

# **FINANCE COMMITTEE**

Tuesday 26 May 2009

Session 3

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## FINANCE COMMITTEE

### 14<sup>th</sup> Meeting 2009, Session 3

#### CONVENER

\*Andrew Welsh (Angus) (SNP)

#### DEPUTY CONVENER

\*Jackie Baillie (Dumbarton) (Lab)

#### COMMITTEE MEMBERS

\*Derek Brownlee (South of Scotland) (Con)

\*Linda Fabiani (Central Scotland) (SNP)

\*Joe FitzPatrick (Dundee West) (SNP)

\*James Kelly (Glasgow Rutherglen) (Lab)

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

\*David Whitton (Strathkelvin and Bearsden) (Lab)

#### COMMITTEE SUBSTITUTES

Murdo Fraser (Mid Scotland and Fife) (Con)

Kenneth Gibson (Cunninghame North) (SNP)

Lewis Macdonald (Aberdeen Central) (Lab)

Liam McArthur (Orkney) (LD)

\*attended

#### THE FOLLOWING GAVE EVIDENCE:

Mary Cuthbert (Scottish Government Public Health and Health Improvement Directorate)

Marjorie Marshall (Scottish Government Health Finance Directorate)

Marlene Walker (Scottish Government Primary and Community Care Directorate)

Anna Wallace (Scottish Government Public Health and Health Improvement Directorate)

#### CLERK TO THE COMMITTEE

James Johnston

#### SENIOR ASSISTANT CLERK

Mark Brough

#### ASSISTANT CLERK

Allan Campbell

#### LOCATION

Committee Room 1



# Scottish Parliament

## Finance Committee

*Tuesday 26 May 2009*

[THE CONVENER *opened the meeting at 14:00*]

### Tobacco and Primary Medical Services (Scotland) Bill: Financial Memorandum

**The Convener (Andrew Welsh):** Good afternoon and welcome to the Finance Committee's 14<sup>th</sup> meeting in 2009 in the third session of the Scottish Parliament. I ask everyone to turn off mobile phones and pagers.

The first item on the agenda is evidence on the financial memorandum of the Tobacco and Primary Medical Services (Scotland) Bill. Members will have received copies of all the written submissions.

I welcome to the committee the following Scottish Government officials: Mary Cuthbert, bill team leader and head of tobacco, sexual health and HIV policy; Marjorie Marshall, economic adviser in the analytical services division; Anna Wallace, bill team manager; and Marlene Walker, head of the general medical services branch. Do any of the witnesses wish to make an opening statement?

**Mary Cuthbert (Scottish Government Public Health and Health Improvement Directorate):** I have not prepared anything, but I thought that it might be helpful to provide some context to our work on the bill. In developing the provisions—particularly those on tobacco, which have taken quite a long time to draw up—we have worked very closely with our stakeholders, particularly the retail sector, which, after all, will feel an impact from the proposals. Indeed, for that very reason, we developed a regulatory impact assessment for the proposals and engaged as effectively as we felt we could with the various constituent bodies, which have since told us that they welcome our openness and transparency in developing the provisions. Anna Wallace and Marjorie Marshall developed the RIA and engaged very well with people.

That said, I have looked at the new information contained in some of the submissions to the committee. It is clear that certain bodies feel that we did not engage with them as well as we might have done, but I want to make it plain that that was through no lack of will on our part.

**The Convener:** I remind the committee that Jackie Baillie and Derek Brownlee are leading the questioning on the bill, but other members can ask questions if they so wish.

**Jackie Baillie (Dumbarton) (Lab):** I thank Mary Cuthbert for her opening statement.

Although the bill's cost to the Scottish Government budget is relatively minor, will the provisions have a cost impact on existing budgets? Where are you getting the money from? What existing budgets will absorb the cost?

**Mary Cuthbert:** We expect to absorb the additional funding required primarily in the current expenditure on our tobacco control programme. In the RIA and the other assessments that we have carried out for the financial memorandum, we have been quite generous in anticipating what the various areas of expenditure might be. Obviously, we will be very happy if we come in under budget, but we felt that we should try to give as realistic a picture as possible.

That said, this sort of financial information is made up of assessments and assumptions, and we cannot guarantee that the amounts that we have suggested will be exact until we implement the provisions. As I have said, however, we feel that we have been quite generous in those assumptions.

**Jackie Baillie:** Are you able to ensure that registration to the national database will continue to be free? That is a worry for local businesses.

**Mary Cuthbert:** As you will see from the bill papers, we considered a number of options in developing the proposals. However, we—and ministers—were very clear that we wanted to reduce the impact on business as much as possible and therefore we felt that we should stick to the proposal of free registration to a national database. The bill would not allow us to impose a fee anyway. We drafted it deliberately in that way because, even though this Administration will not charge, the retail sector feared what a future Administration might do. That means that, if a decision to start charging is ever taken, the Government would have to come back to the Parliament with proposals and justify the decision. We felt that that was the appropriate way forward.

**Jackie Baillie:** I will develop the theme of impact on the business sector. For example, the Scottish Grocers Federation estimates that counter installations will cost in excess of £10,000 and the Scottish Retail Consortium suggests a range of between £2,000 and £25,000. Have you underestimated the likely cost? Whatever the cost may be, should the Government compensate such businesses in some way for providing that additional facility?

**Mary Cuthbert:** Marjorie Marshall and Anna Wallace are probably better placed to talk about the detail; I will talk about the principles. We had detailed discussions with the Scottish Grocers Federation, the Scottish Retail Consortium and other representatives of the retail sector from large businesses down to small corner shops. In developing our proposals, we took at face value the information that they gave us about the costs that might be incurred. Obviously, they gave us that information without having seen the legislative proposals, but they were open with us and I feel that we were open with them about how far we could go. Many of the assumptions that those organisations have made are perhaps based on the idea that retailers will have to refurbish their shops completely.

Although people use the term “under the counter” for shorthand, we have never said in any of the papers that we have published that we are talking about tobacco products being under the counter. We need to find a solution that allows retailers to fulfil the policy objectives of the bill—to hide tobacco products from display—without being too restrictive about how they go about it. As we develop the regulations that underpin the bill, we will need to have further discussions about that with the sector. In fact, we have already had some meetings and will have further open dialogue with retailers. They have clearly laid out their stall, as we would expect them to do.

**Anna Wallace (Scottish Government Public Health and Health Improvement Directorate):** During the development of the regulatory impact assessment, we met the Scottish Grocers Federation five times and received a number of written submissions from it. We also discussed the draft regulatory impact assessment and the financial memorandum with the federation, so we were quite surprised to see it give that figure because it is not the figure that the federation has given us in the past. I appreciate that it has had more time to consider the numbers, but the first response that we had from it was that the cost would be from £2,000 to £10,000.

We know that businesses will want to develop different solutions, which is why the bill is drafted the way that it is. As Mary Cuthbert said, the Government is not necessarily saying that retailers should adopt an under-the-counter solution. The figures from the Scottish Grocers Federation are indicative of the most expensive solution. We want to work closely with retailers to ensure that we do not impose such a cost on them but come up with a solution—on which the retail sector, not the Government, should lead—that achieves the principles of the bill without being overly prescriptive such that retailers have to refit their shops completely.

On implementation, we listened to what businesses had to say about how quickly they refitted their shops. We took that into account and, in an effort to minimise the cost to business, have given a longer lead-in time for small businesses to ensure that, when they refit their shops, they do so as part of a planned refurbishment.

**Marjorie Marshall (Scottish Government Health Finance Directorate):** As Mary Cuthbert said, we took the estimates that the industry gave us. In fact, in response to comments that retailers made to us, we gave three separate sets of estimates rather than simply assuming an average or median figure. We tried to reflect that different types of businesses would be impacted with different costs. The costs for large supermarkets would clearly be different from those for small corner shops. As Anna said, we talked to a number of representatives from different parts of the retail sector and tried to reflect the different costs.

**Jackie Baillie:** Large supermarket chains and other retailers on that scale are likely to renew their fixtures and fittings on a regular basis, but it has been a while since my corner shop did so. The assumption that retailers will absorb the cost because they renew their fixtures and fittings anyway may be false. Is there a plan to provide any compensation, especially to the smallest retailers that will be affected?

**Anna Wallace:** We had extensive discussions about refitting with the National Federation of Retail Newsagents. Since the bill was introduced, I have met representatives of the federation, which seemed to think that a period of three to five years was fair. In many of the estimates that have been given, the cost of general refitting has been included in the cost of removing the gantry. We do not think that that is linked directly to hiding the display of cigarettes—it is something that retailers just have to do.

We have been in discussions with retailers about solutions, some of which—such as keeping the gantry and covering up cigarette packets—would cost nowhere near as much as was estimated at the start. The estimates that are given in the submissions are for pulling out the gantry, replacing it with something else and completely refitting underneath the counter. We are working with retailers to minimise costs. The financial memorandum contains quotes from Canada of as little as £200 or £550. That seems like a reasonable cost over five years.

**Jackie Baillie:** I am keen to push you on the issue. The bill is clear about your intention, which is admirable and for which there is general support. However, having done the studies, you are also clear about what does and does not work. If you want to make a clean break and to ban

displays, why are you now saying that you will try to accommodate them by allowing retailers to pull down shutters and so on? The industry has read the bill—as I would read it—as seeking to ban displays and to ensure that cigarettes are kept under the counter or somewhere else out of sight. Now, because of the potential cost of the measure, you are saying that cigarettes can be kept in sight.

**Anna Wallace:** Neither we nor the minister have ever said that cigarettes must be kept under the counter—that was just the strapline that was used. Mary Cuthbert, who is the bill team leader, may be able to put the matter into perspective. When we talk to retailers about shutters, we do not mean shutters that can be opened and left open; the Scottish Retail Consortium highlighted that point. Retailers will still have to come up with a solution that ensures that cigarettes are hidden from display at all times.

**Jackie Baillie:** So a cost will be attached to the measure. Will you be able to bottom out that cost in the work that you will do?

**Anna Wallace:** We can certainly work more closely with retailers on the issue. Let us look at the flip-side. We have been in discussions with retailers about what they can put in the place that cigarettes have historically occupied, which is a prime point-of-sale advertising spot. I have heard anecdotal evidence of adverts for the lottery, for example, going up there. Retailers could generate revenue from the area. Gerard Hastings has spoken about retailers moving with the times and giving people what they want. The incidence of smoking is reducing; people do not want cigarettes to be up on display. We need to consider other products that they might want to put in that place.

**Jackie Baillie:** I do not doubt the efficacy of such measures. I am questioning whether it is appropriate to recompense those retailers—especially small retailers—who do not change their fixtures and fittings with the same frequency as some larger retailers.

**Mary Cuthbert:** Under the current plans and in the bill, there is no provision for compensation. I repeat that we are continuing to work with the industry to seek solutions that are more cost effective, to reduce the burden on business as much as we can, without undermining the principle of the bill. Be assured that none of the discussions that we have had about possible solutions will undermine that principle, which is encompassed in the legislation. However, the more prescriptive we are about where retailers should store their tobacco products, the higher the costs will be. Many of the costs that have been given have been developed on the basis that we will tell retailers that they must do one thing and not another. The bill is not drafted in that way. We are in discussion

with retailers to help us to develop the subordinate legislation that will support the bill. As I said to the other committees before which I have appeared, we will do our best to have all of this bottomed out over the summer. By the time that we get to stage 2, the committee will have a clear set of proposals on which to hold the Government to account.

14:15

**Jackie Baillie:** I assume that you are not closing the door on providing some form of compensation, albeit that your intention at the moment is not to do so.

**Mary Cuthbert:** That is certainly not on the radar at present. Obviously, at the end of the day, the decision is one for ministers, but we have not budgeted for that. The financial memorandum does not include the making of any form of compensation to shops.

**Jackie Baillie:** There is one area where you are likely to make savings. I think that everyone would sign up to the idea of the national health service being the long-term beneficiary of the bill. Have you made any attempt to quantify the savings in that regard? I see that the question is being passed down the line. [*Laughter.*]

**Marjorie Marshall:** Clearly, the most significant long-term savings are likely to be to the NHS. Again, in the main, the legislative proposals are aimed at the under-18s. Any savings to the NHS are therefore likely to be over a significant period—it will be 15 or 20 years before we will begin to see them. When we looked at raising the age limit, we estimated around £4 million per annum in savings to the NHS in about 20 years' time.

Based on the same methodology, our estimate is now somewhere between £5 million and £10 million per annum in savings to the NHS. There are likely to be savings in court costs and, if we go down the route of fixed penalty notices, in trading standards costs. Trading standards officers tell us about the time and resource that it takes to prepare cases for court. Clearly, there is a potential resource saving in that regard.

**Derek Brownlee (South of Scotland) (Con):** I return to the provisions on displays that are a crucial aspect of the bill. By and large, the criticism in the responses that we have received has been about the potential cost to small businesses of the display regulations. Section 1(4) talks of ministers bringing forward regulations to set out the conditions when a display will not constitute an offence. Most of what you can do to address retailers' concerns comes under the regulations about which you have spoken. At this stage in the legislative process, what initiatives are you taking forward in this respect or is the provision in the bill

simply there as a permissive measure—one that you plan to work up at a later stage?

**Mary Cuthbert:** I am not sure that I quite understand the question.

**Derek Brownlee:** I will give an example. In your earlier discussion with Jackie Baillie, you said that one option would be to screen the tobacco display and open it up only at the point of sale. A literal reading of the bill might lead one to say that that was a display, depending on how long the screen was open for, and that an offence had therefore been committed. Let us assume that there is a queue of people in a shop, all of whom want to buy tobacco. In that case, the display would be open for quite a while and people at the back of the queue would be able to see the display.

I assume that you might make regulations to say that, where a display is made for the purpose of retrieving something to be sold, after which it is screened again, no offence has been committed. Is that the case? Do you have an idea of the circumstances for which regulations will be made? Do you have a number of circumstances in mind or is the provision an enabling provision to allow regulations to be made at a later stage to deal with any problems that emerge in the implementation of the bill?

**Mary Cuthbert:** The regulations will say what is allowable when a transaction is being undertaken. A number of options will be given—for example, that five packets of cigarettes may be displayed. Some people have suggested the option of the time that it takes to make a sale—for example, that a display can be opened for 10 seconds or however long it takes to retrieve a packet of cigarettes.

Several options could provide the solution that might be in the detailed regulations. We must find a solution that does not stop legitimate transactions in shops and does not undermine the principle. For example, if a curtain covered the cigarette packets, the whole curtain would have to be pulled back to obtain a packet of cigarettes, which would break the display ban. We must consider how we word the regulations so that the principle is not breached while we allow normal transactions in shops.

Various solutions exist. Some are expensive, such as the mechanism whereby pressing a button brings up a packet of cigarettes. Much innovation is going on. We must bottom out the issue with retailers to ensure that we do not inhibit them from undertaking the legal transaction of selling a packet of cigarettes while not undermining the ban on point-of-sale display.

**Derek Brownlee:** Do you intend to provide at least some regulations in draft before the bill is passed?

**Mary Cuthbert:** Yes. We told the Health and Sport Committee that we would look to bottom out the issue over the summer and to have a set of regulations by stage 2.

**Derek Brownlee:** I think that you said that the bill does not permit a charge for registration, but I have just scanned it and I see nothing that prevents you from charging. Am I missing something?

**Mary Cuthbert:** The reverse position applies.

**Derek Brownlee:** So because the bill does not permit charging—

**Mary Cuthbert:** We do not have a solicitor with us, but I think that a legal instrument would be required to allow for charging. Nothing in the bill would allow us to make a charge.

**Derek Brownlee:** Perhaps you can write to us if what has been said is wrong.

Section 8(2)(e)—the final condition about applications—says that an application must

“be made in such form and manner as is determined by the Scottish Ministers.”

Do “form and manner” not cover paying a fee?

**Mary Cuthbert:** The provision relates to the form and manner in which we determine that people can apply to be registered. That is nothing to do with charging.

**Derek Brownlee:** We have received information on vending machines. The reason for banning them seems to be that the people who use them cannot be supervised, so they are incompatible with the bill’s broader aims. However, we have received evidence that ways around that issue exist. Did you consider some supervision of vending machines?

**Anna Wallace:** Although—regrettably—we could not consult the National Association of Cigarette Machine Operators before the bill was published, we obtained through discussions with the Department of Health figures from NACMO for the radio-frequency control unit. Those figures were used in the regulatory impact assessment, which weighed up the costs to business, Government and local authorities and which considered the benefits. The units would have a cost and would also have cost implications for landlords, who would have to train staff in what to do—as with alcohol licensing, staff would be trained. Landlords make a small margin from vending machines, and further costs would narrow that margin. It is clear that the benefits of getting rid of vending machines outweigh other factors. Perhaps Mary Cuthbert can say more.

One intention behind the bill is to update tobacco sales law, which dates back to 1937. The



minister decided that selling tobacco—a harmful product—from a self-service machine was not right and was incompatible with what we now know about tobacco, in comparison with what we knew in 1937. The decision was based on the health implications and on bringing the law up to date.

**Mary Cuthbert:** The policy is set out clearly in the policy memorandum. We certainly tried to engage as effectively as we could with the industry, although our intentions are slightly different and it was obvious that the industry would not necessarily like the outcome. We certainly considered all the options, and the regulatory impact assessment was done on that basis. We feel that we have done as good a job as we can as officials, and the decision was taken on that basis.

**Derek Brownlee:** I do not want to put words in your mouth but, in effect, there is a cost benefit argument of which you are sceptical, although that would in general be a decision for the industry. It sounds as though, in effect, the ministerial policy decision trumped the considerations that the industry raised. Whether or not we agree with that, the decision has been taken.

**Mary Cuthbert:** It would be wrong for the industry to suggest that we did not think about the other options, because it is clear that we did. The RIA sets out the options that we considered. Some submissions suggest that we did not consider other options, but we did. The decision was taken that the best way to ensure that no person who is under 18 can access cigarettes from a vending machine is to have a complete ban on vending machine sales.

**David Whitton (Strathkelvin and Bearsden) (Lab):** I declare an interest in that I have a constituent who runs a vending machine company and who has written to me about the issue. The company is in Pauline McNeill's constituency, but the owner lives in my area.

Am I right in thinking that, before the bill was published, you spoke only to Sinclair Collis and not to NACMO?

**Mary Cuthbert:** Yes, although we knew about NACMO and we made attempts to contact it. Marjorie Marshall and Anna Wallace started on that in July 2008. We published our proposals for legislation in May 2008 in "Scotland's Future is Smoke Free: A Smoking Prevention Action Plan", in which we said clearly that we would consider tobacco sales laws, including issues to do with vending machines. When we started to develop the RIA, which was immediately after that, officials tried to contact NACMO, but were unsuccessful. Eventually, we had a meeting with Sinclair Collis, which has the biggest single holding of vending machines in Scotland—it has 2,000 of the 4,000 or

so that exist. Sinclair Collis agreed that it would try to help us contact NACMO, but even then NACMO did not get back to us. We have the e-mails to show that we made good attempts. We do not want to get into an I said, he said situation, but we certainly did our level best to contact NACMO.

We knew that NACMO was in contact with the Department of Health. As Anna Wallace said, we received United Kingdom-wide information, but we did not really bottom out the matter. We put up our hands on that—it was our job to do that and we tried our level best, but we did not succeed. Members have probably seen the minister's letter, in which she explains how we went about the regulatory impact assessment process. NACMO eventually got in touch with us when, after the bill was published, in an answer to a parliamentary question we said that we had not spoken to the association. A week or two after that, NACMO got in touch with us and we met with representatives of it. Since then, we have been in dialogue with NACMO and we continue to have dialogue.

**David Whitton:** My constituent owns a company called McLaren Vending Ltd, which runs 500 machines and has 14 full-time staff. Mr McLaren tells me that they will all lose their jobs as a result of the bill. What compensation measures are in place to help him pay for redundancy costs?

**Mary Cuthbert:** There is no compensation under the bill.

**David Whitton:** So the bill just forces him out of business and there is no compensation for that.

**Mary Cuthbert:** We do not know the options that exist for diversification. We have not been able to establish exactly what kind of jobs you are talking about, not that it matters whether they are full or part time. We have tried to get information from NACMO on such matters. We keep getting different figures, although we have secured a meeting in a week or so at which we might bottom out some of that. We are as keen as anyone else is to find out what the underlying factors are.

14:30

**David Whitton:** I note what the minister says in her letter, but Mr McLaren made the point to me that all of his machines are within licensed premises, which you can only get into in the first place if you are 18 or over. Anyone who is buying cigarettes from one of his vending machines is buying it in licensed premises and would not be underage anyway.

**Mary Cuthbert:** That is one of the arguments that has been put forward. Quite an extensive test purchasing exercise was recently undertaken down south. I cannot remember the figures off the top of my head, but about 15 machines were

tested, all of which were in licensed premises, and the testers managed to get 12 sales. I am afraid that the fact that the machines are in licensed premises does not necessarily mean that they will not be accessed by someone under 18.

**David Whitton:** You have seen the evidence that we have been given that underage smoking is more the result of bootleg tobacco being smuggled into the country, and that rather than shutting down vending machines, we should be beefing up trading standards. What is your reaction to that?

**Mary Cuthbert:** That suggestion has often been made, and some who oppose the measures say that there is not enough evidence to support what we are doing. They say, "All these young people get illicit products", but there is no evidence to support that either. We are mindful of the fact that there are a lot of illicit products on the go. Through the enhanced tobacco sales enforcement programme, which we have agreed with the Convention of Scottish Local Authorities, and which involves all the local authorities, we are trying to tackle not only illegal sales from legitimate businesses but the illicit products that are on the streets. HM Revenue and Customs has given us a lot of help and support in that.

We have given resources—£4.5 million over three years—to local authorities to help them to beef up their trading standards practices. We are working closely with trading standards and HMRC to try to address the concerns expressed by retailers in on-going discussions at official and ministerial levels.

I would not claim—I do not think that anyone would—that we can suddenly solve the problem, but there has been much more effort in that direction. The provisions in the bill will mean that trading standards officers, for the first time, have powers to act against people who are selling illicit products. We have listened to the concerns and we are trying to address them.

**Derek Brownlee:** We are hearing very different things from the retail trade to what we are hearing from others. It struck me as rather ironic that on the day on which the bill was introduced, the New Zealand Government abandoned similar proposals. I wondered whether there has been any discussion of New Zealand's cost benefit analysis with your counterparts there. I appreciate that New Zealand is a very different jurisdiction and that it has a different legislative framework, but presumably basic issues such as the cost and benefit of displays will be relatively common.

**Mary Cuthbert:** Anna Wallace and Marjorie Marshall are probably closer to the international evidence. However, I had a meeting recently with someone who had come over from New Zealand and was campaigning to get the Government of

New Zealand to change its mind. I think that there had been a change in Administration, and that abandoning the proposals was a political gesture—that would be my summing up—rather than being based on any lack of evidence that the proposals would work. There is hope that there will eventually be a positive decision—the wording of the statement did not rule it out completely. I think that New Zealand has a coalition Government and that there is some element of support for the proposals in the Government. I would not read too much into what happened there.

**James Kelly (Glasgow Rutherglen) (Lab):**

Like David Whitton, I want to pick up on the issue of vending machines. Paragraph 92 of the financial memorandum states that the bill will lead to

"14 people being made redundant as a result of the ban on sale of tobacco from vending machines."

As we have already touched on, that figure was based on redundancies at one company. However, a further 14 such companies have since been identified. Therefore, I want to drill down into the assumptions that underlie that figure.

It has been mentioned that, given the difficulties in contacting NACMO, a pro rata calculation was done that suggested that 6,522 vending machines are in operation in Scotland and that discussions with Sinclair Collis, which has 2,000 machines, suggested that 14 redundancies would result from the bill. However, that leaves in excess of 4,000 machines, for which no job losses or impacts have been assessed. What assumptions were made in the figure that was inserted in paragraph 92 of the financial memorandum?

**Anna Wallace:** The wording in the paragraph—I have it as paragraph 91, but I could be wrong—is very careful in what it says about sales from vending machines. The paragraph states:

"The Scottish Government is aware of only one company operating in Scotland that would be affected by the ban."

The financial memorandum says nothing about the number of vending machines, as it deals only with the impact on business. We go on to admit:

"This company has advised the Government that all staff employed in Scotland, totalling 14, would have to be made redundant."

When writing that, we had no implementation plans and the minister still wanted to talk to the industry about how we might best implement the bill in a way that might meet some of the concerns that had been raised. Perhaps with a longer lead-in time, those people would be able to find other jobs, but we have assumed that they would be made redundant. Obviously, we could put into the financial memorandum only the numbers that we knew. We now have updated figures, but those have changed a number of times, as Mary

Cuthbert said. Even Sinclair Collis, which told us that there would be 14 redundancies, has now said that the number would be 15, so the figure seems to be changing almost weekly. However, we will work closely with the industry to get some rigour in the numbers and then amend the financial memorandum. We have assured all the companies involved—we will probably meet the industry on a number of occasions over the next few months—that the financial memorandum reflects accurately the impact that the policy will have on the companies that will be affected.

**Mary Cuthbert:** It is probably worth saying that, in our discussions, Sinclair Collis in particular was very open with us that the industry is clearly in what we might call recession anyway. Particularly since the smoking ban was introduced in 2006, the number of machines has been dropping quite dramatically. Sinclair Collis's holding has halved, as has the number of employees. The industry is already shrinking. That does not lessen the impact on the individuals concerned, but it puts into perspective the fact that the industry is declining.

**James Kelly:** I welcome the fact that the financial memorandum will be updated, but I have some concerns that the supposedly robust regulatory impact assessment was completed after discussions with only one company, which is responsible for 2,000 machines. Potentially, based on the available figures, there is a base of in excess of 4,000 machines out there that were not included in the assessment.

**Marjorie Marshall:** I should say that that number is the correct pro rata figure from the numbers that were quoted by the Department of Health, which we always suspected were an overestimate. The number is not used anywhere in the RIA or the financial memorandum as a basis for calculations for either costs or benefits.

**James Kelly:** What was the thinking behind the fact that nothing was built into the potential costs in respect of the remaining vending machines, on which there had been no discussions?

**Marjorie Marshall:** As my colleagues have outlined, the additional costs relate to employment. However, as has been said, the only organisation that we could talk to was Sinclair Collis. It was therefore difficult to make other estimates. However, as I said, that figure of 4,000 machines is not used as a basis for any of the costs or benefits that are mentioned in the RIA or the financial memorandum.

**Joe FitzPatrick (Dundee West) (SNP):** On redundancies, I understand that you had difficulty communicating with NACMO, but that discussions are now progressing. As part of those discussions, will you discuss diversification for the companies? I know that some pubs in Dundee have diversified

by changing cigarette vending machines for machines that vend smoking cessation products. Might that be a possible approach? We do not want people to lose their jobs. If there is a positive way of turning round the situation, I hope that we are doing what we can to help with that.

**Mary Cuthbert:** Absolutely. When we met NACMO, that was one of the issues that we discussed. Obviously, the meeting was difficult for officials, because the NACMO representatives were disgruntled, but once we got over the initial difficulties, we had a fairly constructive discussion about the other possibilities. Obviously, NACMO's first line is that it wants to keep cigarette vending—let us be honest about that. However, I suspect that, as we move on to implementation, we might have more helpful discussions with NACMO.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** I want to check whether I heard Ms Marshall correctly. I think that she said that the figure of about 6,500 vending machines is not in the RIA or the financial memorandum.

**Marjorie Marshall:** No—it is.

**Jeremy Purvis:** You now believe that the assumption that there are 6,552 machines is inaccurate.

**Marjorie Marshall:** Yes.

**Jeremy Purvis:** But that is the basis on which you estimated the cost.

**Marjorie Marshall:** No. The point is that that figure was not used for any calculations. It is simply given as an indicative figure of the number of machines in Scotland, based on a pro rata calculation using the number of machines in the UK. For example, the figure did not form the basis for calculating the reduction in sales. It was not used as a basis for any calculations; it is simply quoted in the RIA to give an indication of the size of the market. We realised that it might be an overestimate, but it was the only figure that we had.

**Jeremy Purvis:** The letter from the minister of 24 April stated that the financial memorandum would be updated. We are now a month on but, as far as I am aware, the committee has not been presented with an updated financial memorandum. Is the Government asking us to report on a financial memorandum that we know will not be the most relevant one?

**Mary Cuthbert:** The problem is that we have not been able to update the financial memorandum because of the difficulties in bottoming out the figures—we keep getting different figures from NACMO. We are doing our level best, but we did not want to update the financial memorandum and then say to the

committee the next week, "Sorry, but we've got the wrong figure." NACMO has included different figures in its evidence to the Health and Sport Committee. Several figures are being bandied about. We did not want to give you a figure that we might then have to correct. We want to be absolutely certain that the final figures that we arrive at are accurate, particularly in relation to job losses. That is why we have not updated the financial memorandum.

**Jeremy Purvis:** Would it be best if the committee paused in its reflection on the matter until you provide us with updated information? We will not be able to report on the accuracy of the financial memorandum before we have that information before us.

**Anna Wallace:** That is for the committee to decide, but all that we can work on at present is the information that has been provided in evidence to the Finance Committee and the Health and Sport Committee. The most recent information that we have is that the bill will affect 60 staff. However, we want rigour in the figure. For example, we know that McLaren Vending vends other products, so we do not know whether its people are involved full time with cigarette vending. We do not undervalue part-time jobs—whether a job is part time or full time, it is still a job and still provides a person with an income. The figure does not have the rigour that we want yet, but that is the figure that we have.

14:45

**Jeremy Purvis:** The committee is being asked to scrutinise a Government bill. The information that is before us is the Government's estimate that 14 staff could lose their jobs, but you now say that the number of job losses could be 60. You do not know whether the number could be 160 or six. We are being asked to scrutinise figures that you tell us are not robust. When will you have robust information that will allow us to scrutinise the financial memorandum properly? That is not up to the committee to decide, given that the Government presents the memorandum and is in control of the timetable.

**Mary Cuthbert:** We are due to meet NACMO at the beginning of June—it has taken us a while to agree a date that fits in with NACMO's holidays and so on. As soon as we have had that meeting and bottomed out NACMO's concerns, we will update the financial memorandum.

I repeat that we felt that it would be inappropriate for us to provide an updated figure that we had to alter. We keep receiving different figures. As I am sure the committee wants to, we need to understand much better what the information means.

It is clear that the cost benefit analysis in the RIA was based on sales of cigarettes to under-18s.

**Marjorie Marshall:** The information is based on the Scottish schools adolescent lifestyle and substance use survey data.

**Jeremy Purvis:** My point is that the bill came from the Government, so the Government decided when to introduce it and ask Parliament to scrutinise it. However, I will move on.

**The Convener:** When did NACMO contact you to change the figures? The minister's letter says that NACMO

"recently made contact with officials".

**Anna Wallace:** NACMO makes the distinction—as we do—between company owners and the staff who work for them. It is clear that the impact on company owners will be different from that on the people whom they employ. NACMO initially gave figures of 14 owners and 28 staff. In submissions to the Health and Sport Committee, NACMO's northern chairperson gave a total of 28, whereas NACMO's chairperson gave a total of 42. I quickly went back to NACMO to assess the number and was given the figure of 45. At the same time, Sinclair Collis changed its number to 15. In the space of about three weeks, we had three numbers from NACMO and two numbers from Sinclair Collis. We have interrogated the figures and queried inconsistencies.

**Jeremy Purvis:** The financial memorandum estimates the cost of the registration scheme to be £750,000, which is broken down over two years. When we considered the Health Boards (Membership and Elections) (Scotland) Bill, under which costs were expected to be incurred in 2011-12, the Government said that it could not provide information because that was outside the current spending review period. However, the financial memorandum to the Tobacco and Primary Medical Services (Scotland) Bill says that costs of £400,000 are associated with that year. Which position should we believe?

**Mary Cuthbert:** We can go only by the financial memorandum that we have produced for the bill.

**Jeremy Purvis:** Does the figure represent agreed expenditure?

**Mary Cuthbert:** In terms of—

**Jeremy Purvis:** A budget.

**Mary Cuthbert:** In terms of the cost of the registration scheme?

**Jeremy Purvis:** I understand that the financial memorandum estimates that a cost of £400,000 will be incurred in 2011-12—is that correct? The cost in 2010-11 will be £350,000. Have I got that the wrong way round?

**The Convener:** Will you give us a reference?

**Jeremy Purvis:** I am looking at paragraph 77.

**The Convener:** Before the officials respond, I advise them that if they wish to clarify their oral evidence in writing later, they should please do so.

**Anna Wallace:** The figure is based on the assumption that we will have the same programme budget in the next spending review.

**Jeremy Purvis:** Right. I know that you cannot answer for another bill team, but in your capacity as someone who has corporate responsibility for the Government, I ask you to come back to the committee with more information because what we are being told is at variance with what the committee has been told in the past—I am thinking about the Health Boards (Membership and Elections) (Scotland) Bill.

I turn to the costs on business. The financial memorandum contains an estimate of the number of tobacco outlets in Scotland and information about the range of costs. Why was a range of the estimated overall costs on business not included? An extrapolation from the midpoint of your estimates of the costs comes to nearly £9 million, but it seems that you did not wish to include a global sum in the financial memorandum.

**Anna Wallace:** Marjorie Marshall can give you more detail about that, but it is very difficult to know the numbers of small, medium-sized and large retailers. We could not get the figure from the retailers so Marjorie Marshall looked at other national statistics to try to gauge the figure.

**Marjorie Marshall:** As I think I said, we produced a global sum originally in response to comments from retailers and other organisations, but it made more sense to look at costs to retailers of different sizes. One reason for introducing the registration scheme is that it is difficult to get information about the number of retailers that are involved in retailing tobacco. There is no one data source; we have to use a number of different sources to get the information. As I said, the reason for producing costs for different parts of the retail sector was in response to comments, particularly from Fiona Moriarty of the Scottish Retail Consortium, about the fact that there are different sizes of business. We can certainly add up and aggregate the figures.

**Jeremy Purvis:** I ask because the Government does not seem to have given any global estimate of the costs on business, or even just a range of the costs. The information that we seem to be getting now is that, even if you take the midpoint of your various estimates, the cost could be £9 million and mean 60 job losses. However, none of that is clear from the information that is in the financial memorandum. Perhaps you can come

back to the committee with a range of costs within a global sum.

On the cost to local authorities, I note that you estimate a reduction in proceedings in the sheriff court, but an increase in applications for banning orders in relation to tobacco sales. I might be wrong, but as far as I can see, there is no estimate of the sums that might be provided to local authorities in applying for orders. Is that correct?

**Anna Wallace:** The bill establishes banning orders for the first time, so no council has ever applied for a banning order in the context of tobacco sales legislation. The fixed-penalty notice system will work in conjunction with the banning order system. Instead of referring a person to the procurator fiscal for flouting the legislation on tobacco sales, trading standards officers will be able to issue a fixed-penalty notice, which will allow the local authority to collect revenue. We have not accounted for that revenue in the financial memorandum, either. Under the banning order scheme, if a person receives three fixed-penalty notices in a three-year period, the council can apply to the court for a banning order.

We had detailed discussions with COSLA on the financial memorandum and the regulatory impact assessment. As Marjorie Marshall outlined earlier, bringing all the evidence together and getting a conviction is quite a complex process and can take up to two days. We have outlined some costs that are associated with court cases in the different courts. We thought that the savings involved in councils not reporting every case to the procurator fiscal would make the cost of applying for a banning order marginal.

We have spoken to trading standards officers, who do not anticipate a huge number of banning orders. They think that the deterrent of losing the right to sell tobacco would mean that a retailer may get one fixed-penalty notice, or even two, but that the chances of their getting three notices and being banned would be low.

**Jeremy Purvis:** I am sorry, but the financial memorandum is clear. Paragraph 82 says:

“Therefore we do not consider that the provisions of Part 1 will give rise to any administrative, compliance or other costs for local authorities.”

A local authority will issue fixed-penalty notices, apply for banning orders and carry out an annual programme of enforcement across all the tobacco retailers in its area—all of that will be done for nothing. That is amazing.

**Mary Cuthbert:** We have given local authorities specific resources in support of the enhanced tobacco sales enforcement programme. They are already spending money on trading standards, so—

**Jeremy Purvis:** I am sorry to interrupt, but no funding is committed to that beyond 2011, as we have heard in evidence—unless such funding is in the £400,000 that you will write to us about.

**Mary Cuthbert:** Hang on a minute. There is a continuing budget for trading standards as part of the local government settlement. On top of that, we have agreed to give local authorities £1.5 million a year to support the enhanced tobacco sales enforcement programme, which flows from the smoking prevention action plan that we published last year. That money has now gone into local authority baselines, so it will continue as long as local government funding continues. It has been used in Edinburgh to pay for additional officers, for example, but it is obviously up to each individual local authority to decide how to spend it in support of the enhanced programme and the other outcomes that we have asked councils to achieve.

Specific new resources are going into trading standards to support enforcement in relation to tobacco.

**The Convener:** On a point of clarification, I notice that the advertising and marketing costs of the display ban will be £350,000, as will those for the registration scheme. However, those costs appear to include issuing two separate information packs and setting up two separate websites. Would it not be more cost effective to have a single information pack and website?

**Anna Wallace:** Yes. Those are the upper range of costs and they are also based on the increase in the purchasing age, which involves an information and awareness-raising campaign for retailers and young smokers, particularly 16 and 17-year-olds. We think that the amount of money that has been allocated for those purposes is quite generous and that we may be able to merge some of the campaign work. We have been in discussion with colleagues in the alcohol misuse team about the possibility of combining resources and making savings if certain legislative changes were made in relation to alcohol.

**The Convener:** We like to hear that you are making savings.

**Derek Brownlee:** I have a question on the general medical services part of the bill, which may or may not be a welcome break from the tobacco licensing part. Paragraph 94 of the financial memorandum says:

“the proposals could potentially reduce competition by excluding providers which do not meet the criteria, and if a Health Board was unable to place a contract because of this exclusion, the resulting service could be more expensive for the Health Board to provide if it had to run the practice directly and employ doctors”.

Will you give us a bit more information and set out the cost differential between a salaried general practitioner service and the partnership model with which more of us are familiar?

**Marlene Walker (Scottish Government Primary and Community Care Directorate):** I cannot give you specific figures for each. The vast bulk of GP contracts are negotiated on a UK basis, so the cost is agreed by a number of bodies. If a health board had to employ a salaried doctor, it would have additional involvement in overseeing the contract and deciding which services were going to be provided. We were thinking of that contrast between additional health board involvement and a national contract, in which all the services and their costs are clearly set out and agreed UK-wide.

15:00

**Derek Brownlee:** Nonetheless, you are confident that it would be more expensive to have directly employed doctors.

**Marlene Walker:** We have said that it “could be more expensive”. We do not have definitive figures to be able to compare the full cost to a health board of providing a salaried GP service compared with the cost of a contracted one.

**Derek Brownlee:** Would any of the Scottish health boards have indicative figures on that? Some health boards must have had to provide salaried services from time to time for whatever reason.

**Marlene Walker:** Yes. We could ask them whether they could give us some indication of the difference in cost.

**Derek Brownlee:** That would help us to understand the scale of what we are talking about.

If the bill was enacted tomorrow, how many general practitioners would be affected? Would any existing services be prohibited?

**Marlene Walker:** No. The provisions are not retrospective, so the bill would affect only future new contracts.

**Derek Brownlee:** As far as you are aware, are there any current contracts that could not be renewed under the bill?

**Marlene Walker:** Only if they were new contracts.

**Jackie Baillie:** I will explore that a little further. I understand that you are not looking back, but I am interested in finding out whether there are any companies that currently would not fulfil the criteria in the bill.

**Marlene Walker:** We have asked all health boards to provide us with that information. So far,

five have responded and said that all their existing contracts would comply with part 2 of the bill. They include Lothian NHS Board and Greater Glasgow and Clyde NHS Board, which are the two biggest.

**Jackie Baillie:** So it might not be necessary to provide a salaried service because, in practice, nobody is doing it.

**Marlene Walker:** That is right.

**The Convener:** Do our witnesses want to make any final statement?

**Mary Cuthbert:** No.

**Jackie Baillie:** They look shell shocked.

**The Convener:** I thank Mary Cuthbert, Marjorie Marshall, Anna Wallace and Marlene Walker for attending and for their evidence.

## **Decision on Taking Business in Private**

15:03

**The Convener:** The second item on today's agenda is a decision on whether to consider a draft report on the Tobacco and Primary Medical Services (Scotland) Bill in private at a future meeting and whether to consider a draft report on our strategic budget scrutiny inquiry in private at our next meeting. I propose that we do so. Do members agree?

**Members indicated agreement.**

*Meeting closed at 15:03.*





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