

JUSTICE 2 COMMITTEE

Tuesday 12 September 2006

Session 2

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JUSTICE 2 COMMITTEE

21st Meeting 2006, Session 2

CONVENER

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

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)

*Colin Fox (Lothians) (SSP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Mr Stewart Maxwell (West of Scotland) (SNP)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

COMMITTEE SUBSTITUTES

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Carolyn Leckie (Central Scotland) (SSP)

Mr Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Karen Whitefield (Airdrie and Shotts) (Lab)

THE FOLLOWING GAVE EVIDENCE:

The Rev Graham Blount (Scottish Churches Parliamentary Office)

Sheila Govilpillai (Debenhams)

Ivan Middleton (Humanist Society of Scotland)

Mandy Millar (Debenhams)

David Ramsden (Deregulate)

CLERKS TO THE COMMITTEE

Tracey Haw e

Alison Walker

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 1

Scottish Parliament

Justice 2 Committee

Tuesday 12 September 2006

[THE CONVENER *opened the meeting at 14:03*]

Items in Private

The Convener (Mr David Davidson): Good afternoon, ladies and gentlemen, and welcome to the 21st meeting in 2006 of the Justice 2 Committee. We have received no apologies. I welcome Karen Whitefield, who is the member in charge of the Christmas Day and New Year's Day Trading (Scotland) Bill, on which we will take evidence. I remind everyone to ensure that their telephones and pagers are switched off. I apologise for the slight delay in starting, but my train was delayed and we had some business to discuss.

Does the committee agree to take in private item 4, which is consideration of an approach paper on the budget process, and item 5, which is consideration of the committee's work programme?

Members *indicated agreement.*

Christmas Day and New Year's Day Trading (Scotland) Bill: Stage 1

14:04

The Convener: Item 2 is our second evidence session on the Christmas Day and New Year's Day Trading (Scotland) Bill. I welcome the members of the first panel, which comprises the Rev Graham Blount, who is from the Scottish Churches Parliamentary Office, and Ivan Middleton, who is an official from the Humanist Society of Scotland. Unfortunately, the Mothers Union's representative is unable to attend because of illness.

To what extent are Christmas day and new year's day special days? What does the phrase "a special day" mean to you?

The Rev Graham Blount (Scottish Churches Parliamentary Office): Christmas day and new year's day have different connotations for me, but I recognise both of them as special. Christmas day obviously means something to people such as me, for whom it is the birthday of Christ—or, at least, the day that we celebrate as the birthday of Christ. That is why it is special.

Like new year's day, Christmas day has been recognised as special in Scotland for some considerable time. There is a certain irony in my speaking to the committee on the subject, given that I come from a Christian tradition that, in the first half of the 20th century, when Christmas day was not marked in the way in which it is today, did not jump up and down fanatically to have the day properly celebrated. Scotland was very different then, especially when it came to the work-life balance.

In common with the vast majority of churches in Scotland, I am persuaded that the bill goes some way in the direction of promoting the idea of people taking shared time off to spend with their families and their communities on days that are widely recognised as being special, either for a faith reason or for other reasons that apply equally to Christmas day and new year's day, which in Scotland is traditionally a day for celebration together.

Ivan Middleton (Humanist Society of Scotland): We obviously do not approach the issue from a faith perspective, given that the 2001 census showed that 30 per cent of the Scottish population live their lives free of religion. We think that because Christmas day and new year's day are special, the general population should be given an opportunity to get some respite from the consumerist extravaganza that tends to go on at

that time of year and that people who work in the retail trade should be able to take time off without facing the pressure of saying that they do not want to work. An additional advantage would be a saving in electricity and other energies—for example, petrol would not be consumed by people going in their cars to large shops.

I have lived in Scotland long enough to appreciate new year's day. I have formed the view that it is a day on which not a great deal happens. I am sure that people who work in the retail trade would be extremely happy to lie in their beds for longer and to enjoy the company of their families. We did not think that the bill dealt with a burning issue but, on balance, after considering the freedom of choice argument, we felt that it would be beneficial to give people two days' respite from the consumer bonanza and to allow those who are involved in the retail trade to take time off.

The Convener: Given that the Christmas celebration is related to a particular set of religious beliefs, do you feel that non-Christians or people of no religious affiliation might feel left out if festivals that are important to them are not observed?

Ivan Middleton: Humanists tend to think that Christians commandeered what had long been a mid-winter festival by attaching their name and a particular story to it. Basically, Christmas day is a winter festival and should be viewed in that light. It more or less marks the shortest day and the return of the light. From our point of view, it would be much more acceptable if a name such as "winter festival" was adopted instead of Christmas day.

The Rev Graham Blount: I do not quite agree with the very last comment, obviously. I am persuaded by the soundings that the Scottish Inter Faith Council took among non-Christian faith communities, which showed that they generally welcome the recognition of 25 December—however one describes it—as a special day.

Jackie Baillie (Dumbarton) (Lab): I will resist the temptation to enter the debate on what the day should be called.

Both witnesses mentioned the theme of families, which emerged from the written evidence on the bill. What would be the bill's wider impact on Scottish society—on family life, for example?

The Rev Graham Blount: I remember that the phrase "modest but significant" has been used about the bill's impact. The bill would not turn the world upside down, but it would take a significant step in the direction of allowing people in families—and in wider communities, as I said—to share a day off together. That is significant for family life.

I have seen figures bandied about on the bill's potential costs to the tourism industry and to the

retail trade, but a huge cost to society—some of which can be reduced to pounds and pence—is created when family life is damaged because the work-life balance is out of kilter. The bill would take a significant—if small—step in the right direction of parliamentary recognition that family life should be supported.

Ivan Middleton: One of my roles as a humanist is to conduct funeral ceremonies. In meeting bereaved families, one talks with them and tries to find out how the deceased person lived their life. Almost without exception, Christmas day and boxing day are mentioned as significant family days. If the deceased person was a lady, she may well have hosted the Christmas dinner or the new year party. Those are clearly family days in Scotland that are recognised pretty universally. The more people who are free to enjoy them without outside pressures, the better.

Because the bill sees fit to define a large shop, that leaves the door open for Tesco Express outlets and local shops to open, so that if a family runs out of milk or—dare I say it—something a bit stronger, they will still be able to stock up.

Jackie Baillie: I say as an aside that I look forward to the day when predominantly men are in the kitchen on Christmas day.

We are all describing families, but according to the Scottish household survey, 73 per cent of our households have no children and as many as 32 per cent are single people, whether they are lone pensioners or single young adults. Might those non-traditional families feel excluded from the bill?

Ivan Middleton: I do not think so. The statistics that you described are correct, but single people, for example, have sisters, brothers, friends, mothers, fathers and cousins with whom they probably have a hooley on Christmas day and new year's day. As I said, the days are universally recognised as holidays on which people should be as free from work as possible.

The Rev Graham Blount: The story that is at the heart of my understanding of Christmas is not about a family that is exactly traditional. People who live singly are still part of families or communities. A person who lives alone does not necessarily live their entire life alone.

14:15

Mr Stewart Maxwell (West of Scotland) (SNP): Jackie Baillie mentioned the statistics on people who live on their own—obviously, the trend in our society for people to live on their own has been growing for many years. I accept the point that many of those people have connections with other people and will spend Christmas day and new year's day with their sisters, brothers and other

relatives, but do not many people spend those days alone? The statistics show that depression, ill-health and suicides are—unfortunately—higher at that time of year. If workplaces were open, would not some of those people welcome the opportunity to work in them? They could go into their workplace and enjoy the company of others rather than be left alone with their own company within their own four walls.

Ivan Middleton: Large shops will be closed for trading, but I understand that in most of them, staff will still stock the shelves for the next day. It is not true to say that nobody would work in them on Christmas day and new year's day.

I think that single people will welcome a day on which to put up their feet. If your argument is taken to its logical conclusion, it would mean that the people to whom you referred had no friends in the world and nobody with whom they could spend Christmas and new year. A small minority of people may—sadly—be in such a situation, but I do not think that many people in the retail trade are. That is not a basis on which to reach a decision.

Mr Maxwell: I would not take my argument to that extreme; I am simply suggesting that some people may want to have the choice to work. I wondered how that fitted into your thinking.

Ivan Middleton: I think that other opportunities to work would exist. I touched on the size of shops earlier. If a person in a smaller shop does not want to work, another person could do their work. Alternatively, a person could visit people who would appreciate their company.

The Rev Graham Blount: I am tempted to say that my mother is one of the statistics that were mentioned, as she lives on her own. She would not be chuffed if I told her that I was unable to come to see her on Christmas day or new year's day because I was working all day. She is a retired person who lives on her own; she represents one of the significant number of single-person households.

Mr Maxwell: I suspect that you work on Christmas day.

The Rev Graham Blount: Not unless the Parliament sits then.

Mr Maxwell: Many of your colleagues work on Christmas day.

The Rev Graham Blount: I hear what you are saying. Most of us recognise that a small minority of people want to work on Christmas day, some of whom may be involved in the retail trade. A balancing act is involved. We must recognise the positive element of freedom of choice that is involved but also the potential knock-on effects on other people as a result of not placing such a

restriction on shops opening. The impact will be strongest on the lowest paid, and particularly on women and on people who are most vulnerable to the kind of pressure that has been applied when there has been so-called voluntary Sunday opening. A lot of subtle, and less subtle, pressure has been put on people who are supposed to have chosen to work on Sundays, many of whom would not work then if they were given a free choice. It could be argued that the pressure to work on Christmas day and new year's day can be more fearsome. If large stores open, there can be a knock-on effect on and implications for other services. Many people who do not want to work on Christmas day could be put in a difficult position.

Maureen Macmillan (Highlands and Islands) (Lab): I am interested in what you said about women workers. I think that around two thirds of workers in the retail trade are female. Do you agree that opening large stores on Christmas day or new year's day would have a disproportionate effect on women and could therefore affect family celebrations?

The Rev Graham Blount: Yes. We should take into account Jackie Baillie's point that it should not always be women who are in the kitchen, but the potential impact on those who work in the retail trade is clear. I do not know whether the Mothers Union would be content with my speaking on its behalf, but it has made that case in written evidence to the committee.

Maureen Macmillan: We are not talking about only traditional families; sometimes the mother is the sole parent.

The Rev Graham Blount: Indeed.

Ivan Middleton: To put matters in context, people can work on the 363 other days in the year. I would think that most people in the retail trade would be glad that there were two days in the year when they did not have to decide whether to go into work because the decision had been taken for them.

The Rev Graham Blount: On Maureen Macmillan's point about single parents, they are precisely the people who are often put under the greatest financial pressure at Christmas and new year—a time of financial stringency, to say the least—to make a tough choice.

Maureen Macmillan: Yes, indeed.

Bill Butler (Glasgow Anniesland) (Lab): The committee heard evidence previously from the business community, particularly the retail and tourism sectors, about the bill's possible economic impact. In evidence, the business community claims that if the bill prevented businesses from opening on new year's day, it would have a damaging impact on the economy. Do you agree

with the arguments that suggest that the bill would cause economic damage? If you think that the economic arguments are valid, should they have precedence over the arguments that you have espoused today?

Ivan Middleton: I live in Edinburgh and I know that there has been criticism in the past about shops here not opening on new year's day. However, I cannot imagine that people come from America and Australia to shop in Tesco on new year's day. I can accept that they would be a bit annoyed if they could not get a cup of coffee, a glass of wine or a meal, but I do not think that they would be terribly upset if they could not go into a large retail store.

Bill Butler: So you do not hold with the idea that not opening on new year's day could cause economic damage.

Ivan Middleton: It sounds a pretty theoretical argument to me.

The Rev Graham Blount: I seem to be singing not from the same hymn sheet but from the same multicultural song sheet.

Bill Butler: Perhaps that is taking the ecumenical attitude too far.

The Rev Graham Blount: I find it hard to believe that people who come to Edinburgh to enjoy themselves come not for the hogmanay fireworks but to queue up at B&Q at 9 o'clock the following morning.

Bill Butler: So we can say, gentlemen, that both the Humanist Society of Scotland and the Church of Scotland are as one on this matter.

Ivan Middleton: Yes.

The Rev Graham Blount: On this matter, yes. [Laughter.]

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): How significant do the two witnesses consider Easter day to be?

The Rev Graham Blount: Easter day is probably more significant for most Christians. If the bill was about marking a religious holiday, many Christians would probably make a strong case for Easter. However, as I said earlier, the bill is about acknowledging the widespread recognition that a day is special; in Scotland, that applies to Christmas day and to new year's day much more than it does to Easter. That may be a matter of regret, but I am not making a case for a holiday on Easter day, although I would welcome one.

Ivan Middleton: Obviously, from the humanist perspective, Easter has no particular significance. However, I have heard humanists say that it would aid their planning a great deal if Easter was on the

same day every year, rather than their having to see what the phase of the moon is or whatever—I am not sure what the date of Easter is based on.

I have a quick aside to make, if I may, on Mr Butler's remark that the Church of Scotland and humanists agree on something. We also agree in opposing the extension of the provision of faith schools to more religions.

The Convener: I think that that is just outside the bill's scope.

Ivan Middleton: I just thought that I would mention it.

Jeremy Purvis: The phases of the moon are also outside the bill's scope.

Mr Maxwell: I was interested in the comments about visitors coming from the USA to go to Tesco on new year's day. I tend to agree that that seems rather far-fetched. The information that we received on the surveys that were conducted by the tourism authorities and VisitScotland showed that visitors who come to Scotland around the winter festivals state that the retail experience is a large part of the reason why they came to Scotland and why they enjoyed their time in Scotland.

Although I accept that people would not necessarily want to go to a grocer's shop on new year's day, I point out that, last week, the Edinburgh Woollen Mill told us that it opens many of its stores on new year's day and attracts many tourists to those stores. If the bill was passed, it would have to shut those stores. Surely that would have a clear impact on the economy and on the fortunes of that business.

Ivan Middleton: I take the view that the stores would be open the next day and on the other 363 days of the year.

Mr Maxwell: If a tourist is here only for hogmanay, they might fly off on 2 January.

Ivan Middleton: In this day and age, people could order by internet.

Mr Maxwell: So why go on holiday?

Ivan Middleton: To see the fireworks.

Colin Fox (Lothians) (SSP): To see Tesco closed.

The Convener: I will not mention the fact that many large stores are moving into clothing and even jewellery.

Colin Fox: There is a paradox, in that the pressure to open on new year's day is greater than the pressure to open on Christmas day. It would be safe to say that that was a big theme in the evidence that we heard last week. Of the two days, new year's day is much more of a uniquely Scottish experience.

Graham Blount has told us about what Christmas used to be like and John Swinburne has reminded us that he used to work on Christmas day when he was an apprentice, which was not yesterday. What is your organisations' vision of what you would like both occasions to be like? I ask the question because a large part of the issue that we are discussing relates to the need to protect what is culturally unique about new year's day and Christmas day. You have made it quite clear that the consumerist extravaganza does not attract you, but what particular vision do you offer us?

The Rev Graham Blount: I liked the term—which I did not write—in the Church of Scotland's official response, which referred to a process of the flattening of lives. There is a lot to be said for the possibility of having a day or days that are significantly different from other days. To an extent, that is a matter of personal choice—we can make a day different. However, a lot of other social factors determine these things. If you live in one of the streets in which people park in order to patronise a large store 363 days of the year, the opportunity to park outside your house on new year's day might be seen as a plus. If you feel that you have to work a large part of the rest of the year, a day on which the law says that you have the right not to work would make a significant difference.

We are talking about variety and about giving people the opportunity, on two days out of the year, to have a day that is of their own devising. As has been said more than once today, there are different patterns of family life. Increasingly, people operate as families in different ways and celebrate as families in different ways, which I hope means, for many people, spending time with family and friends in the community.

Ivan Middleton: As I said earlier, when I talked about bereaved families, Christmas day and new year's day bring out significant memories of family get-togethers. Perhaps sadly, it is probably the case that those are the only days of the year when certain members of the family meet up. Sometimes, they might say that that is a good thing. However, overall, I think that the benefits outweigh the disadvantages. I see both days as family days.

14:30

The Convener: Reverend Blount, you have cast aspersions, if you like, on voluntary agreements as far as working on Sundays is concerned. Do you have any evidence that you can share with the committee to back up your view, or is your view based on anecdotal evidence that you have picked up?

The Rev Graham Blount: People's experience is beyond anecdote. In the Argos case, there appeared to be a voluntary agreement in place in Scotland, in the absence of legislation to that effect. However, the fact that people had to go to court to try to safeguard what they thought was a right shows that there is a need for legislation in this area. A lot of people out there will never go to the length of taking the matter to court because they are afraid for their jobs. There is strong evidence on both sides of the border of pressure being put on people who are supposedly being asked whether they want to volunteer to work.

The Convener: Do you have any thoughts on that, Mr Middleton?

Ivan Middleton: I am not an expert on the issue.

The Convener: I apologise for the fact that you appear to have a spotlight shining in your eyes. We are not meant to be giving you the third degree or anything.

Mr Maxwell: Reverend Blount, you say that there is strong evidence to support your assertion that people are pressured to work on Sundays. Do you have that strong evidence? Do you have something in writing that we could read?

The Rev Graham Blount: I am fairly certain that I have material that I can send to you. I do not have it with me, and the information is predominantly from south of the border. However, there would be little reason to believe that a voluntary agreement would work better in one place than in another.

Mr Maxwell: It would be useful if you could send the committee that information.

The Convener: If you could send it to the clerks, that would be helpful.

Mr Maxwell: I would also like to ask about the scope of the bill. As you are aware, the bill focuses exclusively on retail premises that are more than 280m² in size. What are your thoughts on that? All shops that are smaller than that are excluded from the bill's provisions, and shops in train stations and airports are excluded. Only about 11 per cent of the working population work in retail, and we can discount from the bill's provisions those who work in smaller stores, airports and railway stations, as well as those who—as Mr Middleton mentioned—undertake stock-taking or shelf-filling on Christmas day and new year's day. What are your views on the fact that the bill restricts trading activities only in the retail sector, given the fact that we are talking about quite a small number of people?

Ivan Middleton: I accept the fact that many people will have to work on those days. My background is in social work, and I recognise that

we cannot close old people's homes, children's homes or hospitals. We also want public transport to work and we want the ambulance service to be available. Many agencies will have to employ people on those days.

I thought that it was strange that the bill focuses on such a small group, but the arguments that it puts forward are persuasive. One cannot please all the people all the time, but it seems that this group of people have a legitimate complaint and feel that they are going to be overwhelmed and forced to work on those two days. If the Parliament stepped in and changed the law so that they did not have to work, that would be beneficial. Nonetheless, I feel that some of the penalties are pretty high.

The Rev Graham Blount: I agree. Personally, I would prefer the bill to go further than it does, although that does not undermine what I said earlier about its making a positive, if modest, contribution. We are talking about a significant section of the workforce, and retail seems to be an area in which new pressure is being placed on employees who have, in the past, not worked on Christmas day and new year's day. That is of particular concern at the moment, which is the justification for introducing legislation that affects that group of people. I agree with Stewart Maxwell if he is thinking that the provisions might be extended to others.

Mr Maxwell: You might be disappointed if that is what you think I am thinking.

Staff who work in Boots in Waverley railway station would have to work on Christmas day and new year's day, whereas staff who work in Boots in Princes Street would not. It would be a special family day for the Princes Street staff, but not for the Waverley railway station staff. Can you explain the logic of that because I have some trouble with it?

Ivan Middleton: As I understood it, facilities ought to be open at railway stations and so on for people who need to use transport.

Mr Maxwell: I will give you another example: the small Boots at the corner of Union Street in Glasgow and the large Boots in Argyle Street. Neither is in a railway station.

Ivan Middleton: I guess that issues such as whether size matters come into play in many situations. For example, one has to decide whether people can buy cigarettes or alcohol at 16 or 18, just as one must decide whether the size of a small shop is more than 280m² or the size of half a tennis court. Fortunately, MSPs have to decide such matters, not us.

The Rev Graham Blount: I have to agree. In many cases, one recognises that it is worth

drawing a line, even though that will create anomalies close to the line. It might be the case that parts of large stores will be cordoned off in order to evade the legislation, if it is passed, so that their size is reduced to whatever the limit is. There is a good case, as has been found in England, for recognising the large impact of particularly large retail premises.

The Convener: We took evidence last week from a representative of a retail store who said that he had no intention of opening on Christmas day, although he felt that new year's day was different. Do either of the witnesses see clear differences between the two days?

The Rev Graham Blount: To be perfectly honest, it seems to me that there is more pressure to open on new year's day. The more we move towards normalising the opening of large retail shops on new year's day, the more pressure will grow on opening shops on Christmas day. There is a difference in the practical pressure on the retail trade at the moment, but I see no other significant difference between the two days.

Ivan Middleton: As I said earlier, both days are ingrained in Scottish culture as family days for different reasons, so it is hard to draw any meaningful distinction between the two.

The Convener: I invite the member in charge of the bill, Karen Whitefield, to ask her questions.

Karen Whitefield (Airdrie and Shotts) (Lab): Thank you, convener, I am pleased to be at the Justice 2 Committee again. I am grateful to both the Humanist Society of Scotland and the Scottish Churches Parliamentary Office for their support of the bill. Do you agree that if the Parliament does not take this opportunity to legislate, Scottish society and the majority of Scotland's shop workers in particular, might suffer a detrimental effect in the future?

The Rev Graham Blount: Yes, I hope that that has been clear in what we have said until now. There is new pressure on large retail stores in particular to open, more on new year's day than on Christmas day. I have no doubt that if we draw back from passing the bill, far more people will be under pressure to work on those days than has been the case in Scotland.

Ivan Middleton: Yes. My thinking is that the bill might prevent a King Canute attempt later on to quell the tide that will overwhelm shop workers. The two days would become shopping days and continue the commercial extravaganza of which I spoke earlier. Scottish society will be worse off if the bill is not passed.

The Convener: Thank you for your attendance this afternoon. I apologise for the fact that you had the sun in your eyes and for the slight delay in

starting. I ask you to send any further written evidence to the clerks as quickly as possible.

Jackie Baillie has not walked out because she is upset with anyone, but because she has a bit of urgent business to do in another committee. She will be back at the earliest opportunity.

I welcome Mandy Millar and Sheila Govilpillai, retail workers for Debenhams who have come to give evidence this afternoon. Please feel relaxed, because we are not going to hang or flog anyone. We are genuinely interested in your responses to issues that committee members and Karen Whitefield, the member in charge of the bill, will raise. The committee will look carefully at all the evidence that is given. Your contributions are valuable, because you are employees in the retail sector.

What are your respective roles in the company?

Mandy Millar (Debenhams): I work in the Debenhams store in Princes Street. I have been with the company for 22 years, and I am a supervisor for cosmetics on the ground floor.

Sheila Govilpillai (Debenhams): I work at Ocean Terminal in Leith. I have been with Debenhams for a year. I am a trainee supervisor in the women's formal clothing department.

The Convener: Jolly good. What is it like to be a retail worker during the Christmas or new year period? How does that affect you and your families? Those of us with some retail knowledge appreciate how busy the festive season is.

Mandy Millar: We work a lot of extra hours over the Christmas period. It is pretty frantic, but it is also enjoyable, because we are kept busy and there is banter with customers. We accept that, as retail workers, we must be where the demand is, and there is great demand at Christmas. I have no qualms about that. It is hard work, but generally it is good fun. If you are in retail, you accept that it comes with the job.

Sheila Govilpillai: I am from Singapore and have no family over here. During the year that I have been at Debenhams, I have spent more time at work than at home. I feel more comfortable at work, because I am used to the environment. It is like a family environment. If I am at home at Christmas and new year, it is a bit lonely. I enjoy the company at work and am comfortable about working during the Christmas and new year periods.

The Convener: Has either of you ever worked on Christmas day?

Sheila Govilpillai: No, not on Christmas day. On boxing day and on Christmas eve.

Mandy Millar: I have worked on boxing day and new year's day.

The Convener: Do you think that the retail trade should be restricted on those days, and why?

14:45

Mandy Millar: It should certainly be restricted on Christmas day—there is not another day like Christmas. However, there is now great demand in retail on new year's day. I was talking to a taxi driver on the way here, who asked me where I was going and so on. He said that he gets people from other countries in his cab on new year's day asking, "What can we do today? The castle is closed, everywhere else is closed." We feel that our opening on new year's day provides a service. It is great fun, and we have a good interaction with the customers.

I have kids, but working is voluntary and we do not do it every year. If we work one year, we do not have to do it the next. There are also people who want to work, such as students who are looking for extra cash—we all know how much money they have to lay out. The work is totally voluntary. If a member of my staff came to me and said, "Mandy, I'm not working new year's day," that would be fine. There is no pressure, but the general thought is that there are people who are more than willing to work on new year's day. Sheila Govilpillai said that she feels lonely at Christmas; there are other people in the same situation.

Sheila Govilpillai: Those are my sentiments exactly. It is strictly voluntary. There is no pressure on us, and we have never been forced to work. It was voluntary last year, and I volunteered as I had nothing to do at home. It was extra cash, as we were paid much more, but more than anything the environment was totally different. Everybody was in a joyous mood, and we did not have much of a crowd—I should definitely mention that. It was very nice and time passed quickly. It was not like an every day working day.

The Convener: What percentage of staff in your respective locations work on new year's day?

Mandy Millar: On a normal day, we would have probably up to 10 members of staff on my floor. Last new year's day we worked with four in my department.

The Convener: And down in Leith?

Sheila Govilpillai: We cover young fashions and women's formal clothing, which is on two floors. We usually have 10 to 12 staff covering both floors. On new year's day we had six to eight staff, including part-timers who came in for four hours.

Colin Fox: We had a manager of a Glasgow Debenhams store in last week.

Mandy Millar: Peter Betts.

Colin Fox: Do you know him?

Mandy Millar: Yes.

Colin Fox: He explained that Debenhams began opening on new year's day only about three or four years ago. I know that Sheila has been with the company just a year but, Mandy, you have worked for Debenhams for 22 years. You must have known 18 years without opening on new year's day.

Mandy Millar: To be honest, I see late-hours opening as more detrimental to my family life than working on new year's day. I am a family person, but in my family life we have close relationships. We have family days all the time anyway, so working on new year's day is not a major problem for me. It is different, but the customers who come in are so pleased to have somewhere to go that you get a good relationship with them. It is good fun. The customers may only be in Edinburgh for a couple of days, so it may not be viable for them to shop the next day. They may be going home the next day.

Colin Fox: You spoke about the jovial attitude of people on new year's day. Is there any sense that, apart from that, it is just a normal working day, the same as any other in the year?

Mandy Millar: No, it is totally different. The store managers make it a special day for the staff as well. They put on extra, fun things for us to do in the store, and it is known as a different day. Staff are well rewarded for working that day. Some people might say that that is bribery to get staff to work; it is Karen Whitefield's bill so she probably feels like that. There are people out there, however, who come in to work as Christmas temps to get extra money.

Colin Fox: You must talk to staff during tea breaks. What would you say is their attitude to the bill?

Mandy Millar: Do not get me wrong; there is a mixed view, to be totally honest. There are staff who do not want to work new year's day, and that is fine because it is totally voluntary. I spoke to four people on my floor who knew that we were coming here today. Three of them were totally okay with working on new year's day. One said, "Why should we work new year? It is a special day." So the view is generally mixed, but that is not a problem because we have enough people who are more than willing to come in on new year's day. There is no pressure whatsoever.

Sheila Govilpillai: I have one point to highlight. Before I came here, I spoke to two groups of staff—our own Debenhams staff and staff from a big group of concessions such as Phase Eight and Principles. The difference is that when we work on

new year's day or Christmas day—and, as I said, it is voluntary—we get paid extra. The concession girls are not paid extra, but get an extra day off if they work on new year's day. Their sentiments were that if the shop was open on new year's day, they would not want to be there, even if they were getting an extra day off.

The few Debenhams staff I spoke to were all from my age group or a bit younger. They said, "I don't mind because I am getting extra money, it's not going to be very crowded and we will be doing the same job, not anything different or extra." They were happy about it.

Mandy Millar: The day is shorter as well because staff do not go in until 11 or 12 o'clock.

Colin Fox: I have a question about the proportions of staff who worked those days. Was it four out of 10 in the Princes Street store and six out of 12 in the Leith store?

Mandy Millar: Yes.

Colin Fox: I take it that they were paid double or triple time on that day.

Mandy Millar: That is right.

Colin Fox: So half of the staff in one store and two thirds in the other chose not to work on that day, notwithstanding the inducement of double or triple time.

Mandy Millar: I would not say that they chose not to work. We worked out the number of staff we thought we would need for that day. Because the day was shorter, staff did not need hour-and-a-half breaks. They got breaks, obviously, but they were not as long, so we did not have to find staff to cover. We could have got six or seven staff to work that day, but we based the staff requirements on what we felt was necessary for the day.

Colin Fox: I suspect that one of my colleagues will go further with that line of questioning.

Earlier, you remarked that the staff were concerned about other, more pressing issues. Last week, the manager from Debenhams said that staff have concerns about travelling home when the stores close at 8, 9 or 10 o'clock at night. They also have anxieties about harassment by bad-mannered customers, for example. Where do those concerns sit amongst the attitudes of retail staff in Debenhams, compared to the proposed measures?

Mandy Millar: Coming up to Christmas, we are open until 10 o'clock at night, sometimes later. The younger staff—

Colin Fox: Is that a bugbear for them? Do they think that that is too late?

Mandy Millar: It is not a bugbear, but they feel uncomfortable about how they are going to get home at night.

You mentioned abusive customers. I had one today. A guy who was high on drugs was in the store being very abusive. I have greater concerns about that than about working on new year's day.

Colin Fox: Is it the same in Leith, Sheila?

Sheila Govilpillai: Yes.

Maureen Macmillan: Thank you for coming to give us evidence. It is good to get it straight from the shop floor. I hear what you are saying, which is that it is almost like a fun day because the shop is open for shorter hours, it is not too busy and it is new year's day so you can have a laugh with each other.

Last week we took evidence from a Debenhams spokesperson who said that he would like to see all the shops open on new year's day. I presume that Debenhams is working towards new year's day being like an ordinary day, when the shops are perhaps open from 9 o'clock in the morning until 6 o'clock or later at night and all the shops on Princes Street and down at Leith are open. There would not be the same kind of atmosphere then. It would be busy and all the staff would be in the shop. Is that what you want to happen?

Mandy Millar: I do not have figures on how much we would take or anything like that, but if the demand is there that would be fine. I do not think that it will ever be that busy, because it is generally tourists who come in on new year's day.

Maureen Macmillan: You said that you rely on temporary staff and so on. If more shops were open, would there be more pressure on staff to come in? Would it be more difficult to get staff to come in if the shop was open for longer hours?

Mandy Millar: No. To be honest, we are under no pressure whatever. I spoke to my store manager when I learned that I was coming to the committee today. I said, "I will go down and support what you have to say and how I feel about it." I stressed that if someone came to me about working on new year's day and said, "I do not want to work it," I would turn round and say, "That is fine." They would not be discriminated against by people saying, "They are not working." It is purely voluntary. If we open for longer hours there may possibly be strains, but we have been told that the current hours are the hours that we will work on new year's day in future and I hope that Debenhams sticks to that.

Maureen Macmillan: Are you concerned that if new year's day became a general trading day there might be pressure for shops to open on Christmas day?

Mandy Millar: No. From having spoken to people in the store and the gentleman who was here last week, Peter Betts, my understanding is that Debenhams has no intention of opening on Christmas day.

Maureen Macmillan: Does Sheila Govilpillai feel the same?

Sheila Govilpillai: I have not had a big discussion about Christmas day with my manager, who sent me here. I agree with your comment that there might be pressure for shops to open on Christmas day, but at the moment and for a few more years to come Debenhams will not be considering opening on Christmas day. When I started I was told that I would definitely not be working on Christmas day and that that would not happen for a long time. I believe that that is the situation, but personally I have not had a discussion on the topic.

Maureen Macmillan: I have one more question, which is not really related. I know people who work in banks, for whom 2 January used to be a holiday. One of the banks decided to change that, but bank staff who were thinking about opting in to working on 2 January discovered that it was almost impossible to get public transport on that day. I presume that you or other staff might have the same problem.

Mandy Millar: The company puts on taxis for staff who have a major problem getting in to the store. The same is done on boxing day. If there is a problem with staff getting in to the store, we will provide them with taxis. It is not viable to have staff come in from Fife and so on, but that does not lead to discrimination against the people who live in Edinburgh, because coming in is voluntary. If staff from Fife arrange to come in to work by driving in, or getting someone to drop them in, that is fine and they can also work on that day.

15:00

Maureen Macmillan: If all shops started opening, there would be pressure on the buses and more and more people would end up working.

Mandy Millar: Yes, I agree with that.

Maureen Macmillan: Some of us are concerned that trading on new year's day will snowball and that the day will become just like any other trading day. Thank you for your contribution.

Bill Butler: Good afternoon, colleagues.

I want to touch a little more on the point that my colleague Maureen Macmillan raised about people volunteering to work on new year's day. Both Mandy Millar and Sheila Govilpillai said that there was no pressure and that working was strictly voluntary. Mr Bruce Fraser of the Union of Shop, Distributive and Allied Workers has said that, if trade were really good, there would be an incentive to get more staff in—more than the 40 per cent that Mandy mentioned or the 50 per cent that Sheila mentioned. He said:

"The employers might start off with the best intentions by asking for volunteers, but once they find that key personnel, such as managers and supervisors, do not want to work, they will move away from a voluntary system very quickly."—[*Official Report, Public Petitions Committee*, 21 January 2004; c 485.]

I think that he was referring to USDAW's experience of Sunday trading.

Mandy, I know that you said that it would be unlikely to happen, but what if business was so good that not only were tourists coming in but other shops were opening because more and more people wanted to treat new year's day just like any other day? Would there not be a real pressure from management on staff?

Mandy Millar: No, because we would employ more staff over new year.

Bill Butler: For one day?

Mandy Millar: No, we would book them in for the whole period, not just for new year's day. It would cost the company more, but we would have to employ more staff. That is what I think the company would do, which is not to say that it would do that, just that that is what I think it would do.

Our store policy is that staff can opt out of working on Sundays. There is no pressure. I work on Sundays, but only one in six—or if I am needed because staff are on holiday. However, a lot of staff in the store can opt out of working on Sundays if they like.

Sheila Govilpillai: I agree that there might be pressure if trading became really good. If that happened, the day could become another task-oriented day like Mondays to Sundays. At the moment, we can be asked to stay in until midnight—as I have done on certain mega-days. However, if I feel that the request is not reasonable or right, I am at liberty to voice my feelings and say, "I don't think it's right for me to be working on this day." If the situation that you describe came about, and it became necessary for staff to work, I am sure that Debenhams would give us the chance to voice our feelings and say that we did not want to be included.

Bill Butler: The company might say, "Yes, well, you're perfectly entitled to your opinion, Sheila, but I'm afraid things have changed. We hear what you're saying but you've still got to come in."

Sheila Govilpillai: I do not think that the company would say that to us. The staff play a very important role: we represent the whole of Debenhams. None of the customers knows the deputies or the board of directors by name, but they know most of us by name. Customers know me by name even if I do not always recognise them. It would not be right for management to do

what you suggest they might. As I say, we represent Debenhams and we are—I believe—very important to the company.

Bill Butler: I agree—workers are important. Mandy, do you have a view?

Mandy Millar: In the 22 years that I have been in retail, many changes have taken place. When I started as a 16-year-old, we did not work on Sundays and we did not work late nights except for Thursdays, when we worked until 8 o'clock. At Christmas time we worked only until 8 o'clock. Things change. Consumers change. Expectations change. Stores are now expected to be open. If you work in retail, you go into that with your eyes wide open. I do not feel any pressure; if I did, I would get the hell out of there. Sorry. If I felt uncomfortable with that situation, I would go. The company has been fantastic to me; I have had a lot of support throughout the 22 years. I have never felt pressured to do anything.

Bill Butler: Thank you for being so frank.

Mr Maxwell: I have a small supplementary that follows on from the questions about possible pressure on people to volunteer. You have said that you do not feel that there is pressure and that people can opt out if they wish. If I remember rightly, Peter Betts of Debenhams said last week that he paid triple time for new year's day. Given that rate of pay, do you have a problem with too many people volunteering for new year's day? Do you always get the four out of 10 that you need? Is it a problem if the figure is five or six out of 10?

Mandy Millar: Demand can be quite high because of the rate of pay, but we work it on a rota system. If I did new year's day this year, and my other supervisor wanted to get the benefits of it next year, that is what would happen.

Mr Maxwell: Is it purely based on pay, or are there other reasons why people might want to work those days?

Mandy Millar: There are other reasons. Christmas is more important to me than new year's day. We get three days off at Christmas, including boxing day and the day after that. That benefits me because I can spend time with my kids at Christmas. We are given options: "Do you want to be off for Christmas? Do you want to be off for new year?" We take it from there.

Mr Maxwell: Flexibility is more important to you.

Mandy Millar: Yes. I am totally flexible when it comes to it, but we have to be fair. If the staff want to work at new year, they should have the choice of doing so. Again, if they do not want to work it, they should have that choice too. We are given three different options at Christmas.

Mr Maxwell: Sheila Govilpillai said that one of the reasons why she was happy to work on new year's day and in the run-up to Christmas and so on was not just to do with money, but to do with the fact that she comes from Singapore and she would otherwise be on her own. By going to work on those days you meet friends, associates and colleagues. Are there others in your store who like to work at that time rather than be at home?

Sheila Govilpillai: There is a minority like me, some of whom are from the United Kingdom. They feel much more relaxed. They are less pressurised. The money is an attraction, but the most attractive point about working on new year's day is that it is the only day on which you can walk around not doing much work and nobody will say anything to you. Most of the staff mentioned that working at new year is not task orientated, because there is no stock to put out and no mark-downs to do. We just have fun. We get other work done, but the day is relaxed.

Mr Maxwell: There is less pressure and more money.

Sheila Govilpillai: Yes.

Karen Whitefield: Mandy Millar in particular, with all her experience in the retail trade—far more than me, since I was only ever a shop assistant while I was studying—will know about this, but it used to be common practice for shops to pay double or triple time on Sundays. My understanding is that that is now quite unusual because people are contracted for a set number of hours, which they work over the course of the week.

How would shop workers feel if they were not offered enhancements to work on new year's day? Is it likely that fewer people would volunteer? The money seems to be a motivating factor for some people. If extra money was not paid as an enhancement for new year's day and all the shops were open so that it became just like any other trading day, the happy and fun atmosphere—with no need for staff to be filling shelves, replacing stock and marking up and marking down in preparation for the sales—would be less likely to occur. People would be less likely to want to work on new year's day, because it would be just like any other day.

Mandy Millar: We get an extra payment for working on Sundays. We are in the store for six hours, but a full-timer gets more or less a full day's pay for that, or they are given a day off during the week. We can get the two and a half hours' extra pay, or we can take it as time earned.

If we did not get extra payments, I am sure that the situation might change. However, Peter Betts came back after last week's meeting and more or less told us that there would always be an extra

payment for staff who work on new year's day. There would be less demand if the payment was not made. We have students working for us who are looking for the money on new year's day.

Karen Whitefield: Shop workers have told me that, if somebody had asked them five or six years ago to work on new year's day, they would have said no, because it has traditionally been a holiday in Scotland and a day on which the vast majority of shops did not open. Only in the past two or three years has it become more normal for stores such as Debenhams to open. There can be few guarantees. At present, the company may say that it is unlikely to do certain things, but that may change.

I am sure that when Mandy Millar left school when she was 16 and started working, she thought that she would always have new year's day off. She said that Christmas day is important for her family. I accept that Debenhams has no desire at present to open on Christmas day, but five or six years ago, it had no desire to open on new year's day either. Do you understand that some shop workers feel that the situation is the thin end of the wedge and that they need a little bit of protection? Like you, they are more than happy to work all those extra hours at Christmas time because they are paid for that, but the bill would provide a little bit of respite and protection for them.

Mandy Millar: I can only give my feelings on the subject, but if Debenhams said that it was going to open on Christmas day and asked me to work, basically, I would tell it to sod off and I would leave retail. That is my personal view—I would never ever work on Christmas day, but new year's day is not as important to me and it is not as important to a lot of people to whom I have spoken.

Karen Whitefield: So you would want to leave the job because working on Christmas day would not be for you. However, do you accept that many shop workers are on fixed incomes and have families to keep and other responsibilities, so it might not be easy for them to find another job? They might not want to work on Christmas day, but the pressure on them to say yes could keep them in their job, whether or not they were happy.

Mandy Millar: I totally accept that, but I truly believe that Christmas will always be Christmas. That is all that I can say. I put my hand on my heart and say that, in the future, Christmas will always be Christmas.

The Convener: Miss Govilpillai, do you have anything to add?

Sheila Govilpillai: Mandy Millar expressed my sentiments exactly.

The Convener: I thank you both for your evidence. Giving evidence is always a bit arduous

for somebody who is not used to it. I see that Jeremy Purvis still has a question. I beg your pardon, Jeremy. You have been so quiet that I had forgotten all about you—that is most unusual.

15:15

Jeremy Purvis: The convener says that I have been uncharacteristically quiet—that is the cheek that we get from our managers.

I am not sure whether the witnesses have read the bill, which exempts stores whose floor area is less than 280m². The member in charge of the bill referred to it providing a little respite and protection, but that would be the case only for staff who work in larger stores. Do you have any comment on that? Do you have any comment on the fact that the bill applies only to people who work in the retail sector and not to other sectors?

Mandy Millar: Restaurants are open and pubs are even open on Christmas day, nowadays. Many different sectors are open and I do not see why we should be any different, if the demand exists.

Jeremy Purvis: What about smaller stores?

Mandy Millar: To be honest, the shops that I have seen open on Christmas day are smaller grocers, which—round my way, anyway—are run by people from different ethnic origins. I accept that shops such as small Boots pharmacies have to be open.

Jeremy Purvis: Are you members of any trade unions?

Sheila Govilpillai: No.

Mandy Millar: No.

Jeremy Purvis: What about people in your teams?

Mandy Millar: When I started in Debenhams, the unions were part of working in a shop—people joined the union. However, as the years have passed, that has fallen by the wayside. A long time ago, I was a member of a union, but not any more. I do not think that anyone in my store is a union member.

Jeremy Purvis: If pressure were to be placed on you by the management—perhaps informal pressure, such as a hint that there were no guarantees for the future if you did not work late or do a little extra, which meant that you had to put pressure on your team—what formal mechanism could you use? You said that you would tell the management to sod off, but does a mechanism exist in the store or through the company for you to register a complaint formally?

Mandy Millar: We have human resources offices that we can get in touch with 24/7 if we have a problem. They would deal with it.

Jeremy Purvis: Has that happened in your stores? I am trying to obtain a picture of the level of complaints.

Mandy Millar: I know of no complaints, but they are confidential much of the time, so whether I would be told about them is another matter. Staff can go to a totally separate room on their own to phone the service.

Jeremy Purvis: Does Debenhams recognise a trade union?

Mandy Millar: I am not sure; I cannot answer that.

The Convener: Does a staff representative group or committee exist?

Mandy Millar: No.

The Convener: Is there openness?

Mandy Millar: Yes—the environment is pretty open.

The Convener: Is the staff tea room the place where people chat about issues?

Mandy Millar: Yes—it is the gossip area.

The Convener: If a feeling among staff arose from that, how would it be processed?

Mandy Millar: We have three levels of staffing in stores: shop workers, supervisors and sales managers. As a supervisor, I generally represent the middle ground. If staff had a general problem, they would be more likely to come to me. I would have to voice their opinions for them.

The Convener: You are the unofficial staff representative for your department.

Mandy Millar: Much of the time, yes. I probably put that on myself, by telling staff that they can see me if they have a problem and I will try to help them.

Jeremy Purvis: Does Sheila Govilpillai want to comment about the mechanisms in the store? You are just starting. Does the store have an environment in which your views can be heard, or could you suggest improvements?

Sheila Govilpillai: I have a very good relationship with my management, from the store manager upwards, and we are at liberty to walk in at any time and voice our concerns. Because I am used to doing that, I have never really understood the need for a campaign. That said, my staff are scared to speak to the manager, so I am always the middle person.

As I said, at the moment, we do not feel the need to hold a campaign. There might be a small issue with voicing our concerns; however, I believe that, if action needed to be taken on an important issue, the store manager or the management above him would look into that.

Jeremy Purvis: Why might the staff be scared to speak to the manager?

Sheila Govilpillai: They are just scared of the word “manager”. No matter who that person was, they would still be scared to approach and speak to him, even if they simply wanted to ask for a day off. Because they feel that they have to go through another person, they have been encouraged to come to us. We are seen as much more approachable than the management.

The Convener: Thank you for your evidence and, indeed, for asking your colleagues for their views. You might have friends who work in other retail stores. Have they mentioned the bill or raised any issues about working at Christmas and new year?

Mandy Millar: No. To be honest, we learned about the bill only last Friday when we were asked to give evidence to the committee. As I have not had a chance to speak to anyone outside our store about the matter, I cannot really comment on how they feel.

The Convener: I thank the witnesses for the openness of their responses, particularly their sometimes colourful nature.

Mandy Millar: Sorry.

The Convener: Do not be sorry—it makes your evidence all the more genuine. Thank you.

I welcome to the meeting David Ramsden, who is the chairman of Deregulate. Thank you for your written submission, which all the members have read.

Do you think that the retail trade should be restricted on Christmas day and new year's day and, if so, why?

David Ramsden (Deregulate): Personally, I cannot see why a retailer would want to open on Christmas day. In fact, very few do so, unless they serve an ethnic minority that does not look on 25 December in the same way that we do.

Interfering with retail premises' opening hours should not be part of the Government's role. That is a matter for the shopkeeper, the shop worker and the customer. In general, the retail trade is very good at regulating itself. Indeed, there is ample evidence of that already in Scotland, and I do not believe that the bill is necessary to protect either shop workers or the special nature of Christmas day and new year's day.

The Convener: I should point out that the Scottish Parliament has no powers over employment and that, therefore, the bill focuses purely on the restriction of trade. However, any consequences that that might have are another matter.

Do you have any evidence that certain retail operations that do not open on Christmas day or new year's day want to do so?

David Ramsden: No. I have no evidence to show that that is the case, other than in Southall, a suburb of London, where some national stores traded on Christmas day until the law prevented them from doing so. However, many small shops—which is to say, those that are smaller than 280m²—trade on Christmas day. As I said earlier, in relation to people from an ethnic minority that does not place a great deal of significance on Christmas, I see no problem with that. However, I have no evidence to suggest that people are clamouring to trade on new year's day and are waiting for this bill to fail to progress before they announce that they are now going to trade on new year's day. People who recognise that there is a consumer demand will—and should—respond to those consumers and should be trading.

Colin Fox: If companies polled consumers and found that there was a commercial demand for Christmas day opening—I am not talking about new year's day at the moment—would you take the view that they should therefore be allowed to open on that day?

David Ramsden: If there is consumer demand, retailers, who are in the service industry, should provide the service that is demanded. If I may say so, the retail graveyard is littered with the remains of people who thought that they knew better than their customers.

Colin Fox: You said that there was little evidence to show that retailers wanted to open on Christmas day, which is why they are not opening. However, you say that, were that demand there, there should be no restriction to having Christmas day as a normal working and trading day. Have I understood you correctly?

David Ramsden: I should, perhaps, have explained myself better. I come from a philosophical position whereby I do not believe that the state has any place in regulating when shopkeepers should open their stores and customers should shop in them. I know of no evidence of any retailers, other than small shops in ethnic minority areas, that open on Christmas day and I cannot believe that retailers have any intention of doing so in the future.

Colin Fox: I thought that you were driving at the fact that, as far as you are concerned, the state has no role to play in the issue.

Jeremy Purvis: What do you think the bill's economic impact would be? You can bring to bear your experience of the comparable situation in England and Wales. If you could make reference to the impact on trading of laws that apply to Easter, that would be quite helpful.

David Ramsden: One of the economic disadvantages is that, if this bill goes through and the only shops that people can go to on new year's day—leaving aside Christmas day—are small shops, the Scottish Parliament will be imposing a tax on the shopper. It is well known that goods are around 10 per cent more expensive in a convenience store than they are in a general food market.

Jeremy Purvis: Have you had experience of the wider economy with regard to areas in England and Wales in which there has been a ban on trading?

David Ramsden: In 1994, when the Sunday trading laws were changed in England and Wales, it was reported that there was an increase in turnover. Clearly, you do not get an increase on an increase; you get a one or two-year increase before the market finds its own level. However, there is no doubt that retail spend went up in 1994-95 as a result of Sunday trading.

15:30

Jeremy Purvis: The amount of money that people spend goes up to a certain level. Could it be argued that, if retail trading were to be restricted on new year's day and Christmas day, it would simply be displaced to other days? People are not necessarily going to be spending more; they will simply be spending it at a different time.

David Ramsden: I do not believe that to be the case. Retailing competes with other activities for the available money. If people cannot go shopping on a Sunday or on new year's day, they may choose to spend that money in other places—money that they might have spent in a shop, had the shop been open.

Jeremy Purvis: One of the points that you make in your written evidence relates to the size of store that will be restricted—I know that colleagues will come back to that point. You say that most Scottish stores are smaller than 280m². I am not sure whether you are familiar with Cameron Toll shopping centre, which is not far from here. Only one store in that whole shopping centre would be forced not to trade if the bill was passed; the remainder would be exempt, as they are smaller than 280m². Would not the bill have minimal economic impact, because most Scottish shops would trade as normal if they wished to open on new year's day?

David Ramsden: In the United Kingdom as a whole, about 15 per cent of all shops are bigger than 280m²; 85 per cent of shops are smaller and, therefore, would not be covered by the bill. That is why the bill fails in at least one of its objectives, which is to protect shop workers. We are talking about only a small number of shop workers who

work in large stores, who might not be required to work on new year's day.

Retailing in large stores is broadly a 24/7 activity. The fact that a shop is not open does not mean that the staff are not there working—shelf filling, stocktaking, cleaning and generally replenishing the shop. The bill does nothing to protect shop workers; it simply prevents shopkeepers from serving their customers on the two days in question.

Bill Butler: Good afternoon, Mr Ramsden. In reply to my colleague Colin Fox, you said that you feel that the Government has no role in regulating the retail sector. Am I right in my recollection?

David Ramsden: Yes.

Bill Butler: I find that interesting. The second sentence in your written submission states:

"Deregulate is an organisation particularly established to promote better regulation in the retail sector and elsewhere."

Do you mean that your organisation's idea of promoting better regulation is the repeal of all legislation that regulates the retail sector?

David Ramsden: No. Where regulation is necessary, it has a place. For instance, I was the principal architect of the shop workers protection that was included in the Sunday Trading Act 1994 in England and Wales. I believe that that is good regulation, which was called for and needed.

Bill Butler: I take your point, but I am intrigued. How would that protection have been realised if it had not gone through the legislative process? The Government had some say in that, did it not? Is it not absolutely necessary that Government has a say in the improvement of regulation?

David Ramsden: Where regulation is needed, of course the Government has a part to play.

Bill Butler: You are amending what you said to Colin Fox, to whom you said that Government has no part to play.

David Ramsden: No, I do not resile from that at all. Perhaps I should modify my statement slightly.

Bill Butler: That would be helpful.

David Ramsden: Of course, health and safety legislation and regulation are necessary. What I am saying is that there is no case for Government—whether here or in England and Wales—to regulate the time that shopkeepers, shop workers and customers do business together.

Bill Butler: Your position is perfectly clear now. Thank you for that clarification.

Karen Whitefield: I have a question on a similar point. Mr Ramsden, you claim to be the architect of the Sunday Trading Act 1994.

David Ramsden: Along with Bill Connor, the general secretary of USDAW at that time.

Karen Whitefield: I understand that the 1994 act came out of a campaign by the Shopping Hours Reform Council. Is that correct?

David Ramsden: Yes.

Karen Whitefield: One objective of that campaign was to ensure that shops paid a minimum of double time on Sundays. However, one of the major retailers that was a member of the council—Asda—broke that agreement within 12 months of its being put in place. Is that not also correct? And did not another member of the council—Argos—sack shop workers in Scotland for refusing to work on Sundays when a sufficient number of volunteers could not be found to staff its stores?

David Ramsden: First, Argos was never a member of the Shopping Hours Reform Council.

Karen Whitefield: Did it sack shop workers in Scotland?

David Ramsden: I do not know. It was not a member of the Shopping Hours Reform Council—I should know, as I was the executive vice-chairman of the SHRC.

Asda still pays double time to shop workers whose employment began pre-1994. There was a change. The agreement—which I brokered, along with Bill Connor, and which eight major retailers signed—was that, until there was a significant change in the marketplace, that is what would happen. A number of major retailers then decided that it would be better for staffing if staff, instead of working a five-and-a-half-day week with Sunday as overtime, moved to a five-out-of-seven-day week. That is the type of contract that most major retailers have now.

In those days, I was the head of public affairs for the Kingfisher Group. You will know that one of the companies that Kingfisher owned—and still owns—is B&Q. At B&Q stores, staff who opted for a five-out-of-seven-day contract got a 19 per cent increase in their hourly rate to compensate for the fact that they would no longer get a double-time payment for working on Sundays. I see no problem with that, nor any difficulty.

Karen Whitefield: I am not sure that shop workers around the United Kingdom would agree that there is no problem with that, as the majority of Asda's current employees are probably not paid double time for working on Sundays, in keeping with many of Scotland's shop workers who work on Sundays. In reality, although the Shopping Hours Reform Council put forward the idea of a voluntary code of conduct for Sunday working, it did not work and we needed to legislate to protect shop workers' rights. That was done following the

sacking of 12 people in Scotland who chose to exercise their rights—

The Convener: Karen, I ask you not to make statements but to ask questions of the witness, please.

Karen Whitefield: I am just clarifying. I accept what you say, convener.

David Ramsden: May I respond to that comment? As you know, the protection for shop workers on Sundays did not apply to Scotland until later. The voluntary agreement that I and others entered into—which was brokered by me and Bill Connor of USDAW—was for England and Wales, not for Scotland. There was no need for such protection in Scotland, because there was no restriction on trading on Sundays in Scotland. That protection was deemed to be so good that, some years later, it was extended to Scotland and Northern Ireland.

To go back to comments that I heard earlier, the fact is that that protection works. In the 12 years since the 1994 act was passed in England and Wales, I have been able to find only 15 cases that ever went to a tribunal. Only three of those involved genuine shop workers and only one of them was upheld. There is protection and it works. Shop workers need not work on Sundays if they do not want to; they merely have to give notice to their employer of the fact that they do not want to do so. Retailers do not have any difficulty persuading people to work on a Sunday. They have queues of people waiting for jobs.

The Convener: I remind the committee that we are discussing Christmas day and new year's day opening. We are not revising legislation that is already in place.

David Ramsden: I apologise.

Mr Maxwell: I seek a small point of clarification, Mr Ramsden. In your earlier discussion with Mr Butler about the role of Government in the regulation of retailers, you said that if regulations were relevant they should be kept, but you said in your written evidence that the state has no role to play in regulating the relationship between retailers and consumers with regard to opening hours. Would you extend that view to include those shop workers who work in off-sales and sell alcohol? Does the Government have any role to play in restricting the retail hours for alcohol?

David Ramsden: I believe that the Government has just totally derestricted the sale of alcohol and that you now have 24-hour licensing.

Mr Maxwell: That is in England.

David Ramsden: In England, yes. I am sorry, but it must be obvious to everybody around the table that I am not a Scot.

The Convener: The Licensing (Scotland) Act 2005 restricts the opening of off-licences, as a health measure rather than a trading measure. I think that it is fair to explain that to someone who comes from the other country.

Colin Fox: It seems clear that the overriding imperative for the retail trade is commercial. As the representatives from Debenhams said, making money is uppermost, and shops open on particular days because retailers believe that there is a demand that they can meet and they can make money. They would probably have less desire to open if they thought that they were going to lose money. Given that making money is the uppermost imperative, how would you protect the freedom of those who decide not to work? You referred to cases involving the protection of shop workers' rights that you had been involved with, but how do you protect the rights of people who say, "No, I don't want to work on those days," if they come under pressure from a commercially driven enterprise to do so?

David Ramsden: Forgive me for being so bold, but I feel that your time would be better spent extending the Sunday worker protection to cover Christmas day and new year's day.

Colin Fox: I return to Sunday trading, because I am interested in your response to Karen Whitefield's question. It seems that there is a parallel with Sunday trading, because the retail trade argued for Sunday opening, shops opened and, in the early days of negotiation, there were promises that workers would not be put under any pressure to work on that day and that double or triple time would be paid if they did work. However, we have heard today from a woman who has worked for Debenhams for 22 years and who now admits that Sunday working at Debenhams is paid at time and a third, although Sunday working was presumably initially sold to the staff on the basis that it would pay double or triple time.

Is there not a danger that we could follow the same path with trading on new year's day, which is where most of the pressure is at the moment? People could be offered double or triple time, but if the managers get a lot of volunteers—more volunteers than they need—why would they offer triple time?

David Ramsden: Precisely. Why would they? At the end of the day, retailing is a commercial enterprise. Let me turn the question on its head. If managers were not able to get sufficient staff to work, they would have to pay increased rates, but at the moment there are queues of people—students and lone parents as well as full-time workers—who want to work on new year's day.

Colin Fox: I am asking you to focus on the pressure that staff would be under if they did not

want to work. Your evidence is important. You talk about people's freedom to trade and you argue that a shopkeeper's right to trade should be recognised, but I am asking you what protection you would give to people's freedom not to work on that day if they do not want to.

15:45

David Ramsden: The freedom that I would give them would be an extension of the Sunday worker protection to cover new year's day. However, you heard from Mandy Millar that a percentage of Debenhams's full-time staff work on new year's day and it supplements them with part-timers. Unless I misheard her, she said that, if the store became even busier, Debenhams would take on more part-timers. Full-timers have a choice, because they can say, "No, I don't want to work." As long as managers can staff their stores with part-timers or casual staff, they do not need to put pressure on full-time staff.

I am not totally naive. I might appear that way, but I know that, on occasions, a store manager who has a store to run will get a request from somebody who says, "I want to play football next Sunday. I don't want to work." The manager says, "That's the last thing I need. Thank you very much indeed." In those circumstances, the person might feel that they are under pressure. If you said that that was pressure, I would have to accept that it was, but that is not the norm. It seems crazy to me that anybody would want to put on their sales floor a shop assistant who did not want to be at work, because the first person whom they would take it out on would be the customer.

Maureen Macmillan: Mr Ramsden, you said in your evidence that it would be a good idea to have a voluntary code amongst retailers to ensure that staff were not put under pressure and to protect workers, which is what we are trying to do. The Scottish Retail Consortium was also in favour of a voluntary code. However, the voluntary code approach has now been abandoned, because the European Commission has said that it is not possible. Does that make you change your mind about the need for the bill?

David Ramsden: I bow to your most recent reading of my evidence, but I believe that I said that we support the Scottish Retail Consortium's proposal for a voluntary code.

Maureen Macmillan: Yes, but the Scottish Retail Consortium has now abandoned that proposal because of European Union regulations.

In your submission, you seem to agree that a voluntary code would protect workers. On the need for employment protection, you state:

"Even if such need exists (which we doubt) ... the Scottish Parliament should first consider whether the industry might properly regulate itself".

The industry suggested self-regulation, but it found that it could not implement it, so one of your suggestions is not possible. Does that make you think differently about the bill?

David Ramsden: No. I return to the answer that I gave to Mr Fox: the Parliament would be far better engaged in extending the Sunday worker protection to staff at new year.

Jeremy Purvis: I do not know whether you have read the policy memorandum that accompanies the bill, but paragraph 80 accurately states that the proposal is modest:

"The Bill affects everyone who currently owns, manages, works for, or shops in, large shops, yet most people are already on holiday on both of those days and most large shops are already closed. In this context the Bill reinforces current practice and makes a proportionate rather than a significant change ... There is nothing to prevent large shop owners or managers from operating in respect of other aspects of business such as shelf-stacking, deliveries, stocktaking etc."

You made that point earlier.

Do you agree that the bill would not make a significant change? Are you saying that the bill's policy objectives could be met if the 1994 arrangements were extended to the special days, which would have a wider and more significant impact?

David Ramsden: There is no doubt that the bill would adversely affect retailers who have seen a need to trade on new year's day and who do so, because they would no longer be able to do that. For all time, or until a further change were made, the bill would prevent retailers who see a consumer demand from meeting it. That is a bad thing.

Mr Maxwell: The cut-off point in the bill for a shop's floor area is 280m². What is your view on that line in the sand? What do you think of restricting the bill to retail trading when many other workers work on Christmas day and new year's day already?

David Ramsden: It is difficult that retailing is singled out as the one commercial activity to be regulated. That happens in England and Wales and, if the Parliament has its way—or Ms Whitefield, at least—that will happen here. I do not see why retailing should be singled out.

The floor area of 280m² is a difficulty. How did we reach that figure? I ask the convener to stop me when I start to bore the committee, because this is my subject—I have worked on it since 1980.

The Convener: Thank you for your honesty.

David Ramsden: The simple fact is that when we tried to discover the right size of shop that could open on a Sunday, people such as those from the keep Sunday special campaign wanted

exempted shops to have a floor area of no more than 1,500ft² and to be able to sell only a limited range of merchandise. The campaign that I led believed that the prime objective was to allow as many shops as possible to open on a Sunday to sell their full range of merchandise. The figure of 3,000ft² was chosen because it was quoted in 1985 by Robin Auld QC, who produced the first Government report on Sunday opening. The Auld committee said that it had been suggested to it that 3,000ft² was a sensible cut-off point.

The SHRC knew that, in round terms, the floor area of 85 per cent of shops was less than that figure, so choosing that figure achieved one of the aims, which was that as many shops as possible should be able to open on a Sunday and sell their full range of merchandise. It seems to have been forgotten in the mists of time that, before 1994, few shops could open legally and sell their full range of merchandise. Most people seem to think that small corner shops have always been able to open and sell their full range of merchandise in England and Wales, but that is not true.

The figure of 3,000ft² was arbitrary. Those who have followed my activities in England and Wales recently—why should you have?—will know that Deregulate is campaigning for the removal of that final barrier. We say that the 3,000ft² mark should disappear and that all retailers should be able to open on a Sunday as their customers want, for whatever time they want. When that happens, as it eventually will, shops will probably trade from 9 until 6.

However—I am sorry to come back to this—I do not see a need for the state to dictate the times that a shop should be able to open to serve customers. Further, I do not see why you are quite happy—as the United Kingdom Parliament is, for England and Wales—to allow a grocer's shop of 5,000ft² that is in a railway station to open but to prevent a grocer's shop of 3,001ft² that is just outside the railway station from opening. That is illogical.

Mr Maxwell: Would it be fair to summarise your point of view as being that, because of the anomalies that would be created by the 3,000ft² rule and the rule that a shop could open at a railway station but not in a high street, the bill would create a farcical situation?

David Ramsden: Yes, but in 1994 that was the best deal that I was going to get.

Mr Maxwell: That is a fair point, although I am sure that you will agree that times have moved on since then, concerning what people do on Sundays.

I have one further question along the same lines, relating to store size. Would it be fair that, for example, Debenhams' shoe department would be

closed because Debenhams was closed when the shoe shop adjacent to it was able to open? Can you understand the logic of that at all?

David Ramsden: I have pondered that and I fear that, if you allow a range of merchandise to be sold in a small shop but do not allow the same range of merchandise to be sold in a large shop, there might be a competition issue. However, I have not yet received leading counsel opinion on whether that would be so. The committee might like to take advice on that issue.

Mr Maxwell: Let us move on to the part of the bill that deals with penalties. If a person were found guilty of an offence, it would be a summary conviction and the fine would not exceed £50,000. What are your views on the level that has been set for the fine?

David Ramsden: The bill copies the penalties that are currently imposed in England and Wales, which were the subject of debate some time ago. As far as I am concerned, the proposed offence and fine bear no relation to similar offences that retailers commit, willingly or unwittingly, and the fines that can be imposed on them. It is perhaps an indication that, in 1994, retailers were so clear about the way forward that they said, "Impose whatever penalty you want. We are not going to break the law." Indeed, the law is not broken. There has been only one case in England and Wales of a large shop opening in contravention of the Sunday Trading Act 1994.

Mr Maxwell: I presume that you think that a fine of £50,000 is far too high.

David Ramsden: I do not think that it bears any relation to the offence.

Mr Maxwell: Is it not appropriate, given that the profits of large multinational stores can be measured in tens of millions of pounds? Is the fine more reasonable in that context, or do the stores make so much money that, frankly, it would be worth opening a store and paying the £50,000?

David Ramsden: That is a perfectly valid point, Mr Maxwell. Unless the fine were such as to be a deterrent, some large stores that would make three times that amount on a Sunday might open in contravention of the law unless you had the foresight—as in England and Wales—to include the directors of the companies in the offence. The one fear that directors of large companies have is of being prosecuted personally.

Mr Maxwell: I have one final question. Do you agree that breach of the legislation by a company should be a criminal offence?

16:00

David Ramsden: That is a very good question. I think that it should be a civil offence, but the

legislators decided that it was a criminal matter. It would be inconsistent to change that.

Mr Maxwell: Why did they decide that it was a criminal matter the first time around?

David Ramsden: That is what the legislators decided. Personally, I view it as a civil matter. However, from the mists of time, I think that trading on a Sunday has always been a criminal offence. You are following what happened in England and Wales, where it continues to be a criminal offence. As I have said, I think that it should be a civil matter.

The Convener: I take you back to your comments about competition. You said that you are seeking legal advice on the matter. Is that on behalf of any particular group?

David Ramsden: It is for Deregulate.

The Convener: Your organisation.

David Ramsden: Yes. We constantly monitor what is happening and ask questions. To be totally up front, I do not currently have the funds to approach leading counsel and ask for their opinion on competition. I have a gut feeling that there might be a competition law issue in this instance, for example if a large shoe shop is not able to open but a small one is.

The Convener: That is an interesting point. Aside from the evidence that the committee has been given, I have heard other people raise the question. No one gave an opinion, but they raised the issue.

I call Karen Whitefield.

Karen Whitefield: I will be conscious of your earlier comments, convener.

Is it not the case that, in England and Wales, Deregulate has been involved in the campaign on Sunday trading and further deregulation, and that the Department of Trade and Industry has decided that the legislation currently operating in England and Wales is appropriate, without any need for change, and—

David Ramsden: The department has decided not to move forward at this time.

Karen Whitefield: I would have expected that, if the DTI had identified an issue around competition, that would have been explored during the consultation. Would you agree with that?

David Ramsden: That might well have been an expectation, but I do not know—I am not privy to the DTI's consultation. However, I find it incredible that, having commissioned a cost-benefit analysis showing a £1.4 billion gain to the economy each year, with very little, if any, cost to the economy, the DTI should decide that it does not want to

move forward on the issue. I am not frightened to say that I think that that is the act of a lame Government.

The Convener: Thank you very much for your detailed responses, Mr Ramsden, and thanks again for what you sent to the committee in advance. The committee raised a number of questions to do with the Scottish situation, of which you might not have been quite so aware. The *Official Report* will be on the web in two or three days. If you feel that you need to clarify any points because they were not in context, I ask that you do so immediately after you have had a chance to see the *Official Report*. We would be grateful if you could send any such clarifications to the clerks.

David Ramsden: Thank you for giving us that opportunity, which we will take. We will come back to you, if you wish, at some time in the future.

The Convener: Do you have a Scottish operation?

David Ramsden: No. Deregulate currently concentrates its efforts in England and Wales, but it is because some of our supporters also operate in Scotland that we were alerted to the situation. We have hitherto held Scotland up as the shining example of what should happen in retailing, with total freedom for retailers, shop workers and customers to do business together.

The Convener: Thank you very much for your information. That is the end of evidence taking for this afternoon.

16:04

Meeting suspended.

16:12

On resuming—

Regulatory Framework Inquiry

The Convener: Item 3 is consideration of the Subordinate Legislation Committee's inquiry into the regulatory framework in Scotland, which we agreed to carry forward from last week. I presume that members have read the note from the clerk. The Subordinate Legislation Committee has recommended a number of changes to current procedures including streamlining the number of different types of instrument and replacing the current negative and affirmative procedures with a general and an exceptional procedure. I invite members to consider and comment on the SLC's proposals.

Maureen Macmillan: It is a good piece of work. Dealing with drafting rather than policy mistakes in a sensible way is a good idea, because the job of commenting on such technical mistakes often lands on policy committees, which would be freed up to consider policy.

Mr Maxwell: I am on the Subordinate Legislation Committee—

The Convener: Perhaps I should have asked you to comment first.

Mr Maxwell: No, it might be better to ask me to speak last because I support all the points in the SLC paper.

The Convener: We will come back to you.

Bill Butler: As Maureen Macmillan said, it is a good idea for the Subordinate Legislation Committee and the lead committee to consider instruments in parallel, as long as both committees do not consider policy.

I was struck by the Subordinate Legislation Committee's recommendation that the Executive put in place a

"co-ordinated approach across all the departments."

I also understand that the Subordinate Legislation Committee proposes that

"at the beginning of each three month period, the Executive should provide the Parliament with a programme of likely subordinate legislation, including the likely content and proposed parliamentary procedure for each instrument."

The wider recommendation is fine in theory. Exceptional circumstances and exceptional instruments are considered, so as far as the proposal is practicable, it is eminently sensible and I have no problem with it.

16:15

The Convener: The Subordinate Legislation Committee raised 15 questions at the end of its

report. The second question is about whether there should be parallel consideration of instruments. One of the things that I have discovered from my time on various committees is that the Subordinate Legislation Committee tends to pick up on drafting, technical and framework issues as opposed to the policy substance and point those out to the lead committee and others. That cuts down on some of the difficulties, because if a lead committee were to get an instrument about which it was unsure, it would have to refer it back to the Subordinate Legislation Committee, which is time consuming. They would refer it to their clerks who would take it to the clerks of the Subordinate Legislation Committee, who would then take a view and so on.

I have put a tick and a question mark next to question 10 in the paper. It talks about rolling and pure considerations. Perhaps Stewart Maxwell will explain that more fully.

Bill Butler: I think that it is rolling and pure consolidations.

The Convener: Did I say considerations? I am awfully sorry about that; I have had a long day.

My other query concerns question 11, which reads:

"Should commencement orders be subject to the modified general procedure under which the lead Committee will not be entitled to consider them?"

I assume that there would be a vote in Parliament on such a proposal, which would give the Parliament an opportunity to comment, but I could be wrong.

Maureen Macmillan: I am sorry that there is no proposal from the Subordinate Legislation Committee to ask the Executive to make its explanations of the content of statutory instruments more user-friendly. Sometimes we have no idea what they are about. The explanation can be written in such jargon that it does not explain anything. It would be helpful if the Executive were to consider the lay people who have to consider statutory instruments.

The Convener: As no one else has any comments, I will ask the clerk to speak before I come back to Stewart Maxwell. What is the procedure for dealing with the report? Do we have to answer all the Subordinate Legislation Committee's questions?

Alison Walker (Clerk): We can proceed in whichever way the committee decides. The deadline for comments is 22 September, so we will draft a response based on the comments that are made today.

The Convener: Committee members will have the opportunity to comment on a draft response written by the clerks by what time?

Alison Walker: By early next week if members agree to comment by correspondence. It is up to members to decide whether they want to do it that way or put the matter back on the agenda.

The Convener: I will let Stewart Maxwell answer our questions after further comments from other members.

Jeremy Purvis: I do not know whether Jackie Baillie has any comments because she is absent but, if she has not and for the sake of efficiency, could we not just refer the Subordinate Legislation Committee to the *Official Report* of today's meeting?

The Convener: The SLC would prefer us to submit a response, which will be based on comments made today, as our clerk said.

Bill Butler: I am sure that the clerk could summarise our salient points and, as the convener said, prepare a draft response on which we could comment by correspondence if everyone agrees.

The Convener: I am of that view and presume that the rest of the committee is too. We will return to that question. Stewart Maxwell is a member of the Subordinate Legislation Committee. Can you answer any of our queries?

Mr Maxwell: With any luck, I should be able to.

I support the proposals for the new Scottish statutory instrument procedure. It is much clearer and simpler and more easily understood by all members, instead of only those who have to slave on the Subordinate Legislation Committee. As the paper says, there are currently eight varieties of instrument, so the proposed new procedure would make things much easier.

I will go through some of the questions that have been raised. Bill Butler commented on question 5, about the three-month rolling advance programme. The issue arose because of the concern of the Subordinate Legislation Committee and lead committees that there is no advance warning of instruments, so that arranging workloads and organising witnesses to give evidence is difficult. The Subordinate Legislation Committee visited the National Assembly for Wales. Obviously, different bodies are involved in Wales, but the Government there provides a detailed advance programme of all the subordinate legislation that will come through the system. Information is laid out in a timetable and all the committees can plan their work. The committee thought that if such an approach was feasible for the Welsh Assembly, it was feasible for the Scottish Parliament, which is why we made the proposals. Such an approach would make things much easier.

That ties in with parallel consideration. I understand the point that the convener made. It is

helpful if the Subordinate Legislation Committee reports first on an instrument because the information that it provides can then be used by a lead committee. However, many conveners and members of lead committees have said that such a procedure ties their hands because they cannot report on an instrument until the Subordinate Legislation Committee has reported on it. They said that such a procedure—as opposed to a parallel consideration procedure—restricts their ability to work on subordinate legislation and bring in witnesses or a minister. If the proposal is agreed to, the lead committee would not be forced to report prior to the Subordinate Legislation Committee's report. It could carry out parallel work, wait for the Subordinate Legislation Committee's report and then finish off its work, taking into account any technical or drafting errors that the Subordinate Legislation Committee had noticed, and produce a final report. Therefore, an avenue would not be blocked and the lead committee would be freed up to carry out its work earlier.

The Convener: Would the clerks have a watching brief with the Subordinate Legislation Committee clerks, so that if an instrument came to the Justice 2 Committee, an aspect of which we thought we would consider and which the Subordinate Legislation Committee was going to consider too, there would be informal feedback between the Subordinate Legislation Committee and us to facilitate the process?

Mr Maxwell: Some mechanism would have to be in place to allow that to happen. Currently, 40 days are available. The Subordinate Legislation Committee has to report within 20 days, which leaves the lead committee only 20 days. The idea is that if an instrument comes before a lead committee that particularly interests it and the committee wants to invite witnesses to discuss the policy issues that are involved, it can go ahead with that work from day one. Therefore, the committee would have the full 40 days rather than only 20 days to deal with the instrument, although it would not help the Subordinate Legislation Committee, which would still have only 20 days to deal with it.

You are right: there probably would have to be a mechanism for discussion between the Subordinate Legislation Committee clerks and the lead committee's clerks, but that would not be difficult to arrange. The main aim is to free up lead committees' ability to do their work and to give them more time to deal with subordinate legislation. Currently, such legislation is mostly ignored as a result of time constraints and committees' inability to do any preparatory work or research on issues.

The Convener: Has the Subordinate Legislation Committee taken views or evidence from the Minister for Parliamentary Business?

Mr Maxwell: Yes.

The Convener: What were her views?

Mr Maxwell: The Executive was not yet convinced that a complete change from the current procedure to the new procedure is necessary. However, we have had negotiations with it, and Executive officials have been witnesses. Discussions have gone on for some time. The work has been going on for at least two years—indeed, it has probably gone on for nearer three years. The Executive's position is neutral, which is why we have organised a further consultation. Rather than publishing a full report, we have published a draft report and put it out to consultation, so that we can get the views of all the committees and, if possible, reach a final agreement with the Executive on where we should go, although we might not do that.

I turn to consolidation. There is a difference between pure consolidation orders and rolling consolidation orders. With rolling consolidation, every time there is a change, a little bit is added to the text of the document and that rolls forward. With pure consolidation, the various different changes that have been made over a period are brought together in a single document. In other words, instead of a rolling process of consolidation, a complete consolidation is made but only after a few changes have been made. With rolling consolidation, a new version of the text is reproduced each time.

I will need to go back to the legal advisers on the exact definition of pure consolidation and rolling consolidation.

Maureen Macmillan: Presumably, pure consolidation involves bringing together instruments that have already been brought into force and have been through the parliamentary process.

Mr Maxwell: I am working from a poor memory, but I think that that is correct. With rolling consolidation, every change that is made to a text is made, in effect, in real time, so the text in the most recent instrument will always be the most up to date.

The Convener: Would rolling consolidation mean that there would be an opportunity to do away with overlapping provisions and ensure that redundant provisions were superseded?

Mr Maxwell: It would. The problem at the moment is that, with a given piece of subordinate legislation, people can never be absolutely sure that they are reading the most up-to-date version, because instruments can be repeatedly amended

over time. For example, at this morning's Subordinate Legislation Committee meeting, we considered an instrument that will make the seventh amendment to a set of regulations, so anyone who wanted to understand the current position would need to look at all seven amendments as well as the principal regulations. We have also had much worse situations, with instruments being amended 10, 12 or 14 times. We feel that the current arrangement can be too complicated and difficult for users. It is not user-friendly.

To be fair, the Executive agrees that it would be better to have consolidation all the time, but it is a time-consuming activity. Once rolling consolidation was up and running, it would run fine, but there would be a lot of background work to bring things up to speed from where we start today.

On question 11, which I think is on commencement orders—I cannot remember—the convener asked whether the Parliament would still have a vote as part of the process. Is that right?

The Convener: Yes. Question 11 asks:

“Should commencement orders be subject to the modified general procedure under which the lead Committee will not be entitled to consider them?”

I asked whether the Parliament as a whole would still have an opportunity to vote on such commencement orders.

Mr Maxwell: I think so, but I will need to check. The point is that, if a bill has already been passed and is simply being commenced by such an order, why should the issue be bogged down in committees? It is a bit of a pointless exercise. Therefore, the idea is that once the provisions in the original bill have been agreed to, the commencement order should just be accepted.

The Convener: Do members have any other comments?

Mr Maxwell: I have not responded to the point about plain English. Our original documentation for the inquiry included a reference to plain English. For the reasons that Maureen Macmillan outlined, we were very much in favour of plain English, but Executive officials suggested to us that the technical, legal nature of statutory instruments means that it is difficult to get away from ensuring that the language is very exact.

Maureen Macmillan: I would always expect statutory instruments to be written in language that is appropriate for a piece of legislation, but the accompanying addendums, such as explanatory notes and impact assessments, are often incomprehensible.

Mr Maxwell: We took up that issue with the Executive and highlighted the need for plain

English not just in the instruments but in the accompanying notes. We got a more sympathetic response on the language used in the accompanying documents.

Maureen Macmillan: I would not expect a change in the language of the instruments themselves.

Mr Maxwell: To be honest, some other legislatures require that all instruments be written in plain English. However, I think that there is a slight nervousness about moving away from what has been done for a long time. That battle is still to be won.

The Convener: We will ask the clerks to produce a draft response, which we can agree by e-mail correspondence by, I think, Wednesday.

Alison Walker: I will include in the e-mail the deadline by which we need to produce the response.

The Convener: Members have been warned.

We will now move into private session as previously agreed.

16:29

Meeting continued in private until 16:50.

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