

# **HEALTH AND SPORT COMMITTEE**

Wednesday 20 May 2009

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to the Licensing Division,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate  
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR  
Donnelley.

---

# CONTENTS

Wednesday 20 May 2009

Col.

<b>TOBACCO AND PRIMARY MEDICAL SERVICES (SCOTLAND) BILL: STAGE 1 .....</b>	<b>1947</b>
<b>SUBORDINATE LEGISLATION.....</b>	<b>2000</b>
National Health Service (Appointment of Consultants) (Scotland) Regulations 2009 (SSI 2009/166) .....	2000
<b>ANNUAL REPORT.....</b>	<b>2001</b>

---

## HEALTH AND SPORT COMMITTEE

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

#### CONVENER

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

#### DEPUTY CONVENER

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

#### COMMITTEE MEMBERS

\*Helen Eadie (Dunfermline East) (Lab)

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Michael Matheson (Falkirk West) (SNP)

\*Ian McKee (Lothians) (SNP)

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

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

#### COMMITTEE SUBSTITUTES

Joe FitzPatrick (Dundee West) (SNP)

Mr Frank McAveety (Glasgow Shettleston) (Lab)

Jamie McGrigor (Highlands and Islands) (Con)

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

\*attended

#### THE FOLLOWING GAVE EVIDENCE:

Julian Banks (Sinclair Collis)

Alastair Brown (Glasgow City Council)

Wyndham Carver (Imported Tobacco Products Advisory Council)

Simon Clark (FOREST)

Mike Davies (Association of Independent Tobacco Specialists)

John Drummond (Scottish Grocers Federation)

Katherine Graham (Tobacco Retailers Alliance)

Janet Hood (BII Scotland)

Paul Mair (National Association of Cigarette Machine Operators)

Michelle McKeown (Japan Tobacco International)

David Roderick (Society of Chief Officers of Trading Standards in Scotland)

David Thomson (South Ayrshire Council)

#### CLERK TO THE COMMITTEE

Callum Thomson

#### SENIOR ASSISTANT CLERK

Douglas Thornton

#### ASSISTANT CLERK

Seán Wixted

#### LOCATION

Committee Room 2



## Scottish Parliament

### Health and Sport Committee

*Wednesday 20 May 2009*

[THE CONVENER *opened the meeting at 10:03*]

### Tobacco and Primary Medical Services (Scotland) Bill: Stage 1

**The Convener (Christine Grahame):** I welcome everyone to the 16<sup>th</sup> meeting in 2009 of the Health and Sport Committee. I remind members, witnesses and the public to switch off their mobile phones and other electronic equipment. We have received no apologies.

We will hear from two groups of witnesses on the Tobacco and Primary Medical Services (Scotland) Bill. There will be a round-table discussion with our first group, which represents tobacco manufacturers, retailers, wholesalers, voluntary organisations and cigarette vending machine operators. I invite people to say who they represent.

**Mike Davies (Association of Independent Tobacco Specialists):** I am from the Association of Independent Tobacco Specialists.

**John Drummond (Scottish Grocers Federation):** I am chief executive of the Scottish Grocers Federation, which represents convenience stores in Scotland.

**Janet Hood (BII Scotland):** I am a solicitor and head of BII Scotland, the professional body for the licensed trade. We represent 800 individual members and 32 corporate members.

**Michelle McKeown (Japan Tobacco International):** I am vice-president of corporate affairs at Japan Tobacco International.

**Katherine Graham (Tobacco Retailers Alliance):** I am campaign manager for the Tobacco Retailers Alliance, a coalition of 26,000 independent shops that sell tobacco products.

**Paul Mair (National Association of Cigarette Machine Operators):** I am chair of the National Association of Cigarette Machine Operators.

**Julian Banks (Sinclair Collis):** I am managing director of Sinclair Collis, which has 15 employees in Scotland and operates throughout the United Kingdom.

**Wyndham Carver (Imported Tobacco Products Advisory Council):** I represent the Imported Tobacco Products Advisory Council. We

focus on representing smaller tobacco retailers and the specialist trade.

**Simon Clark (FOREST):** I am director of the smokers' lobby group, FOREST, which stands for Freedom Organisation for the Right to Enjoy Smoking Tobacco. We represent smokers and liberal non-smokers.

**The Convener:** Thank you for your written submissions on part 1 of the bill. In round-table discussions I usually let witnesses speak before I bring in members. Many of you take similar lines in your submissions, so I will allow members to intervene. If someone makes a point with which you agree, it will not be necessary to elaborate on it at length, although if you want to add something or voice dissent it would be useful to hear from you.

For the purposes of our stage 1 report, it would help us to go through the bill section by section, so I propose to start by considering proposals for restrictions on the display of tobacco products. We will then consider the banning of cigarette vending machines, proposals for a national register of tobacco retailers and enforcement and penalties.

**John Drummond:** Our position on the proposals to restrict the display of tobacco products was encapsulated by John Key, the Prime Minister of New Zealand, when he said

"the lack of international evidence does not justify the burden on small shops."

John Key's comment raises two vital issues. First, there is a complete lack of evidence that a display ban would be effective. Good legislation requires sound and compelling evidence; the bill is therefore bad legislation. Secondly, the cost to our members of complying with the measures in the bill would be disproportionate in the extreme. In many cases, major refurbishment of stores would be required. The convenience store sector would incur heavy costs, which could be measured in millions of pounds.

**Katherine Graham:** I agree 100 per cent with John Drummond. We are overlooking more effective alternative measures, which are based on evidence and would reduce youth smoking. Such measures are not in the bill.

**Janet Hood:** I agree. We have just had a change in the liquor licensing regime. Many of the premises that are targeted in the bill are also licensed for liquor. All licensees and staff will be trained to identify under-18s, and if they can do that for the purposes of selling alcohol they should be able to do so for the purposes of selling cigarettes. Training would assist people who are not currently in the liquor licensed trade.

The liquor licensing legislation has caused a 20 per cent decline in licences being taken up around

the country—the decline is 30 per cent or more in rural areas. The bill will probably lead to a greater decline in village shops, which will harm Scottish communities.

**Michelle McKeown:** In our submission, we advance arguments on the evidence. We commissioned two experts—an expert on consumer research and an economist—to measure the evidence that has been submitted to the committee against globally accepted quality standards. The evidence did not come up to those standards, and we urge the committee to consider the points that we make in our submission because the evidence is fundamentally flawed.

**Wyndham Carver:** I will take the small business angle. My core members are tobacco importers—small private companies that employ, on average, fewer than 50 people and rely to a great extent on the secondary supply channel of retail outlets because they cannot compete for space on the gantries. Those smaller retailers, particularly the ones that carry a wide range of specialist tobacco products, will be disproportionately affected by a ban because they will be less able to compete with the major retailers.

I will give you an idea of the types and ranges of products that my core members sell: one has 356 different types of cigar and another sells more than 100 different types of pipe tobacco. Customers need to be able to see the range to be able to make their choice. We are talking about products that do not appeal to young people. That act of purchasing is exactly the same as walking into a specialist wine shop to look at a range of fine wines, aged Scotch whiskies and liqueurs.

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** My understanding is that specialist retailers will be excluded from the display ban, so I would have thought that, if the ban had any effect on small retail outlets, it would benefit them because they would be the one group that was allowed to continue to display products in their shops.

**Wyndham Carver:** Specialist retailers are grateful for the exemption—my colleague Mike Davies can obviously speak better on that than I can—but there are only 10 of them in Scotland. My members are national distributors who, sadly, cannot survive on specialist tobacconists alone. About a year ago, we estimated for Westminster's Department of Health their loss of turnover from a total ban at 40 per cent. If specialist tobacconists United Kingdom-wide were exempted, that figure would still be 35 per cent. That, of course, follows the smoking ban, because of which a number of specialist tobacco product suppliers have lost between 20 and 30 per cent of their business.

**Michael Matheson (Falkirk West) (SNP):** From considering the evidence that we have received

from the opponents of a ban on cigarette displays, it is not clear to me what the purpose is of the fairly elaborate displays for cigarettes in shops.

**Katherine Graham:** Tobacco is displayed in a shop just as any other product is. The display is there for the purpose of showing our customers what we have available and at what prices. It is behind the counter because it is a valuable, highly portable item. We cannot let children—or even adult customers—in the shop simply pick it up off the shelves; it has to be behind the counter so that the retailer can guard it.

**Michael Matheson:** If the purpose is to allow customers to see exactly what you have on sale, what difference would it make if you simply had a list of the tobacco products that you have on sale without having the products themselves on display?

**Katherine Graham:** A price list would not tell you what was available.

**Michael Matheson:** I did not say a price list; I said a list of cigarettes that you stock.

**Katherine Graham:** Would we change that every day or throughout the day if we ran out of stock?

**Michael Matheson:** You could just have a list of the 10 or 20 products that you stock. What would the difference be?

**Katherine Graham:** Tobacco represents around a third of turnover for newsagents and the average small shop. Therefore, anything that restricts their ability to sell it in the way that they currently do is a threat to the business model as a whole.

**Michael Matheson:** The displays of all those shiny packets of cigarettes, which seem to get ever bigger because there are so many different variants—at times, the displays just seem to grow and grow—lead me, as a non-smoker, to believe that we have so many variants and so many attractive-looking packets to catch people's eyes to demonstrate the products that the retailer has. Given the serious damage that cigarettes cause to people's health, which is indisputable, I cannot see what purpose the displays have other than direct marketing for the tobacco companies. If they dispute the purposes that I have listed, they should be quite happy for shops just to have an A4 sheet that lists the names of the tobacco products that they sell. The customer could just go in and say, "I'll have a packet of them, as you've got them."

10:15

**Katherine Graham:** Tobacco is a legal product.

**Michael Matheson:** I am aware of that.

**Katherine Graham:** It is difficult for a shop to sell something unless it can show its customers what is available. Retailers should be able to sell tobacco as they do at present, and as they sell any number of other items in their shops.

**Mike Davies:** Most of my members are specialist tobacconists and they are grateful for getting an exemption under the Tobacco Advertising and Promotion Act 2002. However, we also have non-specialist members who sell a number of specialist products. Wyndham Carver talked about such retailers a moment ago. The bill will be catastrophic for them because a high percentage of their turnover comes from specialist products but they do not meet the 50 per cent rule. Under those circumstances, the Government should consider giving them an exemption so that they can continue to display cigars, pipes, pipe tobacco and snuff.

**John Drummond:** In his comments on displays, Mr Matheson asked why we do not just have a list. Modern retailing is about offering choice and displaying the products that are on offer, whether that is cigarettes, wine, other forms of alcohol, toilet rolls or whatever. Display is the norm and the way forward.

One objective of the bill is to prevent youngsters from accessing tobacco. Ministers have accepted the evidence that the health lobby or the medical people put forward, but we believe that it is flawed because it draws on markets, particularly in America and Australia, where other point-of-sale material for tobacco products is allowed and is commonplace. In the UK, we are governed by the Tobacco Advertising and Promotion Act 2002, which bans items such as mats on counters, clocks, door posters and the like. The only point-of-sale material that is allowed is the packaging of tobacco products, a large proportion of which is given over to a strong health message. We refute the evidence because it does not compare like with like.

**Michelle McKeown:** I want to elaborate on Mr Drummond's point. The displays are there to allow adult smokers to choose their brand and see what is available and to allow us, as a legitimate company, to compete in the marketplace. The measures in the bill are about children and smoking. They are not about adult smokers. Children should not be able to get hold of cigarettes. There are laws that state that a person must be 18 or over to purchase cigarettes. Those laws could be better enforced, and the alternative solutions that we propose in our submission would help to prevent children from getting hold of cigarettes, but I reiterate that the displays exist to show adult smokers what is available and to enable them to distinguish between the brands on the shelf.

**Simon Clark:** Everyone around the table would agree that no one wants to see children smoking. We have been told that the bill aims to reduce youth smoking rates, yet as far as we can tell there is no evidence that the introduction of a display ban will have a serious impact on youth smoking rates.

We support all reasonable measures that will prevent children from smoking, but we do not believe that a display ban is a reasonable measure. It is totally disproportionate and will have an impact on adult smokers, who, as Katherine Graham said, are simply consuming a perfectly legal product. There is no evidence at all that people impulse buy tobacco. The vast majority of smokers have a regular brand that they have been smoking for some time. However, they need the freedom to choose to change their brand if they wish to. If tobacco displays are put under the counter, people will not have that freedom.

We must ask about the whole process of denormalisation. Many people consider the bill to be nothing to do with youth smoking and all about the denormalisation of adult smokers. We believe that denormalising a legal product, as well as the smokers themselves, is simply incompatible with a free society and a liberal democracy. I hope that we get a chance to talk about that.

**The Convener:** Yes. We will have a general discussion at the end.

**Wyndham Carver:** I will just finish off on the wider specialist trade issue. On 2 February, the minister and Mary Cuthbert from the bill team visited Mr Sinforiani of Sinforiani Bros, who made a submission to the committee and who is leading on the wider specialist issue. There have been subsequent discussions between Mary Cuthbert and Mr Sinforiani and they have another meeting on his proposals tomorrow.

**The Convener:** That was our understanding from the evidence that we received from the bill team.

**Rhoda Grant (Highlands and Islands) (Lab):** I want to return to the comment that Katherine Graham made that, although display bans are not proven to work, other measures that are proven to work are not in the bill. I am keen to hear what they are.

**Katherine Graham:** We have campaigned for some time for the criminalisation of proxy purchasing. Currently, the legal onus for enforcing the law rests entirely on retailers. The only law is that retailers cannot sell tobacco to under-18s, which means that it remains legal for adults to buy tobacco for under-18s. That sounds a bit shocking, but it is very commonplace. The evidence from trading standards is that an estimated 46 per cent of underage smokers regularly get their tobacco

from a proxy purchaser. We are keen for that avenue of access to be closed off.

I have seen recent studies from the United States that show that making possession of tobacco an offence for under-18s significantly reduces their opportunity to smoke. I know that there are sensitivities about criminalising minors but, with alcohol, if the police see someone who is under 18 drinking alcohol in public, they take it off them, whereas they do not do that with tobacco. If we are serious about reducing youth access to tobacco, those are other measures that we should consider.

**Mary Scanlon (Highlands and Islands) (Con):** Obviously, my party does not want young people—or indeed anyone—to start smoking, but the evidence in the submission from the Scottish Grocers Federation is that, in Saskatchewan and Manitoba, where display bans came into effect in 2005, the reduction in smoking was not as great as that in other states in Canada that did not have a display ban. Is that the only evidence that we have? It does not support the banning of visual displays of cigarettes. Do any of the witnesses know of a better evidence base than that? The evidence that we have suggests that not banning visual displays leads to a greater reduction in smoking among young people aged 15 to 19.

I have a second point for the witness from Japan Tobacco International about something in its submission that I wish I had seen last week, when the bill team was here. Section 1.2 in its submission states:

“the provisions banning the display of tobacco products ... constitute the regulation of the sale and supply of goods and services to consumers”.

It goes on to claim that that is a reserved matter. I wonder whether Japan Tobacco International has taken legal advice on the matter or whether we are discussing something that is not within the competence of the Parliament.

**The Convener:** It read like counsel’s opinion. I will let Ms McKeown answer that.

**Michelle McKeown:** Yes, we have serious concerns about the competence of the Scottish Parliament to legislate in the area. The three areas that we mention in our submission are the reserved powers of Westminster, European law and the European convention on human rights. We urge the committee to satisfy itself that it is happy with the view that the Scottish Parliament has competence in this area.

**The Convener:** I remind members that the bill has received a certificate of competence from the Presiding Officer. That is another issue that members can raise with ministers if they want.

**Ross Finnie (West of Scotland) (LD):** It is quite important to make a distinction. Ms McKeown is not challenging the Government; she is challenging the Presiding Officer, who has given a certificate of authorisation for the bill. It is nothing to do with the Government.

**Michelle McKeown:** We are expressing our concerns—

**Ross Finnie:** You have focused your challenge on the Government. You are keen for us to do our homework, but you do not appear to have done yours. The bill has been introduced only because the Presiding Officer, having received it from the Government, has deemed it to be competent. What you are challenging is the Presiding Officer’s ruling on the matter.

**Michelle McKeown:** As I have said, we are raising serious questions and asking the committee to satisfy itself that the Scottish Parliament has competence in the area.

**The Convener:** I do not know what the committee is going to do—I cannot speak for all members—but we usually let the matter rest when a certificate of competence has been received from the Presiding Officer. No doubt, the Government may want to comment on the matter in passing and, if the bill is passed, you can always pursue a legal challenge. I am sure that you have considered that. Let us move on.

**Mary Scanlon:** I asked a question about the fact that, in the states in Canada where a ban on visual displays was not introduced, the reduction in smoking was greater than in the states where such a ban was introduced. That is not a good evidence base. Can anyone give me something else to justify the banning of visual displays of cigarettes?

**The Convener:** I suspect that you are not going to get any volunteers from among our current witnesses—and I am right.

**Rhoda Grant:** I have a supplementary question. Although that evidence is clear, it is not clear what the smoking rates were prior to the ban. It could be that visual displays were banned in one area but not in another because the smoking rate in the first area was much higher. Until we see the evidence—

**Katherine Graham:** Actually, I have a copy of that information in—

**The Convener:** Sorry—I do not want people just to pitch in; I would like everyone to speak through the chair. People have been waiting to comment. I will bring in Ross Finnie and then Ms Hood, who has been waiting for a while.

**Ross Finnie:** This is an open session and Mary Scanlon cited the Canadian evidence by way of an



example. The committee is asking for an evidence base for one side of the argument or the other. It is all very well to say, "Forget the Canadian example; there is no evidence," but is it the witnesses' position that there is no evidence and that the bill is proceeding without evidence? If so, that places a slightly different gloss on the whole matter. You have a particular interest in the bill and agree that there is no evidence one way or the other.

**Simon Clark:** The problem is that so few territories or countries have introduced a display ban that there is simply insufficient evidence to justify it. Canada is one example; Iceland is another. The Prime Minister of New Zealand recently announced that there will not be a display ban there because the evidence does not justify it. You could argue that New Zealand is not dissimilar to Scotland in many ways, which suggests that the Scottish Government should reconsider the policy.

**John Drummond:** Our position is that there is no compelling evidence one way or the other. The Canadian statistics show that you can isolate certain elements to argue one way or the other. For example, in Saskatchewan, the proportion of smokers in the 15-plus category increased between 2005, when the ban was introduced, and 2007, whereas the all-Canada trend was one of no change where there was no ban. In Manitoba, which was the only other state to introduce the ban in 2005, although the number of smokers decreased, the proportion was still higher than the proportion in Canada overall. The message is mixed and there is no compelling evidence to support the ban.

10:30

**Ross Finnie:** Paragraph 15 of the policy memorandum states:

"there is a 'positive, consistent and specific relationship' between exposure to tobacco advertising and the subsequent uptake of smoking among adolescents".

Paragraph 17 states:

"In addition to having a powerful effect on young people, visible displays of tobacco within shops have been shown to act as cues to smoke, including among those not intending to buy cigarettes and those trying to avoid smoking."

That is the Government's proposition; it might be right and it might be wrong. We as a committee are testing both sides of the argument. The Government is quite clear about there being a "positive" and "consistent" link and about the

"powerful effect on young people"

of "visible displays of tobacco". This evidence session gives you the opportunity to provide counter-evidence to rebut the proposition in the policy memorandum.

**Katherine Graham:** I have gone through the evidence base; I have read all the studies that are mentioned. A lot of studies that link youth smoking and advertising have questionable applicability to Scotland or the UK, because of the Tobacco Advertising and Promotion Act 2002. Most of them were done in countries or states with very different market conditions to those in the UK. The reason why there is no evidence is that the whole proposal is based on a flawed assumption that when young people see the display of tobacco in shops, that makes them want to smoke. The display of tobacco is not identified as a causal factor in the Government's own research into youth smoking; it simply does not come into play.

**Simon Clark:** I agree. I am simply not aware of hard evidence that suggests that children go into shops, see tobacco displayed and want to buy it. I am a non-smoker. I grew up in Scotland. I went to school in St Andrews and university in Aberdeen. I was surrounded by tobacco advertising and sponsorship. I have seen tobacco in shops all my life and, like many millions of non-smokers, that has never encouraged me to take up smoking. It is incredibly patronising to tell people that they are influenced to buy tobacco simply because they see a packet on a shelf. When you go into a supermarket, you see rows and rows of soap powder, pet food and alcohol, but that does not mean that you want to put it all in your shopping trolley.

I dispute strongly the premise on which the bill is based. The evidence about why young people take up smoking shows that the number 1 reason is peer pressure. There is obviously a family influence, too, if their parents smoke. However, to say that the display of tobacco is a major reason why young people smoke is total nonsense, because there is no evidence for it.

**John Drummond:** I agree whole-heartedly. The "Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS)—National Report 2006" points to evidence that boys and girls—underage smokers, if you like—acquire cigarettes and the habit of smoking through peer pressure and, in some cases, through parental and other family influences.

**The Convener:** I will at last let in Ms Hood, who has been parked for a long time.

**Janet Hood:** If the display unit is taken away, the subsequent vacuum will have to be filled with something. Shops, especially licensed premises, have already gone through the painful transition to the liquor licensing regime that, by the time all the bureaucracy, architect's fees and lawyer's fees have been covered, will have cost the owner of the smallest shop in the land £3,000 to enter. Taking away a display unit comes with a cost; filling the vacuum with something comes with a cost; going

back to the licensing board comes with a cost; and the new plans that are required come with a cost. My friends in CJ Lang say that for a three-till shop the average cost will be between £13,000 and £15,000, which, on the back of the new liquor licensing regime, could be enough to cripple some players, particularly independents.

There is also a health and safety issue. As many shops will simply not be able to afford the new electronic systems that make cigarettes appear on the counter as if by magic, the shop workers will have to keep bending down, which might well be extremely harmful to their backs.

If those shops close, the white vans will come in. From my 21 years' local authority experience, working in a rural area, I know that white vans prevail in Scotland, selling everything from carpets and illegal Latvian gin to cigarettes from goodness knows where. The Government and, I think, everyone around the table accept that an enormous amount of tobacco—at least a third of cigarettes and 68 per cent of rolling tobacco—is sold either illegally or unlawfully in this country. The bill will simply benefit organised crime, because those people will be out there in our rural communities. There are not enough police to monitor that unlicensed activity, which will cause irreparable harm to Scotland.

**The Convener:** There were gasps when Ms Hood mentioned organised crime.

**Ian McKee (Lothians) (SNP):** I am finding it difficult to work out why these displays exist. I understand the point that shops exhibit the products that they sell, but we have been told that neither the size of the display nor its presence influences the people, including adolescents, who purchase these products, and that, in any case, cigarette smokers go for the brands that they like. We have also been told that since the restrictions on cigarette advertising were introduced in 2003 brand variants have increased from 79 to 114. Indeed, variants in the Mayfair brand—which I think is one of Michelle McKeown's products—have increased from five in 1998 to 17.

I simply cannot equate all these claims. It might be argued that, if people are choosing their own brands and if displays have no effect, cigarette companies must be producing more and more variants to increase the display size. As a result, the display size is in some way an advertisement for cigarettes. Can you help me sort out in my mind the reason for the increase in the number of brand variants?

**Michelle McKeown:** I understand your reasons for asking the question. The Mayfair brand is actually one of the fastest growing in the United Kingdom and, although it is true that some smokers stick with a brand, others might say, "I'm

going to move to another brand." The Mayfair brand has grown from King Size to Superkings and other variants to satisfy its position as the fastest growing brand in the market.

As a result of the Tobacco Advertising and Promotion Act 2002, which banned all advertising except for the A5 sheet of paper in the retailers, JTI delisted a lot of brands and took a lot off the shelves. Because the brands were not well known, they were not selling and, in an environment where one cannot advertise or communicate with one's customers, their market share was decreasing more and more. We then increased the variants of the other, better-known brands by introducing Superkings. I am not sure that that answers your question, but there are economic reasons for the increase in brand variants. Because the Mayfair brand is growing—it is one of the most popular in Scotland—there are more variants of it.

**Ian McKee:** I do not completely follow that. Your argument is that Mayfair is so popular it is taking cigarette smokers away from other brands. I can see why, if there are very popular and less popular brands in your stable, you might decide to get rid of the less popular ones, but I do not see the reason for introducing what you might call internal competitors to a very popular brand. Surely if you were selling loads and loads of washing powder you would simply produce more of that washing powder instead of a load of different products to tempt people away from your original brand. It seems to me that you are simply fighting among yourselves.

**Michelle McKeown:** I understand what you are saying, but the fact is that we are fighting against our competitors. As a legitimate business, we are trying to steal market share from our competition. We are not looking to increase smoking or the number of smokers. After all, smoking in the United Kingdom is declining by 3 or 4 per cent each year. As I say, we are a legitimate company competing in the marketplace, and we are simply trying to take market share and make our brands more acceptable to our smokers than our competitors' brands.

**Ian McKee:** But if you have a very successful brand, why not leave it at that? Why have more variants?

**The Convener:** I am going to move on, Dr McKee.

**Michael Matheson:** Like Ian McKee, I am finding it difficult to understand the real purpose—other than the marketing one—behind putting large cigarette displays in such a prominent position in shops. Some of you have stated that you do not believe that the policy objective of banning such displays will impact on the uptake of

smoking by young people. What impact will it have on people who already smoke?

**Katherine Graham:** I do not think that adults will stop smoking just because they cannot see tobacco in a shop. However, the way in which the retailer will be impaired in selling the product might make smokers buy their tobacco from other places such as the supermarket where they do the weekly shop or, as Ms Hood mentioned, black market sources and the white van man.

**Michael Matheson:** I hear what you are saying, but I do not necessarily follow the logic of it. If the displays have no impact on those who smoke or on the number of smokers, what is your problem with getting rid of them?

**Katherine Graham:** Smaller shops are a one-man operation that rely on selling things quickly, efficiently and conveniently—

**Michael Matheson:** I understand that, but my question was about the problem with removing the displays if they have no impact on the uptake of smoking by young people and do not have an impact on those who already smoke anyway.

**Katherine Graham:** I think that it will impact on those who already smoke, because they will change their shopping habits. They will move away from smaller shops to other sources for their tobacco.

**Michael Matheson:** Why do you say that? What is your basis for those claims?

**Katherine Graham:** The retailers' ability to sell tobacco will be impaired—

**Michael Matheson:** But what is your evidence for that? You keep going on about the evidence for the provisions in the bill; you need to show me the evidence base that substantiates your suggestion that removing displays will make smokers change their purchasing patterns.

**Katherine Graham:** Absolutely. An econometric study that we commissioned on the effect of the display ban proposals on smaller shops showed that trade would be displaced from those shops into supermarkets.

**Michael Matheson:** So why is that not supported by the evidence from Canada?

**Katherine Graham:** Shops have closed in Canada.

**Michael Matheson:** No—the Canadian Government has made it quite clear that the ban has had no impact.

**Katherine Graham:** I have seen evidence that shops have closed in Canada. In fact, I brought over a Canadian colleague to meet MSPs, including members of the committee, so that they

could hear from the horse's mouth how his members' shops were closing down. I am not sure how we have got into the situation where the evidence appears to contradict itself.

**Michael Matheson:** Why, then, in the Canadian Government's economic assessment of the states that have banned cigarette displays is there not one reported case of a shop closing as a result of the ban?

**Katherine Graham:** I am sorry but I cannot tell you why the Canadian Government said that. All I can offer to share with you is the evidence that I have seen, which is from studies commissioned by the Canadian Convenience Stores Association.

**Michael Matheson:** Ah—a vested interest.

10:45

**Dr Simpson:** Is it correct that in the areas in Canada in which the ban was implemented, the industry provided substantial funding to small traders to change their display process? The argument about the cost to small traders might not be incorrect, but the situation would at least be substantially ameliorated by the provision of funds by producers who desire to continue to have their products sold. Is that correct about Canada?

**Michelle McKeown:** From a JTI perspective, no. No one should assume that we are going to pay for our products to go out of sight in the UK. Why would we do that? I want to make that clear. I have heard that—

**Dr Simpson:** Are you saying that you do not pay for any display changes at the moment? We are told that the display units change every three to five years, which is an adaptation problem that the committee will have to consider. Are you saying that at the moment, you provide no funds to any tobacco retail outlet for the display of your product?

**Michelle McKeown:** No, that is not what I am saying. We did not pay to put our products out of sight in Canada, and you should not assume that we will pay to have our products put out of sight in Scotland. As it stands, we pay for the gantries, the installation and the maintenance costs with certain retailers.

**Dr Simpson:** Are you saying that you would definitely not provide any money to any retailer in Scotland in the event of a ban being introduced?

**Michelle McKeown:** I have not seen the technical areas of the regulation, but I am at a loss to understand why the business would want to pay for its products to be out of sight.

**Dr Simpson:** I take it that that is a maybe.

**Mary Scanlon:** Katherine Graham from the Tobacco Retailers Alliance said that there was no evidence, but her submission says that a display ban was introduced in Thailand and that

“nearly 10,000 tobacco sales outlets closed”.

It went on to say that the

“larger stores’ share of tobacco business doubled in three years.”

**Katherine Graham:** Thank you for reminding me of that. That was from an AC Nielsen report in 2007, which showed that a lot of smaller shops had closed down while larger shops—I think the report named 7-Elevens—had increased in numbers.

**The Convener:** We will have a wind-up at the end in case anyone has a point that they have not made and that is not in the written evidence—remember that the committee has all the written evidence as well.

I want to move on to the banning of cigarette vending machines. Mr Mair, this is your area, so you may want to say something first.

**Paul Mair:** We as an industry do not, under any circumstances, want underage purchases of products from our machines. Trading standards officers have carried out frequent test purchases from those machines and now believe that underage purchases from vending machines can take place. NACMO does not believe that under-18s use cigarette vending machines, although we believe that it is possible for them to purchase from them. We propose that a form of restriction and age verification for those machines is considered for the bill.

**Janet Hood:** BII Scotland, as the professional body for the licensed trade, supports responsible retailing. We would hate to see any of our members selling cigarettes or alcohol to persons under 18.

We would have serious concerns if vending machines were taken out of licensed premises. We agree with the view of my friend Paul Waterson, of the Scottish Licensed Trade Association, that having a vending machine in licensed premises has little direct benefit for the bottom line. However, we disagree with his view that we should therefore not be concerned about vending machines. The indirect benefit of having a vending machine is that a pub’s customers stay within a regulated environment for drinking and smoking. Pubs are the hub of most communities, particularly rural ones. If people are driven out of those places to get cigarettes elsewhere—for example, buying the entire lot in a supermarket on a Saturday—or if they have to go home from the pub because they do not have any cigarettes, which they like to have to accompany their drink

when they are smoking outside the pub, people will cease to go to the pub.

The Government itself has said that the pub is the place where young people should learn how to drink, because it considers it a controlled environment. There is therefore no reason to suppose that it would not be a controlled environment for the sale of cigarettes, particularly if we had the measures proposed by Paul Mair and others around the table with regard to making vending machines secure against the odd purchase by underage persons. We are concerned that, if the service part of selling cigarettes is taken away, pubs will be further harmed.

I would remind the committee that we have lost 30 per cent of the licensed trade in rural areas. That has affected a large number of pubs: records show that we are losing five pubs a week. Such losses will affect more than just the sale of alcohol, because people go to pubs for christenings, weddings and funerals, and use them as a resort when they feel sad or happy. Pubs sell not only alcohol and cigarettes but food and everything else. If pubs are lost, it will harm our economy and the tourism business on which Scotland depends. We are seriously concerned that the bill’s proposals will be the final straw—the last slice of the salami—for marginal pubs in rural communities.

**Michael Matheson:** On the issue of the use of vending machines by under-18s, we have had evidence from the Society of Chief Officers of Trading Standards in Scotland that underage individuals purchasing cigarettes from vending machines “remains a problem”. Additionally, we heard today from the Scottish Grocers Federation about the 2006 SALSUS report, which showed that the prevalence of smoking among underage individuals has been declining. The 2006 SALSUS report also demonstrated that 10 per cent of 15-year-olds obtain their cigarettes from vending machines. That in itself suggests that there is a serious problem with the misuse of vending machines and underage individuals being able to get products. I would like to hear what the witnesses have to say in response to that.

**Julian Banks:** Specifically on that point, we would question much of the evidence—the so-called real evidence—about children who purchase from cigarette vending machines. All the evidence in the UK and in Scotland about that comes from surveys like the SALSUS one. It says that 10 per cent have reported that they buy from vending machines, but if you add up the figures the total comes to over 200 per cent. The survey gives children a kind of choice of where they might buy cigarettes, and they give a range of places that they buy from. We believe that there is no real

evidence that that is normal practice; it is what they say they do. That kind of evidence is compounded by trial purchases, which are done by taking young children into public houses and asking them to access a vending machine. Again, we are disappointed that such access happens, which is why we, as well as NACMO, have been working long and hard to provide access controls. We have presented the controls to the UK and Scottish Governments and hope that they will accept that they are a reasonable recourse to take.

We are concerned that people pick up the 10 per cent figure from the SALSUS report and use it in a variety of ways for which it was never intended. The statistic is not that 10 per cent of children purchase cigarettes from vending machines. My submission states that it ignores the fact that price is quite a driver. Most Governments accept that price is a big driver for purchase or non-purchase. Unfortunately, because of the cost of vending, our products are considerably more expensive than products in a retail environment. The recommended retail price of an ordinary brand such as Marlboro is equivalent to 29p per cigarette, but we currently charge the equivalent of 40p per cigarette.

**The Convener:** What does a packet of 20 cigarettes cost in a retail setting, and what do you charge for it?

**Julian Banks:** The recommended retail price for a packet of 20 Marlboro Gold cigarettes is £5.85, and £3 for a pack of 10, which works out as 29p or 30p a cigarette. The average price for a pack of 20 cigarettes in one of our vending machines is £6.44—that is a silly price because it is an average.

**Simon Clark:** Mr Banks is much more authoritative on this subject than I am, so I can only echo what he says.

To put it simply, the surveys do not make sense. They are based on anecdotal evidence, and there is no hard evidence at all. I do not have evidence for Scotland, but I know that the anti-smoking lobby claims that 52,000 children access cigarette vending machines in the UK every year. That figure simply does not add up, for the reasons that Mr Banks has just outlined. Cigarettes are quite expensive in a vending machine. Why on earth would a child go to a vending machine when that is the most expensive way of getting hold of cigarettes?

We are not against further restrictions that make it harder for children to get cigarettes from vending machines, if that is happening, but we do not need a total ban. We are up against extremism, fanaticism and a lack of willingness to compromise because, quite clearly, there are alternatives to a

ban. We can use tokens or credit cards, for example, and we can now even use radio-controlled vending machines. Such measures would make it dramatically more difficult for children to access vending machines. Surely that approach is more reasonable than imposing a complete ban.

**Janet Hood:** I agree with what everybody has said. I cannot comment on the 2006 survey that Mr Matheson referred to or on the numbers of young people who were getting access to cigarettes at the time, but I can state that, at that time, few of the staff in licensed premises or the licensees themselves had had relevant training. Since then, the Scottish Government has made it compulsory for all licensees and staff to be trained in the sale not only of alcohol but of age-restricted products. BII Scotland covers those areas completely when training is given for our qualifications.

The fact that people who work in the trade are not allowed to get behind a bar without understanding the rules and regulations will surely have a positive effect on the sale of alcohol and cigarettes to underage people. I suspect that, if there were any breaches in the past, they will certainly not be possible in the future because of staff training and the introduction of the measures that have been mentioned by my friends at the table, such as the use of credit cards, tokens or radio-controlled machines.

**Paul Mair:** We believe that the case that has been put to MSPs has not been particularly fair with regard to the use of surveys. The Scottish schools adolescent lifestyle and substance use survey indicates a decline in the number of underage smokers from 22 per cent in 2000 to 10 per cent in 2006, with further declines since then.

We also have issues with the way in which the surveys are carried out, particularly SALSUS. The questions are put in a multiple choice format. One asks how the adolescents get their cigarettes on a day-to-day basis and gives the following options: A, from a newsagent; B, by getting an adult friend or family member to make a proxy purchase; or C, from a vending machine. One in 10 of the people who are asked that question say that they get their cigarettes from a vending machine. It is an easy question to pick up, as it is the last question that is asked.

What the survey does not ask—and the first question that I think that it should ask—is, “Are you a smoker?” We believe that a number of those who were asked those questions were not in fact smokers but still had to answer A, B or C.

11:00

**Dr Simpson:** That attack on SALSUS is unacceptable. The survey has been conducted by successive Governments since the 1980s, and the questions have been put through rigorous testing. The researchers would not include non-smokers in the analysis of where people purchase. I am sorry but, if the evidence is to be attacked, let us have valid attacks. It destroys your own case when you make such an attack.

**Paul Mair:** SALSUS is a multiple-choice survey.

**Dr Simpson:** Absolutely, but there is an initial question about whether the person smokes, and only the responses from those who say that they do smoke are analysed when the figures are produced on how many people purchase cigarettes from various places. The survey does not include everyone, regardless of whether they smoke, in analysing where people purchase cigarettes. The survey has been validated and subjected to rigorous scrutiny over the years. It is a highly acceptable survey.

**Ian McKee:** I have two questions. I will not comment on the validity of the statistics, but the *Manchester Evening News* reported last month that in the north-west of England there had been a region-wide crackdown on purchases from vending machines by underage people. Some 120 pubs were visited and cigarettes were obtained by underage volunteers in 75 of those outlets, so it seems that there is a problem to be solved. I appreciate that some people say that that is a form of entrapment but, on the other hand, if young people want to buy cigarettes from machines, they will find a way in which to distract the person behind the bar and ensure that they do not take an interest. Do you accept that that is a problem? If so, why have you not done something about it before? If there is a range of mechanisms to prevent it, why do you have to wait for legislation?

Secondly, I did not entirely understand Janet Hood's argument and I would be grateful if she would explain it to me. As she said, people go to pubs to drink, to socialise and to eat food. Is she seriously suggesting that someone who goes into a pub just to buy a packet of cigarettes will then eat, drink and spend the whole night there? That seems a generous interpretation of what happens. I do not understand the link between the commercial success of a pub as far as food and drink are concerned and the profit that is made from selling cigarettes.

**Paul Mair:** To answer Mr McKee's question about trading standards in the Manchester area, in the past 12 months, trading standards departments throughout the United Kingdom have stepped up the number of test purchases that they make in environments where there are vending

machines. We are aware of that and we understand it. However, in the past 20 years, no NACMO member has been prosecuted for or convicted of the offence of selling tobacco to an underage person.

Trading standards officers go into a pub at a certain time during the day with an underage person, who then goes to the machine, puts in the correct money and gets the product. Can someone who is under 18 go to a vending machine and purchase the product? It is evident that they can, and we do not deny that. The question is whether they actually do that. We firmly believe that they do not. However, the industry needs to be aware of the matter and find a way to ensure that that does not happen. That is why we propose that vending machines are not banned but have an age verification mechanism placed on them, operated through a radio frequency system. That will ensure that an underage person who goes to a machine, as they do at present in the presence of trading standards officers, will be unable to purchase tobacco. The underage person will have to go to the bar, where age verification will take place. As an industry, we believe that a proof-of-age scheme should be used to verify people's age.

**Ian McKee:** Why are you not doing that?

**Paul Mair:** We are looking to do it. Information packs are being sent to all of our customers.

**Ian McKee:** Can you confirm that charges are not outstanding against the chairman of your northern branch, Mr Rod Bullough, and that he is not being investigated for selling tobacco products to underage people?

**Paul Mair:** I will not comment on on-going cases, which would be prejudiced by my doing so.

**The Convener:** We must be cautious about getting into such matters, in case they are sub judice; we had better not tread there. However, in your response to Ian McKee's question, you made an interesting point about access to machines. A question was also directed at Ms Hood.

**Janet Hood:** I am terribly sorry that I was not clear enough. If people are in a pub, are having a pint and want to buy a packet of cigarettes, but no cigarettes are available on the premises, they will leave. If they are in the city, they will probably go to the supermarket, buy the packet of cigs and half a dozen cans of beer and go home. Footfall will be lost. There are also distress purchases. If someone happens to want a packet of cigarettes and the pub is the only place where they can get it, because the village shop is shut, they will tend to go in. Because they know the person behind the bar, they will say, "Hello Jimmy, I am just getting some fags," and will have a pint. That is how the

licensed trade works—there is a synergy between the two purchases.

If cigarettes are not available, footfall in the pub will decline. I have no statistical evidence on the matter, but I have phoned Punch Taverns, Scottish & Newcastle, Belhaven and G1 Group to confirm my feelings. I have spoken to individual licensees, all of whom have said that having cigarettes in a pub has the effect that I have described. I honestly believe that it helps to maintain footfall in pubs, which are the Scottish Government's preferred place for people, especially young persons between the ages of 18 and 21, to have a drink.

**The Convener:** You have criticised the Government for failing to provide tested evidence, but you have just given us anecdotal evidence. Tread carefully with such evidence when you are rebuking us.

**Ross Finnie:** Are you telling us that people will not go to a public place where they know that they cannot smoke, because that is illegal, unless they can buy cigarettes there? I do not follow the logic of that argument one jot—apart from the fact that the evidence that you have given is totally anecdotal.

**Janet Hood:** It is. I have made no criticism, on behalf of BII, of the Government evidence; I have no ability to do so, as BII has no research team in Scotland.

**The Convener:** I apologise. The general tone was that the Government's evidence is anecdotal.

**Janet Hood:** The evidence that I have comes from speaking to people in the licensed trade whom I represent. I am an ex-smoker. I would have gone into a pub to buy a packet of cigarettes if the shop had been shut, and I would undoubtedly have had half a pint while I was there—as a matter of courtesy, apart from anything else. That is an accepted norm in licensed businesses. I cannot produce evidence of it, but it has been observed by people working in the licensed trade for a long time.

**Rhoda Grant:** My question is along the same lines. I can understand people who are involved with vending machines being concerned about the ban; I cannot quite follow why people who are involved in the licensed trade should be. If they did not have a vending machine, would they not be able to sell cigarettes from behind the counter, as long as the cigarettes were not on display? I cannot see how the proposal affects their businesses.

**Janet Hood:** Cigarette vending machines were introduced to prevent theft. The theft of one packet of cigarettes from behind the bar knocks out the profit from two cartons and makes it almost

impossible to sell cigarettes in that way. Nowadays, there is not enough room behind bars for cigarettes to be put under the counter.

The issue that we are discussing today is how to prevent the sale of cigarettes to under-18s, not the legitimate purchase of cigarettes by adults, to which I am referring.

If the measures that are proposed by Mr Mair and my colleagues around the table—the introduction of the challenge 25 policy, tokens or electronic methods of vending cigarettes—are employed, the perceived harm, which is the sale to under-18s, would surely be removed. I would not suggest that cigarettes be put under the counter of licensed premises. We have just gone through an incredibly expensive licensing law reform, which has probably cost most pubs at least £5,000 to £8,000. If they have to have an area for cigarettes under the counter or another area where cigarettes are hidden, they will have to undertake major variations in most areas, which will probably cost between £3,000 and £5,000 by the time that all the bureaucracy is taken into account. That would be very detrimental to the licensed trade at the moment.

**The Convener:** Mr Banks, you seem to agree about the importance of vending machines in preventing thefts.

**Julian Banks:** Yes, I was going to make that point. When the machines were introduced, licensees were losing a considerable amount of stock on staff changeovers and when other things were happening behind the bar, and they welcomed vending machines in pubs to control that loss. They recognised that that was a clever way of controlling their losses while still providing a service that encouraged people to come into public houses.

Although the smoking population is declining, going to the pub is still seen as a social event. Non-smokers now sit with smokers outside pubs whereas previously they did so inside. There is no doubt that the smoking ban has changed the social structure of the public house.

**Paul Mair:** As an industry, we want to ensure that our tobacco is on sale in licensed premises. Vending machines are generally a secure and safe way of doing that. Putting our tobacco behind the bar makes it accessible to children and to landlords' sons and daughters. Having it in a secure machine that money has to be put into in order to get the product out prevents that.

We want to be seen to be responsible and to work with the bill. However, we feel that, in the consultation process, we have not had a voice to put forward our proposed measures and how we feel that we could move things forward in a responsible way. The first meeting that we had on

the bill was on 24 March with Mary Cuthbert and Anna Wallace. We have been told that we were asked for our views back in July 2008, through phone calls, but we have no record of those calls. The first that we knew about the bill was when we were at the Department of Health at Westminster.

**The Convener:** I do not want us to get into tit for tat about who called whom about what and when. I know that a general call for evidence would have been sent out, which you perhaps missed. A call for evidence is sent out for every bill—even for members' bills—and the consultation is open for a period of time.

**Ross Finnie:** It is 12 weeks, is it not?

**The Convener:** I am advised that it is usually 12 weeks. A general call for evidence is sent out for every bill that is proposed by the Government. You perhaps missed it, but many other organisations are alert to bills coming along and keep their eye open for issues that may affect their business.

**Mary Scanlon:** I am still wondering about the evidence base. It is worth saying that the Society of Chief Officers of Trading Standards in Scotland confirms, in its evidence, that it

"has no conclusive evidence of widespread use of vending machines by persons aged less than 18 years."

Mr Mair, I understand that the radio-controlled device was being developed. Is the system now in operation? If so, what effect has it had on sales of cigarettes to under-18s or whatever?

**Paul Mair:** We have produced our radio frequency system and have included parameters to ensure that, when it is rolled out, that can be done efficiently and quickly. The system should be compatible with existing machines. Trials are being carried out in a number of pubs in the Manchester area, and the results that are coming back are highly favourable, on a number of points. First, everybody has to come for age verification. Secondly, the system has been embraced by the staff working in that environment. We are very much aware that, unless the system is embraced by the staff, it will fail. As I say, the results that we have got back from the initial trials have been very positive.

11:15

**Mary Scanlon:** Are many trials being conducted in Scotland?

**Paul Mair:** Not currently. Because the trials are at an early stage, we have kept them local to the people who have designed the software and hardware for us.

**Michael Matheson:** Earlier, the competence of the SALSUS report was questioned. We have heard evidence today from one party that has

used that report, which questions the need to ban the display of tobacco products in shops. Another party questions the quality of the report for the purposes of defending the retention of vending machines. I do not think that you are doing your case much good if you cite evidence when it works in your favour but then question it when it does not.

I will take up the issue that Ms Hood raised about the economic impact that the measures could have on pubs. I frequent a couple of pubs that do not have vending machines and never have had them, and they are doing very well. The idea that no longer allowing vending machines would have a dramatic impact on the economic viability of a pub would be justified if there was evidence to suggest that that was the case. If vending machine revenue contributed significantly to pubs' incomes and to their economic viability, all pubs would have them, but a significant number of pubs choose not to have vending machines. That suggests that it is an issue of choice—it is for individual pub owners to decide whether they wish to have them. The impact of not allowing vending machines will probably be very marginal if it exists at all.

We have heard evidence about the development of radio-controlled vending machines. Radio-controlled cars started to be developed in the 1950s and 1960s; I am surprised that it has taken until 2009 for the industry to recognise that there is a problem with vending machines. They have been around for a long time, and there is a long-recognised problem with them yet, as a result of the potential ban, a radio-controlled vending machine has all of a sudden become a potential option for dealing with the issues. That is rather disingenuous.

**The Convener:** Ms Hood can respond first, as her point was specifically taken up. The radio-controlled vending machine issue will go to Mr Mair. Mr Drummond wishes to come in, too.

**John Drummond:** On the comments that Mr Matheson has just made.

**The Convener:** Is it on the economic issues or on the point about radio-controlled vending machines?

**John Drummond:** No, it is on the question of the SALSUS report.

**The Convener:** Okay. I invite responses in the order that I have just set out.

**Janet Hood:** I said at the start that cigarette machines have very little impact on the bottom line for pubs. I agree with Mr Matheson on that, and I agree with my friend Paul Waterson on that. However, I also said that not having the machines can have a serious effect on marginal premises.



City pubs probably make more money from vending machines, as they have more people going into them. However, the service level there is probably less important.

In the licensed trade, service is everything. In a marginal pub in the Western Isles or in north-east Scotland, where I live, all kinds of services to the community can be added, such as the sale of cigarettes or of groceries and even post office services. None of those services particularly affects the bottom line of the business, but they add a service to the community. That is what the pub exists to do. Each time such services are eroded, that cuts the bottom line and takes off another slice of the salami. That makes marginal premises less viable, as people cease to come in to make those purchases.

**Paul Mair:** Mr Matheson speaks about the pubs that he goes into, which have no vending machines and seem to do very well. We would never deny that some pubs are more food led. Profiles are different—some pubs do not have vending machines and will perhaps not suffer.

Mr Matheson says that

“a significant number of pubs”

do not have vending machines in them. I see no report or figures to justify that statement. We can all bandy figures and reports around, but you cannot sit and make such a statement without any backing for it.

I also wish to respond to the comment about radio-controlled cars and so on. Where a machine is sited at a place where an underage person could gain access to it, we have adopted a token control system, and that system has been in operation for a number of years. We want to go one step further, however, as we have identified flaws in that system. That is why we want to adopt a radio frequency system.

**The Convener:** What is the flaw in the token control system?

**Paul Mair:** The flaw is that, in some outlets, the token can become available to a minor. We have considered the issue in other countries such as Spain, where tokens can be seen sitting on top of the machines. That is not responsible, and it is not what we want to be involved in.

**John Drummond:** Mr Matheson's comments regarding our use of the information from the SALSUS report suggest some kind of conspiracy or linkage between witnesses round the table.

**Michael Matheson:** I am not into conspiracies.

**John Drummond:** Okay. All I wanted to say is that there are different markets. The cigarette vending market is quite different from the retail market. I have no problem whatever with the

SALSUS report. There are perhaps elements of it that we do not like, but we nevertheless accept the numbers and the trends therein. That is why the example was used.

**The Convener:** Helen Eadie has not spoken yet. Good morning. It is nice to see you.

**Helen Eadie (Dunfermline East) (Lab):** Thank you. I have three questions—I have saved them all up for you, convener.

First, would Mr Clark like to resile from the comment that seemed to suggest that the Scottish Parliament and the Scottish Government might be extremist if the Parliament passed the proposed legislation, even in the context of the World Health Organization's recommendation of

“a total ban on tobacco vending machines”?

As has also been stated,

“22 countries in Europe, including France, Belgium and Norway as well as many others across the globe, do not allow tobacco vending machines.”

First, will you resile from your comment that we are being extremist by suggesting the measures?

**Simon Clark:** I am sorry, but I will not. I think that it would be an extreme action to ban tobacco vending machines. We all accept that tobacco vending machines form a very small part of the tobacco market. I will openly say that, for many smokers, vending machines are not desperately popular, because of the expense of buying cigarettes from them. However, the point is that they are convenient. For someone who is in a pub late at night, when the local shop has shut, the vending machine offers a very convenient way of buying cigarettes.

There is no reason why we should completely ban vending machines. We have already heard today about radio frequency control technology and other systems such as token and credit card systems, which are used in countries such as Germany and Japan, that would make it far harder for children to access cigarettes from vending machines—if indeed they are using vending machines; I dispute the notion that large numbers of children are doing that.

With the greatest respect to the people who are sitting round the table, I think that politicians are banning things far too easily at the moment. Surely we should be looking to compromise where we can. Banning tobacco vending machines would be an extreme act. It would be totally unjustified, totally disproportionate and unnecessary.

**The Convener:** So the answer is no.

**Helen Eadie:** He is not going to resile.

The next question continues on the theme of young people being able to access vending

machines. A report called "Test Purchasing of Tobacco Products, Results from Local Authority Trading Standards, 1st October 2007 to 31st March 2008" states:

"Purchasing cigarettes from vending machines was found to be the most successful way for young people to get hold of cigarettes and was almost twice as successful as attempted purchases from a newsagent, off licence or petrol station kiosk."

I invite anyone to comment on that.

**Julian Banks:** On that last point, although I would not use the word "entrapment", trading standards officers encourage children to buy cigarettes from vending machines—they give a child £7 in coins to do that, because it is more than £6 for a packet. That is not a normal habit. Nobody stands beside a child saying, "Here's the £7 you need to use that machine." That is a false picture. We hear considerable concerns from publicans about the way in which trading standards do that. That might well be the subject of legal action.

**The Convener:** We will hear evidence from trading standards witnesses in the next panel. No doubt they are listening now. We can put those points to them and you may stay while they give their evidence, to hear any rebuttals.

**Julian Banks:** I will not be able to talk from the public gallery.

**The Convener:** No—you get only one slice here. This is your moment in the sun.

**Paul Mair:** If someone who is under 18 goes with a trading standards officer, they can get to a machine and purchase tobacco. I do not want to repeat myself, but our industry is saying clearly that vending machines are not a route that people who are under 18 use to purchase cigarettes. We have been through that already. The reasons are the expense of the product and the fact that a minor would have to walk into what is often a hostile environment. The huge issue regarding tobacco is to do with the people who sell illegally imported, counterfeit and contraband products on street corners. That is how children buy the product and where the issues really arise. They do not buy tobacco from our machines. However, we want to work with the Parliament to consider ways and means of restricting that as much as possible.

**Helen Eadie:** Vending machines in Japan were modified so that they had age verification measures, but underage smokers borrowed proof-of-age cards from friends and family. In Florida, where proof of age is required through an identity card, a test-case compliance study showed that one third of attempts by minors to access cigarettes from vending machines were successful. That is in a report from Broward County in Florida—I have the reference if you need it. Those examples show that there are ways

round any age verification measures that are put in place, whether that is through borrowing tokens or ID or through proxy purchasing, which we heard about earlier. The one point that has interested me was the suggestion that we should make proxy purchasing illegal or a criminal offence. However, I want to press you again on the point that there is simply no way round the age verification issue.

**Paul Mair:** Vending accounts for less than 0.8 per cent of total tobacco sales. The age verification system that we propose uses radio frequency control machines. That is dissimilar in many ways to the system in Japan, where a card is used to take the machine from a dormant to a live state. The system that we use is based not only on a card, but on age verification by members of staff behind the bar who are qualified to verify age. If a 14-year-old went to a member of staff behind a bar to ask for a machine to be put into sale mode, the member of staff would see them. Young people cannot go into an outlet and produce a false ID card if it is obvious that it is false. Age verification is done by sight and by some form of identification.

**Dr Simpson:** To sum up the evidence so far, you are telling us that young people do not purchase cigarettes from vending machines anyway and that test purchasing is an unfair approach. Those are the two points that I have taken from your evidence so far, neither of which I accept. As I understand it, the radio-controlled system will require a line of sight by the member of staff. Is that correct?

**Paul Mair:** Yes.

**Julian Banks:** Yes.

**Dr Simpson:** Are you really telling the committee that in a busy pub, a member of staff will watch somebody move from the bar across to a vending machine and then ensure that that person makes the purchase? Many machines might begin in sight, but a lot of them end up out of sight. How will staff ensure that a machine is switched off as soon as a purchase is made, or can only a single purchase be made at a time? In that case, someone who wants to purchase a couple of packets will have to go back to the bar to get it operated again.

11:30

**Paul Mair:** The NACMO siting guidelines for machines are fairly explicit. We would like to ensure that every single machine in a pub can be seen easily from the bar. We are not talking about having machines down corridors or in alcoves; we are talking about having them within sight from the bar.

You asked what happens once the machine has been activated. The system is simple. The machine lies dormant, which means that if someone puts in money, it falls through the slot and into the tray—they cannot purchase until the machine is activated. That happens once a member of staff has seen the person who wishes to use the machine. The person goes to the bar and asks to use the machine, age verification takes place and they then go to the machine. Once the person has put the money in and one packet of cigarettes has been vended, the machine goes into a dormant state again. Also, if the person does not get to the machine in an allotted time, it shuts down.

On the comment about people wishing to purchase two packets of cigarettes, in the time that I have been in the industry, I do not think that anyone has ever purchased two packets of cigarettes from a vending machine.

**Dr Simpson:** I have difficulty getting a drink in many of the bars that I go to, but you are trying to tell me that, in a busy bar, someone will stand there and ensure that the system operates correctly. I find that interesting. I do not know how many pilots you are operating, but if there were a sufficient number of sites to allow test purchasing to take place, it would be interesting to find out the results.

**Paul Mair:** With regard to RF systems, we have employed the services of a company that was recommended to us by the Department of Health at Westminster to carry out test purchases at sites where we have the system to ensure that it works and to find out what is happening.

**The Convener:** When will you have that evidence for us?

**Paul Mair:** I would have to speak to a colleague about that.

**The Convener:** Time marches on and we will march on to different stages of the bill.

**Paul Mair:** We are talking about a matter of weeks.

**The Convener:** It would be useful if you could let me and the clerks know the timetable, so that we can consider that evidence.

**Paul Mair:** We have spoken to Mary Cuthbert about that and she is waiting for the results from us, too.

**Julian Banks:** Sinclair Collis is carrying out separate trials with a similar product. We offered to bring a machine to the committee. At that point, I did not know that it was a round-table discussion—I thought that the format was different. We took a machine to our depot in Scotland and suggested that we could site it in a

pub close to the Parliament—perhaps one of Dr Simpson's pubs.

**The Convener:** We are interested in machines that are operating in real conditions, particularly in busy bars. I can think of some small rural pubs where it would be difficult to put a cigarette vending machine within sight of the bar.

**Julian Banks:** We do not put them in if that is the case. We work hard with trading standards officers. We are not against them—we work with them on siting. They ring us up if they think that a machine is not in the best position and we move it immediately.

**The Convener:** We have a last question, from Ian McKee.

**Ian McKee:** I wanted to ask this as the first question. I feel that the committee should know who we are taking evidence from, although that is pretty obvious from some of the details that we have been given. For example, we know that Sinclair Collis is a totally owned subsidiary of Imperial Tobacco Group. Is that correct?

**Julian Banks:** That is correct.

**Ian McKee:** I am not criticising—it is just nice to know.

I ask Simon Clark of FOREST, Katherine Graham of the Tobacco Retailers Alliance and Paul Mair of the National Association of Cigarette Machine Operators to tell us whether their income is wholly or partially from tobacco manufacturers or from other sources.

**Simon Clark:** I am happy to tell you that we get donations from JTI, British American Tobacco and Imperial. We are in our 30<sup>th</sup> year, and without those donations it would be very difficult for us to exist and to be here to put our case in a democratic forum.

**The Convener:** How much do you get?

**Simon Clark:** It is approximately £250,000 a year.

**Paul Mair:** NACMO is funded by its members. We have 55 members, ranging from large cigarette vending companies—all independently owned—to individuals with perhaps only 20 or 30 sites, and we take an annual subscription from them.

To be clear, JTI, BAT and Imperial are among our members, as are manufacturers of cigarette machines. NACMO exists as a body to represent cigarette vending machine operators, so input from the tobacco industry is important.

**Ian McKee:** What proportion of your income comes from the tobacco manufacturing side?

**Paul Mair:** I do not think that that is relevant to the conversation.

**The Convener:** Oh, I think that it is relevant. It is a straightforward question—we have already had an answer from FOREST.

**Paul Mair:** I cannot answer that question today, but I can get the information for you, convener, if you think it is important.

**The Convener:** We would appreciate the information, and it will be published as part of our evidence session.

**Katherine Graham:** My campaign is funded—and has been since it was founded 26 years ago—entirely by the Tobacco Manufacturers Association, which means that we can offer free membership to independent retailers of tobacco products. We have traditionally campaigned against the black market, which is obviously an issue that is relevant to the manufacturers of tobacco and to the retailers that sell it.

Before the proposals to ban tobacco displays were announced, we had 16,000 members throughout the UK—we now have around 26,000 members. That illustrates the level of concern in the trade about the proposals.

**Ian McKee:** What is your income from the industry?

**Katherine Graham:** Gosh, I should probably—

**Michelle McKeown:** I can tell you what JTI's contributions are, if that would be helpful.

**Ian McKee:** That would be helpful, but Katherine Graham will need to write to the committee.

**The Convener:** We would like to know the total figure. I have already asked Mr Mair to provide the figure for his organisation in additional written evidence.

**Katherine Graham:** I would like to check with our members—the people who fund the alliance—as a courtesy, but I will let you know.

**The Convener:** Of course; you can check, and then write to the committee with the figure. I understand that you have undertaken to provide that.

**Michelle McKeown:** We are proud to support the retailers and the organisation that represents smokers. We are transparent about that—they do good work and they need support to put forward presentation materials and surveys when they are expressing their concerns to Governments about the impact on them of any proposed measures.

Last year JTI contributed about £30,000 to the Tobacco Retailers Alliance and about £50,000 to FOREST. I do not know how much it contributed to NACMO, but I suspect that the amount was a

lot less than the figures that I have quoted, if it was anything at all—sorry, Paul.

**Paul Mair:** I do not have the exact figures with me today, but we are talking about small amounts. It is about £5,000 from each of the tobacco manufacturers; the amount that the independents contribute depends on the size of the company. The more sites they have, the larger the amount they pay for membership.

**The Convener:** I see that John Drummond wants to come in—I will let him make a comment, if it is on funding.

**John Drummond:** It is 30 seconds' worth of comment, for the record.

**The Convener:** Let us hear it then.

**John Drummond:** The Scottish Grocers Federation is funded by retail members, and it has the interests of retailing at heart, as opposed to receiving any supplier contributions.

**Katherine Graham:** There is an organisation called the NFRN—the National Federation of Retail Newsagents—that has a Scottish branch. The committee presumably had the opportunity to call the federation here today, but it did not. The NFRN is funded entirely by its members, rather than by the tobacco industry in any way. It could have been a voice for independent retailers, without any link to the industry, at today's meeting.

**The Convener:** We will not be chastised about who we call before the committee, if you do not mind. We have all the written evidence and it is for the committee to decide which witnesses to call—we have called a very representative sample here today.

I will move on to the national register of tobacco retailers. Does anyone want to begin?

**Mary Scanlon:** I note that the policy memorandum says that

"it is recognised that there is very little evidence of the impact of tobacco retailers licensing schemes on reducing underage sales".

Has anyone who read or saw last week's evidence got any comments about whether giving your name and address and registering under the new scheme will have the proposed effect?

**Janet Hood:** I am not convinced that the scheme will make any difference to how tobacco is sold because there is no evidence to show that it will.

What would be the timescale to register people? I have not been able to find that out from the bill, but it is terribly important. If people apply to join the scheme, they need to know how speedily they will be registered. Will it be instant or will it take six weeks?

**Dr Simpson:** It will be done online.

**The Convener:** I think that it will be done online, but we will get clarification from the minister. Much of the process will be dealt with in regulations that will come before the committee before we reach stage 2. We will have draft regulations before we reach the first amendment stage.

**Janet Hood:** May I respond to Ms Scanlon's other point? I did watch the broadcast of the previous committee meeting. There are some legal anomalies in the bill that could lead to difficulties if persons have the misfortune to be struck off in any area. The bill is not as clear as it might be as to whether being struck off would affect numbers of premises in an area or just one premises.

**The Convener:** We asked that question and the answer was that the offending premises would be struck off according to the rule of three strikes and you are out. That is in the bill at present.

**Janet Hood:** I say with respect that, unfortunately, there is a technical anomaly in the bill that could lead people to come to an alternative position. I wonder whether that could be addressed by the civil service.

**The Convener:** We have asked about that too. As you know, stage 1 consideration of a bill is important because we look at where there might be errors, omissions, double entendres or whatnot so that we can get them remedied at stage 2.

**John Drummond:** Registration is preferable to licensing, which was also considered, because it is cheaper, easier and more efficient—in theory. Licensing would lead to unnecessary bureaucracy and cost, so we support registration.

There is some implication that registration will lead to the prevention, or at least the diminution, of activity in the illicit cigarette market. Registration in itself will not do that, so stronger powers are required by trading standards, the police or both in order to clamp down on activities in the illicit market because they are having a damaging effect, not only on business but on the health of individuals who consume such products.

**The Convener:** We will talk about stronger powers in the next batch of questions on enforcement and fixed penalties—

**John Drummond:** It does link in with—

**The Convener:** You can speak about stronger powers later. I want us to stay within the current category of questions, but please raise that point when we get to enforcement.

**Helen Eadie:** I want to hear people's views about the proposal from some of the respondents to our call for evidence that there should be a local register instead of a national scheme. Some

people, for example the Trading Standards Institute, say that that might cut down on unintended bureaucracy.

**Katherine Graham:** The only issue with that is that you might get regional disparities, which might distort competition. Where small businesses are concerned, anything that reduces red tape and bureaucracy is a positive thing. On moral grounds, we cannot oppose any measure that would help to enforce the current law, which is that retailers should not sell cigarettes to under-18s. Shops have no business selling tobacco to under-18s, and we would support any measure that prevented such sales. Like Mr Drummond, I question whether a registration scheme would help enforcement against the black market.

11:45

**The Convener:** I did not follow the argument about regional disparities.

**Katherine Graham:** If schemes were being administered by local authorities, the standards of enforcement might not necessarily be the same.

**The Convener:** I think that there will be a standard form—it is being kept quite simple. We will come to that later.

I preferred positive licensing but have demitted to a registration scheme. However, I think that display of the certificate of registration by the retailer should be mandatory, and that failure to display should be an offence in itself. That would also pertain to vans and so on. What are your comments on that? Would that have a deterrent effect in that it would remind the public that sellers have to be registered, and that they would be entering into an illegal transaction if they purchased where the certificate was not displayed?

**Janet Hood:** It would be useful if the certificate were displayed in shops, pubs and legitimate vans. It is highly unlikely that the illegitimate white vans that circulate in Scotland, selling everything from carpets to goodness knows what, would apply for registration. If there were no other outlet in an area, I do not think that anyone would care. If an area does not have a village shop, no one is going to phone the local authority, trading standards or the police to complain. People will say, "Well, it's here. We'll buy stuff from it." The proposal does not address the harm that is caused by organised criminals, who are circulating in this country, selling illegal goods of all sorts, including cigarettes.

**John Drummond:** My comments are similar to those of Ms Hood. The display of a certificate of registration would act as a stamp of authority but it would not do anything to address illicit trade.

**The Convener:** I want to move on to enforcement and fixed penalties. Mr Drummond, you said that trading standards officers need more powers.

**John Drummond:** Absolutely. We have very good relations with trading standards officers. Where they are good, they are very, very good, but where they are bad—you know the rest of that sentence. There is an inconsistent approach in trading standards throughout the country. I gather that that is to do with resource. Steps should be taken to offer a consistent trading standards service throughout the country. As responsible retailers, we believe that greater steps should be taken—either directly with trading standards officers or in conjunction with the police—to stamp out underage sales and, in particular, the illicit trade.

**Michael Matheson:** That picks up on Mr Drummond's point about inconsistency. I have some concerns about how trading standards officers in different local authorities might choose to apply, for example, the fixed-penalty notice and the direct referral for prosecution. There is a danger that one local authority could take a more robust approach than its neighbour. Do the witnesses think that there is a need for some form of guidance to accompany that element of the bill, to try to ensure a more consistent approach by local authorities to issuing fixed-penalty notices, and to when referral for prosecution is triggered?

**John Drummond:** I applaud your comments, and I agree with them. I am not sure how such a consistent approach can be established other than by an equitable allocation of resource among local authorities. In the next witness session, there is input from trading standards officers, and perhaps they may have some suggestions. However it is done, we would look for consistency.

**Michael Matheson:** I do not think that it is necessarily an issue of resource in local authority trading standards departments. It is about ensuring that trading standards departments are all using whatever resources they have in a similar way and achieving consistency in determining when a fixed-penalty notice is appropriate and when they should go for a prosecution. I understand what you are saying about resources, but I think that the issue is more to do with the application of the law and when trading standards departments decide to take a particular course of action.

**John Drummond:** Perhaps the way forward would be to have some dialogue between interested stakeholders, trading standards and the police to produce guidelines.

**Janet Hood:** I agree that consistency across the board would be welcomed in all licensed trade

premises. We have certainly not seen consistency as a result of the Licensing (Scotland) Act 2005. If guidance can be produced that ensures that there is a level playing field, every licensee, whether on or off trade, would welcome it. The difficulty is that, as the Scottish Government acknowledges, different conditions apply in different areas, which is why we have a total inconsistency in liquor licensing throughout the country. We have to ensure that we do not have a total inconsistency in cigarette registration, too.

**Dr Simpson:** We had evidence from the Association of Chief Police Officers in Scotland that it would wish to be involved. Should any registration process fall within the ambit of the police, rather than of trading standards? Are there any advantages or disadvantages to that approach?

**The Convener:** I have long argued that trading standards should be monitoring licensing, which would free up the police for other duties. The witnesses could comment on either approach. The monitoring could be amalgamated to ensure that the law is obtempered.

**John Drummond:** We do not have strong views on that, but we believe that there is much to be gained by trading standards and the police working more closely together. I believe that in many instances they know who the culprits are and who the rogue retailers are. I am sure that between them they could work out the best way to tackle those issues.

**The Convener:** You are nodding, Ms Hood, so I take it that you agree.

**Janet Hood:** The police are working successfully with licensing standards officers at the moment. There is absolutely no reason why they could not work in the same way with trading standards officers. In certain areas, there is no overlap, but there is a sort of Venn diagram overlap in relation to how more serious issues are dealt with. The police get involved on such occasions, so that trading standards officers are not put at risk if they have to deal with a serious criminal type.

**The Convener:** That is a very good point.

**Helen Eadie:** The issue of illicit trading has been raised many times. I guess that that is where there would be a benefit in ACPOS being involved, as per the representations that we had from it in writing last week.

Do the witnesses think that fixed-penalty notices should be recorded on the register? After all, there will be incremental stages of fixed-penalty notices. There could be a serious fine of £20,000 and upwards, which might change with time.

**The Convener:** You are on the ball this morning, Helen. You are firing good questions today. On you go; we are all thinking, "Good point."

**Helen Eadie:** Thank you, convener. What do the witnesses think about fixed-penalty notices being recorded on a publicly available register?

**The Convener:** Just like the penalty points on your driving licence, which, of course, none of us has.

**John Drummond:** As responsible retailers, we have no issue with that suggestion; it sounds eminently sensible.

**The Convener:** On that harmonious and happy note, I will bring this evidence session to an end. I thank you all for your evidence. I will suspend the meeting for five minutes.

11:54

*Meeting suspended.*

12:03

*On resuming—*

**The Convener:** Our second group of witnesses represent trading standards officers. I noticed that they had their pens out and were taking notes during the previous evidence. On the panel we have Alastair Brown, the head of environmental health and trading standards in Glasgow City Council; David Roderick, the chairman of the Society of Chief Officers of Trading Standards in Scotland; and David Thomson, the trading standards manager in South Ayrshire Council.

I invite questions from members.

**Helen Eadie:** The submission from the Bill suggests that enforcement officers should be able to enter premises only at reasonable times, and should be able to require the production only of books, documents, data, records and products relating to the sale of tobacco. Could you compare that with the situation with regard to other regulated products with which you deal?

**David Roderick (Society of Chief Officers of Trading Standards in Scotland):** Most of our powers apply to premises during their usual hours of business. It is very rare that we would want access to a business when it was closed. I presume that the comment that you refer to concerns public houses: we would normally only go into a public house when it was open.

On access to records, there was discussion about specialist tobacco retailers and so on. We would need to see the records of a business in its entirety if we were to assess whether 50 per cent of its sales were of tobacco. If we had access only

to the tobacco records, we would not be able to do that calculation.

**Alastair Brown (Glasgow City Council):** It is reasonable to say that enforcement officers might be in premises for a variety of reasons and that the procedure that has just been described is familiar to any enforcement officer. I would not want officers to be restricted to one function. When they are in premises they could, in theory, be multifunctional.

**Helen Eadie:** Last week, ACPOS wrote to us to suggest that the police might have a role in enforcement, which is interesting because it is rare for police officers to volunteer their services and support. Do you see a role for the police in that regard? I gather that they are not involved in other areas.

**Alastair Brown:** We work with the police on a variety of issues. There are good examples of partnership working with the police in other fixed-penalty regimes—certainly in Glasgow—and I do not see why this area should be any different. There is no reason why trading standards officers and police cannot both be involved in the enforcement regime.

**David Roderick:** Trading standards officers already work with police on what are, essentially, regarded as police matters, such as the sale of knives to under-18s and the sale of imitation firearms. The police recognise that trading standards officers have the expertise in underage sales and are familiar with the sorts of premises that sell such items, while they have the expertise in the products themselves.

**Ross Finnie:** On the sale of alcohol, the relationship between the police and trading standards officers is the other way around—the police come first and trading standards officers come in behind.

We are rewriting the law on tobacco such that tobacco will be regarded far more seriously than alcohol is: the product is not to be seen in shops at all, because the message that we are trying to send is that smoking is an extremely serious matter. Given that, would it be better if the police had the prime role in enforcement?

**David Thomson (South Ayrshire Council):** I understand that the police are concerned that the bill gives them no powers to enforce the legislation properly. They should be able to issue fixed penalties to non-registered or illicit sellers that they come across in their everyday duties. The thrust of the work that trading standards officers do with businesses has enabled them to build up expertise in underage sales and so on.

**Alastair Brown:** In Glasgow, environmental health officers and trading standards officers work

together in one department. Licensing standards officers, who were mentioned by the previous panel, are contained within that partnership. One of the key roles for environmental health departments and the trading standards departments is business regulation. That fits in with the idea that we are about getting businesses to comply with legislation and advising and supporting them so that they can do so. To take one part of business regulation away from the role of those departments seems to be a bit strange.

The police have a clear role to play, but the proposals in the bill fit in with the business regulation role that we already play. There has been quite a lot of discussion about how we can improve business regulation in the UK, in which the Local Better Regulation Office has been involved. Businesses would find it beneficial to be able to see clearly who is responsible for regulating them.

**Ross Finnie:** We make a distinction around products that can have damaging effects on people's health. We are elevating tobacco to a far more serious level than alcohol; we are saying that even seeing it in a shop might cause someone to buy it impulsively, and that we therefore want it to be completely out of sight. Alcohol regulations are, however, enforced by the police and tobacco regulations will not be.

**Alastair Brown:** A parallel example would be enforcement of anti-smoking legislation in public places, which is undertaken by environmental health officers.

**The Convener:** The submission from ACPOS came in late, so we have not arranged to hear from its representatives. However, if the committee would like to speak to ACPOS, we have time to arrange that for a later meeting. I feel that that would be quite useful, so perhaps we should think about it.

**Michael Matheson:** Some people in the tobacco industry have suggested that a ban on the display of cigarettes could have the unintended consequence of increasing the illicit trade in tobacco. The logic seems to be that having the products on the gantries allows people to see that the goods are kosher, which might not be the case when the product is kept under the counter.

What are your views on that suggestion?

**David Thomson:** I do not follow the logic of that argument, because the sole driver for buying illicitly—which currently happens at car boot sales, pubs, Sunday markets and so on—is cost. The argument seems to be that, once the products are out of sight, people who have been buying cigarettes from a convenience store for years will not know that it sells them anymore and will therefore seek out someone who is selling

cigarettes illicitly, or that someone who cannot buy cigarettes from a vending machine in a pub will go out and find some illicit tobacco. However, people do not change their habit of buying legitimate goods simply because a product has been removed from sight. They will still source tobacco from the same places and ask the proprietors whether they sell tobacco. If one shop does not sell tobacco, they will go to another. I cannot follow the link between the products being removed from sight and illicit sales.

**Michael Matheson:** The Bill suggest that removing vending machines from pubs in small rural communities that do not have shops would play into the hands of organised crime—I think that is the phrase that was used—and that the white van man would take over the sale of cigarettes. Is that a legitimate concern? Can you see it becoming a sizeable problem as a result of a ban on vending machines in pubs in rural areas, where there is no shop that sells cigarettes?

12:15

**David Roderick:** I am not sure that there would be a direct link between the ban on vending machines and illicit sales. We are conscious that the legitimate trade has genuine concerns about illicit sales. As part of the enhanced enforcement programme, we agreed that there should be a Scottish trading standards scambuster team, funded by central Government, run by North Lanarkshire Council and Dundee City Council and operating Scotland-wide. Part of the group's remit is to assist HM Revenue and Customs to deal with the illicit trade. Often such sales are, to some extent, out of the reach of local trading standards officers, because of the nature of the activities concerned: because they are often part of organised crime, they need the sort of detailed attention that only something like a scambuster team, working in co-operation with the police and HMRC, can give.

**The Convener:** Is "scam" an acronym in this context, or is it just the slang term?

**David Roderick:** The project, which is funded by the Department for Business, Enterprise and Regulatory Reform, is called scambusters.

**The Convener:** Is "scam" an acronym in this case?

**David Roderick:** No.

**The Convener:** We should be happy, because we all know what a scam is. Eyebrows were raised when the term was used.

**Michael Matheson:** Will any of the measures that may be introduced under the bill play into the hands of organised crime and illicit trade?



**David Thomson:** The bill should help us to crack down on illicit trade—we will probably come on to that later. The bill gives police and trading standards a direct power to deal, through a fixed penalty or a report to the procurator fiscal, with people who are not registered to sell tobacco, which should increase our ability to crack down on illicit sales.

I will not go into the complexities, but there is a complex picture of illicit tobacco sales, involving street trading and non-fiscal-marked goods, which fall within the remit of customs and trading standards trademarks. However, the provision for those who are not registered to receive a fixed penalty or be reported to the fiscal should make operations much simpler for us and our police colleagues. The bill will add strength to our elbow as we seek to crack down on illicit sales.

I have no evidence that normally law-abiding people will suddenly seek out the illegitimate trade if their legitimate source of tobacco is hidden from sight—it will not be removed completely. A large proportion of people in the country still do not know where to find the illicit trade and, even if they did, would not want to be associated with it. I see no evidence that illicit sales will cash in on the removal of cigarettes from display and the banning of vending machines.

**The Convener:** Would displaying of a certificate confirming registration to sell tobacco products resolve the issue? A Government campaign on the new legislation would let people know that they could still purchase cigarettes in such premises, even though cigarettes were no longer displayed.

**David Thomson:** When we originally considered the provisions for display of a certificate, we were ambivalent about the proposal. There are many pieces of legislation that tell people to display things—members of the public do not look up to see whether someone has a credit licence on the wall before taking out credit with them. The online register will enable enforcement agencies to check whether people are registered. I am not sure that the absence of a certificate will lead people to ask trading standards whether someone is registered. The purpose of the certificate may be to indicate in a roundabout way that tobacco is available on the premises. I think that people are likely just to ask for their usual.

**The Convener:** The situation would be different if it were mandatory to display a certificate and an offence not to do so. That would let people know exactly where they stood.

**David Thomson:** It comes down to the number of times that we go in and ask for—

**The Convener:** I am talking about ordinary people, who will go in whether or not they have

seen the product. If someone is displaying a certificate that indicates that they are authorised by the Scottish Government to sell cigarettes, and people know that it is mandatory to display such a certificate, they will know that they are in a place where they can still get cigarettes.

**David Thomson:** People must display a weights and measures notice in their premises. The number of complaints that we get about people not displaying such notices is probably zero.

**The Convener:** Okay. I might be flogging a dead horse with this one, but I will keep going anyway.

**Mary Scanlon:** The Society of Chief Officers of Trading Standards in Scotland says in evidence that in its experience

“illicit products are unlikely to be on open display and so a ban on display would not affect these enforcement activities.”

There seems to be an underlying view that current measures that deal with proxy purchasing of cigarettes are not being enforced by the police or trading standards. However, the SALSUS report, which has been quoted quite a bit today, found that 38 per cent of 13 to 15-year-old boys who were regular smokers got cigarettes from friends, siblings and parents. Furthermore, 48 per cent of regular girl smokers aged 13 to 15 were also given cigarettes by friends, siblings and parents. Why is something not being done about proxy purchasing? Is it because of a lack of resources in trading standards?

I read in last week's evidence that you could count on one hand prosecutions for selling cigarettes to under-18s over the past five years. Why are the existing measures not being enforced by trading standards officers?

**David Roderick:** Proxy purchasing is not the same for cigarettes as it is for alcohol—it is not an offence to buy cigarettes and then to give them to someone who is underage. If that is done with alcohol, the person commits an offence, as does an underage purchaser of alcohol. Equivalent provisions for tobacco purchasing do not exist; it is not an offence for an underage person to buy tobacco or for someone to buy it on their behalf, so we cannot take proceedings in such situations.

**Mary Scanlon:** So, if you were standing in a shop watching as I bought cigarettes and handed them to a 10-year-old, that would be okay, would it?

**David Roderick:** Legally, yes; morally, no.

**Mary Scanlon:** It is also quite all right to do that in front of the police. What about prosecutions of shop owners who sell tobacco to under-18s, which

is illegal? I understand that there have been very few such prosecutions. Why is the number so low?

**David Roderick:** To some extent, it depends on the level of activity by local authorities. Until last year, when the enhanced enforcement programme began and additional resources came from the Scottish Government, only a small number of authorities were actively involved in test purchasing. Other authorities were simply going round advising businesses on the requirements and were positively not doing test purchasing. Test purchasing is the only way to get sufficient evidence to report to the fiscal.

**Mary Scanlon:** Has lack of resources led to the low number of prosecutions?

**David Roderick:** The low number of prosecutions is, to a certain extent, because of lack of resources. As I said, until additional funding came through last year, many authorities were not doing test purchasing. Equally, the low number is to do with the effect of test purchasing. In my authority area, we have agreed with the fiscal's office that if we get a sale, the seller gets a written warning on the first occasion and is reported to the fiscal only after a second sale. We have reported probably only a handful of businesses to the fiscal because after the first offence, people often tighten up their practice. That is probably replicated in other authority areas.

**Mary Scanlon:** The point of the bill is to reduce—or to eradicate, which would be wonderful—smoking among people under 15. However, we see 48 per cent of girls—half of girls—benefiting from proxy purchasing and buying tobacco while they are underage. There is nothing in the bill to stop that.

**The Convener:** That is a fair point. Many committee members feel that the problem of proxy purchasing has been missed from the bill. It would be possible to amend section 4—"Sale of tobacco products to persons under 18"—to reflect our concerns. Criminal offences are covered in that section, which talks about summary convictions and fines not exceeding level 4. The committee might want to raise that matter with the Government.

**Mary Scanlon:** The existing measures are not being enforced. My final point is that SCOTSS says that it supports a ban on vending machines, but you also say that there is

"no conclusive evidence of widespread use of vending machines by persons aged less than 18".

If there is no such evidence, why do you support the ban?

**David Roderick:** Perhaps your question is the result of how we worded our evidence. We are saying that we have no conclusive evidence in

Scotland of the use of vending machines by under-18s, which is probably because we have not done test-purchasing work on vending machines. Our colleagues in the rest of the UK have been doing test purchasing since the early 1990s and have much more experience and have done much more work in that field. They more recently got round to concentrating on vending machines, which is why the issues that the committee heard about in the earlier evidence have cropped up. However, vending machines have not been a particular issue in Scotland and we have not undertaken a great deal of activity on them. We therefore do not have evidence on underage purchasing from vending machines, which is not to say that it is not happening.

**Mary Scanlon:** So, there is no evidential base that confirms that there is widespread purchasing of cigarettes from vending machines by people aged under 18.

**David Roderick:** There is no such evidence in Scotland, but there is in the rest of the UK. The work of trading standards officers in England, particularly the north-west of England, leads us to believe that the situation is not greatly different in Scotland.

**Dr Simpson:** Test purchasing was not brought in to Scotland until 2005, when it was piloted in Fife. I was the Deputy Minister for Justice in 2001 who tried to bring in test purchasing, but the Lord Advocate had to consult on it and so on. I therefore point out to Mary Scanlon that we have not been doing test purchasing for long, whereas they have been doing it in England.

I have a couple of questions for the witnesses. Should we allow moving vehicles—I presume that that includes car-boot sales—to be registered to sell cigarettes, or should registration be restricted to mobile vans in areas where there is no other outlet? In other words, would registration for moving vehicles be helpful in tackling the illicit trade in cigarettes? For example, car-boot sale people will not register, but will say the usual thing: "I haven't got the certificate," or "It's somebody else who's registered." We know the games that they will play. However, if we simply had a ban on selling cigarettes from car-boot sales and ice-cream vans—a lot of them sell to children—would that be helpful in achieving the bill's objectives?

**David Thomson:** I hate to correct a committee member, but the test purchasing pilot was carried out by South Ayrshire Council in 2002. Fife Constabulary did test purchasing for alcohol, but for tobacco, the original—

**Dr Simpson:** I was not in Parliament when the pilot was finally implemented.

**The Convener:** Ah!

**David Thomson:** There were four pilot authorities. Forgive me for correcting you on that point.

**Dr Simpson:** That is no problem.

**David Thomson:** Anything that helps to crack down on illicit sales is good, but trying to differentiate between mobile vans and car-boot sales would be a problem. The latter, along with weekend and mid-week markets, tend not to have legitimate sellers of tobacco. Sales of tobacco at such events tend to be illicit, even when they are from fixed premises, such as a booth or cabin. The people who turn up to sell at such markets will not be bothered about whether they can or cannot get registration: they simply will not register. We must ensure that we have the tools to do the job of detecting and reporting such people. We will come on later to whether the offence provisions in the bill cover that. We think that there are deficiencies in the wording regarding what is a tobacco business, which will not help us with illicit sales.

We should accept that mobile operators, especially in rural areas, require to be registered. I do not think that that will allow people at car-boot sales to register, nor do I think that they will want to register, because doing so would only alert the authorities about where they are and what they are doing.

**Dr Simpson:** Should we restrict mobile vans to areas that do not have other outlets? My greater concern is with getting rid of tobacco altogether, but in terms of fairness, people in rural areas must have continued access to that addictive product for as long as it is legal.

Should we restrict registration in any way? At the moment, people can simply register. That is the thing about licensing—positive licensing would mean that there would be much tougher conditions and that trading would be much more expensive. However, we could say that mobile vans can be licensed to sell only in areas in which there are no other outlets within a certain distance.

12:30

**David Thomson:** That introduces a layer of complexity. If a business suddenly opened up in such an area, would it put the mobile van out of business? I can understand the objective, but from an operational point of view, we would be happy to have clear registration and non-registration.

**Dr Simpson:** Perhaps I am not asking the right people, but you are quite happy that things like ice-cream vans—

**The Convener:** Mr Brown wanted to comment.

**Alastair Brown:** We already have a street traders licensing system, so we regularly engage

with street traders on a variety of issues, and I cannot see why the selling of tobacco should be excluded. The bill could be a good opportunity for us to focus on problems relating to the retail of tobacco from mobile vehicles or by street traders. As I say, we already license street traders, and I see no reason why we cannot ask them to register for tobacco retail.

**Ross Finnie:** Like Dr Simpson, I am not at all sympathetic to tobacco and addictive products, but because we are not banning them, there are issues that we must deal with.

Mr Thomson, I am fascinated by your view that when tobacco products cease to be on display, no one's purchasing habits will be affected. What other product are you aware of that is similarly unavailable, and on what basis do you assert that there is no effect on the purchasing of it?

**David Thomson:** I return to my answer to Michael Matheson's question. I was asked to provide a personal view. I do not think that removing a product from display would change the buying habits of someone who purchased it regularly from a premises. If the product was not on display, it would not make them think that they had to buy it illicitly. I do not know whether they would stop buying it, but I do not see the link between the product not being visible in the place from which they purchased it for many years and their suddenly saying, "I'd better find an illicit seller."

**Ross Finnie:** Let us move back down the chain to the attempt to prevent sales to younger people. I am very much in favour of hammering those who sell illegally to people who are underage, but I am still slightly puzzled about the idea that cigarettes are an impulse buy. I struggle to see the evidence for that.

In your written evidence, you all welcome the move towards forcing the retailer to seek proof of identity. However, the bill provides the defence that

"no reasonable person could have suspected from the customer's appearance that the customer was under the age of 18."

That is a bit of a nonsense, because if you are a reasonable person it is reasonable that you should have sought proof of identity. What is your view on the additional defence that the bill appears to provide?

**David Roderick:** To a certain extent, putting such a defence in legislation is a retrograde step. The Children and Young Persons (Protection from Tobacco) Act 1991 removed the word "apparently" from the Children and Young Persons (Scotland) Act 1937, which said that it was an offence to sell to someone who apparently was underage. That followed similar legislation that dealt with

fireworks. At one time, the legislation referred to people appearing to be underage, but if it is an offence to sell to someone who is underage, it is an offence full stop. We agree that if someone has formed the first part of the defence, and has made the checks and established that a person is not underage, what is the point of the second part?

**The Convener:** What if you had somebody in front of you who, because of some genetic condition, looked very elderly—that is rare, but possible—and you did not challenge them because there seemed to be no reason to do so, given their physical appearance? Indeed, it might have been insulting to challenge them. I am talking about very unusual circumstances. However, an absolute test would not allow for the rare circumstances in which you could argue that no reasonable person could have known from looking at the individual concerned that they were under the age of 18.

**Ian McKee:** You would love to be challenged, convener.

**The Convener:** Yes. Thank you for that. No more Danish pastries for you. I was making a serious point.

**David Thomson:** We are puzzled as to why the second part of the defence has been inserted. I understand that it covers the occasional times when no reasonable person would assume that the person purchasing was under 18, such as in the example that you gave. Such a provision might need to be built in as part of a belt-and-braces approach, but the way in which that has been done would have the opposite effect: it would allow defence agents to bring a test purchase volunteer to court to try to persuade the sheriff that the defence could be satisfied. Bringing a test purchase volunteer to court would go against all the principles of volunteer test purchasing. Although the young people involved are generally 16 and a half, in some cases they are under 16. We try everything possible not to bring those young people to court. The provision would force businesses—in order to keep their licence—to ask for the test purchase volunteer to be produced in court so that the defence could be tested. That would be a retrograde step.

**The Convener:** That is an interesting answer. I am just testing the argument.

**David Thomson:** No enforcement agency would ever take action in the example that you gave. Even in a less extreme example, it would clearly not serve the ends of justice to follow the letter of the law.

**The Convener:** I am content.

**David Roderick:** The defence might try to bring a test purchaser to court, but the point is that the

case might not get to court until several months, or even a year, later. The person who was 16 or 16 and a half at the time of the purchase would be 17 or 17 and a half when the case came to court. That would cause evidential difficulties, although we would take photographs of the test purchaser at the time to overcome such difficulties.

**The Convener:** That is very useful. Your answers have allowed me to think through the issue more.

**Rhoda Grant:** Trading standards would not use somebody who obviously looked over 18 to test purchase. If somebody in the example that the convener gave made a purchase, it is unlikely that a policeman or trading standards officer who was watching would say, "But I know that that person is under 18"; surely they would form the same opinion as the retailer.

**The Convener:** Although an offence might have been committed, in those circumstances a prosecution would not serve the ends of justice. We will test that further. It is worth opening the argument up a bit.

**David Thomson:** I want to clarify a point. There is a difference between coming across that situation in a shop and using a volunteer test purchaser. A volunteer test purchaser is controlled by the national code of guidance, which is scrupulously fair—in my view, it is overfair—therefore we would never use someone who looked older. The test purchasers have to be 18 months under the age limit, so we would not use anyone over 16 and a half when we might take legal proceedings.

**The Convener:** Perhaps you have undermined your argument. I will think about the position.

**Ross Finnie:** The argument was made that the trial comes some way down the line from the purchase. The defence in the bill might take account of a rare circumstance. However, that is not the risk that I have in mind; I am thinking of the large number of defence agents, who are able—as no doubt you were, convener—in exploiting every aspect of the law.

**The Convener:** I was a civil practitioner—I divorced people.

**Ross Finnie:** The court would have before it a witness who looked considerably older, and the defence agent would advance that argument in open court. The second line of defence therefore opens up the possibility that a much larger percentage of people would challenge a prosecution, rather than the narrow percentage that the drafter of the legislation might have had in mind.

**The Convener:** I am moving about on that point, but I will test it further with the minister.

**Ross Finnie:** Do you intend to prosecute the minister?

**The Convener:** I do not—it might be the other way round.

**Helen Eadie:** Sticking with the statutory defence, East Dunbartonshire Council trading standards said in its written response to the committee's call for evidence that it was concerned about the wording of the statutory defence in section 4(2), which states:

"It is a defence to a charge in proceedings against a person ('the accused') under subsection (1) that ... the accused believed the person under the age of 18".

The submission states:

"The use of the word 'believed', in conjunction with 'no reasonable person could have suspected' offers a particularly easy defence for a tobacco retailer to the section 4(1) strict liability offence",

and that that is

"a retrograde step, with the Children and Young Person's (Scotland) Act 1937 previously being amended to remove the word 'apparently' from the offence in relation to the purchaser's age."

The council's trading standards team is, in effect, saying that leaving the bill's wording as it is would cause great problems. What is your reaction to that?

**David Roderick:** We fully agree with that comment from East Dunbartonshire Council trading standards. That issue is part of why local authorities always encourage retailers to adopt a challenge 21 or challenge 25 approach. If retailers adopt only a challenge 18 policy, there is every chance that they will get it wrong, but if they take a challenge 25 approach, they will probably not mistake someone who is 16 and a half for someone who is 25. The retailer needs to seek that positive assurance first.

**Helen Eadie:** That is helpful.

I have another question, which concerns the penalties for the offences. The submission from East Dunbartonshire trading standards states:

"East Dunbartonshire Council Trading Standards do not agree that the penalty for the offence of selling a tobacco product or cigarette papers to a person under the age of 18 should be less than the penalty for offences relating to Registration of their premises.

Trading Standards offences commonly attract a penalty of level 5."

As I understand it, the penalty will be set at level 4. Do you agree with that?

Will you comment on the proposals that came before the Subordinate Legislation Committee yesterday on using regulations to control the levels of the penalties, as opposed to setting those levels in the bill? I can see why the Government is

proposing to use regulations, because over a period of time the penalties would, in effect, decrease, but can you see any flaws in not setting the penalty levels in the bill? We want to ensure that we are doing the right thing. I would certainly like to hear your views on using level 4 penalties as opposed to level 5 penalties.

**David Thomson:** The trading standards community was surprised to see that there was a penalty of £20,000 for non-registration. However, I accept that the fine has been set at that level in order to crack down on the illicit trade. I cannot speak for the judiciary, but I believe it is very unlikely that a sheriff would impose a fine of £20,000 on a legitimate seller who had not registered or had refused to register. It would be open to a sheriff to impose such a fine, but I imagine that the fine of £20,000 has been set because the alternative of a banning order is not available for illicit sellers, and therefore there is the possibility of a very high monetary fine or a custodial sentence. Although there appears to be a disparity, a fine of £2,500 for an underage sale or non-registration, or as a fixed penalty for a minor offence, seems reasonable, while the £20,000 fine simply exists to back up the law with teeth in dealing with illicit sellers.

**The Convener:** For clarification, you said that if sellers do not want to register, they do not have to, but surely they do if they want to keep trading in tobacco products.

**David Thomson:** I am talking about illicit sellers who do not register.

**The Convener:** Sorry, I thought you were talking about the others.

**Helen Eadie:** Is it appropriate to use subordinate legislation to set the penalties, as opposed to using primary legislation?

12:45

**David Thomson:** I must correct myself. You were right, convener—I made the point with reference to legitimate sellers. I was talking about people who simply refuse to register.

**The Convener:** If they do not register, they will not be able to sell. Registration is not discretionary, it is mandatory, if they want to continue trading in tobacco products.

**David Thomson:** If someone took a stand, refused to register but continued to trade, the sanction of a £20,000 fine would be available.

**The Convener:** That is right.

**Helen Eadie:** Would there be any flaw in the committee agreeing to ministers being able to alter through regulation the levels of fines, to match inflation and to address other considerations?

**David Thomson:** I have no view on the issue.

**The Convener:** It is standard for the matter to be dealt with through regulations, so that we do not have to go through a whole bill procedure to change the levels of fines.

**Mary Scanlon:** In its submission, SCOTSS states that it

"would like clarity in the case of tobacco displays in the departure areas of international airports".

Last week, we received confirmation that the visual display ban will apply equally to such areas. Am I right in thinking that you have concerns about whether the ban will cover duty-free sales for people who are travelling outwith the EU? Are you concerned that we are banning visual displays of a product that cannot be consumed in this country?

**The Convener:** I saw the passing the buck that took place between the witnesses.

**David Roderick:** The question was, will the ban apply to displays in airports in areas where people have passed through security? Although most trading standards legislation covers such areas, we do not go there often. We do not normally consider the activities that take place in those areas, apart from bar operations, as medium or high risk.

**Mary Scanlon:** My point is that a product that is bought at duty free by someone who is travelling outwith the EU cannot be consumed in this country. That sets duty-free sales apart from all the other retailers that we are discussing. Does it make such sales different in any way?

**David Roderick:** The wording of the submission suggests that we see a difference, but that was not really the reason for our question. We were seeking clarity on whether the ban would cover sales in duty-free areas.

**The Convener:** Mr Thomson, did you say in passing that you had problems with the definition of "tobacco business"?

**David Thomson:** Yes.

**The Convener:** The bill states that a tobacco business

"means a business involving the sale of tobacco products by retail".

What is your problem with that?

**David Thomson:** The definition is the foundation for our taking action against legitimate and illicit sellers. The use of the words "sale" and "retail" will present some operational difficulties if we want to be seen to be efficient and effective against illicit sellers, simply because "sale" means a concluded transaction. A member of the committee has already said how difficult it will be to enforce the provisions of the bill, as all the

loopholes will be exploited. We are not dealing with people who have all the stuff displayed on trestle-tables—detection was simple in those days, but unfortunately they have gone. Now people secrete tobacco on their person and store it in places such as car parks. We must prove that people are in the tobacco business, which is defined by their having concluded a sale to someone, and that they are a retailer. Both present evidential difficulties. It makes things much simpler if we talk about supply, possession for supply and offer to supply.

**The Convener:** That is a helpful point. I heard you make it in passing, but it goes to the heart of many of the issues that we are discussing. We now have it on the record.

**Michael Matheson:** I am concerned about the potential for trading standards officers in different local authorities to ramp up the way they handle fixed penalties. For example, for a particular offence, one local authority might decide to go straight to a banning order while another might decide only to issue a fixed-penalty notice. What guidance can be issued to assure retailers that a consistent approach is taken by different trading standards departments in different local authority areas?

**Alastair Brown:** There are good examples of the application of fixed-penalty regimes. For example, when the ban on smoking in public places was introduced, the Government issued quite clear guidance that allowed local authorities to apply the measure consistently. To be perfectly honest, I do not think that that will be a problem, as long as local authority officers receive guidance and instruction.

**David Thomson:** The Scottish Government's age-restricted products group, which was mentioned last week by Mrs Cuthbert and on which I sit, has agreed that enforcement officers will be issued with a code of guidance setting out general guidelines on what should be applied across the piece.

**Michael Matheson:** That is helpful. The bill team should have enlightened us on the issue last week.

**Helen Eadie:** Do you have complete jurisdiction over the whole of an airport, ferry terminal or other such area, or is there a distinction between what you might call the civilian side and the duty-free area on the other side of security?

**David Thomson:** I will answer that question, because I was tasked to look into the matter. There is absolutely no problem in that respect. However, one perceived problem in treating the duty-free area—for example, the one at Glasgow airport—differently might arise if there were also a chain of shops in the same area that would

normally sell tobacco but which did not because they had to compete with the duty-free shops. You might, for example, find yourself allowing the duty-free shop to display tobacco products while banning the shops in the regular chain from doing so. In any case, trading standards officers enforce the law in front of and behind the security gate at all such premises.

**The Convener:** Rhoda Grant has a teeny final question.

**Rhoda Grant:** Michael Matheson and I were wondering about cigarette advertising in in-flight magazines. I understand that other laws apply when the plane leaves UK airspace, but what happens when the plane is on the ground? Perhaps that is not such a teeny question.

**The Convener:** That is more to do with magazine advertising than tobacco display gantries.

**Rhoda Grant:** But it is still about displaying tobacco.

**David Thomson:** The old joke was that if the airline was going to short measure you it would do so when the plane was outside UK airspace and out of our jurisdiction. Any planes in UK airspace or sitting on the ground are within our jurisdiction.

**The Convener:** I thank everyone for giving evidence, particularly those who had a long wait. This session has been very helpful.

My script says that we should have a short break now, but I will go straight to item 2.

## Subordinate Legislation

### National Health Service (Appointment of Consultants) (Scotland) Regulations 2009 (SSI 2009/166)

12:54

**The Convener:** The second item is consideration of a negative statutory instrument. These regulations revoke the National Health Service (Appointment of Consultants) (Scotland) Regulations 1993 and replace them with a simplified procedure for appointing consultants in the national health service in Scotland. No comments have been received from members, no motion to annul has been lodged, and when the Subordinate Legislation Committee considered the regulations on 12 May it did not wish to draw any issues to our attention. Are members agreed that we do not wish to make any recommendations on the regulations?

**Members** *indicated agreement.*

## Annual Report

**The Convener:** That concludes today's formal business.

*Meeting closed at 12:55.*

12:54

**The Convener:** The final item is consideration of a draft of the committee's annual report for the parliamentary year 9 May 2008 to 8 May 2009. The draft follows the style of previous annual reports by briefly covering the main aspects of the committee's work over the past 12 months, including our main inquiries, the primary and secondary legislation that we have considered, and other aspects of our work programme such as our annual budget scrutiny, consideration of petitions and equal opportunities issues. The report also notes the number of times that the committee met and the locations of meetings held outside the Parliament.

As members do not appear to have any comments, do we agree to the draft report?

**Members** *indicated agreement.*



Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Wednesday 3 June 2009**

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

##### WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

#### **Blackwell's Bookshop**

**53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222**

**Blackwell's Bookshops:**  
243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

**Blackwell's Scottish Parliament Documentation**  
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

**Telephone orders and inquiries**  
**0131 622 8283 or**  
**0131 622 8258**

**Fax orders**  
**0131 557 8149**

**E-mail orders**  
**business.edinburgh@blackwell.co.uk**

**Subscriptions & Standing Orders**  
**business.edinburgh@blackwell.co.uk**

#### **Scottish Parliament**

**RNID TYPETALK calls welcome on**  
**18001 0131 348 5000**  
**Textphone 0845 270 0152**

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers