

HEALTH AND SPORT COMMITTEE

Wednesday 10 June 2009

Session 3

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HEALTH AND SPORT COMMITTEE

19th 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:

Assistant Chief Constable Andrew Barker (Association of Chief Police Officers in Scotland)

Mary Cuthbert (Scottish Government Chief Medical Officer and Public Health Directorate)

Rosemary Lindsay (Scottish Government Legal Directorate)

Shona Robison (Minister for Public Health and Sport)

Nicola Sturgeon (Cabinet Secretary for Health and Wellbeing)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Seán Wixted

LOCATION

Committee Room 1

Scottish Parliament

Health and Sport Committee

Wednesday 10 June 2009

[THE CONVENER *opened the meeting in private at 09:31*]

10:23

Meeting suspended until 10:27 and continued in public thereafter.

Decision on Taking Business in Private

The Convener (Christine Grahame): Welcome to the 19th meeting of the Health and Sport Committee in 2009. I remind members, witnesses and people in the public gallery to switch off their mobile phones and other electronic equipment. No apologies have been received.

Under item 2 on the agenda, we must decide whether to take in private item 5, which involves consideration of options for our work programme. Do members agree so to do?

Members *indicated agreement.*

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

10:28

The Convener: Our next item of business is an oral evidence-taking session as part of our stage 1 consideration of the Tobacco and Primary Medical Services (Scotland) Bill. This will be the committee's final oral evidence-taking session on the bill. Following its completion, we will consider the oral and written evidence that we have received to date, with a view to publishing our stage 1 report on the bill in mid-September.

We begin today by taking oral evidence from the Association of Chief Police Officers in Scotland on enforcement and penalty issues in relation to the bill. We will also take evidence from the Minister for Public Health and Sport on part 1 of the bill, which deals with tobacco, and from the Deputy First Minister and Cabinet Secretary for Health and Wellbeing on part 2 of the bill, which deals with primary medical services.

I welcome to the committee Assistant Chief Constable Andrew Barker of Fife Constabulary, who represents ACPOS on licensing issues. As the committee has received a written submission from ACPOS, which members have before them, we will move straight to questions.

Michael Matheson (Falkirk West) (SNP): I want to deal with two issues around the restrictions on tobacco sales that are proposed in the bill.

The first issue concerns the consistency of the approach that local authority enforcement officers will take when dealing with breaches of the legislation, if it is implemented, particularly around the sale of tobacco to underage individuals. I am concerned about the fact that different local authorities could take different approaches. Some might decide to go immediately for prosecution of an offence, while others might issue a fixed-penalty notice for a similar offence.

Given that the police regularly issue fixed-penalty notices, it would be helpful to know ACPOS's views on what can be done to try to ensure a more consistent approach by local authority enforcement officers.

10:30

Assistant Chief Constable Andrew Barker (Association of Chief Police Officers in Scotland): There is always a difficulty around the use of discretion when alternative penalties are available for any offence that is committed. Certainly, I would try to ensure consistency, especially in an enforcement phase in which a lot

of the offences that are associated with tobacco could also be associated with alcohol and premises that sell both products. A clear steer in relation to the public health issues and the tie-ins with the alcohol problems that we have in Scotland would be helpful.

I am not sure how, in every instance, a consistent approach can be dictated. Circumstances will differ in each case. If people have discretion in relation to which alternatives they will go for, they will use it. However, I would certainly seek consistency, if at all possible.

Michael Matheson: Would it be helpful if guidance were issued?

Assistant Chief Constable Barker: Guidance on what is expected would be helpful.

Michael Matheson: The second issue that I want to address involves the link to alcohol, which you have already mentioned. Some concerns have been expressed to the committee about proxy purchasing. Obviously, it is an offence for someone over the age of 18 to purchase alcohol and pass it on to someone under the age of 18. However, there are no plans for the bill to apply a similar approach to the purchase of cigarettes. Do you think that, from an enforcement point of view, it would be helpful for the bill to make it a criminal offence for someone who is 18 or over to purchase cigarettes and pass them on to someone who is under 18?

Assistant Chief Constable Barker: You make a valid point. The similarity to the purchase of alcohol is quite significant. With regard to test purchasing, which was introduced by my force and rolled out throughout the country, we are seeing a decrease in failures in test purchases directly from the retailer, but there is a substantial amount of evidence that a problem is emerging in relation to proxy sales. Recently, my force captured on closed-circuit television a clear example of that, involving an individual who was over the age of 18 buying a substantial quantity of alcohol from an off-sales premises and then selling it to youngsters. That case is now being dealt with.

The issue of proxy purchasing is significant and we are trying to deal with it in relation to alcohol, in which connection it is an offence.

Michael Matheson: So you would welcome the proxy purchasing of tobacco becoming an offence as well.

Assistant Chief Constable Barker: Yes.

Michael Matheson: Do you feel that someone under the age of 18 who is found to be in possession of cigarettes and is possibly using them should also be viewed as having committed a criminal offence?

Assistant Chief Constable Barker: That is a more difficult issue. A question was raised about the police taking possession of tobacco that belongs to persons under the age of 18 in the same way that we can take possession of alcohol that belongs to persons under the age of 18. That is probably a way forward.

I am not quite sure whether imposing a penalty on the person—I was going to say “criminalising” them, but that is not quite the right term—is the way forward. Perhaps an education and intervention route would be better at that point, rather than a penalty that might not stop them using tobacco in the future.

The Convener: The committee is interested in amending the bill to cover proxy purchasing. However, there might be an issue about whether that would be within the scope of the bill. We can raise the matter with the minister and also find out for ourselves by seeking legal advice. It might be possible to deal with the matter under the phrase “and for connected purposes” in the long title, but that depends on how far we can stretch the idea of “connected purposes”.

Rhoda Grant (Highlands and Islands) (Lab): If it were not an offence for individuals under the age of 18 to possess tobacco, could it be legally removed from them by a police officer? Surely it would be impossible for someone to remove tobacco from them if it were not illegal for them to have it.

Assistant Chief Constable Barker: I am not quite sure of the full legal position in that respect. Certainly, however, we have the power to remove alcohol from people under the age of 18, and the offence in that regard is the purchasing, not necessarily the possession, of alcohol. There is a parallel there but, as the convener suggested, it might be better to seek legal advice on the matter.

Rhoda Grant: Another issue that has arisen in evidence is about the enforcement of the ban on tobacco displays. The bill says that the ban is to be enforced by local authorities, but some witnesses have suggested that the police should enforce it, because local authorities might not have sufficient manpower or capability, whereas police officers who are out on the beat might be in a better position to do so.

Assistant Chief Constable Barker: I would not want the power to be exclusively a police power. That would be an expansion of the police role. There is an opportunity to work closely with local authorities, trading standards officers and other agencies in relation to the ban, as we already do on other issues. However, I would not welcome the onus being on the police service for the enforcement of the advertising ban.

Rhoda Grant: Will the bill allow police officers to take action against retailers?

Assistant Chief Constable Barker: As the association mentions in its written submission, we would welcome a power for police officers to enter and inspect premises, so that we can work in partnership with other agencies and local authorities. However, the bill provides the opportunity for the police to issue fixed-penalty notices—forgive me, but I cannot recall the exact provision. Our officers are perfectly well versed in issuing fixed penalties—they are used to doing so. There is an opportunity for some work to be done, but I would not like the onus to be exclusively on the police.

Ross Finnie (West of Scotland) (LD): I want to press you on that, as I am interested in the point that Rhoda Grant raises. What is the thinking behind your approach? The rewriting of the provisions on the control of tobacco will elevate the nature of the offence and, I suppose, the importance that the Government attaches to tobacco retailing will also be elevated, just as for many years we have given a higher profile to the sale of alcohol. If the aim is the denormalisation of tobacco products, why are you unhappy about having a more prominent role?

Assistant Chief Constable Barker: It is not so much that we are unhappy; the issue is about other agencies' capacity. The drive that you suggest would involve an expansion of the police role. The local authority will carry out the licensing and regulation. I do not dispute that the police should have a role in enforcement, but it should not be the lead role.

Ross Finnie: Local authorities license public houses.

Assistant Chief Constable Barker: I do not disagree with that—well, the licensing authority does it.

Ross Finnie: But you enforce that system.

Assistant Chief Constable Barker: Yes, although that will also be done by licensing standards officers, on behalf of the local authority, under the new arrangements on enforcing licensing provisions. There is an opportunity for a dual role. Much of the licensing enforcement under the Licensing (Scotland) Act 2005, which will begin in September, will fall to licensing standards officers, while the police will enforce disorder and the licensing provisions that are connected with that.

The Convener: That is an interesting point.

Mary Scanlon (Highlands and Islands) (Con): In relation to fixed penalties, the enforcement officer can be a council officer or a constable. In your evidence, you are critical of the proposed

national register and state that you would prefer a licensing scheme similar to that for alcohol under the Civic Government (Scotland) Act 1982. You state that that would allow for "local accountability" and

"added flexibility in respect of enforcement."

Why would a licensing scheme be better than a register? The implication in your submission is that a register would limit police enforcement. Will you explain that?

Assistant Chief Constable Barker: My understanding of the point in the association's submission is that, under the 1982 act, systems and procedures are already in place—and have been for many years—for regulating several types of premises, whether they are used for entertainment, the sale of goods, catering or whatever.

The association wonders why the introduction of a separate, stand-alone register is necessary when schemes that would allow for licensing in a similar way, at local level, where there is liaison between the local police and the local regulatory function, are already well established. I refer to the liquor licensing system and the other schemes that are in place under the 1982 act.

Mary Scanlon: I understand what is in place at present. However, the association states that, if there were no register but a licensing system,

"This would not only allow for greater local accountability, but may well offer added flexibility in respect of enforcement."

You say clearly that a licensing regime would be far superior to the proposed register in that respect. I am not sure that I understand the point.

Assistant Chief Constable Barker: I go back to the point that I made to Mr Finnie about local licensing standards officers. The liaisons, relationships and systems that allow for local flexibility are already in place. There is already joint working between local licensing standards officers and local police officers.

Mary Scanlon: Would the relationships and systems that you describe not be equally effective if a register were used? Is that not sufficient?

Assistant Chief Constable Barker: It is difficult to say at the moment, without knowing the shape and availability of the register and the processes that will be in place for it. I do not dispute the suggestion that relationships could be built in due course. We are saying that a system that allows flexibility and local accountability is already in place. The question is, why do we need another one?

Mary Scanlon: You can enforce a fixed-penalty notice; the police can also ensure that someone is

struck off. That is not very different from what you are proposing. I do not quite understand why you think that the register is not quite as good as a licensing regime.

Assistant Chief Constable Barker: I am not saying that. I am asking only whether there is duplication in having another system run in tandem with systems that are already in place to regulate similar activities.

The Convener: In the electronic age, local authorities could access the data on a national register. If the police, trading standards officers or licensing standards officers have local intelligence about particular traders, that could easily be accessed.

Assistant Chief Constable Barker: Yes, if the system were appropriate—I cannot argue against that.

Ross Finnie: Let us assume that you are liaising with the relevant trading standards officers. You said that the change to the licensing legislation was helpful. Do you have any concerns about the fact that the powers of entry and other matters that are addressed in the bill from section 21 onwards relate solely to trading standards or council employees?

Assistant Chief Constable Barker: In its submission, the association makes the point that it would welcome the police being granted similar powers, for exactly the reasons that you have articulated. Joint working with local authorities and council officers is strong. Giving the police parity in relation to the powers that we are discussing would be a helpful step forward.

The Convener: That is a useful point. We will put it to the minister.

Michael Matheson: I would like to go back to a point that was made when we were discussing whether it should be made a criminal offence for someone under the age of 18 to be found in possession of tobacco. I agree that we should not go down that road, as I do not think that it would be helpful for us to criminalise youngsters at that age. However, it appears that if the police find someone under the age of 18 in possession of tobacco, they may not have the power to confiscate it from them. Would it be helpful for the police to have the power to confiscate tobacco from youngsters, although not necessarily to take legal action against them?

Assistant Chief Constable Barker: That would reflect the position on alcohol. Parity in that respect would be helpful.

10:45

Ian McKee (Lothians) (SNP): I would be grateful if you could clarify the differences between local authority licensing and the proposed national register. As I understand it, if there is a national register, a large supermarket chain can register all its outlets in one go. It seems pretty obvious that any activity in a supermarket chain that needed to be licensed would have to be registered with the local authorities, which would be a lot more complex and expensive.

Under the present licensing regime, are supermarkets able to license in one stroke all their outlets in a particular local authority area, or does each store have to apply for a licence? I am not quite certain what the present situation is with regard to changes involving public houses, for example.

Assistant Chief Constable Barker: Under the Licensing (Scotland) Act 2005 and the proposals in the Criminal Justice and Licensing (Scotland) Bill, individual premises have to apply for licences. Supermarkets cannot do it in one stroke across the country.

Ian McKee: So instead of making one application to a national register a supermarket chain would have to make perhaps 500 applications.

Assistant Chief Constable Barker: That is the provision in the 2005 act. In fact, the proposed licensing legislation seeks to expand that provision for licences for premises and the individuals who operate these stores.

Ian McKee: So it is a way of keeping a much closer eye on the activities of individual outlets, but at greater expense to the industry.

Assistant Chief Constable Barker: I do not know about the expense, but it will certainly involve more work than simply registering everything at one stroke, and it reflects the current position on alcohol licensing.

The Convener: Section 15, “Council access to register”, says:

“The Scottish Ministers must make available to councils the information contained in the Register”,

which I think addresses the localisation argument.

I thank Andrew Barker for his evidence and patience. Before we move on to our second panel, I remind the committee that we have received a letter from the Government dated 3 June that responds to some of the issues that members have raised. I know that everyone has seen it, because you do your homework.

I welcome to the meeting Shona Robison, Minister for Public Health and Sport; Rosemary Lindsay from the Scottish Government’s legal

directorates; and Mary Cuthbert from the Scottish Government chief medical officer and public health directorate. As I said, the Government's written submission is included in members' papers, but I give the minister the chance to make a short opening statement before we move to questions.

The Minister for Public Health and Sport (Shona Robison): I welcome this opportunity to discuss the principle behind and some of the detail in the Tobacco and Primary Medical Services (Scotland) Bill.

I do not think that I need to remind members of the health risks that are associated with tobacco smoking; suffice to say they are well recognised and indisputable. Significant progress has, of course, been made in recent years to reduce the cultural acceptability of smoking, including through the bold and decisive action that was taken by this Parliament.

Nevertheless, some 15,000 children and young people start to smoke each year in Scotland and the potential impact on their health is frightening. A child who starts smoking at 15 or younger is three times more likely to die of cancer as a result than someone who starts smoking in their mid-20s.

We will of course continue to help smokers quit, but I believe that the emphasis needs to be shifted towards preventing children and young people from starting in the first place. It is within the context of protecting future generations from the devastating effects of smoking that the bill's measures should be viewed. They form part of the comprehensive and co-ordinated programme of measures set out in the smoking prevention action plan "Scotland's Future is Smoke-free", which is aimed at protecting children and young people and dissuading them from smoking.

More specifically, the bill's provisions are aimed at reducing the attractiveness and accessibility of tobacco by banning the display of cigarettes and other tobacco products at points of sale; and generally updating existing tobacco sales law to ban the sale of cigarettes from vending machines, introduce a new registration scheme for tobacco retailers and create a new system of fixed-penalty notices for breaches of the law.

Point-of-sale advertising—undoubtedly, that is what displays are—is a powerful marketing tool, so it is totally inappropriate for such a uniquely dangerous product as cigarettes, along with other tobacco products, to be promoted in that way. Similarly, I see no place in a modern Scotland for cigarette vending machines—we would not allow any other dangerous product to be sold in that way.

I emphasise that we have listened, and indeed are listening carefully, to the views that have been expressed during our own soundings on the bill

and during the Health and Sport Committee's evidence sessions. While I am clear that the bill's provisions are basically sound, I remain open-minded about any suggestions that might strengthen the bill at stage 2. I look forward to continuing discussion and dialogue with the committee as the bill progresses. I am happy to take questions.

The Convener: Thank you, minister.

Michael Matheson: I want to pick up on a couple of points that we discussed with the witness from ACPOS around the issue of proxy purchasing. It is currently an offence for someone who is 18 or over to purchase alcohol for someone under 18, but the bill does not take a similar approach to the purchase of tobacco. It would be interesting to hear whether the Government thinks that the bill could address the proxy purchasing of tobacco, given that ACPOS has said that test purchasing of alcohol appears to have gone fairly well but that proxy purchasing continues to be a problem. I think that proxy purchasing of tobacco could be a problem, too.

Secondly, I am with ACPOS in not wanting to prosecute young people under 18 who are found to be in possession of cigarettes. However, can you clarify whether the police have the power to confiscate cigarettes from young people? If the police do not have that power, does the Government think that it may be worth giving it to them, in line with the power that they have to confiscate alcohol?

Shona Robison: It goes without saying that it remains difficult to gather evidence around the proxy purchasing of alcohol. I think that the same would apply to the proxy purchasing of tobacco, if we included such a provision in the bill. Having said that, I followed the debate on proxy purchasing with interest and I am happy to consider amending the bill to include a provision on proxy purchasing—subject, of course, to the parliamentary authorities agreeing that such a provision would be within the scope of the bill, which is tightly drawn. I think that proxy purchasing would be regarded as being on the periphery of the bill's scope, so more work would be required on that.

I was interested to hear the ACPOS representative say that proxy purchasing is an increasing problem. We would certainly want to consider the evidence that ACPOS has gathered on that through the work on test purchasing. However, I remain open-minded about whether to include proxy purchasing in the bill, although we must consider whether it fits within the bill's scope. If we went down that road, we should be under no illusion that gathering evidence on the proxy purchasing of tobacco would still be a big

challenge—as is gathering evidence on the proxy purchasing of alcohol.

On the issue of prosecuting under-18s, I do not think that we would ever take lightly the step of criminalising young people, because that would be a serious step to take. In any event, we have to ask whether such a step would reduce or stop consumption. There is also the question whether that step would be within the bill's scope, but that is probably less problematic than the question about proxy purchasing in that regard.

It may be that we, or the committee, will feel that there should be more consultation with young people and youth organisations. There has not really been enough consultation on the specific issue of criminalising young people, because that is not part of the bill. A serious step such as has been suggested would require far more discussion.

You asked about the power to confiscate. The law in that regard is quite old and relates to people under the age of 16; the position did not change when the legal purchasing age rose to 18. The law also refers to the power to confiscate of park wardens in uniform, which gives members an idea of how old it is. Any attempts to update the law would be subject to the European convention on human rights, which the previous legislation was not. The question would arise whether confiscating tobacco products from someone under the age of 18 was ECHR compliant. That would not be straightforward. Any change would be a big step, and more consultation would be required.

The Convener: Whatever route the minister takes, there would be time for the committee to take evidence, because I am advised that the deadline for stage 1 is 25 September and that stage 2 will not begin until the beginning of October. We could also take evidence at stage 2 on any amendments, if that were necessary. There is always the option of taking more evidence. That option is open to us and to the minister.

Michael Matheson: I want to ask about the way in which local authorities might enforce any breach of the rules relating to the sale of tobacco. Different local authorities could take different approaches. That point has been raised by a number of witnesses, and there is a growing view that guidance would be helpful. We have to ensure that local authorities are, generally speaking, being more consistent—although I fully accept that guidance cannot cover every specific circumstance.

Is the Government minded to introduce into the bill some form of guidance on the enforcement provisions? Who will the Government engage with in determining what will be in the guidance? I

suspect that the people who are responsible for enforcing any measures will have clear views on what the guidance should contain. They will be keen to be involved in the process.

Shona Robison: ACPOS has made the point that circumstances will differ between cases, so flexibility and judgment will be required. Guidance is appropriate, and it will come from the enforcement group that Mary Cuthbert chairs.

Mary Cuthbert (Scottish Government Chief Medical Officer and Public Health Directorate):

This point was raised at the previous committee meeting, but I did not want to come out and say straightaway that, yes, we would agree to enforcement protocols. However, we have an enforcement group that considers all restricted products. The group comprises representatives of Scottish Government, ACPOS, trading standards, the Crown Office, retailers, the licensed trade—everybody who has an interest in the enforcement of laws in this area.

In the past, we have drawn up protocols on a number of issues, including test purchasing. It was the enforcement group that oversaw the tobacco test purchasing pilots, which led to a change in the law in relation to test purchasing. It also oversaw the alcohol test purchasing pilot that took place in Fife. That pilot was mentioned earlier.

The group is ideally placed to consider all the issues and speak to all the stakeholders. Obviously, we can pull other people into the discussions as necessary. However, all the retail organisations are represented.

We have had a certain amount of success. For example, we have guidance on our intranet on the approaches to test purchasing. However, the enforcement officer will always have to exercise discretion in individual circumstances. I am sure that we can agree broad parameters on how to enforce the law. We did that for the smoking ban.

11:00

Ross Finnie: I do not disagree with the minister's opening remarks about the objective of trying to reduce the number of young people who start to smoke. I am really quite opposed to the whole thing, but my prejudice does not obviate the need for evidence to support the proposed measures. I think I heard you say that tobacco displays are a powerful marketing tool, but the most prominent thing in the illuminated arrays of a few dozen packets of cigarettes is the Government health warning.

The committee has heard people on both sides of the argument cite various published sources of evidence, but when we pressed them, the evidence proved to be inconclusive. If someone

wants to quote studies from Canada—the Saskatchewan example—they will do that, but if it does not suit their case, they do not. That is not satisfactory.

From the Government's point of view, what is the solid and sound evidential base for arguing that displays, the most prominent feature of which is the Government health warning, are a powerful marketing tool and that they encourage people spontaneously to purchase cigarettes?

Shona Robison: I could refer you to the report "Point of Sale Display of Tobacco Products", which is a powerful read, and other work by Gerard Hastings, who is an expert in the area.

For me, it comes down to something more fundamental. There are two issues. First, if point-of-sale displays do not matter, why does the tobacco industry find it important to have them? The fact that they have such displays makes me think that they are important to the industry.

Secondly, we should consider children's views. I have seen some interesting comments from 13-year-olds about point-of-sale displays, such as:

"In some shops the tabs are just out on display and the kids look at them and think, 'I want that.'"

Other comments included:

"Cigarettes on the wall and they are next to sweets",

"When you are little you are attracted to bright colours and shiny things",

and

"Out of sight, out of mind."

Those comments from 13-year-olds—there are many more—show how they see tobacco displays.

Part of the bill's thrust is to reduce the attractiveness of cigarettes and try to minimise the likelihood that children and young people will start to smoke in the first place. Children are exposed to mixed messages. They get the message from schools and, we hope, from parents that cigarette smoking is dangerous and bad for them, but lit cigarette displays have pride of place in every shop they walk into. Many children will wonder why, if it is so dangerous, shops sell the product in such a powerful and open way.

Ross Finnie said that the health messages are on display. I have a sample here, although I do not know whether members will be able to see it—it is always dangerous to hold up props at committee. In it, all I can see is the tops of packets, and below that, the prices obscure the health message. From a distance, one can see only the attractive gold designs. A lot of effort and money goes in to the design of packets. Why? I contend that it is because point-of-sale displays are a powerful tool. They are the only marketing and advertising tool

that remains to the tobacco companies because the others have been removed, so displays are important to them.

On Ross Finnie's question about the evidence base, as with the ban on smoking in enclosed public places, the evidence base is being gathered as countries make groundbreaking efforts to reduce cigarette smoking. We are now gathering real evidence about the achievements of the ban on smoking in enclosed public spaces; in five or 10 years, we will be doing the same with regard to displays.

Ross Finnie: Thank you for that. I am glad that you did not use your prop. I confess that I have disappointed a number of tobacco retailers in recent weeks, as I have been joining queues merely to observe. Unfortunately, if we do that sort of thing we become interested in what we can and cannot see. I have found myself at the front of the queue and have been asked which brand I want—and I have had no intention of making a purchase. I have been causing more trouble than I am worth.

The Convener: You can see how seriously we take our jobs—we are an investigative committee, with members out and about, at the locus.

Mary Scanlon: I am glad that Ross Finnie has raised that point. Like him, my party absolutely agrees on the health risks that are associated with tobacco and is fully committed, but not just to wanting young people to stop smoking. We also want them to stop starting smoking, and we want the general population to reduce the level of smoking. We are fully aware of the risks, which goes without saying.

Like Ross Finnie, however, I have been struggling when it comes to the question of an evidential base. I have been doing a fair amount of work on the matter. I have listened carefully to the minister's answers, but I have still not seen that evidential base. In New Zealand, for example, where there is no retail display ban, smoking rates have decreased significantly. If the proposals work, let us know and we will support them. I think that many other measures work as effectively, if not more effectively, and we do have an evidential base for them.

There is evidence on the matter from the Scottish Grocers Federation and various other organisations. I will also cite Saskatchewan: the truth is that rates of smoking for 15 to 19-year-olds fell faster in the rest of Canada, without a ban on displays, than they did in Saskatchewan, where such a ban was imposed.

I am seriously struggling to support the measure. As I have said, I want people to stop smoking, but I am not convinced about the proposed measure's effectiveness. I have not seen, read or heard any evidence that supports

the idea that a ban on point-of-sale displays will stop people smoking.

My friend and colleague Ross Finnie has described how he has been clandestinely lurking around shops. Obesity is a huge problem, so should we say in that case that chocolate can kill and ban it from being presented in glossy wrappers? Do we say that alcohol kills? Those are Scotland's biggest medical problems. There is a serious point here about setting a precedent to ban the display of a product without an evidential base to say that doing so works.

Shona Robison: Mary Scanlon mentioned New Zealand: I was interested to read the *Official Report* of your meeting of 27 May, when Elspeth Lee of Cancer Research UK pointed out that

"Some new, unpublished data from New Zealand, looking at 25,000 14 to 15-year-olds, show that young people who see point-of-sale displays more than three times a week are three times more likely to try smoking than those who see such displays less than once a week."—[*Official Report, Health and Sport Committee, 27 May 2009; c 2005.*]

To go back to Ross Finnie's point, I accept that evidence can be produced on both sides. Those who do not want a ban on displays will produce certain evidence to prove their case, while those who want such a ban will produce a different set of evidence. The debate will go back and forth. For me, there is something more fundamental. I am speaking partly as the Minister for Public Health, but also as a mother. When I take my child into a shop, and the most prominent thing on display is lit up packets of cigarettes, what message does that send to my child about the product? At the same time, I am trying to tell her that it is a dangerous product. The messages are mixed. There is a message that it is a dangerous product, but children will ask why cigarette packets are displayed in lights.

Therefore, I contend that the evidence for banning displays exists. I accept that those who do not want to ban them can similarly produce evidence to the contrary but, for me, it is about the fact that point-of-sale displays are important to the tobacco industry because they are its last remaining advertising. For me, that is the most compelling point; we should remove that last advertising loophole.

Mary Scanlon: I will move on from contention about who has the evidence and who has not to a fact. In February this year, the New Zealand Government stated that its reason for not implementing any ban was that the New Zealand House of Representatives Health Select Committee had

"reported that evidence could not directly link the banning of displays with decreasing smoking rates."

New Zealand has scoured the world and found no evidence for a ban but is, in order to reduce smoking rates, considering other measures that we would support. It has decided that a ban on point-of-sale advertising is not one of them because it is not effective.

Shona Robison: The missing piece of information there is that New Zealand had a change of Government and, therefore, a change of policy. An incoming Government that did not want to introduce a ban may well construct an argument for why it does not want to pursue the policy and would be absolutely entitled to that.

I agree with Mary Scanlon that other measures need to be taken to address cigarette smoking. That is why we are considering how to get the message across through education. It is also why we are considering smoking cessation and why we backed the ban on smoking in enclosed public places. I would not try to argue that a ban on displays is the only measure that we could ever take to reduce cigarette smoking among young people. Of course there are other things we could do, should do and are doing. However, a ban is an important tool for trying to reduce the attractiveness of cigarettes to young people.

Mary Scanlon: I will ask a question that Japan Tobacco International, I think, raised. I would like to get it out of the way, and we agreed that we would put it to the minister. The company expressed concern about a ban on displays of cigarettes impinging on regulation of the sale of goods, which is reserved to Westminster. I assume that the Government has checked it all out and that a ban is within devolved competence. Is that correct?

Shona Robison: Absolutely. The law officers have considered it closely and we are 100 per cent certain that there is no issue with our having competence on the matter.

Mary Scanlon: I simply wanted that on the record.

The Convener: I may be wrong, but is not the final arbiter the Presiding Officer? He certifies a bill's legislative competence before it can be introduced.

Shona Robison: Absolutely.

Mary Scanlon: We also heard evidence about a radio-controlled device for vending machines in pubs and clubs. If we trust the person behind the bar to sell a drink to an over-18-year-old, cannot we assume that they would exercise the same trust or judgment in providing a token or operating a device to allow a customer to get cigarettes? Would not that be acceptable for vending machines? It would have the in-built protection of the bar staff's judgment.

Shona Robison: What is missing from that is whether the bar staff and licensed trade would want to take on that responsibility. There is a big question about that and it is something that the Department of Health may have to consider. The Scottish Licensed Trade Association has told me—how should I describe it—that it does not consider vending machines to be an important part of the trade. They are marginal to its operation and there is a genuine issue in respect of shifting responsibility to bar staff who will be extremely busy doing other things.

11:15

For me, the fundamental question is whether tobacco is an appropriate product to sell in a vending machine. We would not sell other age-restricted dangerous products in vending machines, so why do we sell cigarettes in that way? Although there might be technical solutions, should one want to go down that route, for me it all comes back to the fundamental question whether it is right to sell cigarettes in that way. The Government's view is that it is not.

Ian McKee: Section 1(2) of the bill states:

"A person does not commit an offence ... if the display—

(a) is in or fixed to the outside of the premises of a specialist tobacconist".

It could be argued that if the display is fixed to the outside of the tobacconist, you are advertising to people who are not using a specialist tobacconist. That just seems to be a strange glitch in what you are trying to do.

Shona Robison: I read some of the discussion around section 1. I want further discussion about that with specialist tobacconists. Ian McKee's point was well made. The section probably does not feel like it is within the spirit of what the bill is trying to achieve.

Mary Cuthbert: Absolutely. As I said when I gave evidence earlier, we must have more detailed discussion about what will be in subordinate legislation. However, changing the provision that Ian McKee mentioned would require a change in the primary legislation. We have certainly taken that point on board.

The Convener: What is the position in respect of the ban on tobacco advertising? There must already be restrictions on what specialist tobacconists can and cannot put on the window or outside the shop.

Rosemary Lindsay (Scottish Government Legal Directorate): Those provisions are lifted from existing advertising legislation, so there must be a comparator. I do not know the detail of what specialist tobacconists can and cannot put outside their shops.

The Convener: I would like to know that, too. I would like to know whether tobacconists can have a flappy sign or whatever.

Shona Robison: We will get back to you.

Mary Cuthbert: There are restrictions and there are regulations, but I cannot remember the detail, off the top of my head.

Ian McKee: My next question is on section 8, which is on registration. I can understand the desire for a cheap and easy way of registering premises. However, the point was made in evidence that it seems to be possible for a "person", which could be a big supermarket, to apply for registration for multiple outlets all at once, even though several of their outlets might have a history of falling foul of the law. All they would do is get rid of those outlets or change the address. The same person can stay on the register for all their other outlets. It seems that there is no way of ensuring that a person who applies for registration is behaving in a reasonable way, given that there might be multiple breaches of the law in their individual outlets. Should section 8 be tightened up in some way, so that the person applying has a deal more responsibility, rather than just being able to discard an outlet if it fails to meet requirements?

Shona Robison: We had a long, hard discussion about the best way forward, the best scheme and the best system. After a long discussion with retailers—small businesses in particular—we felt that the registration scheme ticked all the right boxes in terms of having a tool for trading standards to use to ensure that those who are registered to sell tobacco products can, if they breach the law, be stopped and lose their right to sell tobacco products. Trading standards officers are telling us that that is absolutely what they need. A chain of stores could make one approach, but all the stores and outlets would have to be listed as separate entities and their addresses would have to be visible. The law would be applied to each store, and if they breached it they would lose their right to sell tobacco products.

The registration scheme is important: we have not had such a tool before. The introduction of the penalty of losing the right to sell tobacco products is a fast and easy way of dealing with the problem, and it is a good way of addressing the illicit trade, because there are big penalties for unregistered people who are found to be selling tobacco products. We are not talking about buttons: there will be pretty stiff penalties, such as a £20,000 fine and six months in jail—which trading standards officers have welcomed—for not being registered while selling tobacco products, or for being an illicit trader. Simplicity is sometimes a good thing. I am convinced that the provisions in the bill are the best way to achieve our desired ends.

Ian McKee: Under section 8, could a person—perhaps a supermarket chain—that applies on behalf of multiple outlets, lose the right to register the other outlets, if several of the chain were to commit the same breach? That would be a powerful tool to ensure that the person who applies for registration checks that all their outlets are keeping within the law.

Mary Cuthbert: Under the bill—Rosemary Lindsay will correct me if I am wrong—the person and the premises would be committing the offence and would be taken to task. You are referring to the legal “person”—Tesco, Asda or whatever—committing an offence in several premises. Under the act—sorry, the bill; I am being presumptuous—there would have to be three offences in a single set of premises, as opposed to in another set of premises that the person happened to operate, if that makes sense.

Ian McKee: I appreciate that. It just struck me that it would be a good idea to have a sanction against the legal person who applies for registration if they were legally responsible for multiple breaches. You may or may not wish to take up that point.

Shona Robison: We can certainly give it further thought, but we would not want to lose the principle of simplicity from the registration system. We would be cautious about putting in place anything that would turn the scheme into something bureaucratic, difficult and time consuming rather than simple. We believe that the most important thing is to give trading standards a tool. However, we will reflect on whether there is a mechanism to address the issue of a chain of stores in which premises fall foul of the law one by one. We will explore whether we can do something about those stores as an entity.

Ian McKee: Thank you.

The Convener: That is an interesting point. Under section 12(3), it will be discretionary on sheriffs to make banning orders. To follow Ian McKee’s line of argument, there would be room for the sheriff to apply a collective penalty if the pattern was that premises within a large multinational chain, or within a chain of six shops, were being in some way negligent: it would be obvious that something was wrong with the management.

Rosemary Lindsay: As the bill stands, there is no scope for the sheriff to make such a decision.

The Convener: I know that.

Rosemary Lindsay: Sheriffs can make an order that bans sale of tobacco only at premises that are specified in the order.

I am sorry, convener. Your question was whether section 12 could be modified to give the sheriff—

The Convener: No. I wondered whether a section could be added to cover proprietors who had registered several premises in which there was a pattern of breaches. Again, such provision would be subject to what the management knew—they could be doing it deliberately, knowing that there was a gap in the law.

Shona Robison: We will certainly consider whether sheriffs could take such things into account in judgments, having considered how the legislation was operating across the range of premises. We can decide whether that is something that sheriffs could have discretion over, but we will need to get back to you on that.

The Convener: Where is the definition of “premises” in the bill? Is there a definition?

Rosemary Lindsay: It is in section 27.

The Convener: Section 27 defines “premises” as

“any place and any vehicle, vessel, or moveable structure”.

That could include a fleet of ice cream vans or something like that. Each van would be defined as “premises” and would come into the ambit of the bill. That is an important point.

Shona Robison: Okay. We will reflect on that.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): If a pattern were established that suggested that the multi-centre owner was failing to train staff properly, the sheriff should be entitled to say that that owner is not a fit person to be registered to sell tobacco on any premises. Perhaps there could be something in the bill to say that such a pattern—

Shona Robison: —could trigger something. Okay. We will consider that.

Ian McKee: Can I ask another question, convener?

The Convener: Of course. You are doing so well.

Ian McKee: I will move on to collection of evidence of breaches. According to evidence, it is expensive to make test purchases, but you state that the register will be cost neutral. Surely there will be a large increase in costs to local authorities, which will have to police the register.

Shona Robison: It was very much with that in mind that I announced in February £4.5 million of additional new money over three years for enhanced enforcement or for trading standards. We have agreed outcomes with local authorities regarding the numbers involved. Mary Cuthbert

can go into that in detail, if you want. It was important to establish that basis, because the matter is important. Mary may want to say a bit about the outcomes that we have agreed.

Mary Cuthbert: The outcomes are various. I do not know them off the top of my head, but I will send them to the committee. They vary from increases in test purchasing activity to the provision of support to businesses so that they can comply with the law, which we feel is important. It is all about business regulation as opposed to coming in heavy-handed with enforcement. There are also some targets for work with HM Revenue and Customs on illicit products. We can send the committee details of all those things—that is no problem at all.

Ian McKee: Thank you. My final question is on section 19(1) on enforcement, which states:

“A council must—

(a) consider, at least once in every period of 12 months”.

Do you think that “consider” is a slightly weak word in that context? Councils could consider and then decide not to do anything because of financial pressures, or whatever. Should we be a bit more definitive?

Shona Robison: Do you mean in terms of the one-year ban?

Dr Simpson: No—it is about councils preparing a plan.

Ian McKee: The bill requires councils only to “consider” a programme of enforcement. They could consider it and decide that they are not going to do it.

Shona Robison: I think that the guidance will probably be important in determining where there will be room for manoeuvre. We want to send out a strong message that we want consistency in application of the bill. Mary Cuthbert will correct me if I am wrong, but I think that section 19 was written in that way in order to leave some discretion.

Mary Cuthbert: Yes. Councils already have a duty regarding enforcement: section 19 is a straight lift from existing legislation. Every year, we carry out a survey to find out what they have been doing in relation to enforcement activity. Most councils have a programme.

Ian McKee: Why can section 19 not just use the word “must”?

Dr Simpson: Section 19 could say that councils “must” have a programme without saying what that programme should be.

Ian McKee: Legally, councils could consider the matter and then do nothing.

11:30

The Convener: Let us leave that matter. It is obvious that an issue has been raised that the minister can consider.

Shona Robison: Yes. I will have a look at it.

The Convener: Perhaps I should say that the minister must consider it.

Shona Robison: I assure members that I will do so.

Rhoda Grant: I want to return to a couple of issues that have been raised previously. The first is to do with vending machines. You have talked about the licensed trade not being keen on having vending machines around and being responsible for who uses them. I think that it was the representative of BII Scotland who said in evidence that banning vending machines would impact on the licensed trade because, in remote rural areas especially, people go into pubs to buy packets of cigarettes if they are not available in local shops or if those shops are shut. I put it to her that cigarettes could still be sold behind the counter, but she had concerns from a space point of view and because temptation would be put in the way of staff. Also, in small, family-run pubs, children who run round and get packets of crisps from behind the bar would also have access to cigarettes so, rather than restricting access to cigarettes, banning vending machines might increase young people’s access to them. She said that the measure would therefore be counterproductive.

Shona Robison: That is certainly not what Paul Waterson of the Scottish Licensed Trade Association said. He conducted a survey of his members on the matter and found that they are ambivalent about vending machines. As I said earlier, vending machines do not earn them any money.

From my understanding of what has been proposed south of the border, there is concern about the increased responsibility that will arise for bar staff from whatever the mechanism turns out to be being in their hands. The direction of travel seems to be that there will be quite a complicated system that will have to be policed. I am not sure how much consultation there has been with the licensed trade down south on that, but I would think that there are issues to do with that responsibility that have to be explored. Our discussions have been focused on the Scottish Licensed Trade Association, which is ambivalent about vending machines in premises.

Rhoda Grant: We have also received evidence on the number of jobs that are involved in keeping vending machines up to date. There is a worry. If the policy does not really impact on the supply of

cigarettes—if anything, it could make cigarettes more available if pub owners decide to sell them behind the bar—there will be a disproportionate kickback on employment. That is a concern.

Shona Robison: I reiterate that the thrust of the bill is to reduce the opportunities that young people have to get access to cigarettes. That is the reason for banning vending machines. At the moment, one young person in 10 gets access to cigarettes through vending machines. Cigarettes may be sold to adults from behind bars and things could be done in a different way, but the thrust of the bill is not to prevent adults from purchasing cigarettes; rather, we want to prevent and reduce the opportunities that children and young people have to purchase them. At the moment, many children and young people purchase them through vending machines.

Of course job losses would be a concern, and no one would take that matter lightly. Members have probably seen the correspondence about the number of jobs involved. We are still trying to establish with companies exactly what the numbers are. Quite a lot of the companies are subsidiaries and some are based in England. It has been quite a challenge to get accurate information from them. We are in the process of doing that and are making some progress. We hope to be in a position to issue the revised financial memorandum as quickly as possible.

We are now talking to the National Association of Cigarette Machine Operators, with which we had some difficulty making contact, as you are aware. In fact, officials have a meeting with the organisation tomorrow. Part of the discussion is about issues such as lead-in times. We want to ensure that there is time for vending machine companies to investigate how they can bolster the other, non-tobacco-related parts of their business. Other arms of Government might be able to help with diversification into alternative areas. We want to give those companies time to consider the decisions that we propose to make.

Although we do not take the matter lightly, it comes back to whether we think that it is appropriate to sell cigarette products out of machines, which one in 10 young people who smoke manages to access. We think that it is not. We want to work with the companies concerned to minimise the impact of our proposal, but we think that banning the sale of cigarettes from vending machines is an important public health measure.

Rhoda Grant: I have a question on a different area, which relates to lead-in times. The Scottish Grocers Federation expressed concern about the cost to its members of changing their premises because of the ban on displays of tobacco, which will involve an expensive refit of their counter area. It is important to them that if the bill becomes law,

they have sufficient lead-in time. Given that they will all have to invest substantial amounts of money in changing the layout of their shops, is consideration being given to a longer lead-in time and to providing financial assistance to help them during such difficult economic times for small businesses?

Shona Robison: There are two important points to make. First, in our discussions with retailers, which have been extremely productive, we have already differentiated the lead-in times. Whereas large retailers such as supermarkets will have to implement a display ban by 2011, small retailers will not have to do so until 2013, which gives them a four-year lead-in time. By giving them more time, we will make it possible for the many small premises that have a rolling refit programme to build any modifications that are necessary under the display ban into their natural programme of work.

Secondly, I want to minimise how prescriptive we are about what premises will have to do under the display ban. Clearly, the display of cigarettes will not be allowed when the bill is passed, so it will not be acceptable simply to put up a curtain. However, we want to avoid saying that shop owners will have to keep cigarettes in a cabinet that is Xft by Xft and which is made of such-and-such a material. As long as cigarettes are not displayed, I want to leave some flexibility in how that is achieved.

In Canada, a system was devised that I think cost each retailer about £500 that allowed people to comply with the legislation, so there are ways of minimising the costs. In our discussions with retailers, we are not going down the route that the Department of Health is going down, which is about specifying particular materials and so on. We do not think that we have to do that. As long as the bill's objective of banning displays of tobacco is achieved, we must allow flexibility in how that is done.

The Convener: Business opportunities might be created. Job losses have been mentioned, but there might be job opportunities.

Shona Robison: That is what happened in Canada.

The Convener: Black clouds have silver linings.

Dr Simpson: Going back to the evidence on displays, I think that the New Zealand health committee reported before the two studies by Paynter were published; in fact, I think that the second one has not even been published yet. The Paynter and Edwards study "The impact of tobacco promotion at the point of sale", which was published in 2009, indicated that there was a significantly greater uptake of smoking where point-of-sale advertising was widely seen. The

same authors did the study of 25,000 young people in New Zealand to which the minister referred, which showed that the young people were three times more likely to smoke if they were heavily exposed to point-of-sale advertising.

We can debate the evidence on point-of-sale advertising all day. I am convinced that it has an effect, but perhaps I start from a different point than others do, in that I would regard point-of-sale displays as marketing and advertising. Is the Government aware of an increase in the size of displays over the past few years since the Tobacco Advertising and Promotion Act 2002 was commenced? If the displays have not increased in size, or have become smaller, it may be that we are wrong, and that it is not an advertising issue. However, my understanding is that many companies are rebranding for fairly spurious reasons—that is to say, not because the products are different sizes or have menthol tips and so on, but so that they have a bigger display area. Do you have any evidence on that?

Shona Robison: I am not so sure about the size of displays. However, some of the products that I have been looking at illustrate the innovation—shall we say—of the industry in using the packet to maximum effect. There are cigarette packets that look like iPods; others open up and have bits inside—the design is well thought through in terms of the market that the industry is trying to reach. I suppose that that is the industry's response to an ever-decreasing opportunity for advertising. It now focuses on the packet's design, look and colour, as it is aware that that will be visible on the display gantry. Getting figures from the industry is quite difficult, as you can imagine, but it would be interesting to know how much money has been spent on innovation and design over the past 10 years or so. We have not been privy to that information, but I suspect that it would be quite a sizeable amount.

Dr Simpson: I agree. It will be like everything relating to this industry. When we finally get a freedom of information system going, we will find that the information supporting the case for not smoking will get greater and greater, just as it has in America.

I have another question on displays. As you say, the industry is one of the best at marketing its products in very restrictive circumstances. As one avenue is closed down, another opens. The new avenue for the industry is online, with texting and games. A whole industry is developing in the area of associated activities that market the brand. It is extremely clever and sophisticated, and, of course, because it is young people who tend to be better at texting, there is a whole new area there. It may be an issue that is entirely reserved, but I wonder whether the Government has considered

that issue, either alone or jointly with the Department of Health. I have concerns about the marketing methods that are being developed, such as text messaging.

Shona Robison: Mary, have there been any discussions with the Department of Health?

Mary Cuthbert: We have not had specific discussions with the Department of Health, but there are already regulations under the Tobacco Advertising and Promotion Act 2002 that restrict advertising on websites. We have regular contact with the Department of Health, and that is an issue that I can raise with it. We are constantly looking—

The Convener: Sorry, but I would like to move on. That was a good point, but it is not within the ambit of the debate, and we are running short of time.

Dr Simpson: Well, it is a question of advertising displays.

Shona Robison: We will certainly look into the issue.

Dr Simpson: It would be good if the Government came back to us on that.

The Convener: I say to Richard Simpson that my predictive texting has had some strange results.

11:45

Dr Simpson: My other question is on an issue about which I have serious concerns. Specifically, section 12(3)(a) states that a person may be banned from selling tobacco at a premises if

“within the period of 2 years ending on the date the application was made, the person has been the subject of 3 or more relevant enforcement actions”.

As we have heard, test purchasing is very expensive to do, even if it is concentrated on areas where there has already been failure to follow the law. I understand the concept of three strikes and you are out, but the provision in section 12(3)(a) seems to me a very mild application of that concept. Presumably, a person's first offence would drop after three years. Someone could offend every year from now until kingdom come, but they would not be banned.

The Convener: To be precise, a person would have to be caught offending.

Dr Simpson: Yes, in effect they would have to be caught offending more than once a year.

Shona Robison: We thought that it would be a proportionate response to issue a banning order if someone committed three offences in two years. We are still considering what the fixed-penalty notice should be set at. We maybe need to consider whether there should be an escalating

fixed-penalty system that takes cognisance of previous breaches, so that the judgment whether it would be worth taking the hit would come into play for the second and third offence. Clearly, if someone got to the third offence, I would imagine that their mind would be very much on the next consequence, which would be a ban and losing their right to sell tobacco. However, we might be able to do something around the scope of the fixed-penalty notice that would send out a clear message that getting such a notice was not just an occupational hazard and that it had financial consequences. We can give that further consideration.

Dr Simpson: That would certainly help.

The Convener: An escalating system would be satisfactory.

Helen Eadie (Dunfermline East) (Lab): I have two questions, the first of which is a short, sharp one. Could the minister look at an aspect of the Centre for Tobacco Control Research report of August 2008, "Point of Sale Display of Tobacco Products", which is included in the Cancer Research UK submission, specifically the reference on page 15 to "a loophole" in Australian tobacco legislation? The question is not for her to answer right now, but I ask her to look at the last sentence of paragraph 4 on page 15, which refers to Victoria in Australia, because I would be worried if there were similar loopholes in the bill.

Secondly, could the minister comment on the suggestion that we have heard this morning that only a limited number of countries have gone down the route of banning tobacco displays? The fact is that, according to the World Health Organization, about 140 countries—I think—have signed up to the ban on the display of tobacco products. It is worth while putting that on the record because it has been suggested that the ban is limited to places such as Saskatchewan in Canada and New Zealand. In fact, the WHO has promoted such work on a much bigger basis than has been suggested by some committee colleagues at this meeting and at other meetings of the Health and Sport Committee.

Shona Robison: That is an important point. There are some comparisons here with the ban on smoking in public spaces. In that case, there was a domino effect in that countries looked to see what other countries did and how the ban worked in practice before testing the water themselves. The same is happening with banning point-of-sale displays of tobacco products. As more countries do it, more will follow, because it builds up the evidence base and they can see the effect of a ban. That is probably how many public health policies end up being rolled out. It is an important point to put on the record.

Helen Eadie: I must amend my earlier comment that 140 countries have signed up to the ban: it is actually 168 countries, according to "Point of Sale Display of Tobacco Products". The report also states:

"According to the WHO's latest figures, 20 countries have a comprehensive advertising policy in place and 45 have moderate policies".

I have one final point. In internal UK tobacco industry documents that were seen by the House of Commons Select Committee on Health, all five main advertising companies admitted that they targeted young people. They were confessing in private, although it is now public and on the record. They were saying that they were targeting young people and that it would harm them enormously.

Shona Robison: That is an important—

The Convener: Thank you for that evidence. I think that the minister will agree that it is important.

Shona Robison: Yes.

Michael Matheson: We have received evidence from the Tobacco Retailers Alliance and now from Imperial Tobacco. They allege that the introduction of a ban on point-of-sale displays could put people out of business. The Tobacco Retailers Alliance mentions shops closing in Canada as a result of a ban, and Imperial Tobacco say that

"7% of all retail businesses in Canada have closed during the last 9 months of 2008."

I suspect that the economic downturn has a large part to play in that; I am not sure why they believe that the problems are caused by the ban on point-of-sale displays. What evidence has the Government considered of the impact that a ban could have on businesses?

Secondly, Imperial Tobacco, Japan Tobacco International and all the folk who are keen to sell as many fags as possible have said that this type of ban would encourage people to get into the illicit selling of tobacco. Do you agree, or is it just another form of scaremongering?

Shona Robison: We know of no international evidence that links point-of-sale display bans with businesses closing.

We have gone out of our way to talk to small retailers about how we can minimise the impact on their businesses of the things that they will have to do to their shop fittings, because we know that everyone is in the middle of an economic recession. There will be a long lead-in time for these measures, but we acknowledge the challenges that small businesses are facing.

The bill is about reducing the attractiveness of cigarettes to young people and preventing them from starting smoking in the first place. It is not

aimed at stopping adults going to the places where they always buy their cigarettes. I hope that some adults will stop smoking, and we have programmes to encourage them to stop, but that is not the primary aim of the bill. In other countries, it appears that, if adults have the habit of buying their cigarettes from a particular shop, that habit continues. The only difference is that the products are no longer displayed.

Of course, the more young people who do not start smoking, the more economic impact there will be. That is a concern to the tobacco trade, which needs a new generation of smokers, but our aim is to stop that. I hope that we can reduce the amount of cigarette smoking among the next generation of adults.

The bill is aimed at preventing young people from smoking, not at stopping adults going into their corner shop and buying cigarettes. The evidence is that adults will continue with their purchasing habits.

Michael Matheson mentioned the illicit trade. Even though we do not like the fact, we have to accept that the selling of cigarettes is a reality of life. We want people to stop smoking, but we have to accept that many will continue. However, we are talking about legitimate traders, and they have made the point to us that there are people who sell cigarettes out of the back of a van or down the pub but do not take any of the responsibilities or make any of the payments that legitimate traders have to. The traders asked us what we were going to do about that.

We thought that that was an important question to which we had to respond. The work that we have done with HMRC on tackling the illicit trade, with the stiff penalties of six months in jail and a £20,000 fine, will make people think twice about hawking their wares down on the street corner. If caught, such people are unlikely to be on the register to sell—I would be surprised if someone who was selling illicit tobacco tried to register—so action can be taken against them from either perspective. The bill gives HMRC and trading standards officers the tools that they have been seeking for a long time to clamp down on the illicit trade. They will use those tools to good effect.

The Convener: We are 55 seconds over time, which is really good—we whipped along. I thank the committee for that and thank the minister and her team for their evidence. I suspend the meeting for five minutes.

11:56

Meeting suspended.

12:02

On resuming—

The Convener: Our final panel today consists of Nicola Sturgeon MSP, the Deputy First Minister and Cabinet Secretary for Health and Wellbeing; John Davidson from the Scottish Government's general medical services branch; Kathleen Preston from the Scottish Government legal directorate; and Dr Jonathan Pryce from the Scottish Government primary and community care directorate. Good afternoon and welcome. I invite the Deputy First Minister to make a short opening statement; we will then move straight to questions.

The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon): Thank you for giving me the opportunity to give evidence to the committee on part 2 of the Tobacco and Primary Medical Services (Scotland) Bill. I have been following carefully the committee's consideration of the bill and I know that members will want to raise particular issues with me.

I want to be clear at the outset about the aim and objective of the provisions. The intention is to ensure that any holder of a primary medical services contract, as the first—and sometimes the only—point of contact between patients and the national health service, is fully committed to the national health service. Under the bill, we expect contract holders to demonstrate that commitment by being involved in either the clinical care of patients or the running of services on a day-to-day basis. That will put patients' interests at the heart of general practitioner service provision, where they are at the moment.

The model of provision for which the bill provides already operates effectively in Scotland. However, members will be aware that, under existing legislation, health boards can make contractual arrangements for PMS services with "any person". That is a wide-ranging power—too wide ranging, I believe. A power that potentially opens up GP contracts to those who do not have the interests of patients as their main focus does not sit well with our vision of a publicly owned, publicly delivered, mutual NHS.

We propose to limit the contractual routes that are open to health boards to provide GP services by removing the power to contract with "any person". Instead, health boards will be able to enter into contractual arrangements through a GMS contract, through an agreement under section 17C of the National Health Service (Scotland) Act 1978 or through an arrangement under section 2C of the 1978 act, but only with lists of named eligible persons. Those lists have been amended and clarified in the bill. Of course, boards will retain the power directly to employ

GPs. It is important to stress that the changes will apply to any new contractual arrangements that boards enter into. The legislation will not be retrospective, so existing contracts will not be affected.

We propose a new involvement condition for parties to a PMS contract, to reflect the commitment to patient care that I mentioned. The detail of the condition will be set out in regulations, but it is likely to require an average time commitment of a day a week. Again, that will not be retrospective and will therefore not impact on existing contract holders.

I am happy to answer any questions that the committee has.

Ian McKee: If the cabinet secretary has been following the committee's proceedings, it will probably not surprise her that I want to raise a question about section 30 in part 2, which is about persons with whom agreements on primary medical services can be made. I accept your stated aim that people who run health services should have a direct interest in health services, but I am concerned that the bill is still slightly loose on that.

In evidence to the committee on 13 May, Dr Pryce agreed with me that it would be possible for health workers who worked one day a week in a practice also to run many other practices throughout Scotland, by virtue of the fact that they worked just one day a week in that particular practice. That situation would seem to be extremely commercial, although it would perhaps not be as commercial as an outside body coming in. Somebody could have 40 practices, but have no involvement at all in 39 of them. Should we tighten up the bill so that people would have to work in a specific practice, rather than being able to take on other practices?

Nicola Sturgeon: To make a general comment, we will reflect on all the points that the committee raises in the course of its consideration. Therefore, we will reflect further on the issue that Ian McKee raises. However, I will try to explain the rationale behind the present provision. We want to ensure that people who are party to primary care contracts have an interest and involvement in, and therefore knowledge of, the running of primary GP services and, by extension, knowledge of and an interest in the broader issues of the NHS. We will reflect on your comments, but I do not believe that that necessarily means that there must be that kind of involvement in each and every practice for which somebody has a contract—the interest and involvement could be demonstrated over the piece. That is the thinking behind the present provision, which I believe is acceptable, although obviously I will listen to the points that have been

raised and, as you would expect, we will reflect further on the issue before stage 2.

Ian McKee: I will form another question that puts the matter differently. Do you accept that the needs of patients in primary care can vary extremely from one part of the country to another, and therefore although someone who is a director of an organisation that provides primary medical care services might be well aware of the needs and demands of people in the area in which they work one day a week, that does not mean that, for example, an accountancy-minded GP or a nurse working in a leafy suburb has much knowledge of the demands of working in a deprived area of Glasgow or Edinburgh? It would be a great advantage if the person of whom we demand experience had experience of the type of practice that is involved.

Nicola Sturgeon: I understand the point. I explained why we have the present provisions and I said that we will reflect on your points.

One big concern that drove our legislative proposals was the fact that, under the existing law, parties to contracts for primary medical services can have no interest whatever in the health aspect—they can treat the activity simply as a business. I am not impugning business motives, but that means that the motives do not relate primarily to health. The bill deals with that concern by ensuring that anybody who is party to such a contract has day-to-day involvement in the health service and in the delivery of health services. However, I understand your point and I do not reject it out of hand—I will consider it further.

Helen Eadie: The Royal College of Nursing has made representations to the committee about section 17C agreements. The RCN is especially concerned that the policy memorandum says that a proposal on such agreements was withdrawn because it

“generated strong disagreement from the sector, although one organisation was in favour. The proposal was also not extensively trailed prior to the consultation, and this generated some criticism. It has been decided that there is no compelling evidence to support pursuing this option.”

The RCN's analysis of the consultation responses showed that 28 of the 56 respondents had no objection to the proposal, five respondents explicitly supported it and six others were non-committal—they outlined their concerns in a constructive way that described the issues that they would like to be addressed. The objections came from several medical bodies whose arguments the RCN challenges.

The committee sympathises with the RCN's concerns, because we have heard evidence that some parts of Scotland are hard to doctor—that is very much along the lines of Ian McKee's

comments. I should declare an interest, as I was elected as a Labour and Co-operative Party member. I am concerned that in pursuing mutuality, we can interpret it in a wide variety of ways. For example, a community in one part of Scotland might want to establish a community business to ensure that service delivery there takes a mutual approach. I am concerned that, if the bill is not amended, it will preclude such developments.

I was taken by the evidence from Professor Allyson Pollock, Dr Elke Viebrock—I do not know whether I pronounced that right—and David Price of the centre for international public health policy. They said that the bill

“fails to prevent commercial contracting by shareholder companies”

and raised several concerns. In 2008, you said that the NHS would be kept

“firmly in the public sector ... delivered in partnership with the public.”

A community business would achieve exactly that, yet your proposals could exclude that option.

Further, the bill adopts the English model and retains the 2004 market reforms that create a primary care market that is open to competition with commercial companies. That seems to go against what you and I probably want.

Nicola Sturgeon: The bill could not be further away from the English model of privatisation and competition if we tried, but I will return to that in a second.

The point about nurses is important and we have thought long and hard about it. I am sure that members understand the situation, but I will explain it to make clear the current position and what the position would be if the bill were enacted as it stands.

I will share briefly our thinking behind not extending the provision for nurses. The bill will not change the status quo for nurses. Nurses are eligible to hold contracts in their own right, under section 17C arrangements. That said, we are aware of no nurses in Scotland holding contracts in their own right. Likewise, at the moment, a nurse is able to hold a GMS contract in partnership with a GP; indeed, that will remain the case if the bill is enacted. It is therefore important to make it clear that the bill will not change the status quo with regard to nurses.

12:15

In effect, we consulted on extending the status quo and opening up the possibility of nurses being the sole holders of GMS contracts, but we decided not to go down that road. Of course, that decision

is not meant to diminish in any way, shape or form the important and valuable role that I believe nurses play—and will increasingly play—in the provision of primary care services. We decided not to extend the eligibility for holding GMS contracts to nurses on their own for a variety of reasons. For example, section 17C contracts can be quite selective in the services that are provided, whereas holders of GMS contracts are expected to provide the panoply of GP services. As a result, we considered that it was still appropriate to stipulate that a doctor should be a party to a GMS contract.

The other reasons for our decision are more practical, but nevertheless are not inconsiderable. If we allowed nurses to be the sole holders of GMS contracts, we would have to bring them within the framework of GP contract negotiations and, I suppose, make them subject to the same regulatory requirements as GPs. We decided not to take that approach, but I stress that the passing of the bill as it stands will not change nurses' current position one iota.

As for Helen Eadie's other questions, I have read the centre for international public health policy's submission. I bow to no one in my commitment to a publicly owned and publicly delivered health service. In addition, although the bill will allow partnerships and shareholder companies to contract for GP services, the requirement that the doctors and, in the case of 17C agreements, health professionals who hold those contracts have a day-to-day involvement in the health service—subject, of course, to the points made by Ian McKee—represents a significant change from the current position where, in theory, any company without an interest in health services can contract for services purely for profit. Such an improvement will help to cement the commitment to a mutual public health service.

As for retaining the English model, I do not think that we can be any clearer about the direction that we want to take with regard to the health service. It is not my job to pass comment or judgment on how other people choose to organise their health service, but I have no doubt in my mind that our way is the right way for Scottish circumstances. This bill contributes to the notion of an NHS that is publicly owned and publicly delivered. At the moment, GPs are independent contractors, but the current model of GP provision sits well within the public model of the NHS.

Helen Eadie: On section 17C agreements, the RCN has suggested that we

“consider an amendment that would allow the change to be made, via regulation, in the future rather than having to reopen legislation”.

In other words, the delivery of health care could change quite a lot—

Nicola Sturgeon: I take the point, but I think that you are referring to GMS contracts rather than section 17C contracts.

Helen Eadie: Yes, and that we might be able to deal with them without reopening the legislation.

Nicola Sturgeon: In the spirit of genuinely listening to committee members' comments, I will reflect on the issue. However, it is only fair to be frank with you: I am not persuaded that at this stage we should allow nurses to be sole holders of GMS contracts. That said, the point about being able to change things in future without opening up primary legislation merits further reflection.

Helen Eadie: My appeal, on behalf of the RCN, is just that we bear in mind the potential scenario in Scotland in which the stipulation requiring a medical practitioner is not achievable. Given that nursing staff nowadays can be highly qualified graduates, in a situation like that, a community co-operative business could be established in a hard-to-doctor area. I would not want that potential to be lost.

Nicola Sturgeon: I take that point. I agree to reflect on the suggestion that we leave scope to change the position in future without primary legislation, but I am not minded to make such a change at the moment.

As we consider all these matters of legitimate discussion, I ask for the committee's co-operation to ensure that we are all clear that the bill will not restrict nurses' current right to hold section 17C contracts.

Helen Eadie: The bill will restrict that right, because nurses will need a GP practitioner as part of the arrangement.

Nicola Sturgeon: That is not the case under a section 17C contract.

The Convener: I think that the cabinet secretary has explained the distinction—which I have now understood, after many weeks—between a section 17C contract and a GMS contract.

Dr Simpson: I have a supplementary question.

The Convener: Following special pleading from Helen Eadie's colleague—he said that he does not have a main question, so he will not get to ask one now—I will let Richard Simpson ask a supplementary.

Dr Simpson: I just want to press the cabinet secretary on the community issue, which is a different situation. For example, a small Highland community for which the health board could not set up a GMS, PMS or section 17C contract might decide that as it could not get the practice that it wanted, it would form a community co-operative to contract for the practice, but such an arrangement would be precluded by the bill. If none of the staff

was a medical practitioner, there would be a problem.

I simply press the point that Helen Eadie has made. Such a possibility is not highly likely, but as no relevant commercial companies currently operate in Scotland, we can discuss the matter only hypothetically. Is the cabinet secretary prepared to reconsider the possibility of amendments at stage 2 to allow the primary legislation to provide for a community to act in such a way on a co-operative basis? The suggestion perhaps goes back to the old pre-NHS Welsh model, under which groups of miners got together to employ doctors in areas where they could not get medical staff.

The Convener: Before the cabinet secretary answers that, let me say that she is far younger than some committee members. I cannot remember the pre-NHS Welsh miners' model, but there you are.

Nicola Sturgeon: I dare say that I am far younger than all committee members, even Michael Matheson.

Michael Matheson: I think that you are older.

The Convener: Gallantry is not dead.

Ian McKee: But it is going fast.

Nicola Sturgeon: Mr Matheson and I might need to fight over that one outwith the committee. I am not sure that he is accurate on that point.

To answer Richard Simpson's question, I will not commit myself one way or another on the matter today, but I give the commitment that we will consider the issue again. I remind members that nothing in the bill will prevent health boards from taking on salaried GPs, as is possible at the moment. That gives boards some flexibility in areas where—rarely—they cannot get people to take on a contract. That flexibility will continue to be available. However, I will reflect on Richard Simpson's point.

Dr Simpson: Convener, I should have said—

The Convener: Sorry, do you have another supplementary to your supplementary question?

Dr Simpson: No, I just want to say that I should have declared that I am a member of the Co-operative Party, although I am not a Labour and Co-operative member.

The Convener: I do not know the distinction, but I am sure that there is one.

Mary Scanlon: When the Primary Medical Services (Scotland) Bill was passed in 2003, it was supported by the SNP, the Conservatives, Labour and the Liberal Democrats. The only party

to oppose the bill was the Scottish Socialist Party. At the time, Shona Robison stated:

“I do not subscribe to the conspiracy theory that the SSP promotes that somehow the entire bill has been engineered to open the door to a mass influx of the private sector into the health service ... The paranoia exhibited ... is staggering even by SSP standards.”—[*Official Report*, 18 December 2003; c 4390.]

Given that the Primary Medical Services (Scotland) Act 2004 has not opened the door to a mass influx of the private sector—or even, as Richard Simpson said, to the influx of one commercial provider—why was the legislation right then but not right now?

The Convener: We are aware of the influx of one commercial provider, but it has been a long day.

Mary Scanlon: Helen Eadie has pointed me to First Responders in Kinloch Rannoch.

Helen Eadie: That is the first one.

Mary Scanlon: I do not think that First Responders holds a GMS contract.

Helen Eadie: It is the first—

The Convener: Excuse me. I know that the two members to my left have a delightful relationship, but they should speak through the chair.

I ask the cabinet secretary to respond to the question.

Nicola Sturgeon: I should probably start by congratulating Mary Scanlon on her research. Given the bill that I am promoting today, her quote from Shona Robison just shows that we are a listening Government that learns from experience and is prepared to be flexible in its response. [*Laughter.*]

Mary Scanlon: There is no experience.

Nicola Sturgeon: In all seriousness, Mary Scanlon is right to some extent, in that we have not had an influx of the type that some people might have expected. Nevertheless, the possibility remains on the statute book that commercial companies could become involved, and there has been interest from such companies. I have listened to representations from a range of interests and decided that it is right, given our broader objectives and vision for the NHS, to close the loophole. I respect the fact that others take a different view, but I believe that we are doing the right thing, and I hope that the majority of the committee share that view.

Mary Scanlon: Point made, but I am not convinced.

I move on to my second question. A representative from NHS Lanarkshire gave us an excellent explanation of the Scottish, UK and

European contractual tendering processes. Ultimately, NHS Lanarkshire did not go for a commercial company, but he was advised that it was perfectly all right under the European contractual tendering process for a private company to hold a GMS contract. Does the bill not contradict that, and does it not therefore lack competence in the context of the European contractual process?

Nicola Sturgeon: As Mary Scanlon knows, if the Government did not believe that the bill was competent in all respects, we would not be sitting here discussing it. The bill does not change the tendering or procurement process, and, to return to Helen Eadie’s point, nor does it ban companies from being involved. The bill makes it clear what conditions companies must satisfy in order to be eligible to hold one of the contracts, and it is non-discriminatory in that it applies those conditions across the board. For those reasons, I am confident, as you would expect me to be, that the provisions are entirely competent and within European law.

Mary Scanlon: So you could have a private commercial company—

Nicola Sturgeon: Mary Scanlon should read the terms of the bill. The point relates to the discussion that I had with Ian McKee. The shareholders of the company would have to be among the list of eligible people. That rules out commercial companies that do not have shareholders who are medical practitioners or, in some cases, other health professionals, and companies that do not have day-to-day involvement in the running of the health service of the type that we have discussed.

Mary Scanlon: My third question is about a point that Community Pharmacy Scotland made. In its written submission, it stated:

“There is no guarantee that the existing practice model will survive for another 10 ... years”.

Various others also made that point. It also stated:

“One option would be to allow other health care contractors to bid to provide ... primary medical services”.

It has serious reservations about the proposals. Do you agree that the proposals are restrictive and do not allow flexibility in hard-to-doctor areas?

Nicola Sturgeon: No. I have already mentioned that health boards’ flexibility to employ salaried GPs will remain.

I take a different view from Mary Scanlon. I have confidence in the current model of general practice. Like all parts of the health service, it requires to be flexible, to respond, to continue to keep up to date and to innovate, but I am confident that it will do that. The proposals are right, because they exclude commercialisation in

the sense of companies that have a profit motive over a health motive, but they retain flexibility around health boards' ability to employ salaried GPs. The bill strikes the right balance.

Mary Scanlon: Are you saying that there is no profit motive whatsoever in the existing contracts?

Nicola Sturgeon: No, of course not. I have already said that GPs are independent contractors who run businesses, but they are also medical professionals whose motive is the best interests of patients and the communities in which they live. There is a difference between a company that is made up of health professionals, who have a health motive, and a big company that is not composed of health professionals. I am not impugning business motives, and I do not want anybody to think that I am, but that kind of approach is not appropriate for what is often rightly described as the gateway to our national health service.

12:30

Mary Scanlon: But—

The Convener: I would like to move on, Mary. I can see that some members wish to leave for other meetings. Before they go, however, I would like them to sit and hear Rhoda Grant's question, which will be the last one to the minister. It might be suitable for those members who wish to leave to do so after that, if I may say so. Thank you, gentlemen. I am referring to my medical experts, who are sitting to my right.

Rhoda Grant: This follows on from Mary Scanlon's questioning. I am quite perturbed about this matter. I hear what you say, cabinet secretary, about wanting people to be fully committed to the NHS, and I totally agree with that, but I do not see why one private is good and the other private is bad. I do not understand why one private contractor's motivation is different from another's. If you are talking about a commitment to the NHS, surely you should be using the bill to ensure that all GPs are directly employed by the NHS rather than by private contractors. I cannot quite square the circle that you are making. It is either one or the other—you cannot have a grey area, with the argument that, just because someone has trained as a doctor, they have a different motivation from somebody who is looking to provide a service in another way.

Nicola Sturgeon: We might just have to agree to differ on that. It is perfectly clear to me that a company that is made up of health professionals who are involved in the provision of health care to the communities that they serve is in a different position from one whose shareholders do not have that same direct involvement and who are simply interested in the share price of their company—

although I am not saying that that is wrong. There is a material and significant difference there. I would not necessarily expect a Tory to get that, but I probably would expect somebody from your political background to get it.

Rhoda Grant: I think that you are missing my point. If a GP was really committed to the NHS, they would be directly employed by the NHS, and not providing a private service, which is what they do now.

Nicola Sturgeon: If Rhoda Grant wants to put on record a statement that the majority of our GPs, who are independent contractors, are not fully committed to the NHS, I will leave her to do so, but it is certainly not a view that I agree with.

Rhoda Grant: That is not what I am saying.

The Convener: Finish the point that you were making.

Rhoda Grant: My point is that there seems to be a grey area, with some people being more private than others. If we are really talking about having no private provision within the NHS, surely all GPs should be directly employed by it. There seems to be an area in the middle where you are saying, "It's okay," because of people's training.

Nicola Sturgeon: With respect—and I am sorry if I did not listen to your question properly—I have an issue with, and the bill is trying to deal with, the commercialisation of the health service. GPs are independent contractors, and they are businesses.

Rhoda Grant: Commercial contractors.

Nicola Sturgeon: Nevertheless, they are health professionals—they run businesses, but their primary motive is the delivery of health care. There is a material difference between that and big commercial companies that are made up of shareholders and that do not have that health experience and responsibility for the delivery of health care. As I said, we might just have to agree to differ on the matter, but I believe that there is a material difference, and it is a point that the British Medical Association, notably, agrees with.

The Convener: I am going to stop there. I am sorry that things got a bit hot and bothered at the end. I see the agitation of our two ex-medics, who wish to leave. We will stop now, so that we can do so at an appropriate place for the minister. I thank the minister and her team very much for their evidence.

Subordinate Legislation

National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009 (SSI 2009/183)

12:33

The Convener: We now consider a negative Scottish statutory instrument. The purpose of the regulations is to make provision for serial prescriptions, which will form the basis of the new chronic medication service. The regulations consolidate the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995 (SI 1995/414) and regulate the terms according to which pharmaceutical services are provided under the National Health Service (Scotland) Act 1978.

No comments have been received from members, and no motion to annul has been lodged. The Subordinate Legislation Committee

“reports to the lead committee and the Parliament that this instrument contains a number of drafting errors ... but notes and welcomes the Scottish Government’s commitment to bring forward a corrective instrument to address these errors prior to these regulations coming into force.”

Are we agreed that the committee does not wish to make any recommendations on the regulations?

Members *indicated agreement.*

The Convener: We now move on to item 5, on consideration of options for our work programme, which will be brief. As agreed, this item will be taken in private, and I therefore close the public part of the meeting.

12:35

Meeting continued in private until 12:39.

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