

HEALTH COMMITTEE

Tuesday 11 May 2004
(*Afternoon*)

Session 2

£5.00

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HEALTH COMMITTEE 13th Meeting 2004, Session 2

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Mr David Davidson (North East Scotland) (Con)

*Helen Eadie (Dunfermline East) (Lab)

*Kate Maclean (Dundee West) (Lab)

*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)

*Shona Robison (Dundee East) (SNP)

Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*Dr Jean Turner (Strathkelvin and Bearsden) (Ind)

COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)

Paul Martin (Glasgow Springburn) (Lab)

Mrs Nanette Milne (North East Scotland) (Con)

Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED :

Elaine Smith (Coatbridge and Chryston) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Malcolm Chisholm (Minister for Health and Community Care)

Rosemary Dodds (National Childbirth Trust)

Leah Granat (The Breastfeeding Network)

Norman Macleod (Scottish Police Federation)

Deputy Chief Constable David Mellor (Association of Chief Police Officers in Scotland)

Colin Wilkinson (Scottish Licensed Trade Association)

CLERK TO THE COMMITTEE

Jennifer Smart

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERK

Roz Wheeler

LOCATION

The Hub

Scottish Parliament

Health Committee

Tuesday 11 May 2004

(Afternoon)

[THE CONVENER *opened the meeting at 14:07*]

Items in Private

The Convener (Christine Grahame): Welcome to the 13th meeting in 2004 of the Health Committee. Members should ensure that mobile phones and pagers are turned off.

Agenda item 1 is consideration of whether to take in private agenda items 5 and 6. Item 5 is consideration of a draft report on the budget process. I suggest that the committee consider the item in private because the report is in draft form and requires to be finalised before comments are passed to the Finance Committee and the Executive. Consideration of the item in private will also allow our adviser to contribute to proceedings. Do members agree to take item 5 in private?

Members indicated agreement.

The Convener: Agenda item 6 is the work force planning inquiry. The item is to allow for finalisation of details of the public engagement process—it is a bit of housekeeping. Do members agree to take item 6 in private?

Members indicated agreement.

The Convener: When we have finalised matters, information will be in the public domain, as will our response to the budget.

Subordinate Legislation

Health Professions (Operating Department Practitioners and Miscellaneous Amendments) Order 2004 (draft)

14:08

The Convener: Agenda item 2 is subordinate legislation. I welcome the Minister for Health and Community Care, who is accompanied by Robert Marr and Scott Miller from the Executive.

Paper HC/S2/04/13/1 has been circulated to members. The committee is asked to consider the draft Health Professions (Operating Department Practitioners and Miscellaneous Amendments) Order 2004.

No comments from members have been received in relation to the instrument in advance of the meeting, but if any member wants clarification on anything, they can ask for that now and Executive representatives can respond. However, we are not in debate.

Mr David Davidson (North East Scotland) (Con): Earlier, I raised a point with the convener relating to a procedural matter. What options do we have today? The Subordinate Legislation Committee has alleged that the instrument is not correctly written.

The Convener: We can move to a vote. The minister will move the motion and members will be able to vote on it, whether we debate it or not. *[Interruption.]*

I take it that you are not referring to the Scottish statutory instrument that we are considering under the affirmative procedure, on which the Subordinate Legislation Committee made no comments. The instruments that we will consider under the negative procedure are those on which the Subordinate Legislation Committee made adverse comments. I take it that your point is not about the affirmative instrument.

Mr Davidson: No, it is not.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I want to ask a question about the affirmative instrument—the one to do with the health care and associated professions.

The Convener: I am sorry. Which SSI are you talking about?

Dr Turner: The draft Health Professions (Operating Department Practitioners and Miscellaneous Amendments) Order 2004. Is that the right one?

The Convener: Yes.

Dr Turner: Under the heading “Issue” on page 1, paragraph 1 of the full regulatory impact assessment says:

“Health professionals known as Operating Department Practitioners ... have a direct impact on patient care as they carry out tasks such as giving anaesthetic drugs, closing wounds and other invasive procedures.”

I would like the minister to elaborate on what that means those people would be doing.

The Convener: Can you point us to the right page?

Dr Turner: I quoted from page 1 of the full regulatory impact assessment; the relevant part is in paragraph 1.

The Convener: I am sorry—I am being very dim. What page of the papers is that on?

Dr Turner: The full regulatory impact assessment is on the sixth page of the papers that we have.

The Convener: Oh yes, I see it. It is on another sheet.

Dr Turner: I wanted the minister to provide clarification of what he thought the operating department practitioners would be doing.

The Convener: Will I let Shona Robison ask her question, too, or do you want to answer Dr Turner’s question now?

The Minister for Health and Community Care (Malcolm Chisholm): Am I supposed to move the motion?

The Convener: We will come to that, minister, but we are having some questions first, for clarification. I suspect that there will not be a problem; we just want an explanation.

Malcolm Chisholm: My speech will explain some what Dr Turner has asked about. It would seem to be more sensible for me to move the motion first and then to have questions.

The Convener: We will put Dr Turner’s question to the side, as something that can be answered in the speech.

Shona Robison (Dundee East) (SNP): My comments and questions are about the negative instruments.

The Convener: Our consideration of those will follow. We are just dealing with the affirmative instrument at the moment.

Does any member wish to debate the instrument?

Members: No.

The Convener: I invite the minister to move motion S2M-1232 and to address the question that has been asked.

Malcolm Chisholm: The Health Professions (Operating Department Practitioners and Miscellaneous Amendments) Order 2004 will introduce statutory regulations for operating department practitioners. It will strengthen public protection for patients who undergo operations by setting and maintaining in law standards of practice, training and conduct for that group of health care staff. It will bring ODPs in line with their medical and nursing colleagues who work in the same area.

All the United Kingdom health departments take seriously the need to introduce statutory regulation for operating department practitioners, whose work—as with the work of all health care professionals—has a direct impact on patient care. Through the order, we propose to extend the current system of regulation of health professionals to operating department practitioners by bringing them under the Health Professions Council.

The order was the subject of three months’ extensive consultation—from August 2003 to November 2003—and I am glad to say that it attracted broad agreement. A small number of changes have been made along the way.

Just before I move the motion, I point out that I have two pages of material that defines the role of operating department practitioners. I do not know whether I can read out all of that in response to Jean Turner’s question; I think that the role of operating department practitioners is fairly well established.

The Convener: If you sent that information to me, I could pass it to committee members for clarification.

Motion moved,

That the Health Committee recommends that the draft Health Professions (Operating Department Practitioners and Miscellaneous Amendments) Order 2004 be approved.—[*Malcolm Chisholm.*]

The Convener: I said that no one wanted a debate, so it would be improper to open up the motion to debate. The minister will send us a response in full detail.

Dr Turner: Can I ask a question?

The Convener: You can ask a question, but nobody wanted a debate.

Dr Turner: Could the minister put his answer in writing?

The Convener: I have just asked for that to come to me; I will pass it to you.

Motion agreed to.

**General Medical Services and Section 17C
Agreements (Transitional and other
Ancillary Provisions) (Scotland) Order
2004 (SSI 2004/163)**

**National Health Service
(Travelling Expenses and Remission of
Charges) (Scotland) Amendment (No 2)
Regulations (SSI 2004/166)**

**Food (Jelly Mini-Cups)
(Emergency Control) (Scotland)
Regulations 2004 (SSI 2004/187)**

14:15

The Convener: Paper HC/S2/04/13/1 is relevant to agenda item 3, which concerns three statutory instruments that are subject to the negative procedure. The Subordinate Legislation Committee had no comment on SSI 2004/187, but it commented on SSI 2004/163 and SSI 2004/166. Those comments have been circulated. No members' comments have been received and no motions to annul have been lodged.

A member has already alluded to a question that he might ask the minister. As the minister was not given notice, I will understand if he does not want to take questions, but if he is prepared to do so, I will allow members to ask questions.

Malcolm Chisholm: I am aware of the general problems, but I do not know the details, so it is unlikely that I will be able to answer detailed questions. Many drafting issues have been raised and I apologise for a situation that I regard as being totally unacceptable. The matter has not passed my desk; it is for lawyers. However, I apologise on the Health Department's behalf. I cannot guarantee that such issues will not arise again, but I would be most concerned and upset if they did.

The Convener: Are you content to take questions?

Malcolm Chisholm: I will listen to the questions, but I do not know whether I will be able to answer them.

Shona Robison: I apologise for not submitting comments in advance, but the minister has acknowledged clear concerns from the Subordinate Legislation Committee about the drafting of the General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004. The committee says:

"there is a particular need for care in the drafting of NHS legislation which is already extremely complex and difficult to follow. The user should not have to undertake an added burden of first identifying that an error has been made and

then attempting to construe from the context the real intention of the provision in question. The Committee therefore hopes that the Order will be amended appropriately without delay."

The committee makes further comments on the order. It also comments on the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment (No 2) Regulations, but most of its comments are about the order on section 17C agreements.

The Subordinate Legislation Committee says clearly that the Executive has failed to follow proper legislative practice and the minister has acknowledged that. What will happen to rectify the situation? Can SSI 2004/163 be redrafted, as that committee recommends? What will be done to fix the problem?

Malcolm Chisholm: To be safe, I must say that I will write to the member, but I imagine that the situation can be corrected. There is little that I can do other than ensure that SSI 2004/163 is corrected and, in so far as I can, ensure that the situation does not happen again. The only excuse that is being offered is that a lot of time pressure was faced. The situation is obviously unsatisfactory, so I will not excuse it.

Janis Hughes (Glasgow Rutherglen) (Lab): Shona Robison has covered the order. As for SSI 2004/166, the minister has accepted that the regulations were defectively drafted but, as discussed with the Subordinate Legislation Committee, will you confirm that you will take steps to ensure that the explanatory note is amended to reflect the content of the regulations? That was the Subordinate Legislation Committee's hope, so can you now give us firm assurances that that will happen?

Malcolm Chisholm: I will certainly undertake to do that.

Mr Davidson: Paragraph 18 of the Subordinate Legislation Committee's report has a question mark over the vires of article 94 of SSI 2004/163. We must make a decision one way or another about the order, but there is doubt about whether it is a legitimate piece of legislation. Unlike the convener, I am not a lawyer, but I wonder what the parliamentary rules are about our taking the order any further. I suppose I am asking for advice. Perhaps we can simply ask the minister whether he would guarantee to provide a redrafted order and put the system on hold until he gets the appropriate people to deal with the order and correct it. We can hardly agree to pass it when there is doubt about its status in law and about whether it will achieve the purpose for which it was intended. I am not making a personal attack on the minister—he has acknowledged that there is a drafting problem. However, we seek assurance

that the order will be corrected before it is put before the Parliament.

Malcolm Chisholm: My understanding is that there are two issues. I do not accept that there is a vires issue with the order—there is genuine disagreement between the Executive and the Subordinate Legislation Committee on that issue. Obviously, we take the view that the order is consequential on the Scottish legislation, which is the Primary Medical Services (Scotland) Act 2004. That is a different issue from the drafting errors. That is the point that I am making.

The Convener: Thank you, minister. Can you confirm that, once you have had another opportunity to consider the instruments, you will write back to the committee to advise us whether the instruments are being withdrawn or whatever? I presume that you will also address the Subordinate Legislation Committee. I note that it reported to you on 6 May.

Malcolm Chisholm: I apologise, but the only issue for us is the drafting. There are no substantive issues for us over and above the drafting issues, because we take a different view on the vires issue, which would be—

The Convener: I was not addressing the vires issue. I meant the drafting. Does what you say mean that the SSIs have to come back? They are obviously being redrafted in different words. Do they go back to the Subordinate Legislation Committee?

Malcolm Chisholm: I do not know. I cannot answer that question.

The Convener: Perhaps someone could clarify that for us and for the Subordinate Legislation Committee. Thank you very much, minister.

Malcolm Chisholm: As far as the Health Committee is concerned, you want to see redrafted instruments before you pass them. Is that what you are saying?

The Convener: Yes.

Malcolm Chisholm: I am sorry. I am just asking for clarity so that I know—you want the instruments to be redrafted correctly and then you will deal with them.

The Convener: I think that would be in the interests of you and of everybody, minister.

Malcolm Chisholm: Okay. [*Interruption.*] I am told that a corrective order is being drafted. Is that okay?

The Convener: That will simply come back through the process again to this committee.

Malcolm Chisholm: I do not know about the procedure. That is up to the Subordinate Legislation Committee.

The Convener: The clerk informs me that the order will come back to this committee, which is what we want. Is that all right?

Malcolm Chisholm: Okay.

The Convener: Thank you very much.

No motions to annul have been lodged in relation to the instruments. In respect of what the minister said, can I take it that the committee now does not wish to make any recommendation in relation to the statutory instruments, given the process that the minister advised us of?

Members indicated agreement.

The Convener: Thank you very much.

We have dealt with all three negative instruments, including the jelly one.

Breastfeeding etc (Scotland) Bill: Stage 1

14:24

The Convener: Item 4 is the Breastfeeding etc (Scotland) Bill. I ask members to turn to briefing papers HC/S2/04/13/2 to HC/S2/04/13/5, which have been circulated.

I welcome our first panel of witnesses. We have Rosemary Dodds, the policy research officer of the National Childbirth Trust, and Leah Granat, from The Breastfeeding Network. I hope that I pronounced your surname properly.

Leah Granat (The Breastfeeding Network): That is fine.

The Convener: I was close.

In your experience, how common an occurrence is it for women to be asked to leave a public place and go elsewhere to breastfeed? Much evidence about the issue is anecdotal, but has any research explored it?

Leah Granat: I am not aware of any research. Only a minority of women are asked to leave or receive adverse comments, but those bad experiences impact greatly on their breastfeeding experience, their relationship with their children and other areas of their lives.

Rosemary Dodds (National Childbirth Trust): I work at the National Childbirth Trust office for the UK—I receive phone calls from women who have heard of the trust and who know that we are interested in breastfeeding. I deal with a slow but steady stream of concerned women who have been asked to leave premises. For example, they have been told that they cannot breastfeed in various restaurants and shops. Last week, women were told in a law court and in a job centre that they were not allowed to breastfeed.

There is some qualitative evidence from focus groups of women. The most interesting evidence has come from a group of women in Glasgow, at which the breastfeeding peer support project talked to women about their experiences of breastfeeding. Quite a high proportion of them had been so hesitant to breastfeed when they were out and about that it influenced their decision to breastfeed in the first place. The problem is not just that women are asked to leave premises because they are breastfeeding—I agree with Leah that that happens only in a minority of cases—it is also that that stops them breastfeeding in the first place.

NOP Research Ltd carried out a survey last year and found that of approximately 1,000 adults who were questioned throughout the UK only 15 per

cent said that they would object to breastfeeding in a public place. However, when women were asked whether they thought that people would object, two thirds of them thought that there would be objections to their breastfeeding in public. The tiny 15 per cent minority seems to be having an unbalanced effect on women's perceptions, such that they feel they cannot go out and breastfeed.

Leah Granat: I have been involved in setting up the breastfeeding welcome award in the Maryhill area of Glasgow. It was a pilot study that set out to achieve on a voluntary basis what the Breastfeeding etc (Scotland) Bill aims to do in a legally enforceable way. The management of various public places committed themselves to supporting breastfeeding women on their premises and to allowing breastfeeding to take place. Volunteers then went out to check the places. They went in the guise of ordinary customers visiting the premises, breastfed their children as appropriate and reported their findings. Even in public places where the management had committed themselves to supporting breastfeeding, four mothers experienced a bad time and were told by members of staff, "You can't breastfeed here," or, "If you want to do that you'll have to go off to the toilet." The breastfeeding welcome award has submitted that evidence to the committee.

We are not talking about an issue that is up in the air and that people talk about but does not happen. Like Rosemary Dodds, I am in contact with women regularly. Slowly the calls come in and slowly the women talk face to face, but such incidents do happen. Although it is good to say that we can approach the issue in a cultural way and through voluntary schemes—there are voluntary schemes like the breastfeeding welcome award scattered throughout Scotland—that will not solve the problem for women. Our society accepts bottle feeding as the norm and although we hope that breastfeeding will become an everyday occurrence, it will take a long time to happen.

As well as creating a situation in which somebody who prevented a woman from breastfeeding in public could be taken to court, the legislation would allow the Parliament to lead from the front in changing the culture. Parliament would be making a strong statement about what the culture of Scotland ought to be.

14:30

Kate Maclean (Dundee West) (Lab): Have things improved or got worse in recent years? When I was a child, it was quite common to see people breastfeeding babies but, when I had my own daughter, I was once asked to leave a well known up-market Edinburgh store because I was breastfeeding. At the same time, an assistant in

the powder room was giving somebody a bowl of water for their dog. That was 24 years ago.

The National Childbirth Trust has been around a long time and you will have been able to monitor the situation. Have public attitudes towards breastfeeding got worse? Is there evidence that people experience more difficulty and less acceptance of breastfeeding now than they did 10 or 20 years ago?

Rosemary Dodds: Things are not getting any better, which is disappointing. The statistics on breastfeeding have been pretty level since about the 1970s. In Scotland, the last national survey showed only a slight increase.

These days, we hear more about women who are expressing their breast milk and putting it in a bottle so that they can go out. I had not come across that before; it is a terrible indictment of our society. Some women also say that they cannot breastfeed in front of their parents or their partner. We never used to hear that, although it may be that women are more honest now—I cannot tell.

Leah Granat: The statistics are affected by the gap in the encouragement of breastfeeding. For many years, up to the beginning of the previous century, breastfeeding was the way that babies were fed. Then, as infant feeding became more medicalised and as infant formula became more common, people lost the experience of seeing babies being breastfed. Several generations now have not had that experience. Mothers today face a public who are not used to seeing babies being breastfed and who do not realise that breastfed babies are not fed every four hours for 10 or 20 minutes. People have not grown up from childhood knowing that breastfed babies do not feed to a routine. The mother might be in the supermarket and then go down the road to the library and the baby might need to be fed in both places, but then not again for a few hours.

The Convener: Several people on the committee know that from personal experience, so you are speaking to the converted.

Shona, has your question been answered?

Shona Robison: Yes, it has been answered in part. You said that the current culture influences whether a woman chooses to breastfeed or not, and that that is a problem. Those who heard Lesley Riddoch's programme yesterday will be under no illusion. Entrenched attitudes exist, although when I breastfed last year, I was quite fortunate not to have any negative experiences. Would the witnesses like to add anything on the culture and its influence on breastfeeding?

Leah Granat: If you walk into any newsagent or supermarket and look at the wrapping paper for gifts for new babies, or the cards for new babies,

you will find that very few do not have an image of a baby's bottle. That is an indication of how much this society associates babies with bottles. Breastfeeding mothers are bombarded—by television and newspapers and other media—with images of bottle-feeding. In the supermarket, there are rows and rows of shelves of infant formula, often with reduced prices, which is not permitted under United Kingdom law.

Another cultural issue is the age until which children are fed. In the draft bill, I would like to highlight—

The Convener: We will come on to that. You have plenty of time.

Dr Turner: You obviously accept that there is a need to legislate to enable people to breastfeed in public if they want to. However, I remember many people being dissuaded from breastfeeding by the hospitals. Because nurses were so busy, it was much easier to give the babies bottles. I wonder whether you are absolutely sure that there has been an improvement in the hospital side of things, with people being 100 per cent encouraged to breastfeed, and that the problem is totally with people accepting breastfeeding outside hospital.

Rosemary Dodds: There has been a huge improvement in the support for breastfeeding in hospitals. The way in which the Scottish Executive and the chief nurse have supported the baby-friendly initiative has been influential in improving the support and information that mothers get in the early days. However, I would not say that the problem has been solved. There probably needs to be a lot more training and debriefing of health professionals so that they can leave their own experiences behind.

The bill is a complementary measure that would make a big difference to the perception of breastfeeding. When studies have been carried out, such as the peer-support schemes in which women have been given additional support to breastfeed, the feedback has been that it is the culture that is difficult to change. Even where better information and support can be provided, we are still battling against the culture. There needs to be a multipronged approach.

Dr Turner: Where do you see the best help coming from in the education process? I am thinking about primary care, which is very important in the first few weeks after a woman has had her baby, when she has finished dealing with the hospital nurses and has to deal with the health visitors. I know that some practices have, over the years, been running classes for first-time mums and single-parent mums, to give them encouragement. Do you think that that is still a good way of beginning to change the culture? Do you think that you would stand a better chance of

doing so if primary care was behind you? Are there other ways forward that you can see?

Rosemary Dodds: Consistency of information is important. If the midwives in hospital are supportive but the general practitioners and the health visitors are not—or vice versa—parents get confused. Women say that they are always receiving contradictory information and conflicting advice, which is not helpful. That is why the multidisciplinary training is so important. Everybody receives the same information and has the opportunity to discuss it with their colleagues. They then present that good-quality, up-to-date, evidence-based information to the parents.

Janis Hughes: The infant feeding survey that was carried out in 2000 showed that half the women who breastfed in public stated that they would prefer to feed in private mother-and-baby facilities. Some lobbyists argue that, as opposed to focusing on breastfeeding in public, it would be preferable to encourage businesses to provide private facilities for breastfeeding mothers. How do you feel about that suggestion?

Leah Granat: It is significant that half the mothers who were questioned said that they would prefer to breastfeed in private facilities. The research that has been done in that area seems to show an even split. Half the mothers would prefer a pleasant, private area in which to sit and breastfeed their babies; the other half of breastfeeding women would prefer just to be able to get on with it where they are—sitting in the cafe with their cup of tea or coffee, sitting in the library, perching on a chair in the supermarket, or wherever they feel comfortable doing it. Both groups of women need to be adequately provided for.

Janis Hughes: So you think that the main aspect of the bill is the provision of choice: it would give mothers a choice about where to feed rather than encourage businesses to provide private facilities. You say that it is more important that people have choice.

Leah Granat: It is important that people have choice and therefore that private facilities are available for women who want them. It is equally important that women who are happier staying in a public area do not feel that they will be shunted off to a private room somewhere, even if it is a pleasant room. Nowadays, such rooms are often not pleasant—women are sent to the toilets to breastfeed.

Rosemary Dodds: The bill is important because it does not hide breastfeeding in the corner. If we are going to change attitudes, it is important that young people become more accustomed to seeing breastfeeding as a normal part of everyday life. Half of women may say that they prefer to

breastfeed in a private place and, indeed, some babies may prefer to breastfeed in private because otherwise they look around and wonder what is going on. However, that figure might change if the bill becomes law. The measures in the bill are more important than a legislative requirement to provide breastfeeding facilities would be. Providing comfortable private facilities should be an optional extra or good practice, but the most important thing is to give women the right not to be asked to leave just because they are feeding their baby in the most natural way possible.

The Convener: As the long title shows, the bill is not just about providing facilities or allowing breastfeeding in public places; it also aims to promote breastfeeding. In considering the bill, we tend to forget that it is two pronged in that sense, which is the point that you are making.

Mr Davidson: I am a former community pharmacist and in my chain of pharmacies we had waiting areas, which had chairs for the elderly and disabled, for example. However, not every small business can provide such facilities. I want to clear up the issue of the statutory provision of facilities. The provision of facilities is one thing in a shopping centre where there is a lot of space and the cost can be shared among the businesses, but it is another thing for most of the small businesses in Scotland. I do not think that small businesses are complaining, but I would be worried about a compulsion to provide choice. I do not read the bill as saying that choice must be provided, but will you clarify your organisation's view on that issue?

Leah Granat: We must recognise that breastfeeding does not need equipment or space, other than where the mother is with her baby, nor does it need any input of money or building work to provide extra rooms. As I understand it, under the bill, a woman who is walking round a supermarket and who has not asked for extra facilities would be able to breastfeed her baby, if she was comfortable, either at the side of one of the aisles or, as some women can do, as she continued shopping—I have done that myself. There does not need to be provision of material facilities, but a strong input is necessary to provide a pleasant and supportive attitude from staff, which will encourage the same attitude in people who are visiting the premises. If the staff are supportive of breastfeeding mothers, that will become the ethos of the business, whether it is large or small.

The Convener: The bill is called the Breastfeeding etc (Scotland) Bill, but the definition of milk includes

“cow's milk or infant formula”.

Is it appropriate that the bill, given its title, also applies to bottle feeding?

14:45

Leah Granat: Yes, because, as Rosemary Dodds mentioned, some mothers choose to express milk and give it to a baby in a bottle or a cup. Other mothers may breastfeed for part of the day and bottle feed for the rest. I would feel comfortable with a culture in which a mother can go out with her baby and feel supported in the way in which she mothers. As you said, convener, the bill includes provisions on the promotion of breastfeeding, which I strongly endorse, but if a mother gives her baby milk of any kind in a bottle, she should be able to do that in a public place.

Rosemary Dodds: I second that and add that it is important that we do not move from discriminating against one group to discriminating against another, which would be the danger if the bill did not cover other types of milk.

The Convener: The definition of a child in the bill is

“a person who has not yet attained the age of two years”.

I do not know many women who breastfeed their child until they are two. Certainly in our culture, women do pretty well if they get up to 12 months. Is it necessary to have an age limit?

Rosemary Dodds: Absolutely not. The National Childbirth Trust feels strongly that it would set a dangerous precedent if the Parliament supported that provision. The World Health Organisation has stated that children should be breastfed up to two years and beyond—it was careful not to state an upper limit when breastfeeding should stop. Although it may not be common for us to see women breastfeeding babies of two and over at present, that does not mean that it does not happen. We know that many women who breastfeed older toddlers do so at home because they do not feel that it is acceptable when they are out. Again, that is hiding breastfeeding away. There is no scientific or medical reason to doubt the benefits of continuing to breastfeed. In fact, the anti-infective properties of breast milk increase as a baby gets older and takes less breast milk.

The Convener: But we would have to define “child” in some way.

Rosemary Dodds: Why do we have to define “child” in some way?

The Convener: Elsewhere in the law, there are definitions of what a child is and is not. If we are going to introduce a criminal offence of preventing or stopping a child being fed milk, there must be some definition of where childhood ends. If we take it to an extreme, a disturbance might be

caused if—not to be too rude about it—a very old child was being breastfed in a public place. We surely must have some kind of definition.

Rosemary Dodds: I am not convinced of that. I am not a lawyer, but I have not seen another definition of a child as a person up to the age of two; when we talk of a child in terms of legal competency, ages of eight or 16 are given. It is highly unlikely that a child of school age will be breastfed in public, although I would not object to that.

You must think of the bill as having international interest. Women in Scotland will benefit, but the world is watching and, if the bill gives an upper age of two, you will be saying that it is not recommended to continue breastfeeding a child over the age of two and that women will not be welcome in public places if they are breastfeeding older children. I understand that some women who have been breastfeeding older children responded to the consultation on the bill and that no one has responded in favour of an upper age limit of two years. All the organisations and individuals that have responded have said that two years is too young.

The Convener: What happens in other countries that have similar legislation? Do other European nations have age limits?

Rosemary Dodds: I am not aware of any upper age limits.

Leah Granat: We have to remember that breastfeeding is a self-limiting experience. Adolescents have been mentioned, but I do not think that there are any breastfeeding adolescents.

The Convener: I would not have thought so.

Leah Granat: The length of a breastfeeding experience varies from one mother and baby to the next. Even within a family, a mother may breastfeed different children for different lengths of time, but at some point the mother and the child will end that part of the relationship of their own accord. I suggest that it would be enough for the bill to accept the definition as “a child who is still breastfeeding” and leave the limits of each breastfeeding relationship to the mother and her child—that is, her child, not her baby.

Kate Maclean: I know mothers who have breastfed children up to school age, but it is not necessarily the best thing for a four or five-year-old to be breastfed in front of his or her peers, because of the attitudes of other children or, possibly, other adults. Babies need to be fed and they need to be fed when they need to be fed. At that point, all the food that they have is milk, whether breast milk or bottle milk. By the time they get to the age of two or three, they can drink fruit juice and eat food, so I would not have thought

that it was imperative for them to be able to be breastfed in any public place. No babies should be denied the right to be fed whenever they need to be fed wherever their mothers are, but the difference between a baby and a child of two, three, four or five is that the child can be fed food.

Leah Granat: There is something important in what you say. Many children who are still breastfed at that age will not ask to be breastfed in front of their peers—that is partly the child's choice. When the child is old enough to reason with, many mothers will say, "Not now, but when we get home," or, "Not now, but a bit later," if the child asks for a breastfeed at an inconvenient time. However, it would be a retrograde step to close the door. I ask you to consider a situation in which a child—perhaps a four-year-old or an older child who is still breastfed—trips and falls while they are out in the park playing. Often, babies and children breastfeed for comfort and security as well as for nutrients. If there were an upper limit of two years, the mother would be outside the security and protection of the bill if an older child, having fallen and hurt themselves, turned to her for a breastfeed.

Kate Maclean: You are talking about something entirely different. The bill is about feeding children in public places, not about comforting them in public places. I am not saying that there should be an upper age limit in the bill, but I feel a bit uncomfortable about what we are trying to do.

Leah Granat: The bill is called the Breastfeeding etc (Scotland) Bill. Everyone needs to recognise that breastfeeding is absolutely the best way of nourishing a baby, but breastfeeding goes beyond nutrition. It involves a relationship that encompasses feeding, as in giving nutrition, but it also involves a bonding relationship; it is a way of caring and a way of comforting. It is impossible to split one aspect of breastfeeding from another.

The Convener: The problem is that the bill creates an open-ended criminal offence. It says:

"it is an offence deliberately to prevent or stop a person in charge of a child from feeding milk to that child in a public place or on licensed premises."

It goes on to say:

"A person guilty of an offence under subsection (1) is liable on summary conviction to a fine".

I am concerned about older children. That might be at the extreme end of things, but the bill creates a criminal offence and the provision is mandatory—it does not take account of the facts and circumstances of the case. A person could go up to someone and say, "I think that that child is a bit too old, and I find what you're doing a bit offensive. I do not mind babies being breastfed, but that child is about six." If the age limit is taken

out of the bill, that person would be guilty of a criminal offence.

Leah Granat: Is there any difference between breastfeeding a baby and breastfeeding a young child? We are talking about a change of culture and the issue is to do with the extent of that change.

Shona Robison: Given the fact that too few women breastfeed in Scotland because we have a culture that does not encourage breastfeeding, we have to accept the baseline that we are starting from and try to take as many people as possible with us. Although I respect the views that our witnesses have just aired, I suggest that that discussion will not help in changing the attitudes of the majority of those who remain to be persuaded about breastfeeding. We do not want the vision of an older child breastfeeding in public to be associated with the bill. The bill centres on the breastfeeding of babies and I suggest that focusing on breastfeeding older children probably undermines that cause.

Nobody is suggesting that people should not express their views but, given that many people remain to be persuaded about breastfeeding, it makes better tactical sense to focus on the arguments that are most likely to persuade people. In order to do that, I suggest that there needs to be an upper age limit. I think that most people would believe that a child ceases to be a baby somewhere around the age of two. A big public education exercise needs to be undertaken and I am not sure that the discussion that we have just had will help in that regard.

Rosemary Dodds: You are right in saying that a big cultural change is necessary. However, the danger of setting an upper age limit of two is that you would perpetuate the idea that breastfeeding older babies is not acceptable. Including that age limit in the legislation would reinforce the idea that people should stop breastfeeding when their child reaches the age of two. Having no age limit in the bill would mean that, because people understand that breastfeeding is something that happens in the early years, their perception of the bill would be that it protects the right of women to breastfeed babies and young toddlers. If an age limit is included, there will be too much focus on issues relating to age. That is why I argue that there should be no age limit in the bill.

Dr Turner: I think that we might have to accept the suggestion that there be no age limit in the bill. I doubt whether even doctors would know exactly the age of a baby simply by looking at it. Some babies are born looking like they have been in the world for nine months already. It might be better simply to leave out any reference to age and let things take their course. I accept everything that Kate Maclean and Shona Robison have said, but,

given that we are talking about creating an offence, such practical difficulties are important.

Mr Davidson: While we have these witnesses before us, we have to deal with the impact that the bill would have if it were passed. Is the bill absolutely clear about which actions will be deemed to be offences? What do you think constitutes the prevention of someone breastfeeding in public?

15:00

Leah Granat: I would say that preventing or stopping somebody feeding a child in public is a subjective notion. What will prevent or stop one woman might not hinder another woman. We are talking about not approaching a woman and saying, "You can't do that here," and not doing anything unpleasant or harmful to that woman and her baby. Some women have had unpleasant experiences. At the extreme end of the scale, I remember a case from a few years back when a shopkeeper poured a bucket of dirty water over a woman who was sitting breastfeeding her baby.

Mr Davidson: The physical intervention is already covered in law, because it will be some form of assault. What we want from you is your definition of "prevent or stop". Did that notion come from a simple agreement, when the bill was being written, about what constitutes an action to prevent breastfeeding? Are we talking about a sign on a shopfront that says, "Breastfeeding mothers not welcome"? Are we talking about someone challenging a woman—however discreetly and politely—or suggesting to her that there is a lovely baby-feeding facility and saying, "Would you care to do it there, please, as that's why we've provided it"? Would that be an offence? You have talked about choice and about whether mothers should go to a private place. Where should the line be drawn?

Leah Granat: The line should be the point at which the mother is made to feel uncomfortable. There might be a choice of using a mother-and-baby room—a private facility where the mother could breastfeed her baby if she chose to do so. Perhaps people who work in public places could think about making mothers aware of such facilities by putting stickers on the door, rather than having a member of staff approach the mother. Mothers have said to me that, when somebody came up to them, while they were sitting and feeding their baby, to ask, "Do you know there's a mother-and-baby room?" they felt as though they were being told that they had to go there. I would say that that makes a woman feel that she cannot breastfeed in that public place. There should be indications of any available facilities for women who wish to feed in private.

Stickers or signs would be perfectly adequate for that.

The Convener: Before we move on, could I just correct you? The bill does not say "a mother". It says:

"it is an offence deliberately to prevent or stop a person in charge of a child from feeding milk to that child".

That expands the circumstances.

Leah Granat: I apologise—you are quite right. That is an important aspect of the bill. It concerns not just mothers.

Rosemary Dodds: I agree with Leah Granat. I would not interpret the bill as covering asking a woman to move to a private place. I understand that one of the respondents to the consultation thought that asking a woman to move was an acceptable thing to do. However, it is not on to expect a woman with older children, perhaps with a buggy or a double buggy with twins, to fit into a broom cupboard, which is often all that is provided. A woman might be there for an hour by the time she has breastfed the baby and changed their nappy, especially if the baby is very new. I do not think that asking a woman to move under those circumstances constitutes a welcoming attitude towards breastfeeding, which I hoped the bill would support.

Mr Davidson: If you are starting to talk about nappy changing in the same context, I would make the point that a totally different set of circumstances apply. Perhaps you would like to revise what you just said.

Rosemary Dodds: No—I am talking about the whole episode of breastfeeding. If a woman is being asked to go into a private room with a very new baby, breastfeeding can sometimes take a long while. Entertaining older children at the same time is difficult for a woman if they are asked to breastfeed in a closed space with nothing else going on. That is what I was trying to explain.

The Convener: Thank you both very much for your evidence. We will now move to the next set of witnesses.

I welcome Deputy Chief Constable David Mellor, the secretary of the Association of Chief Police Officers in Scotland, and Norman Macleod, the deputy general secretary of the Scottish Police Federation. I will launch straight away.

I do not know whether you heard the previous evidence—it will be helpful if you did because you would have heard us talking about enforcement, difficulties in collecting evidence and so on. We were right into your field. I have a big broad question for you to start off with. Do you think that the police and procurators fiscal would be willing to pursue prosecutions under the bill?

Deputy Chief Constable David Mellor (Association of Chief Police Officers in Scotland): If a criminal offence has been created, it is the duty of the police to enforce the law. If, under the bill, we received a complaint from a person who was in charge of a child whom they had been prevented from breastfeeding, we would have a duty to act. My best guess at how we would deal with such a complaint is that it would probably not be a priority. Given the range of calls that we receive, including emergency calls, although a call of that nature would be treated entirely seriously, it probably would not be a priority. We probably could not guarantee a quick response unless there was some aggravating factor such as assault or threats, which would probably take the matter into other areas of criminal law anyway.

The Convener: You would not prosecute under the bill; you would prosecute under the common law.

Deputy Chief Constable Mellor: In those circumstances—yes.

A police officer who was dealing with such a complaint would probably, in the first instance, try to conciliate. That is often what we find ourselves doing in disputes or conflicts; we try to resolve conflict if we can. I do not think it likely that many reports would go to the procurator fiscal. I read in the financial memorandum to the bill that it is anticipated that there would probably not be a large number of prosecutions. That said, I support fully the objectives of the bill, on behalf of the Association of Chief Police Officers in Scotland.

Norman Macleod (Scottish Police Federation): I endorse Deputy Chief Constable Mellor's comments. Police officers will attend to complaints under the bill from members of the public and, if appropriate, we will report to the procurator fiscal, although I think that the circumstances would have to be extreme before the procurator fiscal would deal with such a matter. Operational police officers try to conciliate at every opportunity and that is how we would start off.

We would like it to be made clear what will be expected of police officers in relation to the bill. The bill is quite wide ranging and police officers need to be clear about what will be expected of them.

The Convener: We will develop that in other questions. I welcome Elaine Smith, whose member's bill it is, to the committee. If you want to ask questions, Elaine, please bid like every other member.

Shona Robison: You said that you do not envisage many prosecutions taking place. Is not

that the whole point of the bill? In your written evidence, you say:

"Members commented that the use of criminal legislation as a mechanism to protect lieges, perhaps with a view to engineering social change in relation to public order or safety issues, is to be supported."

The issue might not necessarily be about public order or safety, but it is very much about social change. Is not that an argument in favour of the bill? It would send out a strong message that an attitudinal change must happen, particularly among people who manage public places. The number of prosecutions is likely to be very small. Do you accept that?

Deputy Chief Constable Mellor: I accept that if we are trying to change culture and attitudes, we need to consider a range of approaches, and I accept that the creation of a series of criminal offences has proved in the past to be effective in changing attitudes. The seat-belt law is a classic example: there were concerns about civil liberties before that legislation was enacted, but the overwhelming view now is that the law saves lives and is unequivocally a good thing. It is perfectly legitimate to create a criminal offence as part of a strategy to change attitudes.

However, I sense that the creation of a criminal offence in this bill seems to be principally a symbolic act, although I accept that the existence on the statute book of an offence that means that people can threaten to use the criminal law is a convincing way of changing attitudes and behaviours.

Shona Robison: Perhaps an analogy can be made with disability legislation—Elaine Smith has made that analogy. Although there might not be many prosecutions of people who fail to provide disabled access to their premises, it is important that the message has gone out that disabled access is a requirement. In the context of the bill, the standard that will be required from those who provide public places will be that breastfeeding mothers should be allowed to feed their babies in such places. Do you accept that comparison?

Deputy Chief Constable Mellor: Yes—that is a perfectly satisfactory comparison and I accept fully the points that you make. My comments were made in response to the convener's question about the extent to which the police service would be likely to report offences to the procurator fiscal.

Mr Davidson: You said that it was likely that there would be a low level of police involvement and an even lower level of procurator fiscal involvement. Your written submission says:

"Members therefore suggested that the most effective way forward would be to enshrine a statutory obligation where the rights of breastfeeding mothers are incorporated

into the charters and licences of all public organisations, outlets or establishments.”

In other words, responsibility would lie with the local authority, which already has powers in relation to safety, for example. Is that a firm view? I appreciate that we are arguing not about the principle of breastfeeding but about the mechanics of the practical application of the proposals in the bill.

Deputy Chief Constable Mellor: There was divergence among my ACPOS colleagues’ views. They supported unequivocally the bill’s objectives, but some supported the creation of a criminal offence and others did not. An alternative to going down the criminal-law route might be to go down the licensing route—powers of enforcement can be attached to licences, but that is a potential way forward that has not been explored in the bill. On my reading of the bill, the approach seems to be either civil—that would require the person in charge of the child to initiate proceedings, which would be quite hard to have to do—or criminal. There might be a middle way, so the suggestion in our submission was intended to be a helpful contribution to the debate.

15:15

Mr Davidson: Will you clarify what percentage of your members supported that notion?

Deputy Chief Constable Mellor: Every chief officer to whom I wrote supported the principle of the bill. Of the eight of us—there are eight forces in Scotland—I recall that two or three supported the proposal that there should be a specific offence in criminal law.

Mr Davidson: Were the rest supportive of taking the local authority route?

Deputy Chief Constable Mellor: No. They advanced arguments against the use of criminal law. It was one of my correspondents who made that suggestion, which we thought merited inclusion in our evidence.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): There are some good examples that are comparable with making prevention of breastfeeding in public a criminal offence in order to change our culture. We did not introduce fines for not wearing seat belts; I remember the strapline of that advertising campaign, which was “Clunk-click, every trip”—we need to raise awareness in such ways. Despite the fact that there were laws in place to prevent one person from assaulting another, we had to raise awareness of violence against women. In that way, we won public support and condemnation of such violence.

I am worried about the belief in what politicians can do without the consent of the community, as Shona Robison mentioned during earlier questions. We must convince the public and we must communicate effectively what needs to be done because there is no short cut to changing culture simply by introducing legal measures. Do you disagree with that?

Deputy Chief Constable Mellor: I do not disagree; it is true that there is no short cut to changing attitudes and the culture of a country. When I referred to the seat-belt law, I meant that it is possible to change attitudes. That was an example in which the creation of a specific offence was one of many measures that changed attitudes. The advertising campaign to which Duncan McNeil referred worked well—you can still remember its strapline—and is an example of advertising’s being particularly useful. The domestic abuse example was also a good one; we have had a very lengthy campaign to change attitudes to domestic violence. We still have some way to go, despite the facts that we have a perfectly adequate legal system to tackle domestic violence and have had good publicity over a number of years. Creation of a criminal offence is only one aspect of changing attitudes and behaviour.

Mr McNeil: What would have to happen before you could get the majority of those eight very important chief police officers to give their support to creating a criminal offence?

Deputy Chief Constable Mellor: The police enforce the law; if prevention of breastfeeding in public becomes an offence under criminal law, the police will have a responsibility to enforce it. We will do that diligently—that is one of the roles that we play in society.

The Convener: With respect, we all appreciate that. We are asking whether the bill will be good law. Law is only proper and enforceable if it has the consent of the public. One does not want bad laws. I think that that is what Duncan McNeil is asking. Would such a law go with the grain of society?

Deputy Chief Constable Mellor: My view is that it would be good law in that it would be symbolic, it would reinforce the aims of the bill and it would exist as a threat. Sometimes people need a threat so that they change their attitudes and behaviour. In support of the bill, I say simply—this echoes the financial memorandum—that I anticipate that prosecutions would be few in number.

Norman Macleod: I will pick up where I left off on the difficulties that will be faced by our members, especially at the front end. As I read it, the bill applies to any public place, which might

mean a seat on the Royal Mile or in a public park. The definition is so wide that it causes us concern. Would it be a crime to watch a lady breastfeed?

Elaine Smith (Coatbridge and Chryston) (Lab): I apologise for my absence—I had to speak to amendments at the Local Government and Transport Committee.

In its submission, ACPOS states:

“reservations were expressed regarding the use of legislation to reinforce what is in effect a mother’s right and a freedom of choice.”

I appreciate that point, but do you agree that that right is not at present fully recognised? We know about harassment and segregation of mothers with babies. Legislation is often needed to protect against discriminatory practices and abuses. Symbolism is important, but do you consider that rather than simply being symbolic the bill could act as a deterrent against the abuses that are taking place at the moment?

Deputy Chief Constable Mellor: Yes. I declare a personal interest—my daughter is a National Childbirth Trust breastfeeding counsellor.

The Convener: That should have been declared at the outset. Never mind—no charges will follow.

Deputy Chief Constable Mellor: Thank you. My daughter was denied access to her local council offices to breastfeed my youngest granddaughter. Because she is an assertive and confident person, she thought that the best way in which to deal with the matter was to go to the local press. She did so and an article was published, which did the trick: the council changed its attitude. In fact, the council had facilities for breastfeeding, but the staff were not properly briefed about that, as is often the case.

I accept that the introduction of a criminal law offence would be persuasive. Elaine Smith made the very good point that we are dealing with a form of discrimination. I understand that, because issues relating to discrimination are reserved, it was not possible for the Scottish Parliament to go down that road and that consequently a criminal law approach was taken in the bill. However, the point that the member made about discrimination is a strong one.

Elaine Smith: Public education campaigns have been tried for many years, but there is still intolerance, even though the bill has been in the public domain for some time. I return to the point that Shona Robison made about the Disability Discrimination Act 1995. You say that you are concerned that the introduction of a statutory offence may be seen as punitive and may create a negative attitude to breastfeeding. Do you think that the Disability Discrimination Act 1995 has created a negative attitude to disabled people?

How many charges have been brought as a result of that act? If the number is small, what is your view on that? I do not think that offences that were introduced by the DDA, especially under part 5 of the act, have created a negative attitude. The rationale of the legislation is deterrence—it is about disabled persons’ rights in public places. Do you agree that the Breastfeeding (Scotland) Bill is about children’s rights to feed in public places?

Deputy Chief Constable Mellor: Is the question directed at me?

Elaine Smith: Yes. In your submission, you refer to negative conditioning. Has the DDA, especially part 5 of the act, resulted in negative conditioning?

Deputy Chief Constable Mellor: No.

Elaine Smith: The Breastfeeding (Scotland) Bill is about protecting children’s rights to feed in public places. Why might it create a negative attitude?

Deputy Chief Constable Mellor: I suggested only that that was a possible adverse outcome. I have no evidence that the Disability Discrimination Act 1995 has resulted in negative conditioning. We raised the issue in our written evidence merely as a possible undesirable effect. After all, we might have to deal with certain conflict situations. As we obviously have no control over how the media would report such matters, any adverse reports could trivialise the issue and have a negative impact. That said, I do not think that the risk is a major one.

The Convener: On the definitions that are used in the bill, the committee had quite a long discussion about the word “child”, which is defined as

“a person who has not yet attained the age of two years”.

What is your view of that definition? I had the sense that committee members had difficulties with that part of the bill.

Norman Macleod: That issue also highlights a difficulty in enforcing the legislation. It has already been pointed out that all children look different at different stages of their lives. We would have to prove the child’s age, which would mean our producing documentary evidence to the court. That in itself would not be difficult, as we have to do the same in other circumstances; however, it is another route that we would have to take. Age limits are extremely difficult and problematic. Indeed, when I walk into licensed premises, I find it difficult to tell who is under 18 and who is over 18.

The Convener: Are you suggesting that there should be no upper age limit?

Norman Macleod: I am not suggesting anything one way or the other.

The Convener: But we are seeking your guidance as police officers who will have to enforce the law.

Norman Macleod: Age limits can be difficult to enforce.

The Convener: We know that, but it still does not help us with this issue. Should there be no age limit or is it better to put a figure on such things?

Norman Macleod: My view is that there should be no age limit.

Deputy Chief Constable Mellor: Although I know that the issue provoked considerable debate earlier, I do not think that it poses a major problem. I presume that the phrase “two years” would mean two years and 364 days, which I would have thought would be enough time. I do not think that an age limit would make much difference to enforcement; after all, the major issue is the denying of the person in charge of the baby the opportunity to breastfeed. I would have thought that, in 99 per cent of cases, we would be talking about a mother and her baby.

The Convener: Of course, a problem is that the bill does not say that. It simply mentions “person in charge”. Perhaps we can discuss that later.

I should also point out that, under the bill’s definition of child, the phrase “two years” would mean up to one year and 364 days.

Deputy Chief Constable Mellor: Right. I am glad that you clarified that.

The Convener: David, do you have a question on specifics?

Mr Davidson: For a moment, I thought that we were about to discuss introducing identity cards for babies.

You said that if preventing someone from feeding their child is made a criminal offence you will be obliged to investigate such complaints. If, for example, there was a movement to ensure that all public premises were visited and their breastfeeding policies challenged, that would tie up a lot of police time. What would it cost to carry out such investigations, which would, after all, have to be made long before the matter went to the procurator fiscal?

Deputy Chief Constable Mellor: I expect the costs would be minimal. I accept your point that it would be possible for interested parties to make greater use of the legislation than we might have expected. However, I would not have thought that the amount of police resources involved would be a major issue.

Mr Davidson: Are the bill’s definitions specific enough about the offence of preventing the person in charge from feeding milk to a child? Are more definitions needed and, if so, what would you like to be included in the bill?

15:30

Deputy Chief Constable Mellor: The definition is important, but I do not have any particularly strong views on it. If there was behaviour that took the case into the criminal law arena, we would be clear about our responsibilities under the criminal law. Creating a criminal offence in the bill is catering for those cases that would not involve an offence under the current criminal law. It would be undesirable if there were no criminal offence and police officers were expected to make use of the criminal law by, for example, using breach of the peace as a mechanism for giving enforcement teeth to the bill. That would put police officers in an unfair position. In a number of areas, we are required to use breach of the peace a little too elastically at times. It would not be fair for that to be expected of us in these circumstances. I know that that was not your question.

Mr Davidson: Convener, I wonder whether you might suggest to our witnesses, on behalf of the committee, that they should feel free to send in further thinking on that. I get the impression that there is discomfort about what the final wording will be. Their organisations may wish to take legal advice about the definition. It is important that this committee especially gets good support and opinion, as the bill will go to one of the justice committees after we have finished with it. As has been stated already, the Parliament will need clarity on the definition.

I have a final question. Do you feel that the fine structure—

The Convener: David, there is no secondary committee for the bill. The justice committees will not consider the bill’s enforcement—that will be for us.

Mr Davidson: Thank you for correcting me. I did not know that.

Let us move on to the fine scale. Do you think that the fines are an appropriate deterrent? Do you have any views on their level?

Deputy Chief Constable Mellor: No. The setting of fine scales is not really the police’s territory. I have no opinion to offer on that.

Kate Maclean: I have a small question that relates to what I am going to ask the Scottish Licensed Trade Association. In its written evidence, the association states:

“Responsible licensees who cater for children will try to make efforts to accommodate mothers”

who wish to breastfeed.

"However, they also have to cater for a whole range of customers in their premises"

and

"have no control over individuals' views or actions, whether legislation exists or not."

Is that the case for licensees? I would have thought that licensees would have to have control over certain things otherwise they would be liable to be reported to the licensing board and lose their licence.

Deputy Chief Constable Mellor: You make a fair point. The licensed trade has perhaps expressed its point in rather too general terms. The holder of a liquor licence has a number of responsibilities under liquor licensing laws and other laws on discrimination, for example. Although I do not wish to criticise fellow consultees, that seems to be a rather broad statement.

Kate Maclean: If the bill became legislation, licensees would have some responsibility to ensure that it was adhered to.

Deputy Chief Constable Mellor: I cannot recall what the legislation says about vicarious liability, but it contains some comments about that.

The Convener: I have concerns about the evidential requirements of the bill. I take it that the evidence has to be corroborated, as is usual under criminal law. The bill may get tightened up at stages 2 and 3, but as it is drafted, do you see it posing problems for police in the gathering of evidence to present to the procurator fiscal?

Deputy Chief Constable Mellor: Yes. I imagine that there would be some difficulties because, in many cases, we would be dealing with the matter after the event. In those circumstances, if we were preparing a report for the procurator fiscal, we would need to take statements from the persons who were involved. It might not be easy in all cases to gain the necessary corroboration under Scots law if we were investigating matters after the event. As I said, in such cases we would probably find ourselves looking to conciliate as a first step—if we were attending the scene—albeit that we would always be mindful of our requirement to enforce the law of the land.

Norman Macleod: Operational police officers would have a certain amount of difficulty obtaining the necessary evidence, even down to people's interpretation of "act", into which a certain amount of subjectivity enters. There could be difficulties, although they may not be insurmountable.

The Convener: Thank you. That completes this part of the evidence session.

I welcome Colin Wilkinson, secretary of the Scottish Licensed Trade Association. I presume that you will have heard both previous sets of evidence; that is very helpful.

I will kick off with the first question. To what extent do licensed premises currently experience complaints about breastfeeding mothers?

Colin Wilkinson (Scottish Licensed Trade Association): We have had very few complaints from our members, who represent about a quarter of the public houses in Scotland. It is not something that has come up in our many regular meetings. Licensees who cater for children have certain conditions to follow that have been attached by licensing boards and they try to cater as best as they can for children.

The Convener: I appreciate that there are certain licence regulations for children: do those apply to a mother and baby?

Colin Wilkinson: Yes.

The Convener: So the existing legislation already applies to them.

Colin Wilkinson: A licensee would have to have a children's certificate no matter what age the child is; it must be for the purpose of consuming a meal.

Shona Robison: How would complaints from customers about a mother breastfeeding usually be dealt with in licensed premises?

Colin Wilkinson: The association has not had any complaints from individuals who have visited licensed premises. Our membership is individual licensees who operate their own businesses independent of the association. We are there to promote best practice and so on.

Shona Robison: Have you been an owner of licensed premises?

Colin Wilkinson: No.

Shona Robison: How would you envisage that the situation would be dealt with by one of your members? What do you envisage that they would do in such a situation?

Colin Wilkinson: A situation could arise in which a complaint is made against a member because they stop someone from breastfeeding on licensed premises. Very few premises cater for children, so the issue will not arise often. Overall, our members who cater for children would have to take the issue into consideration. The association would ask them to consider all the issues. That is all that I can say. It is not a situation that we have come across before in the licensed trade, so it is difficult to answer that question.

Shona Robison: Okay. That is fair enough.

The Convener: I will ask a supplementary question because I think that I have misunderstood. If I were a mother with a four-week-old child in a wee carrier and I wanted to have a half pint in the afternoon and not to buy any food, the existing legislation would not allow me into licensed premises with the baby. Is that correct?

Colin Wilkinson: That is correct.

The Convener: Fine.

Janis Hughes: I have noted the comments in your submission. Did you canvass opinion from your members on your submission? If so, were the responses for or against the bill?

Colin Wilkinson: We have regular meetings of representatives who cover the whole of Scotland, so we had a good poll from which to gather opinion. Their experience of catering for somebody who wants to feed a child is that they are asked for privacy, if they have facilities for that. As I said, our members have not reported complaints about that. If members catered for children, they would make every effort to provide the facilities that were requested. As for facilities in public, most of our members were of the opinion that as mothers had asked for private facilities in the past, that is what they would cater for.

Janis Hughes: What does catering for requests mean? Your submission says that most of your members would accommodate people who sought private facilities in which to breastfeed. What does that mean? Part of the problem is that such facilities are often a broom cupboard, as has been said, or somewhere that is unsatisfactory and is not a suitable environment. How accommodating would your members be?

Colin Wilkinson: Obviously, our members must comply with the local conditions that licensing boards set on the facilities that they must provide to obtain a children's certificate. It is not a case of having a broom cupboard. Various amenities must be provided. Our members say that if they have the facilities for mothers to feed privately, they would be happy to accommodate mothers.

Janis Hughes: I take it that you mean something like a changing facility, which is often a toilet. Do you consider that satisfactory?

Colin Wilkinson: I cannot comment on whether a toilet is satisfactory. Personally, I have two daughters and I would not feed them in a toilet, but premises must provide more than just changing facilities. It is difficult to say what level the facility should be at. I cannot comment more. What premises provide would be up to individuals.

Elaine Smith: You said that in your members' experience, most women ask for somewhere private to breastfeed. I take it that we are talking

about restaurants. In your members' experience, would a woman who is out with friends and family having a meal at a table want to leave that social situation to go away and hide to breastfeed? I ask that because that is not my experience of breastfeeding in such circumstances, or that of the people who speak to me. Some people would want to do what is described. The bill places no onus on premises to provide private facilities. I also wonder how children's certificates would be affected.

Colin Wilkinson: Most of our members are public houses and hotels. It is far easier for hoteliers to provide separate facilities, if they are requested. I described the comments and experiences of our members from all areas of Scotland.

Dr Turner: Do you agree that the bill could benefit the licensed trade, as it would encourage more young families to frequent premises that hold children's certificates? I have seen a culture change. More families eat out nowadays. Many establishments now are not just straight square restaurants and would allow women to breastfeed at a table.

Colin Wilkinson: When children's certificates were created, we thought that they would encourage more premises to make provision. Edinburgh has 1,300 licensed premises and only 75 children's certificates, simply because of the conditions that were attached to the certificates, which put many licensees off providing catering facilities for children. The bill would create another condition that will not encourage licensees to cater for children.

Dr Turner: Do you think so?

Colin Wilkinson: Yes.

Dr Turner: Have licensees expressed an opinion?

Colin Wilkinson: They expressed it when children's certificates were first introduced: there was very little uptake of them.

Dr Turner: That is interesting.

15:45

The Convener: I think that you said that the bill would be compliant with existing licensing legislation concerning children. Am I correct?

Colin Wilkinson: Yes.

The Convener: If only 75 licensed premises in Edinburgh have children's certificates, only 75 could comply with the bill, so what will we do about all the others?

Colin Wilkinson: That is the present situation under the current legislation, but you will be aware

of the Nicholson report, which recommends that we should no longer have separate licences for certain types of operation, but one licence. We are concerned that, under that regime, more licensees will decide to opt out of providing facilities for children. That is coupled with other proposed changes.

The Convener: But licensees could not opt out if the bill were to become law, could they?

Colin Wilkinson: Yes, they could, because they would not renew their children's certificates and children would not be allowed on the premises.

The Convener: Thank you for clarifying that.

Kate Maclean: I think that you have probably heard my question. In your written submission, you say that licensees have to

"cater for a range of customers in their premises"

and

"have no control over individual's views or actions, whether legislation exists or not."

That is not really the case, because there is some legislation that licensees have to ensure is upheld. If the bill is enacted, will that not make things easier for licensees to deal with customers who make complaints about mothers breastfeeding? For instance, if a customer goes up to a bar and tries to buy somebody who is obviously under age a drink, the licensee can say, "No, that's against the law," and, if somebody were to complain about a mother breastfeeding in a pub that had a children's certificate, the licensee could say to them, "That's the law. They are allowed to do that."

Colin Wilkinson: The reason that I included that comment in the submission—I accept that it might be an open comment—is that a lot of people comment not only to the licensee, but to other customers in the premises. We are concerned that an individual in licensed premises could make a comment without the licensee knowing about it and concerned about what could happen to such customers. I stand to be corrected if I am wrong, but if customers made comments or tried to stop a woman from breastfeeding, would they be prosecuted?

Kate Maclean: I presume that it is up to the licensee to ensure that he is able to act lawfully and, if a customer is preventing that, to deal with that customer in the same way as he would deal with a customer who was trying to buy an under-age person a drink, selling drugs or breaking any other laws on his premises. To keep his licence, the licensee would not want any reports of problems with the law being upheld in his pub to be made to the licensing board.

In the second-last paragraph of your submission, you say:

"The Licensed Trade ... is being bombarded with various proposed changes to legislation which are perceived by many as 'nanny state' politics",

and you give the example of Dundee City Council's licensing board's introduction of a no-smoking policy in pubs that apply for children's certificates. Because I am the MSP for Dundee West, I am aware of that and was interested to follow that story in the press. I was glad that I was no longer a member of the licensing board, because it was a controversial policy, but is that policy comparable to the bill? The licensing board is saying that it does not want children to sit in areas where there is smoking or to walk through such areas to get to the toilet. Is that comparable to the introduction of legislation on breastfeeding? As far as I am aware, there is no such thing as passive breastfeeding—when a mother breastfeeds a child, that does not affect anybody else.

Colin Wilkinson: I do not wish to digress, but in the Dundee case, the licensees were not permitted to allow smoking on the premises at any time, even if children were not allowed in the premises, for example, in the evening. Our members in the area considered that to be a totally ridiculous situation. The action that they took was simply to cease their children's certificates. There is a concern that if the bill is seen as another condition that is attached to licences, businesses may well take that action again.

Kate Maclean: There is a difference between smoking and breastfeeding.

Colin Wilkinson: Yes, but the surrounding issue is about children's certificates.

Mr McNeill: There is an issue about politicians wishing those in the licensed trade to get into the trenches to change Scottish culture. It would be a difficult message to communicate at that level if there is resistance. That is why we are discussing the proposed legislation. For instance, we would be replacing smoking areas with breastfeeding areas in pubs in Scotland. Do you think that that would confuse the message?

Colin Wilkinson: Yes, it certainly would.

The Convener: I am sorry to labour the point, but I return to my earlier question. The long title states that the bill is

"An Act of the Scottish Parliament to make it an offence to prevent or stop a child who is permitted to be in a public place or licensed premises from being fed milk".

The key point is that the child must be permitted to be in the place. You are saying that, at present,

that is fairly fluid because licensing legislation is changing.

Colin Wilkinson: Yes.

The Convener: So we would have to keep our eye on other legislation.

Colin Wilkinson: Yes.

The Convener: My second point is about vicarious liability when somebody else is on the premises. In fairness, the bill makes it plain that the licensee would be liable only in certain circumstances, for example, if the person was an agent or employee. Obviously, a person cannot be liable for everybody who is on the premises.

Thirdly, I would like your comments on the age issue, as the other witnesses have commented on it. In the bill,

“‘child’ means a person who has not yet attained the age of two years”.

Does your trade have views on whether there should be no limit or an upper limit?

Colin Wilkinson: We have no views on that.

Shona Robison: Do you want more licensed premises to cater for families?

Colin Wilkinson: Yes, definitely. I said that in our written submission.

Shona Robison: But you are concerned that an unintended consequence of all these changes could be a significant reduction in the number of licensed premises that cater for families.

Colin Wilkinson: Yes—that and other things that are going ahead at present.

Shona Robison: What would be the way forward to try to overcome that, given the fact that there are health issues that have to be dealt with when children are on any premises? What do you suggest as a way forward?

Colin Wilkinson: As was stated by the previous witnesses, there needs to be a culture change. It took the licensed trade a great deal of time to change from what were probably classified as drinking dens to what we have now. We feel that that is a far better way to go.

Elaine Smith: There has been some emphasis in the press on licensed premises, although the bill covers all public areas, and public services are extremely important. The convener mentioned that the bill is to cover premises on which children are permitted—so, we are talking about premises with children’s certificates. You said earlier that the bill would impose another condition. Are you saying that licensees are unlikely to apply for children’s certificates because they might have to allow and tolerate breastfeeding mothers and their babies?

Colin Wilkinson: I am not saying that; I am saying that certain conditions already exist and that that would be seen as another requirement that licensees would have to comply with. It would be up to them to decide whether they wanted to continue to provide that facility.

Elaine Smith: I am a bit puzzled about what conditions licensees would need to comply with. What kind of red tape is there? Duncan McNeil has suggested the creation of breastfeeding areas. However, that would be counterproductive, as we are trying to change attitudes and make people see breastfeeding as the norm. Are you of the opinion that the bill would mean that you would have to provide special areas, which might be considered to represent a further cost to licensees?

Colin Wilkinson: No. I do not see it as requiring an area to be provided for that. However, on top of what licensees have to comply with at present, licensees may see this as an additional requirement that might put them off applying for children’s certificates. We have experienced that in the past.

Elaine Smith: Would the same be said of bottle feeding, or is it just breastfeeding? The bill provides for both.

Colin Wilkinson: Yes. That could be an issue for some, but I cannot answer without consulting. I do not see that being an issue.

Mr McNeil: Elaine Smith was attending another committee when we heard in previous evidence that it is important that a choice is available to women. The people who support the bill believe that there should be special areas for those women who want them as well as the ability to breastfeed in general. I was just pursuing that point.

The Convener: Thank you for that clarification.

I thank our witnesses for their evidence to the committee.

That completes our business in public and we will move into private session after a 10-minute break.

15:56

Meeting suspended until 16:08 and thereafter continued in private until 17:03.

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