

HEALTH COMMITTEE

Tuesday 15 March 2005

Session 2

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HEALTH COMMITTEE

8th Meeting 2005, Session 2

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Janis Hughes (Glasgow Rutherglen) (Lab)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)
Kate Maclean (Dundee West) (Lab)
*Mr Duncan McNeil (Greenock and Inverclyde) (Lab)
*Mrs Nanette Milne (North East Scotland) (Con)
*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)
Mr Stewart Maxwell (West of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Brian Monteith (Mid Scotland and Fife) (Con)

THE FOLLOWING GAVE EVIDENCE:

Paddy Crerar (British Hospitality Association Scottish Committee)
Sheila Duffy (ASH Scotland)
Gordon Greenhill (City of Edinburgh Council)
Dr Rachel Harrison (ASH Scotland)
Andy Matson (Amicus)
Ian McAlpine (Coal Industry Social Welfare Organisation)
Alan McKeown (Convention of Scottish Local Authorities)
Keith McNamara (Royal Environmental Health Institute of Scotland)
David Mellor (Association of Chief Police Officers in Scotland)
Christopher Ogden (Tobacco Manufacturers Association)
George Ross (Royal British Legion Scotland)
Stuart Ross (Scottish Licensed Trade Association)
Steven Stotesbury (Tobacco Manufacturers Association)
Ian Tasker (Scottish Trades Union Congress)
Paul Waterson (Scottish Licensed Trade Association)
Dave Watson (Unison Scotland)

CLERK TO THE COMMITTEE

Simon Watkins

SENIOR ASSISTANT CLERK

Tracey White

ASSISTANT CLERK

Roz Wheeler

LOCATION

Committee Room 1

Scottish Parliament

Health Committee

Tuesday 15 March 2005

[THE DEPUTY CONVENER *opened the meeting at 14:02*]

Items in Private

The Deputy Convener (Janis Hughes): Good afternoon and welcome to the Health Committee's eighth meeting in 2005. I welcome the many visitors who are present for today's meeting.

Agenda item 1 is to consider whether to take agenda items 4 and 5 in private. The reasons for doing so are that item 4 will involve a discussion of today's evidence as part of our consideration of our stage 1 report on the Smoking, Health and Social Care (Scotland) Bill, and that item 5 will involve a discussion of options for the proposed committee debate on access to dental health services in Scotland. As no members object, are we agreed that items 4 and 5 should be taken in private?

Members *indicated agreement.*

Subordinate Legislation

Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Amendment (Scotland) Regulations 2005 (SSI 2005/81)

**National Assistance
(Assessment of Resources) Amendment
(Scotland) Regulations 2005 (SSI 2005/82)**

**National Assistance
(Sums for Personal Requirements)
(Scotland) Regulations 2005 (SSI 2005/84)**

**Health Boards
(Membership and Procedure) (Scotland)
Amendment Regulations 2005
(SSI 2005/108)**

14:03

The Deputy Convener: Agenda item 2 is subordinate legislation. As shown on today's agenda, the committee is asked to consider four negative Scottish statutory instruments: SSI 2005/81, SSI 2005/82, SSI 2005/84 and SSI 2005/108. The Subordinate Legislation Committee had no comment to make on the instruments, no comments have been received from members and no motions to annul have been lodged. Are we agreed that the committee does not wish to make any recommendation on the instruments?

Members *indicated agreement.*

Smoking, Health and Social Care (Scotland) Bill: Stage 1

14:03

The Deputy Convener: The convener has now arrived, so I will vacate the chair.

The Convener (Roseanna Cunningham): Thanks very much. I am sorry that I am late. Children from a local primary school are visiting the Parliament this afternoon, so I needed at least to go and say hello to them.

We now move on to our evidence-taking sessions on the Smoking, Health and Social Care (Scotland) Bill. The committee papers include submissions from a number of the organisations that are to give evidence this afternoon. Members also have a copy of the draft Smoking, Health and Social Care (Scotland) Bill (Prohibition of Smoking in Certain Premises) Regulations 2005, which the Executive has prepared for us, and a copy of the Scottish Parliament information centre briefing on part 1 of the bill. In addition, we have a note on the committee's recent fact-finding visit to Ireland.

I welcome the members of our first panel: Paul Waterson, chief executive of the Scottish Licensed Trade Association; Stuart Ross, chief executive of the Belhaven Brewery Company, who also represents the Scottish Licensed Trade Association; Christopher Ogden, director of trade and industry affairs, Tobacco Manufacturers Association; and Steven Stotesbury, senior scientist with Imperial Tobacco, who also represents the Tobacco Manufacturers Association. I ask the panel for two brief introductory statements—one from the Scottish Licensed Trade Association and one from the Tobacco Manufacturers Association—after which we will move on to questions from the committee.

Paul Waterson (Scottish Licensed Trade Association): Thank you for inviting us to the committee today. Our association is totally committed to improving the health, safety and welfare not only of our members, who are the licensees of Scotland, but of our staff and customers. The matter on which our thoughts diverge from those of the Scottish Executive is on the most efficient way of doing that. A total ban will cause our members to lose their livelihoods and our staff to lose their jobs; there would be a significant impact on health if that were to happen.

Managing smoking efficiently has been the aim of the SLTA for a long time. We are one of the founding partners of the Scottish voluntary charter group, which has worked with the Scottish Executive since 1999 to encourage licensed premises to introduce smoke-free areas and so on. Although the group had exceeded all the Executive's charter targets, except one that

related to paperwork, we realised that voluntary action had served its purpose. In May 2004, we asked the Executive to introduce legislation that would have three key elements: a smoking ban at the bar counter in all pubs in Scotland; a smoking ban wherever and whenever hot food is served; and, within three years, a commitment that 50 per cent of the total floor space in all pubs in Scotland should be given over to non-smoking areas. We further suggested that a review be conducted at the end of the third year and appropriate further steps taken.

The proposals are fair and enforceable; they reflect public opinion which, from Executive research, we know favours smoking restrictions. The proposals echo to some extent the thoughts of the committee's colleagues at Westminster and are in tune with the European Union, which also wants restrictions to be put in place to protect our trade and give choice to our customers.

Good health messages, like good laws, are easily understood, easily enforceable and backed by public opinion. A total ban is none of those things. Evidence from Ireland shows that jobs have been lost and business is down, especially in rural areas. Some research shows, as it does for Norway, that smoking cessation rates are down since the ban. There has also been an increase in drinking and smoking in the home, which does not reduce or eliminate environmental tobacco smoke risks but accentuates them.

Our view is fully supported by Dr John Reid, who gave evidence recently to the Health Committee at the House of Commons. He said that

"A complete ban on smoking in public places is not a good thing on health grounds ... because you get a displacement of smoking from some public areas to the home ... a percentage of people who previously went to the pub to smoke will now get a carry-out and take it home. I think that the figure in Ireland is about 15 per cent."

Dr Reid went on to say that

"80 per cent of people ... did not want a complete ban"

on smoking in pubs. He gave a second reason for the adoption of the route that Westminster appears to be taking, which is the recognition that ultimately, in a "free society", men and women have a right within the law to choose their own lifestyle.

We submit that the dictatorial approach of the Scottish Executive has resulted in the presentation of a bill that is predicated on incomplete and, to a great extent, irrelevant research. We also submit that the health outcome of the bill will exacerbate rather than reduce the problems that Scots experience from passive smoking.

The Convener: Thank you. I invite one of the Tobacco Manufacturers Association's representatives to make an opening statement.

Christopher Ogden (Tobacco Manufacturers Association): Thank you for inviting me to speak on behalf of the Tobacco Manufacturers Association. I am accompanied by Dr Steven Stotesbury, who is a scientist from Imperial Tobacco. Steven will be able to address any questions of a scientific, technical nature, for which I am grateful. We have submitted six documents for the committee's consideration and we are here to answer any questions that might arise from those submissions. We will also deal with any additional points that are raised.

The TMA represents British American Tobacco, Gallaher and Imperial Tobacco, which together create a £12 billion a year industry in the United Kingdom. Of that total, some 80 per cent goes to the Treasury in duty and VAT receipts. Tobacco is a legal product, and we take the view that smoking is a matter of informed adult choice. We acknowledge the fact that there are health risks associated with smoking, and it is quite right that public health authorities promote risk awareness programmes. We cannot possibly object to that. What we do object to, however, is the distortion of science to further an anti-tobacco agenda. It is one thing to tell smokers that they are harming themselves, but it is quite another to say that, by smoking, they are harming others. That is the premise on which section 1 of the Smoking, Health and Social Care (Scotland) Bill is based.

The whole issue of environmental tobacco smoke—ETS—is being driven by a strident, determined anti-smoking lobby whose ultimate objective is a tobacco-free world; ETS is a means to that end. Our view is that the scientific evidence—and it is important to understand that the evidence that exists is epidemiological, not medical—does not prove causation between exposure to ETS and death or disease. Nevertheless, that is being posited as a given by the anti-smoking lobby, which is assiduous in extrapolating dubious relative risk figures into absolute numbers of deaths. We are not alone in our view. In 2003, Richard Smith, formerly the editor of the British Medical Journal, said:

"We must be interested in whether passive smoking kills, and the question has not been definitively answered. It's a hard question, and our methods are inadequate."

So the medical profession thinks along similar lines.

We are not in denial of ETS to the extent that we do not acknowledge the fact that other people's smoke can be annoying and, indeed, irritating to non-smokers. Of course, it can be; however, in the interests of common sense, freedom of choice and natural social justice, alternatives to an outright ban on smoking in public places should be considered. It is perfectly possible to create designated smoking areas with proper ventilation in a range of public places, which can

accommodate the preferences of both smokers and non-smokers. Opinion polls indicate that that is what the public want, and among the population at large there is a greater degree of tolerance and a greater sense of fair play than those who are implacably opposed to tobacco might wish us to believe.

The Convener: Thank you. Before we move to the question and answer session, I welcome Brian Monteith to the committee. I understand that he does not wish to ask questions, although he may do so. We will try to accommodate that if we have to. Apologies have been received from Kate Maclean, who is unable to attend the meeting.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I am interested to hear the evidence from the Tobacco Manufacturers Association. In your written submission, you acknowledge the fact that tobacco smoke can be irritating to non-smokers, and you just confirmed that you refute the fact that passive smoking kills people. You will be aware that the committee has received other medical evidence—for instance, from Action on Smoking and Health Scotland. ASH Scotland cites the findings of the International Agency for Research on Cancer's working group

"of 29 experts from 12 countries convened by the World Health Organisation."

It states:

"This working group have now published the long-awaited 1,500 page review of all published evidence related to passive tobacco smoking and cancer, concluding that secondhand smoke is carcinogenic to humans."

Do you still refute that evidence?

Christopher Ogden: My colleague will deal with the specific scientific details in a moment. However, in response to your question, I have to say that we refute that evidence. The relative risk figures in some ETS studies do not warrant the claims that have been made about its effect on health. For example, many are spousal smoking studies that rely on recall of exposure to smoke over many years. Indeed, of the five largest studies into ETS, three determined that, statistically, there was no increased risk to health; one determined that there was a slightly increased risk; and one determined that the risk was slightly decreased. That, in a microcosm, exposes the degree of contradiction and discrepancy in the various studies.

14:15

Mike Rumbles: So you refute the evidence of 29 World Health Organisation experts from 12 countries.

Although the SLTA does not go as far as the Tobacco Manufacturers Association, its submission says:

"We find the claims of hundreds of deaths a year of non-smoking bar workers as a result of ETS ... to be incredible from our own observations."

Does the SLTA accept that ETS is carcinogenic? If you do not accept that ETS causes hundreds of deaths a year, how many deaths do you think there are and how many of them are acceptable?

Paul Waterson: We see the same risk factors as everyone else, and do not think that they are large at all. Indeed, we think that the claims have been grossly exaggerated. For example, we hear that a bar worker dies every week from the effects of passive smoking. I have been in the trade for 30 years and have to say that neither I nor any of my colleagues know of any bar worker who has died in that way. When we asked about these figures, we were told that one bar worker a week died in Scotland, then that one a week died in the UK, then that it was not really one a week. It goes on and on. Where are these figures coming from?

Mike Rumbles: That is exactly what I want to get at. Are you refuting the medical evidence that ETS is carcinogenic? Are you saying that you do not believe that these deaths are happening?

Paul Waterson: As far as smoking is concerned, a comparison of relative risk factors shows that someone who uses a mobile phone has more chance of getting a blood clot in his eardrum.

Mike Rumbles: But how many people have to die from ETS before you think that it is unacceptable?

Stuart Ross (Scottish Licensed Trade Association): We have read the research that was undertaken for the Scottish Executive by the University of Aberdeen, which concluded that of the 865 people who die each year from passive smoking, 120 experienced second-hand smoke in all types of public places. No one knows how many people experience second-hand smoke in licensed premises, because there has been no research into that matter.

The licensed trade gets frustrated by statements such as the one that the First Minister made to Parliament on 10 November when he presented the bill. He said that 1,000 people in Scotland die each year from the impact of second-hand smoke. However, the Executive's own research mentions 865, more than 700 of whom experience the problem at home. Our argument is predicated on the fact that the Scottish Executive has carried out no research whatever into the question whether an outright ban will solve or shift a health problem. In fact, as Paul Waterson said in his introductory remarks, Dr John Reid made exactly the same point to the House of Commons Health Committee on 25 February 2005.

Mike Rumbles: I understand the Tobacco Manufacturers Association's position, because it has made it absolutely clear.

Steven Stotesbury (Tobacco Manufacturers Association): Can I come in here?

Mike Rumbles: I want to pursue this question first.

The TMA has said that people do not die from ETS. However, the SLTA has not said that; instead, by refuting the figures, you are playing a numbers game. You are still not answering my question, which is: how many people have to die from passive smoking before you think that it is a problem that we need to solve?

Stuart Ross: We want fewer people to die from it. We have read a lot of research on the subject and we listened to Dr John Reid at Westminster saying that more people will be harmed by an outright ban on smoking than would be harmed by his proposals. There are obviously different views. You must appreciate that we are business people running bars and trying to do our best within our own domain. We are not health experts, but there is clearly a division of opinion on the matter. We cannot answer the question, but we listen to a lot of people.

The crucial point that we want to make to the Health Committee, and the point that we have been making all along in our various submissions, is that the research that has been conducted by the University of Aberdeen, and upon which the bill is predicated, is incomplete and, to a large extent, irrelevant. That is made quite clear in the document that we submitted, which was prepared by the well-respected Moffat centre at Glasgow Caledonian University. It peer-reviewed the University of Aberdeen work and came to the conclusion that it was based on studies of smoking restrictions in countries round the world, not of smoking bans in any countries. Indeed, there has been only one outright ban of smoking, in Ireland, which came into place in April 2004, as members will all know from their trip to Ireland. The Irish ban has not even had a year to run, and there has obviously been no complete research into its health or financial consequences.

Steven Stotesbury: I would like to make a point, because I am afraid that if we go on our position may not be understood. Our position is not to say categorically that no one can die, or has ever died, from exposure to environmental tobacco smoke. Our position is that the science is inconclusive and that the risk factor cited is extremely small. Unfortunately, for both sides in the debate, the issue remains uncertain. I wish that I could tell you otherwise, but I cannot. Neither can anyone who follows argue legitimately that the risks are proven on scientific grounds; they are not. Therefore, there is uncertainty, and within that

uncertainty I believe that there is the space and opportunity for us to find proportionate solutions that will, while minimising involuntary exposure to smoke, enable smokers to enjoy a legal product in a social setting.

Helen Eadie (Dunfermline East) (Lab): I want to ask about the economic impact of a ban. First, how much duty is generated through taxation for the UK Government from tobacco revenue?

Christopher Ogden: Last year, it was in the region of £9.6 billion.

Helen Eadie: How much money is spent by the national health service in Scotland on treating smoking-related disease?

Christopher Ogden: That question is best answered by the health authorities, but I understand that the cost, for the United Kingdom as a whole, of treating what are described as smoking-related diseases is £1.5 billion.

Helen Eadie: It is £200 million in Scotland, according to the Scottish Executive. Do you know the cost of the payment of welfare benefits to those unable to work due to smoking-related illnesses?

Christopher Ogden: No, I do not.

Helen Eadie: You may be interested to know that it is £40 million. What is the loss of total productivity through smoking-related time off work in Scotland?

Christopher Ogden: Again, those are figures that are no doubt familiar to the public health authorities, but I am not in a position to comment on them.

Helen Eadie: You are arguing that there will be a loss of money to the Exchequer, and I am highlighting the fact that there is also a cost to the Exchequer. If your argument is to be persuasive, I want you to be able to quote to me precisely what the pluses and minuses are. I am asking you about the total loss of productivity through smoking-related time off work in Scotland.

Christopher Ogden: I shall answer that by saying that the tobacco industry has always been at pains not to trade figures in that way. We think that it is irrelevant to the argument, which is to do with the consumption of a legally manufactured, legally sold product that is bought by those who wish to purchase and consume it.

Helen Eadie: The premise of your argument is that it would cost the Exchequer more to ban tobacco smoke than it would not to ban it. I am saying that it would cost the Exchequer more if we allow you to continue to cause smoking-related illnesses. The answer that I was looking for is £450 million.

What is the estimated cost of sickness absence that is related to exposure to environmental

tobacco smoke, for those with asthma and chronic bronchitis?

Christopher Ogden: To clarify, in mentioning the size of the United Kingdom tobacco market, my intention was not to juxtapose those figures with the figure with which you have presented us. We have not approached the economic argument about health costs.

Helen Eadie: You will agree that it is important for any Executive in arriving at a policy conclusion to know what the costs and benefits of the policy are. Your argument has been about costs and benefits, but you cannot provide any persuasive thinking on the issue.

Christopher Ogden: I can do that, but by concentrating on the issue that is at stake, which is not active smoking, but second-hand or environmental tobacco smoke. Our argument on that issue is completely different. Our view is based on the fact that the case is simply not proven that exposure to other people's smoke causes death or disease.

Helen Eadie: Are you really saying that all the World Health Organisation reports on the subject and the various other reports from a variety of universities and experts are not telling the truth?

Christopher Ogden: I would not put it quite like that—I am saying that those reports do not give a definitive position. I should add that organisations such as the WHO, the BMA and the Royal College of Physicians have as an ultimate objective a tobacco-free world; for health reasons, they do not wish people to smoke.

Helen Eadie: When did you read the 1998 report of the UK Scientific Committee on Tobacco and Health?

Christopher Ogden: Recently. There is a more recent SCOTH report, which is a meta-analysis of existing studies, but which adds nothing to the 1998 report.

Helen Eadie: What were the conclusions of the report?

Christopher Ogden: It gave a relative risk factor of 1.24 for lung cancer that is related to environmental tobacco smoke.

Helen Eadie: So the increased risk of lung cancer from environmental tobacco smoke is about 20 to 30 per cent.

Christopher Ogden: The use of percentage terms—

Helen Eadie: Was that what the report said?

Christopher Ogden: With all due respect to the committee, I will explain what that means.

Helen Eadie: The report talked about the risk of exposure to environmental tobacco smoke.

The Convener: Let the witness answer.

Christopher Ogden: The medical community accepts the figure that, among those who do not smoke and who are not exposed to smoke, 10 in 100,000 people per annum die from lung cancer—the norm is 10 in 100,000 people per year. A relative risk of 1.24 that is arrived at as a result of an ETS study means that 12.4 in 100,000 people would contract lung cancer, the extra 2.4 people being those who are exposed to ETS. That translates into a 24 per cent increase. That sort of percentage increase tends to be headlined in the media, but it gives a misleading impression. A man off the street could go into a pub and think, “Oh my goodness, people are smoking in here—I’ve got a 24 per cent chance of contracting lung cancer.” Of course, that is completely wrong.

Helen Eadie: Are you saying that it is acceptable for society to allow that percentage of people to die from exposure to smoke?

Christopher Ogden: I am saying that we take a different view on the percentages that have been arrived at. More than 60 ETS studies have been conducted, which, as a whole, are insufficient to warrant those figures.

14:30

Steven Stotesbury: I have a follow up point on the SCOTH report. The TMA made an oral submission to SCOTH, which is acknowledged in the report, in which we debated and challenged SCOTH’s conclusions. We had an expert who calculated the figures for meta-analysis and who came up with an alternative range of figures that suggested that, perhaps, the risk was not significant. The point was argued and was acknowledged in the report but, unfortunately, that is where the matter stands. SCOTH did not take those conclusions on board and the report did not state what its view of that alternative was; it simply acknowledges the fact that the TMA came to SCOTH, gave a presentation and left. That is unfortunate.

Helen Eadie: What do you say about the World Health Organisation report?

Steven Stotesbury: It takes a selective view of the research that has been done. There are between 60 and 70 different reports on lung cancer. The vast majority of those conclude that the risk is inconclusive, and a minority come to the view that there is a small, significant increase in risk. The WHO and the IARC, which is an agency of the WHO, seem to have cherry picked some of the studies that fit their case.

Helen Eadie: What would you say is a small, insignificant amount of people at risk? The SCOTH report puts the figure at 24 per cent.

Steven Stotesbury: What I mean by—

Helen Eadie: Do you believe that, if 24 per cent of people are at risk, that is a small, insignificant number?

Steven Stotesbury: That is not what I mean by—

Helen Eadie: That is what the report says.

Steven Stotesbury: Can I define what I mean by “significant”? No report that has ever been published comes up with a figure like 24 per cent.

Helen Eadie: Are you aware that the SCOTH report is an overview of 37 other studies?

Steven Stotesbury: It is an overview of 37 studies, whereas nearly 70 have been published. By definition, SCOTH has been selective in its approach to the studies that it has chosen to focus on.

Helen Eadie: Do you agree with the paragraph in the SCOTH report that says:

“The increased risk to non-smokers of lung cancer from secondhand smoke (SHS) was estimated at 24% in the overview of 37 studies and 4626 cases commissioned by SCOTH”?

Steven Stotesbury: I am aware of that conclusion.

Helen Eadie: Do you deny that that figure of 24 per cent is significant?

Steven Stotesbury: Can I explain what I mean by “significant”? I think that we are talking at cross-purposes.

The Convener: Are you using the word “significant” in a specific statistical sense as opposed to its normal use? That might be where some of the difficulty arises.

Steven Stotesbury: Yes, I am using it in a specific sense. In every study—including the IARC study—the headline figure is an average. However, the result is quoted in terms of a range from a lower figure to a higher figure.

In every study, those who conduct the study are comparing populations. In the usual case, they compare a population of non-smokers who are not exposed to smoke with a population of non-smokers who are exposed to smoke either in the workplace or in the home and examine the outcome in terms of health.

By definition, if there is no difference between those two groups, the result is quoted as 1. If, within that limit of confidence—which is another statistical term—the result of a study is quoted as 1, that study is defined as being non-significant. That is the particular and precise meaning of “significant” that I am using. I apologise for the fact that we are talking at cross-purposes.

Helen Eadie: Thank you for that clarification.

The SCOTH report also says that

"new studies on SHS exposure and the risk of heart disease have strengthened the findings of the 1998 SCOTH overview which estimated that the excess risk in non smokers exposed to SHS compared to those not exposed was 23%".

What do you say about the fact that such evidence and statistics are being produced for us?

Steven Stotesbury: It is right to say that evidence continues to be produced. You will find that people who have an anti-tobacco agenda will pick up on the studies that show something sensational. However, the many studies that suggest that there is no increased risk tend to get left out of their reports and consideration. To return to something that Christopher Ogden said, because we are considering an increase in risk that is incredibly small statistically, it is best to focus on the studies that have included the greatest number of cases. If we consider the largest studies that have been conducted, we get a consistent pattern. Of the top 10 such studies, the top seven are inconclusive in that they include the possibility that there is no difference between the risk to an exposed group and to a non-exposed group. Two of the studies conclude that there is a significant increase in the risk and one concludes that there is a significant decrease in the risk. By any analysis, that is uncertain and inconclusive. I would not call it conclusive proof that there is risk; there is a measure of uncertainty.

Shona Robison (Dundee East) (SNP): One of the problems with the debate is that many statistics are produced by both sides and it is important that both sides produce statistics responsibly. I turn to the section in the SLTA's evidence on the reduction in smoking incidence. You cite statistics from Norway and argue that

"In 2003-4, the incidence of smokers aged 16-24 actually increased by 0.9%".

You do not mention the fact that the incidence of smoking among the same age group increased in the years 1996-97 to 2002-03. You just take the figure from 2003-04 and say that

"From these data you could conclude that the smoking ban markedly decreased or reversed the decline in smoking incidence that was being achieved previously."

How can you come to that conclusion on the basis of one year's figures, given that previous years' figures from before the smoking ban show that there was a rising incidence of smoking in the 16-24 age group?

Paul Waterson: Of course, it has taken 12 years to introduce the total ban on smoking in Norway, so there was a cycle there that we will not have.

Shona Robison: With all due respect, that is not the point.

Paul Waterson: The figures also show that although smoking was being reduced by 3.1 per cent among the whole population before the ban, the rate is now down to 0.3 per cent. There is definitely room for debate about the figures. The figures do not tell us that if we introduce a ban we will stop people smoking totally. That is what we in the licensed trade are saying about the introduction of a ban. The figures exist and we can argue about them, but it is surprising that all we hear all the time is, "Introduce the ban—it'll be the best thing that ever happened. Everybody's going to stop smoking. The percentages will go up." That is not happening in Norway.

Stuart Ross: At the Scottish Executive's conference on smoking last September we heard speakers representing different countries that have adopted a phased approach to banning smoking talk about the success of their reductions in incidence of smoking. Our argument is predicated on considering whether an outright ban or a phased approach is better. The evidence that we heard at the Edinburgh international conference centre in September suggests that the phased approach works.

Shona Robison: I am suggesting to you that you undermine the credibility of your evidence by pulling out one year's statistics when all the previous years' statistics show that there had been an increase in smoking rates among young people, which is a trend across Europe. What you did distorts the picture and is selective. Further on, you say of the statistics:

"This suggests that whilst smoking bans may"

help

"the light and very light social smokers to give up, and probably reduce the tobacco consumption of heavier users, it does little if anything to cause regular users to stop."

Even if that were true, would you not say that it was a success to reduce tobacco consumption among heavier users and to get

"light and very light social smokers"

to stop smoking? Would not that in itself be a success?

Paul Waterson: We are not saying that we should not do something to stop people smoking; we are saying that we do not need a ban to achieve cessation rates.

Shona Robison: You said in your written evidence that a smoking ban achieved cessation; I am asking whether it would be an achievement in itself if a smoking ban achieved that.

Paul Waterson: Yes—but we do not need a ban to achieve cessation.

Shona Robison: But you said that a smoking ban had achieved it.

Paul Waterson: Yes. We do not want nothing to happen. We appreciate all that you say, but we are saying that we do not need an overall ban to achieve cessation. Other countries are achieving cessation through restrictions, so why do we need a ban—especially a ban that will be introduced overnight? It has taken Norway 12 years or thereabouts to reach that point.

Stuart Ross: In Australia, there was a ban on smoking in restaurants, which was later extended to bars. That has been an exemplary success in raising the cessation rate. Our argument is not based on health grounds; it is about what will improve health best and what will do least financial damage to business interests. Those are the two fundamental arguments that we would like to put forward—and have been putting forward—to the Finance Committee and the Health Committee.

Shona Robison: Your evidence suggests that the result of a smoking ban such as I have just outlined would not be an achievement in itself. Your evidence says that a smoking ban achieving that would not be an achievement. I suggest that it surely would be an achievement.

Finally I want to ask about the Irish situation. You say that there is no evidence from Ireland, but you cite the experience in Ireland in your written submission. Either there is evidence from Ireland or there is not. You say that in Ireland there has been a shift towards people smoking and drinking at home. I would not dispute that. However, do you accept that many other factors could be behind that? When we were in Ireland, we found that as well as the smoking ban's being enforced, a number of other changes were taking place; for example, the drink-driving laws were being toughened up. You might screw your nose up at that, but members of the licensed trade in Ireland said that that was having a major impact on whether people drink in rural pubs. There was also a general trend towards people drinking at home because cheap booze is available in supermarkets. That was also acknowledged by the members of the licensed trade, who accepted that it was not just the smoking ban that was having an impact on people coming through their doors. Do you accept that those are other factors that might contribute to more people smoking and drinking at home?

Stuart Ross: You asked quite a lot of questions at once. I will try to answer them in order. First, you asked whether or not there is evidence from Ireland. Ireland is the only country that has imposed an outright ban in a sudden—or dictatorial—manner, as the Executive is proposing. When we were asked to give our views on the proposals from Holyrood, we had to get research done. All that was available to us at that time was the four or five-month period of the Irish

ban. We commissioned the Centre for Economic and Business Research—a well-respected firm in London that has no axe to grind—to examine the Irish situation and to find out what the percentage of displacement was from on-trade or pub trade to take-home trade. That research was carried out independently and was not influenced by our views. Shona Robison would believe that anything we say is tainted by commercial interests. It was independently concluded that, if the Irish position was replicated in Scotland, there would be a loss of revenue of more than £100 million, a loss of profit of £90 million, a negative shift in jobs of 6 per cent; and a decrease of £56 million in the revenue take from the licensed trade.

14:45

Not being economists, we asked the CEBR to carry out research, but we accept that people must decide whether or not to accept the CEBR's view. As I said earlier, the ban in Ireland has been in place for less than a year, so we do not know the true position in Ireland. However, when Diageo announced its results two weeks ago, its chief executive made great play of the fact that Guinness sales were up in the take-home trade but well down in the pub trade; all the evidence points to a shift. We need to remember that there is always a reason for commercial movements, whether that be the weather, the economy or pricing.

Although the health lobby quotes statistics that are claimed to show a reduction in the use of tobacco as a result of anti-smoking legislation such as outright bans and restrictions, people never mention the fact that the number of smokers is decreasing anyway. People who have a commercial axe to grind always put the best slant on their figures. I am sure that politicians also do that at times.

Shona Robison: To be clear for the record, are you saying that the licensed trade accepts that other factors have been at play in Ireland? Do you accept that factors such as drink-driving laws and the lower price of drink in the burgeoning number of supermarket outlets have been a major factor in Ireland's increased take-home trade?

Stuart Ross: Whether or not I accept that is irrelevant. We asked the CEBR to conduct independent research. We submitted the research to the committee, although Shona Robison may not have had a chance to read it. The research concluded that assigning the Irish situation to Scotland would result in the statistics that I have just quoted.

Shona Robison: Did the study take account of the other factors?

Stuart Ross: Yes. The study's conclusion, if you read it—

Shona Robison: How did the researchers know how much of the change was due to other factors and how much was due to the smoking ban?

Stuart Ross: You would need to ask that question of the researchers. I am not here to speak on their behalf.

Shona Robison: Are you in touch with the trade association in Ireland?

Stuart Ross: Yes.

Shona Robison: In that case I have no doubt that the Irish licensed trade association will have given you the same information as it gave us. It told us that the other factors at work are just as important, if not more important, in putting pressure on the industry. Do you accept that?

Paul Waterson: The smoking ban “greatly accelerated”—those were the words that the Irish used—the downturn in the Irish licensed trade.

We need to remember that the Scottish licensed trade does not have the same stability as the Irish trade. We are talking about two entirely different types of business. Because of the way in which Irish licences are granted, licensed trade businesses in Ireland tend to be handed down from generation to generation and are asset rich. As such, they are far more able than our industry to handle a downturn in business. Most businesses in Scotland are relatively young, with large loans and rented properties. We are in a much more difficult position, because the trade in this country will not be able to withstand a downturn in business such as the Irish trade has handled.

The smoking ban in Ireland has certainly greatly accelerated the move away from the pub to off-sales drinking. As I am sure members will know, all jurisdictions that have big off-sales drinking populations have problems with alcohol abuse. The health problems that are associated with such abuse are exacerbated and get much worse when drink is taken out of the controlled environment.

Stuart Ross: Surely the relevant point is whether or not anti-smoking legislation will improve the nation's overall health. That brings us back to the question whether more people will smoke and drink at home as a result of a ban and the impact that such a development would have on children. ASH Scotland's written submission points out that children who are exposed to ETS in their early years are three times more likely to contract lung cancer or smoking-related diseases in later life than are children who are not exposed. If the trend towards take-home drinking is exacerbated by legislation, that is not necessarily good news for health promotion. That is surely a crucial issue that needs to be taken into account, but no research is being done on it. In our view, if

the bill is the most important bill that has been introduced in the Scottish Parliament—as the First Minister has claimed—the proposals should be properly and fully researched in respect of relevant like situations.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): I will turn to another matter that we will probably never resolve, even though we have spent hours and hours on it. We will have one more attempt. Is smoking a health hazard? Can we agree on that?

Christopher Ogden: As I said in my opening statement, we do not disagree that health risks are associated with smoking.

Mr McNeil: A yes or no answer would be fine, because there are other people to get in.

Christopher Ogden: That was a yes.

Mr McNeil: We have just heard ASH being quoted as saying that exposure to passive smoking increases the risk and health hazard. I accept that. Do you agree?

Christopher Ogden: No.

Mr McNeil: So—a person who is not exposed to passive smoking is at the same risk as someone who is exposed to it seven days a week, eight hours a day.

Steven Stotesbury: That is too close to call.

Mr McNeil: That is a difficulty. If you are not prepared to concede that, it is difficult for the committee to take seriously your evidence and your claim that you accept fully your duty of care to your staff. If you are not prepared to go from agreeing that smoking poses a health risk to agreeing that passive smoking also poses a risk—

Stuart Ross: I think—

Mr McNeil: I am coming to my question. I should not have made that comment, but my line of questioning is about—

The Convener: It would be fair to let the witnesses respond.

Stuart Ross: You cannot lump together the four of us who are on this one panel. Paul Waterson and I represent the Scottish Licensed Trade Association and have no links with the Tobacco Manufacturers Association. Of course we accept the risk. Our argument is predicated on that, and our submission to Tom McCabe last May was about how we would handle it. We put to him a five-point plan, the main elements of which Paul Waterson outlined. Since 1999, we have been working with the Scottish Executive—through the Scottish voluntary charter on smoking in public places—to encourage more smoke-free areas. Our objective is to restrict the use of tobacco in

licensed premises without fundamentally damaging business interests while still providing freedom of choice for the individual, as supported at Westminster by John Reid, whom Paul Waterson quoted.

Mr McNeil: You said that earlier. Does the SLTA accept that smoking is a health hazard and that increased exposure to passive smoking is also a health hazard?

Stuart Ross: Yes, but the relative risk of passive smoking has to be taken into account.

Mr McNeil: Yes or no will be fine.

Stuart Ross: We are saying that the relative risk has to be taken into account, as does the relative risk of shift.

Mr McNeil: That is useful, particularly as far as your attitude to your staff is concerned. On page 2 of your submission, you claim that there is a

“low level of staff exposure”.

How have you measured that? What risk assessment has been carried out? What air pollution tests has your industry carried out to establish the bald statement that there is a

“low level of staff exposure”?

Paul Waterson: There are building control rules and regulations to which all licence holders must adhere, so the atmosphere must be kept within certain limits. However, we have the problem that we are told that ventilation does not work. We have done research—we are back to the problem of whether you agree with the research that we commissioned—that showed categorically that relatively inexpensive ventilation systems work, but we are told that we need a hurricane blowing through our premises to make the air clean enough. We have a problem with that. Licence holders are under a duty of care under building control regulations and other legislation. That looks after the staff side.

Mr McNeil: So you are not aware of any risk assessment that has been carried out throughout the establishments that you represent to establish whether you can make the claim that there is a

“low level of staff exposure”.

Stuart Ross: Although I have worked in the industry for 30 years and have been the boss of Belhaven for 20 years, not once has a member of staff complained to me about passive smoking in the work environment.

Mr McNeil: You came to us today saying that you are responsible employers. Have you carried out a risk assessment in any of, or throughout, the establishments that you represent to allow you to submit that there is a

“low level of staff exposure”?

How are you able to make that statement without measuring exposure?

Stuart Ross: The Scottish Executive's own research shows that health problems because of passive smoking are mainly experienced in domestic environments. You need only read the University of Aberdeen research to draw that conclusion. Six sevenths of ETS problems come from domestic sources, not from public places. Licensed premises are only one small part of a vast array of public places, so you can draw the conclusion from that report that the incidence of staff experiencing passive smoking problems in licensed premises is tiny.

Mr McNeil: You have no scientific basis on which to say that. You have not even carried out a risk assessment, as you would be required to do.

Stuart Ross: Could you tell me how to carry out a risk assessment?

Mr McNeil: Yes.

Stuart Ross: How would you do it?

Mr McNeil: You would speak to the Health and Safety Executive and get its chemists to perform air pollution tests in and around bar areas, which you claim—

Stuart Ross: We have done that with ventilation. That is exactly what Paul Waterson said.

Mr McNeil: Not every bar that I go into has ventilation.

Stuart Ross: That is exactly the point. You are right that ventilation has been adopted by Italy as the solution to the health problems. It is just about to be adopted by Germany. It has been adopted by the European Parliament, in which 544 out of 600-odd members of the European Parliament voted in favour of ventilation as a solution to ETS problems. You say that we have not considered ventilation, but we have considered it, and we have encouraged our members to use it. Indeed, in Belhaven, we put ventilation into every unit that we upgrade.

Mr McNeil: You mention the Health and Safety Executive in your submission in defence of some of your claims, but you have not involved the HSE in carrying out a risk assessment. There is a well established hierarchy in measuring risk. The first point is that you eliminate the risk, not that you ventilate the cause of the risk and then remove it only subsequently.

Stuart Ross: If you read the University of Glamorgan report you would see that it concluded that a pub in Glasgow that had ventilation systems and in which smoking was allowed had fewer contaminants in the air than a no-smoking pub in the centre of the city that did not have—

Mr McNeil: If you have not—

Stuart Ross: You are not listening.

Mr McNeil: If you have not evaluated the hazard and the risk, how can you evaluate what type of ventilation to use?

Stuart Ross: We are not scientists. We are businessmen.

Mr McNeil: You have not done anything in that regard to protect your staff.

Stuart Ross: That is nonsense—of course we have.

Mr McNeil: Your staff are exposed to passive smoking seven days a week and eight hours a day.

Paul Waterson: So, do you not agree that ventilation does any good at all—you think that it does absolutely no good?

Mr McNeil: Ventilation has to be introduced alongside a proper assessment of the hazards and risk to your employees. You have confirmed today that you have not taken that seriously.

Paul Waterson: That is not the case. Guidelines on clean air have been laid down and we are within those guidelines.

The Convener: Where do the guidelines come from?

Paul Waterson: They are health and safety guidelines.

The Convener: Do you comply with them currently?

Paul Waterson: Research shows that we are well within the guidelines; in fact, the non-smoking pub had more problems than the smoking pub. That is one of the reasons why we have said that we know that it can be uncomfortable for bar staff and that we will ban smoking in bar areas. We have said that openly. To do so is fair and consistent with what you are saying.

Mr McNeil: You mention “substantial control methods” on page 3 of your submission. What scientific basis do you have for using the word “substantial”? Who has validated them? Has the HSE validated them, and how can it do that throughout the pubs that you represent?

Paul Waterson: The methods are “substantial” within the limits that are laid down.

Mrs Nanette Milne (North East Scotland) (Con): I confess that I am beginning to be blinded by science. Do you have any further comments on Professor Hole’s report that was commissioned by the Scottish Executive and NHS Scotland, and on the University of Aberdeen review? Do you have any points to raise that have not been covered? I am slightly unclear as to your concerns with both.

Steven Stotesbury: I want to make two comments. First, I do not want to say too much about Professor Hole’s report, but I feel that it is unfortunate that in presenting his evidence he has taken the position that there is a certain level of risk and has extrapolated figures from that. It is disappointing that he did not begin by examining the balance of evidence in various studies and considering the variability or uncertainty of that risk estimate.

15:00

Mrs Milne: Are you saying that he has plucked the initial figure out of the air?

Steven Stotesbury: No.

Mrs Milne: Then how did he arrive at it?

Steven Stotesbury: He has based the figure on a particular report without verifying it or testing its variability. For instance, using the SCOTH report’s relative risk figure of 1.24 would in all fairness require an examination of SCOTH’s assessment of the uncertainty of that figure and the whole range of variability.

Mrs Milne: And what about the University of Aberdeen review?

Steven Stotesbury: I am not familiar with it, so I will not comment on it.

Mrs Milne: Does the SLTA wish to comment on that review?

Paul Waterson: That review covered areas where smoking was restricted, rather than banned outright. For example, it considered one study on the effects of smoking in Californian hotels and restaurants, but not in pubs. We do not think that that is the right foundation for decision making.

Stuart Ross: I should point out that those researchers had nothing to look at—when the research was commissioned, an outright ban had not been imposed anywhere in the world apart from Ireland, where it had been in place for only a couple of months.

Mrs Milne: So those researchers were not comparing like with like.

Paul Waterson: Definitely not.

Mrs Milne: We have already been told that ventilation can remove the obvious effects of smoke—that is, the smoky atmosphere—but that unless it creates a tornado it cannot remove carcinogens from the atmosphere. Do you have any scientific comments to make on that claim?

Steven Stotesbury: Yes. First, I should make two comments, because the previous argument that we had on ventilation leads me to think that the committee might be under the false impression

that, on the one hand, there is fresh air and, on the other, there is air that is contaminated with ETS. In fact, the air around us and in most indoor environments is full of chemicals. If members want it, I can quote chapter and verse from reports. Suffice it to say that many of the chemicals in environmental tobacco smoke are already around us and come from a variety of sources, such as varnish on wood, and from paint, carpets and the aftershave that we put on in the morning. A chemical examination of that air would show that it was a soup. I am sorry to say that, but that is the reality of the situation.

Measuring the chemical effect of smoking in such a venue would show that its impact on the number of chemicals present would be very minimal. For example, there might be a very small increase in carbon monoxide. There would also be a sudden peak in nicotine, which is a major product of ETS. However, many of those chemicals, which are accepted as carcinogens, are present no matter whether there is ETS. As a result, ventilation is a very good solution; it deals with the chemicals that are present in ETS as well as all the chemicals that are present in a room, and makes the environment more pleasant for us all.

I am familiar with the argument that although ventilation can deal with many chemicals it cannot deal with carcinogens. I do not know where that has come from, but it is not a scientific argument. Everything that diffuses into the air in its vapour phase becomes mixed. That is a physical fact; indeed, it is one of the gas laws. Gases mix. As a result, if they are removed, they are removed together at exactly the same rate. I do not know who argued that carcinogens are left behind and become concentrated, but the claim is completely and utterly false.

Mrs Milne: Are all solid particles removed by ventilation?

Steven Stotesbury: Solid particles behave differently. It can be easier to remove them, because they can be filtered out. They do not behave like pure gases, but they float in the air and can be removed in approximately the same way.

Mrs Milne: Are the carcinogenic substances mainly gases or solids?

Steven Stotesbury: There will be carcinogenic substances in both phases. Some substances will be apportioned between them, but we do not want to go into that level of complexity.

The Convener: I am keeping an eye on the time and I ask members to make their questions questions, rather than speeches.

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): We accept that cigarettes are an addiction

and all packets carry a message indicating that they kill. You accept that there is a decline in smoking in the population and that probably 70 per cent of people do not smoke. You are catering for the 30 per cent who still smoke. Do you accept that in this country the number of people who smoke is decreasing, but that in other countries, especially in the east, it is increasing? We are selling more cigarettes abroad.

The Convener: What is your question?

Dr Turner: I have asked a question. We can run through things quickly. We accept that cigarettes kill—that is stated on every packet.

The Convener: That is not a question—it is a statement. Ask a question.

Dr Turner: I am asking whether the witnesses accept that cigarettes kill, as is stated on the packets. The answer should be a quick yes.

Stuart Ross: We have already answered the question.

Dr Turner: Are you not catering for the 30 per cent of people in this country who still smoke?

Stuart Ross: All the research shows that 60 per cent of people who go to Scottish pubs smoke. We do not cater for smokers; we cater for people who want to eat and drink. Some of them happen to smoke. We do not make a living out of selling tobacco.

Dr Turner: Exactly. You will have a business plan for the future if a ban is introduced. You have probably looked into the benefits of a ban, some of which have been mentioned. Cleaning bills, fire risk and so on would go down.

Stuart Ross: Your point is absolutely valid. There is an opportunity for all public houses to get more business from people who do not like to go into smoke-filled environments. However, 60 per cent of people who currently go to pubs smoke, so there is a big risk that those people will transfer their drinking habits from the on-trade to the take-home trade. My crystal ball is no better than yours. We can examine only the research that is available. We have commissioned research from the CEBR—the research has been presented to the committee—that shows the evidence from Ireland in the period for which it is available. That is not a guess; it is assigning known information from Ireland to Scotland.

Dr Turner: Public houses in Ireland accepted the situation and changed their business trends. I suppose that you would do the same.

Let me be more scientific and talk about the duty of care. In New York, a decision was made to carry out blood tests. I would like to hear your scientific take on those tests, which measured the levels of cotinine in the blood of staff, rather than particles and carbon monoxide. The tests found

that in pubs and restaurants in which there was a ban on smoking, those levels were reduced markedly. What do you have to say about that?

Steven Stotesbury: I am not familiar with the study, but cotinine is a well-known biological marker.

Dr Turner: Do you think that it was sensible to carry out the tests in New York?

Steven Stotesbury: It was a reasonable thing to do. I will be precise—you cannot infer a direct quantitative relationship between levels of cotinine and exposure to tobacco smoke. However, qualitatively you can tell the difference between an exposed and a non-exposed group. Some people try to extrapolate amazing things from cotinine levels—

Dr Turner: Do you accept that that is better than doing nothing? If you had figures from before, during and after exposure, they might be statistically significant over time.

Steven Stotesbury: They would give an indication of exposure or non-exposure.

Dr Turner: If you wanted to look after the people in establishments, you would not look to carry out air tests, because you think that the air is okay. However, we have heard evidence that sometimes people do not turn on the ventilation, because it is too expensive. Would it be a good idea to carry out blood tests?

Steven Stotesbury: Because I am interested in air-quality measures—I hope that I have already made a case for their being a better route to go down—I am more in favour of measuring air quality and air-quality indicators than in an intrusive practice such as taking blood samples from staff.

Dr Turner: Staff might agree to the procedure if they thought that you had their interests at heart.

It has been said that the proposals will result in more smoking at home, but the experience in Australia seems to show that a reduction in smoking in the workplace results in less exposure to smoke for children at home. Do you disagree with that?

Stuart Ross: I agree that the route that Australia took was successful. The tobacco restrictions there were introduced gradually, over a period of time, which meant that people had a chance to get used to the restrictions and so did not switch from going out to socialise to socialising at home.

Dr Turner: We have been aware for more than 35 years—probably 40 years—that cigarettes are not good for us and that even to inhale the smoke of cigarettes may not be good for us. Given that Scotland has the worst health record in the UK,

and perhaps in Europe, it is not a surprise that we are trying to do something about cigarette smoking.

Paul Waterson: Yes, but the issue is what we should do about it and what will work. In comparing the Australian licensed trade with ours, we should bear in mind the climate and the other variables. We must consider what will work and have a significant impact here—nobody questions that. We do not believe that a ban on smoking in licensed premises will have the impact that you perhaps think it will have. The point that we are trying to make is that a ban would simply shift the problem somewhere else.

Dr Turner: Do you accept that cigarettes and alcohol go together and that people drink more when they smoke? There might be a cost benefit for you in encouraging people to smoke.

Paul Waterson: As I had the first no-smoking pub in Scotland, I can say that there are different markets. That was in the mid-1980s, so perhaps it was a bit ahead of its time. I know the arguments, but the point is that, at present, people have a choice. Customers should continue to have the choice about where to go. We should increase ventilation levels and ensure that the trade adheres to our proposals, which is why we want legislation on the issue. That is the way in which we should start the process, rather than going straight for a ban that we do not believe will work and that will affect business, as we have heard.

Stuart Ross: That is our view—you might have a contrary view, to which you are entitled, but the fact is that the most important piece of proposed legislation that the Scottish Parliament has introduced is not based on research. There has been no research into whether the proposals will solve, shift or even exacerbate the health problem. You may argue that I say that for reasons of commercial advantage, but it is a fact.

Dr Turner: Given that you agree that environmental tobacco smoke is a health hazard and that you would like a gradual implementation of measures, when do you believe that a ban could be introduced in Scotland?

Stuart Ross: Under the proposals that we put to Tom McCabe, there would be no smoking in any premises where food is served and no smoking at the bar counter in any premises. Smoking would be allowed in pubs where no food was served, but that would be restricted to 70 per cent of the airspace, which would be reduced to 60 per cent and then 50 per cent. After three years, the measures would be reviewed, taking account of public opinion shifts and the health of the nation. We put that proposal to Mr McCabe in May last year, but there has been no engagement with us on them. Sure, we had a public consultation,

during which we stood on the same platforms as ASH and other pro-health and anti-tobacco lobbies, but at no stage in the consultation process did the Scottish Executive sit down with us to discuss how our proposals would work. As Scottish businessmen with a vested interest in our concerns and in promoting health in Scotland, we are naturally frustrated by that.

Dr Turner: The measures would last for only three years, according to your evidence.

Stuart Ross: We said that we would review them after three years. I dare say that, if the proposals were not regarded as robust enough, everything would be open to negotiation.

15:15

Janis Hughes (Glasgow Rutherglen) (Lab): You mentioned a number of things that you could have done, such as increasing the amount of ventilation. Why did those things not happen during the period of the voluntary charter?

Stuart Ross: They did.

Janis Hughes: Did they happen on a scale that any of us would have noticed?

Paul Waterson: We achieved all the targets that were set by the Scottish Executive—they were not our targets—except one, which was on paperwork. The voluntary charter was successful. We approached it from a standing start and not many resources were put into it, so the fact that we achieved what we achieved showed great commitment from the trade. Furthermore, in our new proposals we said that we agreed that there should be legislation. We said that, at first, the legislation should be based on the elements of the voluntary charter so that we could drive the measures forward quicker. In any trade, there are always people who lag behind others. There are responsible operators in every business, but sometimes there are irresponsible operators. We asked for legislation and we moved on to our new proposals to drive things forward. We were aware that, although we had achieved the targets that were set, things were perhaps not moving quickly enough. We say that openly. That is why we wanted legislation.

Janis Hughes: How many pubs implemented the voluntary charter and had an area that was designated as smoke free?

Paul Waterson: I do not have the figures in front of me.

Janis Hughes: Roughly.

Paul Waterson: We certainly achieved the targets that were set.

Stuart Ross: I would say that at the moment about 15 to 20 per cent of Scottish pubs have an area that is designated as smoke free.

Paul Waterson: We want that to increase to all pubs.

Janis Hughes: That is perhaps the problem. The changes did not happen quickly enough.

Stuart Ross: Your point is valid. The Scottish licensed trade is definitely not perfect in relation to air quality. One of the problems is that the more responsible operators will invest to improve air quality, whereas others, who are not members of trade associations or are not committed to the issues in the way that we are, will do nothing. That is why we need a level playing field through legislation. However, you must admit that, because of the investment in Scottish pubs in the past 20 years, the condition of air in them is much better than it was. Progress was being made, although it could be made faster. One of our arguments is that such improvements should be made mandatory.

Janis Hughes: You mentioned the need for a level playing field and you say in your evidence:

“it was unlikely that ... accelerated uptake could be achieved by voluntary measures, as there were widely perceived commercial disadvantages to those operators restricting or banning smoking”.

In evidence on Stewart Maxwell's member's bill, we heard—perhaps from you—that his proposals would not give you a level playing field because they would displace people who wished to smoke from places where food was served; smoking would be banned in such places, so people would move elsewhere. Is the Executive's proposal a level playing field, in relation to your commercial concerns?

Stuart Ross: The Scottish Executive's proposals obviously represent a level playing field, but our argument is that the bill is not necessarily the best way of achieving the health results that you are looking for, because of the displacement issue. Moreover, the imposition of an outright ban dictatorially against the wishes of 82 per cent of the Scottish public will have a big impact on our businesses and we are naturally concerned about that. Those are our two fundamental concerns.

Janis Hughes: You mentioned earlier that no specific research has been done on the effects of passive smoking in the home, but you claim—

Stuart Ross: I said that no research has been done into whether an outright ban or the phased introduction of tobacco restrictions would result in displacement of the ETS problems from public places to—

Janis Hughes: I may have picked you up incorrectly, but in your submission you say:

“85% of health problems caused by Environmental Tobacco Smoke are derived from domestic situations”.

Where does that figure come from?

Stuart Ross: The Scottish Executive's research, which was conducted by the University of Aberdeen, concluded that 865 people die from passive smoking in Scotland each year but that only 120 of them experienced the problem in public places—not just licensed premises, but all public places.

The Convener: We are just about at the end of this session. Could you just clarify one thing? Your submission says that the SLTA

"represents the interests of over 1800 self-employed licensees."

Your evidence also says that those people mainly work in pubs. Do you have a rough figure for how many pubs are not in the SLTA?

Stuart Ross: There are 5,000 public house licences in Scotland. The SLTA is also a member of the against an outright ban group, which has been promoting the phased approach. The SLTA is only one constituent part of the AOB group, which represents 3,500 Scottish public house licences.

The Convener: The SLTA submitted a petition to the Public Petitions Committee and we have just been notified that that petition is being referred to the Health Committee. It will be incorporated into our stage 1 evidence. I thank you for that and I thank you all for coming. The session has been fairly gruelling, but I do not suppose that you expected anything else.

I welcome our second panel of witnesses, which includes Paddy Crerar, the chairman of the British Hospitality Association Scottish committee, Ian McAlpine, who is from the Coal Industry Social Welfare Organisation and the Committee of Registered Clubs Associations, and George Ross, who is from the Royal British Legion clubs and the Committee of Registered Clubs Associations. Will the British Hospitality Association give the committee a brief introductory statement, followed by CORCA?

Paddy Crerar (British Hospitality Association Scottish Committee): Although I represent the BHA in Scotland, I am also an independent hotelier with a hotel chain in Scotland. If a ban were to be imposed, the BHA would support it for the reasons that are set out in our submission to the Scottish Executive. However, we require further work to be done on the exemption of hotel bedrooms.

The Convener: May we now hear from CORCA? Mr Ross?

George Ross (Royal British Legion Scotland): I should point out that my organisation is not an executive member or a body of CORCA. I represent the Royal British Legion Scotland.

Ian McAlpine (Coal Industry Social Welfare Organisation): Perhaps I can assist. CORCA is an umbrella body. It is made up of various bodies including the Royal British Legion Scotland, CISWO, the Working Men's Club and Institute Union, and Conservative and Labour clubs. George Ross and I are here primarily on behalf of our own organisations, but we are also wearing the general CORCA hat.

The Convener: Thank you. We will go straight to questions.

Shona Robison: I have a question of clarification for the British Hospitality Association. What sort of relationship do you have with the Scottish Licensed Trade Association? Do you work closely together?

Paddy Crerar: I believe that we have a very good relationship. We work closely together on most subjects.

Shona Robison: Do you have dual membership?

Paddy Crerar: I personally do not.

Shona Robison: I am sorry; I meant to ask whether your members can also be members of the SLTA.

Paddy Crerar: Yes, they can.

Shona Robison: Okay. Has the fact that the two organisations are taking very different positions on the issue led to a rigorous debate behind the scenes?

Paddy Crerar: The positions that we are taking are not really that different. Our position is that, if a ban were to come into place, we would support it in the form that is proposed. The BHA has accepted, perhaps wrongly, that the ban is a fait accompli and that we should therefore try to ensure that the bill contains proposals that best suit our members.

Shona Robison: That is helpful. My next question is whether your concern about hotel rooms relates to the fact that no mention is made of them on the face of the bill. I understand that the Executive's intention is that the bill will not apply to hotel rooms. Is that also your understanding? If so, do you want the exemption to be made explicit in the bill?

Paddy Crerar: That intention is not clear in the bill. My understanding is that hotel rooms could be covered, but we think that they should be entirely exempt.

Shona Robison: My understanding is that they would not be covered. Obviously, we will have to pursue the point with the Executive. Your clear position is that the exemption should be on the face of the bill. You think that there should be no ambiguity. Is that correct?

Paddy Crerar: Yes.

Shona Robison: Thank you.

Dr Turner: I, too, have a question of clarification about hotel rooms. I am sure that I read somewhere that, although hotel premises are covered by the bill, it may be possible to designate smoking and non-smoking rooms.

Paddy Crerar: We would not wish to support that.

Dr Turner: So you would rather that all hotel rooms were smoking rooms.

Paddy Crerar: Yes. We would rather have them all as smoking rooms. We think that designating certain rooms as smoking rooms and others as non-smoking rooms would be unworkable.

Dr Turner: We are talking only about bedrooms.

Paddy Crerar: Yes.

Dr Turner: Are you happy about the provisions as they relate to the downstairs bars and restaurant areas?

Paddy Crerar: "Happy" is too strong a word. If the Parliament decides to go ahead with a ban, our submission sets out how we would support it.

Dr Turner: You would accept the ban for downstairs but not for the bedrooms, which you would like to be within your jurisdiction. Your proposal has cost implications, however. The bedside rugs and carpets in many hotel bedrooms have cigarette burns. What is the annual cost of repairs and redecoration that result from smoking damage?

Paddy Crerar: I am more concerned about the potential loss of business. We have a number of clients from Spain and we are growing business with Poland and Russia—the sort of places that were mentioned earlier where a high percentage of the population smokes. If smoking is not allowed in the bedrooms, those customers would have nowhere to smoke on our premises. The potential loss of business far outweighs the cost of repair and replacement.

Dr Turner: That is clear. Thank you. You are also concerned about recruitment. In your submission, you say:

"As currently drafted section 7 appears to suggest that owners or head landlords may be proceeded against even in circumstances where they are not in day to day control of the business. This is not compatible with natural justice and should be addressed."

Paddy Crerar: Under the bill, if someone persists in smoking on our premises despite the fact that we have done all that we can to prevent them from smoking, short of physically throwing them out, I understand that the owner of the business, who may not be the manager of the

business, could be acted against in a court of law. The BHA thinks that that is unfair.

Dr Turner: On recruitment, do you not think that people would want to work in premises where there was no smoking? Allowing smoking might be a factor in their not wanting to work there.

15:30

Paddy Crerar: The truthful answer is that I think that there are probably as many people who would be happy working in a smoking environment as there are those who would be happy working in a non-smoking environment. That is the nature of the trade. A lot of our staff—about 70 per cent in our company—smoke, so I cannot see that there would be a positive or negative effect on recruitment.

Dr Turner: Do you think that factors other than a cigarette ban would cause trouble in recruitment?

Paddy Crerar: Yes.

The Convener: I would like to clarify something. In the past few days, we have received the draft regulations. There is a clear indication in the guidelines that the regulations have been drafted in such a way as to include hotels, guesthouses and bed-and-breakfast accommodation within the scope of the law, but to allow proprietors, if they wish, to designate bedrooms in which smoking may be permitted. Are you saying that you would prefer bedrooms to be clearly excluded from the guidelines?

Paddy Crerar: If the guidelines say that the rooms can be designated by the owner, that is effectively the same thing.

The Convener: So you would be happy with that.

Paddy Crerar: Yes.

The Convener: Will you ensure that you make that position clear in the consultation on the guidelines, just in case there is any dubiety about that?

I would like to ask a question of the two witnesses from the Committee of Registered Clubs Associations. I understand that you each represent a different group within CORCA—one the Royal British Legion clubs, with which all of us will be familiar, and the other the miners welfare clubs, which, for geographical reasons, will not be so familiar to all committee members. I would like each of you to tell us the views of your individual organisations about the ban.

Ian McAlpine: I represent the Coal Industry Social Welfare Organisation Scotland, which is an umbrella body for miners welfare schemes. As you will appreciate, with 53 independent clubs and

approximately 50,000 members, there are widely varying views about the bill and its impact, both positive and negative, on registered clubs.

My organisation's view is that we wholeheartedly support the prohibition in enclosed public places. Our stance is based solely and specifically on the fact that it is a health and safety issue. Any employer has a duty of care to employees, and that duty of care must extend to the membership, user groups and volunteers who are using the facilities.

We are a mining charity and our whole ethos is to promote quality of life, so it would be wholly inappropriate to support a pro-smoking lobby. However, we acknowledge that there are wide and differing views, and there are individual management committees and individual members who would prefer CISWO not to support the bill but to lobby the Parliament to make amendments to align the bill with the more diluted proposals south of the border. There are individuals who are genuinely concerned about the impact of the bill on their way of life. There is also genuine concern about the impact of the bill on the income generation of certain community clubs and the worry is that those borderline clubs might close if income dropped to such an extent that they were no longer viable, because of a perception that smokers would stop using the facilities. There are also individuals who just completely ignore the health risks, who will quite happily ignore the fact that smoking is potentially addictive and harmful and who will happily support the pro-smoking lobby.

In the CISWO miners welfare network there are already management committees that are partnering health professionals and agencies that provide practical support in their premises to their membership and the wider community. With encouragement, they are organising support groups and smoking cessation courses that link in with nicotine replacement initiatives. They are helping deliver the Government's ambitions in relation to peer education and a healthy lifestyle. Given that the majority of the population are non-smokers and that the bill will allow them to socialise in a smoke-free environment, there is a strong argument that it might ensure a more secure future for many facilities in the medium to long term. However, careful management and support of what will be a radical change will be needed in the short term for obvious reasons. Some people are clearly up for the challenge, but some might never be.

On some of the other agencies that come under the CORCA banner, the general secretary of the Club and Institute Union has intimated to me that there is a general consensus that its members would much prefer to have an arrangement

whereby clubs provide smoking areas and separate non-smoking areas; in their view, that would be adequate. I have not had any direct dialogue with either the Conservative or the Labour clubs. I imagine that there is quite a cross-section of opinion there. Perhaps George Ross can pick up on that.

The Convener: Before we hear from George Ross, how did you go about ascertaining the views of the miners welfare clubs? What was the internal process that has enabled you to represent the views of that set of clubs?

Ian McAlpine: In my line of work I support the miners welfare scheme management committees on a variety of initiatives and give advice on best practice. In recent years I have been involved proactively in coalfields community regeneration and assisting in setting up projects to develop facilities and their usage.

The Convener: I appreciate that, but how did you ascertain the views of clubs specifically on the proposed ban?

Ian McAlpine: I have not spoken to all management committees on the ban specifically. That is why I intimated earlier that there was a wide and varying set of views on the subject. I can speak for CISWO and I can highlight to you the differing views on the ban.

George Ross: I am the legal affairs officer of the Royal British Legion Scotland. Although I have responsibility, I have no authority over any of our branches or branch clubs; they are completely separate units. We have 214 branches in Scotland, 87 of which have clubs. Clubs are brought about by members producing a viable plan and presenting it to their branch; if the plan is accepted, a club will be born. In our 214 branches and clubs we have approximately 59,000 members. I have no authority over the branch clubs, but I carried out a small exercise in Edinburgh and the Lothians and in Glasgow and the western counties. I found that the minority—approximately 20 per cent—were looking for a complete ban. Of the other 80 per cent, 65 per cent did not want a ban and 15 per cent said, "Okay you can have a ban, but please exempt our clubs." They took the view that a lot of smoking occurred in domestic areas, such as households.

If the ban were to come into being—and it looks as if it will—many of our clubs will have difficulty staying alive. Many of the Royal British Legion clubs, which serve the ex-service community and those who believe in the aims and objectives of the Royal British Legion, will close. They provide the only means within our organisation for members to socialise and enjoy comradeship.

An important historical fact is that in the first and second world wars, cigarettes were issued to

soldiers, sailors and airmen by the Government. Following my 23 years in the Army, I moved to the Royal British Legion Scotland, where I became a war pensions appeal officer and presented cases at tribunals. Many of the people whose cases I presented had chest problems due to smoking-related diseases such as heart disease. Their defence was that they caught the diseases from which they suffered through smoking and that the Government had issued them with cigarettes to smoke during the wars. The Government's response, which was relayed through the Veterans Agency and Department of Social Security representatives, was that an individual's decision to smoke was a matter of freedom of choice and that, therefore, the sufferers had brought their conditions on themselves.

Now, however, we are looking at a complete turnaround. The Government, which issued cigarettes to the servicemen at that time, is introducing a complete ban that will mean that the ex-servicemen will have nowhere to go. The Royal British Legion feels that the Government should accept some of the blame.

Let us consider the issue of drugs. Nowadays, the Government issues needles and so on to drug addicts—those who inject drugs, smoke cannabis and take magic mushrooms—in order to help them. I heard that nicotine patches are being issued to younger smokers. If that is the case, I believe that the Government should issue nicotine patches free of charge in every chemist's throughout Scotland. That would help to educate those who smoke that smoking can cause fatal diseases.

I feel strongly that the Government has a responsibility in this area.

The Convener: That is a fair point. It is not germane to what we are doing with the bill, but I am sure that every member of the committee will have taken on board what you have said.

Mike Rumbles: I am a member of the Royal British Legion and served in the Army for 15 years. I remember saying to the soldiers, "Let's have a smoke break now." The phrase rattled off the tongue; it was the accepted parlance and it was accepted that people would smoke. However, time has moved on and we are all aware of the medical evidence on smoking and so on.

Mr Ross, you said that some of the clubs would close. I accept that there will be an economic impact and that the evidence from Ireland suggests that a certain number of people would not come to the club or the pub. However, what evidence do you have for your claim that some of the clubs would close?

George Ross: Some of our clubs are so small that they survive only due to the money that is put

into a particular gambling machine. That is the only income that they have from which to pay the employees who run the bar. If a smoking ban is brought in, our membership will be reduced in more than one way. Under sections 107 and 108 of the Licensing (Scotland) Act 1976, our membership has to be clearly identified and the ordinary member must be the main member. Associate members cannot rise above that level; if they did, we would be breaking the Licensing (Scotland) Act 1976. Under a smoking ban, our low membership—of both ordinary members and associate members—would deplete further and the club would close.

Mike Rumbles: You accept the fact that there is a public health argument. We are talking about saving lives, but we are also talking about some of your smaller clubs closing. I know that you are here to protect the interests of your members, but how do you balance the economic argument and the public health argument? You have just told us that you are involved with claims for your members against the Government on public health grounds.

15:45

George Ross: For your information, I am a non-smoker, but I understand that it is about the freedom of the individual to smoke or not to smoke. That is what the Government said, regarding our pensions appeal tribunals. It is the individual's choice whether to smoke or not to smoke. Those individuals who smoke need not go to clubs; I am sure that they can go somewhere else to find what they are after, but if they cannot, that is discrimination against the smoker.

More important—I referred to hard drugs being taken—smoking is taking a drug. The Government and the law are moving in and closing the ring on the suppliers. The newsagents and shops, including Tesco, that are supplying cigarettes are supplying drugs. It is exactly the same—there is no getting away from it. Smoking is taking a drug.

The Convener: One or two members have indicated that they want to ask questions. This always happens: for 15 minutes, nobody wants to ask a question and then everybody wants to ask questions at once.

Mrs Milne: The last time I was in a British Legion club, the atmosphere was extremely smoky and I was not aware of there being ventilation. Do you know how many of your clubs have ventilation, either efficient or otherwise? If, as is proposed in England, ventilation were to become compulsory, how would that impact on your clubs? You have said that a ban would result in some of them closing. What would be the impact on your clubs of their having to provide adequate ventilation?

George Ross: Several clubs in Edinburgh and the Lothians, including the one in Broughton Street, have ventilation systems. The one in Bridge of Weir, near Glasgow, has a ventilation system. Those clubs are successful. You must remember that the club is brought about by the primary unit, or branch. Moneys that are raised from trading for profit within the club are transferred over and go into the branch funds. Our branch is charitable, and we cannot spend that charitable money on the upkeep of the premises of our branch club. The money that is raised becomes charitable money and we can use it only for charitable purposes. It is as simple as that.

Recently, I spoke to the Office of the Scottish Charity Regulator, the new body that has taken over from the Inland Revenue regarding charities. We talked about installing ventilation and a disabled toilet. We discussed the issue with OSCR and the Inland Revenue. It may be that, within the premises, we can install ventilation for the health and safety of employees and those members of the ex-service community who use the premises for benevolent and welfare purposes. That is the only way that we can get round the rules. However, some of our small branches and branch clubs may close because they have insufficient funds. With all the good will in the world, they are transferring the money from the branch club to the branch, and it can be used only for charitable purposes. They cannot spend it on their premises.

Mr McNeil: You have mentioned your experience of challenging employers—the Ministry of Defence or whatever—about their duty of care to service personnel. How seriously do you take your duty of care to your employees who work in the clubs? What choice have they got about working in that hazardous environment?

George Ross: The majority of employees of Royal British Legion Scotland branch clubs will likely be smokers. Obviously, a time may come when clubs—although I do not know which ones—might have employees who do not smoke.

I am not really in a position to answer your question. However, before any employer takes on any employee, they must surely ask, “Do you smoke or not?”

The Convener: It is probably worth remembering that the bill is not being brought in under health and safety or staffing rules.

George Ross: I understand.

The Convener: It was a valid question, but I do not want us to go too far down that road.

Mr McNeil: You mentioned a straw poll that you took the time to carry out, and you said that you had no figures. Did you carry out a straw poll to establish how many of the people working in the

clubs smoke? Did you carry out a straw poll to establish what percentage of your members smoke?

George Ross: All I can say is that we are trying to modernise the Royal British Legion Scotland and bring it into the 21st century. You have to realise that the clubs and branches came about after two world wars and that most of our members are of the older generation. We have very few members of the younger generation, but we are seeking to modernise our clubs.

When I say “modernise our clubs”, I mean that I would rather have 10 first-class buildings with all the necessary community facilities—such as crèches, computer networks and pool tables—than have 80 stinking clubs that are full of sawdust and dirty water. We want to take out the old dirty water, throw out the old accordion, and bring in Bacardi Breezers and karaoke. That is modernising. That is moving into the 21st century. However, it takes time to do that. I cannot give you figures, sir, but it takes time. We are in the process of modernising. The legion is a very big beast. It is slow moving and we have to keep kicking it until it moves. It will move, but until then we have to educate it.

I do not think that I have answered your question, but I am asking you to give us time—we are trying to modernise. However, I feel that bringing in a complete ban, all at once, is provocative and is against my members.

Helen Eadie: You have told us about your total membership and you have told us that you held a small consultation exercise. Did you circulate a questionnaire?

George Ross: Yes, it was a formal survey. I kept it to our Edinburgh and Lothians and Glasgow and western counties areas. However, I intend to expand the survey nationally. We have just completed a survey of our declining membership and a survey of our clubs with disabled access and facilities.

We are being hit. Licensing legislation is being changed, health and safety considerations are coming in, and now we have legislation on smoking. Those will all lead to big objectives. Reaching those objectives will not come about by itself—we will have to generate money, and that money is not available.

Helen Eadie: You are saying that you sent out a questionnaire on a range of issues. Is that right?

George Ross: Yes.

Helen Eadie: So it was not only on smoking.

George Ross: No.

Helen Eadie: But questions on smoking were included among other questions.

George Ross: Yes.

Helen Eadie: Could you give the committee clerk a copy of your questionnaire?

George Ross: Certainly.

The Convener: We would be grateful if you could send that to us.

Helen Eadie: How many copies of the questionnaire did you circulate?

George Ross: We circulated it with the *Scottish Legion News* to approximately 60,000 members.

Helen Eadie: What was the percentage rate of return?

George Ross: In the two areas where we carried out the survey, the percentage of people looking for a complete ban was 20 per cent.

Helen Eadie: But how many people returned the questionnaire?

George Ross: I think that 54 per cent of people returned it.

Helen Eadie: How many members do you have in the Edinburgh and Lothians area?

George Ross: I am sorry, I do not have the figures in front of me.

The Convener: Thank you for your attendance and for the evidence that you have given to us. Feel free to provide us in writing with the information that we have requested and other points that occur to you and that you wish you had made. We still have a couple of weeks in which to produce a draft report on the bill.

I suspend the meeting until 4 o'clock, to allow members a brief break before we hear from the third panel of witnesses.

15:55

Meeting suspended.

16:00

On resuming—

The Convener: One or two stragglers are yet to return, but we will start. I welcome this afternoon's third panel, which has four witnesses: Alan McKeown, the health and social care team leader for the Convention of Scottish Local Authorities; Gordon Greenhill, environmental health manager in the regulatory services department of City of Edinburgh Council; Kevin McNamara, president of the Royal Environmental Health Institute of Scotland; and Deputy Chief Constable David Mellor, who represents the Association of Chief Police Officers in Scotland.

I invite each of the four witnesses to make a

brief introductory statement. That might be somewhat rash, because what are meant to be brief introductory statements are sometimes not that brief, but I ask people to be as brief as possible. Let us start from the left, with Mr McKeown, and work our way along the table.

Alan McKeown (Convention of Scottish Local Authorities): COSLA supports the introduction of the ban. There is no dissension among our members on that. We recognise the health improvement benefits that will flow from the ban. Our concerns are around ensuring that councils' ability to play their full part in enforcing the ban is facilitated by the Parliament addressing the resourcing issues, which include staffing as well as cash.

We will answer any questions that the committee wants to ask. Gordon Greenhill will speak wearing not only a COSLA hat but a local authority environmental health officer hat.

Gordon Greenhill (City of Edinburgh Council): I will also speak on behalf of the Society of Chief Officers of Environmental Health in Scotland. We welcome the proposed introduction of a ban and we believe that the enforcement of the ban will effect a cultural change in relation to the nation's attitude to health.

Keith McNamara (Royal Environmental Health Institute of Scotland): I am the president of the Royal Environmental Health Institute of Scotland. As the professional environmental health body in Scotland, the institute has more than 130 years' experience of protecting and improving public health. The institute very much welcomes the bill and wants to play its part in securing its success.

David Mellor (Association of Chief Police Officers in Scotland): My colleagues have taken 30 seconds maximum. I have never spoken for such a short period, but I will do my best.

ACPOS is broadly supportive of the bill's aims, but we are interested in enforcement and the work that might fall the way of the police in Scotland.

The Convener: In this section of our evidence taking we are, of course, concerned principally with enforcement issues.

Helen Eadie: The written submission from the Royal Environmental Health Institute of Scotland states:

"should smoking on public transport become an offence the issues surrounding compliance on cross border ... public transport will require to be addressed."

Will you enlarge on that issue?

Keith McNamara: We understand that the proposed ban in England will not take effect until 2006, whereas the bill will come into force before that. That time lag means that there will be an

issue with cross-border travel.

We are also unclear whether the proposed ban in England and Wales will extend to public transport. We could have a scenario in which people can smoke on a bus while it is in England but it is illegal for them to do so as soon as the bus crosses the border. That is the type of issue to which we are referring.

Helen Eadie: Do you propose any solutions to address that issue?

Keith McNamara: We would need to work with the travel organisations. As the bus crossed the border, people would need to be told to stub out their cigarettes. That might be the best solution that we can offer.

Helen Eadie: Finally, your written submission states:

"The Institute believes that clear and unequivocal definitions must be provided".

Will you expand on your concerns about the definitional issues?

Keith McNamara: Yes. Since we made our submission, the draft regulations that define which premises would be included in the ban and which would not have been issued. Those regulations, which came out last week, have gone a considerable way towards resolving that issue. As enforcement officers, we need to know which premises would be covered by the ban and which would not. In many respects, time has solved that problem for us.

Helen Eadie: What sharing of knowledge about definitions have you had with colleagues from Ireland?

Keith McNamara: One of the speakers at last year's annual conference was an officer who enforces the ban in Ireland. We have regular contact with my counterpart in Ireland, who is the chairman of the Environmental Health Officers Association. In fact, I spoke to her on the phone before I came to the Parliament; our contact is frequent.

Helen Eadie: Have your colleagues in Ireland given you any pointers about the definitions that have caused difficulties over there? We heard about such difficulties during our evidence gathering. Have you been alerted to them?

Keith McNamara: They have raised several matters with us, but they have not identified definitions as being a problem.

Helen Eadie: Will you tell us about some of the issues that have been raised with you?

Keith McNamara: Our colleagues in Ireland have stressed the need for us to get in our promotion before we introduce the ban. Believe it

or not, the ban in Ireland seems to have been widely accepted. That is largely thanks to a major promotional campaign by central Government and because local people who work on the ground visited premises to provide information and an opportunity to ask questions on a one-to-one basis.

One issue that was raised was having to deal with noise disturbance outside premises, but our Irish colleagues said that that was not too much of a problem. There had been a concern that people who went outside for a fly smoke could create a disturbance, but apparently that has not been a problem. Businesses have tried to overcome the ban, for example by setting up beer gardens with open sides. When people congregate in such an environment, it can cause a noise disturbance. Litter has also been mentioned. If more people stand outside premises, there will be more cigarette-related litter. In Ireland, that was not picked up on. Our Irish colleagues feel that that is one lesson to be learned. They would advise anyone else to take that issue into account.

Mr McNeil: Much of the evidence tells us that 70 per cent of people do not smoke. What are the challenges for enforcement? It is estimated that Shona Robison has 21,000 smokers in her constituency. How can we deal with that? How do we get the nearly 40 per cent of people who smoke to comply?

Gordon Greenhill: We start from the premise that most Scots are law abiding and that, if a law is introduced, they will comply with the terms of the act. That has been the experience with other new legislation that the Scottish Executive has brought in, such as that relating to the issuing of fixed-penalty notices for littering. About 90 per cent of the fixed-penalty fines that are imposed are paid, because people accept that they have done something wrong. From the Irish experience and from our experience of serving fixed-penalty notices, we assume that if someone is asked to put out their cigarette or is issued with a fixed-penalty notice, they will accept that. The fact that someone is smoking does not make them a hardened criminal; they will be breaking the law but, once people in this country know what the law is, the majority of them will comply with it.

Alan McKeown: It is important to remember that we are not banning smoking; we are just banning smoking in public places.

Mr McNeil: It is estimated that there are 21,000 smokers in Shona Robison's constituency, so we are talking about a significant problem. Many of those people will want to smoke in public places.

I will take my point a bit further by considering the estimated cost of the ban. In the Dundee City Council area, which covers both Dundee

constituencies, it is estimated that there are 40,000 smokers. The council there estimates that the ban will cost £95,000. The number of smokers in Inverclyde, which is a much smaller area, is estimated to be 17,000, but Inverclyde Council says that the ban will cost £140,000. How seriously can we take the information that we have about preparations for the anticipated implementation of the ban when so much of it is questionable?

Alan McKeown: A number of councils went through their information quite rigorously. There was not a set template; we wrote to councils based on the papers that we had. We heavily qualified our evidence to the Finance Committee by saying that we would go back and re-examine the information once we had the draft regulations. We now have them, so we will go back and re-examine the information. We might consider defining some headings under which every council will do similar things. There is no question about the need to tighten up the costs, and we have not tried to hide from that. We have worked out a cost of about £6 million for this year and next year to make—

Mr McNeil: Did you submit that evidence on the basis that we should take it seriously?

Alan McKeown: Yes, indeed.

Mr McNeil: Are you now saying that we should not take it seriously?

Alan McKeown: No, we are saying that the evidence was submitted on the basis of the information that was available to us at the time, which was incomplete because the draft regulations did not exist. We now have the draft regulations, so we will go back to our members and clarify the costs.

Gordon Greenhill: There will be two elements to enforcement of the bill. In Edinburgh, the City of Edinburgh Council enforces health and safety legislation in 17,000 premises, so we will go into those premises, say "This is a no-smoking area. You have to have signs up here," and give advice to the owner of the premises. The bill will give us responsibility for another 3,000 premises that the Health and Safety Executive currently regulates, so visits to those premises will be an additional burden.

The second element is officers enforcing the law where breaches are taking place. We will need a small number of officers to do the in-your-face enforcement and a small number to get round premises to ensure that they comply with the legislation.

Mr McNeil: How many visits can an establishment that you regulate expect in a year or two years?

Gordon Greenhill: We visit all the 17,000 premises in a five-year cycle, but it is not as simple as all 17,000 premises being visited once every five years; there is a different inspection rate for different types of premises. There are different categories of risk, so we visit the high-risk premises every year and the medium-risk premises every two years, but we would visit a corner shop only once every five years. We are probably talking about 25,000 inspections being done in a five-year period.

Mr McNeil: So enforcing the bill would be a significant challenge for you.

Gordon Greenhill: No. We would not be doing full health and safety inspections; we would visit only to check that the no-smoking provisions were in place, so the inspections would be quick.

Mr McNeil: Would you just be checking that the premises had signs up?

Gordon Greenhill: It would be more than a matter of signs. We would check that there was no evidence of smoking paraphernalia.

Mr McNeil: No ashtrays.

Gordon Greenhill: Aye—no ashtrays, cigarette burns or other stuff like that.

Mr McNeil: So you do not plan on going into premises at weekends to do spot checks.

Gordon Greenhill: Yes, we do. Most councils have plans to cover the evening and early hours of the morning. It would be naive to say that we would have any impact on smoking in pubs if enforcement were to take place only during the daytime.

The Convener: We went to Ireland for three days to speak to, among others, representatives of the Health Service Executive, western area, who talked about the need for clear overtime allocations and which activities resulted in real overtime spending. They also talked about there being a concomitant 20 per cent decrease in their food control activities as a result of the increased activity that they were having to undertake because of the introduction of the ban. Have you considered that aspect of the bill's impact on your work?

Gordon Greenhill: That is a good question, and the answer to it is yes. The last thing that we want is for the bill to have a negative impact on food safety in Scotland, because we have a large number of tourists and a large number of people who go out to wine and dine. There will be no impact on food inspection regimes throughout Scotland if the bill is properly funded when it becomes an act.

The Convener: There will be no impact if the resources are in place.

Gordon Greenhill: Absolutely.

The Convener: So you would try to avoid replicating the situation in Galway, where food control activities have decreased by 20 per cent.

Gordon Greenhill: Absolutely. Implementation of the bill's provisions on smoking will have no effect on the food hygiene inspections in Scotland if the funding is available.

Dr Turner: I address my questions to Deputy Chief Constable Mellor. There has been a hint that, because people will be forced out of pubs and on to the streets, the police might be busier on the streets. Will you comment on that? It seems from your evidence that you do not expect to be much involved in enforcing the bill, because others will do that. Do you expect problems?

16:15

David Mellor: The law of unintended consequences could apply. Certainly there would be concern about the safety of women and others who fall into more vulnerable categories when they are smoking outside pubs and clubs. Given that we want to prevent crime, there would be concern if people were more exposed to crime and vulnerability by being outside public houses and clubs late at night in circumstances in which there might be a reasonable fear of violence or attack. We will have to keep an eye on that and log it, and make it part of our patrol strategy, to ensure that we address the fact that people are more vulnerable if they are outside premises smoking.

On your second point, we expect our involvement in enforcement to be fairly insignificant. Over the years, we have worked closely with environmental health officers on a range of issues. Clearly, we would be entirely prepared to support environmental health staff, because one can imagine that public order situations might arise. I read with interest about the mass non-compliance campaign at Fibber Magee's pub in Galway. It would not be surprising for the police to take an interest in such issues.

We are interested to hear what the environmental health staff's enforcement strategy will be. If it is based on gathering evidence via observation, then going back and confronting people at a later time, that would be less likely to create friction and public order situations, and so it would be less likely that the police would be involved. We support that particular enforcement strategy.

The Convener: I have a follow-up question. I do not know whether this was suggested to other MSPs, but I was invited to hold local surgeries on the smoking ban in licensed premises, and I dutifully did so. A concern that was raised is that,

in areas where there is a problem with drugs, it will be much harder for those who run licensed premises to keep an eye on what is happening, because there will constantly be people hanging around outside, so they will not be able to control what happens outside, for example if transactions are taking place. Has that registered on your radar?

David Mellor: It has not. It is an interesting theory. You are saying that people will be coming and going and hanging around outside, which will provide cover for those who are involved in illicit drug dealing and supply. That has not registered with us, but it is an interesting point. Our drugs enforcement staff would take that into account, but we tend to operate on the basis of accumulating evidence carefully by observation or through the use of closed-circuit television and so on. It would be possible to use that evidence to negate someone's defence if they said, "I was not supplying drugs. I was just outside having a quick smoke." It is an interesting point, to which we need to pay attention.

The Convener: Does any committee member want to come in specifically on the evidence from the police?

Janis Hughes: I have a question not on the police evidence, but on the displacement of people outside premises. In Ireland, we learned about a large increase in applications to councils for tables and chairs outside licensed premises, particularly in pedestrianised, city-centre areas. Does COSLA expect a rise in such applications? People will want to smoke all year round, so we will experience that situation all year long, not just in the summer, as we do now.

Gordon Greenhill: There is no medical evidence on passive smoking in the open air, so we would welcome that situation. On the issue of applications for licences for beer gardens and so on, there will probably be a lot of joiners running about putting up gazebos at the back of licensed premises, which is fine, as long as it is done in a properly controlled manner. The many beer gardens that exist in built-up areas do not give cause for concern, as long as they are managed properly.

Janis Hughes: I was thinking more about the issues for councils, who will have to deal with the rise in the number of applications for licences for beer gardens. We heard evidence that people who want to go into business in Ireland should start selling outdoor heaters, which are in high demand. You mentioned gazebos, which might be another idea. In city-centre areas, many premises will probably apply for a licence to have tables and chairs outside, which people will use all year round until fairly late at night. How will that affect those areas?

The Convener: Before the witnesses answer, I refer to our experience in Ireland, where there was evidence that pubs, particularly city-centre pubs, that had no space at the back were renting pavement space at the front from councils, even for just a couple of tables. Will councils take a similar approach here?

Alan McKeown: We must discuss that in the various political groupings in COSLA. The issue is being considered by our health improvement committee and environment committee. We need to take the issue to the planning committee, now that we know exactly what is to be done. Because the measures will cut across all those functions, we must ensure that we take a strategic approach to applications, rather than deal with them one by one. We will take a report to the council leaders as the bill goes through Parliament and our views become more sophisticated. However, we will take a strategic approach rather than a piecemeal one.

Mike Rumbles: The Royal Environmental Health Institute of Scotland's written submission raises the issue of officers

"serving Fixed Penalty Notices in potentially dangerous situations."

The committee's experience of enforcement of the ban in Ireland was interesting. We were constantly told that the success of enforcement was linked to the non-confrontational approach and that the ban was largely self-policing. As part 1 of the bill does, the ban in Ireland focuses on the offence of permitting others to smoke in no-smoking premises. Basically, we will focus on the landlord or manager of the premises. To give some anecdotal evidence, when we were doing our research in Galway, someone started to light up and was put out of the pub by the manager like lintie—we hardly noticed it. The focus is on management ensuring that the law is obeyed.

Surely you do not envisage environmental health officers and police officers going round the pubs issuing fixed-penalty notices to anybody they spot smoking. Surely, as in Ireland, the focus will be on a self-policing approach and on enforcing the ban through the managers of premises.

Keith McNamara: You are absolutely spot on. We flagged up the issue because people might see the fixed-penalty notice as the first means of taking action against individuals, whereas there will be a basket of measures that can be applied appropriately. You are right that we need to focus on managers and to deal with issues proactively to target resources in the most effective way. If we went to premises and took action against an individual smoker on one night and then the next night went back and dealt with another individual smoker, that would not be an effective use of resources. Taking action via the management is in line with the general principle that we apply in

environmental health, which is that we take action against the person who has the premises and who controls the risks. The same is true of licensing law—the person who has control of the premises has the major responsibility.

We have spoken to our colleagues in Ireland about the issue, who say that they would take action against an individual who was being deliberately obstructive or obstreperous. We need to have enforcement powers against individuals, but we hope that they will be used rarely. The proactive enforcement in Ireland and the fact that enforcement has been taken up by the trade there are examples of good practice.

Alan McKeown: We take a slightly different view. The law is the law and if its integrity is to be protected, it must be enforced. We accept that a mature and sensible approach should be taken throughout, but if the law is to be successful, it has to be implemented.

The Convener: Will you clarify that you will go after individual smokers as opposed to licensees?

Gordon Greenhill: There are two elements. The licensee must take every possible step: they must have signs up, there must be no ashtrays and they must explain the new law to their clientele. The Royal Environmental Health Institute of Scotland is absolutely right; initially, we as an enforcing body would ensure that all those elements were in place. I assume that this august body will do an extensive education and publicity campaign, so that people know what is what.

However, because of the way in which the bill is written, there is no option. If someone is smoking at premises after that education has been done and the implementation date has passed, the only option will be to issue an immediate fixed-penalty notice, which is an effective measure. The Scottish Executive has gradually introduced fixed penalties and decriminalised things. People are not criminals if they smoke or drop litter, although they are not in keeping with the rest of society. You have introduced those pieces of legislation, and that is what this law before us says. It says—

The Convener: To clarify, we have not introduced this piece of legislation. We are in the process of gathering evidence on it to establish whether there are things in it on which we wish to comment. If there is a slight difference on the issue, it is important that we know about that.

Gordon Greenhill: What you have put out for consultation will be good legislation because it is clear. There is no vagueness and there are no grey areas. If the person who is in charge of the public house, licensed club, shopping mall or whatever has put in place the proper management procedures, the problem will come down to the individual who is contravening the legislation.

David Mellor: Although we do not expect to play anything other than a peripheral role in enforcement, one thing that police officers learn early on is the importance of discretion. The law does not have to be enforced there and then in all cases; it is possible to enforce it by taking action after the event. One has to balance a whole range of issues, including the danger to public order and the risk of making the situation worse. We need a degree of common sense and discretion, although when I heard the comments that were made earlier, I was quite interested in the idea of posting officers on the border to capture people as they come over on buses.

Mrs Milne: Mr McNamara, you say in your written evidence that the Scientific Committee on Tobacco and Health's report

"concluded that ETS is a controllable and preventable form of indoor air pollution that no infant, adult or child should be exposed to".

I assume that you accept that there are risks associated with ETS. Do you also accept that children and infants are not likely to be harmed in pubs but that if ETS goes into the home because people smoke there instead of going to pubs, infants and children will be at greater risk as a result of the bill?

Keith McNamara: It is a matter of individual discretion and choice. If I take my child out to a restaurant for a meal, I do not want her to be subjected to ETS. If people choose to smoke in front of their children at home, that is their individual choice.

Mrs Milne: Your submission says that a "high profile media campaign" should precede the introduction of any legislation. The people in Ireland also made that point to us. Given that the provisions in the bill are supposed to come into effect in a year's time, is there enough time for such a campaign to be run?

Keith McNamara: I would say so, but we need to start planning it now. Gordon Greenhill and I have had discussions about various aspects of the bill, but COSLA, the Society of Chief Officers of Environmental Health in Scotland and the Royal Environmental Health Institute of Scotland need to work closely to assist with the promotional campaign.

Mrs Milne: My impression is that there was a longer run-in period in Ireland.

The Irish said that the definition of closed or non-enclosed spaces caused them problems with enforcing the ban. For example, people constructed shelters that were all but enclosed. Do you have any views on that?

16:30

Keith McNamara: Yes. As I understand it, in Ireland, a space was not enclosed if less than 50 per cent of the enclosure was within walls. However, in Scotland, the recently issued draft regulations stipulate that a space is enclosed if the only openable elements are the doors and windows. It does not matter whether the Irish system or the system that is outlined in the draft regulations is introduced; businesses will still try to get round it by erecting marquees, tents, gazebos, beer gardens and so on.

Mrs Milne: I am sure that they will find ingenious ways of getting round the regulations.

My last question is for Gordon Greenhill. Would you have to recruit additional environmental health officers to enforce the legislation? If so, would that be a problem? I understand that it is quite difficult to recruit qualified EHOs. Indeed, one source of recruitment has been Ireland; I wonder whether that source is likely to dry up now that the Irish are enforcing their legislation.

Gordon Greenhill: Six Irish EHOs are working for me in Edinburgh, and they are very good.

There are problems with recruiting and retaining EHOs in Scotland. We are actively discussing with the Executive and the society ways in which we can speed up training, but we will not overcome those problems in the time span that we are talking about. It takes four years for someone to qualify as an EHO, after which they must undertake a year's practical training and sit their chartered exams. The situation will not be cured overnight.

I do not think that the sort of enforcement that we are talking about will require an environmental health officer. We will be able to use what is called an enforcement officer. Many people meet that standard of qualification; for example, 12 ex-police officers work in my department and they are very effective at enforcement.

The Convener: I suppose that they have a bit of experience in that respect.

Shona Robison: I am sorry to go back a step, but I think that we are beginning to uncover something quite important. I simply want to be clear in my own mind.

The panel members appear to disagree about enforcement. Earlier, when David Mellor said that it would be better to carry out enforcement post-event, Gordon Greenhill shook his head; I see that he is doing it again now. I want to explore the difference of opinion on this matter and on the question whether we need a lighter touch and more self-policing. The witnesses seem to have different interpretations of what the bill will mean, and we need to clear up any misunderstandings or

have some clarity that will allow us to put those differences of opinion to the Executive. Will you help us by identifying where the difference of interpretation lies?

Keith McNamara: I am not sure that there is any disagreement. We do not have any problems with issuing fixed penalty notices. However, as a line manager, I could not ask two officers—who, at that stage, would have no police support—to put themselves in danger by issuing a notice some Saturday night in a pub full of people with a few drinks in them. I should say that, in my career, we have always had the best of police support in tense situations. I need to make that differentiation from the perspective of my staff's health and safety. That said, I do not object to the principle of issuing fixed penalty notices to individuals.

Shona Robison: Do you disagree with that, Mr Greenhill?

Gordon Greenhill: Yes. I would expect my staff to issue fixed penalty notices. They do so already—what else can they do if a Rottweiler fouls in the middle of a public park? More than 3,000 fixed penalty notices have been issued in Edinburgh, all of which have been paid. No one has given Donald Duck as their name and, when a situation has arisen, the police have been fantastic.

The Convener: I suggest that issuing fixed penalty notices to individuals on a Friday or Saturday night in a busy pub is a very different matter. Have you thought through the implications of what you are saying?

Gordon Greenhill: Absolutely. I agree with you entirely. All our officers are trained to use a hefty dose of common sense. They would walk away from a situation of the sort that has been described or call the requisite back-up. However, if people in a public house persist in lighting up after the ban has been in place for six months and we have spoken to the licensee and the clientele a number of times, should we walk away?

Shona Robison: Surely in such a situation action would be taken against the managers of the premises for permitting smoking to take place there. Would you not threaten them with action if they continued to allow smoking? That is the approach that has been successful in Ireland. However, you seem to want to tackle the problem more from the point of view of individuals. I am not sure why that is the case.

Gordon Greenhill: Our approach is based on our experience of the existing fixed penalties. As I have said, the public are law abiding. I do not disagree that, if the managers have done everything that they can, we would expect them to enforce the ban. However, the bill as drafted makes smoking in enclosed public places an

absolute offence. You need to revisit that phraseology.

Mike Rumbles: I do not think that we need to revisit the terminology, which is absolutely clear. Section 1 is entitled "Offence of permitting others to smoke in no-smoking premises". That is the focus of the bill. It also creates an offence of smoking in banned premises. The bill is quite clear. The committee's experience is that the ban in Ireland has been successful because the emphasis of enforcement has been on management allowing people to smoke. If you pursued an individual in the way that you seem to be outlining, would you not end up with what David Mellor suggested—a greater issue of public safety and disturbance? I may be reading the bill wrongly, but surely it is written in such a way as to ensure that management is tackled first and foremost. Is that not the issue on which we must focus?

Gordon Greenhill: I agree. You are saying that the emphasis is on the owner, licensee or shopping mall contractor to have in place management systems to ensure that people do not smoke. That is fundamental. However, ultimately there is an offence if people persistently flout the law.

Mike Rumbles: Yes, but the approach that is taken in Ireland is to issue a penalty notice to the licensee on the following day or to threaten action if he persists in allowing people to smoke on his premises. Action is not necessarily taken against the individual smoker. That is the right way of dealing with the problem. I believe that our bill is framed in the same terms. If I have misunderstood it, we need to sort that out.

Alan McKeown: Whenever we discussed the framing of the legislation, there was a debate about whether the onus should be solely on the licensee or whether it should be on individuals, too. We are debating how far we should go down the road of placing responsibility on individuals. We would expect the licensee to exercise due diligence. Indeed, the licensing committee should put management systems in place to ensure that licensees put up signage and that their door staff give information to clients as they come in, go round the bar to remind people of the ban and catch them before they start smoking. If all that is done and is seen to be done, but there is a persistent offender, the only way of dealing with their behaviour under the legislation is to fine them.

We take your point about the need to deal with inflammatory situations outwith the immediate environment, so that there is no threat to the environmental health officer and the rest of the clientele in the bar. As Gordon Greenhill said, that is where a hefty dose of common sense comes in.

We need to find a mechanism for dealing with such situations without creating conflict in the bar.

Mike Rumbles: I would like to have one more shot at this issue. I do not want sets of officers, uniformed or not, to go round pubs and clubs in Scotland issuing fixed penalty notices to people who are smoking. That is not the right way in which to approach the bill.

Gordon Greenhill: I agree; that is not the concept that I am trying to get across. We have always worked well with the licensed trade and publicans. Let us be honest: the nub of the problem will be in pubs and clubs. If the bill is to be implemented properly, we will ultimately have to tackle what we call the refuseniks. We will probably do that jointly with the police. A hard-core element of people will flout the law and we will have to issue those people with fixed penalty notices.

The Convener: You can understand our concern.

Mr McNeil: Surely the appropriate response of the licensee or publican to someone who insisted on lighting up would be to ask them to leave the premises.

Gordon Greenhill: Absolutely. I agree.

Mr McNeil: If a licensee did not ask the person to leave, or did not eject them from the premises, the focus would be on that licensee.

Alan McKeown: Yes. That would have to be considered. We do not dispute that.

David Mellor: From a policing point of view, we do not agree with the "in-your-face enforcement" strategy that Gordon Greenhill talked about. We are talking about how we solve a problem and the bill offers one way of doing that. Another way is through publicity campaigns, for example. When we try to solve a problem, it is helpful to have the back-up of positive legislation, which we should use judiciously when we need to do so. I will give a parochial example: if we were in consultation with environmental health officers in Fife about a strategy for enforcing the bill, we would have to take a problem-solving rather than a confrontational approach.

The Convener: If no members have further specific questions, I will release the witnesses. You are probably sitting there thinking, "Please release us". You are free to go.

I welcome the witnesses from ASH Scotland: Dr Rachel Harrison is senior policy and research officer; and Sheila Duffy is head of information and communications. I invite one of the witnesses to give a brief introductory statement.

Sheila Duffy (ASH Scotland): We thank the committee for inviting us to give evidence. ASH

Scotland welcomes the bill and the opportunity that it represents to address a known health hazard in Scotland.

We take issue with the statement that was made earlier that the evidence on second-hand smoke is largely epidemiological. There is good medical evidence that second-hand smoke, as a known carcinogen, increases the risk of lung cancer, heart disease and complications during pregnancy and poses particular health risks to children and infants.

Since the committee last took evidence on the health impacts of second-hand smoke—

16:45

The Convener: Ms Duffy, you must speak into the microphone. We are having difficulty hearing you at this end of the room.

Sheila Duffy: My apologies.

I was emphasising that the debate is about health. Second-hand smoke is a toxic substance that threatens the health of smokers and non-smokers, and it is preventable.

Ventilation is not a solution to the problem of second-hand smoke, as it cannot effectively clean the air of toxic gases and particles. We believe that people have misrepresented the research by Dr Geens, which compared a pub with ventilation in which smoking was allowed with a smoke-free pub. His research showed that, even with ventilation, particulate levels in the smoking pub were three to 10 times higher, but the measurements were presented in a graph in which the axes differed by a factor of 10 to make it look as if they were the same. There is no known safe level of exposure to second-hand smoke.

Voluntary approaches have been tried in Scotland but, in line with experience elsewhere, they have failed to increase protection. The Scottish Licensed Trade Association's proposed five-point plan lacks an evidence base. Such partial policies are costly and, by delaying effective protection, they lead to increases in health inequalities. Comprehensive legislation, such as the proposal in the bill, is the fairest and most effective way forward. Ending smoking in enclosed public places and communicating effectively why such a step is being taken will not only reduce the burden of health and economic inequalities that tobacco places on our most vulnerable communities, but create positive environments for our children and support the majority of smokers who want to stop smoking. We believe that the majority of Scots will welcome the measure.

The Convener: In our evidence taking on a previous bill, we heard evidence that covered most of the public health arguments in respect of

environmental tobacco smoke. In this part of the meeting, we will concentrate on any new health evidence that has emerged subsequently rather than go over the same evidence. The SLTA said that there was new evidence, so we want to give ASH Scotland the opportunity to respond to that.

Shona Robison: There is so much information and so many statistics and different interpretations of the same studies that the subject can, in some respects, become almost impenetrable. Both the SLTA and the Tobacco Manufacturers Association said robustly that there was no evidence to suggest that ventilation did not work. They questioned the source of research that made such a suggestion. For our benefit, will you clarify whether such research is independent, where it comes from and when it was produced?

Dr Rachel Harrison (ASH Scotland): A whole host of independent research on ventilation has been conducted. The SLTA likes to respond to the research that was conducted by Dr Geens of the University of Glamorgan, but we know that that was not an independent study. Our submission refers to research by ventilation experts such as Professor Repace, who is based in the States. He has produced a huge amount of valuable and robust evidence that shows that ventilation simply does not work because it does not remove the carcinogenic aspects from the air. Ventilation is not a suitable outcome measure for reducing the health hazards that are associated with exposure to second-hand smoke.

Shona Robison: Are the five references in your written submission all to independent research?

Dr Harrison: Yes.

Mike Rumbles: I wanted to put this question to the Tobacco Manufacturers Association, but we ran out of time. The association took exactly the opposite view from ASH, although it appeared to be in denial of the scientific evidence.

In what year did the Tobacco Manufacturers Association—or its predecessors—recognise that smoking, as opposed to environmental tobacco smoke, causes deaths? The association opposed the scientific evidence for many years, but I understand that it had to accept it eventually. It strikes me that it is now in the same position in opposing the scientific evidence on environmental tobacco smoke. Do you know when it eventually accepted the scientific evidence on smoking? An answer to that question might be helpful.

Sheila Duffy: I do not know whether there is full acceptance in the tobacco industry of the fact that there is a link between active smoking and lung cancer. Even nowadays, Imperial Tobacco gives evidence in court casting doubt on such a link.

Mike Rumbles: The new evidence that the

University of Glasgow published in November suggests that up to 2,000 deaths per year in Scotland are related to the ETS exposure of non-smokers—that is, lifelong non-smokers or quitters. As far as you are aware, is that research robust?

Dr Harrison: As far as we are aware, it is. It might be useful to draw the committee's attention to a newer study, which has been published since we submitted our evidence. The study, which was published recently in the *British Medical Journal*, says that exposure to second-hand smoke kills more than 11,000 people a year in the United Kingdom. That figure is much higher than it was previously thought to be. The first available figure for people who die as a result of exposure to second-hand smoke in the workplace is given as 600 a year. That figure is very much in line with recent research that was conducted by David Hole, which suggests that approximately 1,000 Scots die every year as a result of second-hand smoke.

Mr McNeil: Does that figure relate to smoking in public places?

Dr Harrison: There are specific figures for exposure to second-hand smoke—

Mr McNeil: On the 1,000 deaths and second-hand smoking in public places, is there a direct—

Dr Harrison: The study does not specifically talk about enclosed public places.

Mr McNeil: Then why is it relevant?

Dr Harrison: It gives a comparison point that is useful to have when one is working with estimates.

Mr McNeil: For the purposes of the argument, we criticised the tobacco lobby earlier for misusing or selectively using statistics. Have you, too, not just done that?

Dr Harrison: I would not go as far as to say that I have. It is useful to consider estimates and studies that are based on estimates in the context of other research that has been conducted, including large-scale research studies such as those that have been done by the World Health Organisation, the International Agency for Research on cancer and the Scientific Committee on Tobacco and Health. When such things are considered in the context of wider research evidence, it is clear that second-hand smoke kills.

Mr McNeil: But what you say is related to the level of exposure to second-hand smoke.

Dr Harrison: Yes.

Dr Turner: Earlier, I tried to point out that blood test studies in New York have proved that breakdown products of nicotine are diminishing in the bloodstreams of people who work in premises in which there has been a smoking ban and that such products were proving to be a good indicator.

Do you agree?

Sheila Duffy: Yes. There was a huge drop in the cotinine levels of non-smoking bar staff in New York—I think that the figure was 85 per cent.

Dr Turner: Are such studies worth while, or are there other indicators that are easier to measure?

Sheila Duffy: Cotinine is a good indicator of exposure to tobacco smoke.

Dr Turner: Is it a better indicator than carbon monoxide?

Sheila Duffy: Measuring carbon monoxide can work for short-term exposure.

Dr Turner: Did you clarify whether the Geens study proved that the pub that had a ban had better air than the pub that did not have a ban, if like was compared with like on the correct graphs? Forgive me if you have clarified that matter.

Sheila Duffy: It did, despite being located in the city centre next to Queen Street station and major roads.

Dr Turner: It is good to have that clarified.

Mrs Milne: I have a question about enforcement and implementation. You have referred to high compliance rates in Ireland. When we were in Ireland, people were at pains to say that there was a very long run-in to the legislation. Public opinion was carried along with the promotional campaign, so that by the time the legislation was implemented, the public were ready for the legislation and it was timely. People also said that they had been able to get unions and other organisations on board because the ban was introduced in Ireland as a health and safety at work measure. Obviously, we cannot do that here, because health and safety is a reserved matter. Given that the bill is due to come into force next year, is there enough time for the Scottish public to be brought on board to the same level as the Irish public were, so that by the time the legislation is enforced people are ready for it and therefore the compliance rate will be high? Do you have any comments on that? I know that I am asking you to speculate.

Sheila Duffy: We might benefit from the validated results that are emerging from the experience of other countries that have introduced legislation, therefore we may not require such a long lead time to reach the same level in Scotland. However, I agree that we have a busy job ahead to communicate why the bill is being considered and, we hope, implemented.

Mrs Milne: But is it possible to do that in a year?

Sheila Duffy: Yes.

Dr Harrison: Public opinion that some action should be taken has been increasing steadily

since about 1996, so although some polls suggest otherwise, a large proportion of the public are behind measures being taken.

Mrs Milne: Does “some action” equate to a complete ban with few exceptions, except on humanitarian grounds?

Dr Harrison: I will answer that question with regard to the Scottish Executive’s opinion poll by Market Research UK, which I know has come under scrutiny by the likes of the SLTA, because it demonstrated that there were lower levels of support for legislation that covered pubs than for legislation that covered other places. There are important points to note, the first of which is that the public’s support for a ban in pubs is generally lower than that for a ban in other places, such as restaurants. However, in places where legislation has been introduced, public regard for the legislation has generally continued to grow.

Mrs Milne: Your submission quotes the UK Government advisory committee—the Committee on Carcinogenicity of Chemicals in Food, Consumer Products and the Environment:

“Taking all the supportive data into consideration we conclude that passive smoking in non-smokers exposed over a substantial part of their life is associated with a 10-30% increase in the risk of lung cancer”.

Can you define

“a substantial part of their life”?

Dr Harrison: No, because it was not defined in the paper that we looked at to gain that evidence.

Helen Eadie: What do you know about the tobacco company Philip Morris’s attempt to conceal important research that could and should influence Government policy?

Sheila Duffy: We know from documents that have been disclosed in litigation in various places that the tobacco industry has sought to delay, alter and deny evidence, and to run concerted campaigns to prevent the health evidence from having the obvious effect.

The Convener: May I enter a note of caution? I am being reminded that we should be careful where this leads to in terms of privilege.

Helen Eadie: I understand that, but I want to ask about litigation in various places.

The Convener: Everybody be careful. We do not want to end up in litigation.

Sheila Duffy: We have seen evidence in tobacco industry documents of the industry’s own commissioned research being altered following legal advice to remove evidence of harm from smoking.

Helen Eadie: Where is litigation taking place or where has it taken place?

Sheila Duffy: There has been litigation in America. We can come back to you with further details on that.

Helen Eadie: Will you provide details of all the litigation cases of which you are aware?

Sheila Duffy: Yes.

Helen Eadie: Can you comment on the assertion in your report that second-hand smoke "is more harmful than mainstream smoke"?

Dr Harrison: We can provide you with further details on that if you wish.

Shona Robison: The SLTA argued that a displacement effect may lead to increased smoking and drinking in the home. Whether or not you accept that, given the trend towards more home drinking because of the availability of cheap alcohol in supermarkets, it is likely that people will drink more at home and therefore there is a danger that people will smoke more at home. Is ASH concerned about that problem and, if so, what measures are required to deal with it?

17:00

Sheila Duffy: We have worked for several years with people on low incomes, particularly in areas of deprivation. We are concerned about increased smoking at home because it has obvious impacts through sudden infant death syndrome and respiratory infections among children. It is important that we communicate clearly to people the reason why the bill is under consideration, because people who understand why smoking has ended in enclosed public places in Scotland are unlikely to expose their children to smoke at home.

Shona Robison: Must that issue be taken into account in the publicity campaigns that come with the ban?

Sheila Duffy: That will be vital. It would also be helpful if some of the disinformation on the issue was robustly refuted in campaigns.

The Convener: Do you anticipate that the ban will result in a decline in smoking in the home?

Sheila Duffy: The evidence from Australia is that voluntary restrictions increased after legislation on smoking came into place.

The Convener: So you anticipate—

Sheila Duffy: We anticipate that exposure of children to tobacco smoke at home will decrease if the pattern here follows that in other countries.

The Convener: That is what I asked you. Basically, you anticipate a decline in smoking at home.

Sheila Duffy: Yes.

The Convener: Do you intend to measure that?

Sheila Duffy: I believe that the Scottish Executive is considering ways of measuring a baseline.

Mike Rumbles: When the committee went to Ireland, we met Sean Power, a minister of state at the Department of Health and Children, who informed us that in 2004 cigarette sales in Ireland decreased by 17 per cent, which led to a decrease of more than €100 million in revenue for the equivalent of the Inland Revenue in Ireland. The evidence is clear that the ban in Ireland has led to a decrease in smoking. It is assumed from the evidence that smoking is decreasing everywhere, but we cannot tell that. To follow up the convener's question, how can we measure the impact of the ban here? We have heard about the SLTA's fear that the ban will simply displace smoking, but the evidence from Ireland is that smoking will decrease. The key is how we measure the effects of the ban. Do you have any suggestions as to how the Executive or other organisations can do that?

Sheila Duffy: The early indications are encouraging. The number of calls to the smokeline from people expressing an interest in stopping smoking has increased since the discussion about the proposed legislation started. It should be possible to measure the success of smoking cessation services and the number of people who take advantage of the opportunity to stop. Most smokers say that they would like to stop. Beyond that, there is an on-going discussion about measures of the bill's success, to which we would be happy to contribute.

Mr McNeil: Have you done, or do you have available, any research on illegal supply and smuggling of cigarettes and its impact on deprived communities?

Sheila Duffy: We have done some work on that, which is available on our website. The issue is a big one for certain communities. For tobacco control to work, effective action is required on a number of fronts.

Mr McNeil: Do you have evidence that illegal supply of cigarettes in Ireland has increased? The news today is that the Irish Republican Army has made that a business for itself. Could that be related in any way to the decrease in cigarettes that are sold legally?

Sheila Duffy: There are concerns about large-scale smuggling because it tends to go with other criminal activity. Action has been taken to hold tobacco companies accountable so that they do not collude with large-scale smuggling activity.

Mr McNeil: I am trying to establish that the 15 per cent reduction in sales of tobacco—

Mike Rumbles: It is 17 per cent.

Mr McNeil: Mike Rumbles reminds me that it is a 17 per cent reduction in legal sales of tobacco. Could that be partly due to smuggling of cigarettes?

Sheila Duffy: I am not aware of evidence to that effect.

Dr Harrison: Neither am I.

Mr McNeil: Could the reduction in legal sales not possibly be because of smuggling? Is the reduction caused only by people stopping smoking?

Dr Harrison: We do not have evidence on that.

The Convener: If there was evidence of large-scale black market trading in cigarettes that is not reflected in official figures, would you accept that that would displace over-the-counter trade?

Dr Harrison: Do you mean evidence from Ireland?

The Convener: I mean any evidence. If there was evidence here of a substantial black market in cigarettes it would not register in the figures for the over-the-counter trade.

Sheila Duffy: That is right.

The Convener: There are no further questions, so you are free to go. Thank you very much for coming in to give evidence.

The next witnesses are from the trade union side. I ask the representatives from Unison, the Scottish Trades Union Congress and Amicus to come to the table. Please check that the nameplates in front of you are the right ones—if they are not we will all get confused.

I welcome you to the meeting. Andy Matson is the regional officer from Amicus, Ian Tasker is assistant secretary of the STUC and Dave Watson is head of policy and information at Unison Scotland.

I ask Ian Tasker from the STUC to make a very brief introductory statement—perhaps he can hold the jackets thereafter.

Ian Tasker (Scottish Trades Union Congress): The STUC represents approximately 630,000 members. The proposed legislation on smoking has been discussed at some length within the trade union movement. If the committee had hoped to hear of consensus among the trade unions, I can tell members that that will not happen today. The STUC's position is that although we broadly support a ban on the basis of the impact on the health of Scottish citizens and workers in general, we have problems with the timescale for implementation.

The Convener: Thank you.

Janis Hughes: I declare an interest as a member of Unison.

I will ask Dave Watson about the evidence that Unison submitted on the role of environmental health officers in enforcement. You probably heard the previous witnesses' evidence—there was some disagreement about the role of environmental health officers and the role that the police may play in enforcement. Can you comment on the remarks that were made by Mr Greenhill about how he sees environmental health officers working to enforce the legislation?

Dave Watson (Unison Scotland): It is important to say that we represent environmental health staff, so our perspective is probably not a high-level policy one but one that reflects discussions with colleagues who work on the ground. It is important to understand that environmental health staff already enforce fixed penalty tickets in a number of areas including littering, dog fouling, emissions and—soon—domestic noise. The key element for a member of staff who seeks to enforce a fixed penalty on an individual is that they need the name and address of the person. In some cases they also need the date of birth, but in essence the name and address is the key information. The view of our members is that there will be difficulties in enforcement—some of them put it more colourfully than that—and we are not hiding from that.

I will comment on what the committee heard from the witness from the City of Edinburgh Council. Edinburgh has a particularly high enforcement rate for fixed penalty tickets, but that is not the experience throughout Scotland. I do not have the precise figure for the enforcement rate in Glasgow, but I understand that it is significantly lower than the 95 per cent rate—I think that is the figure—in Edinburgh. There are a number of reasons for that which relate to the enforcement strategy. In some areas in Glasgow, seconded police officers accompany environmental health staff to enforce fixed penalty notices. The essence of the problem is that if an environmental health officer or other member of staff asks a person to give their name and address and the person replies, "Get stuffed"—I will not use more colourful language—the officer has no powers of arrest and therefore no way of gaining the person's name and address. In Edinburgh and in other parts of the country, a system has been set up whereby an environmental health officer can, using their mobile phone, call a police officer for support. The effect of that appears to be that EHOs can get a person's real name when they need to issue a fixed penalty notice. However, there is a problem in that the police, perhaps not unreasonably, do not regard such offences as being a priority, although they will certainly attend areas in which enforcement might be difficult.

Concerns about the costs of the bill were flagged up rather vaguely in the Convention of Scottish Local Authorities' submission. There will be initial costs, if not continuing costs, so we are concerned because environmental health departments already suffer because of tight budgets. We commented on the budget settlement for local government for the next few years; we are concerned that there is no spare capacity in environmental health departments, so additional resources will have to be provided to such departments if they are to carry out their functions.

I emphasise that Unison Scotland supports the bill and does not object to enforcement of its provisions by environmental health departments, but funding will be needed. For example, special Executive funding was made available to employ teams of staff to deal with domestic noise, particularly late at night. Local authorities had to bid for that money. We are concerned that the moneys that will be provided might either be ring fenced or short term, as is the case for the Executive's community wardens initiative. We support that initiative, but funding will last for only a few years and there is no guarantee that there will be on-going funding to ensure that money is available for enforcement purposes.

We are also concerned about health and safety. Unison Scotland gave evidence on the Emergency Workers (Scotland) Bill to the Justice 1 Committee and made the point that a range of local authority staff, including environmental health staff, would not be covered by it. Such staff do not receive the additional protection that certain categories of emergency workers will receive now that that bill has been passed, so there is an issue about the additional protection that we want staff to have. In fairness, local authorities will put in place risk assessments and appropriate mechanisms. We would not allow our members to be placed in high-risk situations and our advice to workers is always that they should back off from such situations. We must acknowledge that there are safety considerations for staff.

I have given a long answer, but there are many enforcement issues in relation to environmental health. We have concerns, although I emphasise that we support the bill and the approach to enforcement.

The Convener: You talked about the City of Edinburgh Council's experience of having policemen available on call. Unison represents members throughout Scotland, including members in areas in which it is well known to everyone that an environmental health officer would be lucky if a policeman arrived within 45 minutes or an hour. Do you agree that in different parts of the country different issues might arise?

Dave Watson: Yes. However, colleagues in

Edinburgh tell me that when people are simply told, "I will have to call a police officer to come and enforce the fixed penalty", they tend to provide their names and addresses. We need to acknowledge that there will be a hard core of people who will cause difficulties, but in general, enforcement of fixed penalties has not been a problem.

The Convener: Are enforcement officers empowered to detain a person while they wait for a police officer to arrive?

Dave Watson: No, but that has not been a problem. People give their names and addresses when the consequences of not doing so are brought to their attention.

The Convener: I am still interested in what happens if a person knows that the policeman will not arrive for an hour. In such circumstances must staff wait with the person? There are issues about that.

17:15

Mr McNeil: We have received evidence from the Republic of Ireland that shows that, on average, 94 per cent of premises that were inspected comply with the law. Compliance levels are reported at 94 per cent in hotels, 99 per cent in restaurants and 91 per cent in licensed premises. Do not those figures demonstrate that anti-smoking legislation is largely self-enforceable?

Dave Watson: That is probably the case in respect of the history of other fixed penalties, but it would be foolish to say that there are no costs associated with enforcement.

There has been great emphasis on pubs and similar premises, but we also represent staff who work in other enclosed premises where alcohol is present such as places of entertainment, local authority premises, community centres and so on. Often, the staff who work in—or, more important, who manage—those premises are community based and there is concern that they may be put under pressure in enforcing their managerial control over premises. There may be hostility towards them from some people in the community. Their job is not quite the same as that of the manager of a city centre pub, who can go home at night and be well away from the place. A community worker is much more a member of the community, which must be taken into account. There are safety issues relating to that, which local authorities will have to take into account, and there will be training and cost implications.

The Convener: The previous panel of witnesses expressed differences of opinion about the kind of enforcement that we might anticipate. Would you be more supportive of the police approach than of

the other approach?

Dave Watson: In all things, a pragmatic approach must be taken to enforcement. I understand where my colleagues from the Royal Environmental Health Institute of Scotland and the City of Edinburgh Council are coming from. There is no hierarchy of offences in the bill. I accept the fact that section 1 focuses on managerial responsibilities and that the other sections deal with stand-alone offences, but if someone has responsibility for enforcement, they must take that responsibility.

Shona Robison: I have questions on Amicus's written submission. To give us some background, can you tell us how many of your members work in the food and drink industry, for tobacco companies and for vending machine companies? What percentage of your members in the food and drink industry work behind bars, where environmental tobacco smoke is a direct issue?

Andy Matson (Amicus): I will deal with the last question first. Not many of our members work behind bars; they tend to work in other sectors of the industry, but that does not mean that we do not have members who do such work part time. Members of other organisations will put in a couple of shifts at a pub or hotel to augment their income, and I am sure that Unison members and members of other unions fall into that category. The bulk of our members in the drinks industry are involved in manufacture, whether of soft drinks such as Coca-Cola, or alcoholic drinks, which are produced by companies such as Diageo. Our members are also involved in food manufacture.

As far as the tobacco industry is concerned, the split between vending and manufacturing is heavily weighted towards those who are employed in manufacture of tobacco products. The industry, like many others, has been in decline, but we reckon that about 4,500 to 5,500 people are employed in the tobacco industry in the UK. That is nothing like the number of people who were employed in the industry in its heyday, primarily because of advances in technology and so forth. Within the tobacco industry, the workforce is split between those who are involved in production, those who are involved in administration and those who are involved in selling. The vast majority are involved in manufacture.

There are no more than 700 vending machine operatives employed in the UK who service and fill the vending machines in pubs, clubs and restaurants. The numbers in tobacco company sales forces in the UK are similar to the numbers of vending engineers.

Shona Robison: Just to be clear, is the biggest proportion of your members in food and drink manufacture, compared with tobacco manufacture

and vending? I ask because when you talk about economic impact, you talk about a reduction in alcohol sales, rather than in tobacco sales, impacting economically on your membership through loss of jobs.

Andy Matson: I do not necessarily accept the logic that if a ban were introduced, it would lead to a reduction in either consumption or production of alcohol. If one considers the Irish experience and talks to the licensed trade in Ireland, people will say that, on the one hand, there has been a significant downturn in sales of draught beers—beer that is sold over the counter in pubs—while the sale of canned and bottled beers has increased. The Irish licensed trade has suggested that there has been a shift away from drinking in pubs, clubs and hotels to drinking at home, therefore it is not unnatural that there would be a reduction in sales of draught beer as sales of cans and bottles increase. It would be reasonable to extrapolate that situation to Scotland should similar circumstances exist.

Shona Robison: What I am trying to get at is where you foresee economic impacts on your membership and where they work. It will not be on the bar staff who might lose their jobs because of the proposed legislation. You are saying that it will not impact on manufacture of drinks because there will be an increase in off-sales, so where does Amicus's concern lie in respect of its membership and the potential loss of jobs?

Andy Matson: There are two areas. First is where we foresee our members being directly affected, but secondly we believe as a union that should any Parliament—Holyrood, Westminster or Cardiff—enact legislation, the economic impact on the community has to be considered. What we have said and included in our written submission is clear.

The convener will recall that when we gave evidence to the committee on Stewart Maxwell's bill, I said that we felt then that it would be difficult to quantify the number of jobs that could be put at direct risk in the tobacco and food and drink industries. We can draw some analogies with the vending of tobacco products in Ireland. Our information is that the vending machine companies in the Republic of Ireland have shed between 25 per cent and 35 per cent of their labour, depending on the area in which they operate and the nature and size of the company. Any ban in the UK would also have an impact on throughput of products through vending machines. That has been the experience in Ireland. As far as the other areas are concerned, it would be irresponsible for any Parliament to consider legislation in isolation from the grand position as far as employment is concerned.

We believe that it is fair and reasonable to extrapolate from the Irish experience, given that Scotland and Ireland are similar in their rural and urban make-up, although their populations may differ. Extrapolating from the official Irish Government statistics, which are referred to in our written submission, should allow Parliament and the committee at least to consider the position of the hospitality industry, which we believe will be hardest hit by the ban. We need to take things from there. If the impact on the hospitality industry is similar in Scotland to what it was in Ireland, questions must be asked and people must be given assurances about safeguards and retraining. We need to ask where the money that is lost will come from.

Shona Robison: Is it fair to say that your concerns are more about the wider impact on the economy than about the impact on your members?

Andy Matson: Yes.

Shona Robison: I will turn to that issue. Your written evidence focuses on the estimated £41.6 million reduction in revenue for the Exchequer that might result from fewer people smoking. With all due respect, if you were to take that argument to its logical conclusion—I wonder whether you would—you would argue against all smoking cessation policies across the board. Restrictions on tobacco advertising, health warnings on cigarette packets to warn about the dangers of smoking and bans on smoking in public places are all measures that will potentially reduce tobacco revenue to the Exchequer. Surely Amicus would not argue that smoking cessation policies are a bad thing. Are attempts to improve the health of our nation not a more important objective? Where does Amicus stand on that? Do you agree with anti-smoking policies, which try to reduce levels of smoking even though they might have an adverse impact on the amount of money that the Treasury receives?

Andy Matson: Our written submission states clearly that the union's food, drink and tobacco sector's national conference has declared our opposition to an all-out ban on smoking in public places. The union's position accepts the requirement for greater restrictions and controls on smoking and for consideration to be given to alternatives, including ventilation and filtration systems. We have been consistent on that.

I should say that the mathematics in our written submission are not based on figures that we have pulled from the sky. For example, the bill's accompanying documents mention the Wanless report's estimate that a reduction in smoking of something in the region of 4 per cent would emanate from the introduction of a ban. Using that figure and other figures that have been produced

by Parliament, our submission puts some reasoned and logical economic argument before the committee. We believe that it is important that the proposed ban be considered not narrowly but in the round. We believe that the electorate are entitled to be told what the bill will or will not mean. If it will mean a shortfall either in revenue for Scotland or in resources for local authorities, the electorate are entitled to know where that money will come from.

Shona Robison: Would a 4 per cent reduction in smoking not be a good thing?

Andy Matson: I am not saying that it would be a good thing or a bad thing. In our submission, we say clearly that we intend to concentrate on the economic and employment side of the debate, which we believe has been somewhat swept under the carpet. For example, the financial memorandum that is attached to the bill tends to consider primarily areas in which estimated savings to the health service can be quantified.

The estimated costs to local authorities of implementation and enforcement are slightly underestimated in the financial memorandum, according to COSLA's written submission, which says that the cost will be about £6 million in the first two years. That money has to be found by the local authorities, and we should be clear that COSLA is saying that its support for the bill is dependent on local authorities' getting funding for implementation. It is reasonable to ask where that funding will come from.

17:30

Mike Rumbles: On that point, I understand entirely that you are focusing on the economic and employment side, but we have to focus on everything in the round. In your written submission, you say:

"It is our view that ... health matters"

should be given

"equal consideration ... to the employment implications."

You equate a possible downturn in business with the deaths of 1,000 to 2,000 people in Scotland every year through passive smoking—that is based on the scientific information that we have received. Are you seriously suggesting to us that the economic argument that you propound should outweigh that?

Andy Matson: Not necessarily, but from the economics, which we outline in our paper, it appears to us that to save about £15.5 million we will lose in the region of £50 million. We are not economists, but simple sums suggest to us that that is the case. That seems to me to be the economics of lunacy.

As a trade union, we have always supported and argued for health and safety. We believe that

health and safety in the workplace is paramount. The industries in which we have operated over the years are primarily those in which there have been health and safety risks from fumes of one type or another, but those risks have been resolved in industry with the use of improved ventilation systems. There have been problems with fumes from chemicals that are used in certain processes in the electronics industry, but ventilation and filtration systems have been used to resolve some of those issues. In heavy engineering industries such as shipbuilding there have been difficulties with fumes from welding rods and so on, but improved ventilation systems have gone some way towards resolving those problems.

Evidence is available to suggest that ventilation and filtration systems can provide health and safety support to workers in the hospitality trade, if health and safety in the workplace is the issue on which the committee wishes to focus. We have tried to stay out of the health debate on smoking and concentrate on the areas in which we believe our members have some input and we would like to think that the committee is prepared to take that on board.

The Convener: You are saying that, whatever the Parliament chooses to do, it should act with full knowledge of all the impacts of its decision.

Andy Matson: That is what I am saying. As we say in our written submission, we believe that choice should be available on both sides of the debate. Some pubs and restaurants have already declared their intention to be non-smoking premises within a particular period of time—Pizza Hut is one and J D Wetherspoon has made its declaration. We do not have a difficulty with that. We believe that, if people want to go into a pub and have a pint and a fag, that is a choice that they should be able to make. If they want to go into a pub and have a pint without a cigarette, that is equally a choice that should be made available to them.

Helen Eadie: We visited Galway and Dublin and we met Impact, the biggest public sector trade union in the Republic of Ireland. Do you agree with its view that the health and safety of its members should take precedence over the potential economic impact of the policy?

Ian Tasker: The STUC's policy has always been that there should be no economic measure in relation to health and safety improvements. The difference between the situation in Ireland and the proposed legislation in Scotland—this was touched on in a previous evidence session—is the lead-in. We held initial discussions with the hospitality and licensed trades on how the trade union movement could work with them over a prolonged period to examine and perhaps reduce the economic impact. The Transport and General

Workers Union, which has members in the hospitality industry, supports an all-out ban in Scotland, England and Wales. There is an opportunity for the trade union movement to work with the hospitality trade, but we are concerned that the wider public debate over the past few months has prevented us from taking that opportunity.

Helen Eadie: When we visited Ireland, we heard about the new investment opportunities, which have been mentioned by the deputy convener, such as the manufacture of gazebos and patio heaters. A whole range of construction-related jobs has been created, which it is felt must offset the number of jobs that have been lost in the hospitality sector.

Ian Tasker: I am not aware of any figures relating to what those new industries are doing to offset the overall economic cost. We support the view of Amicus that job losses are an important consideration. People who work in the hospitality industry often do not choose to do so; they do it to see themselves through college or as a second job. If jobs in that industry disappear—although we are not wholly convinced that the forecast loss of jobs will materialise—that may lead to increased social exclusion for many people who are already on low wages.

Helen Eadie: What is your comment on the potential impact of the ban on those who suffer from smoke-related diseases, especially asthma and chronic bronchitis? Can you even up the balance sheet from what Andy Matson has said and acknowledge that there is a cost to Scotland of £83 million for sickness absence related to exposure to environmental tobacco smoke?

Ian Tasker: Environmental tobacco smoke obviously impacts on people who have bronchial conditions. We are considering the health angle and the STUC line has been that it is inevitable that a ban on smoking in public places will bring overall health improvement. We therefore support the health arguments, but we believe that some smoking cessation initiatives must be provided for the hospitality trade, as various estimates say that between 50 and 70 per cent of the people who work in that industry smoke.

Helen Eadie: What is your comment on the cost of the loss of productivity to Scotland through smoking-related diseases causing time off work? That cost is estimated at £450 million.

Ian Tasker: If people are suffering from lung cancer or any lung disease, there will be a loss of productivity. However, there is also a loss of productivity through drink-related illnesses. We have to look at the whole picture. Smoking is one issue, but there are a lot of occupational health illnesses.

Helen Eadie: We will move on to the subject of alcohol later. Do you know what the cost is of the payment of welfare benefits to those who are unable to work due to smoking-related illnesses? Do you accept—again, evening up the balance sheet with what Andy Matson has said—that that cost is £40 million? That brings the total cost to around four times the amount that Andy Matson has suggested in his submission to the Scottish Parliament.

Ian Tasker: I think that Andy Matson would be better placed to comment on those figures. We are looking at the situation and considering what the health benefits will mean, but what is important is how we use the cost savings relating to health to mitigate the situation in relation to job losses and the arguments that Andy Matson has put forward. The trade union movement exists to protect jobs and to protect members' health and safety, so we are caught between the devil and the deep blue sea.

Helen Eadie: Do you accept that all the savings that we have talked about this afternoon—more than £600 million by now—could be channelled into the public sector works that we so desperately need across Scotland? The trade union movement is always bemoaning the fact that there is never enough money to go round to create jobs in the public sector. Could not that money be redirected from the savings back into the health service, which unions represent?

The Convener: I should point out that all that we are asking for is a general opinion. It is not really for the individual unions to answer that question. Unfortunately, it will not be a matter for them.

Helen Eadie: Okay. I have a specific question. How much money is spent by the national health service in Scotland, and do you agree that that money—£200 million—would generate more jobs?

The Convener: I think that we understand the point that Helen Eadie is making. There are two sides to the equation. Money may be lost on one side, but it may be gained on the other. That is the point that needs to be addressed.

Andy Matson: It is unfair to become selective about which work-related illnesses one wants to quantify. We might want to extend that to include work-related stress, which is a big issue these days, although I do not know whether anyone has tried to quantify how much it is costing. As far as our submission is concerned, we have certainly not tried to draw anything out of the air. We have looked at papers that have been produced on behalf of the Parliament in supporting the bill. We have not sought to go beyond that to any documentation that is not among the official papers for the committee. If such papers had been appended, each and every one of us would

probably have had a tome to read, but we have tried to make a reasonable submission in the light of the official paperwork that was sent out to interested parties when the Parliament issued invitations to comment.

Dr Turner: I have a quick question about the heating and ventilation industry. I take it that you will not be expecting to lose many people from that industry, because I understand that there is heating and ventilation in premises anyway. Would you expect to lose anybody in that area?

Andy Matson: No. Our view is that, if the Parliament were to consider a voluntary ban, rather than a total ban, and to tie it in with requirements for improved ventilation systems, there would be an opportunity for expanding employment in the heating and ventilating industry, not only in installing upgraded equipment but in on-going maintenance to ensure that the systems work efficiently. That is certainly not an area in which we envisage a downturn in employment.

Dr Turner: A large number of people do not accept that ventilation works and there is quite a range of expensive ventilation systems. If we were to go down that pathway to an eventual ban, would we be leading people into expense and eventually putting the ventilation suppliers out of business, not to mention people in other businesses, because they would have spent and borrowed so much money to install useless equipment—or equipment that you may not think is useless but that many people believe is useless?

Andy Matson: I accept that some people believe that, no matter how super-efficient the ventilation and filtration system that could be installed, it is irrelevant to the argument. Equally, some people—including us—contend that adequate ventilation and filtration systems can be developed and installed to provide the necessary safeguards that the committee and the Executive through the bill seek to put in public places.

17:45

The Convener: Do members have any final, small points?

Mr McNeil: When will we finish?

The Convener: We will finish when we finish. There is time for you to ask more questions.

Mr McNeil: I will follow up Helen Eadie's questions. There is a big divergence in view from that of the Irish trade unions, which were clearly partners for the greater good of a large group of workers in the hospitality industry. The STUC submission refers to choice in the round and says:

"individuals work in the hospitality industry not through choice but necessity. This includes students, young parents

and those who need to take additional jobs to supplement low pay in their main employment.”

Where else would the trade union movement argue that protection that workers deserve should be deferred until others catch up? As trade unionists, when we meet a health hazard, the first principle is to ask whether that hazard can be eliminated. Smoking is a hazard that can be eliminated in the workplace. Only when we cannot eliminate a hazard do we seek to enclose it or replace it with safer materials. We have a hazard that can be eliminated and we should not defer the support that workers in the hospitality industry deserve. I appreciate that that was more of a statement than a question.

The Convener: Indeed.

Ian Tasker: Duncan McNeil has summed up our position. After much debate, we are supporting a ban. We believe that smoking is a hazard and should be treated as a workplace hazard. It is unusual for the Scottish Parliament to consider legislation that will impact on the workplace.

The STUC youth committee discussed the matter and also favours a ban, but we have not had the chance to work in partnership on the matter. That is what we want to achieve, but we will not do that by April next year. We must engage with the anti-smoking lobbies and the SLTA and we must promote partnership to achieve the overall ambition of a ban on smoking in public places.

Dave Watson: I agree with Andy Matson that the Parliament should always consider the economic impact of legislation. When that is clearly measured, just transition arrangements should be put in place to deal with it. However, Unison has discussed the matter with Impact, our sister union in Ireland, and we take the same approach. As always in health and safety, the risks and the economic impact must be balanced. Given the number of deaths that smoking causes, the impact of second-hand environmental tobacco smoke and the fact that 70 per cent of adults do not smoke, the balance is in favour of the ban.

The voluntary arrangements have not worked. Equally, for many of the reasons that Duncan McNeil gave, the ventilation approach is not right. When we can get rid of a risk, the proper health and safety approach is to get rid of it. It is not as though alternatives do not exist. People do not have to smoke in pubs or other buildings. If an employer said that we had to keep that approach in place, we would say, “On yer bike. We’re not having ventilation. Get rid of the risk.” On the balance of health and safety, that is what we would argue.

I say bluntly that we approach the issue from a public health perspective. We represent staff in the

health service and social care sector who see the damage that tobacco smoke does daily. If you have had to nurse someone with lung cancer, you tend to take a fairly firm view on the dangers of smoking. We put the bill in the context of the Executive’s wider programmes to reduce smoking and think that it would provide an important benefit by reducing smoking and the associated health risks in Scotland.

Andy Matson: I do not think for a moment that Duncan McNeil was saying that ventilation systems will not solve the problem. He was saying that a hazard has been identified and asking how we should address it. Over the decades, we have identified numerous hazards in the workplace and have put in place measures to address them, while seeking not to impact on employability in certain areas and industries. Our submission seeks to address that issue by saying that a hazard has been identified and that we believe that there are mechanisms available to address it. Stewart Maxwell is not in attendance, but I say to him that we are not suggesting that people wear space suits. The comments that I made on the previous occasion that I gave evidence to the committee in support of filtration systems and the technology that is available in other places and can be utilised were taken a little out of context.

Let me be quite clear. In its written submission on Stewart Maxwell’s member’s bill, Amicus said that it supported some Executive initiatives to reduce the level of smoking but that it did not believe that an all-out ban was the way forward. We do not believe that such a ban is in people’s interests or that the public are asking for one. We believe that choice is essential and that, if Scottish people are presented with a choice, they will sensibly determine whether during their leisure time—which is the primary target of the proposals—they wish to frequent premises where they can smoke or premises where they cannot smoke. To remove that option is almost to remove a basic right from the population of this country.

The Convener: That concludes the panel’s evidence.

17:53

Meeting continued in private until 18:22.

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