

# **HEALTH AND SPORT COMMITTEE**

Wednesday 12 September 2007

Session 3

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## HEALTH AND SPORT COMMITTEE

### 3<sup>rd</sup> Meeting 2007, Session 3

#### CONVENER

\*Christine Grahame (South of Scotland) (SNP)

#### DEPUTY CONVENER

\*Ross Finnie (West of Scotland) (LD)

#### COMMITTEE MEMBERS

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

Karen Gillon (Clydesdale) (Lab)

\*Lewis Macdonald (Aberdeen Central) (Lab)

\*Michael Matheson (Falkirk West) (SNP)

\*Ian McKee (Lothians) (SNP)

\*Mary Scanlon (Highlands and Islands) (Con)

#### COMMITTEE SUBSTITUTES

\*Helen Eadie (Dunfermline East) (Lab)

Joe FitzPatrick (Dundee West) (SNP)

Jamie McGrigor (Highlands and Islands) (Con)

Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

\*attended

#### THE FOLLOWING GAVE EVIDENCE:

Shona Robison (Minister for Public Health)

#### CLERKS TO THE COMMITTEE

Karen O'Hanlon

Simon Watkins

#### SENIOR ASSISTANT CLERK

Douglas Thornton

#### ASSISTANT CLERK

David Simpson

#### LOCATION

Committee Room 2



## Scottish Parliament

### Health and Sport Committee

*Wednesday 12 September 2007*

[THE CONVENER *opened the meeting at 10:04*]

### Decision on Taking Business in Private

**The Convener (Christine Grahame):** Good morning and welcome to the third meeting of the Health and Sport Committee in session 3. I welcome the Minister for Public Health, who will shortly give us some evidence.

I have received apologies from Karen Gillon. Michael Matheson should join us shortly but is caught up in traffic. Please put your mobile phones off if you know how to do it—I have just been taught how to put mine off.

I ask committee members to agree to take agenda item 7, on the appointment of a budget adviser, in private. Are we agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

### Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco etc and Consequential Modifications) Order 2007 (draft)

10:05

**The Convener:** Item 3 is evidence on the draft Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco etc and Consequential Modifications) Order 2007.

Shona Robison is an old hand on the committee, if I may use the term loosely. She served on the predecessor committees for as long as we all care to remember, so she knows what we are up to. She is the Minister for Public Health.

Is your official joining you, minister?

**The Minister for Public Health (Shona Robison):** She will stay in the audience.

**The Convener:** It is the minister's first appearance at the committee. She is giving evidence on the draft affirmative order, which will, from 1 October 2007, raise the age of purchase for tobacco products from 16 to 18 years. I invite her to speak before we move on to questions.

**Shona Robison:** I might be an old hand, but not at this side of the table.

Thank you for giving me the opportunity to set the context a little bit. The overall message is that we want to make Scotland a healthier place and we believe that raising the age of purchase for cigarettes to 18 will help us to achieve that aim. However, raising the age for tobacco sales should not be viewed in isolation but should be seen as part of a wider range of measures, including prevention, education, tougher enforcement and help for young people to give up smoking. We are already committed to publishing a five-year smoking prevention action plan next year, which will draw on many of the recommendations from "Towards a future without tobacco: The Report of The Smoking Prevention Working Group".

Over the past five years, steps have been taken in Scotland to reduce the attractiveness and availability of cigarettes to young people, such as the ban on tobacco advertising, changes in prosecution policy to allow test purchasing and support for a proof-of-age card. However, the message about the harm that smoking does is clearly not getting through and too many young Scots are still taking up the habit. Surveys suggest that, by the age of 15, some 12 per cent of boys and 18 per cent of girls are regular smokers.

Underage young people seem to have no great difficulty in buying cigarettes. Evidence suggests that over 47 per cent of 13-year-old smokers and nearly 82 per cent of 15-year-old smokers buy their cigarettes from shops, so raising the age will make it more difficult for young people to buy cigarettes.

We need more vigilance among retailers to avoid illegal sales and more effective enforcement of the law by trading standards. We also need a radical new approach to smoking prevention and education but not necessarily exclusively in schools. We need to start with our young people and discourage them from starting to smoke in the first place. Raising the age will send a clear message to young people and the wider population that smoking is highly dangerous.

Evidence shows that the younger somebody starts to smoke, the greater the likelihood is that they will die of a smoking-related disease. Statistics tell us that almost half of 15-year-old smokers would like to quit, and we will continue to consider the best ways to help them to kick the habit. Raising the age is an important step forward. We are already working with retailers organisations and trading standards officers to ensure that the new age limit is introduced as smoothly as possible. Subject to the draft order being approved by Parliament, we will launch a communication campaign to alert young people to the change in the law and will issue information packs to all tobacco retailers with helpful information, along with posters and a new statutory notice.

Smoking is the greatest preventable cause of premature death and ill health. During the past 50 years, it has killed some 700,000 Scots prematurely. Raising the age will stop more young recruits taking up the habit and reduce the terrible toll that smoking takes on our nation's health.

**Ross Finnie (West of Scotland) (LD):** I do not disagree with a single word that the minister said about the damage that smoking can do to people. However, she said in her introductory remarks that we should not consider the measure in isolation. In particular, she referred to the need for tougher enforcement. We all acknowledge that difficulties have arisen with enforcement; indeed, one of the many reasons why the Gruer committee was set up was to examine some of those failings. I appreciate that the minister has made only introductory remarks, but will she elaborate on what she has in mind to bring about that tougher enforcement? As we all know, difficulties have arisen with enforcing the existing legislation—parliamentary questions have revealed that as few as 11 prosecutions were successfully carried out last year. Will she elaborate on how, in raising the

age limit, she will seek to bring about improved enforcement?

**Shona Robison:** Prosecution is the ultimate sanction, but it is not in itself a measure of the effectiveness of local authority enforcement programmes. Trading standards officers routinely monitor compliance with the legislation, using measures such as test-purchasing programmes. The officers work with retailers to encourage them to adopt procedures to avoid illegal sales and to support them in that. We want local authorities to make greater use of test purchasing, as a key tool that trading standards officers have in their toolbox, to ensure that retailers are aware that they are likely to be caught if they sell cigarettes to those who are under age.

We hope that raising the age limit will be a major deterrent to retailers who might sell to those who are underage. Prosecution is the ultimate sanction, but tougher enforcement by trading standards officers is the way forward, so we want that to be rolled out further.

**Ross Finnie:** I understand that, but, nevertheless, imposing an age limit of 16 has not had the hoped-for deterrent effect. Therefore, given what Gruer found, I am interested in whether you have further evidence that suggests that simply raising the age limit will act as a deterrent. If at least 16 per cent of 15-year-old girls and 17 per cent of 15-year-old boys continue to purchase tobacco despite the current legislation, what evidence do you have that simply raising the age limit will be more effective?

**Shona Robison:** We believe that raising the age limit will assist retailers in establishing proof of age, because people who are 18 or over have a variety of ways of proving their age—more so than those who are under 18. It is important that they will have proof of age. Retailers will be able to establish more clearly than they can with the present age limit of 16 whether someone is underage. We should remember that the present age limit was brought into law in 1937, when there was less awareness than there is now of the dangers of smoking. Now that we are aware of the dangers, it is the right time to raise the age limit. The important message is that retailers must ask for proof of age. We want retailers to take a no-proof, no-sale approach: they should routinely ask young people who seek to buy cigarettes for proof of age. Those who are 18 and over have a variety of ways of proving their age.

**The Convener:** Before we go any further, I welcome Michael Matheson and Helen Eadie. Helen is here as a substitute member for Karen Gillon. Just to get this out of the way, I ask Helen whether she has any interests to declare.

**Helen Eadie (Dunfermline East) (Lab):** I apologise for my late arrival, which was unavoidable. I have no interests to declare, other than those that are mentioned in my entry in the register of members' interests.

**The Convener:** We now return to questions to the minister.

**Lewis Macdonald (Aberdeen Central) (Lab):** I am happy to welcome the progress that the minister has made on the issue and to support the broad principles that lie behind the proposals. The previous Administration had begun to consult on precisely these proposals, so I am interested in exploring that a little with the minister. To follow on from Ross Finnie's line of questioning, I am interested in the situation of retailers. For some retailers, it is a challenge to enforce the existing age requirements, partly because of the challenges that they face from customers. Have you given any thought to the increased challenge that retailers will face, given that a slightly older age group will be affected? Do you intend to put in place additional support for retailers in those circumstances?

Earlier in the year, the Scottish Youth Parliament gave out mixed messages in its response to the consultation. It said that setting an age limit of 18 for buying tobacco products was at variance with some of the other prohibitions on young people, which set an age limit of 16. How did that argument develop? Did you receive responses from young people's representative organisations that supported the measure that you propose to introduce?

10:15

**Shona Robison:** Broadly speaking, retailers are in favour of the measure. They want to ensure that young people in particular are aware of the change in the law. It is a bit of a chicken-and-egg situation. We did not want to be presumptuous about Parliament's view on the order but, in advance of laying it, we told retailers and young people that there was likely to be a change in the law and we have raised awareness of that through the Young Scot network, youth forums and the media.

We will certainly hit the ground running. In the fortnight before the order comes into force, subject to parliamentary approval, we will send out communication packs to retailers with full information and posters for their windows to inform people of the change in the law. There will be a website to support retailers with information and advice on how to avoid conflict and how to ensure that they get the message across that the law has changed. There will also be a lot of media activity, particularly in the local media, to raise awareness

among retailers and young people of the change in the law and to make it clear that the Government has made a decision and that retailers have no choice but to uphold the law.

When the ban on smoking in enclosed public spaces was introduced there was no great difficulty with enforcing it. We believe that it will be similar with this change in the law.

**Lewis Macdonald:** That is helpful. How have young people's representative organisations responded to the proposals? It seems that their initial support was at least qualified.

**Shona Robison:** I appreciate the position of the Scottish Youth Parliament and I understand its perspective. The proof of the pudding will be in the eating. I am sure that, once the Scottish Youth Parliament sees the change in the law in operation, it will come round to supporting it.

A number of other youth organisations, and young people in general, are very supportive of anti-tobacco measures. I have been speaking to young people on my travels and have not met one young person who does not think that the proposed change is a good idea. Generally speaking, young people are ahead of the game when it comes to anti-tobacco measures.

**Ian McKee (Lothians) (SNP):** Thank you for your statement. I completely support the basis of the order. Lewis Macdonald has touched on many of the points that I was going to raise.

I am interested in the arrangements for implementation and the planned publicity. What role will schools have when the legislation comes into force? It is clear that few people at school will be 18 or over.

**Shona Robison:** We are going to use communication networks as far as possible and schools will be part of that. We will also involve the youth media and further education establishments. We have to consider how we will manage to penetrate the youth audience. Local media provide an effective way of doing that. We will use local radio and other local outlets to get the message across to young people. However, I think that there is already quite a high level of awareness among young people about the proposed change in the law. I have tested that out with young people I have met on my travels. All of them were aware that there will imminently be a change in the law. That general awareness is reassuring.

**Mary Scanlon (Highlands and Islands) (Con):** The Scottish Conservatives support the proposed measure. Nonetheless, I have some issues to raise with you. I note from our briefing papers that the policy intention is

"to reduce the prevalence of smoking in young people."

I also note from our papers that the prevalence of smoking among 15-year-old boys has decreased by 18 per cent over the past 10 years and that the prevalence of smoking among girls of the same age has decreased by 12 per cent. I would like you to acknowledge that there is already a positive trend. Today, we are helping to accelerate that trend.

I have three points to put to the minister. First, how do we stop under-18s buying from vending machines? Sales from vending machines constitute 10 per cent of sales. Secondly, how do we stop 45 per cent of 13 to 15-year-olds buying from friends? Twice as many 13-year-olds buy from friends and relatives as buy from shops.

Thirdly, the Health Development Agency in England has stated:

"The restraining pressure of age restrictions and their strict enforcement may delay the onset of smoking ... but the evidence is not conclusive".

That has been stated throughout the research that we have been given. As Ross Finnie and others have said, enforcement is crucial, so I was a bit disappointed not to find any commitment in the papers to increasing resources for trading standards officers, although the matter will be considered under the comprehensive spending review. Given that the measure is to be implemented in October and that the comprehensive spending review is not being considered until around the end of November, there is a concern over enforcement.

**Shona Robison:** I will address the last point first. The timing of the comprehensive spending review is outwith our control, unfortunately, although, as you have said, that will shortly be resolved. We will know then what resources we have for trading standards officers. I am hopeful that we will have additional resources for this important piece of work.

I agree with you that the evidence is probably not conclusive. It does not cover a whole range of anti-tobacco measures. We are pioneers in much of the action that we are taking. There were people who said that there was no evidence base for the ban on smoking in enclosed public spaces. However, evidence is now being produced for other countries to follow. I hope that Scotland can be a pioneer in anti-tobacco measures and that we can continue to provide such evidence for others to follow.

You make valid points about how young people access cigarettes. You mentioned that they buy them from friends and relatives. Of course, those friends will have had to access and purchase the cigarettes in the first place. There is strong evidence to show that underage people are

purchasing from shops, which we want to stop happening.

The issue of vending machines is not one that Laurence Gruer's committee examined, although I am aware of it and will be looking into it.

You are right to note some positive messages about trends in the incidence of smoking among young people. However, we cannot be complacent. There are still far too many young people taking up cigarette smoking. Enforcement and changing the law by raising the minimum age of purchase form only one part of a complex picture.

We need to ensure that the educational messages that we get across to young people are more effective than they have been to date. Therefore, we are looking carefully at how we can craft messages that are far more effective in preventing young people from smoking in the first place.

**Mary Scanlon:** I remind the minister that all the points that I make are valid; otherwise I would not make them.

**The Convener:** I have to say, minister, that Mary Scanlon's cup of tea was delayed this morning.

**Mary Scanlon:** We are all sitting around the table supporting the order in good faith, and there is little in the minister's opening statement with which I disagree. Nonetheless, when members pass legislation or directives in Parliament, we will be wasting our time unless enforcement measures are in place. I am disappointed that the minister has not made a commitment to increase the number of trading standards officers for enforcement before the order has been implemented.

**Shona Robison:** Trading standards officers certainly support and are enthusiastic about the proposed measures, and they want to get out there to help us to prevent retailers from selling tobacco to underage people. We look forward to working with them and supporting them as they do their important job.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** I will try to make some valid points, although I am still a bit of a novice at such questioning.

**The Convener:** Your modesty becomes you, Malcolm.

**Malcolm Chisholm:** I congratulate the Scottish Government on bringing forward the order, although we should acknowledge the role that other people have played. The previous Health Committee—particularly my colleague Duncan McNeil—pushed the issue.



We all agree that enforcement is at the heart of the matter. Mary Scanlon talked about trading standards officers. I am interested in the development of accredited proof-of-age cards, which the Government has a role in promoting. When the alcohol sales issue was raised a few months ago, proof-of-age cards were at the heart of the debate. I visited a store in my constituency where the main issue that was raised was proof-of-age cards. They seem to me to be at the heart of the matter. What can the Government do to ensure that more people have accredited proof-of-age cards?

My second question is about research. I would tend to support the proposed measure whatever the research has concluded, as it reinforces an important message about the dangers of tobacco, but what research evidence on the effect of raising the age limit for the sale of tobacco exists? The research will no doubt tell us that enforcement is at the heart of the matter and that the proposed measure will be effective only if there is enforcement.

My third question builds on what Mary Scanlon said. We all accept that what has been proposed for young people is part of the answer but not the whole answer. Does the minister have any preliminary thoughts on the British Medical Association's policy briefing, which recommends banning vending machines and prohibiting the sale of packs of 10 cigarettes and supports a positive licensing scheme for shops? I am sure that she has seen that briefing. Does she have any thoughts on those matters and possible further measures?

**Shona Robison:** As I have said, I recognise the need for increased enforcement with respect to tobacco sales. That is an important part of implementing the order.

We would like all young people to take advantage of the voluntary proof-of-age cards—obviously, we are not talking about compulsory cards—that are being developed. I acknowledge that a lot of work was put into those cards under the previous Administration. We want to progress that work with the accredited Young Scot card, which is a reliable way for retailers to determine age and for young people to prove age. However, I return to the fundamental point. A card will be good only if the retailer asks to see it, and the message must be that there must be a no-proof, no-sale policy for age-restricted goods, whether tobacco or any other item.

We have plans to extend the offer of cards to all 18 to 26-year-olds in further and higher education this autumn. That could raise the number of Young Scot cards that are in circulation to 500,000 by the end of the year, which is a significant number. I am aware of the measures for which the BMA has

called; Malcolm Chisholm mentioned a few of those. We are working on the next stage of the five-year action plan that we want to have in place by the spring of next year. We are giving full consideration to a range of measures, some of which he mentioned. I will report back on that work in due course.

10:30

**The Convener:** You may be aware that I plan to consult on licensing, either positive or negative, of tobacco retailers. Yesterday, I spoke to representatives of Scottish grocers, who have many concerns, one of which relates to the three-week lead-in time for the order. I appreciate what you have said about education and all the publicity that has been given to the measure, but if the order is approved by Parliament, it will be enforced on 1 October. That is quite a short lead-in time for a dramatic change in the law. Would you like to comment on that point?

I do not expect you to say anything today about a licensing scheme—I heard your comments about the five-year action plan—but such a scheme would take care of vending machines. If retailers, rather than premises, were licensed, the person responsible for the vending machine would be responsible for any breach. Given that I was told in a parliamentary answer that only 11 people were prosecuted in Scotland last year for selling tobacco to underage purchasers—up from two the previous year—the issue needs to be examined seriously, notwithstanding what has been said about trading standards. If we consider how many underage people are buying cigarettes, we see that the number of prosecutions is a drop in the bucket.

**Shona Robison:** There is a short lead-in time, but we are where we are with that. It would be presumptuous of us to assume that Parliament will approve the order, but we have not rested on our laurels and have raised awareness of what is likely to happen through young people's organisations, young people's media and retailers organisations. The evidence from media research shows that the messages that are put out two weeks before a change in the law comes into force are most effective, because the issue is immediate and is in people's minds. Late, comprehensive communication of a change in the law is effective. The two-week lead-in time will be an important period in which we will reinforce the message that the law has been changed, so that the point is fresh in people's minds when we hit the ground running on 1 October.

Further to the comments that I made earlier, I indicate that I am open-minded on the issue of licensing, but I think that it must be proportionate. There are concerns about the bureaucracy and

possible costs to local authorities and retailers of establishing a positive licensing scheme. A negative licensing scheme might produce the same desired effect, but less bureaucracy and cost would be associated with it. Under such a scheme, everyone would have the presumed right to sell tobacco, but there would be a process for removing that right and prohibiting people from selling if they were in breach of the law. A negative licensing scheme has merit and we are open-minded on the matter. We are giving active consideration to all such measures.

**Helen Eadie:** The minister said that enforcement would include removing the retailer's licence to sell tobacco if they broke the law, which I welcome. The alcohol test-purchase scheme in my area has been a useful tool. Will test purchasing be the only tool that you will use for enforcement or will there be financial penalties and punishments, other than removal of licence, which is a major financial penalty, for retailers who continue to sell to underage people?

**Shona Robison:** A fixed-penalty notice is one option. We are currently considering all such measures and, as we consult on them, we will welcome your input and views on penalties. I am open-minded at the moment. We will introduce our proposals in due course and come back to the committee to discuss them.

**The Convener:** Thank you, minister. Now that we have heard evidence on the draft order from the minister and concluded questions, we will move to item 4. Does any member feel that we need to debate the order or do members feel that we have had our debate through the questions?

**Ross Finnie:** I have a brief comment. Although I welcome—

**The Convener:** If you are not asking a question, I must invite the minister to move the motion.

**Ross Finnie:** It is not a question; it is part of the debate. I welcome the fact that the minister is considering possibilities around licensing, which were raised by Malcolm Chisholm. My party supports the proposal of a negative licensing scheme. My second quick comment is in relation to Lewis Macdonald's point about the reaction of the Scottish Youth Parliament, which is not for this committee's consideration. Young people are raising issues about what one might loosely call the age of responsibility in Scotland. There is a clear schism between the ages of 16 and 18, but that is a wider issue.

I will support the order. However, I am in no doubt that, several years ago, trading standards officers were equally enthusiastic about enforcing the current law, but it has not worked. Given the comments that have been made about enforcement by everybody round the table, we

have to hear more positive words from the minister about how enforcement is to be pursued.

**Mary Scanlon:** Hear, hear.

**The Convener:** For procedural reasons I am going to treat that as a question. Does the minister wish to make further comment?

**Shona Robison:** I have answered that question.

**The Convener:** Do members wish to have a formal debate?

**Members:** No.

*Motion moved,*

That the Health and Sport Committee recommends that the draft Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco etc. and Consequential Modifications) Order 2007 be approved.—  
[Shona Robison.]

*Motion agreed to.*

10:38

*Meeting suspended.*

10:39

*On resuming—*

### **Bovine Products (Restriction on Placing on the Market) (Scotland) (No 2) Amendment Regulations 2007 (SSI 2007/338)**

### **Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2007 (SSI 2007/357)**

### **Food (Suspension of the Use of E 128 Red 2G as Food Colour) (Scotland) Regulations 2007 (SSI 2007/363)**

### **Nutrition and Health Claims (Scotland) Regulations 2007 (SSI 2007/383)**

**The Convener:** We must consider four Scottish statutory instruments that are subject to the negative procedure. The Subordinate Legislation Committee has raised no issue in relation to the instruments, no comments have been received from members, and no motions to annul have been lodged. Does the committee agree to make no recommendations on the instruments?

**Members** *indicated agreement.*

## Petitions

### Smoking, Health and Social Care (Scotland) Act 2005 (PE1037 and PE1042)

10:40

**The Convener:** We will consider two petitions. PE1037, which was lodged by David Nelson on behalf of Fife Action Group, calls on the Scottish Parliament to amend the Smoking, Health and Social Care (Scotland) Act 2005 to allow smoking in pubs and clubs within designated smoking areas. PE1042, which was lodged by Belinda Cunnison on behalf of Freedom to Choose, calls on the Scottish Parliament to review the smoking legislation and to introduce a regulated indoor air quality standard. I draw members' attention to the papers on the petitions. Although the Public Petitions Committee linked the petitions, there is no obligation on the Health and Sport Committee to take the same approach to both petitions, so we must decide whether it would be useful to consider them independently or together, before discussing what action to take.

I refer members to the statistics that were presented on Monday by NHS Health Scotland, on the impact of the smoking ban in Scotland. Research shows a 17 per cent reduction in heart attack admissions to nine Scottish hospitals, a 39 per cent reduction in exposure to second-hand smoke among 11-year-olds and adult non-smokers, and an 86 per cent reduction in exposure to second-hand smoke in bars. There is no evidence so far that smoking is shifting from public places into the home and there appears to be high public support for the 2005 act, even among smokers, whose support increased when the legislation was in place.

Do members want to consider the petitions separately or together?

**Members:** Together.

**The Convener:** I invite members' views on what the committee should do with the petitions. I welcome the petitioners, who are in the public gallery to hear the disposal of the petitions, which is an important part of parliamentary procedure.

**Malcolm Chisholm:** One approach would be for us to consider the petitions in the context of post-legislative scrutiny of the 2005 act. I do not know when the committee will carry out such scrutiny, but I presume that we will do so in the near future. Much new research is being done and the findings that were presented this week are extremely interesting. Some of the research is available online—I am told that there is more to come on the heart attack figures. A series of research papers

will be published, so we should in due course consider the petitioners' points in the light of that research. My instinct is that we should therefore allow some time to pass so that a full evaluation can be done, and thereafter consider in that light what the petitioners are saying.

Many of the points that the petitioners make were made in the context of debates about the Smoking, Health and Social Care (Scotland) Bill. In many ways, the points that the petitioners make are not new but were thoroughly considered by the Health Committee and Parliament in the previous session. However, that does not mean that we should reject the issues out of hand; rather, we should consider them as part of post-legislative scrutiny of the 2005 act.

**The Convener:** I see members nodding, but I am not taking a nod as an indication that you want to speak.

**Michael Matheson (Falkirk West) (SNP):** I agree with Malcolm Chisholm that we could consider the petitions in the context of post-legislative scrutiny. However, given that we have not decided when to undertake such scrutiny or on what we will focus, it is important that the petitioners know that the issues that they have raised will be in the mix with a number of issues that we might choose to explore. A decision to consider a matter as part of post-legislative scrutiny does not guarantee that we will consider an issue that has been raised by a petitioner. The committee must keep an open mind, because other issues might emerge that merit consideration in post-legislative scrutiny.

10:45

**Lewis Macdonald:** I agree with Malcolm Chisholm and Michael Matheson. It is important to say that the petitions express a point of view that was expressed when the bill was considered by the Health Committee in the previous session. At first sight, the petitions appear to contain no additional evidence that was not available when the previous committee considered the bill.

I suspect that the proposition that Scotland—having taken the lead over the rest of the United Kingdom on smoking in public places—should go into reverse gear at this early stage in the lifetime of the legislation would meet with little sympathy in the committee. The proposition that the impact of the legislation should be considered in a balanced way when evidence of the overall impact is available would probably attract support. Therefore, I suggest that we consider the points that the petitions make in due course, when we decide that it is time for post-legislative scrutiny.

**Helen Eadie:** I was one of the Fife MSPs who were lobbied by the groups. I agree with the

members who have just said that it would be wise to consider whether the 2005 act would be a candidate for post-legislative scrutiny. That would enable us to consider the arguments that are being put forward by the petitioners, rather than simply dismiss them out of hand.

I should say that I was on the committee that scrutinised the legislation and, having heard the arguments at the time, I supported the bill. However, as Mary Scanlon said, we should look again at legislation that we pass. Nothing is written on tablets of stone. If evidence is brought to the attention of Parliament, it is up to Parliament, in the future, to decide what to do about it.

**Mary Scanlon:** I am afraid that there has been an outbreak of consensus in the committee today. Nevertheless, I commend the petitioners, who have carried out a substantial piece of research and have made some interesting and competent points, such as the one about more energy being used because smokers are outdoors.

I support the point that Malcolm Chisholm made and agree that post-legislative scrutiny should be carried out once more research has been done.

**Ross Finnie:** Michael Matheson made a pertinent point when he said that—as everyone has agreed—the right forum for further consideration of the matter is in the context of post-legislative scrutiny. The petitioners will be advised of that decision, if that is what we decide to do. However, given that some time is likely to elapse before that post-legislative scrutiny takes place, I am interested in the mechanism by which the petitioners will be kept adequately informed about whether the committee has been able adequately to address the issue. Clearly, there is a risk that, as our work progresses and we do not immediately conduct post-legislative scrutiny, the petitioners might inadvertently get the impression that we have not dealt with their petition.

**The Convener:** I agree. The position is that, when we deal with our work programme next week, we could discuss how we can programme in post-legislative scrutiny of provisions including the smoking ban and the raising of the age at which people can purchase tobacco.

If the committee is minded to deal with the petitions as part of the proposed post-legislative scrutiny, I suggest that we advise the petitioners of that, assure them that we will consider the points that they have raised when we commence post-legislative scrutiny, and inform them when we come to do so. We should also inform the Public Petitions Committee of our decision. Is that agreed?

**Members indicated agreement.**

**The Convener:** We have agreed that item 7, which concerns the appointment of a budget adviser to the committee, will be taken in private.

10:49

*Meeting continued in private until 10:59.*

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