JUSTICE COMMITTEE

Tuesday 16 June 2009

Session 3

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JUSTICE COMMITTEE
20th Meeting 2009, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
Angela Constance (Livingston) (SNP)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*Paul Martin (Glasgow Springburn) (Lab)
*Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

*Aileen Campbell (South of Scotland) (SNP)
John Lamont (Roxburgh and Berwickshire) (Con)
Mike Pringle (Edinburgh South) (LD)
Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

Assistant Chief Constable Andrew Barker (Association of Chief Police Officers in Scotland)
Patrick Browne (Scottish Beer and Pub Association)
Inspector Gordon Hunter (Association of Chief Police Officers in Scotland)
Frank Jensen (Fife Council)
John Loudon (Law Society of Scotland)
Alan McCreadie (Law Society of Scotland)
Mairi Millar (City of Glasgow Licensing Board)
Sylvia Murray (Convention of Scottish Local Authorities)
Paul Smith (Scottish Late Night Operators Association)
Paul D Smith (Noctis)
Councillor Marjorie Thomas (City of Edinburgh Licensing Board)
Paul Waterson (Scottish Licensed Trade Association)
Colin Wilkinson (Scottish Licensed Trade Association)

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 16 June 2009

[THE CONVENER *opened the meeting at 10:05*]

Decisions on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I remind everyone to switch off their mobile phones. We have received apologies from Angela Constance, so I welcome Aileen Campbell as her substitute.

Aileen, I ask you to confirm that you are present as a committee substitute.

Aileen Campbell (South of Scotland) (SNP): I am present as a substitute.

The Convener: Thank you.

Under agenda item 1, the committee is asked to agree to take in private its consideration of an issues paper and a draft report on the Criminal Justice and Licensing (Scotland) Bill at future meetings. Is that agreed?

Members *indicated agreement*.

The Convener: Under item 2, the committee is asked to agree to take in private at its next meeting its consideration of the appointment of an adviser for its scrutiny of the Scottish Government's draft budget 2010-11. Is that agreed?

Members *indicated agreement*.

Criminal Justice and Licensing (Scotland) Bill: Stage 1

10:06

The Convener: This morning's principal business is our continuing consideration of the Criminal Justice and Licensing (Scotland) Bill. The committee has taken evidence on the bill's criminal justice provisions. Some variety is perhaps called for, so today we will concentrate on the licensing provisions in parts 8 and 9.

I welcome the first panel, which comprises Alan McCreadie, the deputy director of law reform, and John Loudon, the convener of the licensing law sub-committee, from the Law Society of Scotland. We thank the Law Society for its written evidence, which we read with considerable interest.

We will go straight to questions, which I will start. Your submission highlights matters that the bill does not deal with but which you believe it should deal with, such as amendments to the appeal provisions in the Licensing (Scotland) Act 2005 and the reintroduction of a site-only application procedure. We read with particular interest what you said about appeals, but will you describe in more detail the difficulties that you expect if the 2005 act is not amended, and talk about the site-only application procedure?

John Loudon (Law Society of Scotland): We have the rare situation that almost every lawyer—if not every lawyer—whom I have met agrees that the new appeal procedures are cumbersome, expensive and not working in practice. That is what the private sector, the public sector and sheriffs have said.

The problem is that the clerk to the licensing board—somebody like the committee's adviser, Robert Millar—must produce a stated case and identify facts. In general, a licensing board is not a place where facts are identified: committee members who have been licensing board members will know that boards hear ex parte statements from people such as me, hear the objectors and take a view on the matter. At the end of the day, the applicant, the objector or I can ask for written reasons, which have historically been the basis on which a decision is made whether to appeal.

The new procedure is a long way from that. Hindsight is a wonderful thing, but it would be relatively easy to drop back to the summary procedure. Some debate might take place about the provisions for instant suspension. You might recall that, under the Licensing (Scotland) Act 1976, if a licensing board suspended a licence,

somebody such as me would simply appeal, so the suspension had no effect—

The Convener: I am aware of that procedure.

John Loudon: I thought that you might be.

The Convener: I was the victim of it several times.

John Loudon: Under the 2005 act, if a board decides to suspend a premises licence holder, the suspension is instantaneous, but the person can go to the sheriff principal to ask for the decision to be reviewed. Objectively, it is difficult for a sheriff principal to do that quickly. How can a sheriff principal gainsay a licensing board when it has exercised its discretion without hearing all the evidence? For the first time that I can remember, there is, right across the board, a wish to revert to the summary procedure under the 1976 act.

I do not know whether Alan McCreadie wishes to add anything.

Alan McCreadie (Law Society of Scotland): I am not sure whether there is anything that I can usefully add. From my experience as a clerk to a district court, I know that, following the implementation of the Criminal Proceedings etc (Reform) (Scotland) Act 2007, many solicitors in local government who previously clerked district courts and licensing boards have transferred to the Scottish Court Service. There may be resource issues for councils or clerks who are simply not used to stated case procedure, but it does not seem to sit well with an appeal against a licensing board's decision for there to be a decision on which facts have been admitted and proved and thereafter for the sheriff principal to adjudicate.

John Loudon: The other matter that the convener raised was that of what I would call section 26(2) applications under the 1976 act. Some members will know that, under the old provisions, it was possible to apply for a licence in principle. Someone who wanted a public house licence went to the board and gave a brief description of the premises as they would be. If the board granted that licence, the applicant could go to affirmation and finality. The mischief under the 1976 act was that the board had no control over the detail once someone got to the affirmation stage.

We do not have that facility under the 2005 act, and there is a desperate need for it. I recently advised a pension fund about a major development—a large hotel project—that it was considering, for which it did not have an occupier. When I explained that it would be necessary to get planning permission and to produce detailed plans of the hotel, right down to fire exits and fire alarms, and an operating plan, the fund's representatives told me that it would cost them more than £200,000 to do that. As a result, the project is simply not happening. That represents the loss of a major inward investment to Scotland, which is crackers.

If, under the 2005 act, we had a procedure that was similar to the section 26(2) procedure under the 1976 act, an applicant who wanted to obtain a premises licence would outline broadly what they wanted. The real plus of such a system is that the applicant would have to get their plans approved at a later stage, and the boards would have the power to review, modify, revoke or suspend a licence if they were not happy. There is a control in the 2005 act that was missing from the 1976 act. It does not matter whether we are talking about a corner shop or a huge development—it is extremely important that people have the ability to apply without having to produce detailed plans.

Let us say that someone wants to put a small pub in a village. Before they can get off first base, they must have detailed drawings of the pub, right down to where the bar and the exits are, just to lodge the application. That situation is crackers, and it is certainly not good for business or for Scotland. I feel passionately that people need to have the flexibility to lodge section 26(2) applications, while the boards should be left with control over the details of opening hours, operating plan and layout plan.

The Convener: I turn to another issue that obviously causes you some concern—the fact that the bill provides for the attachment of mandatory and standard conditions to any type of licence that is issued by a licensing board. You say that consideration should be given to having a transitional period so that licensing authorities have time to consider and approve standard conditions for all licence types. Will you take us through some of the practical difficulties that could arise?

10:15

Alan McCreadie: We raised that point regarding section 121 of the bill and the fact that a deemed grant will not now be unconditional—the society noted that mandatory licence conditions can be applied. I do not think that there is any particular difficulty with that but, from a practical point of view, the society considered that a transitional period should be required to allow such conditions to be put in place. There will be a move from deemed grants being unconditional, as is the case now, so we were calling for a sufficient period to allow licensing authorities that deal with civic government-type licences under the Civic Government (Scotland) Act 1982 to bed in the new conditions. The society did not have a particular view on the matter other than the practical implications that section 121 would have.

The Convener: So there would be no particular issues and the proper administration of the licensing system would not be prejudiced by there not being arrangements in place in the short term.

John Loudon: I do not think that there is a problem on the civic government side. It is simply a question of identifying what the conditions would be, having some discussion about that and reaching agreement. The conditions could then be rolled in, perhaps, as licences are renewed.

The Convener: We will stay under the same general heading, with Nigel Don continuing the questioning.

Nigel Don (North East Scotland) (SNP): Let us talk about something that I do not think we have ever spoken about before, Mr Loudon, as I was never on the licensing committee: taxis. As we understand it, the bill requires local authorities to review taxi fares every 18 months at the maximum. I am referring to section 124(3)(a). In your submission, you suggest that that will be a difficult timetable to work with. Will you elaborate on that for us?

John Loudon: The concerns about that aspect of the bill primarily came from council solicitors who are involved with taxi reviews. They were concerned that it would be difficult—because of all the parties concerned and all the consultation that was required—for such reviews to be completed within 18 months. I do not know whether that is impossible, but it is difficult. Glasgow City Council is particularly concerned about that period—I do not know what the City of Edinburgh Council's current view is on the matter.

Nigel Don: Perhaps we can ask. Is the problem that we cannot find a way of having an 18-month cycle? I find that idea difficult—we could simply suggest numbers far enough in advance so that the cycle could always be made to work. Is there a need in principle to survey the number of taxis that are required? Is that a part of the plot that is not written in?

John Loudon: To a certain extent, it depends on the area of Scotland. Some parts of the country have caps on the number of taxis; others do not. It might be more of a problem in the bigger cities than elsewhere. If the reviews were in the system, and if people were given enough notice, they might be manageable even if they had to be carried out within 18 months.

Alan McCreadie: I do not think that I can usefully add much on the subject of that 18-month review period. Mr Loudon was right to state that it would depend on the local authority area. The fact that a consultation must be factored in means that the 18-month period within which the review process must be completed might prove problematic, purely from a practical point of view.

Nigel Don: It would be useful to get clarity on that. A local authority might finish up, in effect, having a continuous consultation because numbers have to be produced every 18 months. It is not obvious to me why that is impracticable, although I appreciate that it might be if other things get in the way.

John Loudon: Perhaps that would be the answer—to have a revolving review.

Nigel Don: That makes sense to me—it is not obvious to me why that is not possible. I think that is why we are asking the question.

Alan McCreadie: I am not sure. I would really have to investigate that point further.

Nigel Don: If you could give us some clarity about where such a review would cause a problem, it would be useful.

The Convener: It might be a matter for each local authority.

Nigel Don: They are all doing the same thing.

The Convener: Such arrangements would not be precluded under the bill as it stands.

Alan McCreadie: That may well be the case.

The Convener: In any event, it would be useful if you could come back to us on that point.

Alan McCreadie: We certainly will.

Nigel Don: Your submission also picked up on the issue of people whose driving licences are suspended. The legislation suggests that they have to have a licence for 12 months before they can apply or reapply for a taxi licence. Therefore, if somebody had a six-month suspension, it would be 18 months before they could drive a taxi again. I see the practicalities of that situation. Is it really a problem?

John Loudon: It might be a problem for some people, but it could be overcome simply by giving the licensing committee discretion on the matter. In other words, if the committee sitting to consider a particular application were given discretion to look at the facts and circumstances, it is likely that it would come up with the right answer, even though we do not always agree with what committees come up with. In the example given, if somebody had a six-month ban and could not reapply for a licence for a further year, it would be effectively an 18-month penalty, which does not seem fair. However, I would be comfortable if the committee considering the case were to look at the facts and circumstances and take a view.

Nigel Don: I am not so sure whether they would, but we will get a chance to ask them about it later.

Your submission also picks up the issue of advertising taxi fare scales in local newspapers. It seems a relatively trivial matter, but is that really the wrong medium in which to advertise such things these days?

John Loudon: As you know, newspaper adverts are extremely expensive. They have to be paid for by somebody—it will come out of the fees. In this day and age, most people know that almost all information should be easily available on the web. I accept that some council websites are not as good as others, but they could be improved. If you do not have web access in your house—although the majority of people do—you can certainly access it in your local library. It is not a problem. If people are aware that the first place to look for information about the council, be it about taxis, pubs or even road closures, is on the web, you will save an awful lot of money. Newspaper adverts are a one-off and expensive cost. If you happen to read the local paper, it is fine, but if you do not take it on the Tuesday night when it is published, it is of no use to you.

Nigel Don: By way of extension, do you suggest that we should do the same thing with almost all the other public notices that appear in the papers—put them on the web?

John Loudon: If you are asking me for a purely personal opinion, the answer is yes. If people accept that public information is readily available on the web and council websites are user friendly and easily accessible in libraries, I would be happy with that.

The Convener: We will now proceed to the possible unintended consequences to charities, with Robert Brown.

Robert Brown (Glasgow) (LD): I will ask a supplementary question on that last point first, if I may. Among the issues is one of time. People can get all sorts of general information from a website, but if they want to know about dates for objections or new applications, I presume that it is desirable to have a specific notice that draws their attention to the information. Do you agree that that need is not met by website information?

John Loudon: Again, purely personally, I think that councils should have a website with links to all the things that are happening so that people can see that, over the coming month, there will be X, Y and Z and all they do is click on the roads, public entertainment or licensing link, which takes them to the next information. It should be really easy for people to access information in that way. A lot of council sites are not user friendly, but they could be made so. The savings to the public and private purses of not having to run all those newspaper adverts would be considerable.

Robert Brown: Let us move on to the exemption enjoyed by charitable, youth, religious, community and other organisations to the requirement to hold a market operator's licence, which is to be changed by section 125. You made some observations about that. Will you give us more insight into what you think the consequences of that provision might be? Some of them are fairly obvious, but perhaps there are wider issues to consider.

John Loudon: The provision is similar to that for the licensing of public entertainment. In certain circumstances, it is patently obvious that someone needs a licence, but in others it is not. I offer a practical example. One of the ladies who works in my team has a severely handicapped son. Recently, she and others have been trying to organise an event to raise money for people in that situation. At present, they do not have to pay a fee for a licence. If they had to do that, the event simply would not happen.

Patently, some things need licences and others do not. It comes down to common sense. A large public event will usually need a licence. There are questions about how we define "large" but, if someone is trying to get 50 people together to raise some money for charity or whatever, it is not proportionate to impose the need for a licence and a fee.

Robert Brown: Lots of summer galas of varying sizes and scales take place in Glasgow and other areas. Some of them are week-long events with parades and roads being closed, whereas others are minor events with a few stalls on a public site. Where should the balance lie with such events, which will probably be hit the most by the bill? On the one hand, we have the bureaucracy of the licensing process. Is that necessary? What is its practical advantage? On the other hand, if an event is licensed, the authorities have some control over it.

John Loudon: I am not sure how we can strike the right balance. I suppose that I would turn the question on its head and ask where we have problems at present. If there are problems, can we identify them, find out the cause and determine the best solution? I am not aware that there are problems throughout the country with unlicensed events, but the proposal must have come from somewhere. I presume that somebody has information to explain why licensing is needed. If so, that is fine, but if there is no problem and no mischief to fix, why do we need to go down the regulatory route? If a problem has been identified, that is fine, but I am not aware of one.

Robert Brown: There have been some issues with free events—not events run by charities but concerts and various things of that sort. The bill removes the exemption that free events enjoy

from the requirement to hold a public entertainment licence. Do you have a view on that?

John Loudon: Personally, I think that a large-scale public event probably needs a licence, regardless of whether it is free or charged for, because there will be health and safety and other issues that might not arise with smaller events. However, do we draw the line at 50 people or 500 people? It is difficult. All that we could do is to ask councils and police forces which events cause them difficulties and where they draw the line, and take a view based on that.

Robert Brown: Can the matter be dealt with by definitions in the bill that separate big events—those above a certain size—from small, non-challenging events?

John Loudon: There will be a problem wherever you draw the line. If the line is drawn at 500 people, people will go up to 499, or they will come and ask people such as me how they can stretch the limit. It is difficult to be prescriptive, but ultimately there must surely be a degree of common sense, the reasonable exercise of discretion, and a system that is proportionate to the risk. The public interest is paramount.

Robert Brown: I think that I am correct to say that, under the bill, it will be left to local authorities to decide whether to license events. We could argue that that is the proper approach because local authorities know the local circumstances that might arise. Is that a flexible arrangement that will allow proper consideration to be given, or is the matter so cumbersome that we need to create a general scheme rather than make decisions in individual cases?

John Loudon: The system might become too cumbersome or overprescriptive. At the end of the day, local councillors know their area. I read recently in a newspaper that Dundee City Council has decided to ban cakes from fêtes. That would be fine if there were a problem, but I am not aware that there is a problem. I keep coming back to that point: if there is a problem or a mischief that needs to be cured, we should make rules to cure it, but if not, why should we regulate something that does not cause difficulties?

10:30

Stewart Maxwell (West of Scotland) (SNP): I want to follow up the point about youth, religious or community groups having to apply for a licence. Mr Loudon seemed to indicate in answer to Robert Brown's original question that such groups must apply for a licence. However, the Law Society's written evidence states:

"It is unclear as to the policy intent of this particular provision as charitable and community organisations in future will require to consider the cost of obtaining a market operator's licence and associated costs and that this may well prove to be prohibitive".

The bill's policy memorandum states that local authorities may choose not to license events such as gala days. Surely that indicates that local authorities will have flexibility over such licensing and that the groups about which Mr Loudon said he was concerned would probably not have to apply for a licence.

John Loudon: I sincerely hope that that would be the case, but local authorities sometimes err on the side of caution, so they may opt to include such groups in licensing.

Stewart Maxwell: If there is something to be cautious about, is it a bad thing if local authorities err on the side of caution?

John Loudon: If there is something to be cautious about or there is a mischief, I have no difficulty with a local authority erring on the side of caution. However, I have a problem if licensing is applied across the board without a bit of discretion and proportionality, because that will catch things that were never intended to be caught. I do not think that anybody here would have a problem with a large event with 500 people having to have a licence, but many of us would be concerned if, for example, a local fête for 40 or 50 people had to have a licence and go through all the required procedures, as that would not be necessary.

Stewart Maxwell: I agree with you. However, I am confused, because the bill seems to provide flexibility for local authorities to choose to license—or not—an event on the basis of local discretion and whether the event is very large or very small, as you described. I am therefore a wee bit confused about what your problem is.

Alan McCreadie: I am not exactly sure how that flexibility is put in place, given the amendment of section 40 of the Civic Government (Scotland) Act 1982 by section 125 of the bill, unless it is done by a section 9 resolution, whereby a local authority would simply resolve not to have market operators licensed at all. I suppose investing some discretion in the local authority can be brought in by regulation. I concede that I have perhaps missed something, but I am still unsure about how discretion is introduced through the amendment of section 40 of the 1982 act by section 125. However, you are right that the policy memorandum states that local authorities should be vested with discretion.

Stewart Maxwell: Does the bill as drafted not implement what the policy memorandum states? Is that the issue?

Alan McCreadie: From my reading of the bill, that appears to be an issue, unless I have missed something.

Stewart Maxwell: If you can contribute anything else after further reading, perhaps you can write to us.

Alan McCreadie: Indeed—we will.

Stewart Maxwell: We might need to take up your point with the Cabinet Secretary for Justice.

The Convener: It would be useful to have further information from Mr McCreadie. Cathie Craigie might have a couple of points on the same issue.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The policy memorandum seems to be silent on section 125—it does not give any explanation of it. However, the explanatory notes state clearly that

"licensing authorities have discretion as to whether to charge reduced or no fees".

That seems to suggest that somebody would have to apply for a licence and that it would then be up to the local authority whether to charge a fee. Is that your understanding? Have you raised concerns about the issue because you do not see any evidence for the change?

Alan McCreadie: Our question is whether the licence is required in principle, rather than whether it should be for local authorities to determine whether a fee should be charged for a charitable or youth organisation event. The bill certainly requires further scrutiny in that regard, and I undertake to look at the area.

Robert Brown: I want to be sure that I am clear about this point. I must confess that I understood that there was a difference between the local authority having the discretion to decide whether to have a scheme for the licensing of charitable events and the like, and how that discretion was exercised, which would obviously have to be in accordance with general principles. The local authority would therefore have to develop arrangements for events, rather than consider each event independently and flexibly. Is that your understanding?

Alan McCreadie: Yes.

Robert Brown: It is not only about the fee; for small bodies, which are perhaps not very experienced in such matters, it is also about the process and the annoyance of having to go through it. Is that also your fear?

John Loudon: The process can be very daunting. It is sometimes bad enough for lawyers, but my assistant, for example, who is an experienced paralegal, would have found the process daunting. We do not want to put people off holding such events. I come back again to the fact that it is in the public interest that they happen; it is good for the community and we do not want to make it difficult for them to be held. I have no problems with licensing large events.

Robert Brown: Am I right that the provision would apply to both indoor and outdoor events? We mentioned galas. Would it also apply to church fêtes, events held in council halls and such like?

John Loudon: I thought that it would apply to all events, whether inside or outside.

Robert Brown: That is what I thought.

The Convener: That was also my interpretation.

Paul Martin (Glasgow Springburn) (Lab): Good morning, gentlemen. The bill makes provision for applications for licences under the Civic Government (Scotland) Act 1982 to be treated as renewals when they have been received within 28 days of the expiry of an old licence. Your submission refers to that provision. Can you elaborate on some of the issues with the provision that you have raised?

John Loudon: The matter is reasonably straightforward. One can see the logic and the fairness of having a bit of leeway. However, what happens if, for example, an offence occurs or someone applies for an extra taxi during the 28-day period? If the wording were adjusted to accommodate such developments, there would not be a problem. It seems fair to allow a bit of leeway, but it is necessary to address the issue of something occurring within the 28-day period.

Paul Martin: Can you suggest any particular wording, or can you respond to the committee later on the matter?

John Loudon: I cannot do so yet, but I am sure that we can have a look at it for you.

The Convener: I will cite an example—you will appreciate that, for lay people, it is always best if an example can be used for illustrative purposes. Let us assume that a taxi driver neglects or fails to apply to renew his licence. Three weeks in, it comes to the attention of the police that he has been reported for sexual assault. Does that require to be picked up by new wording? Is that an appropriate illustration?

John Loudon: Yes. That is a simple illustration.

The Convener: We now turn to alcohol licensing with Cathie Craigie.

Cathie Craigie: Your submission highlights the practical difficulties that may arise if a licensing board were able to grant a licence subject to modifications to the layout plan. Can you elaborate on those practical difficulties?

John Loudon: The issue has been a matter of much debate among members of the Law Society's licensing law sub-committee. Let us

imagine that we are in a room with a licence in a listed building—I do not know whether the Parliament building is listed yet. There is a bar in one corner and, for whatever reason, the licensing board decides that it must be moved to another position. The operator may have got their building warrant and other consents based on the bar being in its current position, so the decision has an immediate knock-on effect. Many buildings in places such as Edinburgh, Glasgow and Dundee are listed. If there are changes, the operator may need listed building consent, planning consent and a building warrant, which would not necessarily be easy to get. Is it not for the operator to decide how he wants his business laid out and run? Modifications have been made to layout plans during transition. I am pretty sure that the legislation does not allow for that, but it has happened and it has worked.

For instance, if the plans show an outside area to the left of the front door, but everyone agrees that the area is to the right and adjusted plans are submitted, that has just been accepted—it has worked. However, I do not think that that is covered in the legislation. Although I am not aware of bars being moved, some boards have asked for the plans to show the location of gaming machines. That is micromanaging. It should be for the operator to decide where they want their bits of kit, having regard to the terms of the liquor and gambling legislation, which are fairly tight. A number of problems might arise if boards are able to tell operators to move a bar, a toilet or what have you—I do not think that the board is the right place for that to happen.

Cathie Craigie: The explanatory notes state that the intention is that the licensing board would grant the licence

"if the applicant agreed to the proposed modification."

Your evidence is that a board might decide to grant a licence subject to a modification, but the applicant might not be in a position to agree to the modification because of other warrants or planning consents.

John Loudon: That is part of the issue. Is it reasonable or proportionate for a board to say that someone can have their premises licence provided that they move a gaming machine from the left-hand side of the room to the right-hand side? I can envisage circumstances arising, although not often, in which boards ask for modifications that the applicant simply does not want to do. I do not think that there is a right of appeal in that regard.

Alan McCreadie: I do not think that there is. For want of a better phrase, we would end up with a catch-22 situation. Once the technical consents have been given, if the board is not happy with something, which is then fixed—if the applicant is happy to do so—the premises might then no longer meet the technical consents.

John Loudon: Some of the witnesses who will give evidence after us might want to expand on the issue.

The Convener: Surely the difficulty could be overcome fairly simply. If the licensing board wants a bar moved to another place and the applicant is of the view that that is totally inappropriate, he does not have to take up the licence—he could submit a new application that would then be a matter for determination by the board and subsequent appeal, if necessary.

John Loudon: That is possible, but a new application is an expensive process. It takes three to six months to process an application, by the time that the application with all the detailed plans is submitted, the plans are published on the board's website, the neighbour notification is carried out and the hearing takes place. It is not reasonable to require that to happen.

The Convener: Has anybody challenged a decision yet?

John Loudon: There have been a number of appeals in relation to premises licences. Those relate mainly to the definition of the term "excluded premises" and the contradiction between the 2005 act and the guidance—the act talks about residents, whereas the guidance talks about the community. Very few of those cases have gone through to decisions. There was a case in Aberdeen involving the Co-operative and the Shafiq case in the west of Scotland, but those were both to do with petrol stations. I am not aware of any other cases.

Cathie Craigie: If an applicant does not accept the amendment to the layout, can they ask the board to continue the process so that they can check with other authorities, or does the board have to reach its decision within a specified period?

John Loudon: One can always ask a board to continue. In most cases, if there was a reasonable ground for continuation, the board would grant it—generally, boards are not unreasonable. However, one might not be able to get a satisfactory answer from all the departments. For instance, obtaining listed building consent is a time-consuming process, as members will be aware.

Cathie Craigie: That is obviously an issue that we must consider more closely.

I will move on to ask about section 135. Your submission welcomes the provisions in the bill that will enable occasional licences to be granted outwith the normal timescales, when the licensing board is satisfied that the application should be

dealt with quickly. You make the point that a similar fast-track procedure should be considered for applications for extended hours. What would be the advantages of that?

10:45

John Loudon: Under the 1976 act, occasional extensions, as they are known, are common. It is very rare for there to be a problem with an occasional extension: you put in your application and it is processed and granted. Some boards turn such applications round within two or three days, although others take a couple of weeks.

I will give the committee a practical example. I have recently been advising some larger contract caterers. Often, they are asked to provide facilities for weddings and functions at relatively short notice. Historically, that has not been a problem. People have been able to get an occasional licence, or an extension of hours in premises where a licence existed, quite quickly. However, I have advised the caterers that they should allow at least two months for an application for an occasional licence, and possibly the same length of time for an application for extended hours. The caterers have been absolutely horrified.

The good news is that all the competition is in the same boat. However, a lot of conference and function business is carried out at relatively short notice. Since the 1976 act came into force, the system for occasional extensions has worked very well, as far as I am aware. Relatively few issues have arisen. I therefore cannot see any good reason for not replicating that system in the 2005 act. That would be in the interests of the public, business and councils. We could be creating a time problem when none exists at present.

The Convener: When there are premises licences, an argument might be made that the applicant, or licence holder, could register as a person authorised to keep his premises open with an extension to the previously permitted hours, provided that he telephoned his local police office to say, "I intend to stay open until 2am." Thereafter, he would be invoiced by the licensing authority. That is what happens in Germany and Austria.

John Loudon: I can see that that would be great; equally, I can see that many of my clients would say to me, "Just get it for me, John, and we'll keep it just in case we ever need it." However, if the system were used properly and respected, it would be a nice, simple solution.

Nigel Don: We have already talked about site-only licences. The submission from the Scottish Beer and Pub Association says that, under section 45 of the 2005 act, there is only

"a two-year window … from the provisional grant of licence to confirmation".

I can see how that could cause problems and am slightly surprised that the witnesses have not raised the point.

John Loudon: It is already causing major problems. I will give the committee a practical example with which I have been involved. I was at the Edinburgh licensing board—Marjorie Thomas from the board is here today—where we sought to convert an entertainment liquor licence for a new casino in Fountainbridge to a premises licence. That was granted without issue or objection. Indeed, we even had the support of the local community council.

As soon as the licence was granted, I said to the board that I needed an extension to the two-year period because the company now had to go back to the bankers and the developers to get the project done. Demolition and rebuilding are involved, for retail units and so on, and the work will not be completed within two years. The board members smiled and said, "There shouldn't be a problem. Just come back in a year or in 15 months' time and tell us how you're getting on."

There is now a real prospect that the development will not go ahead. The company cannot take the risk: there might be an election, and different councillors might be on the board. Two years is a very short time for a big project. The Scottish Parliament building is one example; the Land Securities development at Livingston took six years; and the Scottish Widows development at Fountainbridge has taken six years. Two years is crazy.

There is no mischief in allowing a longer period. A project of any size will take longer than two years. If the project is not completed within two years and the board does not grant an extension, the developer might have spent heaven knows what and still have no licence. Developers are simply not going to do that. Bankers or financiers will not lend someone the money to do that.

Nigel Don: I think that five years is the period in which you have to get something on the ground after you get planning permission for a development. Would that be a sensible period?

John Loudon: Five years is sensible, especially for the bigger projects, such as the redevelopment of a town centre. Is there a mischief in such a period? If the licence is granted, the board can take that into account when it is looking at whether there is overprovision and so on. If the project is not taken through to completion, it will simply fall out of the system. There must be a degree of security to allow projects to go ahead. Even for a small project, such as a new pub or restaurant, two years from the date of grant is too tight a

period in which to get everything in place and completed—you need the completion certificates.

Nigel Don: The Scottish Licensed Trade Association submission made some extremely interesting points about the fees for licences, which are to be based on rateable value, and the fact that supermarkets would pay relatively small fees in comparison with the fees paid by the small trader with a shop on the street corner. Given your considerable experience, will you give me some clues about the balance in all this? It is plain that licensing a supermarket with a very large turnover does not require a great deal more work by the licensing authority than licensing a corner shop, so it could be argued that it would be perfectly equitable for the supermarket and the corner shop to pay the same fee. However, the submission quite rightly states that 7.5 per cent of the fees will be paid by traders that have something like 50 per cent of the turnover. How can we balance that?

John Loudon: With the judgment of Solomon. It is very difficult to strike the balance. You will never get it right, because whatever you plump for, there will always be people who are caught fairly—or unfairly. A large supermarket, hotel or pub chain will probably present all the material to the board in a well-organised and efficient way and it will not take a lot of administration to deal with the application. However, the tiny wee restaurant or corner shop might present material to the board in a complete mess, which takes a lot of time to deal with. I know that because I have been at many board hearings where a lot of time has been spent trying to deal with the smaller applicant who has not taken professional advice, who has not gone to the expense of employing someone to help them and who takes up a disproportionate amount of time at the hearing. It is very difficult to come up with a scheme that everybody will be happy with. We have the rateable values and there are sliding scales. I appreciate what the SLTA is saying. I am glad that I am not the one who has to make the decision on the fees, because it is not easy.

Nigel Don: Thank you for clarifying that point for me.

The Convener: That was a refreshingly honest answer.

Robert Brown: The Law Society submitted a supplementary letter on some of the technical points to do with heritable securities and so on.

I want to ask about the logistical problems that you anticipate in relation to the transition date of 1 September 2009. You said in your letter that, given the logjam that is building up—I have heard this from the trade, too—consideration might be given to allowing some sort of extension or dispensation for applications that are in the system by a certain date, so that they can carry on and be okay when it comes to the transition date. How can that be done? Are there powers in existing legislation to do that? The bill will not be passed in time. Can such a dispensation be done by statutory instrument? Can you give us any guidance on the implications of that?

John Loudon: I think that such a move will be essential. A significant percentage of premises throughout Scotland will not have designated premises managers on the premises licence and will not have the premises licence and summary up by 1 September. I think that you can do pretty nearly anything that you want under section 146 of the 2005 act, which is a wide-ranging, bits-and-pieces section.

I will give you a practical example. So far, I have received one premises licence with a designated premises manager on it, although we have made many hundreds of applications across Scotland. I have had applications for personal licences in with some boards since before the turn of the year, and those personal licences have not yet been issued. There is a large misunderstanding across the industry that the training certificate is the personal licence. All the trade bodies have worked hard—I know that licensing lawyers have worked hard—to get clients to understand that it is a three-stage procedure involving training, the personal licence and the designated premises manager.

Even when the training has been done and the application for a personal licence is in, applicants have no control over how the boards process that—there is no time limit to say that a personal licence application must be dealt with in, say, a month. So, although we have put in hundreds of applications early, they are still in the system and we have no control over when the licences will be issued by the boards. Then, once a licence has been issued by the board, the licensee must nominate a designated premises manager. The board must do all that administration and processing and have the licence back with the applicant by 1 September or the applicant cannot trade alcohol. If, for whatever reason, the board does not do that by 1 December, the applicant's premises licence is revoked. It is horrendously complicated.

Let us take the Sheraton Grand hotel in Edinburgh as an example. If the application is in but the board simply has not got around to processing it by 1 September, the hotel cannot sell alcohol. If the application has not been processed and cleared by 1 December, the licence will be revoked. That is draconian. My feeling is that, if somebody has taken the trouble to get an application into the system in reasonable time—I think that we said by 31 July in the supplementary evidence—there should be a dispensation to allow them to continue to sell alcohol after 1 September

until the application has been processed and dealt with; otherwise, we will have big problems.

Robert Brown: Your evidence is that the problem extends across a good part of Scotland.

John Loudon: Right across Scotland.

Robert Brown: Is that because of the bureaucratic implications for the boards and the pressure of work?

John Loudon: It is because of the sheer volume of applications. We have about 17,000 licensed premises in Scotland, each of which needs at least one DPM. That is a minimum of 17,000 DPMs. However, most licensed premises will need two or three personal licence holders, so we are talking about not 17,000 applications across Scotland, but 50,000 or 60,000 applications across Scotland. I do not care how efficient the boards are—that is a huge administrative burden on them.

Some boards are a year behind in issuing premises licences, which are supposed to be dealt with within six months. I prophesy that, with the best will in the world, come 1 September, we will have a problem. Not only is that not in the trade interest; it is not in the public interest. It is not right. Ladies and gentlemen, you have the ability to do something about it.

The Convener: We have received representations regarding the matter, which we take very seriously.

There are no further questions for this panel of witnesses. I thank Mr McCreadie and Mr Loudon for their attendance this morning and for giving their evidence in such a clear and cogent manner.

10:59

Meeting suspended.

11:00

On resuming—

The Convener: Our second panel is Assistant Chief Constable Andrew Barker, Fife Constabulary, and Inspector Gordon Hunter, Lothian and Borders Police, who represent the Association of Chief Police Officers in Scotland. We have your submissions, for which we are very grateful, so we will move straight to questions. I think that we need not detain you very long this morning.

Aileen Campbell: Good morning. I will kick off with a question on the concerns about an increase in the theft of metal due to its high value, which I think the Law Society highlighted in its submission. The bill replaces the mandatory licensing scheme for metal dealers with an optional scheme at the discretion of the local authority. Does ACPOS have a view on the impact of that change?

Assistant Chief Constable Andrew Barker (Association of Chief Police Officers in Scotland): The theft of metal has been an issue in the past. Our local experience is that it has been curtailed to a large extent, probably due to the economic downturn. I have looked into the issue in Fife fairly recently. As with other issues that you discussed with the Law Society, the question is when to impose the provision and when not to do so. It is difficult to say what the effect of local authorities being given discretion will be throughout the country. The issue may have faded somewhat as a result of the economic downturn.

Aileen Campbell: You are content with that being left to the discretion of the local authority.

Assistant Chief Constable Barker: Yes, at this point.

Aileen Campbell: That is grand.

On public entertainment licensing, you may have heard comments in the previous evidence session about problems with the licensing of free events. Respondents have suggested that the proposal may have an impact on the willingness of small, community organisations to put on free events. The Law Society suggested that it might be disproportionate to license such events. Why will the provision be useful to you? Does the policy memorandum offer local authorities enough flexibility not to penalise small events by requiring them to apply for a licence?

Assistant Chief Constable Barker: I can add very little to what the Law Society said. My difficulty is with the word “large”. Where do we draw the line? Community events can draw several thousand people. Will that sort of event be licensed? I echo the previous panel’s comments on the matter. We do not want to discourage community events, which are very much to the fore, particularly in areas such as the one that I police. I have lost count of the number of galas and local events that have taken place in Fife in my time there.

However, where do we draw the line? I am thinking of an event that is intended to attract 50 people but which attracts 500 or 1,000 people. It is very difficult to define a large event. Safety is the paramount issue. In that regard, I cannot put it better than a previous witness did: what is the mischief that we are trying to resolve? There is no particular issue with community events, but the question is where we draw the line.

Aileen Campbell: Where have the problems with large events arisen? What type of event has created problems? Clearly, the policy intention of the bill is to help to control such events. What is

your experience of where the problems have stemmed from?

Assistant Chief Constable Barker: I am not fully cognisant with that area of the bill. In the past, the problem has been free events that have attracted thousands of people. If they are not regulated and controlled, they cause significant issues. Questions arise in relation to what my officers are going to do, what the role of the police is, how many officers are required for public safety and how we progress things. I do not have a lot of personal experience of the free events that have caused problems. Perhaps Gordon Hunter can say something on the issue.

Inspector Gordon Hunter (Association of Chief Police Officers in Scotland): The question is difficult. Several factors kick in—they depend on the event's size. For example, we start to think about traffic management and public safety in relation to equipment that is brought on to a site. Many issues are not necessarily policing matters, but public safety departments throughout the country consider a variety of issues in relation to structures that are brought on to a site.

Police consider the potential for public disorder and traffic management, which can without a shadow of a doubt become a major issue. Traffic management is not a major issue for a small event that involves 50 people, but if the event involves 500 people, it suddenly becomes a big issue. Even in smaller villages—the whole village turned out for our local fête recently—difficulties can be caused over a long period, and alcohol is being put into the mix. There is a stack of considerations.

Aileen Campbell: So, when it is sensible to require and request a licence is at the local authority's discretion on the basis of its local knowledge and that of your police colleagues.

Assistant Chief Constable Barker: A great deal of historical knowledge is also involved. We are all aware of events that have taken place for many years and which we see no need to license. Whether emerging events go down the same route is a difficult call for a local authority to make. The question is whether an event is likely to be large. One local authority's definition of what is large might differ from another local authority's definition, just because of the area's demographics. We cannot give a definitive answer on what is large.

Nigel Don: I will try to tease that out. Who talks to whom first? You talked about an emerging event. If an event does not need a licence at the moment, how does anybody know about it—other than through advertising—until it happens?

Assistant Chief Constable Barker: I agree that the question is difficult. If a local event is being developed or planned, we will probably hear about it through community officers or local groups such as community councils. Most such groups ask the police first for advice on whether any regulation applies, so I think that that is what will happen in the future.

As I said, that raises the issue of how people know a local authority's policy on what is large, when that applies and whether definitions exist of a large event for which notification is required and a small event for which notification is not required.

Nigel Don: Thank you for making it clear that the first notification of an event is probably to the police, through officers who are on foot in the community. On that basis—which I would predict—is it reasonable to say that you are the best judges in the first instance of what should be licensed? I am not worried about what the bill says at the moment. If the local chief constable were to advise the local authority that an event should be licensed, might that be a way forward?

Assistant Chief Constable Barker: On what grounds would we give that advice? Would the decision relate to an event's size, public safety or public disorder? We return to the same lack of definition as exists about what is large. Would the call about an event be based on professional judgment? A joint decision would have to be made that involved the chief constable, whom I would certainly want to influence whether an event was licensed, but what would be the criteria for the decision?

Inspector Hunter: I will add to the mix my experience that when people look for advice about events that are coming up, they do not necessarily approach only the police—they regularly approach public safety departments first for information. In reality, what matters is good communication. The police, local planning authorities and council departments now all have reasonably good links, so we have discussions—event planning-type meetings—that take many issues forward. The decision would probably sit better with that set-up than with a single person.

Nigel Don: That is what local councillors would predict. I am struggling with knowing what framework we should set down on paper. When the system works well, communities, the police and local authorities do not need to worry about what is in legislation—they just get on with it. That is how the world should be. However, we are worried about what we should prescribe in the framework and to whom we should give the power. How we should formulate that is not yet clear.

The Convener: Does Mr Barker have further views on the point?

Assistant Chief Constable Barker: It will be a joint decision. I am struggling to think what the prescribed criteria would be. However, as with most licensing issues, there will be close co-operation.

It is also important to take into account the other prescriptions that exist regarding the safety of events, such as the guidance on structures, which Gordon Hunter mentioned. That comes into play where there are to be large structures on the ground. We also have to consider whether to set a limit of 100 people, 500 people or whatever. That will vary in different parts of the country. A large event for one area will be a small one elsewhere. However, I am struggling to come up with helpful comments on exactly what the prescriptions should be.

The Convener: I have a further question on changes to the 1982 act. As you know, the bill extends the licensing system to include premises that sell food late at night. In your submission, you state that that will have resource implications for the police. Will you expand on that?

Assistant Chief Constable Barker: We make the point that the provision will have resource implications in relation to processing and reporting on such applications, but I emphasise that our submission fully supports the change.

The Convener: It is within our experience that such premises can sometimes be a source of disorder late at night. Will the licensing of such premises be a useful tool where there are difficulties?

Assistant Chief Constable Barker: The short answer is yes.

The Convener: Thank you. We move on to alcohol licensing, with Cathie Craigie.

Cathie Craigie: Good morning, gentlemen. The policy memorandum gives us an insight into the intention as regards the reporting of antisocial behaviour. The 2005 act requires chief constables to report to the licensing board on antisocial behaviour, but it has been suggested that the requirement is "unnecessarily onerous". Will you comment on that?

Assistant Chief Constable Barker: The points that we make in our submission relate to the arrangements during transition, which worked particularly well. We asked whether an antisocial behaviour report is to be required in respect of every premises and what the relevance of that would be. We also asked how specific we can be in what is linked back to premises.

The provisions that were put in place during transition have been helpful. The amount of work that would be involved in producing an antisocial behaviour report for every premises is considerable. In our submission, we state that, where there are clusters of licensed premises in a town or city centre, it would be difficult in a general report to attribute antisocial behaviour to particular premises, but we can say that a group of premises has caused concern.

We are saying that, if we can report on instances that are particular to premises and can be attributed to them, that is helpful. Gordon Hunter has experience of that.

Inspector Hunter: All big cities have areas where there are lots of licensed premises. We have to consider how we can attribute specific instances to specific problem premises. If we take Princes Street in Edinburgh as an example, or George Street, which is perhaps a better example, can we attribute antisocial behaviour to the east end or the west end? Is it all caused by one premises or does it relate to a variety of premises? Large numbers of people travel through George Street to get to other parts of the city, so it is difficult to link antisocial behaviour with premises in that manner. Queen Street, which is the next street down, is probably one of the busiest thoroughfares in Edinburgh. There is only a small number of licensed premises there, but we see a higher level of disturbance because people visit the area as they are going home at the end of the night.

Cathie Craigie: I know from colleagues that antisocial behaviour in the centre of Edinburgh is a huge concern. Hardly a week goes by without a member raising the matter in the Parliament. Will the proposals in the bill deal with the issue?

Inspector Hunter: I think that the existing mechanisms and the proposed new mechanism deal with it more than adequately, because a board will be able to ask for a report if problems have been identified, perhaps as a result of complaints, and the chief constable will have an opportunity to submit a report if he has identified a clear pattern of disorder around premises. I think that the mechanism in the bill is more than adequate, without being a blanket provision.

11:15

Cathie Craigie: Mr Barker, you said that the mechanisms that have been used during the transitional period have been working. Could you tell us a bit more about them?

Assistant Chief Constable Barker: I think that they are the same as what is proposed in the bill—instead of an antisocial behaviour report being provided for every licence application, such a report is provided on premises only if one is requested.

Paul Martin: Do you accept that, under the current regime, some applications could slip through the net and some applications—for off-licences, for example—might not be subject to proper interrogation? I know that, in parts of my constituency, the acceptance of applications for off-licences has led to an increase in antisocial behaviour, which has not been reported to the licensing authority. Does the present method ensure that off-licence applications are carefully considered by the licensing authority?

Inspector Hunter: The situation that you describe certainly does not match my experience. We have examined all premises licence applications, which has taken up a considerable amount of time, and we do take account of complaints. I suspect that it is possible that some applications have slipped through the net, but strong legislation will mean that we will be able to identify problems and deal with them by way of review. That is a strong mechanism for weeding out problematic premises that have been missed, but I suggest that very few, if any, such premises have been missed.

Paul Martin: You say that examining all premises licence applications is onerous in terms of the resources that are required. If someone submitted an off-licence application for premises in Ruchazie in my constituency, what resources would be required if you had to provide a report to the licensing committee on that application?

Inspector Hunter: It is probably easier for me to talk about my force's area rather than your force's area. Our information technology systems do not link up quite as well as those in your force's area. I would have to assign a researcher and an officer to check all our systems, which could equate to two days' work for one premises.

Paul Martin: The other aspect is that, if a successful application results in an increase in antisocial behaviour, more resources will be required if officers have to attend the premises on, let us say, more than 100 occasions. Having to deal with that antisocial behaviour will have an impact on the local community. Do you accept that?

Inspector Hunter: I accept that. However, we have undertaken to provide antisocial behaviour reports on all applications by new premises, so we would catch such cases. Although we have said that we will not provide reports on all applications by existing premises, we would report any existing premises that were causing problems in the community to the board in any case.

Paul Martin: The 2005 act requires an antisocial behaviour report to be provided for every new premises licence application but, in the bill, the Government proposes that whether to provide such a report should be at the discretion of the chief constable. How will communities ensure that information about any antisocial behaviour that takes place—whether it occurs outside nightclubs or outside off-sales—is properly taken account of by the police authority? Under the bill, it will be for the chief constable to decide whether to report such behaviour; he will not interrogate every application.

Inspector Hunter: It is a difficult question to answer succinctly. The reality is that licences are granted in perpetuity and that, in future, we will consider only applications for new licences. However, the police monitor problematic premises on a daily basis. We examine extremely closely the complaints that local communities make to us or to the local authority through community councils.

One of the huge benefits of having licensing standards officers will be the fact that we will be able to monitor those premises and put packages of measures in place to reduce the level of antisocial behaviour. Where we identify problematic premises that do not come up to standard, the community, the police, the licensing standards officers or the local authority will ask for a review. I suggest that that is a strong power.

Paul Martin: What is proposed is an informal mechanism by which, as a result of intelligence gathering, the police could provide an antisocial behaviour report for consideration in the processing of a licensing application. The point that I am making is that the 2005 act guarantees that such a report will be submitted no matter what. Such reports might also highlight the fact that certain premises have no problems with antisocial behaviour. However, the bill proposes an informal mechanism whereby the licensing authority's consideration may be informed by such reports from the police, which raises the possibility that some people will slip through the net. That may affect the resources that will be required by police officers to deal with those premises at a later stage.

Inspector Hunter: We must concede that, yes.

Cathie Craigie: You told us that, rather than take up the challenge and answer Paul Martin's question about Springburn, you wanted to deal with your own area. That is perfectly acceptable. You said that your force would find it more difficult than Strathclyde Police, for example, because you do not have the recording mechanism—I suppose that that is the IT system. How widespread is that? I just assumed that everybody working in the police forces can now press a button and get all that information. Is that situation unique to your force?

Inspector Hunter: A number of forces have difficulties, but the majority of forces have systems that will do that relatively quickly.

Cathie Craigie: I consulted my own community on this aspect of the legislation a few years ago. They expect the police to be able to report on the activities that take place around licensed premises. The general public feel, rightly or wrongly, that a lot of the antisocial behaviour that they experience in their community is generated by licensed premises or people spilling out of licensed premises drinking alcohol out of bottles that they have purchased as off-sales. We will have a dilemma in reconciling what the community expect of their police service with what the police service considers reasonable.

Assistant Chief Constable Barker: I can pick up on a couple of those points. I recently assumed responsibility for licensing and recognise that the need for an integrated system is very much a priority. I can only echo what you say. I expect the police service to take note of which licensed premises experience difficulties with drinking, as the issue is raised by communities throughout Scotland and is something that we are bringing to the fore.

On the points that Gordon Hunter has made, there is a difference between when antisocial behaviour reports are put in place for premises and what their specification is. As I said earlier, should they relate to a group of premises? How should we detail which premises, if any, have a linkage to the antisocial behaviour that is taking place?

You make a valid point in respect of the systems that should be in place. That matter is being addressed at the moment.

Cathie Craigie: If a system were in place that made it simple to press a button and get information about the incidents that the police had been called to deal with at or around specific premises, that would address ACPOS's concerns about resources.

Assistant Chief Constable Barker: To a point. However, you have raised the issue of whether the incidents relate to the premises or to the area around the premises. When there is antisocial behaviour in a specified radius in Edinburgh or Glasgow city centre, how do we attribute that to particular premises? A licensee can take particular care to do all that they can within their premises, but there can still be an issue outwith the premises. There are specification issues there. Nevertheless, we will provide information in respect of all new applications and, for all current licensees, we will continue to monitor the behaviour of premises as they go forward.

Cathie Craigie: We have to remember that not all licences are held in city centres.

Assistant Chief Constable Barker: That is clearly the case. An awful lot, if not the majority of licensed premises, cause very few problems to either the police or the community. There are premises that cause problems but, as you rightly mention, there are also problems with people drinking alcohol in the street or elsewhere, which is not necessarily related to a particular premises.

Inspector Hunter: A related problem is that a large number of new premises opening up are in areas where there is demand and need for alcohol or a corner shop. As there is little or no disorder in those areas, any report would reflect that and would not be informative per se. I can think of a good example. The Law Society mentioned earlier the big developments that are happening. If there is a big development in the city centre, there will be a large number of incidents in the vicinity. If that development were slightly out of the city centre, there might be no incidents. It is about how you interpret such situations because you will not necessarily get what you expect.

Cathie Craigie: But you have to listen to what communities are saying and what they expect from people who serve them, whether it is MSPs or police officers.

Inspector Hunter: Absolutely.

The Convener: That was interesting evidence. If there are no final questions for ACPOS, I thank ACC Barker and Inspector Hunter for giving their evidence so clearly.

11:26

Meeting suspended.

11:33

On resuming—

The Convener: I welcome the third panel of witnesses. They are Paul Waterson, who is the chief executive of the Scottish Licensed Trade Association; Colin Wilkinson, who is the secretary of the Scottish Licensed Trade Association; Patrick Browne, who is the chief executive of the Scottish Beer and Pub Association; Paul D Smith, who is the executive director of Noctis and—to add to this morning's confusion—Paul Smith, who is the vice-chair of the Scottish Late Night Operators Association. Thank you for giving of your time to come here this morning. We will move straight to questioning.

Bill Butler (Glasgow Anniesland) (Lab): Good morning, gentlemen. In your view, what are the main problems with the operation of the Licensing (Scotland) Act 2005? What changes would you

like to be made to the bill to address your concerns?

Paul Waterson (Scottish Licensed Trade Association): The main problem that we have is trying to control local discretion. Licensing boards throughout the country interpret the 2005 act in many different ways, so we need somehow to standardise matters. It is difficult for us to give advice or opinions when licensing boards appear to be doing their own thing, as we often see. As the 2005 act gains momentum in the long term, the situation will only get worse. That is a serious criticism that we have.

Bill Butler: Will you give us examples in which there has been too much local discretion and a lack of standardisation?

Paul Waterson: In respect of operating plans and toilet provisions in Glasgow, there is no standardisation in respect of grandfather rights and what is meant by them. For example, licensees may not have room to put in new toilets, but their licence may depend on their doing so, and different boards may have different interpretations of the rights. We were told that people would have grandfather rights but, all of a sudden, parts of those rights are being taken away from licence holders. It puts licence holders in a very difficult situation if they are told that they have to put new toilets in when they do not have room for them.

Bill Butler: I will ask a High Court judge question along the lines of "Who are the Beatles?" Just for the record, what are grandfather rights?

Paul Waterson: I am sorry. Basically, they are the rights that allow licence holders to trade as they did under the 1976 act.

Bill Butler: I am grateful for that clarification.

Paul D Smith (Noctis): I will follow on from what Paul Waterson has just said. One of our central concerns is that imposition of requirements at local level is not handled reasonably. We are dealing with responsible businesses that have licences—other aspects of the economy and other business leaders are treated slightly differently. The attitude seems to be, "Well you've just got to get on with it in the licensed trade, because you operate under different rules." Our argument is that we are talking about people's livelihoods: businesses in the licensed trade are employers, and recent United Kingdom figures show that 50 pubs are closing every week.

Particular difficulties affect the licensed trade at the moment, and we would hate to see the bill exacerbate those difficulties. The present difficulties have been described numerous times in the press over recent months, so we do not need to go over them again.

Bill Butler: Just for the record, would you go over one or two of those difficulties again?

Paul D Smith (Noctis): We are in the middle of a credit crunch, and the smoking ban has inevitably raised issues—people do not go to licensed premises as much as they used to. Another issue is the cost of supermarket alcohol relative to on-trade alcohol. Numerous issues arise for the on-trade, and to exacerbate them would present lots and lots of people with considerable difficulties. We fail to see why that is necessary. The two-year rule, for instance, does not seem to make a huge amount of sense in terms of allowing major developments. The bringing into Scotland of money and jobs seems to be very important right now, so anything that prevents it does not seem to be sensible.

Paul Smith (Scottish Late Night Operators Association): One of the biggest problems that we will see with the 2005 act relates to its intention to control irresponsible promotions. Any adjustment in price will have to remain in place for 72 hours, and other promotions that currently exist will be banned. Members of our association are phoning me and asking, "If I run this promotion come 1 September, will it circumvent the act?" When I then hear the creative and imaginative promotions that are coming forward, I have to say, "Yes, that will circumvent the intent of the act, although it is not in the spirit of the act." As well-intentioned as are the controls in the 2005 act to prevent irresponsible promotions, they are weak and will fail. I fear that irresponsible promotions will continue.

For example, one of our members said that, although they must keep the same prices for 72 hours, they would introduce on a Wednesday and Thursday a brand of vodka that was 50p cheaper than the £2.80 for their main line of vodka because they want to drive business on those nights, then, come Friday and Saturday, they would simply de-list the cheap brand so that it would not be available. They would therefore not be adjusting the price, which they are not entitled to do under the controls in the 2005 act, but just de-listing a brand. I bounced that example off lawyer advisers, who said that it would be perfectly reasonable to do that.

The trade is only now—because 1 September is fast approaching—beginning to sit down and turn its attention to the issue. My fear is that once the 2005 act comes fully into force on 1 September, we will see a raft of promotions out there that will circumvent the 2005 act's intention to control irresponsible promotions, which was a central pillar of the Nicholson report. The question is how we address irresponsible practice in the on-trade and deep discounting in the off-trade, and the effect that it has on both areas and on the health

of our nation's people. I am gravely worried: I think that we will see huge problems shortly after the 2005 act comes fully into force.

Patrick Browne (Scottish Beer and Pub Association): I thank the committee for the opportunity to be here today. The issues fall into two camps. First, there are issues around licensing transition. People have this morning expressed concern about designating managers of premises by the deadline of 1 September. There are real issues around that, which could have major implications for the industry.

The second category of issues concerns unintended consequences that will arise from the bill's wording and the need for greater clarity. For example, the Law Society flagged up issues around the appeals process. We were promised a fast-track process whereby, if a licence was sanctioned, suspended or revoked, we could go in front of a sheriff and have the issue resolved in weeks. The problem at the moment is that the process takes up to six months, or longer.

The second area on which it would be useful to get greater clarity—I think the Scottish Government is working on this—is what constitutes a major or minor variation under the 2005 act. At the moment, changing a pub's name is apparently viewed as a major variation that requires the licence holder to go through the process of relicensing their premises, which seems to be a bit extreme.

Bill Butler: I am grateful for that. I have a question for Paul D Smith. The Noctis written submission refers to the development of a role of night-time economy co-ordinator to run in parallel with that of licensing standards officer. What are the practical advantages of creating such a role? You refer in your submission to the example of Bournemouth.

Paul D Smith (Noctis): Historically, Bournemouth Borough Council had issues with the licensed trade and the police. A relatively short time ago—within the past couple of years, I think—the council employed as a night-time economy co-ordinator a former licensee who had run a hotel many years ago and understood the licensed trade. The co-ordinator's job is to liaise with the council, the police and local licensees, which encourages dialogue between the different groups. We undertook a major initiative last year on community engagement because we believe that it is the key to providing answers to some conundrums. Local forums can help operators, the council and the police work together effectively.

There being a night-time economy co-ordinator means that the different groups can be brought together to address particular issues. We often reach for legislative solutions when, in fact, a simple conversation would solve problems. Neither the people who run pubs and clubs nor the police and local authorities want difficulty: they want simple and practical solutions.

11:45

A night-time economy co-ordinator enables some issues to be resolved at a fairly low level without the need for any one to become involved in a lengthy legal process, the outcome of which is that no one really ends up winning. The legal case is won, but it is a pyrrhic victory: whoever wins only ends up having annoyed the other side. There is no genuine partnership for a period of time, which is not very useful. The night-time economy co-ordinator seems to provide a useful role in resolving issues before they become problems.

Bill Butler: Is that a separate position or could further advantage be taken of those co-ordinators if a slight change was made to the remit of the licensing standards officer?

Paul D Smith (Noctis): Very possibly. The understanding that partnership is the key should lie at the heart of the licensing officer's role: officers have to respect the licensees and business owners in their communities. By and large, licensees are not looking to get around anything, to make difficulties or to cause problems. The majority of people who run licensed businesses in Scotland, England and Wales or wherever view their businesses as assets to their communities. Those who do not take that view are very much in the minority. The real danger is that we could end up looking at that tiny minority and viewing their behaviour as the norm—we could end up creating a legal structure in which the presumption is that these are difficult businesses that need to be sat on. That would not help to address the broad issues around those businesses as community assets—as hubs where people gather and places where people are employed.

Bill Butler: That is fairly clear. Thank you.

Robert Brown: I want to pursue the issue of the processing of personal licences, which the Law Society of Scotland and others have raised. I seek clarity on the significance and composition of these licences. The Law Society suggested that two components are involved: the backlog of applications that licensing boards are yet to consider, and lack of knowledge about the trade—people are not applying for posts. The two issues are somewhat different one from the other. What is Mr Browne's view on that, including on the need to find a solution?

Patrick Browne: It is clear that the onus is on individual licensees to ensure that they comply

with the requirements of the 2005 act. I am reasonably confident that our members have done so, wherever possible; they have submitted their applications and await their licences.

The issue is complicated by a range of factors. Licensing boards have rightly focused on processing premises licence applications instead of getting to personal licence applications, the result of which is that we now have a backlog of personal licence applications. Also, communication with the trade has been limited. The previous Scottish Government's last promotional campaign on the issue that was aimed at the industry was in December 2007, just a few months before transition. Since that time, we have had no follow-up.

A real issue is involved, the scale of which will become apparent only as we approach 1 September. Many councils go into recess for part of the summer, so during that period it will be more difficult for them to process applications at the rate at which they have so far.

Robert Brown: Have you had any communication with the Scottish Government on the perceived problems? If so, have you heard of anything in the pipeline to sort them out?

Patrick Browne: The SBPA met the Cabinet Secretary for Justice a few weeks ago. We raised the issue with him and followed up with a letter in which we highlighted the research that is now in the public domain. We made that approach, but we have so far had no positive response, other than the expectation that individual applicants should have their licences in place by 1 September.

The problem is not only the 1 September deadline because some boards are imposing deadlines that are well before then for submission and processing of personal licence applications, after which the licensee's name is added to the premises licence. For example, Orkney Islands Council has suggested that applications should be made by 30 June, and other councils are following suit with similar deadlines. The issue is starting to bite.

Paul Smith (Scottish Late Night Operators Association): An application for a personal licence must be made to the board in the area in which the person resides. That is causing a backlog, because some managers in my company live in one part of the country but work in another. We cannot apply to make them designated premises managers until they have their personal licences. Some boards will allow an application for a designated premises manager to be made first, but some will not accept such an application unless the person's personal licence is provided at the time of the application.

Such situations are causing my company deep concern. We are on the phone every day to ask how the personal licence application process is going, but we are told, "We can't tell you; you'll just have to wait and see." When we ask whether the application will be granted in time, we are told, "We don't know." To resolve that problem, I might have to remove a manager from his position and fill it with someone who has a personal licence.

Colin Wilkinson (Scottish Licensed Trade Association): We have the same problem. We encouraged our members to apply for personal licences when they applied for premises licences. Some were told, "Just forget about that the now," but they are now being chased by licensing boards for their applications.

The SLTA office gets a lot of phone calls on this. We represent about 1,200 independent licensed trade businesses and we have noticed a marked increase in the number of people who seem to think that all they need to do is sit through their training.

Robert Brown: There is a double issue, as identified by the Law Society of Scotland.

Colin Wilkinson: There definitely is.

Robert Brown: Is there a considerable backlog of applications, with relatively few being granted, as we have heard?

Colin Wilkinson: Yes.

Paul Waterson: The situation will get worse.

Robert Brown: As I understand it, the SLTA raised three points to do with fees in its written submission. First, you said that fees are higher in Scotland than they are in England. Secondly, you suggested that there is a disparity in the treatment of registered clubs. Thirdly, and perhaps most significant, you made the point that although supermarkets have the bulk of off-sales trade, their fees are relatively small beer, so to speak. Do the other witnesses share those concerns? Is there a case for making the supermarkets bear a greater proportion of the total cost of the licensing system?

Colin Wilkinson: May I add something? The system is based on rateable values, but no consideration was given to the fact that the rateable values of on-trade and off-sales premises—mainly supermarkets—are calculated in completely different ways. For the on-trade, the calculation is based on turnover—the value is roughly 8 or 9 per cent—whereas for supermarkets it is based on square footage. The people who benefit most from the sale of alcohol should pay proportionately.

Patrick Browne: We supported the principles behind the proposals on fees that were put to the

Scottish Government. We accepted the rateable value calculator—I think that we allowed for the view that the SLTA expressed.

I will be honest and say that our biggest problems have been first, the lack of transparency in boards' operating costs and fee income, and secondly, the setting of the maximum fee at twice the original level. There has been a double whammy, which has meant that some boards—I stress that I am talking about probably only four or five—are doing well and making loads of cash. I think that one board was planning for a surplus of £500,000 in the previous financial year. That money disappeared into the council coffers at the end of the financial year. It had been paid by the trade in good faith, but the trade gained no benefit from it. The combination of the two factors that I mentioned has not been helpful.

Robert Brown: It is obvious that the relationship between the on-trade and the off-trade is an underlying issue. I guess that the organisations that the two Mr Smiths represent have a slightly different mix of members than the other witnesses' organisations have. Is that right?

Paul D Smith (Noctis): We represent late-night economy businesses; the Scottish Late Night Operators Association has a similar membership. We represent clubs, bars, live venues and student venues.

One of the key issues involving the supermarkets and our membership is around preloading. The relative cost of off-trade alcohol means that lots of people—the vast majority—are preloading, to a lesser or greater extent, before they go out to our members' premises. Without doubt, that is causing a problem, and not just with our members' premises being relatively empty early in the evening. We are not hugely keen on this, but if our members run a deep-discounted promotion, their businesses will be bustling early in the evening. If they do not, people will turn up a couple of hours later having had quite a lot to drink from the supermarket. Taxi drivers used to talk about taking inebriated people home; now they talk about bringing inebriated people into the towns and cities. That change has come about over recent years.

There is a key question about our members' businesses getting into trouble. They must obviously turn away some people who have spent money on taxis to come into town. When they get to the door of the premises, those people are too inebriated to get in, and that can cause altercations on the door. It puts our members' businesses in a pretty invidious situation: potentially, they can be in quite a lot of trouble with the police and local authorities, based on incidents that occur when they turn people away. That should not be the case. Our members do not, by and large, sell alcohol to people in those circumstances—rather, they turn them away. There have been instances in England and Wales under the legislation there—the Licensing Act 2003—when that has caused problems. The businesses concerned have had pretty difficult conversations with their local councils and with the police, not based on their having caused the problems, but on their experiences of people turning up at their doors having had too much to drink before getting to their premises.

Robert Brown: Those are all important points, but I will stick to the issue of fees, which I began with. I want to clarify whether the other organisations support the approach that Mr Wilkinson has outlined on behalf of the Scottish Licensed Trade Association—that the supermarkets should bear a higher proportion of the cost of regulating the system, in terms of fees, partly for the reason that has been explained and partly for more general reasons.

Paul D Smith (Noctis): It seems fair, given that the majority of alcohol sales are moving towards the off-trade, that the off-trade should bear a reasonable percentage of the costs.

Robert Brown: Do you have a similar view, Mr Browne, or do you take a different view?

Patrick Browne: When the original fees proposal was being discussed, we stood by a principle—that our fees should reflect costs. If it costs the same amount of money to administer a licence for a supermarket as it does for a larger pub, the two businesses should pay broadly the same amount.

There might be an opportunity to examine the rateable value bands on which the calculation is based and to adjust the bands to reflect the change. There might be an opportunity to consider imposing higher bands at a higher level. That might be a way forward.

The fundamental principle is that premises should pay broadly the amount of money that it actually costs to administer the licensing process.

Nigel Don: I want to pick up on that issue. It would be useful if somebody came up with a better banding system—which seems to be accepted in principle—improved the numbers and gave us their ideas. Otherwise, we are all guessing.

Paul Waterson: The foundation for the system is a ratio, if you use the rates. You should remember that the rates for on-trade premises are far higher than for off-sale premises, therefore it is unfair to use rates to start with: you might wish to use turnover instead. I do not think that the fees that some pubs are charged—which we know some of them cannot afford, which is why they are going out of business—equate to those for

supermarkets turning over millions of pounds in alcohol sales a year. The rates are fundamentally flawed to start with, because the two sides of the trade pay according to entirely different ratios. Our ratio is 9 per cent of turnover, whereas the supermarkets' ratio is nowhere near that.

Nigel Don: Presumably you could give us an estimate of a fudge factor, or multiplier, that would enable you to get on-trade and off-trade back to something like equity. Is one rate two times higher or five times higher than the other, for instance?

The Convener: You will appreciate that your evidence on that would have to be tested by some means.

12:00

Nigel Don: The point is that, if the arithmetic is not right, I would be happy for us to find a way of improving it, although it would not be perfect. It would be helpful if, having accepted the basic principle that rateable value is a way forward, you gave us some mechanism for coming up with something that is equitable. That needs to come from gentlemen such as yourselves because, frankly, we would be guessing—it is not something that we can do.

Colin Wilkinson: In its consultation document on the draft Licensing (Fees) (Scotland) Regulations 2007, the Scottish Government described its remit as

"to define a system:

- Allowing for full cost recovery
- Having the same scale of charges across Scotland as a whole"—

which we do not have—and

"Which would not be unfair to SMEs".

What we have got is certainly not fair to small and medium-sized enterprises.

Nigel Don: I ask you to work on the basis that we accept that as a statement of principle but we need you to give us the answer, please, as we have no mechanism for coming up with one. That would be helpful.

Let us move on to site-only licences. Most of you were here earlier when we spoke about them. What was helpful about site-only licences under previous legislation? How should the matter be dealt with in the future?

Paul Smith (Scottish Late Night Operators Association): I support the position that was put forward by the Law Society. My company undertakes many large-scale developments across Scotland. As the representative from the Law Society said, we need to go through certain processes, starting with securing an option on a piece of land or a building. Often, the vendor of the land or building will willingly enter into a restricted option period, but they will not want to sit on it for an indefinite length of time without knowing that a licence will be secured. Once the land or the building is secured, we have to build the concept and define how large the development will be, what it will involve and what the principal costs will be. We then have to engage with our funders, to ensure that the funding is available, and apply for a licence. We have to secure some form of licence at that stage to conclude the deal with the vendor on the piece of land or building and move to the next stage of the fine detail. That is how it has worked under the 1976 act.

In the past eight years, I have successfully built three very large developments in Scotland using the principles in the 1976 act. I doubt that I would be able to do the same under the 2005 act, as I see all sorts of hurdles—not least of which is the fact that I would not be able to secure funding if I did not have a licence. Any vendor of land or property would not tie into an option for many years until we got through to the detail and secured the licence under the 2005 act. That would severely restrict my company's ability to grow and develop. I appreciate the Law Society's concerns.

Nigel Don: Does anybody else have anything to add?

Paul Waterson: Five years seems fair.

Paul Smith (Scottish Late Night Operators Association): That accords with planning consent which, when it is granted, lasts for five years, so it is logical.

Nigel Don: Thank you very much.

The Scottish Beer and Pub Association's written submission raises concerns about the personal details of licence applicants being made available to the general public. Can you expand on that, please?

Patrick Browne: It is a point of basic fairness. Given the fact that licensees tend to be public figures in their communities, they may not always want personal information to be in the public domain. In the case of a pub company, information about directors in a different part of the country might be made public. Our view is that, in the interests of data protection and personal privacy, it is reasonable that that information be made available to licensing boards, so that they can complete the necessary statutory checks, but not to everybody.

Nigel Don: What particular information are you worried about? Can you give an example—a hypothetical one, if necessary?

Patrick Browne: Our written submission refers to people's names and addresses being made available. Making someone's address public poses particular issues in relation to personal privacy. We are concerned that the information could be misused.

Nigel Don: Does anybody else have anything to add?

Paul Waterson: We agree that it is not right that the addresses of people who run local pubs and so on are made public.

Cathie Craigie: Good afternoon, gentlemen. Section 131 will give licensing boards the power to grant licences subject to the modification of premises, if the applicant agrees to the modification. The Scottish Beer and Pub Association was the only panel member to highlight concerns about that in its submission. The committee is not helped much by the fact that the submissions from the boards of our two largest cities seem to disagree about the implications of section 131. What are the panel's views? Will the change bring any benefits for your members or the public?

Patrick Browne: We have no issue with an applicant and a board mutually agreeing that a course of action is appropriate for an application, with a consequent change to a layout plan. Our concern is that we are not convinced that that is how the process will work. The Law Society's representatives talked about a board saying that a bar should be moved from one side of a room to another. Such a situation would be fairly extreme. I have attended many board meetings in the past 18 months, for my sins. Board members might have concerns about the proximity of furniture or a door to the bar, about a serving hatch that is in the wrong place, about a pillar on the bar obstructing the view of the rest of the bar or about an amusement machine. Our concern is that if boards are given the power to make changes, they might try in some cases to do so without agreement and leave it for the applicant to seek a remedy.

In the transition, it appears to be agreed that when an applicant and a board agree a course of action, the operating plan will be changed and the layout plan will be changed as a consequence. Our concern is that including in provisions the layout plan as well as the operating plan might be a step too far.

Paul Smith (Scottish Late Night Operators Association): I agree. My concern is that when an applicant is before a licensing board that is considering the operating plan and the layout plan in detail, the board might, in effect, present the applicant with a fait accompli. If the board does not like the position of the bar or where a clutch of tables, a seating area or a dance floor is located, it can say that it will agree to the application if the applicant agrees to change the layout. That is presenting a fait accompli.

Licensing boards are not experts in design and build. Designers with many years' experience set out how licensed premises will work. I recently worked on a licensed premises of more than 40,000ft^2 that contained many trading aspects, including restaurants, a nightclub, a private members lounge, private function rooms, a bar, kids areas and amusement areas. It is critical that different trading areas work together and that crowd control measures allow movement through a building without obstruction. Achieving that takes many months of careful planning and design.

I am worried that licensing boards, which sometimes have only five or 10 minutes to decide on an application, could suggest a change that might seem right to them but which would destroy a building's layout and design. I am greatly concerned that if an applicant were presented with a fait accompli—we should remember that the decision whether to grant the licence on the day might be critical for the applicant to secure options on buildings or funding—they might be forced to accept it.

As the Law Society said, boards would be micromanaging premises. We should leave it to the experts, who have spent weeks and months on working out the layout. They know best.

Paul D Smith (Noctis): I do not know of a single licensee who aims to lay out premises in a way that causes maximum aggravation. Licensees lay out premises to minimise aggravation. Bars and other features are sited to allow reasonable movement through the premises. It makes absolutely no sense for a licensee to create plans that lead to problems or confusion. That is why, as Paul Smith from the SLNOA said, a huge amount of effort goes into plans. People do not want seemingly random decisions to be made. There are financial implications, too. It is not reasonable to expect people to have to go back into another three or six-month cycle just because of some random decision made at a board.

The Convener: We will pursue the issue with council representatives presently, but would it not be the case, Mr Browne, that in the run-up to an application being heard by a board, discussions would take place between the applicant, his legal representatives and representatives of council departments, for example people in building control? If concerns arose to do with the siting of, for example, a non-weight-bearing pillar, they would be discussed at the time. Some agreement or compromise could probably be reached.

Patrick Browne: I take that point, convener, but when issues have been raised during transition

and discussions have taken place, applicants have sometimes accepted the view of the board but at other times they have not and the matter has fallen, because people have not wanted to push it.

If you gave boards the dual lever of amending the operating plan and the layout plan, the pressure could be too much. It would allow boards to comment on issues such as the siting of an amusement machine in a bar. They could say, "Why don't you move it? We think it should be here on the plan." That would add a further layer of complication.

I have no difficulty with agents acting on behalf of an applicant agreeing with a board on an outcome that is acceptable to both parties. However, if the amendment to the 2005 act were passed, I would be concerned about boards making unilateral decisions on changes.

Paul Smith (Scottish Late Night Operators Association): Convener, you are dead right: the place for discussions is between building control, building standards and the architect or designer, as the application goes through the process. I have often found that, because of their knowledge of building regulations, people suggest that an application might not comply, and changes are made. Between them, the applicant and building control arrive at the right end result. It worries me that, having reached that point, the application could be placed in front of a licensing board with no experience that might make suggestions as serious as changing the position of the bar, for example.

The Convener: Do you concur, Mr Smith with a D?

Paul D Smith (Noctis): I do, completely. Sometimes, the simplest solutions are the best. A conversation at an early point is obviously better than a late conversation with the board.

The Convener: I see that Mr Waterson accepts that point.

Stewart Maxwell: If the licensing board was pushing for changes at that stage, it would surely have to have a reasonable case for doing so. Mr Browne, you said that decisions would be taken unilaterally—you may even have said arbitrarily. You surely are not suggesting that licensing boards would make changes for no reason. There would have to be solid logic behind any decisions. Reasons would have to be explained.

Patrick Browne: I am loth to suggest that changes would be taken for no reason. However, I spent four years as a member of a licensing board, so I have been privy to discussions from the other side. I have also attended quite a few board meetings over the past 18 months, and there have been occasions on which board members have commented on the siting of an amusement machine, but board officials have had to point out that the location was chosen as a result of professional advice from officials, LSOs and others.

Paul Smith of the SLNOA made a point about people dropping in at the end of the process, rather than being involved in the discussions throughout. That is dangerous. Giving power over the operating plan and the layout plan might be taking a step too far.

Paul Waterson: You would open up things to the inconsistencies that we spoke about before: the whole of the country would be different, with an inconsistent approach. Something might seem logical to a licensing board, but that does not mean that it is right. In our experience, unfortunately, licensing boards sometimes have ideas on how things should run that are different from everybody else's.

Stewart Maxwell: But, on the other side of the coin, just because a licensee thinks that something is right does not mean that it is right.

Paul Waterson: The first thing that anybody would say to an architect is, "Remember the board." As Paul D Smith said, people do not go looking for problems. Changes are made as the process goes on. There is no need for another tier.

12:15

Paul Smith (Scottish Late Night Operators Association): The point is to leave it to the experts. The licensed trader—the person who is making the investment—who has probably put his home on the line and is prepared to suggest the design and layout of his premises is an expert, and building control people are experts. Those are the people who should be involved. With respect, licensing boards are often far from expert in such situations and a knee-jerk comment can kill a design scheme. If there is imposition on the layout or operating plan, it will not work.

Paul Martin: Gentlemen, do you want to comment on the Government's proposed new provision in section 132, on antisocial behaviour reports?

Paul D Smith (Noctis): Although we have no issues with problem premises being dealt with effectively, altercations caused by doing the right thing and turning people away can find their way into reports. Similarly, problems can be caused by an operator doing the right thing by managing people in and out of premises where there are no smoking areas—a lot of late-night premises do not have designated smoking areas. An operator might be doing their damnedest to avoid problems, but problems can occur. They can be placed in a

pretty invidious situation if they are doing their best to stop people coming into their premises yet they are still falling foul of the authorities. That is not particularly fair.

Paul Martin: You make a powerful point, but if police reporting mechanisms were more effective in reporting incidents, they might at the same time report that the applicant had made reasonable efforts to deal with the problem. It is important to recognise that while the vast majority of licensees run good and effective businesses and deal with antisocial behaviour, antisocial behaviour reports provide an opportunity to highlight those who do not.

Paul D Smith (Noctis): Absolutely. The more evidence that there is to highlight problem premises the better. It would also be useful to give good premises more of a pat on the back. Of course I would say that, because I run the trade body for the late-night sector, which often operates under difficult trading conditions that are managed incredibly well by our members. However, there are operators out there who are causing problems. Most of the people on this panel would be happy for the rogue operators to be removed.

Paul Martin: The Government proposes that it would be for the licensing authority to request an antisocial behaviour report or for the police to decide to provide one. Will that create consistency issues? Some applicants might say, "Why am I being reported by the chief constable when another applicant is not being reported to the authorities, even though I am aware of antisocial behaviour on their premises?" Having a consistent approach, which was delivered under the 2005 act, would ensure that all reports were provided consistently. Under the proposed provision, a report would be made only at the request of the chief constable or the licensing authority.

Paul Waterson: The problem is in there being reports for all premises when there are clusters of pubs. I understand that not all premises are in city centres—there are pubs and off-sales in housing schemes. However, surely it is right that if there are problems in an area, the board asks for a report or the police provide one, rather than having lots of reports on all premises, most of which will probably mean nothing because, for example, in city centres there are clusters.

Paul Martin: You want the board to have discretion. You raised a point in a previous answer—

Paul Waterson: You cannot say—

Paul Martin: I am making a point about consistency and treating applicants fairly. Would the applicant not want everyone to be required to provide an antisocial behaviour report?

Paul Waterson: We are saying that the problem premises should be taken to task. They should be identified by the police or by the licensing board, if there are problems. However, when we get right down to local issues, there should be some discretion. That is the discretion that I am talking about. Who has better knowledge of the local issues than the licensing board or the local police?

Paul Martin: How do we ensure that the process is robust? We passed the Licensing (Scotland) Bill in 2005 because the police were not providing consistent information to boards. The provision whereby the police had to provide antisocial behaviour reports in every case ensured consistency. I appreciate that some boards have local intelligence, but sometimes that local intelligence is unfair. The requirement to provide antisocial behaviour reports ensures that there is a consistent approach.

Paul Smith (Scottish Late Night Operators Association): It is difficult to argue against your point. Consistency says that if we are to have a process of providing antisocial behaviour reports, it should apply to all premises. I fully take that on board. However, perhaps I am missing something. Such reports have had to be supplied for every application during transition but, given that the transition period is nearly over and licences are granted in perpetuity, antisocial behaviour reports will require to be provided only for new licence applications under the 2005 act. I do not think that that represents a burden on the police. I do not see what the difficulty is, even though I still feel that the provision in the 2005 act remains a problem, because of how distance is calculated and the fact that offences can be caught that are not related to premises.

An antisocial behaviour report will have to be prepared for every new application, when a board member requests one or when the police want to bring to the board's attention premises that have already been granted a licence. By and large, all the work has been concluded. I take your point on board. Consistency and fairness suggest that antisocial behaviour reports should be supplied for every licence application.

I still have doubts about how the information is identified and brought together. I can give the committee a practical example relating to premises that I have in Fife. Simply by virtue of the premises' location—adjacent to an extremely busy taxi rank, which is a hotspot for antisocial behaviour—the premises were subject to an antisocial behaviour report that was supplied by the police in relation to an application during the transition under the 2005 act. The report made the area sound like a war zone. When the report was read out, I saw some board members raise their eyebrows and focus on the premises. The first

question that I asked was whether the police were prepared to comment on whether they thought that the premises were well run or were problem premises. To their credit, the police said that they were extremely well run premises. However, the report made the location of the premises sound like a war zone.

Stewart Maxwell: I have a question about consistency versus local flexibility. Do you agree that although consistency is often welcome, it serves no purpose to use up police resources, licensing boards' time and the time and effort of your members churning out antisocial behaviour reports on premises that, frankly, give concern to no one?

Paul Smith (Scottish Late Night Operators Association): I agree. On one hand, there is the consistency argument; on the other is the fact that producing an antisocial behaviour report for every licence application involves a lot of work for the police. If the premises are not problem premises, what is the need for a report? However, although I recognise both points of view, I think that, by and large, the work under the 2005 act has now been done. The police will have to produce reports on new premises licence applications, but the number of applications that are made under the 2005 act will be limited, not least because of the condition of the economy and the state of our sector. If a member of a licensing board or a local councillor asks for a review, an antisocial behaviour report will require to be produced, but that should not be too difficult to do.

Paul Waterson: Antisocial behaviour reports can be used as powerful tools against premises. They can be used to say, "We're getting reports that the premises aren't being run properly." However, if all premises are the subject of such reports, the message is that people do not have to worry too much, as 95 per cent of the reports are useless anyway because, as Paul Smith said, a premises might be next to a taxi rank or might be one of a cluster of pubs. That is the basis of our thinking.

Patrick Browne: I echo what Paul Smith from the SLNOA said towards the end of his remarks. Under the 2005 act, anybody can ask for a review of a licence at any time on the basis of any of the licensing objectives. If a board accepted an approach from a member of the public who complained about a premises on the basis of the crime and disorder objective, I would expect the board to ask the police for an antisocial behaviour report, so I suspect that we might get to that point anyway. However, there is a difference between asking for antisocial behaviour reports on 20,000 premises in advance of licensing transition and what we will have from now on, which is, perhaps, 700 reports a year plus the review applications.

The Convener: I have a final question for Mr Waterson. In your initial answer to Bill Butler, you pointed out what you regard as inconsistencies between licensing boards. I can well understand the frustrations of the SLTA in that respect and the difficulty that you have in giving advice to individual members, but do you agree that different licensing regimes, in some respects, should be applied in Glasgow and, say, Moray, where different local conditions apply?

Paul Waterson: In relation to training, a single, consistent message goes out throughout the country, which works well. However, if we think about permitted hours, while the position in the short term might be fine, as time goes on and licensing boards change and develop their ideas, we could end up with a patchwork effect. One side of a street could be open and the other side closed. As far as I know, the overprovision provisions in the 2005 act have not even commenced yet.

It would be a lot easier if the positions on overprovision and permitted opening hours were set out nationally, with some local discretion, of course. We have lost some of the more consistent parts of the 1976 act as we have tried to give boards more and more control, and they will use that—they will interpret things in ways that give them even more control. That is a dangerous situation to be in.

The Convener: Gentlemen, thank you for giving evidence today. It has been a very useful exercise.

12:27

Meeting suspended.

12:29

On resuming—

The Convener: I welcome our fourth and final panel, which comprises Councillor Marjorie Thomas, chair of the city of Edinburgh licensing board; Mairi Millar, senior solicitor and assistant clerk from the city of Glasgow licensing board; Frank Jensen, legal team leader at Fife Council; and Sylvia Murray, policy manager at the Convention of Scottish Local Authorities. Thank you for giving of your time this morning to give evidence. We will move straight to questions. Time is getting on, so if one of you has answered a question and the others agree with what has been said, do not hesitate to say so.

I draw your attention to the fact that the bill proposes to extend licensing requirements in relation to market operators and free events. You will have heard the evidence given by earlier witnesses, who expressed concern that the

provision could impact negatively on charitable and community events. Are those concerns valid?

12:30

Frank Jensen (Fife Council): Yes. At the moment, local authorities are required to resolve either to license or not to license a market operator's whole activity—there is no discretion as to which bits of that activity they may or may not license. For the past 20 years or so, numerically the most common type of market has been the car-boot sale, of which there are and will continue to be many in Scotland. Conveniently, from the point of view of administration of the market operator licensing system, most of those fall within the exemption, because almost all of them are run by voluntary, charitable, sporting or recreational organisations for fundraising purposes. The removal of the exemption will bring all of them within the scope of the licensing regime.

It would be highly desirable if there were explicit provision that gave local authorities discretion to determine which categories of market in their area they wished to license, control or regulate. The committee has already heard from others about how the issue might be determined—through assessment of perceived risk, numbers and so on. Such explicit provision would allow local authorities to decide whether to license small-scale markets, or car-boot sales by church groups, and so on. That is essential, as the concerns that were expressed to the committee earlier are well founded.

The Convener: Do any of you take a contrary view?

Mairi Millar (City of Glasgow Licensing Board): No. I agree with what was said. It is important to point out that, even if such events were not licensed, they would still be subject to inspection and scrutiny by our out-of-hours health and safety team, for example. Applying for a licence has cost and practical implications—it is a cumbersome process that would put off a number of charitable organisations.

The Convener: I turn to the question of licences that have, in effect, lapsed because the application is late. As you are aware, the bill makes provision for licence applications that are made within 28 days of the expiry of the existing licence to be treated as renewals, rather than new applications. Might that have any negative consequences?

Mairi Millar: It is unclear what would happen during the 28-day period. Earlier today the point was made that we will be in a sort of limbo. It is not entirely clear whether someone who has not renewed their licence and is found driving during the period is committing an offence. Glasgow has a long-standing policy of limiting the number of taxis. If a licence application is not made at the renewal point, should we take it that the licence will not be renewed and that there is a free licence, or must we wait until the 28-day period has expired? It is unclear how we should deal with speculative applications that come in during that time.

The Convener: No one has any other comments to make on that, so we will turn to alcohol licensing.

Nigel Don: I am delighted that you probably heard the comments from the trade representatives about modifications to layout plans and operating plans. Will you give us the view from the other side of the table? Are their concerns justified?

Mairi Millar: I heard comments about frivolous matters in relation to attempts by boards to modify layout plans. I am not aware of the board in Glasgow ever having intervened because it was unhappy with the cosmetic layout of premises. Any attempts to modify the layout or operating plan have been the result of concerns raised by building control officers or licensing standards officers, so I do not buy into the remarks about frivolous matters.

I am concerned that section 23 of the 2005 act, if amended by section 131 of the bill, would provide that, if the modification were agreed by the board, the application would have to be granted. If a modification is agreed at the licensing board meeting, amended plans are prepared and developed. Only at that stage do we consult again building control and the fire authority. An issue might arise that was not in the board's or the applicant's thoughts when the modification was agreed and the bill seems to provide that

"the Board must grant the application"

with the modification, despite any concerns that might arise subsequent to the modification having been discussed.

Nigel Don: Can you suggest, either now or in writing later, how we can end up with a mechanism that will close the loop in that regard?

Mairi Millar: I do not think that there is a particular problem at the moment. In Glasgow, if there is a concern it will be discussed and the application will be continued to allow amended plans to be lodged. The amended plans would go to the various officials and, if they were fine, there would be a straightforward grant. If there were a difficulty, the application would go back to the board, where the issues would be considered without the constraint of the board being in the "must grant" situation.

Nigel Don: So the answer is to continue the application to the next board meeting.

Mairi Millar: Yes. That is what happens in practice. I think that that is the case with other boards, too. I know that John Loudon talked about it earlier.

Nigel Don: Is it fair to say that most boards meet more frequently than once a quarter?

Mairi Millar: During transition the Glasgow board has been meeting twice a week. It is difficult to anticipate how often it will meet in future, but I would imagine that meetings will be at least monthly.

Nigel Don: That is what I thought. When I was on the licensing board in Dundee, we tended to meet quarterly, but there was almost always one meeting four weeks after the cycle to catch up with the continued business. Councillor Thomas, do you have any thoughts on how councillors will feel about being told that they come up with frivolous changes?

Councillor Marjorie Thomas (City of Edinburgh Licensing Board): I agree with Mairi Millar. The word frivolous did not gel with my experience. Any decisions that boards make are taken seriously. We would never agree to anything unless the officials were happy with the changes. As far as operating plans are concerned, I think that we have once done something because of a red line—a small issue—but never anything of major significance. I concur with Mairi Millar that the board would change plans only if officials reckoned that we needed to do so.

Nigel Don: Do you concur with the idea that boards might meet often enough to ensure that variations to applications can be dealt with by continuing the application?

Councillor Thomas: Yes. In Edinburgh we meet monthly on Mondays and Tuesdays and throughout the recess, too. Sometimes the board meeting lasts from 9 until half past 6. There is plenty time.

Nigel Don: Do the other witnesses have anything to add to that?

Frank Jensen: In Fife, the board has been meeting weekly during the transitional period. Thereafter, its meetings will probably be monthly. Then again, if urgent business requires to be dealt with, it is relatively easy to convene a meeting at shorter notice.

Amendments to layout plans have been dealt with in much the same way as in Glasgow. Most amendments have been for fairly basic, innocuous matters, such as reducing the number of different display areas in off-sales from four or five to two.

Cathie Craigie: Does Mairi Millar believe that section 131, on the modification of layout plans, adds anything to the bill? If not, should it be taken out?

Mairi Millar: I do not think that the amendment of section 23 of the 2005 act is necessary. Current practice deals more than adequately with the situation.

Cathie Craigie: The written submission from the City of Edinburgh Council's licensing board says that

"The Board welcomed this amendment which gives effect to"

what happens in practice, but you said earlier, Councillor Thomas, that you agreed with Miss Millar's points. Can the City of Edinburgh Council clarify its position in that respect?

Councillor Thomas: My point was that, to my knowledge, plans with which we have dealt have rarely had to be changed. I agree that it is not a frivolous thing, but a process that we go through. I can say only that it has not been an issue in Edinburgh. Perhaps Edinburgh and Glasgow have slightly different views on that.

Mairi Millar: It is important that licensing boards have the power to modify layout plans. My difficulty is with the "must grant" provision that would be the effect of the proposed change to section 23 of the 2005 act.

The Convener: In fairness to the previous witnesses, it should be put on record that none of them used the word "frivolous".

Paul Martin: The bill will modify the requirement to provide copies of premises licence applications, so that only a chief constable will be required to receive a copy. Copies of applications will no longer be provided in local newspapers and so on. What are your views on that?

Mairi Millar: A balance must be struck. Given the length of such documents, it would be overburdensome for boards to have to provide copies of the application form, the operating plan and the layout plan for neighbourhood notification and various other consultations. A chief constable and a fire authority should certainly receive all those documents in order that they can comment on them.

The difficulty with simply notifying—particularly people living within a 4m radius of the applicant's premises—is what they would be notified of, given that they would not get a copy of the application and that the 2005 act introduced generic premises licences. Previously, it was possible to say whether an application was for a public house, or an entertainment licence and so on, but we are now able to say only that an application has been received for a premises licence to authorise the sale of alcohol for on-sales, off-sales or both. My

experience throughout the transition period for the 2005 act coming fully into force is that people who have received letters of notification have had no idea as to what was proposed, because of the lack of information that I have described. In all honesty, I think that even providing them with a copy of the application form, operating plan and layout plan would take them no further. I find it difficult to understand what is proposed in applications, because the generic operating plan has little or no information about what will happen on the premises.

Paul Martin: Communities and community councils usually get initial notification of a licence application via a newspaper. Is that not a helpful way of advising the community that a licence application has been submitted? People can then interrogate the information at a later stage, if they want to.

12:45

Mairi Millar: Boards can advertise applications either in a newspaper that circulates throughout the board's area or on a website. There is a move away from newspaper adverts. There is an Improvement Service initiative, which I think is supported by the Scottish Government, to set up a national website on which all public-notice applications will be advertised. That takes me back to the earlier point about adverts for taxi fare changes. We wonder why the bill prescribes a newspaper advert for that when there is a move away from that type of advertising. This morning, John Loudon spoke about the difficulties with newspaper adverts. They appear at a point in time, so if people miss them, that is it, whereas people know where to look for a website. It is useful to notify community councils and neighbours that an application has been received. If they wish, they can come to the licensing section office and look at the application form and the operating and layout plans. However, as I said, I am not clear how much information that would give them.

Paul Martin: Do you accept that there is a move away from providing information to communities? As I said, I embrace the IT age in which we live, but about 40 per cent of the population in the UK does not have access to broadband. Some communities do not have access to the web. I appreciate that people can go to their local library, but the opportunity to provide information to the public via a newspaper is helpful, is it not?

Councillor Thomas: I agree with Mairi Millar. We have had difficulty in Edinburgh with people perceiving that they were not able to find adverts, so we have considered the issue in great detail. We have considered putting information in libraries and elsewhere, but people are becoming much more web orientated. Given the costs, we are advised that using the web is the way forward. I do not want members of the public to think that anything is being hidden. We want to make it crystal clear that the information is open and that nobody has anything to hide. We will try to find the best way to educate people that the information is on the council or board website, using links and so on.

Paul Martin: I am sorry to labour the point, but councils send out various publications. Every month, I am sent a copy of *Glasgow* magazine, which gives information about surgeries and events. Nobody has ever told me that the council should stop sending out that magazine because people can access information on the web. We still send out paper forms of information. Libraries have countless items of literature from local councils on various issues. Why is it an onerous task to send out information on applications, given that councils are happy to send out paper on other occasions? We cannot have it both ways.

Mairi Millar: Obviously, we will still notify the community council that an application has been received for its area and we will carry out the neighbourhood notification. During the transition period, there was no requirement to provide all the documentation. I would be reluctant to send out all the documentation for the neighbourhood notification. We had one application that resulted in 200 letters of notification being sent out. Photocopying a 16-page application form and operating plan and sending that to 200 local residents would cause chaos in our office.

Paul Martin: What are the witnesses' views on antisocial behaviour reports?

Mairi Millar: One of my main concerns about the antisocial behaviour reports is that there is no tie-in with the applicant premises. That is a particular concern with premises that are not yet in operation. The suggestion is that boards might be provided with antisocial behaviour reports that detail the number of incidents of antisocial behaviour in a particular locality. My experience of appeals is that the courts want the board to establish culpability on the part of the applicant or licence holder. With board decisions that are based on test-purchase operations, the courts are looking for the board to establish that the failure is the licence holder's fault and to show a causal connection. Against that background, I would be reluctant to advise a board that it could refuse an application based on an antisocial behaviour report, because that report will display no evidence of culpability on the part of the applicant. They cannot be shown to be responsible through their actions for the antisocial behaviour.

I also adopt all the points that the previous witnesses made about location. The applicant's

premises might be situated on a main thoroughfare where people are routinely passing by. Antisocial behaviour issues might also arise near premises that are located close to a particular type of hot spot, such as a football stadium. The problems might not be related to the management's operation, or future operation, of the premises.

Frank Jensen: I go along with that entirely. So far, the antisocial behaviour reports that our board has viewed have been of very limited value, essentially because of that point about culpability. The reports do not contain a great deal of information that can be used, although they might paint a picture of the area. The information in antisocial behaviour reports might be used more beneficially in larger areas such as town centres, where the details could be reported to licensing forums, which can make general recommendations to the licensing board on terminal hours and other issues. However, that option is available already.

Paul Martin: Convener, I know that we are short of time, but I want to ask just one brief question.

The Convener: Let us fully examine the issue.

Paul Martin: Concerns have been raised about the requirement to consider an antisocial behaviour report, but licensing boards must surely take into account whether antisocial behaviour has surrounded the premises to which the application relates. If antisocial behaviour clearly did not exist to the same extent previously and has increased since the premises started operating, surely the board must be in a position to be properly informed about the kind of activities that are taking place. For example, if the police are called 167 times to a particular premises, surely that should be reported to the board without requiring a police officer to decide whether to provide the information. Is the requirement for an antisocial behaviour report not a more comprehensive way of doing that? Perhaps the reporting is not an exact science at the moment, but it could be developed properly to provide proper information.

Frank Jensen: I agree with that. If information has been built up over a period—for example, if the police were called to a premises 167 times in 2008 and 427 times in 2009—the board could take that information into account.

Mairi Millar: Perhaps a distinction should be made between a new application and a review. In reviewing premises licences, some tweaking might be useful to allow boards to look at whether there has been a build-up in instances of antisocial behaviour since the premises started operating.

The Convener: Stewart Maxwell has a question on what was said earlier about notification.

Stewart Maxwell: I just want to clarify one point. Ms Millar said that, under the new proposals, neighbour notification will still be required, community councils will still be notified and people will still be able to look at applications in more detail in their local council offices. However, as Mr Martin pointed out, not everyone has broadband. In the council's view, what is the value of advertising in local newspapers? I ask for two reasons: first, not everyone buys a local newspaper; secondly, sales of local newspapers have declined quite rapidly in recent years. Does the council believe that providing access to the internet in public libraries—which are not only local but free—is a better way of notifying people than using local newspapers, whose sales are declining?

Mairi Millar: Under the 1976 act, everything was referable to the quarterly meeting of the licensing board, so people could have a reasonable expectation about when the newspaper advert would appear. For example, for the January quarterly meeting, the advert would appear just before Christmas so anyone with a particular interest would buy the paper around that time to see the notice. Because we no longer have quarterly meetings and because every time limit for an application runs from when the application was lodged, our adverts would need to appear every single day, depending on the number of applications that we receive. There could be no certainty in the public's mind about when the newspaper advert would appear.

My original point was that I do not think that we could ever condense the information into a newspaper advert in such a way as to provide meaningful information to members of the public on what was being applied for.

Cathie Craigie: The bill provides for an occasional licence to be granted outwith the normal timescales when a licensing board is satisfied that an application should be dealt with quickly. Some of the written evidence that we have received expresses concern that that function cannot be delegated to members of the licensing board's staff. Does that need to be addressed?

Mairi Millar: Having clerked the city of Glasgow licensing board for about half its meetings during the transition period, I like to think that I have earned its trust and respect, but under the proposals in the bill, I, as assistant clerk, would be unable to take that decision. That seems odd, given that many of my other responsibilities are more onerous.

Having said that, I have a concern about the decision that we would be asked to take. We mentioned that in our submission. My concern is about when it would be appropriate to exercise that discretion. Would it become routine for

applicants to look to the clerk to exercise their discretion and reduce the time limit?

Cathie Craigie: You go into that in detail in your written submission. Do you want to add any comments on the matter or does your submission say it all?

Mairi Millar: The point was made earlier that one of the drivers for the reduced reporting time is the need to deal with emergency or short-notice situations such as funerals, but such cases would be more appropriately dealt with through extended hours applications. It might be useful to have a similar type of provision, although I am concerned that clerks would routinely be asked to exercise discretion and I wonder in what circumstances the reduced reporting period would be appropriate.

Cathie Craigie: It would be useful if you could write to us with your thoughts on how the bill can be improved in that respect.

Mairi Millar: We are certainly happy to do that.

The Convener: I take it that the other members of the panel concur with the views that Ms Millar expressed. They are indicating that they do, which enables us to move on to Robert Brown.

Robert Brown: If I may, convener, I will pursue the point about occasional licences. Ms Millar said that it is difficult to envisage circumstances in which they will be required, even for funeral parties, which tend to be at licensed premises and not unlicensed ones. Do the other members of the panel know any circumstances in which occasional licences would be needed?

Frank Jensen: The range of circumstances is broader than just funerals. The vast majority of applications that we get for occasional licences and extensions are for routine events such as fundraising events by voluntary organisations in village or community halls, birthday or golden wedding celebrations and so on. As often as not, even now, people apply at the last minute. We might get a non-controversial application from someone who seeks an occasional licence for a village hall from 7 pm until 11 pm and we know that there will be no difficulties with it. It would be beneficial if such applications were included in the process.

As clerks, we work closely with the board and we know its line on hours, including terminal hours for events. If the application is for an 18th birthday party, we are alerted to the kind of event that it is likely to be. If we receive any adverse comments, we invariably consult the convener of the board or a local board member.

Robert Brown: In short, then, we are discussing not emergencies but applications for routine events from people who do not know the procedure and have applied late. The applications are often not controversial and you are content with the arrangement.

Frank Jensen: Yes.

13:00

Robert Brown: Is there a need for a similar fast-track procedure for extended hours applications, or would that raise other, more complicated, issues?

Frank Jensen: I think that there is. I suspect that the licensed trade would wish to benefit from that process. The trade is contracting as a result of these changes; it will be looking to provide a full range of services, including for functions. Those who are involved in the trade will want to do that even more than they are doing at the moment. The simple answer is yes.

Robert Brown: Extended hours can be troublesome for the public in some suburban locations. Would objections be made on that ground to applications being fast-tracked without the usual provision for matters to be considered more widely?

Frank Jensen: Boards have their statement of licensing policy, which they follow, and there are also the licensing objectives. We are aware of the terminal hours issue. At present, if anyone asks for the occasional extension beyond those hours, the application is looked at closely. We are aware of the issues with regard to existing licensed premises, and we can and will impose conditions in the future. We have licensing standards officers who visit premises before an event takes place.

Robert Brown: You are saying that it might be helpful to have a fast-track procedure and that you would have no major concerns about that. Is that the position of colleagues, for example in Glasgow?

Mairi Millar: In the past week, the clerk to the board and I sat down together to look at the provisions for occasionals and extended hours applications. The process is fairly tortuous for members of the trade and those who are on the regulatory side. It would be nonsensical to have to convene and hold a board meeting to determine an extended hours application or an occasional licence—that just would not happen within the timescales.

My points on the subject in our submission are fairly narrow in scope. That said, there is cause to look again at the totality of the occasional licence and extended hours application provisions.

Robert Brown: That is helpful.

Earlier, we heard the views of the Scottish Licensed Trade Association on licensed clubs. We heard that fees in Scotland are higher than those

in England, and about whether supermarkets should be put into a higher category of premises that pay more in fees towards the overall administration costs. What is your view on the association's concerns?

Mairi Millar: I have no detailed submission to make on the way in which fees are established. Obviously, I was not prepared to deal with that today.

As the committee heard, processing an application for a larger premises gives rise to no greater involvement than an application for a smaller premises. Both types of application go through exactly the same notification and advertising procedures and consultation with building control and licensing standards officers. The process is no more time consuming just because a premises is bigger.

It has always been recognised that fees would have to be reviewed once we were through transition. In making those projections, we do not yet know the level of business activity post transition—that remains to be considered. The Glasgow board has given an undertaking to review fee setting after transition. We will need to set out a detailed submission on the mechanism in the regulations for fee setting.

Robert Brown: Does Councillor Thomas have anything to say from a policy point of view on representations from the on-trade with regard to supermarkets?

Councillor Thomas: I have a lot of sympathy with them. Everybody in the business knows that young people in particular drink before they go out and obviously get their booze from the cheapest source. I do not know how the issue can be addressed, but it might be worth examining that. In Edinburgh, we have taken seriously—as I am sure all the boards have—the new rules about reducing the areas in which supermarkets can display their alcohol, which will have some effect. With the way that things are going, the matter would definitely be worth considering.

Robert Brown: Are there any other views on that or are the other witnesses happy with those observations?

Frank Jensen: My views are the same.

Aileen Campbell: The bill requires that personal licence applications be signed by the applicant. Concerns have been raised about that provision. Glasgow licensing board said that it may be contrary to the requirements of the European services directive, which may mean that such applications must be capable of being submitted electronically. The Law Society said that it could preclude signature by a legal agent or employer, which may be appropriate in some circumstances. What are the witnesses' views on those issues?

Mairi Millar: The European Union services directive will bring about fundamental changes to liquor licensing and civic government licensing. A huge number of amendments will have to be made to the Civic Government (Scotland) Act 1982 to implement the directive fully and that is to be done by 28 December this year. I have concerns about whether those legislative changes will be in place in time for licensing authorities to gear up for their implementation. It is a huge issue, which is probably beyond the scope of today's meeting. Under the services directive, we will move to allowing applications for personal licences to be submitted online. If they are submitted online, they cannot be signed.

Aileen Campbell: Does anyone else have views about a legal agent or employer not having the right to sign an application?

Frank Jensen: The 2005 act defines an applicant as

"the person making the application".

That is not necessarily the person who will benefit from the application; it could be a lawyer or anybody else. If we apply the normal rules of grammar, the applicant is the one who makes the application and, therefore, the application could be signed by anybody. However, the services directive will point the direction. Signatures and overprovision are aspects of liquor licensing that the directive may catch, as both fall under its provisions on barriers to trade.

Mairi Millar: Since the Glasgow licensing board's submission was made, it has been clarified that, although liquor licensing is within the scope of the EU services directive, personal licensing is outwith it. However, there are still implications for other types of liquor and civic licences.

Aileen Campbell: The previous panel of witnesses said that authorities were sending inconsistent messages about whether it was fine for a premises manager not to have a personal licence. We were given the example that one company may have to second a manager who has a personal licence while another manager waits for theirs to come through. How do you respond to the problems that businesses face and the point about the inconsistency of the messages from local authorities? Perhaps the Convention of Scottish Local Authorities is best placed to give a view on the differences of approach throughout the country.

Sylvia Murray (Convention of Scottish Local Authorities): We do not have a view on that specific point, but the question of consistency

throughout the country is raised often on many issues and the standard answer is that that is local democracy in action. It is a fine balance to strike all the time but it is virtually impossible. We try to promote consistency but it is not always possible because local priorities always come into play.

Frank Jensen: I suspect that the inconsistencies are relatively few and that they are magnified during the transitional period, as each board is at a different stage in the grant and issue of personal licences. I hope that the issues will resolve themselves over the next 12 months.

Robert Brown: A number of witnesses have raised the issue of personal applications being dealt with slowly. Will licences be processed by 1 September in the areas that you represent? Should we be looking to put in place a mechanism to allow derogation from the existing arrangements?

Mairi Millar: Glasgow has been processing and issuing personal licences throughout the process. We deal with applications within four to six weeks, and licences have been issued. However, personal licence applications are not yet arriving in great numbers; as of last month, we had received fewer than 1,000. That does not mean that applications have been received for premises managers for 1,000 of the 1,800 premises in Glasgow, as multiple applications are coming in for single premises. We are well short of the number of applications that would reflect the number of premises in Glasgow. It is now nearly 16 months into the transitional process, but applications are not coming in.

Robert Brown: You have not told or implied to people that they cannot lodge them yet, as was suggested earlier.

Mairi Millar: No, we have been looking for applications throughout the process. It is fair to say that everyone's focus was on premises licences, but we have always had procedures in place to process personal licence applications. With the best will in the world, if we get a windfall of applications in July and August, they will not be issued in time for 1 September.

The Convener: You are saying that you have received four applications for some premises and none for others. That makes the situation worse.

Mairi Millar: We cannot relate personal licence applications to premises, but the numbers suggest that we have not received—

The Convener: Could you not guesstimate?

Mairi Millar: I guess that we have not received enough applications to be able to appoint a designated premises manager for each of the premises in Glasgow.

The Convener: What is the position elsewhere?

Frank Jensen: Like Glasgow, we have been accepting applications. We have issued about 800 licences for the 900 applications that we have received. We estimate that between 2,000 and 2,500 personal licence holders are needed to serve as premises managers if licensed premises are to run properly, so we are expecting a lot of applications. We told applicants earlier in the year—and have continued to repeat—that we could guarantee to issue personal licences in time if applications were received prior to 31 May. The guarantee dropped off in intensity after that date.

Councillor Thomas: I agree. At each board meeting, when we receive applications, we ask people whether they have personal licences. They say that they have, but they really mean that they have the training certificate. We are emphasising the point but, despite our best efforts, there may well be an issue towards the end of the period.

Robert Brown: That raises a subsequent issue. We have heard different accounts of who is at fault but, regardless of whether people are submitting applications late, the failure of licences to be issued in time will have a practical and economic effect. Can you guide us on how the issue might be dealt with and on the remedies that might be provided?

Mairi Millar: It needs to be dealt with through regulation, given that the mandatory conditions that apply to premises licences require there to be a designated premises manager; without one, premises cannot sell alcohol.

Robert Brown: In short, you do not have power to exercise discretion.

Mairi Millar: No, the licensing of a designated premises manager is part of the mandatory conditions.

Nigel Don: Am I right in thinking that the European services directive is directly applicable, because it is a directive, and that, even if we produce a statute that is inconsistent with it, you will have to work within its terms?

Mairi Millar: Absolutely.

13:15

Bill Butler: Several respondents have noted that not all local authorities have chosen to use the national personal licence database and that, in addition, there are no timescales for inputting information into the database. Some argue that that hampers licensing boards' ability to check the history of applicants and therefore discharge their duties in considering applications. What are your views on the issue?

Mairi Millar: That is certainly the case at the moment. Amendments to the 2005 act that are proposed in the bill will cure many of the problems that we have identified with personal licences. There would have been no point in our checking the database during transition, because we had to grant the licence if it met certain minimum requirements. Given the changes that the bill may bring about, the personal licence database will be useful in the future, but it is certainly not useful during transition under the current provisions.

Bill Butler: That is very clear. Does anyone want to add anything or differ?

Frank Jensen: I agree with those comments.

Bill Butler: I will take it that there is agreement.

I have one other question. Some respondents have stated that the appeals procedure under the Licensing (Scotland) Act 2005 is unnecessarily complex and have called for it to be replaced with something more akin to the procedure under the Licensing (Scotland) Act 1976, which involved a summary cause appeal process. What do panel members think about the matter?

Mairi Millar: John Loudon made the point earlier that it is rare for licensing lawyers to agree unanimously on an issue, but this is one of those rare occasions when we are all in agreement—the stated case procedure does not work for licensing appeals and a straightforward return to the summary application is welcomed by all.

Bill Butler: Is it welcomed by all?

Frank Jensen: I concur.

Councillor Thomas: Yes.

Bill Butler: It seems to be welcomed by all, convener. I have no other questions.

The Convener: We have a healthy degree of unanimity. As there are no other questions for the panel, I thank the panel members very much—it has been a particularly useful session.

The committee will now move into private session.

13:17

Meeting continued in private until 13:56.

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