation, maintenance, cleaning costs and savings to the health care system through reduced ill-health effects of environmental tobacco smoke exposure. Given that that was in 1989, the figure would be much higher now. In the US, a similar impact assessment said that the benefits would be between \$39 billion and \$72 billion as a result of reduced absenteeism and boosted productivity. Neither cost-benefit analysis assessed the enhanced quality of life accruing from reduced smoking or the reduced exposure of non-smokers to environmental tobacco smoke.

Two large RIAs have therefore been carried out in Canada and the United States. Do you accept that it would be reasonable to assume that there would be similar effects here?

Colin Cook: I cannot comment on a regulatory impact assessment that was done in another country and which I have not seen. A specific approach was taken largely on a state-by-state or city-by-city basis to deal with the issue. I would be happy to consider the findings and I am sure that there are things that will be picked up in the research. We are interested in such findings, but I cannot comment specifically on them.

The Convener: I thank the Executive witnesses for coming to the meeting. It would be helpful for the committee to receive further information about the research that they intend to do as soon as they have that information.

Our final evidence is from Stewart Maxwell—once he moves round the table—and from David Cullum, who is a clerk for the non-Executive bills unit. As with the previous witnesses, Stewart Maxwell has a brief opportunity to make an opening statement on the financial issues relating to the bill.

Mr Maxwell: I agree with previous witnesses that predicting what will happen in the future is difficult. We all accept that, to a lesser or greater

extent, we are dealing with assumptions, but I have certainly attempted to use all the available comparative evidence from around the world. Some of that evidence has already been discussed this morning and much of it is contained in the policy memorandum, the explanatory notes and the financial memorandum.

We have used results not only from Ireland, New York and throughout the world, including countries such as New Zealand and Australia, but from comparators from within the United Kingdom in respect of likely effects, impacts and prosecution rates. It is reasonable to use other laws in the UK and Scotland as comparators in that regard.

When the bill was drafted some months ago, the Irish ban was not yet in force and only the figures for the first six months of the New York ban were available. We made an assumption that, as the rate of compliance in New York was 98 per cent, it would be the same here. A year later, as the Executive pointed out, the figure has fallen by less than 1 per cent to around to 97 per cent. I think that the figures coming out of New York, Ireland and elsewhere can be taken to show that compliance is high and the loss of trade is non-existent.

I know that the Finance Committee is primarily concerned with the costs of the bill, but the savings that the bill will bring about far outweigh the costs. Pubs will make massive savings as they will need to redecorate less often, have lower insurance costs, be less at risk from fires and not have to install extremely expensive ventilation systems, which is especially problematic for small pubs. Similarly, there will be great savings for the health service.

It is pertinent to point out that, in every independent survey that has been carried out, public opinion has supported the introduction of legislation to ban smoking in various public places. The responses that have been received by the Health Committee have supported the view that more business will be created by the introduction of such legislation. The first study of the situation in Ireland, which was published yesterday, showed that the number of smokers who went into pubs remained the same but that the number of non-smokers who went into pubs increased by 3 per cent. Those figures show us that the assumptions that we made based on the available evidence have been borne out by the evidence that has come out subsequently.

John Swinburne: Eliminating passive smoking and the dangers thereof is a laudable thing to try to do but would you agree that you are only tinkering at the edges of the problem? If smoking were not such a phenomenal source of wealth for the Exchequer, it would be banned completely.

How much do you envisage someone would be fined if they did not comply with the legislation? What would it cost them if they were found guilty in court?

Mr Maxwell: The bill makes it clear that the fine would be—at the absolute maximum—level 3 on the standard scale, which is currently £1,000. I suspect that the procurator fiscal's normal response would be to impose a fairly low-level fine. I do not expect that the first person to breach the law will be fined £1,000.

On your point about tinkering, there is a difference between the right to smoke and the right to damage other people's health. I have no issue with people having the right to smoke. Tobacco is a legal substance and if people want to smoke, that is up to them. However, they do not have the right to damage other people's health. The bill is not tinkering at the edges of an issue; it is attempting to protect people's health. That is the right thing to do with this Parliament that we now have.

John Swinburne: What would be the legal costs of imposing a fine of up to £1,000? How much would we have to pay the legal profession to prosecute the case? Is that another hidden cost that you have not yet revealed?

Mr Maxwell: The costs of prosecution are contained in the notes that I have provided. They are estimates, obviously, but, as the Executive witnesses accepted, even the highest cost would still be a small cost that could easily be borne by the Procurator Fiscal Service and the Scottish Courts Service.

John Swinburne: Do you envisage any Orwellian smoke-detecting police going about the place, at quite a cost to the council tax payer, as they help Ted Brocklebank to avoid the need to waft his windmill?

11:45

Mr Maxwell: The answer is no, I do not envisage smoke police. We do not have specific police for any other laws; we have the police who enforce the law. Given the compliance rates around the world, it would be a waste of money to have smoke police. The Irish Government assumed that it would be difficult to introduce a ban and put in place a lot of measures that have already been scaled back because they were not needed, such as the helpline that I mentioned. We do not need smoke police; the suggestion is nonsense.

We consulted environmental health officers on the issue. They go into premises where there is food as a routine part of their job, so they could look for evidence of smoking as a routine part of

their job. However, they did not want to be regarded as smoke police and we do envisage them having such a role.

The Convener: As you rightly point out, the role of environmental health officers is to check compliance with environmental health regulations. In connection with licensed premises, that relates specifically to regulations on hygiene and the preparation of food. The assumption is that it might be part of environmental health officers' normal duties to check compliance with smoking-related regulations, but most of the issues that relate to the administration of the licensing of premises are normally dealt with by licensing boards in Scotland. Is the matter one for licensing boards or for environmental health officers?

Mr Maxwell: It is an issue for both, in a sense. The point is that, if environmental health officers were to check compliance, they would not be smoke police, and I do not envisage any additional environmental health officers being recruited specifically to enforce the measures in the bill. Part of an environmental health officer's duties is to go into premises and ensure that all the regulations, byelaws and laws are being enforced, so the ban would be another one of the laws that they would have to check.

Licensing boards certainly have a role to play. They take into account all sorts of reports that come before them when they decide whether a licence should be renewed, replaced, extended or removed. I expect that they will have that role, rather than a role that is part of the daily policing of the ban.

The Convener: I suppose that it is not our concern to consider policy issues, however the bill identifies three offences: an offence of smoking in a regulated area; an offence of permitting smoking in a regulated area; and an offence of failing to display signs. Two of those offences would fit relatively neatly within the functions of licensing boards—the failure to display signs and permitting smoking in regulated areas—but I am interested in how you envisage the enforcement of the offence of smoking in a regulated area. Would that be a matter for the licensed trade—the pub owner or the bar manager—to deal with? What legal powers could they draw on? Would enforcement issues and financial enforcement issues be associated with that?

Mr Maxwell: I do think that any financial issues would be associated with that but, on the policy matter, it would be the bar owner's or bar manager's responsibility to ensure that people did not smoke in regulated areas. That is clearly the case. Licensing boards would take into account any reports of breaches of the regulations, and it would be up to them to decide what to do about such breaches. Beyond that, I am not sure what

you are getting at. If somebody who is or appears to be under age goes into a bar, it is the bar owner's or bar manager's responsibility not to serve them alcohol and to deal with the consequences of not serving them. It is also the owner's or manager's responsibility to deal with somebody who has drunk too much, is singing offensive songs or is otherwise behaving unacceptably. Bar owners and managers enforce rules and regulations on their premises every day, and the bill will be the same in that respect.

The Convener: That deals with sections 4 and 5, but it does not really deal with section 3, in which the offence is the individual's. You create two offences for the bar manager or the pub owner, but the first offence that you create is for the individual.

Mr Maxwell: It is illegal for people to do a number of things on licensed premises, and the managers and owners are responsible for enforcing those laws. If the bill became law and somebody started to smoke in a pub, I would expect the manager or owner to enforce the law in the same way as they do in other cases: they would tell the person to put the cigarette out and if the person refused to do so, they would ask them to leave. If the person refused to leave, the manager would not serve the person any more and would call the police to deal with the problem. The situation would be the same as with any other regulation that must be enforced in public bars or licensed premises.

Dr Murray: You have referred to the consultation that Kenny Gibson carried out and the one that you carried out. Did you specifically consult the Scottish Licensed Trade Association?

Mr Maxwell: Yes. Both Kenny Gibson and I consulted the Scottish Licensed Trade Association and the British Beer & Pub Association. The associations responded to Mr Gibson's consultation exercise with various estimates of the terrible impact of the measures on trade, which earlier witnesses repeated this morning. In response to my consultation, the associations said that they had nothing to add but would like to reserve the right to comment at any future date. No additional material was sent to me.

Dr Murray: Was the estimate that such measures could cost the industry around £85 million raised in Kenny Gibson's consultation?

Mr Maxwell: No. I have the Scottish Licensed Trade Association response to Kenny Gibson's consultation before me—it states that the expected loss of trade is between £129 million and £200 million.

Dr Murray: Is that just the revenue cost, not the capital cost?

Mr Maxwell: Yes.

Dr Murray: I do not know whether the SLTA said this to Kenny Gibson, but in evidence to us, its representatives said that around 60 per cent of the pub-going population smokes, which is about twice the average for Scotland. The association feels that the bill might result in a loss of trade if establishments have to opt either to be smoke-free and serve food or to be food-free and allow people to smoke. Do you feel that the figure indicates that a significant proportion of the population is actually put off going to pubs or going somewhere to eat because they know that smoke will be in the environment?

Mr Maxwell: Yes. A significant proportion of the population are put off going to pubs as a result of smoking, particularly those who suffer from certain ailments. A recent survey by the British Lung Foundation found that 43 per cent of people with lung problems deliberately did not go to places where smoking is allowed because of their illness—that equates to about 3.5 million pub visits a year. An Asthma UK survey of asthma sufferers found that about 100,000 people in Scotland who have asthma do not go into pubs because of the smoke. There is a huge untapped resource of people who could go into pubs for a drink or something to eat, which would boost trade. That has been found elsewhere in the world, such as New York, and, given the figures that were published yesterday, Ireland in the past two months.

Dr Murray: It has been suggested that if you dropped the five-day requirement and the need for there to be a physical partition between segregated areas, that would make it much easier for publicans and others to comply with the bill. What would be the effect of those suggestions on what you are trying to achieve?

Mr Maxwell: I disagree with both those suggestions. The five-day barrier is included in the bill because, as the licensed trade people themselves said, a residue of smoke is left in the atmosphere after people have smoked. However, the situation is worse than that. Research in Sweden has found not only that smoke remains in the atmosphere for a considerable period after people have smoked—even with ventilation—but that the particles and gases in smoke are absorbed by furnishings such as carpets, chairs and tables. The material then leaches back into the atmosphere over a period of time.

It is difficult to estimate for a small or large pub, a small or large restaurant or a multiroomed restaurant how long it would take to eliminate the material from the room and the atmosphere. However, it is clear that it would not be a case of allowing smoking up to 12 o'clock, enforcing a smoking ban at 12.01 and lifting it again at 2

o'clock. That would be virtually pointless, because the smoke would still be there and people would still be absorbing and breathing in the materials that were in the atmosphere or which had been left in the furnishings and were leaching back into the room. There has to be a buffer-zone period to allow for getting rid of that material. It has been suggested that we could get rid of the five-day provision, but to say that we could have a smoke-free atmosphere during mealtimes is scientifically incorrect.

On the suggestion of allowing there to be two separate rooms with a communal bar, it is clear that smoke drift would be a problem in such a situation. If I were in a non-smoking seat and Mr Cullum, who is sitting next to me, were in a smoking seat, what would be my protection? There would be no protection. Dozens of pieces of research show that the difference between the absorption of smoking materials—the toxins, gases and carcinogenic materials from tobacco smoke—in smoking areas and non-smoking areas is virtually nil; people absorb almost the same amount in both areas. Even if we put a door between a smoking area and a non-smoking area, there would still be a problem, which is why we have included in the bill the connected spaces rule. I refer to the conclusions of a report on that, which states:

"Nicotine vapour air monitoring in a non-smoking area of the airport, adjacent to a smoking room ... reveals elevated levels of ambient nicotine vapour in excess of what would be expected in a completely non-smoking environment. This study shows that airport smoking rooms expose non-smokers in adjacent non-smoking areas to a significant concentration of nicotine vapour from SHS",

or second-hand smoke. That refers to areas where a door was in place.

Fergus Ewing: It seems to me that the questions that Mr Maxwell put to the Scottish Executive exposed the shakiness of the foundations of the argument that there will need to be an extra environmental officer in each local authority. Goodness knows how the officer in the Highlands would cope with policing Genuig in the morning and the Old Ship Inn in Aviemore in the afternoon before nipping up to Nairn in the evening. The helpline idea seems to be totally spurious; nothing in the bill requires a helpline.

The two main issues are the impact on health and the savings, both in terms of money and human life, and the impact on businesses. On the impact on businesses, I want to raise issues that arise from the evidence from the SLTA. It is difficult to compare like with like. Paragraph 30 of the policy memorandum, which is on economic issues, refers to the 97 studies that have been done, in countries in which there has been some kind of legislation, on the impact on the hospitality industry. It seems to me that a possible criticism of

Mr Maxwell's methodology is that that category is too broad. The SLTA is talking about pubs, but the hospitality industry is much broader, because it includes all sorts of restaurants and hotels. Does Mr Maxwell accept that his methodology could perhaps be criticised on that valid ground? If so, can he provide information specifically on the impact on pubs in countries where some sort of ban is in place?

Mr Maxwell: I do not accept that the methodology is flawed. The paragraph of the policy memorandum to which Fergus Ewing refers is a collation of 97 studies from around the world, some of which considered the broad spectrum of the hospitality industry, including parts of the leisure industry such as clubs, and some of which looked at restaurants or bars. A range of different studies was included. Given that the paragraph covers all the studies that were available at the time, I suggest that the methodology is sound. Twenty-one studies met the three independent criteria and were not funded by the tobacco industry; they all found that there was no impact on trade, so in that sense the methodology is sound.

12:00

Fergus Ewing: Under "Economic issues", paragraph 33 of the policy memorandum states that 21 studies met the criteria of which you approve and that all 21 studies found that smoke-free restaurant and bar laws had no negative impact on revenue or jobs. However, that is only 21 studies out of a total of 97. The policy memorandum also states that 35 studies, whose methodology you dispute, concluded that such laws had a negative impact. However, it does not tell us the conclusions of the remaining 41 studies—a figure that, if I am not mistaken, is greater than the two figures that are mentioned.

Be that as it may, another point that emerged in evidence this morning is that small pubs in New York are exempt from the ban if they have only one or two employees. I do not know whether that is factually correct, but I am sure that you will know, given all the work that you have done on the subject. If small pubs in New York are exempt, what allowance has been made for that factor in your analysis of the research emanating from the New York ban?

Mr Maxwell: The three criteria to which the policy memorandum refers were selected not by me, but by the authors of the study to ensure that their study was objective, scientific and statistically relevant. That is a reasonable point to make.

On whether some bars in New York have an exemption, let me point out that my bill would allow all bars that so wished to be exempted from

the ban. The bill will not enforce the prohibition of smoking on any licensed premises; it will give people the choice. It will be up to the licensee, so there will be no forcing of anybody to do anything. The licensee will be able to decide whether to ban smoking—which is what I hope would happen—or to carry out renovations or to stop serving food. It will be entirely up to the licensee; the bill will not force people to do anything.

Whether a small number of bars in New York are exempt from the ban does not change anything. The study that is mentioned in the policy memorandum is not about New York, which is only one of many places around the world from which data were gathered. Moreover, the information on the ban in Ireland, which has been in force for two months, is 100 per cent in agreement with the information on the experience of other places such as New York, Norway, Australia, Canada, New Zealand, Hong Kong and South Africa. I do not accept that one small variation in New York changes anything.

Fergus Ewing: However, the growth in licensed premises in New York may well arise from other factors, such as economic growth since 9/11. Indeed, the growth in licensed premises might be due to small bars opening to cater for the smoking market, but we do not know that because we do not have the data before us. I am not being critical, but we need to compare like with like. That is a difficult if not impossible task, which makes our task of scrutinising the likely financial impact of the bill much more difficult. However, I suspect that we might just agree to disagree about that.

The third line of criticism that arose, which I think seems valid, is that it is far too early to draw any conclusions from the ban that was introduced in Ireland on 1 April. As we heard from the SLTA, we would be rash to assume anything from the Irish ban until the first winter has been experienced. Just after the ban was introduced, I had the pleasure of visiting Cork, where many people seemed to be sitting outside to enjoy a pint and a fag, but I doubt that they will do that in October, November, December, January, February or March.

In Ireland, all sorts of ingenious devices are being planned such as the boogie bus, which will allow people to go from one pub to another and take their pints with them. People are also talking about drilling holes into pub walls so that they can smoke through an aperture with the cigarette outside. However, my serious point is that I do not see how we can conclude anything from the Irish experience—I am slightly surprised that you have tried to do so—until there has been a long period in which research can be conducted. Perhaps you have overstated your case by arguing that the Irish experience can be used as evidence, despite the

fact that the Irish ban has been in force for just two months.

Mr Maxwell: We can put the Irish experience aside for a moment, although the Office of Tobacco Control has issued its first study on the ban's impact, and it is reasonable to use that study as part of the discussion. From my knowledge, New York winters are pretty harsh. New York has had its first winter since the ban, yet the figures that are coming out of there are very encouraging indeed. I agree that California is generally a warm place and a temperate part of the world. It has had a ban in place for many years. However, Norway is pretty cold and it, too, has had a ban in place for many years. Following the Irish example, Norway has introduced a complete ban today, but for more than a decade it had smoking regulations and smoking bans; there seems to have been no effect on trade over a decade of Norwegian winters.

The Convener: The big impact on the trade might be the price of the beer.

Mr Brocklebank: As Stewart Maxwell knows, Norway is not typical. In Norway, people drink in hotels; there is not the pub culture that there is in the United Kingdom. As was mentioned earlier, booze is supplied by licensed premises for people to take home. There is nothing like the equivalent of our pub on the corner. There are beer gardens in summer and there are hotels, but the impact in Norway is not the impact that there would be here, so Norway is not an example that should be quoted when it comes to pubs in Scotland.

Mr Maxwell: Norway is not Scotland, but neither are New York, Ireland, Australia, California, New Zealand, Hong Kong, South Africa, parts of India and so on. None of those are Scotland, but surely there comes a point at which we have to say that if a ban works in all those places, we cannot continually say, "But that's not Scotland." Surely there comes a point at which the evidence is overwhelming that a ban does not have a negative impact on trade, that it is successful, and that compliance rates are exceptionally high—higher than for virtually any other comparable law. I bet you anything you like that the compliance rate for the recent law on mobile phone use in cars is nothing like 97 or 98 per cent.

Mr Brocklebank: You are not driving in the same places that I am.

I think that policing the bill would involve greater expense than you think. I have a feeling that if the bill had advocated a total ban, as there is in Ireland and elsewhere, it would have been relatively simple to police. However, you are talking about licensed premises in which people are allowed to smoke in one part but not in another. The room for error will be vast. If pub staff are to control what is happening in different areas

and in the passageways that go from one area to the other, that will put an incredible burden on them. You say that the trade should self-police, but the trade has a difficult enough job to do in policing what goes on in pubs. That is your one problem: unless you talk about entirely separate units, you will have massive policing problems.

The Convener: We may be straying into policy areas and moving away from finance.

Mr Brocklebank: It is about the cost of policing.

Mr Maxwell: If your argument—and that of others—is that we should have a total ban in public places, I am open to that argument. Many people in the licensed trade have said that they would prefer a total ban. That is up to them. Most of that argument is about whether the scope of the bill should be wider or narrower and that can be dealt with by amendments at stage 2. However, I do not accept the argument that Scotland is unique, in the sense that we could not police a ban within the existing situation. It is rather strange to suggest that people here would break the law more than would people in Ireland or anywhere else, and that it would be impossible to police a smoking ban in a room in a licensed premises, when it is perfectly possible to police a ban on under-age drinking—which seems to me to be more difficult to enforce—in those premises.

Ireland has banned smoking everywhere, including in company cars. How difficult must it be to enforce a ban in company cars or in trucks that are workplaces? I think that that would be incredibly complex and difficult, so if people are suggesting that my bill is more complex, I do not think that I can agree.

Jeremy Purvis: I presume that you expect there to be a reduction in levels of smoking, but by what percentage?

Mr Maxwell: It is difficult to say. Everywhere that a ban has been introduced, there has been a reduction in smoking by smokers. A couple of things should be pointed out for clarity. There is a group of smokers who are usually referred to as social smokers. They smoke on Friday nights, when they go out and borrow a cigarette from a friend, or they smoke a few cigarettes at the weekend. I suspect that, as has happened elsewhere, that type of smoking would disappear almost immediately. In New York, in the past year, there has been a massive drop in the number of people smoking, so I expect that there would be a similar impact here.

In Norway, it was announced last June that a ban would be coming into effect this June. In the year before the introduction of the ban, the smoking rate fell by 3 per cent, from 29 per cent last year to 26 per cent this year, which demonstrates the impact of legislation. Surveys in

Norway showed that between 25 and 30 per cent of smokers intended to use the introduction of the ban as a reason to give up. I suspect that we will begin to see a much steeper reduction in the smoking rate in Scotland, which has unfortunately reached a plateau in recent years. The legislation would help to enforce a reduction.

Jeremy Purvis: You do not know the percentage.

Mr Maxwell: Sorry?

Jeremy Purvis: There is not an anticipated percentage reduction as a result of your bill.

Mr Maxwell: There are surveys and figures, but I do not have them to hand. I can certainly write to you with them, if that would be helpful.

Jeremy Purvis: If you do not know, you do not know; that is fine. I am just interested in knowing whether you have gone down your chosen route for the bill without knowing its anticipated impact on smoking rates. When we determine the cost with regard to the bill's impact on business—

Mr Maxwell: No; I know the impact that the bill will have. I gave you a couple of examples from New York and Norway, where the introduction of legislation led to an immediate and sudden drop in smoking rates. I fully expect the same thing to happen here. I can write to you with the figures from the survey evidence, although unfortunately I do not have those figures to hand and I cannot remember them. Everywhere that a smoking ban has been introduced, there has been a sudden and sharp decline in smoking; I do not expect it to be any different here.

Jeremy Purvis: Ted Brocklebank asked about policing, and you mentioned a couple of examples of practices that require policing, one of which was selling to under-age drinkers. The selling of cigarettes to under-age smokers in newsagents must also be policed, and a lot of money is spent on the detecting and policing of that practice, particularly by local authority trading standards departments. Why would you expect your bill to be any different if you want it to be just as effective? You do not know what percentage reduction in smoking there will be, but presumably you want the bill to be enforced as rigorously as possible to ensure that that percentage is as high as possible. Why do you say that your bill will not require the kind of policing that exists for newsagents who sell cigarettes to under-age smokers?

Mr Maxwell: I believe that to be the case because I look at the evidence from elsewhere and draw assumptions based on the fact that compliance rates are exceptionally high—higher than they are for most other comparable legislation that affects what people do. Given the fact that such legislation has compliance rates in

the region of 97 or 98 per cent in a variety of places all round the world, it seems entirely reasonable that we should not waste enormous sums of money on bringing into force smoking police, for want of a better term, when they will not be required.

People say that we cannot use examples from Ireland, but there are already examples of non-smokers assisting in the policing of the ban. They have not contacted the smoking police or phoned the helpline, but if somebody goes to light up a cigarette they have said, "You're not allowed to do that. There's a ban in force. You cannot smoke near me." People use the legislation as back-up for their own protection, and it is clear that that is working very well.

We already have bans in the UK. We have bans in planes, in theatres and on the underground, as well as in various workplaces. Lots of bans are in place—

The Convener: We are beginning to drift away from the financial aspects of the bill.

Mr Maxwell: The point that I am trying to make is about enforcement. The bans that are in place in theatres, cinemas and museums or on the underground work perfectly well. I go to all those places and I do not see people smoking all over the place.

12:15

Jeremy Purvis: In much of the public transport that I use, phone numbers are advertised that people can phone to report smoking incidents.

On the five-day barrier, if there are going to be offences and evidence has to be corroborated for the fiscal to pursue a case, how would the five days be determined?

Mr Maxwell: The five days will be dated from the last incidence of smoking.

Jeremy Purvis: How would that be determined for a prosecution?

Mr Maxwell: In the case of an event in a village hall—if there had been a wedding or something like that—at which food was served, people would be allowed smoke after the food had been dispensed with: there could be a meal and smoking would be allowed afterwards, if there was a dance or whatever. For five days following the end of that event, a smoking ban would be in place to allow the smoke to dissipate. If somebody smoked in the premises during that five-day period, that could be reported to the police. The offence would not be particularly difficult to prove—signs would be in place during the five days, which the managers and owners of the premises would have to put in place.

Jeremy Purvis: You do not expect that any equipment will be needed to determine whether smoking had taken place during the five days.

Mr Maxwell: No. The people who used the premises would report it.

Jeremy Purvis: In section 2, we are told that Scottish ministers can amend the definition of "regulated area", possibly quite dramatically. Do you not anticipate that, if the definition of "regulated area" was determined by ministers without the committee having an opportunity to scrutinise such an amendment, there might be an impact on costs?

Mr Maxwell: I cannot cost what is not in the bill. If, at some future point, the Executive or Parliament decided to introduce a statutory instrument to create another definition of "regulated area", Parliament would scrutinise that statutory instrument at that time. I cannot anticipate what the Executive or Parliament will do.

Jeremy Purvis: Why was no regulatory impact assessment carried out?

Mr Maxwell: Such an assessment was not required. The number of regulatory impact assessments that have been carried out for Parliament over the past five years is minuscule. Given the fact that the impact assessments that have been carried out elsewhere have showed massive savings for business, we deemed it to be unnecessary.

Jim Mather: I have a question that might give the SLTA and the Scottish branch of the British Beer & Pub Association some comfort. Given the proximity of Ireland and the likelihood that there must be some restaurant, hotel or pub group that operates in that jurisdiction and here, are you doing anything to try to persuade it to come forward and say, "This is the impact that legislation in Ireland has had on us in terms of turnover, sales mix and bottom line"?

Mr Maxwell: Organisations and companies in Ireland have already done so. There is evidence to which I alluded earlier, which *Scottish Licensed Trade News* has reported widely. That publication spent the past six months running a campaign against the bill but, having surveyed pubs in urban and rural Ireland, it has found that there are extremely high compliance rates—100 per cent in many places—and that there has been no impact on trade in restaurants or bars. It has decided that the impact on businesses here will be either neutral or positive in terms of attracting tourists or locals. That publication has concluded that the bill should, because there is no need to oppose it, be embraced as being inevitable and that licensees should move forward with it, as the Licensed Vintners Association in Ireland has.

Fergus Ewing: I wish to raise a point that occurred to me following your response to Jeremy Purvis. Perhaps I have misunderstood the provisions of the bill with regard to the five-day rule. You said that if a special function took place at which smoking was permitted, there would need to be five days after that function during which there would be a smoking ban.

Section 1 of your bill refers to the “prescribed period” when the public space will be regulated—that is, the period when the bill will apply. Section 1(1)(b) says that the space will be regulated

“during the prescribed period before food is supplied and consumed”.

However, you said that the prescribed period of five days would start after the smoking had taken place, to allow the smoke to disperse. Is there something wrong with the definition of the prescribed period?

Mr Maxwell: No—perhaps I did not make myself clear. Mr Cullum will explain.

David Cullum (Scottish Parliament Non-Executive Bills Unit): The prescribed period is the five-day period. The bill will require that there be five smoke-free days before food can be served. For example, if there is a function on a Saturday, at which no food is served and smoking is permitted, five clear days—Sunday, Monday, Tuesday, Wednesday and Thursday—would have to elapse before there could be a function at which food was served. It would be Friday before food could again be served in those premises. That is the purpose of the prescribed period in section 1.

The Convener: Again, I think that we are beginning to move away from pure and simple financial issues.

I thank the witnesses for coming along today. As I indicated to other witnesses earlier, we will consider the issues that we have discussed on 22 June, so if the witnesses could let us have any further information within the next fortnight, that information could be used in our considerations.

Mr Maxwell: I have already agreed that we will write to the committee with the figures that Jeremy Purvis asked about. I may even include a copy of *Scottish Licensed Trade News*, which will tell you clearly what is happening in Ireland.

The Convener: I thank Stewart Maxwell and David Cullum.

Fergus Ewing: I wonder whether we could take some evidence from the Scottish branch of the British Beer & Pub Association. Mr Stuart Ross said that he was of the understanding that we had not sought advice from that association. Its members would probably feel that they should be consulted, as they will be directly affected. To

inform our deliberations, would it be possible to ask the association to provide us with a written submission?

The Convener: I do not think that there would be a problem with our asking for a written submission.

Mr Maxwell: Obviously, the decision is entirely up to the committee, but the submission by the Scottish branch of the British Beer & Pub Association to the original consultation was on behalf of the association’s Scottish branch and the Scottish Licensed Trade Association. They have been working together.

The Convener: Yes, but there is no problem with our writing to the branch to ask for a written submission.

Mr Maxwell: I assume that, if the association is invited to the committee, I would have the right of reply.

The Convener: The proposal was not to invite the branch but simply to ask for a written submission.

Committee Away Day

12:22

The Convener: The second item on our agenda is to consider whether to have a committee away day. Members will have received a paper from the clerk and will see that I propose that we decide in principle whether to have an away day, with the exact date, time and venue to be confirmed later. The clerk has laid out the various discussions that we could have. I think that an away day would be valuable; we need to consider a number of procedural issues, based on the committee's experiences in this first year of the session. An away day would also help us to begin to identify some of our priorities for next year.

Jeremy Purvis: My only comment is on the timing. The proposal is that the away day be in the last week of August or the first week of September, which will be a rather busy time for us all, if we are moving our offices to the new building. It is also the first sitting week of the new parliamentary year.

The Convener: The first meeting of the Parliament in the chamber is actually in the following week, in the second week of September. Also, we will not—as far as I know—have access to the offices in the last week of August.

Fergus Ewing: It will be difficult to find a date that suits everybody over the summer. Inevitably, people have commitments or—dare I say it?—holidays. To be frank, I would prefer us to have our discussions in committee. I understand that, between now and the beginning of recess, our agendas may not be as heavy as they have been, so I would prefer us to have discussions when everybody can be here. After all, if one person cannot make it, that person will be disenfranchised from the discussions. During the parliamentary year, we all expect that we should be at committee meetings.

As for the content of discussions, I really do not see why we could not factor in—perhaps in the final meeting of this spring/summer term—discussions on the points that are raised in the paper. What is preventing us from doing that? Why do we need an away day? Why do we need the expense of an away day if we are supposed to be tightening our belts? I will find it difficult to attend an away day and quite impossible to fix a date now.

The Convener: We will discuss dates in the future. The clerks advise me that it would be difficult to get all the required information together before the recess. From the timetable that we have already discussed, members will be aware of the business that is forthcoming. We have some

very heavy agendas.

I propose that we have an away day. Do members agree that we should?

Members indicated agreement.

The Convener: We will be in touch with members to establish the dates.

Items in Private

12:26

The Convener: The final item on the agenda is to consider whether to discuss in private the draft report on our relocation inquiry and our stage 1 report on the 2005-06 budget process at our next meeting and at subsequent meetings as required. Do members agree to have those discussions in private?

Members indicated agreement.

Meeting closed at 12:26.

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