

LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 22 March 2005

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

11th Meeting 2005, Session 2

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Bruce Crawford (Mid Scotland and Fife) (SNP)

COMMITTEE MEMBERS

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

*Dr Sylvia Jackson (Stirling) (Lab)

*Paul Martin (Glasgow Springburn) (Lab)

*Michael McMahon (Hamilton North and Bellshill) (Lab)

David Mundell (South of Scotland) (Con)

*Tommy Sheridan (Glasgow) (SSP)

*Margaret Smith (Edinburgh West) (LD)

COMMITTEE SUBSTITUTES

Bill Butler (Glasgow Anniesland) (Lab)

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

Colin Fox (Lothians) (SSP)

Mr Bruce McFee (West of Scotland) (SNP)

John Farquhar Munro (Ross, Skye and Inverness West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Superintendent George Clelland (Working Group on Off-sales in the Community)

Jacqueline Conlan (Scottish Executive Finance and Central Services Department)

Peter Daniels (Working Group on Off-sales in the Community)

Ian Fairweather (Scottish Executive Finance and Central Services Department)

Rab Fleming (Scottish Executive Finance and Central Services Department)

Sheriff Principal Gordon Nicholson (Committee on Liquor Licensing Law)

Tony Rednall (Working Group on Off-sales in the Community)

John St Clair (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 6

Scottish Parliament

Local Government and Transport Committee

Tuesday 22 March 2005

[THE CONVENER *opened the meeting at 14:12*]

The Convener (Bristow Muldoon): I open the 11th meeting in 2005 of the Local Government and Transport Committee. In addition to members of the Scottish Parliament, I welcome to the meeting Stewart Ferguson, who will act as an adviser to the committee on the Licensing (Scotland) Bill, of which we will commence consideration today. We look forward to his assistance. I also welcome to the committee David Davidson MSP, who has been appointed by the Conservatives as a substitute for David Mundell. I ask him to confirm that and to make any relevant declarations of interest to the committee.

Mr David Davidson (North East Scotland) (Con): I confirm that I am here as a substitute. The information that I have supplied to the register of members' interests stands and I have nothing to add that directly reflects on the legislation that we are considering today.

The Convener: Thank you, David, and welcome to the committee.

Tommy Sheridan (Glasgow) (SSP): Before we start the agenda, convener, will you say something on the record about the Caledonian MacBrayne issue that was carried over from last week's meeting? You said last week that we would discuss the matter at a future meeting. When is it planned that we do that? Time is of the essence.

The Convener: The issue is not planned for discussion next week because we will be in Easter recess then, but I assure the committee that we will produce a paper on future options. The matter is not as pressing as it may previously have appeared. The Executive made a clear commitment at last week's meeting to evaluate fully the proposals, including the various academic ones, as part of the consultation and not to make any further moves until it has reported back to the Parliament on its intentions. However, it is still my view that it would be helpful for the committee to hear directly from some of the people who have submitted papers. The clerks will draft a paper on the matter, which will come before a meeting of the committee after the recess.

We have received apologies from Fergus Ewing and David Mundell.

Items in Private

14:15

The Convener: I ask the committee to agree to take items 4 and 5 in private. Item 4 is consideration of the contents of a draft response to the Executive on the trunk road maintenance contracts. It is normal practice for the committee to consider the draft of a report or letter to the Executive in private. Item 5 is consideration of lines of questioning for witnesses who are to come before the committee in relation to the Licensing (Scotland) Bill. Again, it is normal practice to discuss that in private. Obviously, the questioning will be held in public and, on item 4, the letter to the Executive will be made public once it has been agreed and sent to the minister. I seek the committee's agreement to hold those items in private.

Members indicated agreement.

The Convener: That is agreed, although Tommy Sheridan wishes his dissent to be noted.

Subordinate Legislation

Representation of the People (Variation of Limits of Candidates' Local Government Election Expenses) (Scotland) Order 2005 (SSI 2005/102)

14:16

The Convener: No points have been raised on the order and no motions to annul have been lodged. Does the committee agree that we have nothing to report on the order?

Members *indicated agreement.*

Licensing (Scotland) Bill: Stage 1

14:16

The Convener: That brings us to the main item on today's agenda: consideration of the Licensing (Scotland) Bill at stage 1. I welcome to the committee four representatives of the Scottish Executive: Rab Fleming is head of the local governance and licensing division; Jacqueline Conlan is the bill team leader; Ian Fairweather is also in the bill team; and John St Clair is from the office of the solicitor to the Scottish Executive. Welcome to you all. We look forward to the evidence that you will be leading this afternoon. We will start by hearing an opening statement on the general principles of the bill.

Rab Fleming (Scottish Executive Finance and Central Services Department): Good afternoon and thank you for the invitation to give evidence on the Licensing (Scotland) Bill. The bill has been a long time coming. The Nicholson committee reported almost four years ago and, since then, we have held extensive consultations with the licensed trade and many public and voluntary bodies. Following that consultation, we believe that we have been able to put together a coherent and robust bill.

There are still some areas that need further work. One is the transition from the old system to the proposed new system; another is the potential need for controls of off-sales promotions. Nevertheless, we believe that now is a good time to introduce the bill.

I will say something about the recent history of the bill team. Over the past seven to eight months, the bill team has been transferred from the Justice Department to the Finance and Central Services Department and has been relocated from St Andrew's House to Victoria Quay. Within the past couple of months, it has been transferred to a brand-new division within the Finance and Central Services Department. Although the bill team has had a relatively rough passage over the past few months, I hope that that has not been the case for the bill itself.

The Convener: Thank you for those opening remarks, Mr Fleming. I invite questions from members, starting with the deputy convener, Bruce Crawford.

Bruce Crawford (Mid Scotland and Fife) (SNP): Thank you for coming along and helping us out on the bill, for which I am very grateful. I would first like to consider the abolition of permitted opening hours and the ending of the requirement to have licences renewed every three years. I think that there is a correlation between those two issues, which we need to explore.

The information that I have from the trade and licensing boards indicates there is already a variety of practice in how licensing boards go about their work. That is not necessarily a bad thing: it means that licensing boards are reflecting what their local communities are looking for.

On permitted opening hours, what thoughts were given to the potential dangers of moving from what is effectively a core set of permitted hours, which everybody understands, to a situation in which the different licensing boards will effectively have the capacity to come up with 32 proposals for different parts of Scotland, involving when premises open and how they operate, without any cognisance being taken of a core time? In effect, it will be for licensing boards to determine such matters.

Is there a danger that, unless there is strong guidance from the Executive, there will be no strategic overview of how boards operate, so that we end up with a patchwork approach to licensing in Scotland? I do not suggest for a moment that this might happen, but, for example, the Western Isles licensing board might decide not to allow pubs, clubs or hotels to open on a Sunday—or a Saturday. Edinburgh might decide to take a much more liberal approach to opening hours than Fife, which might have a more regressive attitude. The different approaches might cause a considerable shift of people.

I hope that I am giving a flavour of my thinking. Perhaps the answer will come through further material and guidance for licensing boards, but we need to know whether that will happen. I will allow the witnesses to reflect on and answer those concerns before I make a second point.

Jacqueline Conlan (Scottish Executive Finance and Central Services Department): It might be helpful if I provide a little background to the recommendation for the removal of statutory permitted opening hours. Sheriff Principal Nicholson took the view that, although the current system provides for statutory permitted opening hours, there is a fairly entrenched system of regular extensions, which is operated by licensing boards across the country in a variety of ways. There is already a patchwork approach. Indeed, 10,000 of the existing 17,000 licences benefit from extensions to opening hours, so there is much local differentiation in the current system.

Sheriff Principal Nicholson and his committee took the view that there was a need to reform the system to ensure that there was some certainty up front about the hours that establishments would open and that the system would work in the way in which it was intended to work. When the Licensing (Scotland) Act 1976 was enacted, it was not intended that regular extensions would be granted. The new system will remove statutory permitted

opening hours, but applicants will be required specifically to set out in their operating plans the opening hours that they want their premises to have. That is one part of the system, but licensing boards will also give a general steer on opening hours in their licensing policy statements, which they will draw up with regard to the licensing principles, by which I mean the five key licensing objectives that the bill sets out.

There will be some differentiation, but we are trying to strike a balance between the benefits of national consistency and the benefits of local flexibility. It was clear that licensing boards wanted local flexibility. The Executive will provide guidance on how boards should use that flexibility, but it intends boards to have a much better tool for controlling licensed premises and allowing them to open in a way that suits the requirements of the area.

Bruce Crawford: I understand that and I appreciate the background to the approach. However, a member of the Scottish Licensed Trade Association who is watching the process unfold might understandably be concerned that in some areas the core hours that are currently permitted might be eaten into, because licensing boards might take a much less liberal approach than is intended. How will the Executive deal with such situations? Currently, the trade has a guarantee that it can open during certain hours, but no such guarantee will exist in future. Those concerns have been expressed to me, although not necessarily in those terms.

If operators are to be granted a single premises licence, what will the Executive do about nightclubs that apply to their local licensing board to open during what are currently the core permitted hours for ordinary pubs? Nightclubs usually open from eight o'clock at night, but they might decide to open up for larger parts of the day.

Jacqueline Conlan: The point that you make was raised by the SLTA. One important aspect is that the policy statement, which we have tied specifically to the operation of the licensing principles, will provide some certainty up front. In general, under the new system, boards will not be able to take decisions on a whim and there will be many more checks and balances on their powers. That approach is underpinned by provisions in the bill such as the national framework and by the guidance that the Executive will issue. If boards do not adhere to that guidance, they will have to give their reasons for not doing so.

As for the differentiation between nightclubs and pubs, we decided to move to a single premises licence because such a differentiation was no longer appropriate in a modern system. After all, a lot of those barriers have been broken down. As you pointed out, nightclubs now open during the

day and the number of hybrid premises is on the rise. The current system simply cannot cope with such developments.

Under the proposed legislation, when boards take decisions on opening hours, they will have to have regard to what is appropriate for those premises. In the bill, we take the view that in this new world the appropriate approach is not to set up some artificial distinction between a pub and a nightclub. Instead of considering potentially artificial barriers between types of licensed premises, we have tended to look more at the whole later-opening section of the market and to think about what might happen after, say, midnight and how we can regulate on the issues that might arise at that time.

Bruce Crawford: I hear what you say, but I think that I will need a wee bit of convincing on that matter. However, I will listen to the evidence that we receive.

My second question is about the fact that, under the bill, there will no longer be a requirement for a three-year renewal. Perhaps "liberal" is not the right word to describe the process outlined in the bill, but licensing boards will be able to attune their needs to a community's requirements. However, might it not be better to retain three-year renewals as a check until the new system beds in and communities see the different ways in which the new laws are affecting them? At the moment, communities know that they can have their say when applicants for new licences advertise their applications. However, under the bill, such a system will go to a great degree and, if licences are to be renewed every 10 years, communities will have fewer such opportunities. I am concerned, at least in this initial phase, that any move to a 10-year renewal should come further down the line when people are more aware of what the new licensing hours mean.

Jacqueline Conlan: You are right to say that, under the new regime, licences for premises will be open ended. The Nicholson committee thought that appropriate because there is no reason why a licence that is specific to certain premises, that is accompanied by a detailed operating and layout plan and that makes everything about the operation of those premises clear up front should not be open ended.

I should point out that such an approach is accompanied by a system of variations. For example, a licence holder can apply for permission to vary a licence. Such an application will be advertised and people will have an opportunity to object to it. Variations can also be made to a licence if problems arise with the premises.

It is important to point out that ministers have deliberately expanded the involvement of

communities in the new regime, because they feel that communities must have a greater role and that the community's voice must be heard. Indeed, the new system's approach to sanctions and the introduction of licensing standards officers are designed to ensure that that voice is heard and that there are means of dealing with any problems. At one end, the licensing standards officer will be able to mediate between communities and licensed premises if there is a problem and, at the other end, there will be a much tougher range of sanctions with which to deal with problems that may arise. I believe that, as a result, the position of communities will be enhanced.

Bruce Crawford: I accept that that will be true in places where there are variations and the variations are on-going, but, under the new regime, if a pub decides to open for 18 hours a day, it will be able to do that for 10 years, unless some process is brought to bear that creates variation. At present, communities normally respond to on-going problems. When people see advertisements about licences, they think, "This is my chance to have my say." My concern is that the silent majority will just put up with what they see as unsatisfactory behaviour and will not object. As the process will not involve asking people to object, as happens at present, people will need to take a much more proactive approach.

14:30

Jacqueline Conlan: That could be the case, but it is difficult to say how the new situation will compare with the present one, because we cannot anticipate how communities or individuals will feel about the process. However, the new regime will have flexibility. That goes along with the open-ended premises licences, because we must ensure that there is a system to vary such licences and a robust system for complaints to be heard. The system under the new regime will be robust.

Mr Davidson: My question is on the back of the questions from the deputy convener. The tourism and hospitality industry is the biggest employer in Scotland. Some festivals—in the Orkneys and the Western Isles, for example—last for months, not just for one day or a weekend. Is it expected that the guidance on the variation system will allow licensing boards not only to have variations for a couple of days—after public notice and consultation—but to build in at the beginning of each year variations in licensing opening hours to fit local economic and tourism needs? What guidance will be given on that?

Jacqueline Conlan: That issue has two aspects. First, licensees do not often run special events under their normal liquor licence. That situation will continue under the new regime, because the bill will introduce a system of

occasional licences, which is intended to cover voluntary organisations that run special events and licensees who run special events outwith licensed premises. The occasional licensing regime applies to festivals such as the Edinburgh festival.

Secondly, to return to the general issue of how hours will be handled under the new regime, boards will have an opportunity in their policy statement to say what type of hours should be allowed for events. The policy would feed through to the operating plans for which individuals would apply and to the occasional licences. There will be no facility under the new regime to have what are at present called occasional extensions. At present, boards can agree Christmas and new year opening hours on an annual basis, but that will not happen under the new system.

Michael McMahon (Hamilton North and Bellshill) (Lab): The bulk of the bill is about what, where, when and how, but my question is about who will do the licensing. In the past few months, the committee has had debates about the democratic accountability of the proposed regional transport partnerships. There is a danger that the same issue may arise with the present proposals, because of the concern that the proposed size of licensing boards will not allow a true reflection of the make-up of local authority areas, particularly larger ones. Has that concern been expressed to you and, if so, what answer did you give?

Jacqueline Conlan: The changes that the Nicholson committee proposed are different from those in the bill. The Nicholson committee suggested that boards should have a maximum of five people sitting at any one time, although the membership could be greater. That conclusion was reached because of problems with the existing boards. A lot of feedback was given to the Nicholson committee about people feeling intimidated when they appear before large boards with up to 20 members. The Nicholson committee also felt that the large boards operate inefficiently, sometimes simply because people cannot hear what is going on or understand the process because of the line of councillors.

People who commented on the Nicholson committee's proposals agreed that there should be a reduction in the number of members who sit on boards, but said that a reduction to five people was a step too far. Therefore, we reconsidered the matter and thought that a maximum of 10 councillors sitting at any one time—rather than Nicholson's maximum of five councillors—would be appropriate. That number would mean that there would be flexibility to allow for geographical combinations. Boards could have fewer members where that is appropriate, but larger areas such as Glasgow might want to have 10 people sitting. We

think that that proposal is adequate to allow for geographical spread, interests to do with the sexes and so on.

Michael McMahon: Am I right in saying that a quorum could be as low as three if a board had a smaller number of members?

Jacqueline Conlan: That is also the case under the 1976 act.

Michael McMahon: So there would be no difference, as there could currently be as few as three members. That should surely raise concerns, which the bill could have addressed.

Jacqueline Conlan: Low quorums, such as three members, must be allowed so that smaller boards that are allowed to have a maximum of five people sitting are not penalised through not being able to reach a quorum. Boards with five members could be penalised if they had a quorum of five. There must be a little flexibility for smaller boards with only five members, but there is absolutely no problem with having 10 people sitting on boards. Obviously, a larger city board would want to ensure that as many of the 10 people as possible attended meetings.

Michael McMahon: Would it not be better to have a percentage quorum rather than a set figure? After all, three out of five members is a higher percentage than three out of 10 members.

Jacqueline Conlan: We did not consider that.

Michael McMahon: Perhaps the committee can consider that matter and draw to your attention what has been said.

Jacqueline Conlan: Yes.

Michael McMahon: Convener, may I ask a question that is not related to the question that I have just asked?

The Convener: Tommy Sheridan wanted to ask a supplementary question. We will take his supplementary question first and then return to you.

Tommy Sheridan: I would like to return to a more general issue, but, first, I would like to deal with one thing that strikes me about the size of boards, which I would like you to elucidate. There seems to be an attempt to move towards more devolved and localised decision making—there is the idea of local licensing forums, for example. However, you are suggesting that, for cities such as Glasgow, three councillors could be responsible for almost 500,000 people and for applications not only for pubs in the city centre—which is what everybody thinks about—but, more important, for the many complaints about local premises, particularly off-sales premises.

Is there room in the Executive's thinking for considering subdividing local authorities along the lines that most of them are subdivided, so that there are area committees that would allow area boards and so that, instead of a single licensing board, there would be area licensing boards with local knowledge and local input? I do not know whether that is what is meant by "licensing divisions" in the bill. If it is, it is not clear enough for me. I want you to tell me whether a licensing division is the same as a licensing board. If the two are different, I am worried that licensing divisions are a sop to the idea of having more localised input, which will not be the reality. The idea of having three members for the whole of Glasgow in particular, and probably for Edinburgh and the bigger authorities, is simply nonsense, although my comments are probably not as relevant to the smaller authorities.

Jacqueline Conlan: From our perspective, it is not particularly intended that three people should take decisions for the whole of Glasgow, as Glasgow will have a 10-member board. However, you are right to say that if only three people turned up, they could, technically, make decisions. Perhaps the matter should be considered in relation to larger boards and there could be consideration of whether quorums could be changed in accordance with the size of the board. That might be one option.

On licensing boards and licensing divisions, we have not modernised the language of the 1976 act. However, a licensing division gives an opportunity to split a council area into smaller areas or divisions, which would perhaps allow a more localised approach. That tends to be done in the big rural areas—it is done in the Highlands, for example, where divisions deal with different areas.

Tommy Sheridan: So the intention is not for the city of Glasgow to have separate boards for the south-west, the south-east and the north-east. The intention is to have one licensing board that covers the whole city, whereas, in more rural areas where geography is the main issue, the intention is to have licensing divisions. Is that what you are getting at?

Jacqueline Conlan: No. What I am saying is that that is kind of what happens at the moment. As to the intention, I think that the bill makes the matter a little clearer. The decision is not one that the Executive would take; it is one for the local authority. If the local authority felt that there was the need for more licensing boards in Glasgow, it could take the decision to have them.

The Convener: We will return to some of Tommy Sheridan's other points. Paul Martin wants to come in with a supplementary question.

Paul Martin (Glasgow Springburn) (Lab): Jacqueline Conlan said that it was inefficient for a board to have 20 members. Why is that the case?

Jacqueline Conlan: The Nicholson committee reported that many of the people from whom it heard said that it felt intimidating to appear before a board of 20 people. With such large numbers involved, people also do not understand what is going on. I have attended a meeting of the Edinburgh licensing board, which has quite a large membership, and know that if someone is sitting at one end of a very long table, it is difficult to hear what people at the other end are saying. It is inefficient and unnecessary for such a large number of people to take decisions. It is felt that decisions can be taken in a more effective way by a board that has a slightly smaller number of members.

Paul Martin: So no scientific approach was taken to the decision not to have 20 members.

Jacqueline Conlan: No.

Paul Martin: It is just that I notice that the Nicholson committee had 14 members and that the working group on off-sales in the community had 16 members. Why do you think that it is inefficient for a board to have a higher number of members?

Jacqueline Conlan: Do you want me to give an answer? I have one.

Paul Martin: You would have given the advice that helped to create those groups. You helped to create a group of 16 people and another group of 14 people and yet your advice is that licensing boards should have only 10 members.

Jacqueline Conlan: The reason why the Nicholson committee and the expert group had those numbers was they had to accommodate sectoral interests. Obviously, the Executive would have faced a lot of criticism if all those interests had not been represented around the table.

Paul Martin: Why should the licensing boards, too, not be representative of sectoral interests? I appreciate that the process of coming before a board may be intimidating for some people who are not familiar with the process. However, there is still the principle that the licensing board should be representative of various ward interests. You are saying that the principle of representation was a good one for the committee and the working group but not for the boards.

Jacqueline Conlan: The additional point that I should make in response is to say that the councillors who sit on licensing boards become board members in order to take decisions that affect the whole of the city. They do not necessarily take decisions that relate to their own interest. The idea behind having local councillors

on the licensing board is more to do with local knowledge than one person's individual interest. Local knowledge is built into the system in other ways as well, particularly through the existence of the local licensing forums, which can give information directly to the boards.

Paul Martin: I will not take up much more of your time, but I think that you misunderstood the question. The point that I am making is that it is perfectly feasible for councillors to have an interest in representing one of the council's overall objectives, rather than just a local interest. What is wrong with that? Surely that is the same principle that you described in relation to the Nicholson committee and the working group.

Jacqueline Conlan: I do not think that there is anything wrong with that, but I stand by what I have said.

Paul Martin: The working group had 16 members, but the council licensing boards are to have 10 members.

Michael McMahon: In your opening statement, you spoke about the fact that the Nicholson report was four years old. I have spoken to senior police officers in Lanarkshire who are concerned that, since the publication of the report, they have been dealing with a new development that is addressed neither in the report nor in the bill. I am referring to the new way of delivering drink to people's homes, which is commonly known as dial-a-drink or—in Lanarkshire—dial-a-swally. If there is nowhere in the bill for that new development to be addressed, how can we deal with the concerns of those police officers?

The police officers gave me the example of an initiative that they conducted in a village where they felt that there was an over-provision of off-licences. As part of an overall strategy on antisocial behaviour, the police put in additional resources to try to get the licensees in the village to stop selling drink to younger people. After the licensees came together to develop dial-a-drink, the police followed a delivery from one of the shops to a house, in which they discovered 20 young people who had chipped together to buy £90-worth of Buckfast and whatever else they were drinking. They were divvying out the drink when the police came to the door. There is nothing in the bill to address that problem.

14:45

Jacqueline Conlan: I am delighted to tell you that there is a provision in the bill that addresses that problem, of which we are very aware. We have made it a specific offence to make a delivery between 12 midnight and 6 am, except to licensed premises. The provision was designed specifically to deal with the problems that you have

highlighted. I was not aware that they existed in the area that you have mentioned, but I was aware of them in Fife. The issue was put to ministers and the provision in the bill to which I have referred is designed to deal with it. There are other provisions relating to remote sales of alcohol and deliveries to young people that will impact on the problem.

Michael McMahon: According to police officers, there is no current requirement for licensees to get proof of age when they deliver. That is the issue about which the police officers are concerned. There is nothing in the bill that empowers the police to prevent a delivery from being made at 9, 10 or 11 o'clock at night to a group of young people who will then go out to a local park and cause the nuisance that the police have been trying to avoid by cracking down on off-sales. The bill needs to address the specific concern about how the police can control the off-premises sale of alcohol to young people.

Jacqueline Conlan: You are right to say that this is a difficult issue, because to some extent the bill continues the position under the 1976 act, which allows deliveries to be made to a young person who is opening the door of a family residence. If a delivery is to a family residence, it can be made. Perhaps the issue is more where the contract and sale are made.

Michael McMahon: Exactly. That is the point that I am making. The police see nothing in the bill that will give them powers to address the issue.

Jacqueline Conlan: I am not sure about the specific concerns of the police officers to whom you have spoken, but the no-proof, no-sale scheme is a key aspect of the bill. Licensees must ask for proof of age when there is any doubt about whether a person is 18. The bill stipulates that a notice will have to be posted next to the place where sales are made. It also spells out the types of proof that must be requested, which will be added to by regulation. We worked closely with the licensed trade on the no-proof, no-sale scheme. The off-sales sector, in particular, was keen that that should be included in the bill. We hope that it will go some way towards addressing the concerns that you mention. That is all that I can offer at the moment.

The Convener: I have a supplementary to Michael McMahon's question. If a sale is made over the telephone, how is the licensee to know that the person to whom they are selling is under age? Many people who are 16 or 17—perhaps even younger—may have access to debit cards that enable them to make purchases over the phone. Would that be deemed the point of purchase? I cannot see how a licensee could judge over the phone whether a person was under age.

Jacqueline Conlan: I understand the point that you are making, but I am not sure that I can add anything concerning the provisions in the bill. I will take the point away and think about it.

Mr Davidson: I want to pursue the issue of proof of age. Has no consideration been given to ensuring that when an off-sale that has been made by telephone is delivered, the delivery person should receive a receipt for the delivery and see the purchaser's proof of age, in order to eliminate the problem? Supermarkets make deliveries that may include alcohol. The alcohol may not be intended for a child, but there are some fairly glaring loopholes in the bill. People could get debit cards at an early age, as has been said, or an adult could be induced to use their credit card to make a purchase of alcohol that was being delivered for someone else. What will happen if the police do not have the powers to deal with that?

Another problem that seems to be being clamped down on is sales from grocery vans that travel round rural areas. Those vans may wish to carry alcohol for sale under the regulations to remote communities in which people do not have access to shops. How are you going to deal with that aspect? The general issue of off-sales is major and it is obvious that a firm view on how to deal with proof of age and where alcohol can be sold from has not yet been reached.

Jacqueline Conlan: Remote sales are difficult to deal with. We are not just talking about sales over the telephone; we are also talking about internet sales. We have gone as far as we can by ensuring that the place from where the sales are dispatched is subject to a premises licence so that there is an opportunity for the board to apply licensing conditions.

People do not have to show proof of their age at the door of their house. I am not sure whether there is anything more that we can do to tackle that. I do not think that I can give you a firm answer on that at the moment. I would also need to get back to you on your point about grocery vans.

The Convener: I will come on to the broader issue of young people. One of the Executive's policy intentions is to reduce the incidence of under-age drinking. You will be aware that Sheriff Principal Nicholson's submission highlights the concern that the bill appears to be silent on young people. Although there is some mention of young people in paragraphs 18, 86 and 139 of the policy memorandum, the sheriff principal does not feel that the bill deals with the issue. How do you respond to that?

On an associated matter, there has been some debate about the test purchasing of alcohol by

young people. I am aware that there is a problem because an offence would be committed by the young person who was test purchasing the alcohol as well as by the licensee. Has the Executive given any thought to whether it wants test purchasing to be used as a means of finding out whether a particular licensee is flouting the regulations?

Jacqueline Conlan: On Gordon Nicholson's comments, the policy on access by children will appear in the operating plan. A paper by the expert group that has been submitted to the Subordinate Legislation Committee and to your committee makes it clear that there will be questions in the operating plan about access by children to on-sales licensed premises. There will also be a mandatory national licence condition on access by children, and that too appears in the paper for the Subordinate Legislation Committee. That was also discussed by the expert group and the condition has been endorsed by ministers. I have spoken to Gordon Nicholson about his point that there should be an overarching provision on that in the bill. I am quite happy to consider that.

The Convener: I also asked about test purchasing.

Jacqueline Conlan: That issue is really for the Lord Advocate. He has considered the matter and there was a successful pilot on tobacco, on which he made an announcement recently. The pilot is not being extended to alcohol at the moment but there is an agreement to consider it again and consult the various stakeholders, including the police, to decide whether it can be used.

The Convener: I appreciate that it is an issue for the Lord Advocate. However, as I understand it, a young person is not committing an offence by trying to buy tobacco.

Jacqueline Conlan: You are right. There is a complication with alcohol and that is one of the problems.

The Convener: There are some supplementary questions. If Sylvia Jackson, Tommy Sheridan and Bruce Crawford could be brief, we will be able to move on to other issues.

Dr Sylvia Jackson (Stirling) (Lab): The part of the policy memorandum that is concerned with under-age drinking says:

"the most common source of alcohol for these youngsters was a small licensed grocer or corner shop, with 33.2% having purchased alcohol from one of these outlets."

As a member of the Scottish Parliament, I have heard that there is a considerable amount of antisocial behaviour in some areas as a result of youngsters getting their hands on alcohol. What extra protection is there in the bill to stop that kind of antisocial behaviour?

Jacqueline Conlan: The main thing on which we and the licensed trade have worked is the no-proof, no-sale scheme. Ministers wanted to tackle under-age drinking, particularly in relation to the off-sales sector. The off-sales sector supports the no-proof, no-sale system. The sector wanted to have the backing of legislation, because refusing sales in small stores can be intimidating for people. The no-proof, no-sale policy requires the display of a notice and the request of proof. The Executive will accredit types of proof.

As for the wider policy, the bill provides many other ways to deal with problems with premises that may be linked to under-age drinking. For example, communities can have a role in discussing over-provision and boards will have a duty to have a policy on over-provision and taking forward complaints against premises.

Dr Jackson: Will you elaborate on those points? The matter is important. The working group on off-sales in the community suggested that community councils should be statutory consultees. How will you create more of a link with a community where a problem exists?

Another issue that has been mentioned to me arises when what starts as a fairly well-balanced grocer's shop ends up having sales that are largely of alcohol. How will you address that?

Jacqueline Conlan: The new system will deal with the second point, because a problem that the Nicholson committee saw in the existing system was the drift of premises away from their original purpose. That drift will not be possible with operating plans, because for any drift beyond an operating plan, an application will have to be made to a board for a variation to the operating plan. That variation would have to be advertised to the local community, which would have an opportunity to have a say before any decision was taken.

The bill deals with the wider aspects of community involvement in several ways. You are right about the statutory consultee idea. Licensing boards will send community councils copies of all applications for licences, so they will have the opportunity to comment. However, a need was felt to reflect the fact that a local community can be a bit wider than the community council, so local forums should have community representation, which need not be from a community council—it could be from a local housing group, residents group or whatever was appropriate.

The local forum's role is critical, because it has the opportunity to comment on a board's whole policy statement before that is finalised. If a board disagreed with something that a forum said, it would have to give reasons for not following a forum's approach.

The bill says that a local community must be consulted on over-provision, which was a key

issue for ministers that communities raised. Ministers wanted to have a specific means to tackle that in the bill, which is the requirement for boards to consider over-provision more proactively and develop a policy on it.

As for dealing with problems, the new system will produce a big improvement. The role of mediation for the licensing standards officer, who is a new officer, is in the bill. The primary purpose of that is to allow an officer to mediate between a community and a licensee when a problem exists. That will provide an opportunity to sort out matters locally first. If that does not work, the bill has a much wider range of sanctions, which run from written warnings and changes to terms of operation of premises to suspension and revocation of licences. The licensing standards officer will provide a route for more direct linkage with a community.

Dr Jackson: You said that we would be able to examine the situation closely when shops have moved to selling alcohol much more than they did. How will that be operationalised? Will a grey area in the middle exist? How precise will plans be?

Jacqueline Conlan: The operating plan will have to be precise, because it is the means by which boards have information that allows them to decide not only whether to agree to a licence but which licence conditions are appropriate. National as well as local licence conditions will be available. The expert reference group has submitted to the Parliament a paper on operating plans that gives some idea of the position. Operating plans will have to be detailed. They are critical to the new system's operation. We need to develop that feature carefully.

Dr Jackson: Can we get a copy of that paper?

Jacqueline Conlan: You should have a copy.

The Convener: Are the questions that Tommy Sheridan and Margaret Smith wish to ask on the issue of young people, or are they general questions?

Margaret Smith (Edinburgh West) (LD): My question is on off-sales.

Tommy Sheridan: Mine is to do with the policy objective.

The Convener: If we go back to brief supplementaries, I will come back to you both on your more general questions.

Margaret Smith: I was going to ask one of my general questions as a supplementary because that seemed to be the way that things were flowing.

The Convener: I will take Tommy first.

15:00

Tommy Sheridan: You have talked about the four key issues that are mentioned in the policy memorandum and the convener referred to reducing under-age drinking. The legislation has been four years in the making. There has been an awful lot of talk, and an awful lot of work has been done. Why is there no policy objective or desire on the part of the Executive to reduce alcohol consumption? Why is there neutrality about alcohol consumption? I am concerned that there is a mixed message going out that it is okay to drink—in other words, to consume a drug that can have harmful effects—but not to drink excessively. We would encourage people to exercise—it is healthy to do so—but not to over-exercise. Why is there no overarching policy objective that says that people do not need to drink?

Rab Fleming: The remit of the bill concentrates more on managing the supply side of alcohol than on addressing the demand side. We see the work that has gone on in the Health Department on alcohol abuse as where the lead should be taken on policies to address the demand side. When the national licensing forum is up and running, it will provide a good vehicle to bring the building blocks of the policy together because it will be jointly chaired by the deputy ministers responsible for the bill and for health.

Tommy Sheridan: I am sorry to contradict that a bit, but the policy memorandum and the associated documents all draw heavily on crime and health problems that relate to alcohol misuse. The policy memorandum presents policy objectives, but those do not include reducing alcohol consumption as a whole. It talks about reducing under-age and binge drinking only. Are you saying that a health-related statement will come out in some form that will say to Scotland, "Look, you don't have to drink to enjoy yourself and to socialise"? Will that be an objective?

Rab Fleming: Almost exactly the same statement that you have just made was made when we launched the bill, but perhaps it was not strong enough. The national licensing forum, which will bring together the work that we are doing with the work that our colleagues in the Health Department are doing, will present the opportunity to make a strong statement.

Margaret Smith: There seems to be some concern that the controls on irresponsible promotions are directed very much at pubs and not at off-sales.

Rab Fleming: We recognise that concern. In the on-trade, there is an obvious link between promotions and the consumption of alcohol. It is much more difficult in the off-trade to establish a link between purchase and the pattern of

consumption. Our intention is to commission some research in the near future to investigate that. If that research is carried out quickly, I hope that we can incorporate it into the bill as the bill progresses.

Margaret Smith: What is the likely timeframe on that? Will the research be done within three months, or within six months?

Jacqueline Conlan: We cannot be specific about that at the moment. We have arranged to meet Alcohol Focus Scotland, among others, to talk about the research that could be done. Once we have pinned that down, we will be able to consider the timescale for carrying out the research. We will not be in a position to amend the bill while it is going through, but there will be a transitional period before the bill comes into effect, and we will have powers—if we are given them by the Parliament in the bill—to amend the schedule that has conditions on promotions. It would be possible to extend those conditions to off-sales if, following the research, it became clear that that was the appropriate route to go down.

Margaret Smith: I am pleased by your comments in that they do not completely shut the door on the question of how irresponsible drinks promotions are defined. We know about happy hours and so on, but the definition could be extended quite easily to include promotions by off-sales and supermarkets—those two examples immediately spring out of the list—for alcohol products that are likely to appeal to under-18s. It would be irresponsible for a supermarket or off-licence to push sales of such products particularly hard or indeed to offer alcohol as a reward or prize. It seems to me that, even without the benefit of research, we can apply the definition to off-sales and to supermarkets, given the concerns that colleagues expressed earlier about the fact that many people purchase alcohol from supermarkets.

Do you have any views on taking the bill's provisions further by including off-sales? How likely is it that the bill will be extended?

Jacqueline Conlan: All that I can tell you is the position that the deputy minister, Tavish Scott, has reached, which is that he will look at the research. He has a meeting tomorrow with Alcohol Focus Scotland and he has agreed to meet the off-sales licensed trade. We need to get the supermarkets and the grocers side of the trade around the table to hear about their experiences and the best practice that they have in place at the moment. It is important to do that first. The promotions policy in the bill is based on tackling binge drinking. As Rab Fleming said, we have more evidence to make the link in the case of on-sales. It is more difficult to make that link and find evidence for it in the case of off-sales, but that is what we need to do before we can extend the policy.

Bruce Crawford: I pick up the point that Margaret Smith made about young people and drinking. She asked a good question. When the minister meets the off-sales licensed trade, why can he not simply ask, "When you sold Bacardi Breezers at this price, how many did you sell? When you sell them at a lower price, how many extra do you sell?" They are purchased in shops, but shops do not see the end result. We can be pretty sure that there are certain products in the market that are targeted at younger people. I would not have thought that there is much science in asking the supermarkets for information on the increase in sales that occurs when the products are cheaper. That information must be available on the supermarkets' computer systems. I hope that you will accelerate the process by asking simple questions rather than requiring lengthy pieces of detailed research.

On irresponsible promotions, it is bad enough when youngsters get hold of drink, but it is even worse when adults sell it or give it to them. No matter what we try to do, that will continue to happen, given the current environment. What provisions are in the bill to strengthen the powers that the police have to stop adults buying alcohol to give or sell to young people?

Jacqueline Conlan: There are a number of provisions. First, the no-proof, no-sale scheme has been designed to go some way to tackle the problem. For the first time, the notice that must be displayed in premises will say specifically that it is an offence to buy alcohol on behalf of a young person, to try to make that a bit more prominent in licensed premises. Under the bill it is an offence to do that, as it has been since 1976.

In addition, the police will have more powers to deal with problem premises. There is a scheme in the bill about how complaints are dealt with. The police, like anyone else, can bring a matter to the licensing board and make a complaint about licensed premises. Before they do that, they will be able to liaise with the licensing standards officer, who may be the person who brings problems with under-age drinking to the attention of the police in the first place. There is an opportunity to deal with the matter locally, but if it cannot be dealt with, either the licensing standards officer or the police can make a formal complaint to the licensing board and get access to the much more flexible range of sanctions under the bill.

Bruce Crawford: That deals with the licensee but not specifically with the person who is buying the alcohol. Are there any thoughts about more punitive measures aimed at people who procure alcohol to pass on to youngsters? They know that they are breaking the law. I do not think that signs will make any difference to them.

John St Clair (Scottish Executive Legal and Parliamentary Services): Following Sheriff Principal Nicholson's statement that some of the penalties for selling alcohol to young people and allowing them to consume it were too light, there has been a significant increase in the penalties for three offences in particular: under section 93, the sale of alcohol to a child or young person; under section 94, allowing the sale of alcohol to a young person; and under section 97, allowing a young person to consume alcohol—that might apply not to the seller but to a parent. The penalties have been increased to level 5 on the standard scale, which is up to £5,000, so there has been a hefty ratcheting up of the sanctions.

Bruce Crawford: What consideration was given to requiring every person who sells alcohol in an off-licence, whether the local store or supermarket, to be certificated to do so? Requiring them to be licensed would be going too far and I accept that they will all be trained a bit better in future. That way, they would not only go through the training but at the end of the process they would have a bit of paper to say that they were qualified to sell alcohol.

Jacqueline Conlan: It comes back to the training provisions. I can tell you more than you would pick up from the text of the bill about what is intended. There are lots of different levels of training. For personal licence holders, there has to be one premises manager for each premises, who holds the personal licence. The personal licence holder will have to have extensive training to allow them to hold the licence. They will be issued a licence that is valid for 10 years and be subject to all sorts of responsibilities as a result. In addition, all permanent members of staff serving or selling alcohol on licensed premises must be trained to a national standard that is accredited. They would have a certificate at the end of that process.

Bruce Crawford: Who would be responsible for saying whether the certificate can be awarded? Would it be the local authority or the training provider?

Jacqueline Conlan: We are going to ask the national licensing forum to do a fairly extensive piece of work on the types of training that should be accredited—we have tried to leave a few options in the bill for how we might proceed. We have options such as accrediting the training provider, accrediting the training course and setting out the content of the course. We want the forum to consider a number of possibilities to establish the best way to proceed.

Bruce Crawford: That is useful. Thanks very much. I have a question on over-provision, but I am not sure that this is the right time to ask it.

The Convener: I will bring in Tommy Sheridan to ask his other questions, one of which is on over-provision. You might be able to come in on the back of it, Bruce.

Tommy Sheridan: I have a question on over-provision, but before I ask it I want to ask Jacqueline Conlan about one of the policy objectives, which is providing a voice for communities. You have mentioned the local licensing forums several times today. Is it envisaged that the forums will provide the voice for communities? If so, how many members of the community do you envisage being members of the forums?

Jacqueline Conlan: The bill does a number of things to improve the position for communities; local licensing forums are part of that. We are widening out to any person the list of people who can object to a licence. Under the current regime, boundaries with that list have caused difficulties: they have excluded people on housing groups and school boards from being able to object to a licence. That will not now happen. Licensing standards officers will be able to mediate with communities. There is a policy on over-provision and a much wider range of sanctions is available under the bill. It is about taking all those measures together. We have set out in schedule 2 how local forums should be formulated. There is a list of people from which membership of the forums should be drawn, but we have not set out specific numbers or communities.

Tommy Sheridan: As you said, the list is set out in schedule 2. You make a number of prescriptions. You say that the licensing standards officer must be a member of the forum and that the people relevant for its membership include:

- “(a) holders of premises licences and personal licences,
- (b) the chief constable for the police area in which the Forum’s area is situated,
- (c) persons having functions relating to health, education or social work,
- (d) young people,
- (e) persons resident within the Forum’s area.”

Based on what you have prescribed and given that your forum is to have no more than 10 members, that would give a maximum of three community reps. It could be fewer than three.

I ask you again to consider that that number will not improve local community involvement in serious decision making, particularly in larger communities. It would be much more appropriate if local licensing forums were really local and were based on bigger authorities breaking down into appropriate areas. Is there room for you to consider making local licensing forums more appropriately local? Having one licensing

standards officer whose job is to liaise with the local community will mean that, in the city of Glasgow, they will be liaising with 400,000 people in very different communities. Do you really think that whoever is in that position will be able to fulfil the requirements of the job description?

15:15

Jacqueline Conlan: We have set out a minimum in the bill, but that does not mean that in practice there cannot be a good relationship with the board, or that more than one licensing standards officer cannot be involved. Because the forum’s policy role is being set out in legislation, you could say that there is a need to set some boundaries around it. However, on the size of the forum, you might want to ask questions of the minister.

Tommy Sheridan: That relates to the next central question—

The Convener: One second, Tommy. I want to ask a supplementary question on the forums before you go on to address over-provision.

I note that there does not seem to be a quorum for the forums, which could result in a small number of members taking decisions. Does the Executive intend to revisit that issue? In addition, are you concerned that, if a forum is chaired by a local councillor, a conflict of interest could be created if the forum made a decision that was at odds with a decision of a licensing board?

Jacqueline Conlan: We note the point on a quorum and will take it away.

The decision on the structure of forums was taken as a result of recommendations in the Daniels report that local forums should be independent from boards. There has been a lot of discussion about that point and a wide variety of views have been put forward, particularly among licensing boards, which are pretty much evenly split on whether boards should be directly involved in forums, depending on the models that they currently have set up.

Obviously, with some models, boards and forums are closely linked and they work well. However, the Daniels committee examined the issue and felt that, because the policy role of forums will be defined and important, boards and forums have to be independent under the new system. That answers the question about a councillor who is a member of a licensing board chairing a forum.

The Convener: If I am reading you correctly, you are saying that you would not expect a councillor who was on a local forum to serve on a licensing board.

Jacqueline Conlan: That is correct.

Tommy Sheridan: This question relates to problems that arise from the assessment of over-provision. My concern is who will assess over-provision. What level of community involvement will there be in deciding on over-provision?

I recently attended a Glasgow licensing board hearing as a resident in the south-west of Glasgow to protest about the extension of hours for a particular premises. As I expected, the board's knowledge of the area was virtually nil, because its members do not live in the area. If you want to improve community involvement, the idea that we in Glasgow should attend one city centre court and that it should determine everything that goes on in Glasgow is completely unacceptable. Who will input into assessments of over-provision? Who will do the assessing? How will over-provision be determined? If it is done via the local licensing forum, is not my earlier point relevant: that for a city the size of Glasgow there might be three community reps, but they will be covering the whole city?

Jacqueline Conlan: When a council decides to divide its areas into licensing divisions, there can be a forum for each division, so there is flexibility. If the council decides that one central board and forum are not enough, it can subdivide the structure into as many parts as it thinks appropriate.

We have been careful to ensure that—alongside the sections that set out the role of local licensing forums—section 7 ensures that the licensing board has to consult

“persons resident in the locality”.

That is another safeguard to ensure local consultation on over-provision.

It will be for the licensing board to make the assessments but we will ask the national licensing forum to consider over-provision. People will need advice, which is why the national licensing forum will consider this difficult issue. Its considerations will then be part of statutory guidance to be presented to Parliament for debate before the introduction of the new regime.

The guidance would have to give boards an idea of what sort of issue to consider. Boards will decide for themselves how best to consider localities. When considering over-provision, a board might decide to consider just a particular street, or several streets, or a council ward, or whatever was an appropriate area. Feedback we received from boards suggested that they needed that flexibility.

The bill specifically says that, in carrying out the assessment, it is important that boards take account of the “number and capacity” of licensed

premises. We acknowledge that over-provision is not just about new licensed premises but about the expansion of existing premises, increases in hours and so on.

Tommy Sheridan: What assessment of over-provision will be made during the inevitable transitional period? I worry because some communities already feel that there is over-provision. If you set the starting point as now and say that only what is added to the current provision will be assessed, some communities will feel let down. They are hoping for a realistic assessment of the over-provision that already exists.

In the past, communities could not do anything about over-provision. As you know, community councils could not complain on that basis; they could complain only on a planning basis. Are you saying that they will now be able to complain on the basis of over-provision? How will that work during the transitional period?

Jacqueline Conlan: They will be able to complain. Over-provision will be considered during the transitional period because boards will have to develop their policy statements before the new regime can start. Over-provision will be part of that. Boards will have to make assessments during the transitional period and that is when consultation with communities will start.

You are right to say that the assessment will not be retrospective. If a board decides that an area is over-provided for, the bill will not provide a way of closing down a number of those licensed premises. However, it will provide a way of preventing the situation from getting worse by preventing new licensed premises from opening or by preventing existing licensed premises from expanding.

Bruce Crawford: Over-provision has been exercising my mind. Is the way in which we deal with over-provision about restricting the number of hours in which off-licences, in particular, operate? Or is it about restricting the number of outlets? Which is the best method?

At the moment, we have no definition of over-provision. We will therefore have different boards—or even different divisions within the same board—coming up with different definitions. I hope that the national licensing forum will produce an overarching definition of over-provision. It is a bit like affordable housing—how the heck can we define affordable? No one ever has, and we cannot allow ourselves to get into the same situation here.

In effect, we will be regulating the market. I do not necessarily disagree that we should do that, but my biggest concern is that instead of replacing them with people who will do things better, we will

allow bad providers to continue to operate. I wonder what the Executive thinks about that.

In a restricted market in areas in which there is no reinvestment, a person who runs a pub might be hanging on by their fingernails and not providing a good product. The market would make such a person go out of business and someone would replace them, refresh the service and bring in new investment. Has the Executive reflected on that? Have there been danger signals that there is a potential problem?

Jacqueline Conlan: I agree with everything you said about over-provision. The guidance on the role of the proposed national licensing forum will be crucial. It is certainly the intention to provide good guidance to boards on how they should take matters forward.

Your comments about the quality of the product and the nature of the premises that exist raise two issues. First, there is the market aspect, with which we cannot interfere. We expect the discerning consumer to decide where to take their business. In a sense, the bill will address your concerns in that it will require people to raise their game a bit. There will be national standards on training and it will not be sufficient to run a low-quality service, because training will require people to raise the level of their service—considerably, in some instances.

In addition, boards will be able to apply licence conditions. National licence conditions will apply in some areas, particularly to late-opening premises, and will tend to deal with matters that relate to the licensing objectives, which are kept in mind throughout the bill. Matters such as public safety and public nuisance can be addressed through, for example, closed-circuit television and door staff, as well as through the use of plastic glasses or the clearance of glasses that are left outside premises. Boards will also be able to apply local licence conditions that are appropriate to premises, which might lead to better control of some aspects, particularly those that impact on the community outside the premises.

Bruce Crawford: I have a final question—

The Convener: Is it short?

Bruce Crawford: It is very short. If there are three off-licences in one street, the board decides that there is over-provision and does not grant licences to all three premises and two of the off-licences eventually close down, will not the off-licence that remains just get more business? There would be the same level of provision: no less alcohol would be available.

Jacqueline Conlan: I come back to the point that the bill regulates a legal product. The licensing objectives deal with issues of public

safety, nuisance and health that are linked to the product. As I said, the bill represents a regulatory aspect of a wider picture, which includes the action that our colleagues in the Scottish Executive Health Department are taking through, for example, the plan for action on alcohol problems. Such initiatives more directly consider the consumption and misuse of alcohol, education and other ways of tackling problems.

Dr Jackson: A recent episode of “The Enforcers” was about the unregulated sale of tobacco to children. What kind of training for staff do you envisage? Will everyone who works on a checkout go through training? I see that you are nodding, so I assume that the answer is yes.

Jacqueline Conlan: Yes, that is right.

Dr Jackson: If that is the case, will the responsibility lie with checkout staff, so that if they do not ask for proof of age they could be open to a criminal charge?

Jacqueline Conlan: There is a threefold responsibility. There is a responsibility on the individual, but because the bill deals with licensed premises it will also place responsibilities on personal licence holders who act as the premises manager and the premises licence holder. There are a number of ways in which the new regime will tackle problems.

The Convener: David Davidson has questions on the broader issue of grandfather rights in the transitional arrangements.

Mr Davidson: Yes. The witnesses seem to be hinting that they are beginning to come to a view on grandfather rights in the transitional period, which was not obvious before today’s meeting. Issues to do with the marketplace have been raised. Some people, for example in Aberdeen, are already investing in new premises and upping their game by training staff and licensed doormen.

How will you give guidance on the view that local boards should take of existing premises? Will there be set, tick-box guidance under which, if premises do not fulfil certain criteria or if there is police or court evidence that they have been a scene of disturbance, for example, they will automatically be excluded? We are trying to pin you down early on when you will come clean on your transitional arrangements, roughly what the guidance will say, whether it will be national guidance and what variance will be allowed for the local boards.

15:30

Jacqueline Conlan: I hope that I will not disappoint you, but I can tell you the position that ministers have reached. We have not, for a number of reasons, taken any decision on

transitional arrangements. We feel that we need to have detailed discussions about such arrangements with the licensed trade and licensing boards. There are a number of options—you have outlined some—but we need to discuss them. It is also important that we have some certainty about the shape of the new regime, which will come through the parliamentary process.

We will start to talk to licensing boards and the licensed trade about the transitional arrangements soon. We have been talking to them about transition and realise that they are worried about it. It is an important issue on which we should start discussions now, although the intention is clearly that the transitional arrangements will be made by regulations after the bill has been passed.

On grandfather rights, there is a need for the introduction of the new system to result in positive change. Ministers have made it clear that it would not be acceptable for there to be no change for some existing licence holders and that they would not want to create a two-tier system in which existing licensees did not have to comply with the promotions policy or the no-proof, no-sale policy, for example. However, from talking to people about grandfather rights, I have found that there is quite a lot of variation in what is understood by the term.

We need to consider how we move licensees from the existing system on to the new system. For some licensees, grandfather rights are simply about not having to apply for a new licence and having some kind of procedure to transfer across to the new licence. That is what was done in England and Wales and it is an option that we can discuss with the licensed trade, but the background to it is that licensees would have to comply with the new conditions, such as the no-proof, no-sale policy, through their licences under the new system.

Mr Davidson: Forgive me if I am pushing you, but the financial memorandum to the bill must specify costs. Would it not be more sensible to state, clearly and well in advance of the bill's being passed and the regulations' introduction, the general obligations that licensees will be required to fulfil if they are to be able to enjoy a succession of the rights that they already have so that they know in advance whether they will have to rush out and take all sorts of court action, which might impede the bill's passage and, in the process, impose a great cost on the trade, the Scottish Executive and, possibly, councils?

Jacqueline Conlan: It would not have been feasible to develop policy on transitional arrangements before the shape of the bill was settled. The minister has been clear that the key to the transition is that licensees be given sufficient

time and have a very good understanding of what is required. The passage of the bill is only the first step towards a new regime; we will have regulations and guidance to produce, which could take 18 months, and that will be done before boards create their policy statements, which will happen before we get to a transitional period. There is time for the transition to happen, and the intention is that the new system will not be introduced in such a way that licensees are put at a disadvantage by not knowing what to expect.

Mr Davidson: Is it the intention that the regulations will come to the Parliament for an affirmative decision?

Jacqueline Conlan: The guidance that will be introduced under the new system is the key thing, and the procedure specified in the bill for that would involve debate by the Parliament.

Mr Davidson: Convener, do you want me to move on to the next subject?

The Convener: I think that Michael McMahon wanted to ask a supplementary question first.

Michael McMahon: I will ask the question later, because it is on another issue.

Mr Davidson: I will ask about another area about which there seems to be quite a bit of debate. I refer to the regulations that are proposed on the status of, and police access to, private clubs. How will those regulations impinge on clubs of various types, ranging from students unions to working men's clubs, with which there do not seem to have been tremendous problems in the past? There is also the difficulty that some clubs, such as rugby clubs, might not have a full-time steward who can become the licensed person. How will that be dealt with?

Jacqueline Conlan: Ian Fairweather can give more detail, but I will start by saying that we have had much discussion with clubs. We have developed the position with their full co-operation and, as far as I know, they are happy with it. The police will have access to clubs in future. Clubs' special status will also be recognised through licence conditions.

Ian Fairweather (Scottish Executive Finance and Central Services Department): The Nicholson report recommended that clubs should be brought into the system and that a provision should protect their special nature. That is what section 117 does. It gives ministers a regulatory power to exempt clubs that meet certain conditions. All those conditions were set out in a memorandum to the Subordinate Legislation Committee. Do you want me to read them out?

Mr Davidson: No; that is fine.

Ian Fairweather: The information is available for you. All those clubs will be exempt from the likes

of the over-provision assessment. A further power will allow clubs to be exempted from the requirement to have a personal licence holder, who is known as a premises manager in the bill.

Mr Davidson: Will that cover inappropriate promotions, which we have discussed?

Ian Fairweather: I am not sure.

Jacqueline Conlan: Under the regulatory powers in the bill, we intend to exempt very small clubs from the requirement to have a personal licence holder. That has been a concern, particularly of bowling clubs that have very few members and are very small but have the capacity for members to have a drink. We have said that we will examine that.

I am sorry; I have forgotten your other question.

Mr Davidson: It was about promotions.

Jacqueline Conlan: One advantage of a non-differential pricing route over a minimum pricing route is that it can be applied equally to private clubs and to other licensed premises. It does not prevent such clubs from having lower prices, as they traditionally do, but they will have to comply with the rest of the policy.

Mr Davidson: Will a smaller club that will be exempt be defined clearly?

Jacqueline Conlan: Yes. That is the intention.

Mr Davidson: Will that be in the bill?

Jacqueline Conlan: It will be in regulations.

Margaret Smith: Why is no provision made for objectors or personal licence holders to appeal? Sheriff Principal Nicholson has expressed concerns about that. I pick up some of the points that Tommy Sheridan made about involving communities and ensuring that they have a voice. Not having an appeal provision for objectors is slightly worrying.

John St Clair: Perhaps an apology is due to the committee if a misunderstanding has occurred. The provisions in the bill do not reflect the Executive's final position on appeals. They were holding provisions pending discussions that we had with sheriff principals on the mechanics of how Sheriff Principal Nicholson's recommendations about appeals would work in practice. We have successfully concluded talks with sheriff principals and have drafts that we will recommend to Parliament at stage 2 or perhaps before then.

Those provisions will meet your concerns. We will list all the substantive types of decisions that boards can make by section. Those will be appealable. Objectors and applicants for reviews will be allowed to appeal.

Subject to what the Parliament says, we expect to follow Sheriff Principal Nicholson's recommendation that appeals will go in the first instance to a sheriff principal. In most cases, we would expect a sheriff principal to hear those appeals. However, we propose that he should be given the power to delegate an appeal to other sheriffs in his sheriffdom if necessary.

The final point is that we have always been concerned about the slightly draconian effect of immediate suspension or the board ordering a licence to terminate there and then, which might put a business out of operation before any appeal was heard. We propose to include a provision in the appeal sections whereby, when such an order is made, a person can go straight to the sheriff principal if he lodges an appeal—which can be done quickly—and seek a suspension of that effect. The sheriff principal or his sheriff could suspend the effect of the suspension pending the appeal if, considering the circumstances, they think that that type of order is unreasonable or disproportionate.

Margaret Smith: That is excellent. You have answered my supplementary question.

The Convener: I have one other issue to raise, on objectors. You will be aware that Sheriff Principal Nicholson has voiced concern that the definition of objector in the bill is too wide and leaves it open for someone who has no geographical locus on a particular application to submit an objection. Sheriff Principal Nicholson says that that goes some way beyond the real and material interest test that is proposed in the Daniels report and that it goes further than the recommendations of the Nicholson report. Do you have any concerns about the breadth of objectors that are allowed? Do you see it adding to the workload and causing problems for the licensing system?

John St Clair: A lot of thought has gone into this. Although we cannot totally predict the future, our take on it is that there is a growing tendency for the courts to allow representative groups to participate in other civil cases. We did not want to refuse, in principle, any representative group or individual access to the objecting system; we wanted the system to be as transparent and democratic as possible.

On the other hand, we did not want to overload the system with a lot of unnecessary objections from busybodies and people who have no real interest. With that in mind, we thought that the best policy was to have some sort of choke mechanism, or filter; hence, we included the provision whereby the licensing board can turn down vexatious or frivolous objections. We envisage that working if somebody objects for the sake of it, to be annoying. That would probably

come under the term vexatious. If they came up with some vacuous, fatuous and childish points, the objection could be turned down as frivolous.

There have been cases of somebody who has no connection with an area coming up with some theological point. That might be a difficult one to call the first time. The licensing board might accept the point the first time, but not the second time, by which time what that person is on about will have become well known. The proposed model allows a democratic, open input for objections but has an overrider, or choke-off, to stop people being ridiculous and abusing the system.

The Convener: In his written submission, the sheriff principal makes the point that someone who has a genuine, principled, objection to the sale of alcohol might object and that it would be difficult to term such an objection either frivolous or vexatious. He seems to suggest by implication that the real and material interest test that Daniels proposed might be a better model.

John St Clair: We considered that carefully, but there are difficult drafting questions around using the model of real and material interest. Catching that idea would require a significant expansion of the text. We thought letting everybody make objections, but filtering them if there were problems, the more pragmatic approach and the one more likely to achieve the effect that we are after.

The Convener: Do you feel that the terms that are used would deal with the example that I gave—someone who makes a principled objection or series of objections to the sale and consumption of alcohol?

John St Clair: Yes. If the objection was substantially the same every time, it would be caught.

The Convener: Tommy Sheridan has a brief supplementary question.

15:45

Tommy Sheridan: I thank you, convener, for indulging me. You have had an impossible task and there are so many areas that we have not even touched on. It is a pity that we have such a limited amount of time. The idea of objections being considered frivolous or vexatious on the basis of their being annoying would not go down well with a lot of community objectors. However, I want to ask specifically about section 86.

I am concerned and surprised that the Executive has allowed section 86 to appear as it does. I may be wrong, and I will stand corrected, but it appears to me—Sheriff Principal Nicholson refers to this as well—that, for the first time, when anyone breaches an exclusion order, the licence holder of

the premises will be given the power to remove that person from the premises. Even more important, the licence holder may,

“if necessary for that purpose, use reasonable force.”

It is hard enough to justify the use of reasonable force to prevent someone from getting in somewhere or to restrain someone until an officer of the law comes. Allowing reasonable force to be used to remove someone physically is opening up a Pandora's box of major legal problems concerning what is or is not reasonable force.

It is also an unequal power. Some licence holders will not be capable of using reasonable force, whereas others will; therefore, it will be an unequally used piece of law. I am worried that, for the first time, we are providing a citizen other than an officer of the law with the power to use reasonable force against another citizen. I ask the Executive to reconsider that, as it is very troublesome.

Jacqueline Conlan: Thanks very much for making that point. Gordon Nicholson also made that point in his comments. We are happy to take that away and reconsider the section.

Paul Martin: What measures have been taken to improve police reporting to the licensing boards?

Jacqueline Conlan: Could you give me a bit more detail?

Paul Martin: It could be argued that the current format of the police reporting to licensing boards is insufficient, in terms of the kind of information that is provided to licensing boards. Are there any measures in the bill to improve the situation?

Jacqueline Conlan: The issue has not been raised with us. In general, the police have a good and close relationship with licensing boards. They attend board meetings and seem to be in fairly regular contact with them. If you give me more detail, I can take it away and consider the point.

Paul Martin: If, for example, 110 calls about an off-sales establishment were made to the police, would you expect that to be reported to the licensing board?

Jacqueline Conlan: By the police? Under the new system, we would expect—

Paul Martin: I mean under the existing system and the 1976 act. Would you expect the police to report that 110 calls were made by a local community that was concerned about activities in and around those premises?

Jacqueline Conlan: I am not sure that I am equipped to comment on what is happening at the moment. I would expect that, where there were persistent problems linked to specific licensed

premises, the licensing board would be made aware of that.

Paul Martin: I appreciate that, but I am asking about the current process by which the chief constable reports to the licensing board concerning new applications. Under current provision, in the 1976 act, if 110 calls have been made about an off-licence premises, any member of the public would expect that to be reported to the licensing board. However, current experience suggests that that information is not reported. Are there any measures in the bill to address the way in which Strathclyde police interact with the licensing board to provide a wide range of information? As it stands, the police may not be providing all the information concerning those licensed premises.

Jacqueline Conlan: There are two sets of issues: one about new applications; the other about on-going problems. As regards on-going problems, there would be a close relationship with the police, which would probably make itself known most through the relationship with the licensing standards officer. Under the new system, the police will certainly be at liberty to bring complaints.

In relation to new applications, the bill adopts the recommendation of the Nicholson committee, that the approach should be based on relevant offences or relevant convictions. Such an approach has been introduced in England and Wales. The police will provide information on new applications to the licensing board on the basis of convictions for relevant offences, which will be listed.

Paul Martin: That relates to the licence holder. I will give the example of an off-sales in Ruchazie in Glasgow to illustrate my point. On average, 50 youths congregate at, and are involved in antisocial behaviour around, those premises. Under the new provisions, would you expect the police to report that information to the licensing board?

Jacqueline Conlan: There are no specific provisions that give the police a statutory duty to report certain types of information. The bill provides routes for them to do that, but there is nothing in the bill that regulates the practice.

Paul Martin: Do you accept that the licence holder is not the only important element of the licence and that the operation of such premises in the communities in which they provide a service is important too?

Jacqueline Conlan: We obviously want to ensure that the new system means that when there is a problem with the operation of a premises, it can be tackled. The mechanisms for that are in the monitoring and enforcement regime

that will be put in place. If there are issues that you want to raise that go beyond that, such as the arrangements for how the police will relate to the licensing board, we would need to look at that in more detail.

Paul Martin: You are happy to confirm that you will look at the format of the process by which the police will provide information to the licensing board.

Jacqueline Conlan: We would be happy to consider any information you provide, but it would be for the minister to decide whether he wanted to amend the bill or introduce additional provisions on that.

Margaret Smith: I want to ask about the role of chief constables. I may be wrong, but it seems to me from what we are being told that although chief constables have a right to be competent objectors to applications at the moment, under the bill they will no longer be able to object to an application, but may simply make a recommendation that is based on an assessment of the applicant's convictions. Is that understanding correct? What does that mean?

Jacqueline Conlan: The bill incorporates the Nicholson committee's recommendation that we should replicate the system that has been introduced in England and Wales. Nicholson said that that system is broadly acceptable and should be introduced in Scotland. That proposal is linked to the removal of the fit and proper person ground for rejecting a licence application. It has been suggested that that ground, which can be considered quite vague and subjective, has been overused. As the new system will be more transparent and will be set up on a more objective basis, it should be clearer for applicants and the police.

You are right that, under the new regime, the police will have the role of checking whether the applicant has had convictions for relevant offences and confirming that to the licensing board. We expect that a fairly wide list of relevant offences will be set out in regulations. If convictions were discovered, the police might also make comments to the licensing board about whether they felt that the licence should be granted. In addition, the police will have an on-going role, in that they will be able to make a complaint against a premises at any time, under any of the grounds that are set out.

Margaret Smith: So the police's role does not relate just to the personal licence holder; they can report matters such as repeated problems with a premises to the licensing board at any time.

Jacqueline Conlan: Yes. There are two sides to the role of the police. There is the procedure that I have just explained, which relates to the

premises licence holder. In addition, the bill sets out procedures that relate to the personal licence holder. The police have a role in assessing relevant offences and convictions, but a complaint may be made against a personal licence holder that is linked to problems that have arisen on a premises, with the result that the board decides that it wants to take action against the personal licence holder. In such circumstances, the licence holder would be said to be acting in a way that was not consistent with the licensing objectives in the bill.

The Convener: That brings us to the end of our questions for the first panel of witnesses. I thank the four representatives of the Scottish Executive for what I think has been a very useful opening session. It continued for a little longer than we had originally scheduled, but it has helped the committee to understand the Executive's perspective on a number of the issues and to highlight a number of issues on which members would like the Executive to return to the committee following further consideration. I am sure we will be dealing with you again over the months to come.

We will move straight on to the second panel. I welcome Sheriff Principal Gordon Nicholson to the committee. Your name has been much mentioned during the past hour and a half. The fact that you are giving evidence to the committee is very welcome, given your involvement in chairing the committee on liquor licensing law. The written notes that you have submitted in advance of today's meeting have been very helpful in identifying areas where you think the bill is going in the right direction and in raising issues on which you think there is a need for revision during the Parliament's scrutiny of the bill. Before we move on to questions, I will give you the opportunity to make some introductory remarks.

Sheriff Principal Gordon Nicholson (Committee on Liquor Licensing Law): Largely because I submitted a written paper, I had not intended to make any introductory remarks. However, over the past hour and a half I have been taking a few notes on some of the matters that have been raised and it might be helpful to give my view on what I think are some of the more important ones.

I see that Tommy Sheridan is no longer here, but I will respond to a point that he raised. I had never thought of this before but, speaking personally, I can see some advantage in a city the size of Glasgow deciding to divisionalise and set up a number of boards in different parts of the city. As Jacqueline Conlan said, that is a matter for the local authority. The bill certainly empowers councils to take such steps if they wish.

The second point that I would like to discuss concerns the size of licensing boards. A comparison was made—a little unfairly, I thought—between the proposal in the bill and the size of my committee. I and members of my committee saw a distinction arising out of boards' two functions. First, there is the size of a licensing board as relates to what one might call its broad committee function: the function of sitting in private in a room rather like this one and of deciding, as they will have increasingly to do under the new bill, on issues of policy on over-provision and whatever else. I would have no difficulty with a board of 15 or even more for that sort of thing, so that it can be as representative as possible of all interests.

The problem area is when boards emerge out of their private room and come into the chamber to hold a quasi-judicial hearing. There, applications are considered, objections are listened to and so on. It is in that sort of context where, we felt, the existing boards are too big. I hope that the committee will keep that distinction in mind in determining whether the figures in the bill are or are not appropriate.

In relation to access by children, my personal view, as I said to Jacqueline Conlan on the telephone just yesterday, is that the bill should contain some general indication of policy. I quite accept that the operating plan will be what determines what is or is not appropriate in relation to individual premises, but there has to be some kind of starting point—or presumption one way or the other, to use the legal terminology—upon which you can build or from which you can subtract.

One reason why that is important—I hope you do not think that I am being in the least bit offensive, because I certainly do not mean to be—is that it is sometimes not entirely clearly understood that licensed premises are not only public houses but places such as hotels, cinemas, sporting clubs, theatres and so on. Under the existing legislation, there is no prohibition against children going into any of those places. In existing law, the only prohibition is against children going into bars—and it has to be said that the extent of that prohibition is not entirely clear. That is one reason why we thought that there needed to be a change, with some modernisation.

16:00

One has to have some provision that will enable the owner of the Balmoral Hotel on Princes Street, for example, to understand where he is starting from when it comes to setting out the details in his proposed operating plan. Is he starting out from a basis whereby he need not say that children will be able to have access to the public lounges, the restaurant, the bedrooms, the bathrooms and so

on? If he can take that for granted, he can concentrate on the details and say that they will not have access to the XYZ bar, the ABC bar or whichever other bits of the premises to which they will be denied access.

Whether one starts from a presumption in favour of access and then subtracts from it—the approach that we recommended—or starts from a presumption of no access, it is important that the bill says something about where that starting point will be.

On appeals, I stand by what I said in my submission. With the greatest of respect to Mr St Clair, I must say that I did not find his explanation convincing. It seems to me that allowing someone who in any sensible view has no proper interest in the subject matter in question to appeal once, but to stop them the second or third time on the ground that they would at that point be being either vexatious or frivolous, is not a good recommendation for legislation.

I simply renew my personal belief that, even if one has the wide, any-person approach that is in the bill at the moment, there should be some sort of geographical limitation, even if that limitation restricts the right to appeal to—and I suggest this off the top of my head—anyone who is resident or has a place of business in the area that is covered by the licensing board in question. That seems to be a fairly sensible way forward and, to pick up the point that Tommy Sheridan made, it would admit local residents groups and so on but exclude the teetotaler in Stornoway that I posited in my submission.

A point about the chief constable being an objector was raised. I have not had an opportunity to discuss the matter with Jacqueline Conlan; I hope she will forgive me for what I am about to say. I have a suspicion that the Nicholson report might have been slightly misunderstood—that might be our fault for not expressing ourselves clearly enough. One reason we suggested that chief constables and others who are linked to a local authority should be limited to a position wherein they are able to make representations and unable to raise objections—you might say that in any case there is very little difference between the two positions—is that we were concerned about certain human rights issues relating to the objectively perceived independence of the licensing board. That is one of the main reasons we recommended that local authorities should no longer be competent objectors or competent licence holders.

As I understand it, the legal advice that the Executive has received is that our concerns in this area are wrong. I do not agree with that, but there we are. As a result of those concerns, we thought that officials such as the chief constable or

whoever should not have a formal right of objection but should be entitled to make submissions, observations or comments in some other way. Our recommendation had nothing to do with the removal of the old fit-and-proper-person test.

I had not realised until I heard a day or two ago roughly what Jacqueline Conlan said earlier that, as far as applications are concerned, the bill seeks to limit chief constables simply to making comments about convictions. I would have thought that a chief constable might have a perfectly proper, legitimate and important interest in a wider range of matters and that he should be capable of making his views on them known to a licensing board. As a result, I am a little alarmed if a chief constable's role is to be constricted in such a way. If, as it appears, the Executive considers that this matter has no European convention on human rights implications, a chief constable should simply be treated as an objector.

I should add that this is simply a matter of statutory interpretation. I would have thought that, given that the reference in section 21(1) to “any person” who can make an objection or representation is restricted only by the “frivolous and vexatious” test in section 21(3), a court would perceive a chief constable as being “any person” for that purpose. If the intention is to include chief constables, the bill should say so.

I am sorry, convener. I went on a little longer than I intended to, but I thought that it would be helpful to give the committee my personal take on matters that have already been discussed.

The Convener: We welcome your response to some of the debate on the Executive's introductory evidence; it has been useful.

Before I bring in my colleagues, I want to return to the issue of the local authority being a licence holder. I understand your concerns about local authority members taking a decision on their own local authority's application for a licence. However, the problem with excluding local authorities from applying for a licence is that many of them run sporting or leisure facilities such as municipal golf clubs, theatres and other premises that have a licensed element. Are you suggesting that for such facilities to continue, the local authority would need to franchise out the licensed element while still operating the sporting club, theatre or whatever?

Sheriff Principal Nicholson: The committee certainly considered that possibility. We looked into the matter because of our ECHR concerns and our concerns about whether the licensing board could be considered an impartial tribunal if it were able to grant a licence to that from whence it came. When we carried out a survey of the

position around the country, we discovered that some local authorities have no liquor licences; that some have only two or three; and that Glasgow City Council has the largest number—something like eight or nine. We are not talking about a massive number of licences.

We were a little surprised to find that Dundee does not have any licences. After making some inquiries, we found that that is not because Dundee does not have the kind of premises that you have just described but because the council has, for whatever reason, decided not to hold licences in its own name. Instead, it either franchises or rents out the licensed bar element of those premises to a tenant, who becomes the licensee. The information that we received from Dundee was that that arrangement does not present any particular problems. That said, I know that, notwithstanding questions of ECHR, our proposal did not go down well with a great many local authorities around the country.

Bruce Crawford: Thank you for coming along to the meeting and for being prepared to give evidence. Obviously, your committee has presented Scotland with an incredibly important piece of work and it is good to see that work coming to fruition today.

You have probably heard me beginning to tease out the issue of the abolition of permitted hours. One would expect organisations such as the SLTA to rub their hands with glee at the prospect of abolishing permitted hours and to consider that to be useful and acceptable, but it has argued that core operating hours must be available and guaranteed.

On page 2 of your submission—the paragraphs of which are not numbered—you state:

“I am not sure that the Bill at present makes it sufficiently clear that a Board can authorise opening hours other than those applied for where the Board considers that to be appropriate”.

I suppose that it is possible that a board could refuse a licensee permission to open during hours that are currently considered to be permitted opening hours and could, for example, remove the ability to open premises at 11 o'clock on a Saturday, for whatever reason. Currently, the SLTA knows that it can operate within the core hours. It is concerned that those hours might be eroded. What do you think about that?

Sheriff Principal Nicholson: I recognise that there is a theoretical risk and I suppose that, to a certain extent, we must do some crystal ball gazing. However, I should also make clear the committee's concern that, although the current legislation provides for specified permitted hours—as you rightly say—the reality has been totally different for many years.

Members might know that Clayson recommended a power to extend permitted hours on the basis that such a power would be used very occasionally, for example to add an extra hour to closing times in holiday resorts for a couple of months during the summer. However, the use of extensions means that, currently, no hour of the day or night is technically out of bounds to be used as a licensed hour, which is why some places stay open until 4 in the morning. I gather that some pubs in Leith in Edinburgh open at 5 in the morning to cater for workers coming off shifts, for example.

Having legislation that appears to say one thing but works in quite a different way offended my sense of propriety. It is generally accepted that, subject to there being no problems with over-provision and so on, there are too few permitted hours and that permitted hours can reasonably be extended, as they currently are in city-centre pubs, for example. We thought that it would be sensible simply to accept the reality of the situation and to say that no hours should be out of bounds, but it will be up to local licensing boards to determine case by case which opening hours will be permitted.

The other side of the coin is interesting. Members might have seen or heard about what has happened recently in England. The provisions of the Licensing Act 2003 have not quite started to come into operation yet, but applications are being submitted by licence holders. Apparently, no pub has so far sought opening hours that are longer than its current opening hours, and I would be surprised if many licensed premises in Scotland—with the possible exception of 24-hour supermarkets, for example—sought longer hours than they currently have for selling alcohol, although I am gazing into the crystal ball that I mentioned a moment ago.

You mentioned the example of a licensing board in the Western Isles, which might say, “We don't like licensed premises being open on a Sunday, so we won't allow it.” I suspect that in such a situation those who rely heavily on the tourist trade would put pressure on the board to change its policy. On the other hand, if such a policy were truly reflective of the views of the community in that part of the country, the licensing board should have such a power.

16:15

Bruce Crawford: That is useful and reflects the reality of the situation. In your submission, on section 60, you acknowledge that an applicant could stipulate an opening period of 23 hours and 59 minutes, so the premises would in effect be open 24 hours.

Sheriff Principal Nicholson: That was really a point about drafting rather than policy. I have not had a response from the Executive. It might persuade me that I have misunderstood or got it wrong, but it seems to me that although the idea is, as I understand it, to create a kind of presumption against 24-hour opening—with which I would not quarrel—the bill will not achieve that, for the reasons that I set out in my submission.

Bruce Crawford: That is useful.

In your response to my first question, you mentioned over-provision. In your submission, you point out usefully that, in the 1976 act, over-provision is allowed as a ground for refusing an application, but has been given little or no constructive thought. Why do you think that is?

Sheriff Principal Nicholson: This is a purely personal view, but I think that it is because the bad, undesirable consequences of over-provision have crept up on us gradually over a good number of years. Some time ago I asked a licensing board chairman what his approach to over-provision was. He said that the matter was terribly difficult, because if a defined area already had 12 licensed premises, it was difficult to determine whether a 13th licensed premises would result in over-provision or whether that would be the case only once there were 14 or 15 licensed premises.

The matter has been clouded further by the increase in the number of large premises. I am thinking of Edinburgh and Glasgow—and, no doubt, elsewhere—where former banks have been converted into public houses that can accommodate 1,000 people. The addition of two such premises in an area that already has eight small pubs would be much more significant than the addition of two more small pubs would be. The consequences have crept up on us, which is one reason why perhaps not all but most licensing boards have never really grasped the nettle. There is also the problem that was raised earlier of defining what we mean by over-provision.

Bruce Crawford: I will give you an example of a licensing board trying to grapple with the issue. Members probably know Perth reasonably well. In St John Street, there are now a fair number of pavement cafes. There have always been many pubs in that part of Perth. When the pavement cafes first started applying to open licensed premises, all the objectors were neighbouring pubs operating in the area. Quite rightly, the licensing board said that it would not say that there was over-provision and would go ahead and allow the number of pubs to expand. Rather than going out of business, the existing pubs got busier, because the environment was improved and the owners invested more successfully in their businesses. There, the over-provision rules were not applied. I am a bit concerned that the over-

provision rules might stop investment going into areas and bringing other premises up to the required standard. I do not know how much your committee considered that issue and whether such market regulation could have the effect of not allowing investment to come in.

Sheriff Principal Nicholson: That is certainly a risk. Another point that is germane is what we call in our report licensing by stealth. The situation has been touched on briefly this afternoon. For example, premises might be given a hotel licence under the existing law to which no special condition is attached. The licence is given in the knowledge that the hotel is a small one with 10 bedrooms and a small bar. What can happen—I can think of at least one instance, possibly more, of this happening in Edinburgh—is that the bar grows and grows and spills over in summer to outside tables and chairs. There can be 1,000 people drinking in premises that were originally granted a hotel licence when there was only a tiny bar. That kind of thing can also have an impact on over-provision. However one defines the word, one will have to consider the number of premises in a defined area, their size, their capacity, the type of premises and so on.

The Convener: I am aware that people in the area that I represent are less concerned about over-provision in the on-trade than they are about it in the off-trade. Off-licences can often dominate small towns and villages and push out other forms of business. Will the provisions on over-provision be used to help to stimulate local economies by ensuring that a particular type of premises, such as an off-licence, does not dominate an area?

Sheriff Principal Nicholson: What you say is perfectly possible in some areas, and that is why the approach is not so much board by board as locality by locality. The considerations in one place might be slightly different from those in another. As you rightly say, the arrangements and the number of premises in a certain locality can have a positive or a negative impact on the overall economy of the locality.

Paul Martin: Did your committee consider the social consequences of over-provision? There seems to have been a significant increase in the provision of licensed premises, particularly off-licences.

Sheriff Principal Nicholson: It is probably fair to say that our starting point was the adverse impact that over-provision can have on local communities. At one of our evidence sessions, a quite vocal residents group made it plain that it is important not to define any notion of locality too narrowly. The group made the perfectly valid point that there might be a reasonably definable locality that people might say has too many pubs and clubs, the impact of which can be felt at 4 in the

morning a couple of miles away, because that just happens to be the route that all the drunken ex-clubbers take on their way to get the local late-night bus. It was also made clear to us that the issue was not strictly within our terms of reference. I suppose that it is not within the terms of reference of the bill either.

There is also a question about infrastructure. We cannot consider licensing on its own; we must also consider when late-night takeaways are open, when they have to close and issues around the provision of public toilet facilities and public transport. Considering all those matters together with licensing could have an impact on the undesirable consequences that flow from having too many ill-regulated public houses and other licensed premises in one small area.

Paul Martin: So it is accepted that a majority of licensed premises, such as off-sales, will find themselves in deprived communities. If you were to compare Mearns Cross in Newton Mearns with Springburn Way, for example, you would see very different profiles. Is that something that your committee considered?

Sheriff Principal Nicholson: I do not think that we considered that specifically, but I would not quarrel with what you are saying. You are absolutely right.

The Convener: I will move on to issues around young people. You have set out clearly what you would like to be the case with regard to access to licensed premises by young people. You will have heard the committee asking the Executive a series of questions about sales to under-age people. You have commented that you believe that some aspects of sections 98 to 100 are inconsistent. Will you expand a little on your views in that regard?

Sheriff Principal Nicholson: As I think I commented in my submission, it is perfectly possible that I might not have understood the issue properly. Yesterday, Jacqueline Conlan—bless her—told me that she would be sending me a response to my comments, which would deal with the matter.

This might be my fault, but I did not really get a sense of what the desired policy was in those sections. I do not think that I can help you much more at this stage. If, following any response that I receive from Jacqueline Conlan, I have further thoughts on the matter, I might send a further note to the committee.

The Convener: I am sure that it would be useful if you could do so. I am sure that the Executive will copy the committee in on what it sends you on the issue.

Michael McMahon raised the question of services such as dial-a-drink, whereby people can

phone up and order alcohol, which could be delivered to premises where only young people are present. Can the existing law deal with that situation? What measures need to be introduced to address that?

Another aspect is test purchasing, which we asked about earlier. Would it be possible to introduce that, given that the purchase of alcohol by a young person is a criminal offence? The situation is slightly different from the situation that applies to tobacco.

Sheriff Principal Nicholson: As far as dial-a-drink services are concerned, I found myself thinking earlier this afternoon that, in a situation where a delivery driver who is giving effect to an order placed by telephone arrives at a house and a young person answers the door and says, "Ah, you've brought my order," or something like that, and there does not appear to be a responsible adult in the house—in other words, where it is not pure chance that a child has opened the door, and it was not the father who placed the order—there might be advantage in requiring the delivery driver to ask the person to prove their age and to say that, if they cannot, they will not hand over the order and will take it back to the shop, with the cost being reimbursed to the appropriate debit card or whatever.

Even if such a requirement were to be introduced, I dare say that there would still be circumstances in which it would be difficult for a delivery driver to be absolutely sure that the youngster who opened the door was the person who placed the order and was alone or in the company only of other youngsters—it might all have happened because the parents were out. Difficult situations could arise, which would have to be handled with care and which would probably be quite difficult to police.

Sales in licensed premises are rather easier to police. If a licensing standards officer is going around carrying out a routine check of premises and spots a youngish-looking person being sold a drink at on-licensed premises or off-licence premises without being asked to prove their identity, some measure of policing is desirable, but that is much more difficult to do at 10 o'clock at night on a suburban doorstep. In so far as it can be made practicable, there would be an advantage in extending the no-proof, no-sale policy to doorstep deliveries.

As Jacqueline Conlan said, test purchases would be a matter for the Lord Advocate. Any young people who were being used as the organs, if you like, for carrying out the test purchases would have to be given in advance a clear and categorical indication that there would be no question of their being prosecuted for carrying out the task. There remains a slight moral issue,

because, even if that were to be done, it is not inconceivable that some youngsters who were approached to do it, even with assurances that they would not be prosecuted, would not be comfortable with doing something contrary to the law. I have a slight anxiety on that front, which I suspect that the Lord Advocate might share.

16:30

Bruce Crawford: If it is difficult to deal with dial-a-drink services—you went through the complications—it will be equally difficult to deal with purchases over the internet, which, no doubt, will increase. In the circumstances, would it not be better just to ban those practices?

Sheriff Principal Nicholson: That is jolly difficult. I am sure that we have all seen increasing numbers of Sainsbury's and Tesco vans on the roads during the day and in the evening, with drivers staggering out with boxes full of groceries—bread, sugar and, perhaps, half a dozen bottles of wine. Given that, as I understand it, that is a pretty commonplace way for many people to do their shopping, by doing what you suggest, we would be saying either that that kind of shopping must cease altogether or that people can carry on shopping for cornflakes and coffee, but must not order any alcoholic drink. That would be possible, but I sense that it would not be terribly popular.

Margaret Smith: Rather than banning the practice completely, a fairly reputable supermarket, such as Tesco, could make it a condition of sale that where alcohol is purchased online it must be received by someone aged over 18. The person purchasing the alcohol would enter into a contract; if it fell apart, the onus would be on them, rather than on Tesco.

Sheriff Principal Nicholson: I would not have a difficulty with that. I talked specifically about supermarkets, but it occurs to me that there are many wine societies and the like that operate entirely by mail order, either in the true sense or by taking orders over the telephone or internet. If one were to say that such businesses were no longer lawful, one would put many old, established organisations out of business overnight, which would not go down well.

I am a member of the Wine Society, which has its headquarters in Stevenage and from which I buy wine occasionally. It has an investment of millions of pounds in cellarage, storage and other such things. It would not be too happy if the Scottish Parliament passed a law that, although it would not initially affect its English customers, would deprive it of all its Scottish customers.

Dr Jackson: Is there evidence of how the issue has been addressed in other countries?

Sheriff Principal Nicholson: We did not receive any evidence on what happens in other countries. I will be frank—there is a former member of my committee in the public gallery who will perhaps tell me if I have got this wrong: I do not think that we considered the problem that has been discussed this afternoon, which is doorstep delivery, possibly to a child. We gave some consideration to internet sales, but that was in the context of the more technical problem of determining what the premises are for the purposes of a premises licence if the purchaser deals just with a website.

Dr Jackson: I was thinking of countries in which there are already stricter regimes for the sale of alcohol and how they might have overcome the internet problem.

Sheriff Principal Nicholson: I do not know. Officials in the Executive might have contacts whom they can get in touch with, although not necessarily formally, to get a feel for what happens elsewhere.

Mr Davidson: Recently, I received answers from the Scottish Executive to parliamentary questions on internet pharmacy. I was given an assurance that, as far as the Executive is concerned, all premises that operate as internet pharmacies will be subject to the same regulations as will traditional community pharmacies that hold a national health service dispensing contract. Do you feel that the area needs to be considered more closely and that the same regulations should be applied to all premises, as happens in the licensing of premises that dispense drugs, which are registered products? Is there a parallel?

Sheriff Principal Nicholson: When we were preparing our report, we were not persuaded that there is a problem in relation to the sale of alcohol over the internet, but we suggested that an eye should be kept on the situation. Section 130 makes provision for remote sales of alcohol and gives ministers the power to introduce whatever regulations might be required. The intention is to keep an eye on the situation and to take appropriate action as and when it is required.

One of the problems is that some people who operate as alcohol salesmen—wine reps, in particular—might not have premises at all. They might import directly from France, Germany, Spain or Italy, and any premises that they have might be no more than transitory storage premises from which the boxes are put on the back of a lorry and driven to Edinburgh, Glasgow, Aberdeen or wherever. Such businesses might be difficult to regulate within a framework that provides for premises licences, personal licence holders and so on. That is why it is important to include that on-going provision, under which ministers will be able to react as appropriate if it appears that there

is an increase in one or other style of business and to make appropriate regulations.

Mr Davidson: As in many cases, the matter boils down to the unit cost of alcohol, which is also an issue for off-sales. People are becoming more astute about how to purchase volume on price. Is there a need to make such regulations to address that from the perspective of the various objectives that are set out in the bill—the promotion of public health, the protection of children and so on?

Sheriff Principal Nicholson: The situation is like the curate's egg: it is good in parts and bad in others. I fully recognise the undesirability of an off-sales place doing a big promotion on alcopops that are likely to be attractive to young people. That was mentioned earlier. On the other hand, I suspect—tell me if I am wrong—that if one wanted to buy a couple of bottles of whisky to put in the cupboard at home for the odd occasions on which one might want to have a whisky or entertain a friend, most of us would go along to the off-licence and scan the shelves, and, if we saw that Johnnie Walker was being offered at £3 a bottle less than Bell's because of a special promotion, we would buy the brand that was subject to the special promotion. I think that I am right in saying—although, again, I speak with no professional knowledge of this—that many of the promotions in off-licences are the work not of the shopkeeper, but of the big manufacturers and distributors.

Only the other day, I got a letter through the post from Bell's whisky, telling me that the company was delighted that I drank its product. I do not think that I have drunk its product for many years, but that is by the by. There were two vouchers enclosed, which entitled me to 50p off my next two bottles of Bell's whisky. It is a complicated area, as there are some promotions in off-sales that most reasonable people would not regard as being objectionable; by the same token, there are others that people might. I was quite encouraged by what Jacqueline Conlan said about the intention to keep an eye on the situation and to see to what extent some of the provisions in the bill could be applied to off-sales premises as well, without necessarily excluding all kinds of promotions and throwing everything out with the bath water.

The Convener: Let us move back on to our scheduled questions.

Margaret Smith: Bell's was obviously targeting you because it wanted a celebrity endorsement from a well-known spokesperson on alcohol issues.

In future, licensing boards will be required to recognise the views of the local licensing forums, which are to be set up by councils. The forums seem to be independent, but the bill does not seem to preclude representation on behalf of the

council, as long as the same people are not on both bodies. Do you have any thoughts on that? More generally, do you believe that the bill, as drafted, allows the appropriate level of community involvement in the licensing process?

Sheriff Principal Nicholson: Broadly, it does, although I recognise the point that was made earlier by Tommy Sheridan that the limit on the total number of members of a local licensing forum may have a squeezing effect on the number of those members who can be said truly to represent local interests. The total number could, perhaps, be increased. The issue did not catch my eye when I read the bill.

Margaret Smith: Taking a percentage approach might be better than setting an absolute figure.

16:45

Sheriff Principal Nicholson: A percentage approach could allow the local representation element to be taken into account. We could say, for example, that not less than 25 per cent of the membership must represent the local interest. If boards operate with a maximum of 10 members, they might run into difficulties if there is not space for others who should be there—the chief constable and people whose functions relate to health, social work and so on. I am thinking aloud, but I wonder whether there might be an advantage in reconsidering the total. Paragraph 2 of schedule 2 says that the forums should be

“not fewer than 5 and not more than 10”,

but perhaps that should read “not fewer than five and not more than 15”. A lot may depend on the size of the licensing board area. That brings me back to the point that I made earlier when I was commenting on some of the other measures. I think that Tommy Sheridan was out of the room at the time. I said that I have sympathy for his suggestion that the licensing board in Glasgow should be divisionalised.

Tommy Sheridan: Good. I was going to ask you that question.

Sheriff Principal Nicholson: As I was saying when you were out of the room, divisionalisation is permissible under the bill. Although it already happens in places such as Aberdeenshire, in the past it was never thought of in relation to cities. I can see some advantage in divisionalisation. The committee would have to lobby Glasgow City Council and get it to accept the proposal, however. If Glasgow divisionalises and has four separate boards, perhaps there might not be so much wrong with 10 as the maximum number of members of local licensing forums. However, if Glasgow remains a single unitary licensing board area, an argument could be made that the

maximum number of board members should be increased so as to allow a wider spread of local interests from around the whole city.

Margaret Smith: Is it important that the forum is independent from the licensing board?

Sheriff Principal Nicholson: Yes, it is important as a matter of principle. As the committee probably knows, even before the Nicholson report was published, there were local licensing forums in some parts of the country, albeit that they were set up informally. I think that I am right in saying that the Edinburgh licensing forum was chaired by the chairman of the local licensing board. As far as I understand, that arrangement worked well. Nonetheless, although it may work well in some instances, there can be no guarantee of it doing so in all areas, which is my reason for saying that, as a matter of principle, it is better that the forums are independent. Obviously, they should meet the licensing board fairly frequently.

Margaret Smith: In your paper, you say that you were surprised that the bill makes no mention of the national licensing forum, although you also say that you understand why the detail of the forum has to come in future. Do you stand by what you said? Is it reasonable to expect the national licensing forum to be mentioned on the face of the bill?

Sheriff Principal Nicholson: Yes. It would be helpful if the bill mentioned the national licensing forum, as that would put the bill's other provisions in context.

Margaret Smith: I am addressing a school meeting on the subject of licensing tomorrow evening. Should I tell people that the bill will give the public a greater say in licensing decisions?

Sheriff Principal Nicholson: Yes. My view is that you can say that.

Margaret Smith: Thank you.

The Convener: You can mention that public endorsement, Margaret.

Tommy Sheridan: I would have preferred it if, instead of just saying yes to my suggestion, Gordon, you had said, "Yes, but the bill could be a lot better." The truth of the matter is that it would not take much to improve on the current position.

I am sure that I speak on behalf of all members when I say that your paper was very helpful and that we appreciate it very much. I repeat the convener's request that it would be great if we could get a copy of any response that you receive from the Executive. I for one would like to see what the Executive has to say in response to some of the detailed questions that you raised.

Sheriff Principal Nicholson: You will appreciate that that is a matter for the Executive, not for me. However, I am sure that its officials are listening to what you are saying.

Tommy Sheridan: I would appreciate it if you could find out whether it is okay to pass on any answers.

I want to ask a couple of general questions before I raise some specific points. In your inquiry and report, did you ever consider the question that I raised with the Executive of setting a policy objective on alcohol? Although the Executive has quite rightly made it a policy objective to encourage people to smoke less of the legal drug of tobacco, there is no policy objective to encourage people to drink less.

Secondly, did your committee consider the question of irresponsible promotion? The local off-licences that promote cheap alcopops are too far down the production chain and we should be targeting the principal problem of producers of cherry, cranberry or strawberry-flavoured vodka-laced drinks.

Finally, one of the biggest difficulties in Glasgow—I am sure that the situation is the same in Dundee, Edinburgh and Paisley—is that, because licensed premises generally close at about the same time, there is a mass exodus of revellers who are all looking to get home. The provision of transport is so inadequate that bottlenecks occur, which inevitably leads to conflict. Did the committee consider the question of transport in city centres, which, although it is not obviously associated with licensing, is directly related to some of those perceived problems?

Sheriff Principal Nicholson: The short answer to your questions—I will give you the longer answer in a moment—is the one that an Executive witness gave earlier. The bill is fundamentally concerned—as our committee was—with the licensing of premises and people trading in alcohol, although I have to say that we acknowledged that the way in which that is done has implications for public order, public health, local amenity and a range of other matters.

Because of that, when we worked out what we thought should be the licensing objectives—which are now enshrined in the bill—we felt that we could not specifically say that making people drink less should be a licensing objective. If we make that an objective for licensing premises, we will need to shorten licensing hours, never mind maintaining or even increasing them. I suspect that you will say that this is not the whole answer, but cutting the time that people are allowed to drink could have an impact on total consumption. Indeed, one could go further and introduce draconian laws under which a premises, licence

holder or person serving in a bar is entitled to serve no more than two drinks to any customer. All sorts of measures can be taken to cut down drinking.

The Executive's approach—which I agree with—is that the bill must be seen as part of a wider picture. Licensing can do only so much to persuade people to cut down their drinking; other measures to tackle that issue might be introduced, for example, by the Health Department or through educating children in schools. Our report tried to do what I think the bill is now doing, which is to provide a statutory licensing framework that will assist, not hinder, such initiatives. I believe that that is what we have achieved.

I agree entirely with what you say about alcoholic drinks that are cranberry flavoured and so on. They are plainly aimed at young people and are potentially dangerous if consumed in excess. The answer may be to pass a law that prohibits the people who manufacture such drinks from doing so. However, I do not think that the problem can be tackled purely through licensing premises. If the products in question are legal drinks that licensed premises are entitled to purchase wholesale and to sell on to their customers, licensing cannot stop that.

At the start of this session, when you were out of the room, I said that licensing is all part and parcel of public order. We touched on that briefly in our report, although the issue was technically outwith our terms of reference. Licensing cannot provide the complete answers: the whole infrastructure has to be reconsidered. You mentioned public transport, but we might also mention public toilets and late-night food outlets. A whole range of things must be considered together. They do not form part of licensing, but, in our report, we sent out a plea to all local authorities to get their heads down and to think seriously about how all those things can properly mesh together.

Tommy Sheridan: Thanks, Gordon. I will not dwell on the point, but the question arises: why should we have legislation relating to over-provision if we do not have an opinion about the need to reduce the consumption of alcohol overall? Specifically, the bill aims to reduce under-age drinking and drinking among young people. Why it does not have the wider population in mind is beyond me. I think that that is remiss.

I apologise for being out of the room when you made your opening comments. I had to use the toilet. Do you agree with the point that I made about the local element being artificial in places such as Glasgow, Edinburgh and, perhaps, Dundee? Under the bill, there could be three councillors on a board, who would make decisions that would affect the whole city. Given that we are talking about modernising the licensing system

and giving a voice to communities, do you think that there is a window of opportunity to have more localised boards and forums that can feed into them, which would better reflect community wishes? My worry is that the provision is a sop and a way of ensuring only artificial local involvement.

Sheriff Principal Nicholson: As I said, I have no difficulty with what you propose. The bill, as drafted, largely repeats what is in the 1976 act and allows for a local authority area to be divided into divisions for the purpose of licensing boards. The schedule that deals with licensing forums makes it clear that, where that is done, each of those divisions will be considered a board area for the purpose of having its own local licensing forum. The mechanics are all there. Like you, I see some advantage in the larger cities taking that approach to reflect more properly and accurately local interests. What is relevant to the people on the east side of Glasgow may be quite different from what is relevant to people on the west side. However, I do not think that the Parliament will want to change the way that things stand. The Parliament cannot order councils to divide up into board areas; the councils have to make that decision themselves.

Tommy Sheridan: Surely the bill could require councils to consider localised areas—I am thinking aloud with my form of words here. Some Labour members might disagree with me on this, but, having been a councillor for 11 years, I worry that big councils such as Glasgow City Council tend to use certain positions as a form of patronage. If there are several boards rather than one big board, that might become more difficult. Would a change towards localised areas be legally possible?

17:00

Sheriff Principal Nicholson: I hesitate to offer a legal opinion to a committee of the Scottish Parliament. Speaking personally, I cannot see anything wrong with a piece of legislation that says that every local authority must, for instance, apply its mind every five years to the question whether the licensing board in its area should be divisionalised.

I question the likelihood of that being effective. Local authorities that are against the idea of breaking up into divisions might perhaps hold a sham meeting lasting two minutes with a quick agreement to keep things as they are, following which councillors can say, "Right, that's it: we've fulfilled our statutory duty." My view, for what it is worth—and I say this with respect—is that people such as yourselves have to lobby councillors in Glasgow and put forward the case for what you think should apply.

Tommy Sheridan: With proportional representation on its way, I hope that such two-minute meetings will be a thing of the past.

Your paper refers to section 86, to which you will have heard me referring earlier. I also highlight section 122. As the exclusion orders covered by section 86 are specifically directed against people who have apparently either acted violently or threatened violence, do you agree that it could be troublesome—to say the least—to confer on a licence holder the power to use force to evict people from premises? Do you agree that those provisions must be revisited? I think that, as they stand, they would create problems.

Sheriff Principal Nicholson: I did not want to appear too dogmatic in what I wrote in my paper. Now that you have asked me the question, I am bound to say that those provisions are a can of worms. If section 86 stands as it is, I can foresee all sorts of people getting forcibly ejected by licence holders, raising actions for damages and taking their case through the courts. They could claim damages because the licence holder had used more than reasonable force, saying, for example, that they got a black eye as a consequence. The provision is undesirable. I heard Jacqueline Conlan say that the Executive would revisit the matter. I certainly hope that it does so.

Michael McMahon: It sounds as if we are discussing the matter in a vacuum and that the type of situation that we are talking about does not currently occur. Currently, if a bouncer on a door ejects someone from the premises, the person ejected would have redress to the court if they felt that the bouncer had acted with undue force. What would change under the bill in relation to people getting evicted from premises?

Sheriff Principal Nicholson: The bouncer is doing something because it is part of his job. My concern lies in enshrining things in statute. I might be quite wrong about this, but it seems that what we are discussing now is not a million miles away from the discussion that has arisen in recent times largely from the Martin case—the case of the householder who shot somebody dead when his house was being burgled. A bit of discussion has been taking place, perhaps more south of the border than here, about whether there should be statutory authority for householders to use force if their house is invaded—members must have come across that debate. There is perhaps a hostage to fortune in relation to this debate, which goes slightly in the same direction.

Bruce Crawford: Currently, if a person uses inappropriate force to remove someone from a premises, they can be charged with assault. However, the reality is that, particularly in smaller pubs, publicans who police their pubs well and

deal with trouble without needing to call the police have the best-run premises. If the bill is passed, there will be a danger that such publicans will no longer be able to police their own premises.

Sheriff Principal Nicholson: That might be. I agree that some of the best-run premises are the ones that never have to call the police.

Tommy Sheridan: In your paper, you raise concerns about section 122—

Sheriff Principal Nicholson: Are you talking about the provisions on appeals?

Tommy Sheridan: Yes, and about the sanctions that licensing boards could impose. When I was a member of Glasgow City Council, there were a number of occasions over the years on which a publican cocked a snook at the board's decision because the appeals process allowed their premises to remain open for extraordinary lengths of time. The board's decisions were ignored and communities thought, "What's the use of the power?" I want the bill to confer real power on boards to take action. You are concerned that a balance should be struck and you say:

"the immediate effect of a Board's decision could be given judicial scrutiny on an interim basis and pending disposal of the appeal by the sheriff principal."

However, I am worried about the practicality of such a procedure, which you compare with the procedure for interim liberation. I have had to appeal for interim liberation; I had to spend five days inside waiting for my appeal to be heard. In practice, would the courts be able to deal with such matters quickly enough to give boards the power that they need to act quickly, while allowing the licence holder to make a reasonable complaint if a point of fact or law had been wrongly presented?

Sheriff Principal Nicholson: I am hopeful that under the proposals, which I was pleased to hear are to be substantially revamped to reflect more closely the recommendations of the Nicholson report, appeals to the sheriff principal would be dealt with expeditiously—you will appreciate that I speak from 12 years' experience as a sheriff principal. I would think that a sheriff principal might be able to hear and decide an urgent appeal in the sort of case that you have been discussing within about six weeks. Currently, it commonly takes nine months for an appeal to be heard, so that would be a significant improvement.

As you rightly say, if a licensing board were to make an order that had the effect of immediate closure, a wait of just five weeks, during which time the premises would be closed, might be disastrous for some businesses. That is why we on the committee thought that it would be desirable to build into the system a procedure for a quick judicial decision, in which people could say:

“Does the appeal at least seem arguable rather than merely frivolous? Is there a reasonable case to make? If there is, we will keep the place open until the appeal is heard.” In the interests of speed, we suggested that an application for such a decision should be made to a sheriff rather than to a sheriff principal.

I will give an extreme example that occurred to us: the sheriff principal of Grampian, Highlands and Islands has a domain that stretches from the Western Isles up to Orkney and Shetland and down to Aberdeen and Stonehaven—with everything in between. If the licensing board in the Western Isles decided to close premises in Stornoway immediately and those premises appealed to the sheriff principal, the sheriff principal might at that time be engaged in court in a week-long case that he is hearing in Aberdeen or Inverness. For speed, we thought that an application should be made to a sheriff, so a publican in Stornoway could say to his local Stornoway sheriff court, “Please suspend this order of the licensing board temporarily while my appeal proceeds.” I will have to wait to see the finished product, but I think that such a line will be taken.

The Convener: I note the concerns in your submission about ECHR compliance and I note that the Executive believes that as long as the appeal process is ECHR compliant, it sees no difficulty in its proposals. If your interpretation were correct and a successful ECHR-based challenge could be launched, what would be the ramifications? Would that bring the whole act into default?

Sheriff Principal Nicholson: A challenge might do that. I accept fully that the case law from the European Court of Human Rights makes it plain that a deficiency in the impartiality of the judicial body at first instance can be overlooked when a right of appeal exists to a court that is undoubtedly impartial in the fullest sense. However, there is authority that says that, notwithstanding that, a duty exists to ensure that a court or quasi-judicial body at first instance is as close to objective impartiality as possible.

The introduction of new legislation provides the obvious opportunity to ensure that the quasi-judicial body at first instance—which is in this case the licensing board—is as close to being objectively impartial as possible. Therefore, I remain concerned if licensing boards, which are made up of councillors, are to be statutory objectors, able to hold licences in their own names and to consider all those matters, because I foresee problems.

I will give a simple example: a licensing board applies for a licence in its own name and a whole lot of local residents object, but their objection is

overruled and the licence is granted. We are now told that the Executive wants to amend section 122 to entitle objectors to appeal. They might well appeal on the basis that the tribunal that took the decision was not independent or impartial.

You are thinking of a bit in the Scotland Act 1998, which my report mentions. Section 29(1) of that act says:

“An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.”

The section also says that legislation must comply with convention rights. That is the context for my concerns.

I do not claim to be 100 per cent right every time that I express a legal opinion. The number of times in my judicial history that the appeal court has overruled my judgments confirms that I am not infallible. The committee will no doubt be guided by the opinion that it receives from Executive officials. All that I can do is say that I have some doubts.

The Convener: I am sure that none of us round the table is infallible. You draw out an important concern on which the committee will have to satisfy itself fully before final consideration of the bill.

17:15

Michael McMahon: I asked a question earlier about the dial-a-drink service. The police officers who spoke to me about that had a legitimate concern about a specific issue. They were not talking about the threat of someone getting their bottle of Beaujolais from Wines of the World; they were seriously talking about young people getting a bottle of Buckfast from Winos-R-Us. My question was not intended to draw us into a wider discussion of the ordering of bottles of wine over the internet. Do you believe that the bill, as drafted, will give the police the powers to address that specific concern? Have you heard Scottish Executive officials saying that there is provision to curtail that type of activity between 12 o'clock and 6 o'clock? Will the police be able to enforce the provisions in the bill in respect of young people obtaining alcohol from an off-licence via the telephone?

Sheriff Principal Nicholson: I have not been through the bill with a fine-toothed comb—you will appreciate that I have not been as close to it as those in the Executive—and I do not think that I can give you a definitive answer to that question. However, I have no clear recollection of having seen anything in the bill that would immediately address the point that you touch on.

Michael McMahon: Would you be prepared to write back to the committee, once you have had a

look at the bill to see whether it addresses that concern?

Sheriff Principal Nicholson: Yes. I could have a look at the bill and let you have my view on the matter, if that would be helpful.

Michael McMahon: That would be worth while, as we are taking evidence from you on how the recommendations in your report are being implemented in the bill. I would certainly appreciate that.

I have a specific question about the role of the police in the proposed licensing process, concerning the fact that they will be restricted in what they can do. From practical experience and from having spoken to the police in my constituency, I am aware that a local licensing board was considering the issue of licences and was concerned about antisocial behaviour. The police were concerned that, although the motivation for addressing the licences was antisocial behaviour, the board never took the opportunity to consult the police about the effects of the granting of licences on antisocial behaviour. I take it that that issue will not be addressed in the bill, as there is no compulsion on licensing boards to seek information from the police, whether to allow the police to object to the granting of licences or to get the licensing boards to ask the police for advice.

Sheriff Principal Nicholson: That is probably correct. One hopes that, if chief constables were to be reinstated as objectors, a responsible chief constable would, of his own initiative, raise that kind of matter with the local licensing board. In any event, I think that the review provisions in the bill allow a chief constable, among others, to bring matters to the attention of the board in order to determine whether the board should intervene and impose some kind of sanctions on the licence holder. There is a role for the police in doing that.

Michael McMahon: In my experience, the police felt that it would be inappropriate for them to ask the local licensing board to ask them to provide information. They made themselves available and had an officer at the meeting of the board, but the board never availed itself of that information although it was making a decision about the granting of licences on the basis of the impact on antisocial behaviour. Is there some way of requiring the licensing board to seek that information from the police before making a decision? Perhaps the bill could include that requirement. Would it be beneficial to make that a requirement?

Sheriff Principal Nicholson: You must forgive me if, unlike Jacqueline Conlan, I do not have all the provisions of the bill at my fingertips. You are right that there is normally a police representative

at a table just in front of the board members, and from my limited experience of attending licensing board meetings under the present system, almost invariably the chairman of the board will turn to the police representative at each application and say, "Inspector Smith, have you anything to say about this one?"

Michael McMahon: My experience might be particular to the licensing boards that I am thinking about. I had better stop asking questions about the subject.

Sheriff Principal Nicholson: My point is that if it is general practice—with one or two possible exceptions—for licensing boards to follow the kind of practice that I have seen, there might be no need to make that a requirement in the bill.

Paul Martin: I understand that the 1976 act requires the licensing board to provide the chief constable's report, which means that the premises issue will be raised.

Were you disappointed by the response to your report from communities? I note that there do not seem to be community councils, residents organisations and many other organisations on your list of respondents. When the Executive introduced the bill, it raised concerns expressed by many of those organisations.

Sheriff Principal Nicholson: It is not entirely fair to do a head count of the respondents. Some of the residents associations that contacted us were vociferous and supplied us with a lot of helpful information. Some of them were indirectly represented on slightly different bodies. Appendix A to the report contains the list of consultees who responded in writing, which includes bodies such as Angus alcohol steering group. That group, as are many other such groups, is made up of a couple of local doctors, the local social worker, some local residents and a local policeman. They are representative of that sort of community. It is always nice when one feels that one is reaching out to the widest possible audience. I reckon that we did not do too badly.

Paul Martin: The reason why I raised the point is that Jacqueline Conlan said earlier that we have never had any complaints about how the police report to licensing boards. Michael McMahon made a similar point. That is not the case in some communities. People are concerned that, when they attend licensing board meetings, they are told that there is no police report when that is not representative of their experience. Their experience is of significant antisocial activity at particular premises that is not being reported to licensing boards. I raise that point because the bill seems to focus on the licence holder and whether they have criminal convictions, but community representatives are raising wider issues about the

kind of antisocial activity that surrounds the premises of the licence holder.

Sheriff Principal Nicholson: As you were speaking, it occurred to me that the issue is one that the local licensing forum might want to consider. If membership of the local licensing forum includes a police representative, the matter could be discussed from that perspective and from the other, different perspectives that are represented on the forum, after which the decision could be taken whether to pass the matter to the board.

Paul Martin: Does that not make the case for chief constables having a format for the way in which they provide information to a board? If the police have made 110 calls to a licensed premises, surely that warrants a report to the local licensing board? The report would say that that premises has had 100 visits and that there is concern about antisocial behaviour, not necessarily in the premises but in the surrounding area.

Sheriff Principal Nicholson: I understand that that sort of thing is possible under the bill.

Paul Martin: Because mention is made of location in the bill?

Sheriff Principal Nicholson: No, because of the application for review provisions in section 34. Section 34(1) says:

"Any person may apply to the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review."

Although I may be wrong, my understanding is that any person, in the context of section 34, could include the police in the form of the chief constable. If a chief constable had received information that a particular premises was the subject of police call-outs five times a night, night after night, he would be entitled to bring the issue to the board and ask for a review of the licence.

Paul Martin: Surely that makes the case for a specific format that sets out the procedure for review of the licence? Such a format would not leave the decision to the discretion of the police authority but would make it clear that a full report of all activities surrounding those premises should be made. I am not saying that leaving matters to the discretion of an authority always means that the problem is not addressed. However, on occasions, the use of discretion has meant that problems were not reported to licensing boards.

Sheriff Principal Nicholson: If the committee were to go down that road, I foresee some licensing boards saying, "Oh my gosh, not that chief constable again. He is forever sending in notes about these tiddly little things because the Licensing (Scotland) Act 2005 tells him to do so."

Paul Martin: Surely 110 calls to the police—

The Convener: I think that you are getting into a debate with the witness, Paul.

Margaret Smith: I have a comment for the convener. We are going round in circles on the input that police officers make to licensing boards. Given that we are at the beginning of our evidence-taking process, a number of other witnesses are to come before us, some of whom will have the information that we need on the subject. We need a clear picture of the licensing boards at the present time and of police input to boards on an on-going, case-by-case basis as each application comes before a board.

We need a clear picture of what the situation will be after the bill is passed—if that is what happens—what the current issues are and what will happen in terms of the review process. Having had a couple of years on a licensing board in Edinburgh, my experience is exactly the same as that which Sheriff Principal Nicholson described. For every application that was brought before the board, the board chairperson would make a request to the police liaison officer asking whether the police wanted to comment on the application.

The comments that I heard in my time went from no-comment responses to screeds and screeds of information that detailed the number of call-outs, problems with bouncers ejecting people using unreasonable force and so on. Occasionally, the police would stand up and say that, although there had been problems with an establishment over the years, it was now well run as it had a new manager who was doing rather well.

The present system seems to give scope for the police to answer the sort of questions that we are raising on an on-going basis. I suggest that we seek clarification on the situation as it is at present, as it will be in future and at the point of review. We can also bear the issue in mind for our questioning of future witnesses, some of whom will have a lot more experience of the matter than I do.

Mr Davidson: Some of the comments that you made in your report were extremely interesting, Sheriff Principal Nicholson. I turn to your comments on section 7, which concerns the duty to assess over-provision. You mention "so-called 'grandfather rights'". Will you expand on that in light of the comments that Scottish Executive representatives made this afternoon? After the bill is passed—if that happens—and before regulations are made, will there be a need to set out clearly what is expected of licensees if they wish to pursue and continue their existing licence provision?

17:30

Sheriff Principal Nicholson: That would be helpful and appropriate. My concern, which might be ill founded, is that the focus that is given to over-provision by giving it a section to itself could have what many might consider to be an undesirable impact on existing licence holders. It depends on how the timescales work, but a licensing board might decide to work out whether there is over-provision in a designated locality and decide, by whatever yardstick it uses, that there unquestionably is over-provision in the area.

I would be concerned that, when such a board began to get applications from the existing licence holders for conversion to the new premises licence, it would say—because it has already decided that the area is over-provided—that it will have to cut down on the number of licences. If there were 20 licences in the locality, the board might decide to reduce that number to 15, so five licensees would simply be told, “Sorry, chum. You’ve been in business here for the past 35 years, but enough is enough and you’re not going to get a new licence to enable you to continue.” I might be imagining problems that do not exist and I would be more than happy to be told that that would not happen, but I am a little anxious that the section on over-provision might give at least some boards the impression that addressing that was expected of them. It would certainly be desirable for appropriate guidance to be provided, by whatever means, well enough in advance.

Mr Davidson: Do you envisage it being a case of business as usual under the bill, provided that licences are reviewed and premises examined and inspected by the new licensing officers, perhaps with police input? Is that a possible way forward or ought the bill to include specific recommendations from the Scottish Executive, which introduced the bill, to ensure that the new regime does not sneak up on licensees and that we do not face a series of advance appeals, which would take up a lot of court time and prevent the bill from progressing?

Sheriff Principal Nicholson: To put it broadly, it is desirable that there should be as much advance information and co-operation as possible during the transitional process to try to make it run as smoothly as possible and, if it is not contrary to the Executive’s policy, to reassure existing licence holders that, although it is possible that the terms of their licences might vary upon transfer to the new system, they will certainly be entitled to retain their licences.

Mr Davidson: Subject to what?

Sheriff Principal Nicholson: Subject to coming up with an acceptable operating plan.

Mr Davidson: As the bill is worded, is there a serious risk of advance appeals being made or

other advance action being taken through the courts to establish those rights or is that being overplayed?

Sheriff Principal Nicholson: It is a little premature for such actions. After all, the bill has been on the table for only a couple of weeks and it is perfectly plain from what we heard this afternoon that the Executive is continually refining and reviewing its policies, which is only to be expected. I suppose that it comes down to this: whichever direction the policy is to take, the sooner it is made clear and final, the better. Everyone will then know where they stand.

Mr Davidson: Are you content that due attention was paid to the Nicholson committee’s recommendations on private clubs?

Sheriff Principal Nicholson: Yes, I think so. I am sure that you realise that we thought it quite anomalous that one group of premises that sell drink should be completely outwith the normal licensing process. We thought that there was no particularly sound argument for allowing clubs to retain that special, almost privileged, position. However, at the same time, we acknowledged that clubs have a character that is very different from that of ordinary commercial licensed premises and we were anxious that that difference should be recognised as appropriate in the bill. As far as I can tell, the bill seems to do that.

Mr Davidson: Were the comments on exemptions for small clubs that we heard today from Executive officials reasonable?

Sheriff Principal Nicholson: Yes. The comments were helpful and appropriate.

The Convener: That concludes questions for the witness. Thank you for the evidence that you submitted in advance and for your evidence today.

I welcome our final panel of witnesses, who are led by Peter Daniels, who was the chair of the working group on off-sales in the community. He is joined by Superintendent George Clelland, from Strathclyde police, who was a member of the working group, and Tony Rednall, from the Scottish Executive Justice Department, which provided the secretariat for the working group. I apologise for the fact that this part of the meeting is starting a little later than anticipated, but I am sure that the witnesses understand that much of the questioning has been of great relevance to our consideration of the bill. Before we ask questions, I invite Peter Daniels to make introductory remarks about the bill and the working group.

Peter Daniels (Working Group on Off-sales in the Community): I will make a few remarks and provide some background. When the working group was meeting, I was chief executive of East Renfrewshire Council. I retired from that position in

September and I am now employed part time as Her Majesty's lay inspector of constabulary for Scotland, a post that I will hold for three years. George Clelland has been in charge of licensing in Strathclyde police for the past two years and will move on from that role on Thursday. Tony Redhall is an Executive official and was the assistant secretary of the working group.

I will explain how the working group went about its business. We were appointed on 2 September 2003, but our first meeting did not take place until the end of September. We were asked to produce a report before the end of that year and we delivered our report to Cathy Jamieson on Christmas eve—the report made a nice Christmas present for the minister, although for us it meant three months of intensive work. We would have liked to explore some of the issues discussed in the report in more detail, but time did not permit that. For example, we were not able to say much about irresponsible promotions and did not touch at all on the issue of over-provision. That issue was raised by the Executive on the day that our report was published—2 February 2004.

The report indicates that our committee was in broad agreement with the proposed licensing system envisaged by the Nicholson committee. We certainly support the statement of the Minister for Justice that there was little or no argument for premises routinely to sell alcohol throughout the day and night. In our report, we made 30 recommendations. Fifteen of those related to the first half of our remit, which concerned better engagement and consultation at community level. The other 15 related to management and enforcement mechanisms—helping to prevent off-licences from becoming a focus of antisocial behaviour.

Of the 30 recommendations that we made, two do not apply to the bill. The first concerned the need to have antisocial behaviour units in local authorities and the second was a request to chief constables to give priority to policing arrangements in respect of off-sales. It is reasonable that the bill does not address those recommendations. We also recommended that it should be possible to submit objections

“by hand, post, fax or e-mail”,

but the bill refers to objections being made “in writing”. We are not sure whether the bill covers our point entirely. However, we are very pleased that all our other recommendations have been taken on board, either in the bill or in the proposed regulations. In one or two cases, the bill has gone further than our recommendations.

The Convener: I asked Sheriff Principal Nicholson about the criteria for an objector. I understand that your group recommended that an objector should be someone

“who can demonstrate a real and material interest”.

Sheriff Principal Nicholson expressed concern about the fact that the criteria have been broadened and that there is no geographical limit on where an objector can come from. Would you like to comment on the broadening out of the criteria?

Peter Daniels: We were concerned to ensure that the criteria were as broad as possible. The bill goes further than we went, because we were in favour of defining an objector as someone with a real and material interest, which might be difficult to determine. Regardless of whether we use the term “real and material interest” or say that an objection or representation that has been made on “frivolous or vexatious” grounds should be rejected, the criteria will be tested by the building up of case law. If the test were that an objector should have a “real and material interest”, it is probable that the national licensing forum would still have to produce guidance on how such an interest should be defined. Similarly, the forum will probably have to give careful thought to what may constitute a “frivolous or vexatious” objection or representation. It does not cause me too many problems that the Executive has departed from our recommendation and suggested instead that the licensing board should reject “frivolous or vexatious” representations or objections.

17:45

Mr Davidson: Licensing standards officers will have a crucial role. Should they be independent of any other authority, or should they be subject to the control of the licensing board? What powers should they have, and how should they be funded?

Peter Daniels: In our report, we said that licensing standards officers should have an educational and mediation role in addition to their monitoring role. We are pleased that section 14 sets out that those should be the three roles of LSOs. LSOs will provide information and guidance on the operation of the act. They will also provide a mediation service to try to avoid or resolve disputes or disagreements. The bill defines the role of LSOs very much in the way that we thought that it should.

We have also commented on the need for the national licensing forum to produce a job description and specification to a national template. Section 13 gives ministers the power to prescribe the qualifications and experience required; the national licensing forum will consider the job description. Again, the bill's provisions largely agree with how we thought that LSOs should operate.

The Nicholson report suggested that LSOs should be employed by the licensing board.

However, licensing boards do not employ staff; the local authority is the employer. It would be difficult to imagine LSOs being employed by anyone other than the local authority. That is not to say that LSOs will not have a degree of independence in their job—just as local authority planning enforcement officers or environmental health officers have a degree of independence. LSOs will have that category of regulatory role.

Mr Davidson: People who have a disagreement with LSOs, or who feel that LSOs have overstepped the mark or been too inquisitive, might want to appeal. Who will provide independent scrutiny of the role and performance of LSOs? Should it be the national licensing forum, or a division of a Scottish Executive department?

Peter Daniels: There will be scrutiny, or appraisal, of an LSO through a local authority's performance review and development schemes. Just about every local authority in Scotland has a staff appraisal scheme to measure how well people have achieved their objectives. Line managers within local authorities will monitor and scrutinise each person's role.

Providing guidance on how the performance of LSOs' statutory roles should be measured is probably another task for the national licensing forum.

Mr Davidson: How should complaints about LSOs' performance be dealt with?

Peter Daniels: Complaints will clearly form part of the process. I presume that line managers will have to take account of complaints against an individual officer as part of their appraisal.

The Convener: David Davidson asked about the financing of licensing standards officers. Will you comment on that? I accept that the licensing board would not employ LSOs directly—they would be employed by the local authority—but should the board offer LSOs direction or guidance on enforcement measures?

Peter Daniels: The licensing board will have to produce a policy statement for its area and the LSOs will operate within that policy. There will be policy guidance, stemming from the statement that the board will be statutorily obliged to produce. As you would probably expect from a former local authority chief executive, I have strong views about the financing of the LSOs. They will be a cost to local authorities. I would expect the Scottish Executive to assess that cost fully and to reimburse councils for the cost of employing an LSO. In the case of small councils such as Clackmannanshire, the cost could be fairly low. Even my council, East Renfrewshire, with 43 licensed premises, will have only one officer. However, councils such as Glasgow and Edinburgh will have substantially more than one

LSO. The cost could be quite heavy for local government. As a former council chief executive, I think that the Executive should pick up the bill.

The Convener: You say that the Executive should pick up the bill. Alternatively, the fee structure could provide the finance for LSOs. Would that be preferable to the public purse picking up the bill?

Peter Daniels: When the group talked about that idea, the licensed trade representatives were against it on the grounds that the fee hike would be too much. I do not have evidence one way or the other. I would need to see the Executive's work on that before I could pass comment.

Bruce Crawford: To tease that point out a bit further, would the application of a fee through the licensing system to pay for LSOs be any different from a local authority taking money for planning applications and using it to fund its work in that area?

Peter Daniels: That is a fair point. I would not necessarily disagree. To use an old-fashioned term, this is what local authorities would describe as a burden, and a burden needs to be paid for. I have no view one way or the other on whether it should be paid for through the fee or by the Executive.

Mr Davidson: Most of us would accept that it is a burden. Tom McCabe, the Minister for Finance and Public Service Reform, has commented recently about the need for duties to be shared across council boundaries as a means of cost saving and efficiency. Did the group consider the possible regionalisation of such services? The 43 licensed premises in your authority might not warrant a full-time officer. As a former councillor in Stirling, I know well the methods that we were trying to develop to share costs and facilities with Clackmannanshire and Falkirk and I am sure that that approach is common to all parts of Scotland. Is there a view about the efficiency of the service from that perspective?

Peter Daniels: We did not address that specifically but, as you will know, local authorities work together in a variety of areas. If a small council felt that the cost of employing a full-time LSO was not justifiable because of the small number of premises, I am sure that there would be no barrier to its co-operating with a neighbouring authority. The only problem might be that I think the bill requires each council to employ an LSO. I do not know whether councils could get round that provision by offering a shared post. Dog wardens, for example, are normally employed across a range of authorities. There are many such shared posts in local government.

Mr Davidson: Does Superintendent Clelland have a view on sharing licensing standards officers across police authority boundaries?

Superintendent George Clelland (Working Group on Off-sales in the Community): It would certainly be possible to share licensing standards officers under appropriate circumstances. For East Renfrewshire, which was Peter Daniels's authority, the obvious neighbour would be Glasgow, which will need to employ a considerable number of officers, so that might be a one-off instance in which it would not be necessary to employ a full-time officer. However, that would be the exception rather than the rule.

Paul Martin: How does Peter Daniels envisage that local licensing forums would work? We touched on the matter earlier and it was suggested that they could be regional forums.

Peter Daniels: Our concern was to ensure that the proposed local licensing forums are independent of the council, which is necessary if they are to offer independent, objective views and advice to licensing boards on the matters that fall within their remit. The approach to setting up the forums, which is set out in section 10 and schedule 2, is good and covers the issues well. A council will have to establish and support a forum in an approach that will be very similar to the approach to community councils. Under the Local Government (Scotland) Act 1973, councils must establish a community council and provide it with administrative support, but beyond that the community council is independent. There are many examples of bodies that councils set up to operate at arm's length from the authority. We are happy with the bill in that context.

The way in which the composition of local licensing forums is regulated under schedule 2 will probably ensure that councils cannot dominate a local licensing forum. We are generally happy with the provisions.

Paul Martin: Do you have a view on the membership of the forums?

Peter Daniels: No. Paragraph 2(5) of schedule 2 provides that a forum's membership could include

"(a) holders of premises licences and personal licences,

(b) the chief constable for the police area in which the Forum's area is situated,

(c) persons having functions relating to health, education or social work,

(d) young people,

(e) persons resident within the Forum's area."

Those are the kinds of people that we would expect to be included.

Paul Martin: I asked Sheriff Principal Nicholson about the evidence that he heard in relation to the notices that chief constables will provide to

licensing boards. Perhaps Superintendent Clelland can clarify the matter.

Superintendent Clelland: I listened to the discussion with great interest. My job at Strathclyde police involves being the chief constable's representative at Glasgow City Council licensing board. We are notified of every application for a new licence and given the opportunity to make appropriate inquiries and make a full report on the application to the board. The other part of our involvement with the system is the on-going monitoring of licensed premises. Currently, we have the opportunity to bring before boards complaints and objections to renewals or regular extensions of licences, so we are currently very much part of the process. I have reservations about the provisions that relate to the chief constable's involvement. It would not be appropriate for our role simply to be to notify the licensing board of convictions

"for a relevant offence or a foreign offence."

A licensing board should be fully informed before it makes a decision on a premises licence and it might be appropriate to inform boards of other relevant information in relation to personal licences.

I listened to the discussion about the occasion on which information from the chief constable was not heard. I do not know what happened in that case. It is certainly not what happens in Glasgow and it is not my experience of the process.

18:00

Paul Martin: If 100 calls are made by members of the community about antisocial activity immediately outside licensed premises, should that be reported to the licensing board? There seems to be a myth that such things are not relevant to the licensing board and should not be reported to it. However, local people would hope that, if the police are frequently called out to deal with antisocial behaviour at particular licensed premises—not necessarily because the licence holder has criminal convictions—that behaviour should be reported.

Superintendent Clelland: I do not know the particular case that you are referring to. Normally, I would have thought that such information would be brought to the licensing board's attention in some way. In Strathclyde police, the division concerned would gather the information and convey it to me. The information would then be brought to the board's attention at an appropriate stage, whenever that may be. A difficulty that sometimes arises is in attributing particular behaviour—antisocial behaviour in the case you describe—to the presence of particular licensed

premises. Disputes can arise over who can be held responsible for general behaviour in an area.

Paul Martin: A newsagent would probably attract less antisocial behaviour than licensed premises. We have to clarify what should be reported to the licensing board and what should not. There seems to be a myth that we cannot report antisocial behaviour outside licensed premises because that behaviour is nothing to do with the licence holder.

Superintendent Clelland: I agree with where you are coming from. Somebody can be the best licence holder in the world but, if the premises attract antisocial behaviour, the community would clearly be concerned and appropriate action should be taken.

Margaret Smith: Earlier, Mr Daniels touched on irresponsible promotions and said that his working group had not done much work on that issue. Should the bill cover off-sales as well as on-sales? The Executive has said that it will do further research on that.

Peter Daniels: It was a pity that we were not able to consider the issue. Paragraphs 7 and 8 of schedule 3 to the bill deal with irresponsible drinks promotions. As we heard earlier, those provisions will apply only to the on-trade. However, it is encouraging that ministers will be able to modify the list so that any promotions by off-licences can be tackled.

I cannot really comment on whether there is sufficient or insufficient evidence to link the off-trade to irresponsible promotions. We did not consider that and ministers obviously feel that the evidence is insufficient to make the link. We are encouraged that research into off-sales is continuing and that the Executive will consult the off-trade and Alcohol Focus Scotland.

Margaret Smith: Earlier, we talked about various schemes and about the role both of small off-sales premises and of the larger supermarkets. Many people bulk buy because of drinks promotions. Did you have input from people who were concerned about the supermarkets' role?

Peter Daniels: In the working group, the licensed trade and retail sector members debated that issue. The licensed trade was concerned about people's ability to access alcohol freely in a supermarket, to carry it outside the supermarket and to engage in antisocial activities. We did not reach a conclusion, because we could not consider the matter in sufficient detail, as I said. I think that George Clelland would agree that tension existed between the retail sector and licensed trade representatives on the group.

Margaret Smith: Do you have views on additional measures that could be considered to

address concerns about a lack of controls on off-sales premises and supermarkets?

Peter Daniels: I have nothing specific. The bill focuses on matters such as deep price discounting and happy hours, which will not be allowed because of the 48-hour requirement.

As for off-licences, we are talking about a product that is a legal commodity. In a lateral thinking mode, we briefly considered whether we could ask a corner shop or other retail establishment not to sell alcohol, for which the compensation might be a reduction in business rates. That is lateral thinking and is probably off the wall. Our view was that the reduction in business rates would not compensate for the loss of income from not selling alcohol, so we did not take that proposal much further. The working group did not consider such a scheme in detail.

Mr Davidson: Aberdeen City Council recently attempted to establish a minimum pricing scheme for the on-trade. Did the working group take a view on that scheme, which was overturned in the courts? If such a scheme was national, how might it apply to off-sales?

Peter Daniels: The point is that the scheme was overturned in court. The court took the view that Aberdeen City Council had acted *ultra vires*—beyond its powers. Perth and Kinross Council also had such a scheme, but the price that Perth and Kinross licensing board set was much lower than the price in Aberdeen and I am not sure whether the matter has been followed up with legal action.

Mr Davidson: The bill proposes a 48-hour pricing system for on-sales. Did your group consider a minimum period for holding a price in off-sales? I am thinking of larger supermarkets, in which a profit mix subsidises some lines.

Peter Daniels: I am afraid that we did not go into such detail.

The Convener: I am led to believe that the Perth and Kinross experiment has been dropped.

Bruce Crawford: It has.

The Convener: One concern about happy hours and other such promotions is that they encourage binge drinking, because products are cheaper for a certain time. Given that most binge drinking among young people—under-18s—is of products that are bought in off-licences and supermarkets, do you believe that substantial price discounting in off-licences contributes to binge drinking among young people and possibly older people? Is there not a reasonable argument that that could be the case and should we consider measures to try to curb that behaviour?

Peter Daniels: There is a reasonable case, but the issue is whether any action that you can take

might fall foul of competition legislation. That might be a problem, but the Executive would need to be asked about that.

Michael McMahon: We have heard discussion this afternoon about the policy objectives of the bill, one of which is to cut the amount of under-age drinking. Will the bill achieve the aims on under-age drinking that you set out in your report and address the concerns that you raised on it?

Peter Daniels: It will help. The working group was very strong on the proof-of-age scheme and we are pleased that our recommendations for the documentation that would be accepted as proof of age are in the bill. We were attracted by the idea of using the Young Scot card and I think that the Executive wants to consider that as well as other schemes. When proof-of-age schemes are in operation, they will help to tackle under-age drinking, but the bill will not solve the problem, because we have a culture of it in Scotland, which will take a long time to change. However, the bill is certainly a help.

Michael McMahon: Young people are innovative in the ways that they obtain alcohol. You probably heard the debate that we had earlier about the dial-a-drink service. What are your comments about the practical difficulties of dealing with that?

Superintendent Clelland: I share the concerns that other police officers expressed to you about the dial-a-drink service. I cannot for the life of me understand why those who deliver alcohol are not required to ask for proof of age from the person to whom they deliver it. That seems fundamental to me. If proof is to be asked for when someone goes into a shop, why will it not be asked for when drink is delivered? However, that would still be a difficult area to police, because, even if the person who receives the alcohol at the house is over 18, they could pass it on to others and they would be in a house to which nobody would have a right of access. The bill should state that the requirement for proof of age extends to the dial-a-drink service, but it must also be recognised that the privacy of the house raises issues.

Michael McMahon: There are practical difficulties with dealing with off-sales in licensed premises, so a difficulty or practical problem with requesting proof of age in deliveries to a home is no excuse not to propose provisions to deal with it.

Superintendent Clelland: Another major difficulty for policing off-sales is agency purchase, which is when an adult goes into an off-licence, buys alcohol for young people and passes it to them. The licence holder might not be aware that the alcohol is for younger people. Again, however, the fact that that situation poses difficulties does not mean that we should not try to police it

properly, focus on trying to detect people who purchase on behalf of others and introduce sufficient legislative deterrents that work against their doing it in the first place. That is the only way in which we can prevent someone from purchasing alcohol for young people.

The Convener: Is it practical to introduce test purchasing, given that the purchase of alcohol by someone under 18 is an offence? I do not know whether you covered that in your previous answer, because I was having a brief chat with the deputy convener.

Superintendent Clelland: Perhaps Peter Daniels will speak first.

18:15

Peter Daniels: We were attracted to the idea of test purchasing, although we know that it is controversial and we know what is happening with it in England. However, we came to our view because, when we were meeting, three trials had been undertaken by Scottish police forces. The trials took place in East Renfrewshire—my area—Paisley and Fife. In each case, to the best of my recollection, between 80 per cent and 90 per cent of licence holders or sales staff were prepared to sell alcohol to under-18s. We felt that that was damning. Members might recall that there was a lot of press publicity about it at the time. The Lord Advocate decided that three trials and no more were enough.

In East Renfrewshire, the intention was not to prosecute the licence holder or the shop. In the event of prosecution, we would be faced with the possibility of a youngster appearing in court and neither we nor the Lord Advocate wanted that—nobody wants to put a youngster in that position. The idea in my authority area was that we would advise the licensing board of just how drastic the figures were. The results of the analysis in our area were surprising. The problem was not only in the corner shop; we are talking about big supermarkets—I will not name them, but members would know their names—as well as a few local stores. The idea behind the trial was to generate adverse publicity and we certainly did that.

We fully understand the problems that the Lord Advocate has with test purchasing and we think that the Executive needs to sort them out. We are in favour of the principle of test purchasing, but with protection for the young person involved. We hope that the Executive will now discuss the matter further with the Association of Chief Police Officers in Scotland and the children's commissioner. I think that that is where the situation lies at present.

We do not want to undertake test purchasing with a view to prosecution, but we want to let the

public know that 80 per cent to 90 per cent of the big stores that were caught in the trial—the figure was 90 per cent in East Renfrewshire—were prepared to break the law, albeit unknowingly and unwittingly on the part of the salesperson. That is another issue related to training.

Superintendent Clelland: My force—Strathclyde police—supports what we called an integrity-testing regime, which is similar to test purchasing, but with a few specific differences. Some of the initiatives with which we were involved had 16 or 17-year-olds going into off-sales premises with no money in their possession, which meant that they could not have made the purchase. When it was established that a purchase would be made, however, a guiding officer was within eyesight to whom they signalled to come and inform the licence holder or shop assistant what was going on. In that way, it was established that the salesperson was willing to make a sale.

There was never to be a system of reporting such matters as criminal offences. We thought that that balance prevented a young person from properly committing the offence and so protected them from giving evidence in court. However, it gave the required information so that licensing boards could issue proper warnings or, if it came to it, take more severe sanctions against particular licence holders.

That is the position of Strathclyde police. In policing terms, the position throughout Scotland varies slightly. Some forces do not have the same issues as others. That will be the subject of discussion with ACPOS. However, the police service is generally supportive of such an initiative, provided that the correct protective mechanisms for young people are in place.

Bruce Crawford: That is useful. I am glad to hear that that conversation is on-going.

To try to prevent under-age sales, have you considered having designated tills for alcohol and other goods, particularly in the big supermarkets? Every time that alcohol was being sold to a person of any age, the individual would be asked whether the alcohol was being bought for selling to, or giving to, young people. There would be a check mechanism at each till. It would be similar to turning up at an airport and being asked whether you have packed your own bag.

Peter Daniels: I am trying to recall the discussion that we had about that, although I do not know whether it was in such explicit terms.

Tony Rednall (Working Group on Off-sales in the Community): We discussed whether there should be a separate till for alcohol, similar to the separate till for cigarettes that is found in many supermarkets.

Bruce Crawford: A separate till would cause difficulties because of the cost to supermarkets of reconfiguring their stores. People who were buying alcohol would need to get their biscuits at a different till. However, there is no reason why there could not be designated tills for alcohol and other goods. Every individual who was buying alcohol would be asked about their purchase. Would that help?

Peter Daniels: Yes. Although that idea has not found its way into the report, we discussed it and thought that it would help.

Bruce Crawford: That is good to hear. I will come back to that point with other witnesses.

The other issue that I wanted to raise is opening hours. We cannot control the price, because of competitive issues. However, we already have restricted opening hours on a Sunday morning. The Nicholson report and the Daniels report differed slightly on this issue. If I have got this right, Nicholson suggested that opening hours could be increased and that perhaps some 24-hour supermarkets could even sell alcohol, whereas the Executive, in the Daniels report, considered a more restrictive process. Most problems in relation to the purchase of alcohol by or for young people occur over a weekend, except during the summer months, when the schools are on holiday. Has any thought been given to restricting alcohol sales from Friday lunch time until Sunday lunch time?

Peter Daniels: We did not consider that specifically, because we supported the basic principle of Nicholson that decisions on opening hours should be left to the boards. The decision that is taken by each board will depend on the circumstances in its area. What might be applicable in East Renfrewshire might not be applicable in Glasgow, just a few miles across the border. There has been a popular myth that the Nicholson report would mean having 24-hour opening, but the boards could decide to reduce the licensing hours from their present level. None of the subsequent discussion focused on that, but it is a real possibility. If a board thought—for whatever reason—that the licensing hours in its area were too generous, it might decide to reduce those hours.

Bruce Crawford: The only evidence that we have about how much alcohol is being sold in supermarkets, particularly to young people, comes from the pilots that you are talking about. My guess is that, whether the evidence was from East Renfrewshire, Paisley or Fife, the figures alarmed everybody. We can safely say that alcohol is being sold to under-18s in supermarket outlets throughout the country, in a way that was never envisaged. Given that that seems to be the national picture, would it not be wise to reduce the

number of hours in which supermarkets can sell alcohol, until the supermarkets prove that they can control the problem?

Peter Daniels: It comes down to the trust that we put in the local scene and local bodies such as licensing boards and local authorities. As you would expect, as an ex-council chief executive I am very much in favour of decisions being taken at as local a level as possible. My preference is to stick with Nicholson.

Bruce Crawford: I can understand that. I presume that "Responsible Retailing of Alcohol: Guidance for the Off-Trade" will, at some stage, be cited to us by the retailers who produced it. The guidance goes through a checklist of things that are supposed to be done to ensure that sales are not made to under-18s, but it is not worth the paper that it is written on, because such sales are still happening. We need to have a more aggressive policy, nationally or locally, to ensure that sales to under-18s do not happen. I will return to that issue when the minister is here.

Tommy Sheridan: I do not want to go over all the ground that you have covered in relation to test purchasing, but do you not think that there is a distinct lack of urgency? You stated in your report that there were 905 licensing offences in 2001 but only 100 convictions. Even then, we all know from anecdotal evidence that those figures are the tip of the iceberg. Is it not the case that outlets will continue to flout the law, because they think they will get away with it and because the penalties are so small that it is worth it from a profit point of view?

Peter Daniels: I take that point on board. As chairman of the group, I hope that a decision will be reached by ministers sooner rather than later.

Tommy Sheridan: I envisage a number of practical difficulties in relation to the purchasing scheme that was mentioned. I would like offending sellers to hand over the goods and provide a receipt. That would be a better way of getting somebody than calling them over and having a debate with them, and then having them say, "Oh no, I wasn't going to sell it anyway." Would it not be easier for the Lord Advocate to simply exempt the young persons who are involved in authorised test purchasing schemes?

Superintendent Clelland: I agree. The scheme was put in place to comply with the Lord Advocate's requirements. I support an exemption of the nature that you describe. Test purchasing is an excellent policing tool that can be used, under appropriate circumstances, to obtain evidence of licence holders not running their premises properly and to make appropriate reports to either the procurator fiscal or the licensing boards, depending on the circumstances. I support your

suggestion but, unfortunately, not every police officer has the same opinion. However, Strathclyde police supports test purchasing.

Tommy Sheridan: I take it that the figure of 905 licensing offences in 2001 represents reports that were made to the procurator fiscal.

Superintendent Clelland: I presume so.

Tommy Sheridan: The fact that there were only 100 convictions shows that the conviction rate was very low, despite reports being made.

Superintendent Clelland: Indeed. Many reports might have resulted in non-court disposals—either warning letters or other disposals—or perhaps no proceedings were taken.

Tommy Sheridan: I apologise because I had to use the loo when Peter Daniels made some of his points earlier, but did I hear him say something about the number of licensed premises in East Renfrewshire when he was chief executive?

Peter Daniels: Yes. The number was very small.

Tommy Sheridan: Did you say it was 43?

Peter Daniels: Yes.

Tommy Sheridan: Given your local authority background, I will pursue with you the point that I tried to make to the Executive witnesses. My worry is that the bill will not help the voice of communities to be heard in a city such as Glasgow.

Your paper shows that, if all licences are taken into account, there were about 10,800 on-sale premises and 6,249 off-sale premises in Scotland in 2002. I might be wrong, but I imagine that about 40 per cent of those are in the Glasgow area, which means that there are 4,000 to 5,000 on-sale premises and 2,000 to 3,000 off-sale premises there. To me, the idea that one board of 10 individuals with a quorum of three could adequately supervise that number of premises is ridiculous, if we want to modernise and improve the situation. What is your opinion of that?

18:30

Peter Daniels: I agree 100 per cent, but I see no problem with Glasgow establishing four licensing boards under the bill—or as many as were needed—each of which would have a membership of 10 councillors. If the issue is to ensure that the voice of the community, as expressed through local elected representatives, is sufficiently strong, that would be a way of achieving that. That model would mean that 40 councillors in Glasgow were members of a licensing board—I am not sure what the total number of councillors is.

Tommy Sheridan: There are 79, but there will probably be 80, although we are waiting for a report on that matter.

Similarly, would it assume too much to suggest that you would say that the local licensing forums in Glasgow could therefore reflect those licensing boards? As you will have noticed when I drew attention to schedule 1, as the bill is drawn up, there will be a maximum of three local representatives in a city of 400,000 people. Do you agree that that would be inadequate local input?

Peter Daniels: I am not sure what the bill proposes for situations in which there is more than one licensing board in a council area, but I presume that there would be no barrier to a council establishing a forum for each board area, if it decided to have more than one board. I do not see a problem with that, although Tony Rednall can correct me if I am wrong.

Tony Rednall: I do not think that that is wrong.

Superintendent Clelland: I agree that the proposal to have several boards in Glasgow would give greater community participation—there is no doubt about that—but one balancing consideration is the consistency of decision making. A decision in one area of Glasgow might conflict with a decision in another area, even if the applications were roughly the same. That is a concern that the current Glasgow licensing board may have about such a division.

Tommy Sheridan: I suppose that I would see that as a strength rather than a weakness, because we would then have a genuine reflection of local views, rather than the one-cap-fits-all approach of a single board. Such a system would encourage devolution of decision making to as local a level as possible. If that resulted in an application in the west end being treated differently from one in the east end, so be it.

Michael McMahon asked Peter Daniels whether the bill would achieve the aim of reducing under-age drinking. Peter Daniels was honest about that and said that it may help, but that the problem is a cultural one that will take a long time to change. My argument is that there is a lack of policy focus on reducing overall consumption of alcohol, not just consumption by young people, through tackling the cultural problem. We, as a country, consume too much alcohol. Is there room in the bill for statements that are more proactively about encouraging a culture in which, “It’s no a problem if you don’t want a drink”—to use a “Chewin’ the Fat” expression—rather than a culture in which it is a problem?

Peter Daniels: Goodness. If you are asking me as an individual, I point out that I am teetotal. That is not because of principles or morality, but simply

because I do not like the taste of alcohol. I do not drink beer, wine or whisky—I am a Diet Coke and orange juice man. As I understand it, the view of Nicholson and the Executive is that drinking is a socially acceptable phenomenon if it is done in moderation. The policy memorandum has a few pages about the importance of the trade to the Scottish economy. Those big policy issues are for ministers to get to grips with rather than for our little working group, which is considering off-licences. I can answer in a personal capacity, but my answer as chairman of the working group is that the policy issues are too big for us.

Tommy Sheridan: I must point out that smoking tobacco, which is a legal drug, was socially acceptable until recently and that there is a big drive to make it socially unacceptable. I hope that the Executive will take a similar attitude to drink.

Peter Daniels: So do I.

Tommy Sheridan: Perhaps I should have declared from the start that I, too, am teetotal.

My final question is for George Clelland; I want to take advantage of his police experience. The issue is not particularly relevant to the working group, but you will have heard the discussion about section 86, which would confer a power on licence holders to use reasonable force to remove people from premises. I have big worries about that. You have heard Sheriff Principal Nicholson and, I think, the Scottish Executive express doubts about the provision. As a professional, what is your view on the proposed power?

Superintendent Clelland: I share Sheriff Principal Nicholson’s concerns. I accept that there is a limited power to use force, for example in self-defence or when effecting a citizen’s arrest. There are also issues with door stewards—in practice, they are allowed to escort people from premises, but I do not doubt that a reasonable degree of force is sometimes used in doing that, although when a steward goes too far, they can be subject to action. However, to give the proposed power to citizens would be dangerous.

The Convener: That brings us to the end of our questions. I thank Peter Daniels, Superintendent Clelland and Tony Rednall. I apologise for keeping you so late, but, as with the previous two sessions, we have found this session to be useful to our consideration of the bill.

We will deal with the final two agenda items in private.

18:38

Meeting continued in private until 18:46.

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