

JUSTICE 2 COMMITTEE

Tuesday 19 September 2006

Session 2

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JUSTICE 2 COMMITTEE

22ND 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

Mrs Mary Mulligan (Linlithgow) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Andrew Dickson (Scottish Executive Justice Department)

Rodger Evans (Scottish Parliament Directorate of Clerking and Reporting)

Hugh Henry (Deputy Minister for Justice)

Karen Whitefield (Airdrie and Shotts) (Lab)

CLERKS TO THE COMMITTEE

Tracey Hawe

Alison Walker

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 6

Scottish Parliament

Justice 2 Committee

Tuesday 19 September 2006

[THE CONVENER *opened the meeting at 14:05*]

Subordinate Legislation

Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 (Draft)

The Convener (Mr David Davidson): I welcome to the 22nd meeting in 2006 of the Justice 2 Committee members of the public and the member in charge of the Christmas Day and New Year's Day Trading (Scotland) Bill, Karen Whitefield. I also welcome the Deputy Minister for Justice and his colleagues, who have come to deal with a number of items on the agenda. I remind everybody to ensure that all telephones, pagers and BlackBerrys—or whatever new versions they have—are switched off.

Item 1 is subordinate legislation, which is the first reason for the minister's being here this afternoon. The draft Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 is subject to the affirmative procedure. Members of the committee have the opportunity, before we enter into a debate, to ask the minister and his officials for clarification of any points.

Is there anything that you think we ought to ask before we go into our formal debate? It must be a unique occasion for the committee; no one has any questions.

The Deputy Minister for Justice (Hugh Henry): I am content with silence.

The Convener: Thank you. Members will see from the cover note that the order is an amended version of an earlier instrument, which was laid on 16 June 2006. The Subordinate Legislation Committee considered the amended order at its meeting on 5 September 2006 and is content with it.

I invite the minister to move the motion, in the absence of any questions. We shall then go to the formal debate.

Hugh Henry: The draft Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 has been made under the Fire (Scotland) Act 2005, which received royal assent on 1 April 2005. The act helps to facilitate the modernisation and reform of the Scottish fire and rescue service, and gives statutory backing to the full range of

activities that are undertaken by the service. As part of that process, the act provides for increased emphasis on fire prevention and community fire safety activity.

The main provisions of the act came into force in August 2005, except for part 3, which will introduce a new fire safety regime for non-domestic premises in Scotland. That regime is based on the principles of fire safety risk assessment, which we believe will provide a more effective and streamlined fire safety environment. Part 3 and related subordinate legislation, including the order that is before the committee today, are due to come into force on 1 October 2006, at the same time as similar legislation in England and Wales. Members may be aware that, over recent weeks and months, the Executive has undertaken a programme of publicity to inform businesses, charities and voluntary organisations of the new regime.

The order will make a number of repeals, modifications and amendments to primary legislation and savings, which are required to come into force at the same time as part 3 of the 2005 act. The order is made under section 87 of the act, which enables Scottish ministers to make by order such incidental, supplementary, consequential, transitory, transitional or saving provisions as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, the 2005 act or any provision of it. The order may modify any enactment, instrument, or document.

The changes are largely technical. They include repeals to current fire safety legislation—primarily the Fire Precautions Act 1971, and references to it in United Kingdom and Scottish primary legislation. The order also sets out changes to terminology that is currently used in UK and Scottish legislation, to reflect part 3 of the 2005 act. For example, current legislation uses the terms “fire and rescue authorities” or “joint fire and rescue boards”—sometimes known as “relevant authorities”. Those references have to be changed to reflect the fact that enforcement of part 3 of the 2005 act in some premises is not the responsibility of the local fire and rescue authority or of the joint fire and rescue board, as responsibility may lie instead with the enforcing authority under the 2005 act. The 2005 act lists those enforcing authorities—the fire and rescue authority or joint board, the Health and Safety Executive, the defence fire and rescue service, Her Majesty's chief inspector of fire and rescue authorities, and the local authority. Section 61 also lists the premises on which each of those authorities has responsibility for enforcing duties under part 3 of the 2005 act.

There is a saving provision in article 3 that will allow prohibition notices that are currently issued under the Fire Precautions Act 1971 in cases in which there is serious risk to remain in force. Similarly, there is a saving provision in article 4 to keep in place fire safety regulations that currently apply to sub-surface railway stations.

The order is largely a technical measure to ensure that the new fire safety regime can be properly implemented from 1 October. I commend it to the committee.

I move,

That the Justice 2 Committee recommends that the draft Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 be approved.

Motion agreed to.

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

14:11

The Convener: Item 2 is a continuation of evidence taking on the Christmas Day and New Year's Day Trading (Scotland) Bill. The minister is changing his support team. On the first panel of witnesses we have Hugh Henry MSP, the Deputy Minister for Justice, and Andrew Dickson, from the access to justice division of the Scottish Executive Justice Department. Thank you for attending, gentlemen. Minister, I wonder whether you would care to make a short opening statement.

Hugh Henry: The Scottish Executive has, at the moment, no formal view on the bill. We are still weighing up the merits of the bill and the arguments for and against it. It is an interesting bill that deals with a number of simple issues behind which lie complexities. There has been some argument and debate about whether the bill might impinge on reserved matters, but it is clear to us that the bill's subject is a devolved competence and that it is within the remit of the Scottish Parliament to consider it.

The bill breaks ground—it proposes to regulate shopping hours in Scotland for the first time. It could be argued that a voluntary code might have the same effect, but a voluntary code could lead to abuses and to shop workers feeling pressured. It is argued that the bill would clarify the situation for employees and employers alike.

In the bill's favour, it recognises the concerns that retail staff—especially those who are employed by the major stores—face at that time of year. Christmas and new year end a very busy period for shop staff but also anticipate a possibly somewhat busier period because of the sales that take place thereafter. Shop workers bear the brunt of the frenetic activity in the run-up to Christmas and then of the frenzied activity thereafter as people seek to purchase in the sales. The argument in favour of the bill is that it would ensure that staff in larger premises got a guaranteed break at a time of year that is exceptionally busy for them. It is argued that the bill would clarify the position for both employers and employees.

14:15

There are also cultural and religious dimensions to the bill. From a religious perspective, Christmas day still retains a degree of significance for many people. From a cultural perspective, although Christmas may have lost—or may never have

had—any religious meaning for many people, most people see it as a family occasion. Christmas day is one of the few days in the year when families across the country have the opportunity to come together. It is argued that employees of larger stores should have the same opportunity that is afforded to the rest of us. Although it is true that, largely, shops do not open on Christmas day, it can also be argued that shops never used to open on new year's day but some are now starting to do so. An argument in favour of the bill is that it would ensure that workers in large retail stores had protection at that time of year.

Although new year's day does not, arguably, have the same religious significance as Christmas day, it nevertheless has particular cultural resonance for many people in Scotland. When I think back to when I was a boy, which is not so long ago—actually, it is quite long ago—I can recall my father being required to work on Christmas day because it was not recognised as a special day in terms of employment, although it had a significant resonance in our family. Historically, even when Christmas day was a working day in Scotland, workers were given a holiday on new year's day so that families could get together for the new year celebrations and activities such as first footing. In Scotland, new year's day has a very special significance; indeed, Scotland is recognised throughout the world as having a special attachment to new year's day. Many people who seek to develop their own traditions for new year look to Scottish celebrations and traditions. It is argued that, given that new year's day has always been a special day for families to come together, people should not be forced to work on that day.

I turn to the arguments against the bill, which also need to be weighed up. Not many arguments have been made against the bill's provisions regarding Christmas day opening and we have not detected any overt interest among major shops for opening on Christmas day. That is not to say that large stores will never want to open on Christmas day, but none has expressed any interest in doing so.

The worry is that preventing the major stores from opening on new year's day could have an impact on our tourism trade. I suppose that we need to weigh up whether tourists who come to Scotland to join in the new year festivities and major party celebrations in places such as Edinburgh also come to shop in our major stores the next day—provided that they can manage to stay awake during the day after the night before. I suppose that we need to reflect on that carefully. We certainly do not want to do anything to damage our new year's tourism trade. In recent years, tourism has grown significantly even though stores have not opened on new year's day. The

committee and Parliament will need to reflect on whether the availability of shopping has had any implications for tourism, given that tourism expanded even when the stores were not opening. On the other hand, we also need to consider whether the world is changing so much that lack of shopping on new year's day might deter people from coming to Scotland in the future. We will need to weigh that up.

There have been arguments about whether, because smaller stores would not be covered by the bill, we should give the protection to staff in larger stores. We need to reflect on two issues. One is that smaller stores—family corner shops—sometimes provide essential services and the owners often run the shops. The second issue is that medium-sized stores to some extent feed off the activity of the larger stores, so if larger stores open, some of the medium-sized stores might follow suit. If the larger stores are not open we are not sure what market demand there would be for the medium-sized stores.

We are still weighing up the arguments for and against the bill. I hope that I have articulated for the committee the major issues on which we are reflecting. I will answer any questions as best I can.

The Convener: Thank you. You have rehearsed the evidence that we have received for and against the bill. I remind you that because of the way in which the bill is framed and the locus of the Scottish Parliament it is about a restraint of trade rather than about directly influencing employment by an act of Parliament.

I was going to ask you where you felt you were with regard to restraining trade only in larger stores on the days separately, but you gave us the clear message that at this point the Executive—and therefore yourself—does not have a view on any one of the days. On the background detail that you just gave us, I can remember that when I was a student I had to work on Christmas day.

Hugh Henry: The way that we are looking at the issue is that activities would not be restrained on one or other of the days. We would consider both days together; we feel that it would be right to restrain activities either on both days or not at all.

The Convener: Is there a reason why you do not feel that you can separate the two and give an opinion on each? Will the Executive deal only with the bill as it is described in its title?

Hugh Henry: We cannot do that largely because we are addressing the bill that is before us. As we read it, the bill does not afford us the opportunity to separate the two days, so there is little point in our speculating on a matter that is not before us. If there is a debate to be had about separating the two days, we will consider that.

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

I have two brief questions on the minister's comments. First, you said that the bill would give shop workers "a guaranteed break", but the bill will only prevent stores from opening, so face-to-face work with customers would be blocked. However, a large shop could ask its staff to come in on new year's day to prepare for the sales on 2 January, set up their area and do whatever work, such as stocktaking, was necessary. All that work could go on. Do you stand by the assertion that the bill would give shop workers a guaranteed break? It seems to me that it would not.

My other point is that you said that corner shops, which is the term that I think you used, would be allowed to open because such shops are family businesses so the owner could decide for themselves whether to open. I accept that, but at the meeting last week we heard evidence that suggested that 85 per cent of all shops in Scotland are under 3,000ft²—3,000ft² is quite big, so we are not talking only about corner shops. Do you want to reflect on those figures?

Hugh Henry: I will deal with the second point first. I qualified my remarks by differentiating between the very small shops—corner shops—and medium-sized stores, which would not be covered by the bill, and the larger stores. The comment that I made about the medium-sized stores—this is not an argument that we are advancing one way or the other, but an issue on which we are reflecting—is that medium-sized stores are often influenced by the behaviour and activities of the larger stores. If larger stores go one way, the stores that feed off them tend to go with them. For example, when major out-of-town shopping centres are built, developers always try to get large anchor stores in, so that smaller stores come in behind them. Similarly, in town centres, bigger stores influence the opening hours and patterns of activity of the medium-sized stores. All I am saying is that, whatever we decide, medium-sized stores often reflect the activities of larger stores.

On the first point about guaranteed time off, you are technically right that, even at the moment, staff often have to go into work at certain times to prepare. You may have more experience of retail trade than I do—I can reflect only on the experience of family members. It is true that the demand to prepare for activities on 2 or 3 January is more restrained than a full day's activities. At the very least, there would be an opportunity for staff to have some time off.

The convener is right to put the bill in its context of technically restraining trade. The intended effect of the restraint in trade is to give leisure time to employees. I am not advancing that as an argument for or against the bill; I am only reflecting

that, notwithstanding the fact that stores need to prepare, one day without trade would by its nature mean that at some point there would be less pressure on staff, either on 31 December or 1 January.

The Convener: Before bringing in Bill Butler, I want to ask whether you can tell us today when the Executive is likely to make up its mind on whether to support the bill.

Hugh Henry: I cannot tell you that. We are still debating the merits and arguments.

Bill Butler (Glasgow Annie'sland) (Lab): I think Jackie Baillie was due to begin.

The Convener: I beg your pardon, Jackie.

Jackie Baillie (Dumbarton) (Lab): Obviously, the Executive's top priority is growing the economy so, rather than question whether you support the bill, I am looking for some helpful factual information. Do you think that the bill would have an economic impact? If so, what evidence do you have to support that view?

Hugh Henry: It is hard to provide a detailed economic impact. Most large and medium-sized stores do not open on Christmas day, so it would be hard to say that the bill would have an adverse financial consequence if it applied only to Christmas day, although I know that it does not. It can be argued that there would be no significant implications in relation to Christmas day.

The same argument—that there would be no significant implications—could apply to new year, because most large and medium-sized stores do not open on new year's day. Any further restraint of trade on new year's day is likely to have little impact from a wider economic perspective. It would have an impact only if more stores followed the example of Debenhams and started to open on new year's day, so we are talking about the potential economic implications of not allowing shops to open on new year's day. Given that we have no idea which other stores would want to follow Debenhams, it would be hard to put a figure on it.

14:30

The other figure that the committee should perhaps reflect on is the impact on the tourism trade, which is used as an argument against the bill. I suppose that not many tourists come to visit for Christmas. Most people tend to visit family at Christmas. I do not know of a huge and growing tourism trade in and around Christmas, although that does not mean that one does not exist. The tourism trade is much more significant at new year—people now see Scotland as a destination for new year. The large party in Edinburgh is celebrated by hundreds of thousands of people

and there are other events across Scotland that people take part in. Many Scots who live abroad come back to Scotland for the new year.

What impact would the bill have on that tourism trade? I am not sure. The tourism trade has grown significantly until the present day, even with stores not opening. If stores were not able to open, would the tourism trade continue to grow or would the knowledge that, in the future, stores would not be able to open make people think twice about coming to Scotland?

I believe that at that time of year Edinburgh runs at about 97 per cent occupancy, which is almost full. Would Edinburgh be able to grow any further if stores were to open in order to attract tourists? I am not sure where the capacity would be. If the stores were not able to open, would that adversely affect those figures? Would the 97 per cent occupancy start to fall? Given that not many stores open just now, I am not sure that it would fall. However, that is something that we need to think clearly about. We certainly do not want to do anything that would damage the special position that Scotland—Edinburgh in particular—has in relation to celebrating the new year.

Jackie Baillie: The bill promoter, Karen Whitefield, and the Scottish Executive's economists would argue that there is a high degree of displacement with regard to retail activity of the sort that we are discussing. The argument is that people shop on 1 January simply because the stores happen to be open; they would spend their money on 2 January if the stores were closed on 1 January. Do you have a view on that?

Hugh Henry: I am not an expert in economic displacement.

Jackie Baillie: Are you an expert in shopping, perhaps?

Hugh Henry: Certainly not. God forbid.

I can reflect on my experience of my social circle and say that, having had a late night the night before, not too many of them would want to head for the stores on new year's day. However, maybe we just cannot last the pace as well as others.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Perhaps some of them might want to visit pharmacies.

Jackie Baillie: Do you have an estimate of the number of businesses that would be caught by the bill? That is a different question to the question of how many are currently open.

Hugh Henry: No, but we can supply that information.

Jackie Baillie: Has the Executive assessed the degree to which the bill would add to the regulatory burdens that are placed on businesses?

Hugh Henry: On principle, we do not want to add to regulation. Arguably, the regulatory burden that would be associated with the bill is not significant. It is not as if you would need huge notices to display to employers and employees. You would not need to employ lawyers to know that activity would be prohibited on Christmas day and new year's day. The only burden might be that businesses would have to work out the size of their stores. However, they will know that anyway, because they already pay business rates based on size.

Andrew Dickson (Scottish Executive Justice Department): That is right. I add only that, as we are required to do for all bills, we will prepare a regulatory impact assessment. In the case of the Christmas Day and New Year's Day Trading (Scotland) Bill, for the reasons that the minister and others have mentioned, the assessment might be rather vague and hypothetical, because Christmas day and new year's day are unusual days. On the whole, large shops do not open on those days at the moment, so it might be difficult to provide a solid evidence base on what changes the bill might bring.

Maureen Macmillan (Highlands and Islands) (Lab): I have some follow-up questions on the possible impact on the tourism industry. The Executive has a policy of growing tourism revenue by 50 per cent during the next 10 years. Some 37 per cent of visitors to Scotland state that shopping is a reason for coming here, but I presume that that figure comes from a survey of shoppers throughout the year. There is no specific evidence on the reasons why people come to Scotland at new year.

I wonder whether there is a tourism issue that we need to tease out. Perhaps people do not come to Scotland at new year to shop in Marks and Spencer, Debenhams or Tesco, but what about tourism-related retailers? For example, Edinburgh Woollen Mill told us in evidence that it is busy at new year. People who visit Scotland might want to go to a store that sells tartan, woollens and other Scottish goods.

Hugh Henry: I am not familiar with that particular store. I do not know whether it would fall within the ambit of the bill.

Maureen Macmillan: We believe that some of its stores would.

Hugh Henry: Do they open on new year's day at present?

Maureen Macmillan: Yes.

Hugh Henry: I suppose that those who have been out partying on Princes Street until 2 or 3 in the morning and have gone back to wherever they are staying might want to clear their head by

browsing in such shops, but I have no way of knowing that.

Maureen Macmillan: Can you think of any other tourism-related retailers that might be affected? I know that this is not your area of expertise.

Hugh Henry: It is hard to know about the bigger stores. I imagine that if people go away for a few days and they are staying in a strange place, they might want to have a breath of fresh air. Edinburgh is such a beautiful city with so many fine things to see that people can enjoy themselves, assuming that it is not raining like it was this morning. However, under the bill, most of the smaller stores will still be able to open if they wish and if they think that sufficient business will be generated.

I have never experienced Edinburgh at new year, so I do not know how many people wander about, but as you know the bill does not apply to restaurants, bars, takeaway food stores or other establishments, such as registered pharmacies, which Jeremy Purvis mentioned earlier. For some, access to pharmacies on new year's day might be a blessing. I do not know which of the big stores in Edinburgh—other than the one that you mentioned—would be affected.

Maureen Macmillan: If there is only one company that is aimed at tourists because of the merchandise that it sells, would that give us a big enough reason to reject the bill? On the one hand we have one tourist-oriented store, but on the other we have our tradition of keeping Christmas and new year as family days.

Hugh Henry: It is not for me to say, convener; that will be a decision for the committee to make. We do not want the bill, if passed, to have a detrimental effect on Scotland's tourism industry. The committee and others must weigh up whether the impact that Maureen Macmillan describes would be a consequence of the bill.

The Convener: I appreciate that the justice portfolio does not cover normal retail and commercial activity, although licensing and other areas are within your remit.

Hugh Henry: And shoplifting.

The Convener: We raised the question why the bill was being addressed by the Deputy Minister for Justice and not by somebody from the Scottish Executive Enterprise, Transport and Lifelong Learning Department.

Hugh Henry: I suspect that the answers that you would get would be the same—it would still be a matter for the committee to decide on and reach a conclusion. Maureen Macmillan asks whether the impact on one store would be sufficient reason to reject the bill. That is a subjective issue on which each member needs to reflect.

The Convener: For the record, I note that we are joined by Mary Mulligan, another MSP who is exercising her right to attend a public session of the committee.

Bill Butler: Minister, you will be aware that witnesses in previous evidence sessions have raised the issue of the role of Government in this area. Some witnesses have suggested that unless retail workers have protection, they will be coerced into working on Christmas day and new year's day—that is the position of the Union of Shop, Distributive and Allied Workers. Other witnesses have argued that there is genuine freedom of choice for retail workers and that it should be for the employer and employee to come to an agreement. Debenhams, the Scottish Retail Consortium and Deregulate have put forward that point of view. Does the Executive think that this is an appropriate area for legislation, or is it better left to individuals' freedom of choice?

Hugh Henry: The bill is competent—whether that is the same as appropriate is a moot point. We do not think that it is inappropriate. Our position is that, whatever happens, the bill should not have a detrimental impact on the tourism industry.

We do not believe that it is always appropriate simply to leave things to people's freedom of choice. The ban on smoking in public places was a clear example of where we felt that action had to be taken to restrict freedom of choice, because of the impact that smoking has on others. We would not advance freedom of choice as an argument.

Bill Butler: What do you think of the argument that has been advanced by some witnesses that there is no need for regulation, because the situation is not analogous to smoking in public places and the employer and employee can get on perfectly well, go about their business and decide for themselves?

Hugh Henry: The argument against that is that it assumes that the views of the employer and the employee have equal weight, and I am not sure that that is the case.

One of the best discussions on the topic that I have heard—although it took place a considerable time ago, long before the bill was introduced—was on a radio programme. Guests on the programme said that some workers would quite like to earn double or treble time or a day off—whatever it was—and that they would respect the right of employees to say no. However, there was also a young woman on the programme who worked in a store and was passionate in her argument and somewhat persuasive about the dilemma that she would face if she said no. She talked about worries about her future employment and promotion prospects and what it might say about

her if she stood out and said no, whether for family or religious reasons. She felt that it was much fairer for her not to be put into that invidious situation.

14:45

Bill Butler: Did she mean that the law would act as a shield for her?

Hugh Henry: Yes, to a large extent. The other point that she made related to employment potential. She was so busy in the run-up to Christmas and in the aftermath of new year that having a day not in the shop was probably worth more to her than whatever additional earnings might be available. It was a good discussion and both sides of the argument were well put.

Bill Butler: It sounds like it was an illuminating discussion.

The argument has been adduced that some individuals from non-traditional or non-religious backgrounds might prefer to work on the two days concerned. Should they not have the freedom to decide whether they wish to work? Should they be forced into not working?

Hugh Henry: Earlier, I made the point that for some in Scotland Christmas day still has a significant religious resonance. However, many more people of no faith background or other faith backgrounds take the opportunity to celebrate family togetherness at new year. I have heard no people from other religious backgrounds say either that they feel resentful about that or that they need special attention. I believe that the opportunity to share quality time with their family is of the same value to those of a non-religious background as it is to those who believe in the religious significance of Christmas.

Bill Butler: Are you saying that this is really a family-friendly proposal?

Hugh Henry: Irrespective of the conclusion that we ultimately reach on the bill, one thing that it has going for it is that it is, as you say, family friendly. We need to weigh up whether there is sufficient justification for such a family-friendly initiative if it is perceived to have a debilitating economic effect on the tourism industry.

The Convener: Jeremy Purvis will ask about the scope of the bill.

Jeremy Purvis: Do you accept that the bill is family friendly for potentially a minority of retail workers, because it applies only to large stores and is limited to the retail sector? It might affect only a small proportion of workers in Scotland.

Hugh Henry: Yes. By definition, we deal with the proposals in the bill, which is clearly targeted at a specific sector. I have no thoughts to offer on

the emergency services and some parts of the manufacturing sector, which would have to continue to operate.

Jeremy Purvis: Retail workers in medium-sized or small stores, as opposed to large stores, could also be exempt from the bill's provisions.

Hugh Henry: That is correct. However, I return to the point that I made in my opening remarks and expanded in response to a question from Stewart Maxwell. I will put to one side very small local shops. However, a significant number of medium-sized shops in town centres and out-of-town shopping centres are often influenced by the behaviour of the larger anchor stores around them. Whatever the larger stores do has significant implications. I will offer an example from the area that I represent. Smaller stores in Braehead would need to make a commercial decision about whether to open if the larger stores did not, but there is no evidence that they would find the amount of money that they generated sufficient to outweigh the extra costs of opening on Christmas day or new year's day.

Jeremy Purvis: We are talking about a legislative proposal and legal protection rather than commercial protection. Nothing in the bill would prevent smaller stores from opening.

Hugh Henry: Of course, but my point is that whether such stores would open would largely be influenced by the business that they would generate. There is no evidence that medium-sized stores have shown any inclination to open on new year's day. The bill does not address that matter and we have not considered it.

Jeremy Purvis: Would allowing small or medium-sized stores—which are exempt from the proposals—to open while prohibiting large stores that sell similar or identical goods from opening potentially raise anti-competitiveness questions? Has the Executive done any work on that?

Hugh Henry: We are not aware of any problems in that respect.

Jeremy Purvis: Are you not aware of any problems or—

Hugh Henry: We are not aware of any threats, challenges, problems or difficulties—I do not know which is the right word to use. We are not aware of any significant difficulties that could lead to a challenge to the bill in that respect.

Jeremy Purvis: Would having two different legislative areas be fair to staff?

Hugh Henry: The word "fair" is subjective and emotive, and I am not here to judge whether something is fair to certain people. When we banned smoking in public places, for example, some people thought that they had been unfairly

treated, but we had to make a decision. Similarly, the Executive and the Parliament will have to decide whether the proposals in the bill are right; the issue is not whether they are fair to people who would not be afforded the protection that would be afforded to others. With such proposals, it is open to the Parliament at some point in the future to decide whether it wishes to consider further moves in a particular direction. However, I understand from the debate that has taken place on the bill that its proposals have been regarded as a sensible compromise.

Jeremy Purvis: I will put things in a different way. Does the Executive consider it equitable for the law to make a distinction between retail workers who are in the same company and the same union such that they have different rights depending on the size of the store in which they work?

Hugh Henry: I suppose that complete equity could be ensured only by ensuring that every store in the country—irrespective of its size or whether it is a pharmacy or a shop in a railway station, airport, port or motorway service station—was shut. If we do not agree that there should be a complete ban on every store opening, we must accept that there will be a degree of inequity, which I suppose we would all have to live with.

Jeremy Purvis: You are talking about workers who are not necessarily doing the same job in the same company. My question was not about people doing different jobs in different companies.

Hugh Henry: Let us consider the places that could open under the proposals. Some big chain stores, for example, have facilities in airports, motorway service stations and filling stations, which may continue to open unless we close everything down. In order to ensure that there is complete fairness, everything everywhere in the country would need to be closed; alternatively, we have to accept that there will be some unfairness somewhere along the line.

Jeremy Purvis: Another approach would be to have an employment law that would mean that no one anywhere would be forced to work on Christmas day. Shutting everything down is not the only alternative.

Hugh Henry: Employment law is not within our competence. I am dealing only with matters over which we have competence.

The Convener: We received a mixed message at this end of the table about whether Stewart Maxwell wanted to say something. I apologise to him. Do you want to say something about a previous point that was made?

Mr Maxwell: I wanted to ask a question further to a question that Bill Butler asked. Shall I ask it now?

The Convener: Yes.

Mr Maxwell: My question is about individuals—whether or not they are religious—choosing to work on new year's day in particular. I think that everyone accepts that there is no demand for Christmas day opening, but we heard evidence last week from shop workers from Debenhams who preferred to work on new year's day. In fact, they said that they enjoyed it. First, if they live on their own, it gives them an opportunity to get out at a time of year when living on one's own can be quite depressing, so it is a boon to people in that situation. Secondly, they are paid treble time, which is a boon to their finances. Thirdly, they work only six hours, serving a relatively small number of customers—enough to justify opening the store, but not enough to put the staff under serious pressure. They said that it is not like the run-up to Christmas or the middle of the January sales. The staff who work on new year's day choose to do so; sometimes the problem is that there are too many volunteers, so there has to be a rota for who does and does not work on new year's day. What about those people who, for whatever reason, wish to work on new year's day?

Hugh Henry: That is a fair point. There will always be some people who take that view. When we were considering the ban on smoking in public places, there were those who were quite happy to work in facilities where smoking was allowed and who would have preferred to continue to work in such facilities, because they believed that it would be a guarantee of their future employment. Parliament chose to take a different view, irrespective of what they thought was their choice and what was best for them. Parliament will have to do the same in this case. It will have to take a balanced view on whether the opportunity for some people to earn the kind of money that you mentioned outweighs the advantage to those who work in larger stores of being able to spend some time with their families. We see both sides of the argument, and we will have to reflect on the matter.

Mr Maxwell: I am not sure that I understand the analogy that you keep making between the smoking ban and the bill. As far as I am aware, you cannot passively inhale shopping, and even if you could it would not harm you.

Hugh Henry: The point is about freedom of choice and about advantage. There were those who argued that they had freedom of choice to work in facilities where smoking was allowed if they wished to do so. In terms of economic advantage, there were those who argued that denying them the opportunity to work in those

facilities would have a detrimental economic effect on the business, thereby jeopardising their future employment prospects. The argument that I am trying to make is that, where there are freedom-of-choice issues, we sometimes have to make a decision about what we think is for the best. At the moment, we are trying to weigh up the arguments put forward in favour of the bill, balanced against the arguments that we have heard about the economic implications, particularly for the tourism industry.

Jackie Baillie: Do you foresee any difficulties in enforcing the bill?

Hugh Henry: No. The stores affected would be easily identified. It would not be in the economic interests of any of those large companies to take a decision that flew in the face of the law. Virtually all of them are responsible companies. In fact, I cannot think of any that would be regarded as irresponsible. One of the things that we have been pleased with is the co-operation that the retail sector and the large stores have given on a whole range of initiatives, including those that might cause them some difficulty, such as asking them to enforce the law relating to the sale of alcohol or tobacco to underage people. I realise that legislation can impose some difficulties on many retailers, but their co-operation across a range of issues has been superb, so I do not anticipate any problems.

Mr Maxwell: Some people have argued that, if the two days in question were to become normal shopping days, other public services would have to meet the demand associated with that, particularly in relation to public transport and street cleaning. Do you think that that would have to happen, and would it have any impact on public expenditure, particularly for local authorities?

Hugh Henry: There might be a consequential implication for transport, but I do not know whether it would be sufficient economically to justify transport companies putting on services. There could be implications for street cleaning, but I am not sure that there would be a major impact. I suppose we would need to consider that carefully.

15:00

Mr Maxwell: To summarise, you think that if the bill had a consequential impact, it would be at the margins at most.

If the bill had financial implications for local authorities through their having to provide cleaning services—or something else that we have not considered so far—would there be a consequential pay-off for local authorities in gains from taxes because of economic growth from increased sales on Christmas day and new year's

day, which would offset any losses to the local authorities?

Hugh Henry: That takes us back to a much thornier argument about increased sales, potential increased taxation from items that are liable for VAT and increased rate contributions. Such increases would not immediately go back to the local authority that would bear the brunt of the expenditure; they would go back into the central pot. How that would be divided is a much more complicated argument.

Bill Butler: Minister, you will be aware that the bill states that a person found guilty of an offence will be liable on summary conviction to a fine not exceeding £50,000. What is the Executive's assessment of the level at which the fine has been set? Does the Executive feel that it is appropriate that such a breach should be a criminal offence?

Hugh Henry: I hate to go back to the issue of smoking, but I first raised the idea of having a ban on smoking in public places in late 1999 or in 2000. I remember that a national newspaper, which subsequently came out in favour of a ban on public smoking, tried to get me to say that if someone breached a ban they would commit a criminal offence and be jailed. That kind of thing excites newspapers.

If someone breaks the law, that is technically a crime. However, it is a moot point what the penalty should be. A fine of £2,000 for a large company, for example, is not a huge amount of money. However, to be honest, I think that a fine would be largely a symbolic gesture. I think that the damage to a company's reputation from action having to be taken against it would be much more damaging than whatever it would have to pay for a fine. It could be argued that the fine should be £2,000, £5,000 or £10,000.

Bill Butler: That goes back to your answer to my colleague Jackie Baillie in which you said that companies would be responsible and would adhere to the law. However, let us suppose for the sake of argument that there is a rogue company out there. Is £50,000 the correct maximum level to set for a fine? As you just said, £2,000 is a drop in the ocean to some companies.

Hugh Henry: It would be more damaging for some companies than for others. Some are hugely profitable and a £50,000, £100,000 or £500,000 fine would not be a great burden to them, whereas some companies might struggle, depending on how well trade was going, if they had to pay £2,000, £5,000 or £10,000. It is right that there should be a public punishment, such as a fine, but the symbolism and the public relations implications are equally significant.

Bill Butler: I understand what you are saying, minister, and I think that many of us see the logic

in it. However, let us leave aside the issue of the level of fine and consider whether the offence should be a criminal one, as the bill envisages. What is the Executive's view on that?

Hugh Henry: I am trying to think what the alternative would be.

Andrew Dickson: There might be a kind of civil sanction.

Hugh Henry: A civil sanction would be somewhat complicated. It is hard to know what other penalty could easily be applied without it becoming overly complicated. The last thing that we want is to be tied down in huge levels of detail. To be honest, I do not have a problem with what is proposed, because I think that we are talking about responsible companies who would obey the law.

Bill Butler: To go back to your analogy of the anti-smoking legislation—the Smoking, Health and Social Care (Scotland) Act 2005—you think that if the bill were enacted most companies would be as responsible as most businesses have been in meeting the requirements of the 2005 act.

Hugh Henry: I am convinced that the law would be adhered to.

The Convener: I have a final point, minister. Your colleague Andrew Dickson talked about producing a document that would be fairly nebulous. I wonder whether we have given you sufficient areas for consideration to ensure that your response will not be accused of being nebulous.

Hugh Henry: When we reach a conclusion, we will share it with the committee. However, members raised useful points during the meeting and, irrespective of our conclusions, we will want to consider them in more detail.

Andrew Dickson: Just to add to that, the word that I used was probably “hypothetical” and not “nebulous”.

The Convener: Whichever word you used, the point was made.

Andrew Dickson: I certainly picked up on points that committee members made, which I will take back to the economists who are thinking about the regulatory impact assessment. I will feed the results back to the committee.

The Convener: Thank you. I thank you and your colleague, minister, for giving evidence.

We will have a short break while the witness panels change.

15:07

Meeting suspended.

15:17

On resuming—

The Convener: I apologise for the slightly extended delay in reconvening the meeting, but some of us had to make emergency phone calls, which might not necessarily be resolved although we have dealt with them.

For this session, I welcome Karen Whitefield, who is the member in charge of the bill. I thank her for coming along to this final session of evidence. She has with her Rodger Evans from the Parliament's non-Executive bills unit. Do you wish to make a short statement on your proposal?

Karen Whitefield (Airdrie and Shotts) (Lab): I promise to keep my remarks brief because I want to give the committee maximum opportunity to ask me questions; I will do my best to answer them. Thank you for allowing me to appear in front of the committee today. Being at this end of the committee table is a new experience for me, but I am glad to be here to speak in support of my bill.

Most people cannot believe that retailers want to open on Christmas day or new year's day in Scotland. However, for some shop workers the reality is different. When I first proposed the bill, many said to me that shops are not opening so why legislate against it? However, almost 4,000 shop workers signed a petition asking for the Parliament to introduce legislation and 1,500 postcards calling for action were received from people who believe that, with each year, there is increasing pressure for shops to open.

I am pleased that there appears to be consensus about what the bill proposes for Christmas day, but I am concerned that we are on the verge of new year's day becoming a normal trading day. Debenhams and the Edinburgh Woollen Mill have told the committee that they intend to continue opening their stores and they want other large retailers to do so as well. However, the views of the majority of the retailers that responded to the consultation on my bill count too. The majority of the major retailers that responded supported the bill. They want Christmas day and new year's day to remain special. They want not to have to force their employees to work on those days and they want the legislative protection that the bill offers.

Christmas day and new year's day are midwinter festivals that bring a little magic and something special into our lives. I believe that that will be lost if there is widespread opening of our large stores, not just for shop workers but for everyone. Undoubtedly the bill will provide some respite for many of Scotland's shop workers, who work exceptionally hard at that time of year.

Scotland undoubtedly runs the best new year party in the world. We welcome visitors to join our hogmanay celebrations and, with hotel occupancy at 93 per cent in Edinburgh, it seems to me that we are already getting something right. The bill is a simple measure that will protect the special nature of two of our most important days.

The Convener: Thank you for that. You have covered some of the questions that I might have asked about why you have introduced the bill. Legislation is not to be taken lightly by the Parliament and you are targeting for restraint of trade only the larger stores of more than 3,000ft². However, we have had evidence—no doubt others will bring this up—that that would cover only retailing activity because the background workers and support staff would still be doing their bit. Why did you choose both days? Why did you not treat them as separate issues?

Karen Whitefield: The representations that I received from shop workers, the trade union movement and constituents who contacted me show that both days are equally important. For many people, there is an importance to the Christmas holiday because of their religious beliefs and there is also a family perspective to Christmas day for the majority of people in Scotland. Most people see new year's day as a traditional Scottish holiday, which is also an important family holiday. It is seen as part of the festive season holiday package and people tend to package both those holidays together.

The Convener: When they were here, the representatives of USDAW claimed that the bill was theirs but, as far as the Parliament is concerned, it is your bill. Is there a difference?

Karen Whitefield: No. It is certainly my bill. I have laid it before the Parliament and am asking my colleagues in the Parliament to give it due consideration. I am grateful to USDAW, the trade union that has promoted the issue and given me considerable support in preparing the legislative proposal.

Bill Butler: Ms Whitefield, you will be aware that the issue of freedom of choice has been touched on at the previous evidence sessions and again today. Several groups have told the committee that they think that it should be a matter of personal choice for retail workers, employers and customers. Debenhams and the SRC hold that point of view. How do you respond to that evidence?

Karen Whitefield: I listened very carefully to what all the committee's witnesses had to say. If the legislation was unnecessary, or a waste of time, the number of people supporting it—or just calling for a proposal—would not have been so huge. More than 4,000 people signed a petition

and almost 1,500 signed postcards in support of a legislative proposal. Although many people who were contacted were unwilling for me to use their names, they wanted to talk about their experiences. They feel that they have no freedom of choice when it comes to saying no to their employers. Some people have said that although they do not want their names to be used, they would be happy for their stories to be used. A man who works for a large retailer was told that, as he was the keyholder of the store, he would have to open it on new year's day.

Employees who do not want to work on new year's day might find that their normal working hours later in the year or their chances of promotion are affected. My legislative proposal would end such speculation and unnecessary pressure on shop workers and would give the majority of shop workers the right to two days' holiday, which would be of positive benefit.

Bill Butler: I in no way discount the evidence that you have just relayed, but it is mainly anecdotal. Such evidence can be important and can give an impression of the reality that retail workers face, but do you have any hard evidence to support the view that, without the shield of the proposed legislation, retail workers would be compelled to work on new year's day? Where is your hard evidence?

Karen Whitefield: The hard evidence that you seek is that, of the 91 responses to the consultation, eight did not support the proposal, while the remainder did. Of the eight responses that did not support the proposal, two were from individuals, three were from individual retailers and three were from trade organisations. I accept that the majority of the remainder of the responses were from individuals, but a number of individual retailers also supported the proposal. I cannot give the names of those retailers, because they requested that they remain anonymous, but I can confirm that they are national and international chains. They asked for anonymity, but they responded to the consultation on the bill and supported it. All that information is contained in the summary of the consultation responses, which has been published. The hard evidence is that the majority of retailers and individuals who responded to the consultation thought that the proposal is necessary and will bring benefit.

Jackie Baillie: What evidence do you have about the bill's impact on the Scottish economy? You will be aware from the earlier evidence sessions that the Scottish Retail Consortium claims that about £88 million could be generated in sales in a full day's trading on new year's day.

Karen Whitefield: From what I read briefly this morning, the figure of £88 million that could be generated from trading is comparable with the

figure for bank holidays. However, I understand that, even if the SRC has its way, the shops would not be open for as long as they are on bank holidays. Therefore, the situations are not comparable.

If shops were open on two additional days, people would not have more money in their pockets; they would just spend it at different times. If shops were open more, people would not have more ability to spend. If shops were open on new year's day, tourists would not have more money in their pockets. We all work to a budget and we all know how much we can afford to spend. Sadly, far too many Scots spend far more than they can afford to, particularly at Christmas and new year. At that time, people get into a lot of debt in responding to the pressures that are on them to keep up with family, friends and neighbours and they find it difficult to cope with that later in the year. I do not believe that the proposal would have a catastrophic effect on the Scottish economy.

Jackie Baillie: Do you therefore agree with the Scottish Executive economists' view that, with retail activity, there is a high degree of displacement?

Karen Whitefield: I do.

15:30

Jackie Baillie: Do you know how many stores in Scotland are likely to be caught by the bill and how many employees work in those stores? I asked the minister that question and he has promised to get back to us.

Karen Whitefield: Unfortunately, I do not. I have sought to find such information, but we do not appear to keep it. Last week, the witness from Deregulate told the committee that 85 per cent of stores would not be covered by the bill. I am not sure that that figure is accurate because I understand that it was calculated on the basis of company turnover. Under my proposal, whether shops open or close on new year's day and Christmas day will depend not on the size of their turnover, but on the square footage of their shop floors. The use of that system by the retail market has been common practice in other parts of the United Kingdom.

Mr Maxwell: In a previous answer, you stated that the majority of shop workers would be guaranteed two days off if your bill was enacted. Given that you cannot tell us what the balance is between those stores that would be caught by the bill and those that would not, or between the number of employees that would be caught by the bill and the number that would not, how can you say with any certainty that the majority of shop workers would be guaranteed two days off? We know that the many shops that would be exempt

would include not just those with less than 3,000ft² of retail space, but those in places such as railway stations and airports. On what basis do you make your claim?

Karen Whitefield: That is obviously my perception; it is also my belief. When the debate about Sunday trading took place in England and Wales and the size of shop that would be allowed to open was discussed, the figure of 3,000ft² was arrived at because that was the largest size of shop that could open with only one member of staff to operate it. The stores that would open would not be huge and not many employees would be forced to work. If my proposal is successful, the majority of larger stores, if not all of them, will remain closed.

Mr Maxwell: I am sorry to interrupt you, but you said that the majority of shop workers would be guaranteed two days off. I am asking what the evidence is for that assertion because you have just said that you do not know how many shop workers would be caught by your bill.

Karen Whitefield: The point that I am making is that, in my opinion, because the majority of Scotland's shop workers work in larger stores and my proposal covers larger stores, the majority of shop workers would be protected by the bill.

The Convener: Would it be possible for you to submit some figures on the number of people who are employed in stores of less than 280m² to back up the answers that you have given? That would help to answer some of members' questions.

Karen Whitefield: I would be happy to provide the committee with any information that is available but, as I have already said, I have not been able to obtain the relevant information. The fact that it is not collected centrally makes it difficult for me to provide it. However, I will do my best to pass on to the committee whatever information I receive as a result of my inquiries.

Mrs Mary Mulligan (Linlithgow) (Lab): I thank the committee for allowing me to join it for today's meeting. I want to follow up on Jackie Baillie's question about the damage to trade that might result from the proposed closures on Christmas day and new year's day. Are you aware of any evidence that shows that the closure of stores in England and Wales on Easter Sunday has damaged trade in those countries and has had a negative effect on the tourism trade, in particular?

Karen Whitefield: I am not aware of any evidence to back up the claim that trading in England and Wales has been affected because shops do not open on Easter Sunday. Equally, I have watched with some interest the recent debate about Sunday opening in England and Wales, where there is a much more regulated trading system, and noted that at no point was it

suggested that England and Wales cannot compete with Scotland for tourism because their shops are open for fewer hours than those in Scotland.

Jeremy Purvis: I return to the evidence that we received from Deregulate. For clarification, are you saying that Deregulate's estimate that 85 per cent of shops in Scotland would be outside the bill's scope was based on the shops' turnover?

Karen Whitefield: That is my understanding from having made some inquiries about how Deregulate was able to reach that figure. If I get further information, I will be happy to pass it on to you.

Jeremy Purvis: I am looking at the *Official Report* of last week's meeting, at which Mr Ramsden stated that the figure of 3,000ft² was first quoted by Robin Auld QC when he advised the Government on Sunday opening. Mr Ramsden then said that the Shopping Hours Reform Council had determined that about 85 per cent of shops had a floor space of less than that. The *Official Report* makes no mention of the companies' turnover.

Karen Whitefield: I appreciate that it does not and that Mr Ramsden did not point that out but, having made some inquiries, I understand that the statistic was based on turnover. If the committee gets further information, it can consider it and, if Mr Ramsden wants to refute my understanding, he can.

The Convener: The committee clerks have written to Deregulate on the committee's behalf to clarify the evidence that was given.

Jeremy Purvis: I am obliged, convener. It would also be useful if Miss Whitefield could furnish us with her correspondence.

I have a question on the number of people who work in the shops that the bill will cover. On a number of occasions, you have stated that the majority of shop workers work in the large shops. Where is the evidence that the majority of shop workers work in shops with a floor space of more than 3,000ft²?

Karen Whitefield: The reality is that that is the case. When the formulation was drawn up for Sunday trading, the exemption was used to allow small, family-run businesses to open up should they want to do so because they tended not to have employees and would be willing to allow themselves the opportunity to open up and so that people could get a pint of milk if they ran out or a Tunnock's teacake if they had a sweet tooth and wanted something to have with their cup of tea. If those arguments stood 14 years ago, they still stand today. If the Scottish Retail Consortium is unhappy with the anomaly of that definition, it is

surprising that it has not suggested at any point in its oral or written evidence to the committee that we simply remove it altogether and say that all shops should be covered.

Jeremy Purvis: You are the member in charge of the bill. Where is your evidence that the majority of shop workers work in shops with a sales floor of more than 3,000ft²?

Karen Whitefield: As I have said to you, it is my belief and perception that the majority of Scotland's shop workers work in larger retail outlets. If that is the case, then the bill will protect the majority of Scotland's shop workers.

Jeremy Purvis: So it is a matter of perception and belief rather than evidence.

Karen Whitefield: It is the reality of USDAW's members. USDAW believes that the bill will protect the majority of its members and it is the largest trade union representing shop workers in Scotland.

Maureen Macmillan: I will go back to tourism. You heard my questions to the minister and the statistics that I quoted. The Executive has a policy of growing tourism revenue by 50 per cent over the next 10 years. The statistics that we have on the reasons why people come to Scotland are quite interesting, because they show that 37 per cent of people said that to go shopping was one reason why they came to Scotland, although that statistic seems to cover the whole year and not just new year's day. Do you know of any statistics that tell us why people come to Scotland for new year's day?

Karen Whitefield: I am aware of no such statistics. The organisation that is most likely to have such statistics is VisitScotland, but it was not in a position to disaggregate the figures that it presented to the committee. You may recall that I asked VisitScotland whether VisitBritain thought that England and Wales were disadvantaged because stores there were not open on Easter Sunday and VisitBritain did not appear to think so.

We have had a 93 per cent bed occupancy rate in Edinburgh at new year for the past few years while our shops have not opened, which suggests that tourists choose to come to Scotland and stay in Edinburgh to join our unique hogmanay celebrations and not to shop. They can shop on hogmanay and 2 January, so they can enjoy a little retail therapy. I understand that; I know that several committee members are reluctant shoppers, but I am far from being that.

Maureen Macmillan: So you think that the 37 per cent statistic is not relevant to people who come to celebrate new year.

Karen Whitefield: The figure obviously has some relevance, but people can shop on

hogmanay and 2 January. People do not come up to Scotland at 11 o'clock at night on hogmanay and leave the next day. If they take a short break, they often visit for a few days, so they can still shop.

Maureen Macmillan: The Edinburgh Woollen Mill told us that new year's day takings represent 15 per cent of its turnover in that week, so if the bill were passed, losing those takings would be a blow to that company. Are you not concerned about that?

Karen Whitefield: I understand that even if the bill were passed, some of the Edinburgh Woollen Mill's smaller stores would be able to open. The company would probably raise a similar amount of revenue through sales on hogmanay and 2 January, if not in the rest of the week. You can correct me if I am wrong, but I think that the Edinburgh Woollen Mill said that 15 per cent of its revenue was contributed not by new year's day sales but by sales in that week. However, I am happy to stand corrected.

Maureen Macmillan: We will have that clarified.

You think that if larger stores were not allowed to open, displacement purchasing would occur and people who wanted to buy Scottish woollens would do so the day before or the day after new year's day.

Karen Whitefield: Absolutely. If stores are open, people may go in and spend money. We must remember from the evidence that we heard from VisitScotland that Scotland's major tourism market is the rest of the United Kingdom. The bill targets primarily larger retail outlets. I love shopping and I would be quite disappointed if I went on holiday and was not allowed to shop for my entire holiday, but I can honestly say that there is no way that I would go to London and buy a duvet from Debenhams when I knew that I could buy it in Argyle Street or Princes Street. The issue is having a retail experience that is appropriate to a holiday. We need to keep the matter in perspective.

Maureen Macmillan: I agree with you, which is why I am concerned about stores such as the Edinburgh Woollen Mill, which sells Scottish products that people who come up from England might want to buy.

15:45

Mr Maxwell: With your indulgence, convener, I will follow on briefly from Maureen Macmillan's questions.

Like the minister, Karen Whitefield mentioned the bed occupancy rate in the Edinburgh area at new year. Does she accept that it is a red herring if we are considering tourism potential? If we

achieve maximum bed occupancy, the sector will expand, more bed and breakfasts and hotels will open, and more people will be able to visit. The fact that we have a 90-plus per cent bed occupancy rate at the moment does not mean that that is the limit of our tourism ambitions.

Could we not also spread the benefits out from the immediate Edinburgh area into the wider Lothians and Fife? There is a benefit to be gained from more tourists coming at new year. As Edinburgh Woollen Mill, VisitScotland and others have said, would it not act as a disincentive to tourists if we were seen to be shut on 1 January?

Karen Whitefield: I do not think that it is a red herring. I am happy for our businesses to grow, and the fact that we have achieved 93 per cent occupancy rates in Edinburgh at new year is good. You are right—I hope that additional bed and breakfasts will open and more hotels will be built to cater for demand.

The reality is that Debenhams is the only large-scale retailer that opens on new year's day, and we still manage to achieve almost 100 per cent occupancy. When I phoned VisitScotland during December last year to ask whether I would be able to shop on 1 January if I came to Scotland for new year, I was told that I would not. If that is not putting people off just now, why would the bill damage Scotland's tourism? We are able to compete favourably with other parts of the United Kingdom.

Let us take Rome as an example. We do not hear the Italian tourism agency arguing that people do not go to Rome for the Easter weekend because they cannot shop. People go to Rome at Easter because they want to celebrate mass in St Peter's Square. People come to Scotland for our hogmanay celebrations. They can shop on hogmanay and 2 January.

Mr Maxwell: Were you ever in Edinburgh on the Sunday after a rugby international prior to Sunday opening?

Karen Whitefield: I cannot say that I was.

Mr Maxwell: I have been in Edinburgh on those days both prior to and immediately after Sunday opening. Prior to Sunday opening, tourists—both those who went to the game on the Saturday and their partners who came with them for the weekend—milled around Princes Street looking for something to do. Since Sunday opening, whether they are French, English, Welsh or Irish supporters, they have been in the shops, spending money and boosting the local economy. Surely that is a clear example of the fact that when shops are open, tourists spend their money.

Karen Whitefield: I was not in Edinburgh after a rugby international before Sunday trading was

introduced, but I have been in Edinburgh on new year's day after our hogmanay celebrations. I was with visitors and friends from outside Scotland, and at no point did any of them complain that the shops were not open. My relatives and friends wanted to go to the castle, take a nice walk up Arthur's Seat and have a relaxing, leisurely day. I hasten to add that they all love shopping and hit the shops on 2 January. However, they did not say that the shops being closed on new year's day was devastating or had destroyed their trip to Scotland.

Mr Maxwell: If you check the *Official Report*, I think that you will find that I did not say that shops being closed is devastating or spoils people's trips. Prior to Sunday trading, people came, but since the shops have opened, they have come, spent more money and helped to grow the economy.

The scope of the bill focuses specifically on the retail sector. There are a number of exemptions, which we have discussed previously. Could you take me through why some categories of retailers are exempted from the bill's provisions while others are not? A variety of reasons is laid out in the bill and the explanatory notes.

Karen Whitefield: Before I answer that question, I will make one final point. I am sure that tourists who come to Scotland will—like me—go on holiday with a set budget. Just because the shops are open for an extra day does not mean that they will spend more money. I spend the money that I take with me, which is how most people operate.

The reason for the exemptions is that the bill is in no way an attempt to disadvantage or impede travellers who want or need to travel. We also accept that there is a need to provide an essential public service, which is why there is an exemption for pharmacies. Public demand for hospitality—restaurants, pubs and takeaways—is also acknowledged. Those outlets have always been open on new year's day and Christmas day. My bill focuses on the special and family nature of Christmas day and new year's day. The bill recognises the needs of people who wish to venture out socially on those days or who find themselves in transit because they are heading home or visiting family or friends.

Mr Maxwell: I accept much of what you say and I agree with much of it, but I am trying to understand why a shoe shop that is less than 280m² could open on new year's day, but a shoe department in Debenhams, for example, must be closed. Where is the logic in that?

Karen Whitefield: Some people always lose out when we draw arbitrary lines. In the consultation document, which I hope that committee members have had the opportunity to read, we asked

whether the figure that we proposed was appropriate. The responses were mixed, with some people saying that it was appropriate but others saying that it was not. When a line is drawn, some people will be inside it and others will be outside it. My view is that, because we are using the same floor space criteria that have been widely used in other parts of the United Kingdom, the figure is easily understood by retailers.

Smaller shoe stores and individual concerns are much less likely to open up on new year's day. Many of them would not necessarily want to open up on new year's day, but would feel under pressure to do so if their competitors were open. As a result of the bill, if enacted, larger stores would be closed, meaning that smaller stores that were less likely to open because they are family-run concerns would be under less pressure to do so.

A number of the larger companies that responded to the consultation asked to remain anonymous. I wish that I could name some of those pretty big companies because that would make my life an awful lot easier. Some of them are even members of the Scottish Retail Consortium. They sought anonymity because they wanted to safeguard themselves from competitive pressure in the future. They do not want stores to open on Christmas day and new year's day and they do not feel that there is any economic need for it, but if in the future their competitors were to open on a sizeable scale, they would have to revisit their decision.

Mr Maxwell: You mentioned that the bill does not cover pubs and restaurants. You say that traditionally they have always—or at least for a long time—been open on Christmas day or new year's day. I suggest that that is due mainly to demand from members of the public who want to go out for a meal or a drink with friends at new year. Given that you accept the argument for their opening and the consumer-driven aspect of the reason for that—public demand—why do you not accept the same argument in respect of stores of more than 3,000ft²? Should they not be allowed to open if there is public demand for them to do so?

Karen Whitefield: I do not sense that there is public demand for that. The Scottish Retail Consortium and the Confederation of British Industry want to operate as they see fit and appropriate, but I do not have constituents clamouring at my door to argue against the bill—and they are not shy about clamouring at my door to argue about many issues—saying, "Karen, don't do this, because you're going to deny me my right to shop on new year's day and Christmas day." In fact, the reverse is the case. I have not had lots of people telling me that the bill is a bad idea.

Like me, you will probably be well used to going out and campaigning on all sorts of issues, some of which are popular and some of which are less popular, and finding that people are not always willing even to hear what you have to say. I can honestly say, having gone out and campaigned on the matter, that no one has said to me, "I'm not going to take your postcard on the subject." The vast majority of people think that it is ridiculous that shops should even consider opening on Christmas day and new year's day.

Jeremy Purvis: Given the number of exemptions, including small and medium-sized stores, do you agree that the bill will not make a significant change?

Karen Whitefield: It will not make a significant change to the status quo at present, but if the trend continues, who knows what the future holds?

Jeremy Purvis: So the bill is a preventive measure rather than a measure to address something that is bad practice or a problem at the moment.

Karen Whitefield: Yes.

Jeremy Purvis: Am I right to say that there is nothing in the bill to prevent large shops from operating other aspects of their business, such as shelf stacking, deliveries and stocktaking?

Karen Whitefield: That is correct.

Jeremy Purvis: Why is that?

Karen Whitefield: The bill relates solely to trading. I do not know whether Mr Purvis has ever worked in a shop, but I have. I worked for a large retailer—Next—over the Christmas holidays and the store prepared for the boxing day sale on Christmas eve, which is when we got things ready and received the delivery of stock. Although stores could do the things that you mention on Christmas day or new year's day, the financial cost would be so great that they would not do them.

Jeremy Purvis: I am trying to find the balance. You agreed that the bill is a preventive measure for a practice that might happen in the future—that is, shopping on new year's day and Christmas day—but the bill does nothing to prevent other shop workers, such as those who stack shelves, handle deliveries and carry out stocktaking, from working on those days. Are you saying that the bill is a preventive measure for people who work on the shop floor but not for people who work in the stockroom?

Karen Whitefield: My point is that, in reality, shops will prepare for their next opening day. They take will deliveries in the afternoon and evening in preparation for their next opening day. Stores that do not open on Christmas day and new year's day will take their deliveries on Christmas eve and

hogmanay and there will be little activity, if any, on Christmas day and new year's day. They can have activity on those days if they want to pick up the financial cost of doing so, but that activity will be limited and the doors will reopen after the two holidays.

Jeremy Purvis: My question was not about what may or may not be the companies' commercial considerations in the future. It was about what the law would prevent them from doing—that is, opening for retail purposes on Christmas day and new year's day.

Karen Whitefield: The bill relates solely to trading. It has been drafted in those terms, so it would be inappropriate for it to cover anything else.

16:00

Jeremy Purvis: But it would not cover all trading; it would just cover trading on shop floors. Companies could still operate online and through trade sales. Shop workers or retail staff who work in areas that are not on the shop floor would not be covered by the bill.

Karen Whitefield: If those had been problems, I am sure that they would have come up during the consultation. The consultation did not throw up any of those issues, which suggests to me that people did not think that they are of concern.

Jeremy Purvis: It is part of the role of members of the Parliament to scrutinise the proposals in front of us.

Karen Whitefield: Absolutely.

Jeremy Purvis: I would like to confirm whether there is anything in the bill that would prevent a large store from closing off part of its retail space so that it would fall within the 280m² threshold.

Karen Whitefield: I will let Rodger Evans answer that question.

Rodger Evans (Scottish Parliament Directorate of Clerking and Reporting): That is an interesting scenario. The bill relates to floor space for sales and display, and we might speculate about whether any cordoned-off area would still serve as a display area. However, we are just talking about a potential scenario. Sales would also have to be made in that smaller area, and it is quite difficult to envisage a large shop opening just to open up a small area and to sell only those goods that are located in that small area.

Jeremy Purvis: Forgive me, but we are discussing a bill that is before the Parliament. We should not really rely on scenarios, interesting or not, as the bill creates a criminal offence.

Karen Whitefield: Fiona Moriarty from the Scottish Retail Consortium stated to the committee that the consortium's members would comply with the law. As the bill stands, it limits opening on Christmas and new year's day based on a store's square footage. I would have thought that, like the British Retail Consortium and larger stores elsewhere, stores would be likely to comply with the letter of the law, rather than try to find ways round it.

Jeremy Purvis: I am just questioning you on what is in the bill. The definition of "relevant floor area" is:

"so much of the floor area of a shop as is used for making retail sales or for the display of goods in connection with such sales".

It is not about the size of a store; it is about the size of the floor area. That is what you have written in your own bill.

Karen Whitefield: As I have already stated on a number of occasions, such regulations are easily understood. They have been widely used in different parts of the United Kingdom for the past 14 years. At no point has any retailer challenged them, suggested that they are inappropriate or attempted to get round them by opening up part of their store. You are absolutely right to investigate those issues but, according to my knowledge of the system, they have not been raised as a concern by retailers in other parts of the United Kingdom.

Jeremy Purvis: Forgive me, but I am asking a question that was given to us in written evidence from the Scottish Grocers Federation, which represents 5,500 convenience stores across Scotland. The federation wrote:

"We would ask the committee to seek clarification as to whether the bill is intended to prevent supermarkets opening a limited floor area".

All that we have heard is that that is an "interesting scenario". It is not excluded from the bill, however.

Karen Whitefield: I will read out an extract from the commentary section of the bill's explanatory notes:

"A large shop is defined in section 6 as one with a relevant floor area over 280 square metres. The relevant area is defined as the area being used for making retail sales or displaying goods in connection with such sales. The definition of 'retail sale' makes clear that it is opening for the purpose of retailing goods to the general public unconnected to a trade or business that is being prohibited."

The Convener: I think that Mr Purvis's question is similar to one that was asked before: would a large grocery store that managed to wriggle elements of all its merchandise into an area of less than 280m² and then close off the rest of its premises fall within the remit of the bill?

Karen Whitefield: The shop would be breaking the law because its shop floor space would be larger than the definition in the bill.

The Convener: So it is the shop's normal trading space.

Karen Whitefield: Yes.

Jeremy Purvis: Although I appreciate the convener's question about the definition in the bill, I was asking a different question. For example, on Sundays, alcohol sales areas in shops are limited under current Sunday trading laws. That is entirely consistent with the terminology in the bill on "relevant floor area". However, the definition would not prevent a retailer from limiting the area for the "sale of goods for consumption or use"

on Christmas day and new year's day, as currently happens when they sell alcohol on Sundays.

Karen Whitefield: My interpretation of that course of action would be that the retailer was attempting to thwart the law and bend rules that were considered and laid down by the Parliament. No reasonable retailer would wish to do that.

The Convener: Is there another strand to your question, Mr Purvis?

Jeremy Purvis: No, I have asked all my questions.

The Convener: Bill Butler has a question.

Bill Butler: Shall I continue with my question even though Stewart Maxwell was due to ask the next one?

The Convener: Stewart Maxwell has already asked that question within another.

Bill Butler: I am sorry; I was distracted and fascinated by the question-and-answer session between Mr Purvis and Ms Whitefield.

My question is a simple one that I raised with the minister. The bill states that a person, if guilty of an offence, would be liable on summary conviction to a fine not exceeding £50,000. What was the rationale for setting the fine at £50,000 and why is it appropriate that a breach of the proposed legislation should be a criminal offence?

Karen Whitefield: It needs to be a criminal offence because although I believe that the vast majority of retailers are extremely responsible and do not break the law intentionally, the reality is that one retailer in Scotland has broken the existing law. For that reason, I felt that it was appropriate to impose a sizeable fine that would work as a disincentive to people who might think that they could get away with flouting the law.

Bill Butler: Do you agree with the minister that the fine would be mostly symbolic and that, by and large—in fact, in a comprehensive way—retailers

would be responsible and law abiding if the bill were to be enacted?

Karen Whitefield: I agree with the minister. I remind people that Fiona Moriarty of the Scottish Retail Consortium said that her members would want to abide by the spirit and the letter of the law.

Bill Butler: I remember Ms Moriarty's evidence. I think that one of her partners on the panel took a contrary view, although we can check that in the *Official Report*.

Karen Whitefield: Mr Butler is absolutely right. Mr Hawkins said:

"Many retailers, especially smaller ones that are used to opening on new year's day, would go ahead and open regardless of the law, as happened prior to the Sunday Trading Act 1994, when lots of shops opened illegally".— [*Official Report*, Justice 2 Committee, 5 September; c 2605.]

That is the very reason why we need a fine that acts as a deterrent to remind people that they cannot abuse the law, should the bill be enacted.

Bill Butler: I am grateful to Ms Whitefield for reminding me of Mr Hawkins's exact words; now we do not have to investigate the previous *Official Report* because the evidence will be in today's *Official Report* as well.

Mr Maxwell: I have a couple of questions for Karen Whitefield; the first is fairly straightforward. Do you think that it would be anticompetitive to allow small stores to open while large stores that sold exactly the same goods were forced to close?

Karen Whitefield: I do not believe so. As I said earlier, smaller stores are less likely to open. Corner shops might open to sell the occasional pint of milk or Tunnock's teacake, or to meet emergency demands, but I do not consider the bill to be anticompetitive in any way.

Mr Maxwell: You will have read last week's evidence from Deregulate, whose witness seemed to raise the spectre of competition law. Do you have plans to investigate that, or is it a bit of a red herring?

Karen Whitefield: It is a bit of a red herring. I understand that Deregulate is a self-appointed organisation that argues for the total deregulation of trading throughout the United Kingdom. We practically have that in Scotland; we have the most deregulated trading market of any part of the United Kingdom.

The witness last week has been associated with a number of proposals for legislation on retailing, and those proposals have not always gathered the support of people in the retail industry.

Mr Maxwell: In answer to an earlier question, you made a point that connects to the question I am about to ask. You said that, if shops were

forced to close on Christmas day and new year's day, they would prepare for the boxing day sales and the 2 January sales on Christmas eve and hogmanay. I assume that that would force retail staff to work late on Christmas eve and hogmanay. Last week, we heard from retail workers that, in general, having to work late was considered more of a burden than having to work on 1 January. The witnesses said that, week in and week out, people have to work until 8 o'clock in the evening, and sometimes until 10 o'clock. On Christmas eve, a lot of shops seemed to be opening until 10 o'clock. The workers felt that that impinged more on their family life than new year's day opening.

What will be the impact on the preceding days of forcing a closure on the two days in question? What is your view on late working?

Karen Whitefield: My experience as a retail worker in Next was that we never worked anything beyond normal store closing hours on Christmas eve and hogmanay.

Mr Maxwell: But things have changed over the past few years, as you will know.

Karen Whitefield: I appreciate that, but I have family who still work in retail, and their experience has been the same as mine was. I am not aware of people working longer hours on Christmas eve or hogmanay.

People work longer hours in the run-up to Christmas, when many stores stay open longer. The Gyle centre—Marks and Spencer in particular—was open to midnight most nights. That undoubtedly raises issues for staff, but it also creates capacity for temporary staff to be taken on. My understanding is that people are often happy to have extra shifts.

I do not believe that huge pressure will be placed on retail workers to work longer hours on Christmas eve or hogmanay if the stores are going to be closed the next day. There is no evidence to suggest that that will be the case. Last week's evidence—although it was very welcome and should be taken into account—was from two Debenhams employees. It is disappointing that we did not hear from other shop workers, whose experience in retail might have been different. You might want to ask Mary Mulligan about her time as an employee of Edinburgh Woollen Mill.

Mr Maxwell: I am slightly confused by your answers on the pressures on staff, and by your comment that longer opening hours in the run-up to Christmas create an opening for temporary or casual staff—students, for example. I accept that point, but why does that apply to those days if it does not apply to new year's day?

I think that opening on Christmas day would be ludicrous, but why cannot all the people we have talked about—temporary staff, casual staff or people who want to work because they are on their own—work on new year's day? Why does your argument not apply to that day as it applies to the days that you mentioned?

16:15

Karen Whitefield: Christmas day and new year's day have a special nature, which makes them different from the other days in the calendar. I am pleased that Mr Maxwell thinks that it would be ludicrous for stores to open on Christmas day. However, he will recall that one of the young women from Debenhams, who had considerable retail experience—far more than I can claim to have—said that, when she started her employment with Debenhams, if somebody had asked her to work on new year's day, she would have said, "No way." She also said that, at the same time, if she had been expected to work on Sundays the answer would have been, "No way." That suggests to me that although at present people say "No way" to working on new year's day, sadly, the reality may be that, in five or six years, new year's day will be like any other trading day and, shortly after that, Christmas day will be no different from new year's day.

Mr Maxwell: I do not agree—that is an unlikely scenario.

I have one final question. Rather than go down the route of the bill, did you consider extending the Sunday trading laws to apply to the two days in question, so that workers would be protected under law and could refuse to work on those days if they so wished?

Karen Whitefield: We consulted widely on the proposal, but that theme did not become apparent.

Mr Maxwell: I just wonder whether you considered that idea and, if so, why you rejected it.

Karen Whitefield: I rejected the idea because the issue is about the special nature of the two days in question, which I see as unique. Obviously, when Christmas and new year's day fall on a Sunday, shop workers have that protection, but that does not happen every Christmas day or new year's day. It would be a much more consistent approach to legislate for the special nature of the days.

Mr Maxwell: You accept that, in effect, in one year in seven, workers are protected in that way on those days. Would it not strike a better balance to apply the Sunday trading laws to every Christmas day and new year's day? That would allow people who do not wish to work and who agree with you about the special nature of those

days, perhaps for religious or family reasons, not to work, while people who take a different view and who wish to get treble time for working in Debenhams on new year's day or who want to get out of the house because they are on their own would have that option. People would have a choice about whether to work, because protection would exist for those who did not wish to work.

Karen Whitefield: The employees from Debenhams were keen to point out that, at present, they get triple time for working on new year's day. However, it would be difficult to find many retail workers who get enhanced payments for working on Sundays now, because it is common practice for people to be contracted for a set number of hours, meaning that they do not get enhanced payments for Sunday working. That is different from the situation when Sunday opening began. If we treated Christmas day and new year's day as we treat Sundays, the holidays would have no special nature—they would become just like normal trading Sundays, which I do not think is acceptable.

Jeremy Purvis: The written evidence that we received from Glasgow City Council, which I am sure you have seen, states:

"We are concerned ... that there may be an issue relating to ethnic minorities who operate retail premises which are not included in one of the exempt categories and who may want to open on these days. A ban on such trading might be seen to be restrictive."

What is your view on that?

Karen Whitefield: We consulted with all ethnic minority groups and religions and none of them objected to the proposal. I do not believe that my bill is discriminatory in any way. Should the committee feel that to be the case, it should pass the bill to the Equal Opportunities Committee, which takes a dim view of discrimination in all respects. We live in a multicultural and multifaith society, but, notwithstanding that, Christmas day and new year's day remain special days for most of us, for religious and family reasons. If the proposal was an issue for our ethnic minorities, they would have responded to the consultation saying so.

The Convener: That is the end of the evidence-taking session. I thank Ms Whitefield and Mr Evans for answering the committee's questions.

Custodial Sentences and Weapons (Scotland) Bill (Adviser)

16:20

The Convener: Agenda item 3 is on the forthcoming custodial sentences and weapons (Scotland) bill. Members have had a note from the clerk about the appointment of an adviser for the bill. Graham Ross from the Scottish Parliament information centre has joined us for the item. Members are asked to consider the note from the clerk. Does anyone have any points to make on it?

Jackie Baillie: The proposal is excellent.

The Convener: Does the committee therefore agree to appoint an adviser to assist it in its scrutiny of the bill?

Members *indicated agreement.*

The Convener: Does the committee agree to the suggested role and specification for the adviser, as laid out in annex A to the clerk's note?

Members *indicated agreement.*

The Convener: That concludes the public part of the meeting.

16:21

Meeting continued in private until 16:43.

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