

JUSTICE COMMITTEE

Tuesday 22 January 2008

Session 3

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JUSTICE COMMITTEE

2nd Meeting 2008, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Nigel Don (North East Scotland) (SNP)

*Paul Martin (Glasgow Springburn) (Lab)

*Stuart McMillan (West of Scotland) (SNP)

*Margaret Smith (Edinburgh West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)

Marlyn Glen (North East Scotland) (Lab)

John Lamont (Roxburgh and Berwickshire) (Con)

Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Kenny MacAskill (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 6

Scottish Parliament

Justice Committee

Tuesday 22 January 2008

[THE CONVENER *opened the meeting at 10:20*]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I remind everyone to switch off their mobile phones.

I welcome members of the press and the public. In particular, I welcome the modern studies students from Greenfaulds high school in Cumbernauld, who are joining us today at the invitation of Cathie Craigie MSP. We look forward to having a word with them later in the morning.

The first item on our agenda is a decision on taking business in private. Committee members are asked whether they agree that item 6—the committee's discussion on its work programme—should be taken in private, in accordance with our usual practice. Are we agreed?

Members *indicated agreement.*

Subordinate Legislation

Licensing (Fees) (Scotland) Regulations 2007 (SSI 2007/553)

10:21

The Convener: We come now to item 2 and the first of a few pieces of subordinate legislation that we have to consider. Last week, the committee gave preliminary consideration to the Licensing (Fees) (Scotland) Regulations 2007. A number of committee members expressed concerns and it was agreed that we should invite the Cabinet Secretary for Justice to give evidence today. Members have received submissions from the Convention of Scottish Local Authorities, Punch Taverns and the Maclay Group; an updated submission from the Scottish Beer and Pub Association; and further e-mails from interested parties, which were circulated on Monday.

I welcome, yet again, the Cabinet Secretary for Justice, Kenny MacAskill. He is accompanied by Gary Cox, who is the head of the licensing team in the criminal law and licensing division of the Scottish Government, and Tony Rednall, who is from the same team.

Mr MacAskill, you will be aware of what happened last week, when considerable concerns were expressed around the committee table about the way in which this matter has been dealt with. We look forward today to hearing some reassurance from you on various matters—in particular, on the fees that you are now proposing to charge.

The Cabinet Secretary for Justice (Kenny MacAskill): I am grateful for the opportunity to talk about the Licensing (Fees) (Scotland) Regulations 2007. They are the final substantial set of regulations to make the new licensing system work that the committee is being asked to consider. The new system was the creation of the previous Administration and many committee members will recall the debate that led to its acceptance. Since the election, we have been happy to continue the work started by our predecessors.

The new system will have much wider benefits for the communities that we serve. I know that the Scottish Beer and Pub Association, which represents the big pub chains such as Punch Taverns and Mitchells & Butlers, has expressed through the pages of *Holyrood* magazine its opposition to the fees regulations. That is hardly surprising: the association has to be seen to be sticking up for its members, and I would expect nothing less from a body that represents part of the licensed trade. The proposed change under

the regulations will cost big operators such as pub chains or supermarkets with many premises across Scotland much more than it will cost smaller independent operators.

With the improvements to the licensing system, we need to move away from the outdated and dogmatic mindset that selling alcohol is a right. It is not a right, it is a privilege—and the privilege to profit from the sale of alcohol has associated costs. The implementation of the new licensing system should not be brought down to the cheapest possible price.

The running costs of licensing boards and licensing standards officers have to be met. A self-funding system was proposed by the Nicholson committee and was accepted by the previous Administration. We agree that that approach is absolutely right. We cannot expect the council tax payer to subsidise the licensed trade. That would be wrong, but it is exactly what happens under the current arrangements, with only 63 per cent of running costs met from fees. Clearly, the licensed trade wants its costs to be subsidised and the something-for-nothing system to continue. However, the Government does not want that, and I suggest that the public do not want it either.

The fee arrangements that we are proposing are both proportionate and appropriate. They are fair and reasonable to the licensed trade, to licensing boards, and—just as important—to the public.

First, we have set the fee for a personal licence application at £50. That licence remains valid for 10 years, which is a fiver a year, £27 less than the cost of a passport, and only £5 more than the cost of a driving licence. It is important to keep that fee low because we want to encourage people to do the training and apply for a personal licence to help drive up standards in the licensed trade.

On the premises licence, it is true that the regulations are different from those that we issued for consultation. That is the whole point of consultation. Would it not have been strange if we had just presented to Parliament the same regulations that we issued for consultation, ignoring the strong views that were expressed to us? We now have capped amounts, rather than set fees. We accept the view that nationally set figures cannot possibly lead to every licensing board being self-financing. We have weighed up the issues that were raised in the consultation and addressed them where we could do so without undermining the Licensing (Scotland) Act 2005.

It is difficult to compare the old system with the new one, such is the extent of the change. However, under the current arrangements, the system is subsidised by the council tax payer and the smallest pub pays the same as the largest

hypermarket. The current system also does not allow licensing boards to meet their running costs.

Under the regulations that are before the committee, I am proposing a system that is fair to business. By linking fees to rateable value, small pubs will pay far less than big super-pubs, and small convenience stores will pay far less than big supermarkets. It is anticipated that 82 per cent of premises—approximately 16,400 shops, pubs and clubs—will fall into the lowest three bandings. The higher bandings are likely to affect premises such as large nightclubs and colossal supermarkets. The regulations will allow licensing boards and local authorities to achieve full cost recovery. Local authorities will have the flexibility to employ sufficient licensing standards officers to ensure that the new system is enforced effectively, and costs should reduce when the system settles down after the initial transition period.

It is clear that the new regulations represent a major step forward in tightening up the system and raising standards in the licensed trade. The committee has a clear choice: it can support fair and reasonable regulations that place the cost of running the system on those who profit from the sale of alcohol, or it can reject the regulations and shift the financial burden away from business and put it back on to every council tax payer in the country. The committee can support regulations that are essential for the effective implementation and success of the new licensing regime, or it can accept the views of those who are lobbying for a bargain basement system that would threaten and undermine the key objectives of the 2005 act. Those are: to protect and improve public health; to prevent public nuisance; to secure public safety; to prevent crime and disorder; and to protect children from harm. What message would rejection of the regulations send to our constituents? Which of them do we want to short change?

We need to knuckle down to make the new system work in the interests of our communities. I want to get that message across to all who are involved in alcohol licensing. The choice is clear. I ask the committee to support regulations that put the protection of our communities before the protection of profit margins.

The Convener: Thank you. Committee members will now ask questions.

Bill Butler (Glasgow Anniesland) (Lab): Good morning, cabinet secretary, and thank you for that introductory discourse, much of which no one could really disagree with. You said that the trade needs to meet the system's running costs, that the council tax payer should not subsidise the licensed trade and that there should be full cost recovery, and I agree with you. You also say that the fees are proportionate.

However, the nub of the trade's concerns, as expressed in written submissions to the committee and by other means, is that when the regulations were laid on 10 December, which was the last possible date on which they could be laid, the fees had doubled, for which no real explanation was given. What is your response to that, which seems to be the trade's major initial concern?

Kenny MacAskill: There are two points. First, I do not set the fees, apart from in some cases such as the personal licence. We set a maximum, and it is up to local licensing boards to set a level that they think is proportionate and appropriate for their area. That is appropriate because the local licensing boards know their areas, and cost recovery can vary between small rural authorities and large urban authorities. We set the maximum and the bandings, but we do not set the precise amount, which remains for local licensing boards to do.

10:30

On what Bill Butler alleges is the doubling of fees, responses to the figures that we put in the consultation document included squeals from the alcohol industry that they were far too high; equally, local authorities made significant representations that they were far too low. The purpose of consultation is to take cognisance of representations. We took on board representations from councils that pointed out that, unless the licensing fees increased, they would not manage to meet the costs involved in the licensing system. For example, Glasgow City Council indicated that it would face a £300,000 shortfall each year after transition, so it sought an increase in fees. South Lanarkshire Council indicated that the 63 per cent recovery rate would not change and that an increase in fees would be required.

We listened to those representations because it is the Government's responsibility to weigh them up if local licensing boards are to achieve full cost recovery, as was intended in the Licensing (Scotland) Act 2005, which the previous Administration introduced. Balanced against those representations, the alcohol industry said that the increase in fees would undermine its profit margins and affect the viability of some pubs. We felt that the interests of our communities would be best served if we set a figure that would allow licensing boards to achieve the necessary cost recovery.

Representations on licensing fees came not only from Labour councils but from Liberal Democrat and Scottish National Party councils. I can run through the list: North Lanarkshire Council, Shetland Islands Council, Aberdeen City Council, Dundee City Council, Fife Council, South

Lanarkshire Council, Aberdeenshire Council, Clackmannanshire Council, East Dunbartonshire Council, Perth and Kinross Council, Glasgow City Council, West Lothian Council, East Ayrshire Council and Dumfries and Galloway Council. All those councils argued that, unless the figures in the consultation document were increased, they would not manage to get full cost recovery.

Bill Butler: I hear what you say, which is that the councils spoke with one voice through COSLA. Obviously, the Government must consider evidence from all interested parties, but why did you give more weight to COSLA's evidence than to that of the trade? What convinced you and the Government that COSLA's arguments were better or had more weight than the trade's arguments?

Kenny MacAskill: A variety of factors were involved. One is that I have great faith in local and national democracy. Councils consist of elected representatives who have a mandate to speak for their communities; they do not represent the vested interests of a particular section of a trade that operates to achieve profit levels. The ethos of the 2005 act is to deliver a variety of matters, from public safety through to—with respect to the regulations before the committee—the Nicholson committee's desire, which pre-dates the 2005 act, for full cost recovery for the licensing system. We believe that licensing standards officers will be a vital tool in the armoury of licensing boards and will help to ensure that the situation improves. We also believe that the costs of that tool must be met. That is why I believed and took on board the views of councils from across the political spectrum.

Bill Butler: Again, I hear what you say and I have taken cognisance of it. However, would it not have been better for all concerned—the Parliament, the trade and local government—if the Government had laid the regulations before the last possible date for doing so? What reassurance can you give the trade that what you say today will turn out to be the case and that it should not worry?

Kenny MacAskill: I do not understand the final part of your question about the trade worrying. The setting of fees is a matter for local licensing boards, which must balance the interests of their communities against those of the trade. We set the maximum fee level and, with the Accounts Commission, we will review how things are operating in due course. However, the fees are ultimately a matter for the licensing boards; I am happy to trust their judgment of what is necessary for their communities.

On the argument about the late laying of the regulations, 20 sets of regulations were being put through to make the new system work. It was always known that the 2005 act would require a

considerable amount of subordinate legislation. That has been coming through and it has appeared before the committee, as do I when it is necessary for me to attend to speak to items of subordinate legislation.

It was always indicated to the trade that these would be the final fees regulations in the series. It was only fair to allow boards and the trade to have as up-to-date and accurate a picture as possible to inform their consultation responses. It is not true that these substantial changes were not intimated to the trade. The trade was sent a letter by the licensing team on 10 December and it was given a copy of the regulations, which had been revised following the consultation. Regular updates to the trade continued throughout the implementation process.

We believe that the trade has been kept informed. This is the last of what has been, because of the nature and complexity of the 2005 act, a lengthy series of regulations. It was appropriate that we should introduce an all-encompassing act to sort out our licensing system for the 21st century, and we believe that the trade has had adequate time to adapt to it. It contributed to the consultation, and since then it has not lost any time in lobbying, as members know from correspondence and as I have seen on the television and elsewhere in the media.

Bill Butler: Indeed, and I have seen and heard you in the media as well, cabinet secretary. I understand what you are saying, but do you think that it was good practice that an interest—in this case, the licensed trade—should be given notice of a substantial change to maximum fees on the day on which the regulations were laid? Do you call that notice?

Kenny MacAskill: I do not see how else I can carry out a consultation process, unless I have a pre-consultation process that is then followed by a further consultation process. We went out to consultation, and I had to balance the views of local authorities, including Labour-led authorities in Glasgow and elsewhere, with representations from the trade.

As I said, when the figures in the consultation went out, the trade, representing the private sector and its vested interests, was on one side, saying that the fees were too much; local authorities of all political colourings were on the other side, saying that the regulations did not go far enough and that the fees were not high enough. You may say that I should have gone to a second round of consultation, but I did not see the point in doing so. The whole point of consultation is to get information; we got it, and a decision had to be made.

As I said in my introduction, at the end of the day I had to come down on one side or the other. There was no possibility of brokering an agreement. The councils want an increase in the fees to cover their costs, while the trade wants a reduction so that it does not have to meet those costs. I had to make a decision, and it is a decision that I stand by. I did not see any requirement for a second round of consultation. That was the nature of the terrain that we were in.

Bill Butler: I am obliged.

Paul Martin (Glasgow Springburn) (Lab): Cabinet secretary, let me take you back to your comment that you had to come down on the side of the responses that you received from the licensing boards. What information did your officials provide to you to ensure that you could interrogate effectively the proposals that were put before you? I am sure that you would not have taken your decision unless you had been provided with compelling evidence from your officials that there was a need to increase the fees.

Kenny MacAskill: I was provided with a lot of information. North Lanarkshire Council said that, without an increase in fees, it would be underfunded and that either the costs of licensing standards officers would be passed on to residents or a less-than-effective enforcement service would be delivered. I thought that that was a worrying statement. Shetland Islands Council indicated that there would be underrecovery and that a flat fee would be unlikely to achieve cost recovery, given the small number of licensed premises in that area. I have a great deal of sympathy with that point, given the council's location. Aberdeen City Council said that the cost of collecting annual fees would be as much as the fee itself.

Dundee City Council indicated that there would be a £100,000 per annum shortfall, while Fife Council said that there would be an £84,000 per annum shortfall. South Lanarkshire Council indicated that there would be no change in the 63 per cent cost recovery rate and that it would be no further forward in relation to full cost recovery. As I said at the outset, the current situation in which council tax payers subsidise the licensing arrangements is unacceptable. Aberdeenshire Council indicated that only 22 per cent of cost recovery was achieved and that that had to change. I agreed with it.

Clackmannanshire Council said that there would be a 20 per cent shortfall, while East Dunbartonshire Council said that there would be a shortfall after transition. Perth and Kinross Council said that there would be a £6,000 shortfall during transition and a £26,000 per annum shortfall thereafter. Glasgow City Council indicated that there would be a £300,000 shortfall each year

after transition. West Lothian Council said that there would be a £67,700 shortfall in year 2. East Ayrshire Council indicated that a 50 per cent increase in the fees was needed, and Dumfries and Galloway Council said that the proposed fee levels were inadequate and would not allow for the employment of licensing standards officers.

I had to take all those representations in the round. I had to balance the need to allow areas such as Shetland to be protected properly and areas such as Dumfries and Galloway to have licensing standards officers. In my view, licensing standards officers are absolutely vital to the delivery of a safe and secure licensing regime and will benefit not only our communities, but the licensed trade. I also had to ensure, in cities such as Glasgow, which Paul Martin represents, that council tax payers did not have to find £300,000 to subsidise the licensed industry's private profit.

Paul Martin: I ask you to answer my question. I appreciate that you have received conflicting evidence from the Scottish Beer and Pub Association and local authorities. I do not doubt that authorities—Glasgow City Council in particular—provided information with the best of intentions and as accurately as possible. I am sure that every consultation that the Scottish Government undertakes is interrogated effectively. However, my question is whether you interrogated the information. Did your officials do that effectively? How did they reach the calculation that they reached?

Kenny MacAskill: I have—

Paul Martin: The question is straightforward, cabinet secretary. I am not asking for another preamble about Glasgow City Council's response. The question is clear: how did you reach the decision? On the conflicting evidence, did your officials provide you with a briefing paper? If so, will you be kind enough to provide it to the committee so that we can ensure that you interrogated the proposal effectively?

Kenny MacAskill: The question is predicated on a false assumption. You seem to be asking me to interrogate those who submitted the information on the ground that you doubt their veracity.

Paul Martin: I am not saying that.

Kenny MacAskill: Well, you asked what interrogation I had carried out. If, as Cabinet Secretary for Justice, I receive a communication from Glasgow City Council on behalf of its licensing board in which the council says that it faces a £300,000 shortfall, it is not appropriate for me to say, "I have reason to believe that you are lying." I do not think that the authorities were lying. I took at face value the representations from local authorities and from the trade. It would be highly inappropriate for the department or the cabinet

secretary to work on the assumption that the information that we are given is false, misleading or anything other than accurate. Therefore, my answer is no, I did not interrogate them.

The purpose of the consultation—as with most consultations—was to ask people to contribute. We do not challenge representations without good reason. We have no reason to believe that the information from Glasgow City Council, the City of Edinburgh Council or any other council is anything other than accurate. Your question was predicated in such a way that it casts a slur on all those who contributed to the consultation, irrespective of the side of the argument on which they came down.

You also asked whether I had received a briefing paper on the matter. The department provides me with numerous briefings to keep me abreast and aware of what is coming in.

Paul Martin: You do a great disservice to the question, cabinet secretary. I asked an objective question that was not at all predicated in the way that you suggest. I asked whether you interrogated the representations that you received in the consultation—

Kenny MacAskill: And I answered you.

Paul Martin: Clearly, you did not. The committee should consider that when it makes its decision.

Earlier, you said that the new system for setting the fees would be of great benefit to our communities. In saying that, were you referring to my polluter-pays proposal, which your party did not support at the time? Is your decision on the setting of fees connected in any way to the argument that the polluter should pay?

Kenny MacAskill: Absolutely, but the polluter-pays argument is a separate matter, which we will address in due course and to which we are committed fully, as I have said publicly and to the committee. However, of course there is a broader ethos or theme that runs through this debate, which is that the polluter should pay. At the end of the day, it is inappropriate for the trade to cover only 63 per cent of the costs of the licensing system and for the council tax payer to have to deal with the balance of 37 per cent. That is unacceptable. We believe that those who profit from the sale of alcohol should meet the costs arising from the sale of alcohol.

As we have outlined previously, the answer to the question whether the polluter-pays principle should be dealt with in distinctive and separate regulations is yes. However, we as a Government sign up to the fundamental ethos that the costs related to alcohol should be met by those who benefit from the sale of alcohol.

10:45

The Convener: I want to follow up a point that Mr Martin raised. When the regulations first came before the committee, we received correspondence from you that indicated that at some stage in the process the Accounts Commission would be asked to carry out a review of the charges imposed by local authorities to ascertain whether they were reasonable and that, in the event of it being found that the fees charged were not reasonable, licensees and applicants would be given the appropriate refund. Bearing in mind the concerns that Mr Martin articulated, did you not think it appropriate that the Accounts Commission should carry out some preliminary work prior to your laying the regulations, to see whether the fees that local authorities were likely to charge would be appropriate in all circumstances?

Kenny MacAskill: No. That would have been premature. We will look at how the system beds down first. The purpose of the Accounts Commission is to review, not to speculate. We will be happy to see how boards adapt to the new system; we will review it after it comes fully into force—not this year, but in September 2009.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Good morning, cabinet secretary. This morning you backed up what you said in a letter to the convener by advising us that, under the current licensing regime, only 63 per cent of the costs are met by the licensing fees set. That being the case, will you confirm whether the fee levels suggested in the consultation document, which was issued last year, would create a self-financing system?

Kenny MacAskill: The whole purpose of the consultation was consultation. There was only anecdotal evidence about the position, so we issued a consultation to test the water. What we got back was one side saying, “This is far too much and you are squeezing our profit margin,” and the other side saying, “This is inadequate and it won’t cover our costs.” The purpose of a consultation is to find out views. If information is not available, you have to make inquiries. The information that we included in the consultation was intended to provide the spark for the debate.

Cathie Craigie: You have not answered my question. You have said that you accept information that comes to you from local authorities. I would expect the figures and facts in a Government consultation that is issued to local authorities and the trade to have been costed. Would the fee levels suggested in the consultation document have provided a self-financing licensing system?

Kenny MacAskill: I cannot possibly speculate on that. I do not know how many licensing standards officers a particular area might want. We as a Government could speculate that Shetland Islands Council might want half a licensing standards officer—it might want to share one with another area—or that Glasgow City Council might want one. However, authorities might come back to us and say that they want three or four such officers. There is some information that we cannot possibly know.

Licensing boards determine matters locally, to allow them to meet the needs of their communities. That is why we had to issue a consultation. Otherwise, there would be a deeply centralised regime. The only way that we could do what you are suggesting is by having central Government say to local authorities that X number of officers are required in one area and Y number are required in another. I cannot make such an assumption. We have to issue a consultation to allow authorities to work out how many officers they think that they need and what the costs might be. I do not set the salary level for a licensing standards officer. If Glasgow City Council chose to pay £20,000, the costs that it will require to recover will be significantly different from what they would be if it chose to pay £40,000. I hope that you would agree that it is not my job to set the wages of a licensing standards officer.

Accordingly, I cannot possibly get to the position that you are suggesting, because I must leave it to the democratically elected licensing board to decide what is fair and appropriate, taking account of what it thinks is needed in the communities that it serves. The board must decide not only how many LSOs there should be and what salary they should get but a variety of matters that are correctly in the domain of the local licensing board.

Cathie Craigie: I have made no suggestions; you and your officials are making suggestions on licensing fees.

I am sure that I speak for the vast majority of the committee when I say that I cannot disagree with anything that you said in your opening remarks. However, I am trying to get at how the Government estimated the cost to licensing boards of delivery of the system. I would be concerned to learn that the Government had gone out to consultation without at least having done the sums and estimated the cost.

Kenny MacAskill: You are quite right; we had to base our figures on evidence. We based them on research that was carried out in 2005, when, as you know, we were not the Administration. We based the consultation on the most reliable information that we had at the time, which was the report that had been instructed by the Liberal-Labour Executive.

That was the empirical evidence on which the consultation was based, but—I presume partly because of inflation and a variety of other matters—it was quite clear that licensing boards thought that the research was flawed and that the sums were not high enough to meet their cost requirements. The Government has been delighted to ensure that we deliver for councils, whether they are Labour, Liberal Democrat, Scottish National Party or Conservative.

You might think that the information that we put out was flawed, but the only empirical information that we had before us had been instructed by the previous Administration, which you supported.

Cathie Craigie: I am grateful, because I think that we have moved on a little. Are you saying that the figures in the consultation document that was issued last year were based on information in the Nicholson report, other information that the previous Scottish Executive had and inflation—

Kenny MacAskill: They were based on the research report, which had nothing to do with inflation.

Cathie Craigie: If they had “nothing to do with inflation”, why did you just mention inflation?

Kenny MacAskill: The consultation was based on information in the research report of 2005. We then had to consider the representations of local authorities, including North Lanarkshire Council, in your area, which said that it would be underfunded—

Cathie Craigie: I think that you have misunderstood the question. Convener, I think—

The Convener: Let the cabinet secretary finish.

Kenny MacAskill: It might be that local authorities took into account inflation between 2005 and 2007—I do not know. However, I can say that North Lanarkshire Council said that on the basis of the figures in the research report that was commissioned by the Labour-Liberal Executive, it would be underfunded and either the costs of licensing standards officers would be passed on to residents or a less-than-effective enforcement service would be delivered. I have no doubt that that is not what you want for the residents of North Lanarkshire, which is why I supported the representation that its elected councillors made.

Cathie Craigie: Are you saying that the consultation that went out last year was based on the findings in the research report and inflation between 2005 and—

Kenny MacAskill: Inflation is a red herring. The consultation was based on the research report.

Cathie Craigie: We will have to check the *Official Report*. It was you who threw in the point about inflation in response to my question.

Kenny MacAskill: I mentioned inflation in the context of making the point that there was inflation between 2005 and 2008, whatever level it ran at, which might or might not have been a factor that influenced North Lanarkshire’s desire for an increase. As I said, North Lanarkshire Council wanted to ensure, through LSOs, effective enforcement and cost recovery.

Cathie Craigie: I turn now to North Lanarkshire Council’s submission. I accept that North Lanarkshire wants a self-financing system. The council expresses concern about basing the proposed increase in fees on rateable value. It is concerned about who would determine which band an applicant would fall within. Would the applicant be expected to provide the necessary information? Would the licensing board be expected to check the information that the applicant gave? How would it go about doing that?

Kenny MacAskill: That would be an administrative matter for the board. Rateable values are dealt with by local authorities, and it appears appropriate to me for such matters to be dealt with by local authorities, not nationally. It is not rocket science for the licensing board convener to get the information by speaking to whomever in the local authority deals with rates assessment. That is a straightforward administrative matter, which any local authority would be perfectly capable of dealing with.

Cathie Craigie: Some people have suggested to me that the reason for the increase between September and December is more to do with shortfalls in the Government’s budget and what it has been able to give to local authorities, rather than with having a fair and equitable self-financing system. How would you respond to people who might suggest that to you?

Kenny MacAskill: That is total baloney. The system is to be self-financing. The intention was never to get any money from central Government. It was clear that the consultation document was based on erroneous information, which was dated or which did not work out. We required to increase the fees that were available to allow North Lanarkshire to deliver the self-financing operation. There is no central Government involvement here, apart from in setting the maximum fee level. Otherwise, the system is up to the local authority. Ever since the Nicholson review, it has been anticipated that the costs should be met by those who profit, through the till or across the counter. That remains the commitment of this Government, as it was of the previous Administration.

Margaret Smith (Edinburgh West) (LD): Good morning, cabinet secretary. I will make a comment before I ask my question. It is fair to say, from both this question session and last week's meeting, that all members of the committee want the system to be self-financing. We do not want the licensed trade to be subsidised by the taxpayers and local authorities of Scotland. We are all trying to get to the same end point, where we have a fair system. It will be fair to all sides if it is based on transparency, but there seem to have been a number of points along the way where we have had a distinct lack of transparency.

I will return to the point that you have been asked about before: the basis on which the consultation was entered into. It seems that research was undertaken by the consultancy firm York Consulting under the previous Administration—although it is neither here nor there which Administration was in power at that point. We are being told that the consultants came forward with figures after consulting local authorities, asking them to fill in questionnaires and asking them how many licensing standards officers they thought would be required. That work, and probably other work done by the consultants, formed the basis of the consultation that was conducted over the summer. On that basis, it was expected that the fee levels would double.

Your use of language is interesting. You are saying that it is perfectly acceptable for local authorities to be asking for more money—despite the fact that that is not really what most of them were saying in earlier responses to the consultants. I think that you used the word “squealing” about the licensed trade. That is perhaps not a clear playing pitch in terms of the fairness of your language. However, the bottom line is that the original basis for your decisions came from local authorities.

You went out to consultation and you got a different response from local authorities. Then you quadrupled the fees and laid the regulations on the last possible day, without any further discussion.

A couple of points arise. First, what caused the discrepancy between what local authorities said when they were first asked about the issues by York Consulting and what they said later in response to your more recent consultation—a consultation that was based on York Consulting's report?

11:00

Kenny MacAskill: I probably cannot answer that; you would have to ask the individual local authorities. If we had a consultation document but I simply plucked figures from fresh air, that would

be inappropriate and there would be outrage. The only available empirical evidence was from the research document. That document was produced in 2005, before the Licensing (Scotland) Act 2005 was passed and perhaps before certain matters had been fully developed. I have no reason to challenge the accuracy of the report or to believe that the way in which it was produced was flawed, but I have to consider the representations that are being made now.

Something else has changed: local authorities have changed. In 2005, when the report was produced, the City of Edinburgh Council would have dealt with these matters with a Labour convener of the licensing board. Now the convener of the licensing board, Marjorie Thomas, is a Liberal Democrat. Perhaps she made it clear that she felt that the previous information was inadequate. I understand that the City of Edinburgh Council has put in figures that are around 68 per cent of the maximum. That is a matter for the council.

Because certain factors have arisen, I cannot speculate as to why local authorities felt the need to change their position. I do not know what was said to the compilers of the consultation document in 2005, but I know what is being said now. It has been clearly said that local authorities want these matters to be dealt with. Licensing boards have changed, as has the nature of Scottish local authorities following the elections in May 2007.

Margaret Smith: Licensing boards are quasi-judicial. I used to serve on a licensing board in Edinburgh and the party-political affiliation of the convener is a total irrelevance. They are being asked to make a judgment—based on the judgment of their officials—on what the costs of the upcoming licensing system will be, and everybody's intention is to achieve the recovery of the costs of the administration of the system. Whether the convener is Labour or Liberal Democrat is probably irrelevant if they are being asked the same question—namely, what will be the cost of the administration of the new system if it is to recover fees?

I move on to my second question, which is—

Kenny MacAskill: Was there a question for me there?

Margaret Smith: No. Your answer to my earlier question was a slur on conveners of licensing boards, so—

Kenny MacAskill: I have to repudiate that, convener. It is only fair to put that on record.

The Convener: You will have a chance to repudiate it in a minute, but let Ms Smith finish.

Margaret Smith: Councils have been asked a simple question: what will the system cost you?

They gave one set of figures, which formed the basis of the consultation document that the Scottish Government sent out. People then responded on the basis of the consultation document, and local authorities have changed their position. The trade has been working on the assumption that the consultation document contained the research on which your work is now based. Local authorities have changed their minds and asked for more money, and you have listened to them, but you have not listened to the trade, which is saying that the fees are now too much and represent a quadrupling of the fees. That is not a particularly transparent way to do business—unless you go back to the trade and give it a chance at least to comment on the fact that, instead of doubling the fees, you are quadrupling them.

I believe that around 15 local authorities have already set their fee levels, before the committee has decided—at the 11th hour—whether we will take the measure forward.

The regulations state that the fees are to be set at a level that is “broadly equivalent” to the cost of the administrative commitments. Are you content that councils will recover their costs, or do you believe that the term “broadly equivalent” will allow for the possibility that some councils could reclaim more than is required for the administrative costs? To try to generate a partial response from you, I will use an example. So far, the vast majority of councils have stated that they will go up to the maximum. That includes Glasgow City Council, but it looks as though the city that has a roughly equivalent number of licensed premises—Edinburgh, which we both know well—will set charges at about 68 per cent of the maximum. By using the term “broadly equivalent”, are you giving too much breadth and introducing a lack of transparency about what the trade can expect?

Kenny MacAskill: You raise significant issues. I make it clear that neither I nor the department have ever cast a slur on licensing boards. Indeed, we are taking them at face value. I believe in their veracity. We are not interrogating or challenging them, because I believe that they have represented their local authorities appropriately. It is when people suggest otherwise that aspersions and slurs are cast.

We can proceed only on the basis of the information that we have received. It is appropriate that the local authorities should decide. If the City of Edinburgh Council wants to set fees at 68 per cent of the maximum and Glasgow City Council wants to go to the maximum, that is a matter for those councils—they know their areas better than I do, although I could comment on Edinburgh. It would not be appropriate for the levels to be set in St Andrews house. You appear to be arguing that

we should set the fees in St Andrews house. If that is the proposal, that is fair and well, but we do not think that that is appropriate.

Margaret Smith: Believe me, if that is what I was saying, I would say it.

Kenny MacAskill: We think that the matter should be left to local authorities.

We do not know whether the term “broadly equivalent” is common parlance, but it has been accepted by the Subordinate Legislation Committee and by those who drafted and scrutinised the regulations as being competent and as falling within the necessary legal definitions. As I said, the Accounts Commission will be able to review the situation when the system has bedded down, and the statute requires that the aim should be to try to achieve cost recovery. Therefore, there is protection in the legislation to ensure that any board that seeks to use the alcohol sector as a cash cow—to use the parlance—cannot do so. Given the nature of what we are dealing with, we must have flexibility. We take the boards on trust and we believe that sufficient scrutiny and review processes are in place through the Accounts Commission and, ultimately, local authority democracy to ensure that protection is given to all.

Margaret Smith: I have a specific point about something that may be missing—the regulations do not appear to cover fees for the transfer of a licence.

Kenny MacAskill: I am told that regulation 11 provides for that.

Margaret Smith: Right—that is fine.

On monitoring and review, it will be a couple of years before the Accounts Commission can consider the system. For the sake of argument, let us assume that an issue arose about the amount that the trade had been charged. We do not have to go into the basis for or reasoning behind that—the system is brand new and there will be a transitional period so genuine mistakes may be made along the way. If local authorities had overestimated the costs and the trade had paid a significant amount of money that was not attributable to administrative costs, what would you do? Might you provide remuneration to the trade for that overcharging?

Kenny MacAskill: The whole ethos of the Nicholson review was about cost recovery, and that was the basis of the 2005 act, which was passed under a previous Administration. We would certainly expect a board that had overcharged to seek to provide a reduction in fees in the following years. Such matters are set in the act. If that board did not do so, the Accounts

Commission would, doubtless, pick that up in due course.

The Convener: After we discussed the regulations last week, we wrote to you about specific issues on which we required clarification, one of which was cost. You kindly replied on 17 January and, in paragraphs 9 to 12 of your letter, you clearly set out costs for an average pub. In paragraph 12, you concluded:

“under the 2005 Act arrangements, the pub would pay”

only

“£136.60 more per year or £11.38 more per month.”

Given that the costs will largely be front loaded, is that comparison a little nebulous?

Kenny MacAskill: I do not think so.

The Convener: You considered costs over 10 years. If the issue had been that the arrangements would cost the average pub £130 or so extra per annum I do not think that the committee would have been tremendously sympathetic. However, we had representations—which you have seen—from two public houses, one in the Borders and one in Ayrshire, where turnover is low and the impact would be significant.

Kenny MacAskill: In paragraph 11 of my letter, I gave further information. I am not sure what more information you seek from us.

The Convener: I am not seeking further information; you provided comprehensive information. My concern is that the conclusion that you reach in paragraph 12, which is arithmetically correct, is perhaps slightly misleading, in that you consider a business's operating costs over 10 years. Do you agree that if you consider operating costs over three years, the amount that the business pays will be disproportionately high?

Kenny MacAskill: We had to take a position, and that is the one that we put forward. I can only go back to what I said in my introductory remarks. If we do not bring in the regulations, a small rural pub will continue to pay the same fee as others pay. We are providing a system in which fees reflect rateable value. The approach is not 100 per cent accurate, but it is better than a simple blanket rate that does not take into account criteria that are more accurately reflected in the rateable value. It is probably the case that some pubs will face difficulties. However, many will benefit, because the system will be loaded against the hypermarkets and super-pubs, not the smaller outlets. That seems perfectly appropriate.

Stuart McMillan (West of Scotland) (SNP): You said that the Accounts Commission will review the situation in 2009. If it turns out that a few pubs in rural communities in Scotland have closed because of the new arrangements, will it be

possible to introduce a new band for businesses with a rateable value of under £11,500, to help rural businesses?

Kenny MacAskill: We would be more than happy to consider a change in the banding, whether that means providing higher or lower bands. There would be complexities, but we do not rule out doing that. We should see how the new arrangements bed in. All parties wanted the approach in the 2005 act and local authority licensing boards desired the new arrangements. If there is a gap that we are failing to address or if problems arise, we will be more than happy to consider what can be done.

11:15

Nigel Don (North East Scotland) (SNP): A great deal of the discussion has been about how the numbers doubled. It seems that the numbers came from the local authorities. I have a sneaking suspicion that I am not the only former councillor and licensing board member on the committee. I cannot help wondering whether the local authority licensing boards' first calculations were made on the back of an envelope but the chief executive came along later and said, “Hey guys, that is the marginal cost. The full cost is double that figure.” That is what tends to happen.

I have the same faith that you have in licensing boards, cabinet secretary, and the list of authorities that have already set their fees at 100 per cent suggests to me that the figures are in fact about right. Licensing boards, which will ultimately be responsible to the electorate, seem to have finished up with broadly the figure that was the maximum. I know that that is not what the licensed trade was looking for, but it looks as though it might be the right answer. Do you have any idea why the City of Edinburgh Council has come up with a figure that is 68 per cent of the maximum and Glasgow City Council has come up with a figure that is 100 per cent of the maximum? Can we ask the councils that question? Will you ask them? Alternatively, do we just leave it to local democracy?

Kenny MacAskill: I think that we have to leave it to local democracy. As a representative of the city of Edinburgh, I add only that I remember being flabbergasted when Tom Wood, from the drug and alcohol action team, pointed out that there were more licences in Edinburgh than there were in Glasgow, because we have a significantly greater number of corner shops with alcohol licences. Although Edinburgh has a smaller population than Glasgow, we have more liquor licences.

Nigel Don: So it might just be a volume effect, in more ways than one.

The Scottish Parliament information centre has done some excellent research on the meaning of “broadly equivalent”. There is a reference to section 11 of the Public Finance and Accountability (Scotland) Act 2000, which provides some clues in print as to what “broadly equivalent” might mean. It is exactly what we would have expected.

Kenny MacAskill: That is helpful.

Paul Martin: York Consulting carried out its research in 2005. Have you asked it to comment on the issues that respondents raised in the latest consultation exercise, which took place in 2007?

Kenny MacAskill: No. The Administration takes the view that we are sick and tired of consultations, studies into consultations and consultations on consultations. We have had a consultation, to which local authorities and the licensed trade have responded. We have decided that we will see how the system beds down. If there is overcharging, I hope that that money will be repaid through reduced fees. As matters come out in the wash, the Accounts Commission will be able to review them. If there are problems, as Stuart McMillan has said, the Administration can address them. We have to move on. We are in 2008. The 2005 act is bedding in and a decision has to be taken. We do not need further consultations and studies.

Paul Martin: You said that you based your assumptions on the York Consulting document of 2005. I am not asking you whether you carried out another consultation exercise; all I am asking is whether there was any communication between York Consulting and your officials to see how the figures were arrived at and examine why they had to be quadrupled. Was there any communication with York Consulting? We must have paid it a lot of money in the first place. Surely we could go back to it and ask for further information.

Kenny MacAskill: Your colleague Margaret Smith said that these matters are quasi-judicial. The convener will know the legal term “the best evidence rule”. The best evidence here is the information from the licensing boards. Why would I go back to York Consulting to ask it to clarify the position that it got from an individual licensing board, when the individual licensing board has given me information directly? The best evidence is the information provided by the licensing board. I am not criticising or casting aspersions on York Consulting, which did what it did in 2005. If you are asking me whether I am going to pay York Consulting more money to clarify what the licensing boards are saying, the short answer is no. I had the information directly from the horse’s mouth and I accepted it.

Paul Martin: Was there any contact with York Consulting—yes or no? I am not asking whether you paid any more money or anything like that. All I am asking is whether there was any communication with York Consulting in respect of its document of 2005—yes or no?

Kenny MacAskill: No. We had the information from the licensing boards, which we accepted.

John Wilson (Central Scotland) (SNP): Good morning, cabinet secretary. One of the problems here is that the devil is in the detail in relation to full cost recovery. You said earlier that the Accounts Commission would be asked to review the situation. What review, if any, will your department carry out of the job remits of licensing standards officers? I accept the full cost recovery principle, but the issue is what exactly the officers will be expected to do as part of their functions. You said earlier that, depending on the level of pay that Glasgow or Edinburgh may decide to award to the position—one may decide to award £20,000 and one may decide to award £40,000—the full recovery costs will increase dramatically from authority to authority. I am concerned by the number of authorities that are saying that, because of the costs involved and because of the decisions that have been made by licensing boards, they need to charge the full rate as opposed to the reduced amount that Edinburgh is going to charge. Will your department monitor the implementation of the regime, in addition to the review that the Accounts Commission will conduct when the system is bedded in?

Kenny MacAskill: We will consider the information as it comes in. It is a fair question, but we must provide some flexibility for local authorities. For example, some local authorities may take the view that they cannot justify a full-time LSO and may seek to tie the role in with environmental responsibilities or with trading standards. That is a matter for them, and the wages will depend on the nature of the job. We must try to ensure best practice. Much of that will come through the Accounts Commission’s review.

We are always looking to discover and promote best practice. At the behest of Labour, we are seeking to host a summit on how we tackle the problem of underage drinking in our communities. LSOs are a significant factor in that. If the regime is working well somewhere, we regard it as our obligation to point that out. Although that best practice might not be suitable for transposition or transplantation to another local authority area, we will ensure that, when we find best practice, we pass that information on. It is not for us to direct, but it is for us to promote and encourage best practice. We will do that as well as working with the Accounts Commission.

Cathie Craigie: I am looking at your letter to the convener dated 17 January. You confirm in paragraph 5, on “Research undertaken”, that the independent research

“presented a range of views and options for the creation of a new licensing fee structure and was based on information gained from 31 local authorities”.

Was any comparison made between the information that was gained from local authorities through the consultation that you carried out, starting in September, and the information that was gained from local authorities in the research document? I do not expect you to have made the comparison yourself, but did the civil servants in your department compare that information?

Kenny MacAskill: No, we did not do that because, as I say, we recognised that the system had changed and that time had moved on. We had to accept the information that we were given. The only logic in what you are suggesting is that we should challenge local authorities and accuse them of getting their figures wrong. Frankly, I accept the information that we received. I do not see why the department should have sought to compare and contrast the two sets of responses when the local authorities clearly thought that matters had changed significantly. Only one local authority did not respond to the initial consultation.

We had to accept the best evidence, which was the most up-to-date information given by the newly elected and empowered licensing boards. We accepted that information.

Cathie Craigie: I ask the question because you say in your letter that the preparation of the regulations “has been assisted by” the independent research that was carried out. I would have thought it reasonable to compare the information, but you are saying that you accepted without question the information that you received from the licensing boards in the latest consultation.

Kenny MacAskill: The information that we accepted from the review and the consultation was, for example, that the fee level should be predicated on rateable value. That is what came through and that is what we accepted. Local authorities accepted the recommendation of the review that the fee level should be predicated on rateable value and other recommendations, and we did not disagree with that at the time.

What changed was that when local authorities were asked in 2007 whether the proposed level of fees, which was based on the review that was conducted in 2005, was adequate, they said that it was not. We were more than happy to accept the basis and the structure, as were the local authorities, but we accepted their position, advice and information that the fee level was

inadequate—I am obliged to accept that to try to deliver cost recovery.

Margaret Smith: The questions that York Consulting asked local authorities before the research was done were exactly the same as those that were asked in the later consultation. Local authorities were asked about the costs of administering the system and the fees that they would require to cover those costs. Nigel Don speculated that once the situation is clearer, people might take a different view, but local authorities were asked what they thought the costs would be under the new system and after taking into account the cost of licensing standards officers. Local authorities gave York Consulting answers, which it used.

Your letter to the convener says:

“The development of regulations has been assisted by independent research commissioned by the previous administration.”

That means York Consulting’s report. You consulted on that basis, and local authorities had changed their minds in the intervening time. They said that administering the system would be much more expensive than they had thought, but they had been asked exactly the same question before. The questions were not about the old system but about the costs of the new system, including the cost of licensing standards officers. Those costs were included and referred to in paragraphs 5.21, 5.30 and 5.33 of the York Consulting report, which used information that licensing boards supplied in their questionnaire responses.

Kenny MacAskill: The counter-argument to that, which is simple, does not blame or suggest ill-will by local authorities. The fee review was conducted early in the passage of the bill that is now the act on which the system is predicated. When the research was undertaken, the bill that was being taken through Parliament by George Lyon MSP—the relevant minister, who I recall was a Liberal Democrat—was predicated on each licensing board having one LSO. That subsequently changed.

As all of us who were members of Parliament at the time will remember, the passage of that act was not the most edifying in the Parliament’s history. The ground on which matters were predicated and on which York Consulting undertook its study changed significantly because of amendments, some of which I have no doubt were the result of representations by a variety of bodies and some of which were made by your former party colleague George Lyon, who was the bill’s architect and whom I thank for his work.

The Convener: Members have no more questions, so we will move to agenda item 3, which is the motion in my name. It reads:

"That the Justice Committee recommends that nothing further be done under the Licensing (Fees) (Scotland) Regulations 2007".

The motion to annul was lodged so that the committee would have an appropriate way in which to proceed if it were unsatisfied after today's deliberations. Members are aware that the clerk e-mailed them to say that if I do not move the motion, another member who agrees with it can move it. The clerk advises me that no other member has indicated agreement with what I have said in that standard motion to annul.

We move to the winding-up discussion. The nub of the argument relates to cost. The 2005 act was passed largely with the agreement of everyone, albeit in fairly shambolic circumstances. It is agreed that the best approach is to base charges on the rateable values of establishments and there is no difficulty with that.

The matter was remitted to the local authorities, which came back and stated that the costs that they had initially envisaged were low estimates and that they could not run the licensing function without incurring significant loss and passing on the excess costs to their council tax payers.

11:30

Today's discussions and our deliberations last week leave me with the distinct impression that the matter has not been happily handled. The cabinet secretary should have gone back to the consultants after the consultation, but he did not do so. It is unfortunate that an attempt has been made to present a fait accompli to the committee by presenting the regulations at the last possible moment. That has come out loud and clear today, and I hope that a lesson will be learned from that for the future.

People require time in which to consider such matters. Although we cannot continue and adjourn matters in perpetuity, it is only proper that there should be proper consultation and that everyone should be able to consider matters clearly and, if not in a leisurely manner, at least in a measured one. However, the consequences of our not allowing the regulations to go through today would be to prejudice in the extreme the operation of the 2005 act, to which we have all signed up. It would not be appropriate to do so, and it is not my intention to move the motion to annul.

I suspend the meeting so that the cabinet secretary's officials can change over.

11:32

Meeting suspended.

11:33

On resuming—

Management of Offenders etc (Scotland) Act 2005 (Members' Remuneration and Supplementary Provisions) Order 2008 (Draft)

The Convener: Agenda item 4 is consideration of a draft order, which is subject to the affirmative procedure.

I welcome Kenny MacAskill again. This time, he is accompanied by Henry Snedden, who is head of the Scottish Government community justice services branch; Randal McTaggart, who is the policy and liaison officer in the same branch; and Gordon McNicoll and Andrew Ruxton, who are from the Scottish Government solicitors criminal justice, police and fire division.

I refer members to the draft order and the cover note, which is paper J/S3/08/2/6. I invite Mr MacAskill to speak to the instrument and move motion S3M-1106.

Kenny MacAskill: Community justice authorities are independent statutory bodies and, as such, part of neither local nor central Government. Therefore, they cannot be audited under existing arrangements that apply to other governmental bodies. We have consulted Audit Scotland on the most effective mechanism for ensuring that their accounts are properly audited, and the draft order makes explicit the requirement on CJAs to submit their accounts.

The draft order also deals with CJA member allowances. In 2006, secondary legislation was passed to enable CJAs to reimburse their members' expenses by applying local government regulations. However, due to a change to the relevant regulations in 2007, the legal basis for CJAs to reimburse expenses no longer exists. The draft order seeks to rectify that by linking them into the new local government regulations that came into force following the 2007 elections.

The recent changes to the local government regulations have resulted in CJA conveners and deputy conveners no longer being eligible for additional allowances. The new local government framework has established a system for remunerating elected members who take on additional roles. Having consulted COSLA, we propose that CJA conveners and their deputies should be remunerated in recognition of the strategic nature of the role and its additional responsibilities. The proposed framework will require CJAs to pay an additional salary to a convener or deputy convener provided that they are not already receiving additional remuneration for being a senior councillor. The basic councillor

salary is currently £15,452; therefore, the draft order provides for conveners to be paid £19,316 per annum and their deputies £18,350 per annum.

The Subordinate Legislation Committee considered the draft order on 15 January and was content to draw it to the attention of the committee and the Parliament. I recommend to the committee that it be approved.

I move,

That the Justice Committee recommends that the draft Management of Offenders etc. (Scotland) Act 2005 (Members' Remuneration and Supplementary Provisions) Order 2008 be approved.

The Convener: There being no questions or comments, there is no need for the cabinet secretary to wind up, unless he is otherwise minded.

Kenny MacAskill: I have no desire to do so.

Motion agreed to.

The Convener: That is the conclusion of the cabinet secretary's involvement in the meeting. I suspend the meeting briefly while he and his party leave.

11:36

Meeting suspended.

11:38

On resuming—

Inquiries (Scotland) Rules 2007 (SSI 2007/560)

Licensing (Transitional and Saving Provisions) (Scotland) Amendment Order 2007 (SSI 2007/573)

Gambling Act 2005 (Review of Premises Licences) (Scotland) Amendment Regulations 2007 (SSI 2007/574)

Scottish Police Services Authority (Staff Transfer) (No 2) Order 2007 (SSI 2007/576)

The Convener: There are four negative instruments to be considered under agenda item 5. Are committee members content with them?

Members *indicated agreement.*

The Convener: The committee will now move into private.

11:39

Meeting continued in private until 13:00.

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