

# **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

Tuesday 17 May 2005

Session 2

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## LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

17<sup>th</sup> 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:

Jacqueline Conlan (Scottish Executive Finance and Central Services Department)

Tavish Scott (Deputy Minister for Finance and Public Services)

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 4



## Scottish Parliament

### Local Government and Transport Committee

*Tuesday 17 May 2005*

[THE CONVENER *opened the meeting at 14:08*]

#### Items in Private

**The Convener (Bristow Muldoon):** I welcome members of the committee, members of the public and the press, and the minister and his officials to today's meeting of the Local Government and Transport Committee.

Before I properly introduce the minister and move on to the main item on our agenda, I ask the committee to agree to take item 3 in private. Item 3 is consideration of the possible contents of the committee's stage 1 report on the Licensing (Scotland) Bill. It is normal practice to consider in private draft reports and our preparation of draft reports. Is that agreed?

**Members indicated agreement.**

**The Convener:** I also seek members' agreement that future consideration of that draft report be carried out in private until the report is agreed.

**Members indicated agreement.**

## Licensing (Scotland) Bill: Stage 1

14:09

**The Convener:** We move to item 2, which is stage 1 of the Licensing (Scotland) Bill. I welcome to the committee Tavish Scott MSP, the Deputy Minister for Finance and Public Service Reform. He is supported today by Jacqueline Conlan and John St Clair. I will give the minister the opportunity to make some opening remarks about the Licensing (Scotland) Bill, after which we will move on to a series of detailed questions about the evidence that the committee has taken thus far.

**The Deputy Minister for Finance and Public Service Reform (Tavish Scott):** Thank you, convener. I am glad to see you looking so healthy after the weekend's festivities in Orkney—I take it that you attended the symposium on Monday morning.

**The Convener:** I enjoyed the visit to Orkney very much. I met many of your constituents, who discussed many issues with me.

**Tavish Scott:** I am pleased to be here this afternoon for the committee's detailed consideration of the proposed licensing reforms. I do not want to say too much because a lot of the rhetoric is well understood and today's committee meeting is not about that. As the convener said, today is about the detail of the bill; we will do our very best to answer the committee's questions. I have read the evidence that has been taken and I note the range of evidence and witnesses. The evidence is important from our perspective because it informs our consideration of tweaks that we might want to make to the bill.

The bill is only one aspect of the Executive's wider approach to alcohol and alcohol misuse. On its own, legislation will not solve all the problems of alcohol misuse, so the wider issues on alcohol consumption are being worked on by colleagues in the Health Department through such initiatives as the plan for action on alcohol problems.

That is really all that I want to say. I would very much like to get on with the nuts and bolts, if that is agreeable.

**The Convener:** Thank you. It is helpful that you kept your remarks short, given that we have a range of issues to try to get through this afternoon.

I will start off by asking you about the ministerial guidance that will be issued to licensing boards. It is understood that that guidance will be issued and that a national forum will be established to inform the process. When will that forum be established? Who is likely to make up the membership of the forum? What will be the qualifications and coalface

experience of the licensing process of its members? Will they take the trade's perspective or the local authorities' and regulatory perspective? What about concerns that have been expressed that the process for appointing members of the national forum has not been included in the bill? What degree of parliamentary scrutiny will there be of the appointment of its members?

**Tavish Scott:** The answer to the first question is that we hope to have the national forum set up by this summer. The forum is not to be a public body, so the public appointments system that applies to public bodies and the establishment thereof simply does not apply in this case. That judgment was based on what we hope the forum can do and on our ability to review it as much—to be frank—as it was based on Parliament's desire to avoid where possible the establishment of public bodies. We think that we can achieve our policy objectives, which were explained to the committee when Jacqueline Conlan and other colleagues gave evidence at the start of the bill process. Some of that evidence is therefore on the record.

On the responsibilities and skills of the people who would be appointed to the national forum, we see the forum being comprised of people who have a direct interest and understanding of the trade and related issues in alcohol and licensing reform. I have explained the timescale and said why we will not make the forum a formal public body.

**The Convener:** I understand the issue about trade interests. Would the range of interests of the bodies that are to be represented on the forum go as wide as to include, for example, the police or health authorities, which are able to comment on issues around irresponsible promotions?

**Tavish Scott:** We have not come to a final view on that, but we are happy to write to the committee as we clarify and finalise our thinking. I also stress that we will review the forum after two years; if we do not get the balance right or if there is concern—from Parliament or any other quarter—that we have got the balance wrong or that we have missed someone out, we will reconsider the membership. We intend to come to a final view on that in the summer. We will certainly write to you to ensure that the committee is kept up to date. If members want to express any views, we will be happy to take them on board.

14:15

**Mr David Davidson (North East Scotland) (Con):** Will you write to various organisations to invite them to put people up to be vetted, or will you and your department simply make decisions?

**Tavish Scott:** We will do the latter, because I will chair the forum, as Sheriff Principal Nicholson

recommended. It is important that we ensure that we make the appointments, not least because we will be accountable for them. You will not be surprised to hear that we have debated the matter in our many discussions on the construction of the bill and in on-going discussions on licensing reform matters that are covered in other parts of the bill. The proposals are well understood and well known; there is no shortage of people who think they should be on the forum.

**The Convener:** We will now discuss a different matter—licensing boards and licensing forums.

**Tommy Sheridan (Glasgow) (SSP):** Before we do so, will the minister say whether the bill's aims on consumption of alcohol in general are strong enough? If the minister has been following the evidence, he will know that I am worried that the Scottish Government is not firm enough about reducing alcohol consumption across the board. Young drinkers and binge drinking seem to be targeted, but what about alcohol consumption in general?

**Tavish Scott:** I accept that there is an entirely legitimate debate to be had about legislation reflecting not only what might be seen as the narrow reform of licensing laws on the purchase and sale of alcoholic products, but the wider issues including what some people might argue are the more important health-related issues. Mr Sheridan will be entirely familiar with the principles behind the bill and will know that health is a core principle. The Nicholson committee dealt with health issues and we strongly endorse what it said. Encouraging health is a principle behind the reforms, which answers the member's question to some extent.

It is important to think about alcohol consumption rather than merely to tackle fine although important points—as some might see them—that relate to misuse of alcohol. In recent days, the committee has probably received evidence—which I have not read—about the overall cost of alcohol having fallen in real terms over a period of years. I understand that alcohol is cheaper than it was in the past, which is why we have been keen to tackle issues to do with irresponsible promotions.

I accept Mr Sheridan's contention about the importance of tackling overall levels of consumption, but I suggest that we are doing so by reforming licensing law through the bill: after all, it represents the first time in 30 years when such issues have been addressed. I hope that Mr Sheridan accepts that we are also doing that in a number of other areas and across departments. It is often said that the Government does not do enough cross-cutting work across its departments, but there have been meetings with the trade that I have chaired jointly with the Deputy Minister for

Health and Community Care, Rhona Brankin, for example. During those meetings we have taken on board the point that Mr Sheridan and many other people have made to us about the need for the Government to tackle the problem as best it can, or at least to consider issues relating to the extent of alcohol consumption rather than only alcohol licence reform.

**Tommy Sheridan:** I am pleased with what you say and hope that you will not mind if I press you a bit more. You mentioned the principles behind the bill, but the principle of reducing overall alcohol consumption in Scotland is not a stated aim or objective in the bill. Should it be?

**Tavish Scott:** I think that we have got the balance right. As Mr Sheridan will be aware, we have followed the Nicholson recommendations carefully. The Nicholson committee was established to tackle licensing law reform and I believe that it had regard to important principles such as those that relate to health. We know about the statistics on the costs to the national health service that are attributable to misuse of alcohol; the bill is how we have sought to address the issue. I believe that we have got the balance right, not least because we have followed the principles that Nicholson laid out. That is all that I can say on that point.

**Tommy Sheridan:** I shall move on to a question about the licensing board, although I point out that there has, in the past eight years, been a 66 per cent increase in the number of admissions to hospital for liver problems that are directly related to alcohol use, and there has been a 58 per cent increase in alcohol-related deaths. Whatever we are doing now is not working, which is why I had hoped that there would have been a tougher statement on reducing overall alcohol consumption.

On the bill's proposals on the size of the licensing boards, you will be familiar with some of the concerns that have been expressed. Are you now willing to concede that there may be a need to examine more closely the suggestion that three people could be a quorum for a licensing board in Glasgow, which covers nearly 1 million citizens? Do you accept that that is not acceptable for a board that will have authority for such serious issues?

**Tavish Scott:** I accept that. I have been persuaded of that, not least by the evidence that has been given to the committee and by meetings at which that point was put to me in fairly stark terms. I accept the point that Mr Sheridan and the committee have made. As far as I can see, section 5 of the Licensing (Scotland) Act 1976 allows a quorum to be as low as three, although it is generally supposed that it will be half of a board's membership. We would be happy to continue with

that, but we shall reflect on what the committee says in its final report. I accept that we need movement on that.

**Tommy Sheridan:** You will be aware of my correspondence with you in connection with the concept of decision making being local, because one of the bill's stated aims is to give a voice to communities. Are you willing to be a bit more proactive in giving evidence to us today about encouraging local licensing boards to be local? In my view, having one licensing board for the whole city of Glasgow or the whole city of Edinburgh does not give a voice to communities. Would you encourage local authorities to consider having a number of boards instead of one board?

**Tavish Scott:** As members know, local licensing boards can establish a divisional structure. Mr Sheridan and I may just have to disagree on this point, but I am not going to tell local authorities what they should do; that would not be appropriate. I am naturally a decentraliser by political spirit, so I do not believe that my natural tendencies would be helped by my lecturing any board as to what it should do. If such a divisional structure is appropriate for Glasgow, that is a matter that the local authority in Glasgow will progress. I say only that I would not stand in the way of that. I genuinely believe that local authorities should make decisions based on the best structural fit for their city.

**Tommy Sheridan:** To mirror the board, the bill makes provision for licensing forums. You will have heard the evidence relating to there being a voice for communities. Under your current construct of licensing forums, communities would have only a limited voice on the forums. Would you be willing to look again at the membership and make-up of forums in order to provide more room for communities to be represented?

**Tavish Scott:** Yes—again, that is a fair point that has been presented in evidence to the committee. I am happy to reconsider the size of forums. I know that there is a specific issue in relation to Glasgow. That may be the case elsewhere, but I am more familiar with the Glasgow example, having met the chairman of the licensing board there and other representatives. We shall look at that matter.

We will also consider how local forums will be established by way of regulation, so that we can bring secondary legislation to Parliament under the affirmative procedure in order to ensure that Parliament has a formal voice on that and on any review of structures of forums, following appropriate consultation. I am happy to examine closely what the committee says on forum numbers, particularly in relation to Glasgow, and to examine the mechanism in order to simplify the process and to ensure that the committee and Parliament have full roles.

**Tommy Sheridan:** I would like to move on to promotions, but I do not know whether you want to take supplementaries, convener.

**The Convener:** We will deal with a couple of other areas first, and then come back to irresponsible promotions.

We want to ask you about premises licences, minister. You will have noted from the evidence that some witnesses, most notably the Scottish Licensed Trade Association, criticised the proposal to have a single type of premises licence. How would you respond to that association's suggestion that there should be at least three different categories of premises licence—off-licence, on-licence or general licence, and an entertainment premises licence. It believes that that would make it easier for boards to distinguish more clearly where there is overprovision of a particular type of licensed premises, as opposed to a general overprovision of licences.

**Tavish Scott:** This is important and I am glad that the committee has had a good look at the matter. It is important to start from the accepted premise of the Nicholson committee, which is that the current seven types of licence are inflexible and, more to the point, outdated in terms of how the trade now operates. I would be pleased to have it confirmed that we all agree that we want to avoid what Nicholson called "licensing by stealth", in terms of the changes that have taken place to the way in which licensing conditions operate under the current regime.

I am not persuaded by the argument that there should be three types of licence. It is important to recognise the way in which the market is developing. I know that at times I can be guilty of generalising too much in relation to, for example, pubs versus nightclubs, but the concept of how people use such facilities nowadays has changed. Rather than its being ancillary to the provision of alcohol, entertainment is part of the package. I have not been persuaded that the arguments that you raise are as strong as the ones that the Nicholson committee made.

It is also important—as I am sure the committee recognises—that the differentiation between types of premises is not only recognised but strongly observed in operating plans. That will be at the heart of the system. The focus of the bill is not on offering protection from competition, but on controlling public order late at night. It is not for the Government or Parliament to state how the market should develop in that regard. Our job is to create a regime that allows evolution and change to take place naturally through business activity, and to regulate that activity appropriately. That is why I worry about the suggestion that there be three licences, as opposed to the two that came out of Nicholson.

**The Convener:** Could it be difficult for licensing boards to decide on overprovision? I can think of areas where licensing boards might take the view that there are sufficient or perhaps too many off-licences, but if a restaurant applied for a licence the board would be inclined to accede to the application. Could it be difficult for boards to draw distinctions if they refuse an application for an off-licence on the ground of overprovision, and then subsequently receive an application for a different type of licensed premise of which there is no overprovision?

14:30

**Tavish Scott:** The definition of overprovision is part of the work of the national forum. We all recognise the important split between national and local policy and the importance of the ways in which those levels integrate. I believe that the operating plan, as the heart of the process, will allow local boards to make appropriate decisions in relation to particular applications. However, at the same time, because boards will have done overprovision assessment, which will be a three-year rolling assessment in their area, against a background of a national definition and an agreed set of criteria, I expect that the kind of problems that the convener mentions will not come to pass.

As the process works through—you should bear it in mind that the transitional period will give everyone the chance to get fully up to speed with how the interpretations will work appropriately in local circumstances—the operating plan and our associated proposals will deliver what we have in mind.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** On the conclusion that the most satisfactory way forward would be to have a single licence, how much cognisance did the Executive give to the developing licensing scene, particularly with regard to hybrid facilities? There have been big changes in the market; many hybrid licensed premises offer a cross between a nightclub and a restaurant and others offer food, drink, sport and entertainment as part of the package, along with conference facilities. Furthermore, some hotels are, to be frank, pubs with a couple of rooms stuck on the side, whereas some pubs operate more like hotels.

**Tavish Scott:** You make my point for me. I agree with Bruce Crawford's illustration of the current scene; you have done a lot of research and I can only commend you for that.

**Bruce Crawford:** The Opal Lounge in Edinburgh is an example of the type of place I am talking about, I am told.

**Tavish Scott:** The sheer range of licensed premises is incredible. There are also, dare I say



it, licensed cafes, although no Liberal Democrat would go to a cafe bar—I say that looking closely at Margaret Smith.

The differentiation in the market has been a serious driver behind the intent of policy reform. We have had simply to accept that, even in the past 10 years, the market has developed at a considerable pace and the situation is far removed from the one that the Licensing (Scotland) Act 1976 was designed to deal with. The reforms that have been proposed are designed to take account of the fact that the market will develop further in the next 10 years in ways that you and I can only guess at.

**Mr Davidson:** You were talking about the rolling three-year assessment with regard to overprovision, but all premises will be labelled simply “licensed premises”, whether they are off-licences, hotels or any of the variations that Bruce Crawford talked about. What happens if someone sees a market opportunity and the licensing board has not gone as far as reviewing what it considers to be the requirements in that area? Will there be a series of legal challenges about how the system operates? Is the bill going to be a licence for lawyers to make money? Will it allow new ideas to come in? You seem to be favouring a reasonably open-market situation in order to allow products to evolve. As the Justice 2 Committee did, however, I see all sorts of hazards arising from the lack of clarity. Are we going to tie up the boards and the courts in all sorts of arguments about whether something should be provided? You have not covered that.

**Tavish Scott:** That is a fair question. I might get Jacqueline Conlan to deal with the aspect that requires a slightly legalistic approach, however. In relation to that sort of situation, our presumption is very much that things be open. I do not believe that the bill would constrain that kind of market development. Obviously, a licence application in an area will have to comply with the national and local licensing board conditions. John St Clair might want to add something.

**Mr Davidson:** Before you bring in your colleagues, minister, will you clarify for me how much influence and control the national forum will have over the will and freedom of a local board?

**Tavish Scott:** Questions about the right balance between such structures arise in every sphere of government. I see that the trade has said in evidence to you that it would try its best to achieve a degree of national consistency on the important principles and conditions of licensing. Many licensing boards have said that to me as well. The national forum must ensure that we have such consistency. However, as in many areas of government, there should be local interpretation to suit local circumstances. The Glasgow situation is

not the same as the situation in a village in your part of Scotland, Mr Davidson. I will ask John St Clair to deal with the point about our presumption.

**John St Clair (Scottish Executive Legal and Parliamentary Services):** We were aware of the question of overprovision and we drafted section 7(1) carefully so that the local licensing board would consider overprovision of licensed premises in general or—and this may be the key to answering your question—

“licensed premises of a particular description”.

The board will therefore assess the various categories.

Because of the changing circumstances that members have all acknowledged, we have not included numbers for different types of licences. The formulation that we have used for section 7(1) allows boards to select the types of licensed premises that concern them. However, boards can also be subject to central guidance from the national licensing forum. For example, we might want to send a signal from the centre about how boards should go about dealing with overprovision.

**The Convener:** Can a board choose to consider licences not by type but only by number? If a board in a particular part of Scotland chose to do that, would we be drifting away from the idea of national consistency?

**John St Clair:** We cannot conceive of a situation in which the guidance, backed up with the provision in section 7(1), will not compel boards to consider different categories of licensed premises. Things may change over time as the national licensing forum feeds its guidance and advice into the various licensing boards.

**The Convener:** There is a proposal to remove the renewal date for licences. That date can be a focal point for objectors, who are often residents suffering the consequences of behaviour around particular premises. I accept that you may well tell me that licensing standards officers and the police would draw a licensing board's attention to premises that were a particular problem, but is there a danger that residents will regard the loss of the focal point as the loss of the opportunity to make concerted representations to the board?

**Tavish Scott:** That point was made to me when I met the licensing board in Perth, but I do not have any concerns in that regard. You mentioned the licensing standards officers; they will have a strong role in relation to local people, community councils and others who take a strong interest.

The proposals give licensing boards strong powers of review, so there are plenty of mechanisms to ensure that local people do not feel in any way disfranchised or cut out of the

system. People know the current system but I would argue that the system is being reformed very positively. Far from having less of a role, people will have a stronger role.

The importance of licensing standards officers will be one of the improvements to the system. We should not underplay that. If local licensing boards have the right people as standards officers, that will lead to tremendous improvements. We will spend a lot of time trying to ensure that that happens during the transition of the next couple of years.

**The Convener:** I will bring Bruce Crawford in on the issue of children and their access to licensed premises.

**Bruce Crawford:** I will address issues of the drinking culture in general before I bore down into issues about children.

We received some fascinating evidence a couple of weeks ago from the chief medical officer. He told us about the experience in Scandinavia, where Governments have opted for a price hike and restricted licensing to try to control a situation similar to that in Scotland in respect of the number of people who abuse alcohol. The comparison was made with what happens in the Mediterranean countries—in particular Spain and Portugal—where attitudes are much more *laissez-faire*. Those countries do not have the same restrictions on price or licensing, yet alcohol abuse does not happen to the same degree as it does here or in Scandinavian countries.

I want to consider those issues, because whatever we do in the bill will not by itself change the culture, although we can start to adjust small things. A common concern that has been raised with me is the perception that the bill will open up Scotland to 24-hour drinking. How do you think that the new licensing provisions will affect culture in that context? I will come back specifically to the issue of children, but I would appreciate a general answer on the culture issue first.

**Tavish Scott:** There is a presumption in the bill against 24-hour drinking—we could not spell it out in starker terms. We are taking a different approach from the ones taken elsewhere. The matter is as simple as that.

I accept Bruce Crawford's contention about culture and the importance of tackling long-held attitudes to alcohol. Mr Sheridan also made a fair point in that regard. I accept that challenge, although we all know from our own parts of Scotland that it is a big one.

I am interested in Mr Crawford's comments about Scandinavia—my part of Scotland has very strong links with Scandinavia. I recognise the significant differences in approach towards young

people and alcohol in different parts of Europe. I do not know that we have got the approach right here yet, but by definition that is not easy—not least because some aspects of the question relate not only to culture, but to climate. Mediterranean society takes a different approach, which has been built up not over decades but over very long periods. I am sorry to meander. On the central point, there is a presumption in the bill against 24-hour drinking.

**Bruce Crawford:** Evidence has been led to the committee that having more family-friendly establishments would improve the culture, so licensees should be required to opt out of, rather than opt in to, having children on the premises. Premises that want to be adult only should prove that that is the appropriate licence.

**Tavish Scott:** That is a judgment call. We want to ensure that premises are suitable for children and have the appropriate facilities. I know that the committee has received evidence about the facilities that should be available in premises that opt in. The judgment call is that having an opt-in would strike the right balance and be the right way of structuring the system. We believe that that approach will encourage members of the trade who want to attract families and operate in that aspect of the market to ensure that their facilities and services are attractive. If they seek to operate in the context of welcoming children and attracting families, they will need to do so by meeting particular market needs and, in the context of licensing legislation, the requirements of regulations. The issue is about striking the right balance, which is why we wanted an opt-in process rather than one that might not achieve the policy objectives that we might all share in regard to changing attitudes.

**Bruce Crawford:** Can I just burrow down into that a bit more, minister? You gave the reasons why you chose that option, but you did not talk about why the system would not work the other way around, with an opt-out process rather than an opt-in process. In what ways would an opt-out process not fulfil the objectives and principles that are outlined in the bill? I am struggling to grasp where you are coming from on that point.

14:45

**Tavish Scott:** I am sure that Mr Crawford will accept that there are a lot of premises out there that are not suitable for children. That is at the core of the matter and perhaps I can express the point in that simple way. I am not arguing the negative or trying to overemphasise the point; I am not arguing that there is a mass of reasons why we should choose one route rather than the other. It is a judgment call and on that basis we have chosen an opt-in mechanism. One could go to

every part of Scotland—to all our communities and every part of our cities, towns and villages—and find premises to which one would not want to take one's children. Our view is that the opt-in mechanism will mean that many premises will want to attract the family market and provide the relevant facilities. Most of them will comply straight away. We think that an opt-in mechanism is the best way of achieving our objective.

**Margaret Smith (Edinburgh West) (LD):** I have a question on the selling of alcohol to children, particularly from off-licences, which is a matter of concern throughout the country. A number of the submissions that we have received comment on the lack of a procedure for test purchasing as a means of monitoring the sale of alcohol to children, particularly from off-sales outlets. Bearing in mind that there has been a recent policy change from the Lord Advocate in relation to the use of children in test purchasing of cigarettes, why are you not going down the same route?

**Tavish Scott:** That is a fair question. I have discussed the matter with the Lord Advocate, as it is his decision. By definition, there are issues about the danger of criminalising children—or the perception of doing that—and he has asked for further evidence before he makes a final decision on the matter. That is all that I can say at the moment, but the point is being actively considered.

**Margaret Smith:** Can I take it that you will welcome the committee's view on that issue?

**Tavish Scott:** I would certainly welcome your view, yes.

**The Convener:** I do not know whether Michael McMahon wants to ask a question that he raised with several witnesses about a concern that arose in Lanarkshire recently.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** I asked everyone else about it, so I should probably ask the minister, too. As you might know, minister, I have been approached by the police in my area about their major concerns on the dial-a-drink development. Have you had an opportunity to look into the matter? Can you shed any light on the provisions that would be required in the bill to address the concerns that the police raised with me?

**The Convener:** In case you have not seen the detail on the matter, minister, I point out that Michael McMahon has raised the issue that there is no requirement on delivery drivers from such services to require proof of age.

**Tavish Scott:** That is a fair point. It is a worrying issue, which Jacqueline Conlan and the bill team have had a good look at. The problem is finding a mechanism in law to deal with it. My understanding is that certain supermarket chains

already have codes of practice and helpful rules, regulations or company policies on the matter and I am sympathetic to that.

I do not want to be in any way flippant about the matter, but there are some tricky questions. If a 17-year-old answers the door when a case of whatever is being delivered, where does the onus of responsibility lie? We have given considerable thought to the matter but, to be frank, we have not yet come up with a solution. We recognise the problem and if the committee comes up with a solution I will be delighted to look at it. We will be genuinely interested in any recommendations that you care to make. Our lawyers have been poring over the problem, but it has not proved easy to solve.

**Michael McMahon:** As the police are aware of the issue and know the concerns that they will have to deal with, has any discussion taken place with either the Association of Chief Police Officers in Scotland or any of the other relevant organisations?

**Tavish Scott:** I will meet ACPOS shortly and will discuss the matter with it.

**Jacqueline Conlan (Scottish Executive Finance and Central Services Department):** We would like to discuss the matter with the police. In the bill, we have tried to go some way towards tackling dial-a-drink issues by preventing people from delivering alcohol between midnight and 6 am specifically because of those problems. However, we need to consider the proof issues in more detail. Enforceability is a major issue for us, as it is for ACPOS. I believe that Malcolm Dickson said that in his evidence to you. That is something that we need to look at; we just do not know whether we can find a workable, practical solution.

**Bruce Crawford:** My next question is on the general culture of drinking. It has been put to me that many people would rather that their 17-year-old was in a pub having a drink of beer than in the local park slugging away at a flagon of cider that they had procured from a supermarket or wherever. In Holland, the law allows 17-year-olds to drink beer under 5 per cent proof in bars. That might be seen to be a more effective way of trying to educate young people to behave in an appropriate way. I do not know whether the Executive has had the chance to examine the situation in Holland, which has a climate that is similar to Scotland's, or to consider whether such an approach might help us to change the culture and the way that drinking is regarded in Scotland.

**Tavish Scott:** There is no restriction on underage people drinking at home; the responsibility in that area lies with the parents. The example of cider being consumed in the park probably raises that issue as well as other issues.

We have not considered the Dutch example and there are no proposals to change the legal age for the consumption of alcohol, so I cannot give Bruce Crawford a particularly good answer to his question.

The longer-term perspectives and the attitudinal and cultural issues are extremely pertinent. If we were to send out any kind of signal that we were making it easier for younger people to access alcohol, that would not be particularly consistent with what we are trying to do overall. If we could be confident that such action would pay dividends quickly, we might be prepared to consider it, as might any Administration. However, all the evidence on underage drinking is pretty worrying, as the committee knows. We must try to deal with where we are at the moment in relation to the proposals.

**Jacqueline Conlan:** The bill contains a provision that continues the position under the 1976 act, which allows 16 and 17-year-olds to consume certain types of alcohol in a pub with a meal. If they are having a meal, they can have beer and cider.

**Bruce Crawford:** The Dutch position would not be a big extension of that provision.

**Mr Davidson:** The minister has talked about taking advice from different departments on the legal position. I presume that he will have to take account of the situation with regard to internet purchasing and mail order through a wine club that might advertise in *The Sunday Times* or the *Sunday Post*. Many such items are delivered either by the Post Office or by hauliers during working hours, which often means that they are received by underage people who are the only people at home. Will the minister look into that and clarify the position on it in writing to the committee?

**Tavish Scott:** That is one of the issues that we face in relation to the question that Michael McMahon asked. I am sure that the Royal Mail delivers many boxes to Mr Davidson's house, as it does to mine. There is sometimes no illustration on the packaging, so how would a 14-year-old daughter know what was in the box as she signed the receipt? All that I can say is that, yes, that is exactly the kind of issue that we have been toiling with.

**Tommy Sheridan:** The Executive has made the point that the bill represents the biggest shake-up of licensing law for 30 years—a major shift is being made in an attempt to achieve the stated objectives. However, I think that, overall, the committee has been disappointed, as an opportunity has been missed in relation to the regulation of off-sales. Why does the bill not cover stricter regulation of off-sales?

**Tavish Scott:** As the minister sponsoring the bill, I have made it clear time and again that I would be more than happy to consider evidence about off-sales. We have met representatives of that section of the trade. If the committee makes particular recommendations in that area, I will consider them. I have met a range of people, groups and trade representatives, as well as local people in different communities who believe that we should go further on the matter.

I am sure that Mr Sheridan is not suggesting that no measures in the bill relate to off-sales; in fact, the bill contains a considerable number of measures on them. Off-sales premises are licensed premises, like others. They will have to follow, for example, the no-proof, no-sale position. I hope that Mr Sheridan will acknowledge that important measure. I would not wish it to be suggested that we have done nothing on the matter. The reverse is true: we have moved forward considerably. If the committee has thoughts about particular measures, I will be more than happy to consider them.

**Tommy Sheridan:** Would the minister be willing to consider statutory powers in relation to a minimum pricing policy at off-sales? The committee has been concerned about the matter. We received evidence from police chiefs and others who said that groups of youngsters will pool their money on Friday and Saturday nights and will buy as much booze as they can—their carry-out. If there was a minimum pricing policy and less irresponsible promotion by off-sales, we might be able to curtail that supply in some way, although I know that we cannot stop it. Would the minister consider that?

**Tavish Scott:** My mind was genuinely open on how best to tackle irresponsible promotions. We had to take advice on competition law and legal precedents on minimum pricing, in relation to one local authority area in particular. I am sure that Mr Sheridan will be familiar with that. Because of that, we are not advocating to the Parliament that we go down the minimum pricing route. We do not think that it could be defended if it were challenged. That is why we have adopted our present approach on irresponsible promotions.

There is no lack of will on this side of the table to tackle the issue and I would not want there to be any suggestion to the contrary. It is the nature of this job to find ways in which to achieve our policy objectives. It would be great to use a number of mechanisms, but we have alighted on the one that we think is open to us under the law, according to the advice that we have received.

**Tommy Sheridan:** Will the minister comment on the difference between the Perth and Kinross scheme and the Aberdeen scheme, to which he is referring when he mentions a challenge in court?

Our evidence is that Perth and Kinross Council had a minimum pricing scheme, which, according to the Office of Fair Trading, did not contravene competition law. Although there has been no detailed analysis, all the anecdotal evidence is that the scheme there was very successful. Is it worth re-examining the matter?

**Tavish Scott:** I will get Jacqueline Conlan to answer that in detail in a moment, but I discussed the matter with Perth and Kinross Council's licensing board when I visited the area a couple of months ago. We might have looked at the matter more closely if we thought that we could pursue that approach. However, the advice that we received was that we could not.

**Jacqueline Conlan:** I am not sure, but I think that Perth and Kinross Council has withdrawn its scheme following the decision to withdraw the scheme in Aberdeen. The advice is that minimum pricing is not feasible under the terms of the Licensing (Scotland) Act 1976. We considered minimum pricing and non-differential pricing, which is covered by the bill. There were issues around the decisions taken with respect to the 1976 act, but it would be fair to say that there were wider considerations as to whether minimum pricing or non-differential pricing was the best option.

It is felt that minimum pricing is a fairly invasive approach, as it requires individual licensing boards to set prices for a tariff of drinks, which would lead to a lot of variation throughout the country. It was felt that non-differential pricing avoided that, was less invasive and could be applied across the board. It would be difficult to impose minimum pricing in members clubs, for example. Because they traditionally impose lower prices, we would almost have to allow separate tariffs for each club or for clubs in general, whereas non-differential pricing can be imposed across the board without running into some of those difficulties.

15:00

**Tommy Sheridan:** Are you happy that non-differential pricing will allow you to regulate off-sales and prevent irresponsible promotions in that sector as well? On the Perth and Kinross scheme, there seems to be a problem. The scheme was investigated by the OFT, which found that it was not contravening competition law. That gives us one decision for and one against, which is not much evidence on which to base a decision against minimum pricing.

**Jacqueline Conlan:** The people who were involved in the Perth and Kinross scheme received advice from the OFT that they could run it, but the Scottish courts have since ruled differently on the Aberdeen scheme. There were differences between the schemes and it is not for us to

comment on the court's decisions, but Perth and Kinross Council seems to have taken the view that it would rather withdraw the scheme than risk being challenged. I refer you to the minister on the point about off-sales.

**Tavish Scott:** The position on off-sales is clear. At the moment, we struggle to restrict irresponsible promotions in off-sales as opposed to on-sales simply because of the lack of evidence for a direct link between off-sales purchases and binge drinking, which it is a core policy objective of the bill to address. I have asked, and will continue to ask, a number of bodies to provide us with evidence on that—if the committee can help us in that regard, so much the better. I make it clear that we retain the powers to act on that matter and, if evidence of the link is forthcoming, we will act on it. I hope that the convener would expect us to have an evidence base on that. We need such an evidence base; it is helpful to have one.

**The Convener:** Given that the purchase of alcohol on behalf of young people is illegal, the only evidence base for the link would be the relatively small number of people who are prosecuted for the sale of alcohol to a minor or the purchase of alcohol on behalf of a minor, so it would be pretty difficult to get conclusive proof that off-sales contribute to binge drinking among young people.

However, I suggest that it is pretty much common sense that the largest proportion of the alcohol that young people consume will have been purchased from off-sales as opposed to on-sales, because it is easier for them to get access to that alcohol without having to make the purchase themselves and evade the proof-of-age requirements that would apply in an on-sales environment.

In addition, we have all seen promotions in off-sales environments that clearly sell alcohol at well below its cost price. As Mr Sheridan said, young people have limited budgets and are more likely to go for the maximum amount of alcohol that they can buy for that limited budget. That is a commonsense issue that needs to be addressed.

**Tavish Scott:** I have a lot of sympathy with that point, which is why I am determined to retain the powers to act on the matter. There is a lot in that commonsense argument, but we have to put our position together in a number of ways. We would be happy to reflect on the committee's thoughts and findings in that area.

**Tommy Sheridan:** I read in a document—I think that it was in the policy memorandum, but I stand to be corrected as I do not have the document with me—that the only evidence that we had about young people was that the largest amount of alcohol that they accessed and consumed was

from off-sales. That was the only research that we had, but if lots of other research says something different, that is fine.

The idea that we have no evidence is unacceptable. The overwhelming weight of evidence that the committee has heard suggests that off-sales are one of the most problematic aspects of alcohol purchase in the licensed trade. That is why it is disappointing that the regulations are not firmer. If you are saying that the Executive is willing to examine the matter and that, if the committee makes a strong recommendation, you will consider it seriously, that is great. I hope that you will be open-minded.

**Tavish Scott:** I am open-minded on the issue, about which I am genuinely concerned. There is much in the arguments that committee members make. We will strongly and carefully consider the committee's findings.

The committee is right that protecting children is a strong principle of the bill, so the commonsense argument that has been made is persuasive. I will read the committee's report when it is published.

**The Convener:** Tommy Sheridan was right in his reference to the policy memorandum, which cites evidence that one third of young people have purchased alcohol from licensed outlets. I accept that the proof-of-age scheme may affect that, but the evidence is as Tommy Sheridan suggests.

**Margaret Smith:** I do not want to labour the point and I probably do not require a response from the minister. When we heard evidence from Executive officials, we were told about the lack of evidence and advised that the Executive was pursuing more evidence. At that time, I said that some of what is in paragraph 8 of schedule 3 could apply to off-sales without further evidence. I refer the minister to paragraph 8(3), which says:

"A drinks promotion is irresponsible if it ... relates specifically to an alcoholic drink likely to appeal ... to persons under the age of 18"

or

"is based on the strength of any alcohol"

or

"offers alcohol as a reward or prize".

Those provisions do not refer directly to binge drinking, but by applying them to off-sales we would err on the side of saying clearly in the bill that we are concerned about what is happening in off-sales.

Adding provisions to deal with off-sales would cover some, but not all, of the concerns that Mr Sheridan highlighted. We all know that our communities feel under threat from what goes on in and around off-licences, which usually involves many young people. If we do not deal with that in

the bill, that will be a lost opportunity. I accept that the minister might want to examine other evidence, but I ask him seriously to consider whether such off-sales issues could be dealt with in the bill, irrespective of further evidence.

**Tavish Scott:** May I reflect on that? As I said, I am open-minded about the matter. The suggestions are helpful. We will examine closely the committee's recommendations.

**Bruce Crawford:** We have received from the Scottish Grocers Federation interesting evidence that begins to tease out what it considers to be some of the statistics—I will not comment on how robust some of them are. The federation claims:

"the total percentage of alcohol sales on promotion is only 1.78% of the total over a three month period by volume",

which suggests that such sales are not large. It also says:

"We believe that the Scottish Executive should resist all attempts to control the way we promote and market the goods on our shelves."

Interestingly, the federation goes on to qualify that by stating:

"We are relaxed about a proposed minimum period for promoting alcohol products and would be happy to see a minimum period of 72 hours and we are also relaxed about controls on the packaging, whereby an extra 25% free is no longer permissible."

On the one hand the federation states that it does not want controls, while on the other hand it says that it is prepared to accept some. The submission is slightly contradictory, but nevertheless there is some hope in it for potential discussions.

The federation also states:

"We understand the Scottish Executive Licensing Team is commissioning research into the effects of off-trade promotions."

If that research exists, how far is it from publication? Obviously, that would add to the evidence that the committee has and would help us decide what suggestions to make to improve the bill.

I have one more small point. Would the simple measure of allowing only off-licence premises managers or personal licence holders to sell alcohol from off-licences introduce a level of restriction? Such a measure might go some way to controlling the flow of alcohol that finds its way into underage hands.

**Tavish Scott:** I am not sure that that measure would necessarily help. Many of the practical aspects will be covered by the operating plans; that is appropriate, although there must be a degree of consistency in the plans.

Jacqueline Conlan will deal with the question on the research—she knows about it—but on the

statistics that Bruce Crawford mentioned, my only point is that it is extremely helpful to have them on the record.

**Jacqueline Conlan:** The research is at an early stage. I have had two or three meetings with Alcohol Focus Scotland and researchers from the Scottish Executive to consider what kind of research we might be able to do. At present, the Scottish Association of Alcohol Action Teams is undertaking a study, the report of which will be produced by the end of June. We would have done that work anyway, because it is a useful desk study of the available evidence to find out how much of it hangs together. As the study may be informative, we agreed to decide at the end of June whether we could plug further gaps in our knowledge with research. Obviously, issues arise about whether any research that we conduct can reach sensible conclusions. For example, we must decide whether we can formulate research that will provide evidence about consumption, rather than just purchasing. We are actively considering research, but we will use the study that will report at the end of June, which we are not conducting. If we commissioned additional research, I do not think that it would produce results during the bill's passage.

**Tavish Scott:** I will add one point in relation to points that were raised by Margaret Smith and other members—John St Clair has just jogged my memory. Where there are legitimate issues about the number of off-licences, the process of assessment of overprovision will help. I can only speculate what the effect on prices might be, but if a local licensing board found, after careful consideration, that there was overprovision of off-licences in a particular area and took a decision on the numbers, that might have an impact on prices.

**Jacqueline Conlan:** The bill seeks powers that will enable us to extend the licence conditions that exist for on-sales to off-sales. The intention is that that should be done under the affirmative resolution procedure. Therefore, there would be parliamentary scrutiny of the results of any research.

15:15

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** I want to return to the minimum pricing schemes. We are advised by a Scottish Parliament information centre paper with which we have just been supplied that the Perth and Kinross scheme was introduced in October 2002. Anecdotal evidence suggests that the scheme was a success—it created a culture change and tackled problems of alcohol-related disturbance and disorder, which are serious problems for every city-centre dweller who is exposed to them. The scheme involved the setting of minimum pricing

conditions. The minimum price for draught beers, lagers and stouts was £1.50, and for spirits it was £1.00 for 25ml. Minimum prices were also set for wine, alcopops and jugs of cocktails.

The scheme was said to have been successful, but as Jacqueline Conlan pointed out, it is no longer in operation. The paper from SPICe tells us that it ended in November 2004, perhaps as a result of the successful action for judicial review in the Court of Session that Mitchells and Butlers Retail and the Spirit Group raised in relation to a similar scheme in Aberdeen. I have not had the benefit of studying Lord Mackay's opinion, but the paper suggests that his decision might have been made on the narrow ground that the Licensing (Scotland) Act 1976 does not provide the powers to introduce such schemes. If that is so, I query Jacqueline Conlan's response to Mr Sheridan, when she seemed to say that the matter was for the courts. I respectfully suggest that the courts interpret the law, but it is the Parliament's duty to make the law. The bill presents us with an opportunity to make the law and learn from Lord Mackay's judgment, by including permissive provisions to allow minimum pricing schemes and put them on a proper statutory footing.

The note from SPICe quotes Lord Mackay, who said that a licensing board

"might well take the view that adopting a policy of requiring that alcohol be sold in accordance with a minimum price tariff could prevent binge drinking."

We might well take that view, which might well be the experience of Perth and Kinross licensing board—it might have been useful to hear a little more from the board.

Lord Mackay went on to say:

"The board would, in my opinion, be acting outwith its statutory powers, and thus unlawfully, if it adopted and sought to impose a requirement that licence holders sold alcohol at or above minimum prices which the board had itself fixed."

Lord Mackay's opinion seems to be based not on the judgment of the Office of Fair Trading, which—from what we can gather—reached the opposite conclusion, but on the narrow confines of the powers in the 1976 act to deal with drunkenness.

I am neither a critic nor a particular advocate of minimum pricing schemes, but given that we will not legislate on licensing every year, it would be useful if the minister could give further consideration to the matter, because if such schemes have a successful track record in tackling city-centre civil disturbance and disorder—more information could be sought to ascertain whether they do—I hope that, with hindsight, we will not regard the bill as a missed opportunity to address the matter. I am sorry to have gone on at unusual length, but I have been

listening attentively thus far and I thought that I would take my chance.

**The Convener:** You could have omitted the word “unusual” from your final sentence.

**Tavish Scott:** I will try to be brief. First, on the premise of Mr Ewing’s question, the Perth and Kinross scheme ran for a short time. I do not suggest that Mr Ewing is exaggerating the case, but I think that we have all tried to address the fact that we cannot attribute massive cultural change—

**Fergus Ewing:** The scheme ran for two years.

**Tavish Scott:** Yes, but I honestly do not think that it is possible to say, “The bill will change Scotland’s attitudes to drinking in two years”—I have never made such a statement, as I hope that Mr Ewing will acknowledge. We should not suggest that a single mechanism, which was in place for a short time, could change the way in which things happen or the manner in which an area is policed. I went to Perth and Kinross and asked many questions about the scheme and genuinely tried to learn about it, but I do not think that the issues in relation to disorder in the city centre related just to the scheme; an awful lot of other good work was undertaken, which involved working in collaboration with agencies, the police and the trade. I was impressed by the work that the licensing board did and with all the associated activity, which sends a strong message to every licensing board and area.

On the precise question of why we have not opted for minimum pricing, I certainly do not want to get into second-guessing legal judgments and interpretations, but our approach of non-differential pricing is less invasive as it does not require each licensing board to set prices in a drinks tariff. I can only speculate what the front page of the *Inverness Courier* might look like on the day that such a drinks tariff was set. I dare say that the paper might reflect the views of many people. Minimum pricing would—to put it no stronger—be difficult. It would also ensure that we had an entirely inconsistent approach across the country.

For many reasons, but chiefly for the two that I have given, we decided that the minimum pricing approach was not the best one. Although that approach seemed to work in Perth and Kinross for a short period, I stress that the minimum pricing policy was not the only factor, as there were a range of other interagency activities to tackle what we all agree are important issues that need to be addressed. However, we need to make a judgment call about how best to tackle those issues. That is why we have gone down the route that we have chosen.

**The Convener:** I will allow two further points to be raised by Sylvia Jackson and Bruce Crawford, but we must then move on to other issues.

**Dr Sylvia Jackson (Stirling) (Lab):** On the issue of underage drinking, I support what Tommy Sheridan said. I have reread the policy memorandum’s section “Under-age drinking”, which was practically the first section of the document that I read. The link with small licensed grocer shops is clearly stated as one finding from the large-scale, longitudinal research that ministers commissioned from the Scottish Executive central research unit. The policy memorandum says nothing about further research being needed. Indeed, one bullet point states:

“the study has also found that the purchasing of alcohol, as distinct from frequency of drinking, is strongly related to delinquent behaviour.”

All these issues are linked. The policy memorandum could not be clearer on that point.

**Tavish Scott:** I accept that point absolutely, but the issue is not just about children. Sylvia Jackson is entirely right about the evidence on where children purchase alcohol. The protection of children should be an important principle of the bill, and I am sure that all MSPs share that objective. I am listening to what she says—I am hearing her loud and clear, as we say in my part of the world—but I must also have regard to the impact that such measures would have on other customers over 18 who legitimately buy alcohol in off-licences. However, I hear what she says about children. We will take back that point and we will reflect on what the committee says.

**The Convener:** After Bruce Crawford’s question, I will allow one further brief question to Tommy Sheridan, who started off this line of questioning.

**Bruce Crawford:** Jacqueline Conlan mentioned the potential for some kind of affirmative instrument at a later date. Does the minister accept that such a process would put Parliament and the committee at a slight disadvantage, in that we would neither be able to take further evidence on the research that the Executive has commissioned nor have the chance to go into such detail on the regulatory changes that could be applied to the off-licence sector?

Is there any way in which the work that has been commissioned could be fast-tracked to allow the committee access to the research before we get to stage 2? I have not had the chance to discuss this with my committee colleagues, but I wonder whether perhaps we need a supplementary evidence-taking session to examine that research so that we can get some measure on the face of the bill rather than rely on it being introduced by an affirmative instrument. Given the issue’s importance, which the minister has rightly recognised, I am not sure that dealing with the matter by affirmative instrument at a later date is the most appropriate way forward.



**Tavish Scott:** My understanding is that such research cannot be moved up suddenly just like that, so I will not pretend otherwise. It would be misleading of me to say that I could do something when I am not sure that I can. All that I can say is that, again, I absolutely hear what the committee is saying on this subject and we will reflect on it.

**Tommy Sheridan:** I have three questions. I apologise for having to leave early again—the convener knows that I am going to a parentcraft class.

Sylvia Jackson has done us a service by reminding us of the starkness of the evidence and the bill's objectives with respect to underage drinking. I hope that the minister cares less about general services for over-18s and more about homing in on an area in which we may be able to restrict the supply of alcohol to underage drinkers.

First, minister, have you considered statutory health warnings or alcohol concentration warnings on alcohol products to assist the public? Secondly, in the light of evidence that we have heard about the easy availability of lager with bread, for example, have you thought more about the desirability of prescribing how alcohol—given its dangers—is sold in supermarkets? There could be specific tills in specific areas so that there is not a laissez-faire attitude and lager and eggs are not looked on as the same kind of things that can be bought together.

Finally, on section 86(4), will you please confirm that you will withdraw the right of licence holders to “use reasonable force”, given that the evidence that we have received so far is that that would be a dangerous road to go down?

**Tavish Scott:** John St Clair is a lawyer and can deal with the issue of reasonable force. I cannot give the answer that Mr Sheridan wants. We have adopted our position for fairly strong reasons.

I will deal with the first two questions in reverse order. Mr Sheridan may be familiar with the expert group's recommendation on shelf displays. There can be a discretionary national licence condition. I will take on board what the committee says about that and I hope that we can respond positively to Mr Sheridan's question.

Labelling and advertising are reserved matters—I am sorry if that is a wee bit of a cop-out—but I assure Mr Sheridan that I discuss those issues with my ministerial colleagues in the Health Department. During the process that led up to where the bill is now, we sought to build stronger professional relationships with the industry in order to encourage it to consider such matters, but the formal position is that those matters are pursued by members of Parliament in London to achieve consistency throughout the United Kingdom. We do what we can in that area and can respond positively on the issue of shelf displays.

I invite John St Clair to deal with the question about reasonable force.

**John St Clair:** We are slightly puzzled by Tommy Sheridan's question, as the bill echoes previous legislation and the common-law position is that the publican can use reasonable force. Like previous legislation, the bill puts a statutory duty on publicans not to allow disorderly conduct and drunks in their pubs. Publicans cannot stop such conduct unless they can use reasonable force; the only alternative would be waiting until the police arrive, by which time it is often too late. The ability to use reasonable force has been a cornerstone of such legislation for at least 30 years and it is the common law. A pub cannot be run without a publican having the right to use reasonable force to keep an orderly house.

**Tommy Sheridan:** I am sure that Sheriff Principal Nicholson was aware of what was in the previous legislation and he said that that right is wrong.

**John St Clair:** I do not want to comment on his thinking, which he would have to explain to us in detail. I have described our rationale and my reading of the previous legislation.

**The Convener:** Leaving aside Tommy Sheridan's concern about how reasonable force will be defined, it seems to me that there is a danger that there might be an imperative for licensees to move trouble away from their premises rather than deal with it. They might move trouble out on to the street and not bring it to the attention of the police because it would constitute a black mark against them. That might increase the danger of serious and violent assaults, because violent behaviour would not be drawn to the attention of the police. What is your response to that?

15:30

**John St Clair:** I concur with that. We do not want to be in a position in which the responsible person dodges all responsibility by shoving the problem out on to the street. There is common law on how responsible that person is for acts that are committed within the ambit of his pub. I do not want to go into that today, but we are happy to write to the committee on the matter. It is a tricky area.

**Tavish Scott:** About a month ago, I spent a Friday night in Glasgow city centre with Strathclyde police. Between the early stage of the evening and 3 am, when many people leave nightclubs, the two sergeants who were taking us around showed us a video of precisely that type of incident, which was caught on closed-circuit television. A male who had drunk a considerable quantity of alcohol was ejected from an

establishment in central Glasgow. As far as I remember, the licence holder was hauled over the coals by the licensing board in relation to his activities and particularly those of his staff. No harm came to the gentleman who was ejected and in some ways it was reassuring to see that two young girls helped him and phoned the police—apparently, he was safely taken home. The point that members have raised is a serious one and we must have regard to it, but there is nothing to stop proper reviews, operating plan assessments and so on in that area.

**Paul Martin (Glasgow Springburn) (Lab):** My question is separate from the issue that we have been discussing, but it is related to the violence that erupts from premises. We took some evidence, particularly in Glasgow, about the consequences for local communities and the need for additional policing or environmental services such as cleansing. Some witnesses have argued that we should put in place a fee system whereby applicants are expected to pick up the cost of the additional resources that are required. Should we put in place a fee system to allow for that?

**Tavish Scott:** We do not propose such a system, although there is certainly an argument for one. There are two points to be made. First, owners of licensed premises would argue that they already pay taxes—both business rates and other forms of business taxation—for the delivery of local public services. Secondly, as I am sure Mr Martin is aware, there are understandable concerns from the trade about the fees review that is under way. In reforming licensing law, we are making significant changes to the regime and all licensed premises will have to go through a process of change, which is not without its critics. I suspect that if we laid on top of that another area of expenditure, we would find it much more difficult to deliver the reforms with the broad support of the trade. That support is important, because this is such an important area and—I say this in fairness to Fergus Ewing—we are going to deliver the reforms only once: we will not revisit the legislation in every session of Parliament. We have not looked at the area that Paul Martin mentions, but I understand the argument.

**Paul Martin:** The expenditure has to be picked up somewhere and, in effect, it is being picked up by the local authority rather than the licence holder, as the licence holder passes on responsibility for covering the cost of the additional resources that are required. Whether those resources are provided by the police authority or the council, it is the council tax payer and the taxpayer who has to pay for them. I am not talking about all licensed premises, but substantial premises, such as superpubs, will require services that are additional to those that are currently provided. There must be some scope for us to

consider amending the bill at stage 2 to allow local authorities to be given the power to set in place a fee structure so that, as part of the licence conditions, licence holders would have to meet the cost of additional CCTV systems, cleansing services and police, for example.

**The Convener:** I have a supplementary to Mr Martin's question. As things stand at the moment, a local authority's sole method of addressing the sort of problem that Paul Martin raises is to withdraw the licence, which would represent a bigger loss of income to the licence holder than would be incurred by a requirement on them to contribute towards the cost of reducing any behaviour that took place outside the premises and caused concern to local residents.

**Tavish Scott:** There are two issues. First, by definition, the withdrawal of the licence would be one heck of a curtailment of activity. Secondly, I hope that Mr Martin is comforted by the fact that licensing boards can include in the licence conditions of very large drinking establishments such as superpubs—I understand that they are now called vertical drinking establishments, which I presume to mean that they do not have any seats—a requirement to install CCTV, for example. That means that we and local licensing boards can ensure that such premises have an extra degree of security. Other appropriate measures include door stewarding. We need to have a balance between allowing such premises to be managed responsibly and in such a way that any potential for public disorder is derailed and placing an onus on them in that regard. I guess that the licensing regime is designed to create the conditions that allow that to happen.

**Paul Martin:** So you will be sending some cheques to Strathclyde police.

**Tavish Scott:** I write cheques to Strathclyde police under another line.

**Fergus Ewing:** I want to pursue a related point. Neither I nor the Scottish National Party would argue that licensed premises should have heaped on them other taxes, fines, fees or costs. It is germane to point out that, at present, they contribute fairly heavily to local government finance by paying their allotted share through the non-domestic rating system. I raised with a witness at a previous meeting—I think that he was from the Scottish Licensed Trade Association—the related issue of those premises that do not pay business rates, which might therefore be said to sponge off those that do.

I mention the issue because in Inverness and Fort William there were some well-publicised cases of licensed premises that operated as limited companies, went bust, re-established themselves as other limited companies, went bust

again and paid no business rates. Businesses that pay their taxes look on such companies as competitors that flout the law in respect of payment of business rates. I raised the issue quite early on. I am not saying that there are easy solutions, as was acknowledged in the reply that I received from the witness; I am aware of the legal difficulties.

I ask the minister to give further consideration to what is a serious problem before we move on to stage 2. I have encountered it in my work as a solicitor over the years and it is frequently associated with a small minority in the licensed trade. A large number of limited companies go bust, do not pay their taxes and leave unpaid business rates bills, usually for five or six-figure sums. It would be worth while obtaining an answer to why it is that, in some cases, local authorities have not recovered that money. The answer may relate to company law or to other reserved legislation, but I suspect that there are things that we could do to ensure that those who do not pay are not penalising those who do pay—and pay fairly heavily.

**Tavish Scott:** Mr Ewing would accept that the problem is not confined to the licensed trade. Business failures and the collection of overdue or unpaid tax are reserved matters. However, he can be assured that we are considering what we can do.

To some extent, Mr Ewing's question reflects the competitive nature of the industry. It is highly competitive and business failures will occur; the overview of licensing boards and the licensing forum will be important in gathering such information.

To pick up on what Mr Ewing said at the start, I want Scotland to have a strong and vibrant hospitality industry. Scotland needs that, whether in Mr Ewing's part of Scotland, in mine or in the convener's. We need an attractive club, pub and cafe society that Scots and visitors can all enjoy and we want the industry to provide career opportunities. I accept Mr Ewing's point about the importance of the industry to Scotland; we want the industry to be even better.

**Bruce Crawford:** We have heard evidence from people who are concerned that anybody has the right to object to anybody else's application for a licence and some people have suggested a geographical limitation on the right to object. You have seen that evidence. What are your views and have they changed?

**Tavish Scott:** The process should be inclusive rather than exclusive. If I remember rightly, the committee heard evidence from the chairman of the Edinburgh licensing board, who made the point that Mr Crawford raises. His evidence was persuasive.

Licensing boards use a number of criteria when they assess whether an objection is relevant. The example of the minister from Stornoway in the report by Gordon Nicholson is becoming part of folklore. All I would say about it is that, if the said minister from Stornoway has a strong view about a new superclub in Glasgow and wishes to object to it, I do not see why he should not write a letter. I suspect that the clerk of the licensing board would put the letter in the pile of letters from people who are objecting on first principles. The letter would be noted. That would be fair; our process should not rule people out.

We have discussed various core principles of the Licensing (Scotland) Bill this afternoon. One of those principles is communities' right to be involved and local people's right to express a view. Bruce Crawford may press me on the meaning of "local" but—and without wishing to be flippant—I genuinely believe that the process should be inclusive rather than exclusive. That is why we have designed it as we have done.

**Bruce Crawford:** I will not press you on the word "local", but I will ask you to consider the wording in the Gambling Act 2005, which has just been passed at Westminster. Section 158 defines interested parties in relation to objections. An interested party could be a person who

"lives sufficiently close to the premises to be likely to be affected by the authorised activities"

or who

"has business interests that might be affected by the authorised activities".

That wording does not prescribe a distance; for example, it does not say that a person must live within 50m of the premises. It therefore allows some flexibility. I do not expect you to accept today that such a form of words would be appropriate, but will you consider it as offering a way of making progress?

In evidence to the committee, the question arose whether the police or the local authority should have a right to object. You will have seen the evidence concerning the police. Have you reconsidered the issue?

15:45

**Tavish Scott:** As for police objections, we will meet ACPOS shortly, as I said—I think that the meeting is in the next couple of weeks—and we will consider that matter. I am aware of the evidence. That is a significant point, which has been made well in the evidence to the committee.

I cannot give Mr Crawford much comfort on his first point. The Civic Government (Scotland) Act 1982 has been on the statute book for a long time. It has operated without a geographic restriction or

any other curtailment on representations or observations that individuals, bodies, local communities or whoever may wish to make. I understand the concerns, but I honestly do not believe that the system will get bogged down. I am not minded to go down the route of closing the options down when, entirely reasonably, many representations made to the consultations on the bill and on other occasions wanted the system to operate in the way that we have proposed. Forgive me, but I cannot agree with Mr Crawford on that point.

**Bruce Crawford:** I did not say what my view was; I just asked the question.

**Tavish Scott:** I apologise.

**The Convener:** I was particularly struck by the fact that Bruce Crawford quoted positively legislation that was recently passed at Westminster.

**Tavish Scott:** Far be it from me to comment.

**Bruce Crawford:** Obviously, I would much rather that we were legislating in the Scottish Parliament, but I have to face some realities in the short term.

**The Convener:** Define "short term".

**Margaret Smith:** I will pick up on Bruce Crawford's comments. For a time, I served on a licensing board in Edinburgh. The minister knows that I have raised concerns with him about what is at least perceived to be—and I think is—a reduced level of police input to the licensing process under the bill.

We have had discussions about people ejecting others on to the street and the minister has put on the record today comments about the implications for the licence holder—they might be hauled over the coals, for example. To limit the police to only having the right to comment about relevant convictions would not give them the opportunity to make the most of their breadth of knowledge in making an input. When I was a member of the licensing board, I found it useful for the police not only to be able to input information about when things had gone wrong but sometimes to input information when things had gone right. For example, they could point out that there had been a disturbance at a licensed premises but that they felt that the licence holder had dealt with it responsibly and had trained their staff on the door to act responsibly. The police brought to the table that kind of broader information.

I seek reassurance that the minister is seriously considering enabling the police to continue with that wider role so that they can, based on their experience, express their general concerns about an individual who applies for a licence, make positive comments about an individual or comment

on the funding of a project when they feel that the funds might come from laundered money, for example. The police have access to lots of information that can be particularly relevant in relation to licensed premises. I seek reassurance from the minister that we will not limit the police to commenting on relevant convictions only.

**Tavish Scott:** If the issue was as serious as laundered money, I presume that the police would take the case to the fiscal.

It is important to point out that the restriction on the police applies only to the application. For the rest of the time, they can very much be involved in the process through making positive or negative observations, as Margaret Smith rightly describes. I assure her that we will meet ACPOS to discuss the matter fully and deal with those issues.

I hope that Margaret Smith will also accept that in the regime that will be in place—subject to the Parliament approving the bill—licensing standards officers will have a role. The work that they will do perhaps does not get done now or at the least will be considerably strengthened. They will have a role in liaising with various bodies, including the local forum. They will be able to show that they are close enough to the scene, to the trade and to the interested parties—not least of which are the police—to play what I hope will be a positive role.

I assure Margaret Smith that I will meet ACPOS representatives. However, it is important to recognise that the regime will change. The role of licensing standards officers will be important in the effective delivery of the measures that we propose in the bill.

**Margaret Smith:** ACPOS has expressed concern that there are no plans for a national database of personal licence holders and that that information will effectively remain with the licensing board that first gave the holder their licence. Will you comment on ACPOS's concerns?

**Tavish Scott:** You are right that those concerns have been expressed, but quite a number of views on the issue have gone the other way. The matter requires a balanced judgment call and we have to make the right assessment. At times, another national database is an attractive idea, but I would need to be persuaded that that would be the most effective use of public resources. We will discuss the matter with ACPOS.

**Paul Martin:** The issue is not just about what the police want to report. The public need to be certain that licensed premises issues that they have raised are being reported to the licensing board. I amplify community concerns in my constituency and the evidence that the committee has received about what happens when people report incidents involving licensed premises. If a crime has not been detected, an incident may not

be reported to the board. Is there a need for police authorities to report consistently to the board and not to be selective about what they feel is relevant? For example, if the police have been called to a particular off-licence premises 110 times, that could be included in some kind of report to the board of incidents in which the police have not detected a crime but about which there are community concerns. My experience is that the police do not always report such cases to the board.

**Tavish Scott:** I share Paul Martin's disappointment. If I was a constituency member where that was happening I would be pretty worried by it, too. If Paul Martin wanted to furnish us with the details, I would be happy to consider that example and to discuss it with ministerial colleagues in the Justice Department. Those incidents should be coming through the system. In the useful discussion that I had with the Strathclyde officers, they explained that the logging of calls was important to them in building up a picture of particular licensed premises and that that information was shared with the appropriate licensing board. I would be happy to consider the specific example and ways in which we can tackle it.

**Paul Martin:** There is a need for a recognised format, in which a certain number of telephone calls about a premises leads to its being reported to the board. People will say that that is additional bureaucracy, but a community does not want to object to an application and be told that there is no report from Strathclyde police, when the police have in fact made repeated calls to that premises. Strathclyde police might confirm that they have made repeated calls to the premises, but the incidents have not necessarily been reported to the board. Is there a need for some kind of format?

**Tavish Scott:** Indeed. Under the bill, the LSO would have to provide a written report. That would be built into the construction of the new regime. I hope that cases in which there were 126 calls, for example, about a particular off-licence would be logged in the written report—that would therefore be a matter of record in relation to the proceedings of the licensing board. I hope that that would help to pick up the process. Through the bill, we are trying to put in place mechanisms—not least of which are the LSO measures—to tackle that kind of issue.

**Margaret Smith:** Who would direct the activities of the LSOs? Would it be the board, the local authority, the police, or, as the Law Society of Scotland suggested, a national body? Is the role of the LSOs sufficiently clearly defined? Do you accept that there is the potential for a degree of confusion with the police? I refer, for example, to

the power that has been given to LSOs to enter unlicensed premises to check whether alcohol is being sold illegally.

**Tavish Scott:** We will consider the issue of the power of LSOs to enter unlicensed premises. LSOs will be answerable to licensing boards. I envisage that, in practice, the clerk to the board and the LSO—or, in particular localities, LSOs—would have a close working relationship. That is how the system would work. You asked about the job description. That will be worked on further, sharpened and, more to the point, published by the national licensing forum.

**Margaret Smith:** Do you have a timetable for when you expect the system to be in place?

**Tavish Scott:** As I said earlier, the members of the national licensing forum will be appointed this summer. They will have a number of things to get on with, but details such as the ones that we are discussing are important. I hope that the forum will make progress quickly. We will write to the committee with information on the precise timescale. I am sorry not to be able to give a more exact response.

**The Convener:** The next issue that I want to raise is perhaps a technical point, but it is important if it proves to be correct. Sheriff Principal Nicholson indicated to the committee that he believed that there could be a challenge to the bill under the European convention on human rights, on the basis that currently local authorities are licence holders and members of local authorities—councillors—would be the people who made decisions on licences through licensing boards. He contended that a case could be made for viewing licensing boards as tribunals that were not impartial and that, consequently, under the Scotland Act 1998, the legislation as a whole could fall because it was not ECHR compliant. I am sure that you will have picked up that issue in the evidence that Sheriff Principal Nicholson gave to the committee. What is your response to the concern that he expressed?

**Tavish Scott:** We met Sheriff Principal Nicholson a couple of weeks ago. Neither I nor any other minister is allowed to introduce legislation that he knows is not ECHR compatible. I assure you that we have checked the matter seriously and in considerable detail and do not have concerns about it. John St Clair may be able to provide the committee with further details of the process that was undertaken.

**John St Clair:** Over the past 18 months, we have gone into the matter with great care. As members know, no bill can be introduced to the Parliament unless it has been cleared by the law officers. The Presiding Officer can also object. There has been no suggestion of an objection from the law officers or the Presiding Officer.

Some of the jurisprudence that was available when we considered the issue had not come on stream when the committee first met to discuss it. The main point is that the availability of judicial review gives one an almost complete defence against a challenge under the ECHR. We will have wider rights of appeal than we had under the 1976 act. Appeals will go to the sheriff principal, but capping appeals will be the keystone of judicial review. Our firm view is that that makes the system ECHR compatible. We would be happy to give full chapter and verse to the committee, if members would like it. At the moment, we can assure the committee of our complete confidence that the bill is ECHR compatible from a legal point of view.

**The Convener:** We would find a fuller explanation useful. I am struck by two points. First, if local authorities were not licence holders, they would not have a potential conflict of interest and the councillors on licensing boards would be and would be seen to be impartial. That would be a relatively simple solution. The evidence that we have heard indicates that local authorities hold only a relatively small number of licences directly. Secondly, it is not long since the Executive required councillors no longer to be justices of the peace, and certainly not to sit on the bench, because that raised questions about their impartiality. Am I wrong in seeing a parallel between that situation and the situation of licensing boards?

**John St Clair:** There is a degree of analogy. However, the licensing board is more of an administrative body than a tribunal, which impacts on the general ECHR assessment. The House of Lords has made it clear that the existence of a judicial tier above an administrative body gives protection against a challenge under the ECHR.

**The Convener:** There are still a few areas of questioning that we want to pursue. It may be useful for us to have a five-minute break before reconvening.

**Tavish Scott:** That would be fabulous.

16:01

*Meeting suspended.*

16:07

*On resuming—*

**The Convener:** In the absence of the member who was going to ask the next question, I will allow Michael McMahon to come in at this point.

**Michael McMahon:** In all the evidence that we have taken so far, and I have not missed any of it, we have not got around to talking about an issue

that was raised in the Nicholson report but is not covered by the bill, although it is generating a bit of interest in the Parliament. Last Thursday, I attended a meeting at which the issue of the supply of alcohol at sports grounds was raised. The ban on the sale of alcohol in sports grounds, particularly football grounds, was introduced in the 1970s on the back of the McElhone report into football crowd behaviour. Has the Scottish Executive taken time to consider the issue?

There were two aspects to the discussions that I heard last Thursday. The first is technical and relates to the remit of the bill in relation to the supply of alcohol at sports grounds. The provisions to ban the sale of alcohol were in the Criminal Justice (Scotland) Act 1980, which was then updated through the Sporting Events (Control of Alcohol etc) Act 1985 and then the Criminal Law (Consolidation) (Scotland) Act 1995. Would the Licensing (Scotland) Bill be the right place for any amendment to be made to the law covering the supply of alcohol at sports grounds? That was one issue that people at the meeting last Thursday wanted to have clarified.

**Tavish Scott:** My answer is that, no, the bill would not be the right legislation through which to take action on that.

**The Convener:** I should point out that, if a member were to lodge an amendment on the issue, it would be for me to rule whether it was within the competence of the bill, which I would do under the guidance of parliamentary officials.

**Michael McMahon:** I fully appreciate that, convener.

**Tavish Scott:** I was not trying to suggest that you did not have that power, convener.

**Michael McMahon:** I was asking because no one at last Thursday's meeting knew whether the Licensing (Scotland) Bill was the right place for making that decision.

The rest of our discussion was on the theory behind the Nicholson report, which is the second point that I want to raise. The Nicholson committee concluded:

"We do not consider that it is appropriate that we should make any positive recommendations regarding the current restrictions on the sale and supply of alcohol at designated sports grounds."

The committee suggested, however, that

"the time may now be ripe for all concerned to give consideration to whether any changes are now appropriate",

given that the original ban came in on the back of problems in the 1970s. Would the Scottish Executive welcome a review? The Nicholson committee also said that the time might have arrived to run a pilot scheme at one or another of

the major stadiums. What is the Executive's view, given that the issue is raised in the Nicholson report and the bill seeks to address similar issues?

**Tavish Scott:** Michael McMahon raises an important issue and he is absolutely right that the Nicholson committee has made that suggestion. We have not accepted its proposal, however, and it might be useful to talk a bit about the process. I hope that Michael McMahon will accept my reassurance that the issue was considered very carefully last year. Last summer, or in the early part of 2004, there was a lot of cross-portfolio ministerial discussion, because the issue cuts across many different areas, such as health, antisocial behaviour, public order, justice and safety in general.

At the time, ministers had regard to the views of the Nicholson committee. However, based on analysis of that position and taking into consideration the point that Michael McMahon made about when the decision was initially taken and the legislation at that time, it was decided in May 2004 that existing controls would be retained, on the ground that the arrangements had worked well and were continuing to play an essential part in reducing drink-related disorder and the risk to public safety in and around events.

It is fair to say that ministers feel that any other decision would be inconsistent with other key Executive policies and so are opposed to the Nicholson committee's suggestion for a pilot scheme. That decision was taken last May and no further analysis has been made. However, I assure the committee that a lot of careful consideration was given to the issues by ministers across many portfolios.

**The Convener:** Obviously, the circumstances of the time were that quite serious disruption was taking place, particularly at football matches. However, there was not a problem at other sporting events, such as rugby matches. Should ministers perhaps consider whether latitude should be given to the Scottish Rugby Union in relation to Murrayfield and international rugby matches?

Also, behaviour at football matches seems to me to be considerably better than it was when the ban was introduced. In England and Wales, alcohol can be purchased at premiership football grounds and it seems to me that the behaviour of people at football matches in Scotland is not markedly worse than that of people in England and Wales.

**Tavish Scott:** Those are fair points and they were very much part of the ministers' considerations—they were part of the mix of analysis that we believed it important to consider. However, again, the balanced judgment was that public safety and public order issues are

paramount. The whole matter comes under the area of risk analysis based on professional advice from the police and other agencies. The risk analysis did not support any relaxation of the law.

You make a fair point about the SRU and international rugby matches, convener, but those involve large crowds of 60,000 or 70,000 people. We have all been present on such occasions and know that plenty of people consume alcohol before attending. The judgment that was made last year was based on an analysis of all the factors. It was not an easy call, but in order to send a consistent message not just in this area, but in a number of other areas, not least public safety and public order, we decided to maintain the existing position.

16:15

**The Convener:** Three members have indicated that they have questions. I ask them to be concise, because the minister has set out clearly the Executive's position on the matter.

**Bruce Crawford:** My first question relates to the technical issue that Michael McMahon raised. The minister said that it would not be appropriate to amend the law regarding the supply of alcohol at sports grounds through the bill. Would it be technically competent for us to do so?

**The Convener:** It is for me to rule at stage 2 whether an amendment is competent and for the Presiding Officer to do the same at stage 3.

**Bruce Crawford:** We are not yet at stage 2—we are only at the stage of questioning the minister. In your view, minister, would it be technically competent for members to lodge such an amendment? The long title of the bill suggests that its scope is fairly wide, because it refers to the Scottish Parliament making

"provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold".

Whether an amendment would be appropriate is another issue.

**Tavish Scott:** We understand that an amendment to change the law relating to the supply of alcohol at sports grounds would not be technically competent. However, it is not for me but for the convener and the Presiding Officer to rule on the matter. I would not begin to second-guess the convener.

**Bruce Crawford:** The convener may have to make a ruling at some stage.

I will comment in passing on another issue on which the minister may want to reflect. I regularly attend football matches in Scotland. In my view, the trouble is located on the streets, in parks, up closes and in bus parks, where people drink

considerable amounts in an unregulated, uncontrolled way. There is more disorder outside grounds because of the alcohol that is consumed there. I understand that the subject needs to be examined more closely, but would allowing alcohol to be consumed in a much more controlled fashion be a more mature way of dealing with the issue in future? Having a regulation that stipulated that on the day of a match no drinking would be allowed in public outside football and other sporting grounds might be a more appropriate approach.

**Tavish Scott:** Many areas have byelaws relating to drinking in public areas, so the issue could be addressed in that way. Allowing for the sale of alcohol at football grounds would presumably enable the people to whom Mr Crawford refers, who have already drunk alcohol, to drink more. It is difficult for me to make sweeping generalisations on the matter. I can only repeat what I have said, which reflects our analysis and the position that we hold.

**Michael McMahon:** My point is not dissimilar to the one that Bruce Crawford made and is based on the discussion that took place at the meeting that I attended last Thursday. There has been analysis that indicates that the average person who attends a football match drinks about three pints of beer in a pub before going to the game, and that it would be better for them to be in the ground earlier and to have the beer there.

There is no restriction on the amount of alcohol that may be drunk in the context of corporate hospitality. Often people who are having a glass of champagne with their meal in those surroundings abuse the situation by consuming a considerable amount of alcohol. There must be some restriction on activities that already take place inside football grounds, such as people having champagne with their eggs Benedict—or not, in some cases. Should something be done to address that issue?

**Tavish Scott:** The member makes an entirely fair point and raises an issue that must be addressed, although I would rather not be drawn on the particular circumstances to which he refers. By definition, the reforms apply to corporate hospitality facilities, which will have to have operating plans, take all the appropriate measures that we expect of any licensed premises and comply with standard licence conditions.

I accept that there is potential for the argument to be partly about finance-raising mechanisms for football clubs. Football clubs are corporate businesses—the bigger clubs are huge corporate businesses with turnovers of tens of millions of pounds, if not more, per annum—so we need to be clear about the arguments and, as much as possible, the motives in this discussion.

**Paul Martin:** The proposal to allow the sale of alcohol at sports grounds is not a reaction by the

clubs to fans' concern but a purely finance-based initiative. Clubs need the additional capacity to make them viable. I understand why they are making that proposal.

The bill includes measures that could make pubs family friendly, but how could those measures possibly work if children were exposed to people drinking in a football environment? The argument is similar to that which is made in relation to banning smoking in public places: people who do not want to be exposed to cigarette smoke have pushed for such a ban. How would the proposal to sell alcohol at sports grounds help people who do not want their children to be exposed to drinking? I know that that can happen at the moment, but adding to spectators' opportunities to drink when they arrive at football grounds would provide an opportunity to accelerate the drunken state.

**Tavish Scott:** I agree with Paul Martin's point. There appears to be an inconsistency in the clubs' attitudes. On the one hand, they rightly work hard to be more family friendly, to encourage kids to go along to games and to encourage more of our youngsters to play football by allowing them to see the best football players in Scotland—we all hope passionately that that will happen and be a source of pride for us all. On the other hand, however, they would allow children to see signs of alcoholic behaviour of one variety or another. Paul Martin makes a good point and I hope that the football clubs will reflect on it.

**Dr Jackson:** Many people consider that the bill's provisions on permitted hours will open up the potential for variation and patchwork provision not only throughout Scotland, but within localities. Would such enormous variation, not only from place to place but from premises to premises, give rise to any operational difficulties for the police?

**Tavish Scott:** As I am sure that the evidence has illustrated, 11,000 out of the 17,000 licensed premises in Scotland already have regular extensions, so the system is not perfect at the moment; that is one of the arguments that is driving change. It will be for licensing boards to decide on the overall approach that they want to take in any area. If there is concern that clubs could empty at different half-hour periods in the course of an evening because that is what they have applied for, it would be appropriate for a licensing board to achieve consistency in closing times through its standard conditions. Closing times do not have to be staggered. Licensing boards can have a policy on that and I have no doubt that they will have such a policy, because they will be well aware of the point that Sylvia Jackson makes.

I ask Jacqueline Conlan whether that is right.



**Jacqueline Conlan:** Yes, it is, but I will add to it a little. Boards will have policy statements and we expect that those statements will give a steer on hours. A board might take into account the nature of a particular area—residential or city centre, for example—and say that it would expect premises in that area to close at, for example, 1 o'clock.

However, under that system, licensees can apply for the hours that they want to open. If the board has a certain policy, a prospective licensee can come in and say, "We hear what you say on that, but we think that you should allow us to open an hour later for X, Y and Z reasons. We will have security staff and introduce closed-circuit television and so on." They can make a case for the hours that they want, and the board will have to take a decision on whether that is appropriate, on the basis of the licensing principles.

**Dr Jackson:** I want to ask about occasional extensions of permitted hours for events. If I remember correctly, the student body that gave evidence thought that there could be an unforeseen occasion for which it would want an extension. Why is there no provision for that? Is there a reason, or has it just not been thought about?

**Tavish Scott:** My understanding of the word "occasional" is that it must mean occasional, but we would be happy to consider that issue again. There is an argument that needs properly to be addressed. If the committee makes a recommendation on that, we will be happy to consider it.

**Dr Jackson:** Given that there will be no requirement for licensees to apply for regular extensions of permitted hours, as is done annually at the moment under a system that requires public advertisements, will there not be a loss of focus for potential objectors? Does that not detract from the community involvement aim?

**Tavish Scott:** That point has come out in a number of ways. The operating plan will detail the individual licensed premises hours, on which the application will be based. In the first instance, therefore, there will be the right to object or to take a view on that. Thereafter, just as we discussed earlier, if there are concerns, complaints or worse—criminal activity for example—the licence can be reviewed. The strong powers of review mean that there is nothing to stop that. I do not want to overegg the pudding, but the position of licensing standards officers is important in that regard. If a particular licensed premises is causing concern, the LSO has principal responsibility to mediate and ultimately to make a written report on the basis of those concerns. At that stage, a process would be followed that would allow people to be involved.

I understand the concern, but the purpose of the regime is to move the process forward and to have a more positive approach to problem solving, which we hope will help.

**Dr Jackson:** The next question is almost a reverse of my earlier question. At present, many, if not most, licensing boards operate a differential in opening hours—although extensions make them more similar—such that pubs might shut at midnight while nightclubs might stay open until 3 am. What will happen to that in the future? The police have expressed concern that there could be operational difficulties if all premises shut at the same time.

**Tavish Scott:** That is an interesting issue, which I discussed with the Strathclyde police during the evening that I spent with them in Glasgow. There is an argument that a staggering approach—for example, if a particular institution or club wants to close at 2.30 am as opposed to 3 am or 3.30 am—can help with policing and dealing with public disorder. The principles of the bill are to help to reduce public disorder, to allow communities to be safer and to protect people. The national conditions will apply and those principles must be followed in an individual operating licence.

As Jacqueline Conlan said, building in safety measures and precautions such as CCTV and other things that are appropriate to all stewarding, particularly at a late time of night or in the early morning, will allow adequate controls to be in place. That will be done in conjunction with the police and other authorities.

16:30

**The Convener:** I thought that the idea was to get away from a staggering approach in the early hours of the morning.

**Tavish Scott:** I am sorry for not seeing your pun coming. I could comment, but I am not going to.

**The Convener:** The police and others have raised a serious point with us. They think that the gap between pubs and clubs closing could be narrowed as a result of closure times not being as clearly defined. Currently, perhaps half of the people who are in a city centre will leave the pubs and go home and the other half will leave the clubs two or three hours later and go home, but the gap could narrow and a bigger concentration of people would have to be dealt with.

**Tavish Scott:** The gap could narrow, but I suspect that a number of premises will not want to take the extra leap to meet the national conditions that will apply and that there will still be market differentiation. Some premises will not be prepared to make the necessary investment to upgrade to the next level and therefore to be able

to remain open later. I suspect and hope that that will take care of the matter, but we will keep a close eye on it and I suspect that the national licensing forum will want to keep a close eye on it too.

**Dr Jackson:** Margaret Smith asked about police involvement with the licensing boards, and I think that it was said that the police do not have sufficient input. Will sufficient procedures be in place for the police to liaise with licensing boards? The police's input in such scenarios is important.

**Tavish Scott:** I do not have any concerns about that; I have been reassured in discussions with Strathclyde police and a number of other police authorities, including the constabulary in my home area. I am not in any way comparing a small town in Scotland with Glasgow city centre, but getting police perspectives from different parts of Scotland is interesting. Generally speaking, the police do not have any concerns about their ability to ensure that their point is heard. Jacqueline Conlan will talk about the technical process that is involved.

**Jacqueline Conlan:** The general view that was expressed in the Nicholson process was that the police work extremely closely with licensing boards. Largely as a result of the proposal for licensing standards officers, the police's view is that it will be easier to build up relationships under the new regime, as there will be identified persons with whom to build up relationships. In general, police forces have licensing sections that deal with liquor licensing and other subjects. They are administrative sections that also look around licensed premises. I think that the police see their role as being very much supported by the licensing standards officers. If communication must be improved, there will certainly be a direct route for communication to the board and if there is a suggestion that a licence should be reviewed, it is clear that the police and the LSO will collaborate closely before a decision is taken to request a review or on remedial action that must be taken.

**Dr Jackson:** If boards develop policies on hours to maintain differentials and particularly in order to maintain the viability of dedicated nightclubs, would that be tantamount to reintroducing categories? Obviously, the issues of disorder and staggered times must be considered.

**Tavish Scott:** The operating plan system at the heart of the regime will ensure that licensing boards have assessed—at the initial application stage and in the on-going process—applications against their standard conditions locally and the conditions that must apply to the institution; I keep calling licensed premises institutions, but you know what I mean.

I do not have any concerns in that sense, because I believe that the process will be robust

and transparent enough to be observed and consulted on, and for concerns to be expressed if need be. The process is subject to review, and during the period an individual, a community or a community council can raise any concerns. Other measures, such as licensing standards officers, are also available. There are enough checks in the system to deal with that point.

**Dr Jackson:** But you accept that, at the end of the day, licensed premises might all want to remain open until a fairly late hour, which might cause problems, and we might end up with the staggering process. We might go back to the same category system that we have at the moment.

**Tavish Scott:** We cannot make any assumptions about how the system will work out. I hope that Sylvia Jackson accepts that there will be a difference between large city centres, where there is a broad range of licensed premises, and Stirling and other smaller towns, where there is not that range. It is a classic case of one size not fitting all. There will be lots of variation in the number of people in different geographic areas, and therefore in the number of facilities.

**The Convener:** Would it be possible for a board to keep the different categories under the bill? Could it determine that a nightclub is a premise that opens at a specific time, so that in order to qualify for a licence a nightclub could not open at 11 am and still be open through to 3 am, but instead would be able to open only at, say, 9 o'clock or 10 o'clock at night?

**Tavish Scott:** That is not our intention. We should be describing the situation in terms of the national conditions that will apply, and therefore the hoops that will need to be gone through to trade late into the evening or into the early morning. I do not know whether that is helpful. I do not see the system working in that way.

**Jacqueline Conlan:** That is right. In my mind, that would run counter to the principles of the bill. We have a single premises licence and a personal licence, and the boards' policies and licensing conditions are not intended as a means to circumvent that framework. The intention is different under the new system. Not only will we have a single licence, but if there has to be a distinction between premises, it should be able to be supported on the basis of the licensing principles, such as public order and public nuisance. I cannot see the system supporting a distinction that says that, just because premises are classed as a pub, we will make them close earlier because they do not have a dance floor.

A distinction exists partly because, when the 1976 act was drawn up, the concept was that someone could open later at night if their provision

of alcohol was ancillary to the entertainment that they provided. However, in essence, people go on to a nightclub to drink and not necessarily to dance; they want to go to the club to obtain alcohol.

**Mr Davidson:** I once had the privilege of convening a meeting between licensees, a police force and a Government. That happened in the Falkland Islands, and it concerned a specific case that is applicable in this context. A lot of servicemen went for rest and recreation to Port Stanley, where the pubs were all obliged to close at a set time. It was the old fashioned Scottish system—last orders were called, the bar shut at 10 o'clock and at 10 past 10 people left. That put everybody on the street, and the police force could not cope with large numbers of troops being thrown out with nowhere to go. I learned from that that the publicans did not just want to extend the marketplace. They did not want everybody to be chucked out on the street at the same time, so that the problem, if there was one, would simply be displaced and the police would have to deal with it.

The police did not want everybody out on the streets at the same time, because they did not have sufficient manpower to deal with that situation and the Government did not know what to do. I want the minister to be absolutely clear about whether, if we are to have staggered closing to suit the requirements for policing an area, police forces will be able, almost in a mandatory sense, to decide how many establishments they are capable of policing at certain times and to use that power over the licensing boards' new powers. We need clarity from the minister about whether that is what he has in mind or whether such matters will simply be dealt with through good will between the licensing officer, the police force and the board.

**Tavish Scott:** If I may say so, that is a bit of a simplification of the process. It should not be taken as gospel that police forces always say that staggered closing times—to use the convener's phrase—work everywhere. We need to think about the issue carefully. The new regime will ensure that police forces are represented on the local licensing forums, which means that, along with other members of the forums, they will observe and consider the structure of the local licensing trade, the market, the geographic area and related issues about which we have rightly talked at some length this afternoon such as disorder and public safety. That will allow the licensing forums to make a proper assessment of such issues. It is a healthy development that forums, whether they are in Aberdeen, Perth or wherever, will be able to point out issues that arise in a particular locality and which need to be addressed and thought about seriously.

This is all hypothetical, but if, in a forum's discussions about such issues, the police

recommended a particular course of action to deal with closing hours, which the licensing forum agreed to and then recommended to the licensing board, the board would be bound to consider that recommendation carefully. The structure that we are putting in place will allow more careful and proactive consideration of the issues that Mr Davidson raises. One reason why, subject to parliamentary approval, we will set up the forums separate from the licensing boards is to deal with the exact point that David Davidson fairly made about ensuring that issues are properly analysed outwith the charged atmosphere of dealing with individual licence applications. I hope that David Davidson accepts that we are putting in place a structure, regime and mechanism that will ensure that such issues are tackled properly in particular localities.

**Mr Davidson:** The financial memorandum, in its broadest sense, covers the resources that are available to police forces, but we have a chicken and egg situation. If a licensing board wants to run the centre of Glasgow with establishments open all hours, will the police force that is responsible have sufficient resources to deal with that; if not, where will those resources come from? Who will be responsible for that?

**Tavish Scott:** By definition, policing the centre of Glasgow is an operation for Strathclyde constabulary. Without going into the operational details—although they were explained to me in great depth during my visit—I was impressed with the operation that the police carried out that night. The operation was good because the police worked closely with the trade and both sides knew what was going on. In fact, they were not sides—that is the wrong way to describe the situation. There was only one side and everybody knew exactly what was going on. The operation was impressive.

The local licensing forums will take such issues into account. Members will have met the senior police officers in their areas, so they will know that they are pretty good at arguing for more resources. I dare say that the police will make their case persuasively in such forums.

16:45

**Mr Davidson:** It would be helpful if you could make clear the Executive's position on the transitional arrangements and grandfather rights. Will all licensed premises that exist now roll forward with grandfather rights without having to jump through any additional hoops or meet particular standards of behaviour and activity? Will you wish to ensure through regulation, for example, that premises will have to improve their standards during the transitional period in order to keep their licences? Is there an element of

protectionism? How will new and perhaps better products come into the marketplace if transitional rights are linked to a total limit on the number of premises? What sort of training requirements are you likely to ask for within the transitional period? The questions are all part and parcel of what the trade would like to know about.

**Tavish Scott:** I am not persuaded by the blanket grandfather rights that you describe, which would simply mean that nothing would change. That is not what licensing reform—30 years after the Licensing (Scotland) Act 1976—is about. That would not be right. I hope that you are not arguing for that.

**Mr Davidson:** I am not arguing for anything—I am asking questions.

**The Convener:** Let the minister answer.

**Tavish Scott:** I am telling you what the position is. I accept the business regulatory argument and I accept the concerns about the handover or the move to the new regime being onerous. I have discussed the issue in considerable depth with the trade.

Jacqueline Conlan and the Licensing (Scotland) Bill team are in constant discussions with the trade. A lot of work will be done on the matter in the coming months not only to ensure that businesses fully understand the implications of the new act—subject to when Parliament passes it and in what form Parliament passes it—but to give them time to respond. We will not bounce a big industry in Scotland into compliance on day two after passing an act on day one. I want to be very clear with Mr Davidson on that point.

A lot of work still has to be done on the transitional period. The matter is still being considered with the trade and with licensing boards. We are taking the work forward, for example with small groups of licensing clerks who know their areas, know their businesses and know the trade. We are working in conjunction with the bill team to set up a fair and workable system. The system must be fair during the transitional period and businesses must have the opportunity to move into the new regime.

Training will be the subject of considerable discussions and of consideration by the proposed national licensing forum. The great majority of businesses have nothing to fear in respect of training, because most businesses that take their operations seriously already train their staff. It is inconceivable that someone would run a business that is subject to a series of licence conditions without the staff who must deal with those conditions day in, day out and hour in, hour out being aware of them. Training requirements will be such that businesses will be aware of the regime and can comply with it and respond positively to it.

Our initial discussions with the trade suggest that there are very few concerns about training because it is, in the great majority of cases, built into the operations of the business.

**Mr Davidson:** When do you think your consultations with the trade will be finished? When will you come to Parliament with definite views about transitional periods and application of grandfather rights?

**Tavish Scott:** We hope to do some of that through the autumn, but we certainly hope to have done that by the end of the year; we might even be able to do it before the bill finishes its final process through Parliament. It is important that the committee and Parliament are kept up to date with that. It will also be in my interests to ensure that those discussions happen smoothly, clearly and transparently so that the trade knows exactly what is going on. I will try to ensure that that happens.

**Mr Davidson:** Did I hear you correctly that that will happen before the final stage of the bill?

**Tavish Scott:** We hope to have the details sorted out by the end of the year.

**The Convener:** Bruce Crawford has a supplementary question.

**Bruce Crawford:** My question is not so much on grandfather rights and transition as it is on administrative complexity. I was encouraged by what the minister said to David Davidson. We have seen correspondence today from London about deadlines. For instance, there is a deadline of 6 August for transferring currently held conditions across to the new regime. Only about 10 per cent of people have applied so far and a huge volume of applications is expected right up to the deadline. Licensing boards in Scotland must be concerned about administration of the transition. A working group has been set up. Will the minister assure us that the group will look not only at grandfather rights and fairness but at the sheer volume of work that licensing boards will have to do? We may have to consider some sort of staggering system—although perhaps I should not keep using that word—or some sort of incremental system so that people can cope with the administrative burden. It will be pretty cumbersome on the trade and on the licensing boards.

**Tavish Scott:** That is a fair observation. I ask Jacqueline Conlan to give Mr Crawford some details. If there are details that we cannot give today, we will write to the committee. We have a lot of work to do on the system.

**Jacqueline Conlan:** I have recently set up a small group of five clerks to consider transitional arrangements; Stewart Ferguson, the committee's adviser, is one of them. The primary purpose of

the group is to consider the practicalities and administrative difficulties of transition. We acknowledge those difficulties and accept the point that Mr Crawford has made. We are aware of what is happening in England and Wales, and I am going to see my opposite number in Whitehall on Friday to discuss some of the problems that they have encountered. I hope that we will be able to avoid the same problems up here.

The group has met only once and administrative issues were discussed. We acknowledge, as do the licensed trade, that whatever form transition takes, it will be sensible to ensure throughput of applications so that existing licence holders who are transferring to the new system cannot simply do so when they want to. To ensure throughput, the transfer will have to be at a time of our choosing.

**Bruce Crawford:** That is reassuring. Thank you.

**Mr Davidson:** You have spoken a lot about overprovision. From what we have heard, not all of your thinking is engraved on tablets of stone. That is fair enough; you have been very open about that and have said that consultation continues. However, should there be more guidance so that boards and the trade understand what is meant by overprovision, and understand how the measures on overprovision will be administered?

Sylvia Jackson asked about this earlier: apparently, there is a heading of "licences" but, within that, every single licence application will be treated as if it were in a separate category. Could we have some clarity on that?

**Tavish Scott:** That is a fair question. Our intention is that one of the first tasks of the national licensing forum will be to provide a clear definition of overprovision. Mr Davidson will acknowledge that the process will be subject to parliamentary approval of the bill; he would have criticised me if we had been presumptuous about that. We are seeking to achieve the clarity that people are calling for, and that will be one of the first tasks of the national licensing forum. I hope that that work will get speedily under way this summer.

**Mr Davidson:** Will the group of five clerks that Jacqueline Conlan mentioned consider how overprovision might be defined? Definitions are important requirements in legislation, if we are to avoid ambiguity and ensure that provisions cannot be open to challenge left, right and centre.

**Tavish Scott:** No, that group's job is not to define overprovision and it would be unfair to ask it to undertake such a task. It is definitely the responsibility of the national licensing forum to define the term and to undertake further work in relation to the definition. The clerks will deal with the matter locally.

**The Convener:** You said that the proposed national licensing forum would produce guidance on overprovision. You have said in the past that there will be trade representatives on the forum. For clarification, will you confirm that the forum will include representatives of regulatory bodies, by which I mean licensing boards?

**Tavish Scott:** The matter is under discussion and we will come back to the committee on it—perhaps even before the summer recess. No final decision has been made, so I ask the committee to bear with us.

**Bruce Crawford:** Although the fee regime is not in the bill, it is one of the big issues for the trade. The intention is to recover the costs of the new licensing arrangements through the fee system. What level of fee increase is anticipated in the move from the current system to the new premises licences? Will the fees cover all the costs that boards incur and the costs of providing licensing standards officers? Will help be given with the set-up costs, which will be significant? Although the trade understands that there must be fee recovery to help to pay for the process, I anticipate that it will be concerned about substantial set-up costs. Transitional help from the Executive would help the trade to accept the new arrangements and take ownership of them.

**Tavish Scott:** Members know that a fee review is under way. I must allow the review to conclude and then consider its recommendations. The review will address the matters that Bruce Crawford raises, which are important considerations for the trade and for licensing boards. Licensing boards have made vigorous representations on the matter because they have concerns. I cannot say much more at this stage because until the review is concluded we cannot respond to it.

We have talked a little about the job of licensing standards officers and it is clear to me that the costs associated with that job must be considered from a local government perspective. For example, if an environmental health officer is doing a related task, we must consider whether posts can be amalgamated. We must consider efficient local government in that context—I have received strong representations from local government on the matter. We do not want to introduce another tier of bureaucracy, as some people envisage will happen, or to increase costs, if the justification for doing so is questionable. Much work is required, but I want to ensure that we work with the Convention of Scottish Local Authorities and local government so that when we make judgments about the fee-review recommendations, we do so in the overall context of the tasks that will be needed, which will be to do not just with licensing standards officers but EHOs

and others, as Mr Crawford knows from his background in local government.

**Bruce Crawford:** I realise that this is a difficult area, but given that you have set up the group to consider it, will you assure us that the group will examine how to establish a fair level of fees? Small and large operators all pay different business rates, but if a standard fee is to be applied to them all, the small operators will be particularly hard hit. The Scottish Grocers Federation submitted interesting evidence about bands and the levels of fees that are to be paid. I know that you cannot be conclusive, but I want to know that the issue is being considered.

17:00

**Tavish Scott:** I cannot be conclusive, but I assure Mr Crawford that the fairness that he has just described is one of the principles that the review group is using. Jacqueline Conlan will keep me right on this, but I think that business rates are one of the mechanisms that can be used to reflect the different circumstances and sizes of premises.

**The Convener:** We move on to the question of excluded premises. Section 115 of the bill contains a presumption against premises that are primarily used as garages. I have a lot of sympathy with that proposal when we are talking about a busy urban area where there are many other licensed establishments and where most of the garage's business is the sale of petrol and other associated goods. However, one concern that has been raised is that in some rural parts of Scotland where retail forms a significant part of the income of such premises, the proposal could lead to the closure of rural petrol stations as a result of their profitability dropping significantly. Did the Executive consider that and are you able to take it into account?

**Tavish Scott:** You will not be surprised to hear that I am rather worried by that. It is probably the wrong thing for a minister to do but I can give a constituency example. I am going to the island of Unst off Shetland this weekend because there is an application for a hydrogen project. The petrol station at Baltasound is just as you described. There is a strong argument about the example that you have just used and we are considering how to address that.

**The Convener:** Okay. Thank you for that.

I have questions about sections 116 and 118. Section 116 is about exempt premises; hovercraft are defined as exempt premises—I am not aware that hovercraft operate in Scotland—as are aircraft and railway vehicles. I understand the need for that because of the type of operation that they run. The sale of alcohol in aircraft and railway vehicles is governed by United Kingdom legislation. Is

there any intention to require individual licence holders to be present on such vehicles when they are operating within the UK and serving alcohol? There are many issues around people being properly trained in serving of alcohol that are as appropriate to such operations as they are to static licensed premises. As we have seen on many occasions, antisocial behaviour can also happen on railway vehicles and aircraft when people are under the influence of alcohol.

**Tavish Scott:** I will let Jacqueline Conlan answer that, but that is a good point. There have been some difficulties because aircraft and trains operate throughout the UK. For example, can we use the measures for Loganair services that only operate in the Highlands and Islands?

My understanding is that hovercraft have been included because they were included in the 1976 act. That might not be a reason, but that is where it comes from. Jacqueline Conlan can deal with the aircraft issue, as long as she does not stop me getting a gin and tonic on the way home.

**Jacqueline Conlan:** Aircraft are covered under other legislation. We took the view that it would be difficult to cover certain journeys but not others where airspace is involved. However, plenty of controls are available to deal with problems that arise on passenger aircraft.

Trains are a different story. It is difficult to license trains because they are not just moveable, but composed of a number of carriages. A train is not a static item that can be licensed, and trains also tend to travel through various different licensing board areas. We have tried to introduce some controls—for example, we hope that such exempt premises will still have to comply with the no-proof, no-sale requirements of the bill although they will not have to be licensed.

**The Convener:** Let us move on to ferries. Issues have been raised with us by some ferry operators about the definition of “vessels” that would fall within the definition of “premises” and would require such vessels to be licensed. Often, ferries are not moored or berthed in a specific location, but may move around the area in which a ferry operator operates. How will we define which area would be the appropriate licensing board area for a ferry? Also, would it be appropriate for licensing boards to be given certificates of suitability from building standards officers in relation to ferries, which would be types of construction with which those officials were not familiar?

**Tavish Scott:** Discussions are on-going with both Caledonian MacBrayne and NorthLink Orkney and Shetland Ferries in relation to exactly such issues. The problem of where a ferry operator would be licensed is not insurmountable.

The headquarters of a ferry company may be in a set location—logically, that area's licensing board's jurisdiction would apply. Such matters are under discussion with the ferry operators, along with other issues that are yet to be resolved.

The view is that, for longer crossings, ferries are licensed premises and need to be subject to the same licensing laws as other licensed premises. We must ensure that we sort out the practicalities of that, such as the availability of a single premises licence holder, but such problems are not insurmountable. We will work them through with the ferry companies.

**Bruce Crawford:** I want to ask about appeals. Information has come to us—I do not know how accurate it is—that the bill will be amended to give objectors to, and applicants for, personal licences the right to appeal. Is that the situation?

**John St Clair:** When the bill was introduced, the appeals mechanism was incomplete because we were still in discussion with the sheriffs principal about the best way forward on that. We finally agreed on three specific points. First, we will spell out in the bill all the provisions that will be open to appeal. In short, those will be substantive judgments by licensing boards, as opposed to purely procedural matters. They will be spelled out by amendment at stage 2. Secondly, any appeal will be made to the sheriffs principal and will come from either an applicant or somebody who asks for a review of a licence. A person who objects to an initial application will not be allowed to appeal; appeals will be allowed only from somebody who seeks to have an application reviewed after it has been granted.

Thirdly, appeals will be made by stated case and, following Nicholson's recommendation, there will be a special hastened procedure to appeal against an interim suspension when a board has said that circumstances are such that a licensed premises should close down immediately. We took the view that, because that could have a seriously damaging effect on a business, there should be a fast track to a review. The wording has been agreed with the sheriffs principal, who will deal with such matters expeditiously as part of an appeal procedure—in fact, they will deal with such appeals in a matter of days.

That package of appeals measures will be produced as an amendment that will be lodged at stage 2.

**Bruce Crawford:** It is useful to hear that. Those are complicated but important areas of the bill. Is there any capacity within the Executive to let the committee see that stage 2 amendment a considerable time before we reach stage 2?

**John St Clair:** Yes—we would be happy to do that.

**Fergus Ewing:** The Scotch Whisky Association mentioned that, in England and Wales, there is a statutory offence of refilling branded bottles with cheaper drinks—for example, refilling a malt whisky bottle with cooking whisky. There might be evidential difficulties in some such cases, but it seems to me to be a serious point, so I wonder whether the Executive might follow suit?

**Tavish Scott:** Jacqueline Conlan is an expert on blended whiskies, so I ask her to respond.

**Jacqueline Conlan:** The Scotch Whisky Association approached us and we met its representatives. It wrote to us asking that we add the substitution of spirits drinks to our list of relevant offences when we make regulations. The minister agreed to that and we wrote back recently to tell the association that the Executive will be happy to do that.

**Fergus Ewing:** I suppose that it would still be possible to substitute one malt for another.

I hope that my next question is within the bill's scope. It relates to the regulation of licensed premises. If, following a smoking ban, licensed premises wish to provide facilities to allow customers to continue to smoke lawfully—as has happened in Ireland—such as outdoor seated areas within the curtilage of the premises, canopies or other methods of providing protection from the weather or even, as I have heard from an intern from Cork who works for me, retracted ceilings in nightclubs, which is an advert for Irish ingenuity if there ever needed to be one—

**The Convener:** I do not think that such ceilings would go down well in Scotland, given the rainfall.

**Fergus Ewing:** Would the Scottish Executive support such measures in principle?

**Tavish Scott:** I can only support in principle imaginative business solutions to a policy objective that, I am sure, the majority of us share. Such business innovation is to be welcomed, and I am sure that a number of such building solutions will be employed in coming years.

**Fergus Ewing:** So the Executive does not propose to replace a ban on smoking in public places with a total smoking ban.

**Tavish Scott:** The Executive's position on that is clear and I am aware of no proposals to change it.

**The Convener:** That brings us to the end of a fairly extensive period of scrutiny of the Executive. I thank the minister and his officials for their contributions and look forward to starting stage 2 in a number of weeks' time—provided, of course, that the general principles receive Parliament's approval at stage 1.

17:13

*Meeting continued in private until 17:19.*





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