

LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 20 September 2005

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

24th Meeting 2005, Session 2

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

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

*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)

*Euan Robson (Roxburgh and Berwickshire) (LD)

*Tommy Sheridan (Glasgow) (SSP)

COMMITTEE SUBSTITUTES

Colin Fox (Lothians) (SSP)

Mr Bruce McFee (West of Scotland) (SNP)

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

Dr Elaine Murray (Dumfries) (Lab)

Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

George Lyon (Deputy Minister for Finance, Public Service Reform and Parliamentary Business)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 6

Scottish Parliament

Local Government and Transport Committee

Tuesday 20 September 2005

[THE CONVENER *opened the meeting at 14:00*]

Interests

The Convener (Bristow Muldoon): Welcome to today's meeting of the Local Government and Transport Committee. The main item on our agenda is consideration of the Licensing (Scotland) Bill at stage 2, but before we proceed to that, item 1 is a declaration of interests. I invite Euan Robson, as a new member of the committee, to declare any relevant interests.

Euan Robson (Roxburgh and Berwickshire) (LD): I have no registrable interests to declare.

Licensing (Scotland) Bill: Stage 2

14:01

The Convener: Item 2 is stage 2 of the Licensing (Scotland) Bill. I welcome the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, George Lyon, and three officials from the Scottish Executive who will be supporting him.

Members should have copies of the bill, the marshalled list of amendments, which was published on Monday morning, and the groupings. Today's target is amendments to section 25, which we will not go beyond. I do not expect us to get that far, because I intend to conclude around 4.30, although my decision on when to finish will depend on where we are in a grouping.

Section 1—Prohibition of unlicensed sale of alcohol

The Convener: Amendment 6, in the name of the minister, is grouped with amendments 74, 75, 78 to 81, 83 to 85, 113, 114, 121 and 124.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): Thank you for your introduction. I am happy that I will be working with the committee over the next few weeks on this important bill.

The amendments in the group are technical and aim to move away from the current definition of wholesale transactions that do not need to be covered by a licence. The current definition of "wholesale" focuses solely on the quantity of goods sold in establishing whether a transaction is wholesale. Under the new definition, wholesale sales—which will continue not to need a premises licence—will be trade-to-trade sales without a retail element, which is much more in keeping with modern practice. Accordingly, I commend amendment 6.

I move amendment 6.

The Convener: Do you wish to speak to any of the other amendments in the group?

George Lyon: No, they are all consequential on amendment 6.

Amendment 6 agreed to.

Section 1, as amended, agreed to.

Sections 2 to 5 agreed to.

Schedule 1

LICENSING BOARDS

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 8, 26, 42, 47 and 102 to 104.

George Lyon: The amendments in the group are technical. Their purpose is to ensure that the bill allows for all applications, notices and so on to be communicated electronically, in order to reflect more modern ways of working.

I move amendment 7.

Amendment 7 agreed to.

Amendment 8 moved—[George Lyon]—and agreed to.

The Convener: Amendment 131, in the name of David Davidson, is grouped with amendments 132, 144, 146, 148, 149, 154 to 156 and 161.

Mr David Davidson (North East Scotland) (Con): Forgive me if I am a little hesitant; I managed to leave all my notes at home, although the bases for what my amendments seek to do are in the papers. Amendment 131 is consequential on removal of section 7, which would leave decisions on overprovision to licensing boards, without direction from a minister.

Amendment 132's aim is to set up a national register so that the names of people who have personal licences granted to them would be recorded somewhere. We need a national licence for that—I beg your pardon, I am reading the wrong bit; I jumped a line.

Amendment 132 is to leave out section 7, which will introduce a duty to assess whether there is overprovision. I believe that if we have total restriction there will be restraint of trade. Should a new product come to the market, such as when someone who wants to open a new restaurant seeks a licence, that duty could be restrictive. By removing the duty, it would be left to licensing boards to decide locally the quality and value of any individual application, which I believe is the correct approach. Amendment 131 obviously follows on from amendment 132, although they do not come in order.

Amendment 144 is a consequential amendment on overprovision. Amendments 146, 148, 149, 154, 155 and 156 are also consequential and amendment 161, which would leave out a line, is a consequential amendment based on removal of the duty to assess overprovision.

I move amendment 131.

George Lyon: The amendments in the name of David Davidson seek to remove the ability of licensing boards to protect their communities from the undesirable consequences of there being too

many licensed premises. A frequent complaint from constituents and the police is that areas have reached saturation point with licensed premises and boards do not have adequate tools to tackle such situations under the Licensing (Scotland) Act 1976. We do not therefore consider that it should be left to the market to determine on its own how many licensed premises of whatever type there should be. The amendments in the group would remove boards' ability to make an up-front assessment of overprovision involving the licensed trade, the police and communities. In fact, the amendments go even further; they would remove overprovision as a ground for refusal to grant a licence, which has been available to boards since 1976.

The overprovision assessment, although it is a national policy, has been drafted to ensure sufficient local flexibility. Boards can decide which areas are overprovided for and how to define them. Boards can also decide whether all kinds of premises in the area should be affected or just those that offer certain kinds of activities. Boards will be responsible for gathering evidence to support their decisions.

Do we really want to prevent boards from deciding that in a specific area there are too many off-sales or too many premises offering adult entertainment? The overprovision assessment will allow such decisions to be made without stifling development of other kinds of premises and innovations in the same area. In addition, the overprovision assessment is not a blanket ban; boards' conclusions on overprovision create a presumption that there is overprovision, but it is still open to an applicant to apply for a licence and to demonstrate that the overprovision assessment should not apply in their particular case. It might be that someone decides to apply for a licence for a particular type of premises or a particular type of operating licence, which might persuade boards to grant the licence. The national licensing forum has produced excellent draft guidance for boards on overprovision, which will be sent to the committee shortly.

On the basis of my arguments, I ask Mr Davidson to seek to withdraw amendment 131 and not to move the other amendments in the group, as I intend to oppose them.

Mr Davidson: The minister said that guidance has been sent to boards on how to deal with overprovision and that, if a person wants to appeal or have another go at setting up premises or a facility, that opportunity will be available. Why is the Executive including the overprovision measure in the bill when the minister and his predecessor have said that although guidance will be given, decisions will ultimately be left to local boards?

The minister supported some of what I said. A limit on the number of premises already exists—that limit is how much people can spend. People should have choice in the marketplace; the market will see off in its own way premises that are no longer attractive. The market has never been interfered with in the past and should not be interfered with in the future. Given the expansion in some of our cities and towns with new estates being built, will there be an arbitrary figure for the number of licensed establishments in—for the sake of argument—south Aberdeenshire, where the population is increasing? The matter is for local boards and individual applicants to negotiate and to deal with within the law. The issues of good behaviour and performance can be dealt with at the renewal stage.

I intend to press amendment 131.

The Convener: The question is, that amendment 131 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

Jackson, Dr Sylvia (Stirling) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)

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

Muldoon, Bristow (Livingston) (Lab)

Robson, Euan (Roxburgh and Berwickshire) (LD)

Sheridan, Tommy (Glasgow) (SSP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 131 disagreed to.

The Convener: Amendment 9, in the name of the minister, is in a group on its own.

George Lyon: Following the committee's request on the matter, and as announced during the stage 1 debate, we have considered further the acceptable minimum number for a licensing board quorum. Amendment 9 will reintroduce the formulation that was used in the 1976 act—the quorum will be half of the number of members, with a minimum of three. We hope that that will be a sufficiently flexible formula to cater for larger and smaller boards and to allow larger boards to achieve the width of local knowledge that is required. I hope that the committee will support the measure.

I move amendment 9.

Tommy Sheridan (Glasgow) (SSP): I apologise for not attending the stage 1 debate, minister. Some of my remarks may have been covered at that time. Are you happy that the formula will allow maximum representation on

boards from throughout the whole of cities such as Glasgow or Edinburgh? During stage 1 examination of the bill, concern was expressed that three members would not be representative. The formula that you propose is that half of the number of members, but not fewer than three, will form a quorum. Are you confident that that will allow sufficiently varied representation in the bigger board areas?

George Lyon: The committee requested that the Executive revisit the issues of board size and board quorums after hearing views from some boards, particularly the Glasgow licensing board, in which I assume Tommy Sheridan has a keen interest. The boards wanted to continue to have up to 20 members—they argued that larger boards are needed to achieve broad local knowledge. However, we argue that the board members do not sit on the boards as councillors, but in a quasi-judicial role, with local knowledge being delivered by licensing standards officers.

We agreed to revisit the issue of quorums to ensure consistency of decision making, but not to allow large and unwieldy boards to continue. Amendment 9 will therefore amend the quorum formula to ensure that, in the larger boards of 10 members, a minimum of 50 per cent of them—that is, five members—will be required in order for the board to take decisions. That addresses some of the concerns that have been raised.

14:15

Bruce Crawford (Mid Scotland and Fife) (SNP): My point has been dealt with, so I am happy to leave it.

George Lyon: There is one other point that I should perhaps make. If boards want a greater geographical spread, they have the option of setting up two areas within their boundaries, as Argyll and Bute and other boards have done, to reflect proper representation. The bill allows that to be done.

Tommy Sheridan: Does the Executive envisage being more proactive on the division of boards within areas? Being from Glasgow, I am concerned that there is only one board for the whole city. The bill does not cover the idea of community representation on one board covering the whole of the city. Will the Executive stick its neck out a wee bit and encourage the larger board areas to consider subdivisions to allow more local input?

George Lyon: The answer is no. Ultimately, that is a decision for councils, but in my discussions with Gordon Macdiarmid from Glasgow I pointed out that boards have the option to do that. It is up to the Glasgow board to decide the right way forward for itself.

Amendment 9 agreed to.

Schedule 1, as amended, agreed to.

Section 6 agreed to.

Section 7—Duty to assess overprovision

Amendment 132 not moved.

Section 7 agreed to.

Section 8 agreed to.

Section 9—Licensing Board's duty to keep a public register

The Convener: Amendment 133, in the name of David Davidson, is in a group on its own.

Mr Davidson: I spoke earlier about amendment 133, although I spoke to it out of turn. Amendment 133 would oblige ministers to keep a register once premises had been given a licence. It is vital that people across the country can check on who has a licence. For example, if someone wants to move to work in a different area and they put on their curriculum vitae that they have a licence, it must be possible to have that checked simply and efficiently.

The minister spoke earlier about using the web and electronic communications where possible. That makes the system cheaper and easier to run, and is part and parcel of amendment 133. The amendment has validity in that if we are to have a national system we must for a variety of reasons have a national database that can be readily accessed.

I move amendment 133.

Bruce Crawford: I have seen the minister's letter of 12 September, which deals with a national database for licence holders and outlines three options. The minister seems to be coming down in favour of option 1, which is outlined in his paper.

I agree that there is a need for a national licensing register and that such a register should be required. Given that the minister seems to be on his way to accepting that requirement, it will be interesting to hear from him whether David Davidson's amendment would be sufficient under the law to ensure that there is a requirement on the Scottish Executive to create and maintain a register. I am reasonably supportive of what David wants to achieve, but I want to hear what the minister has to say.

Paul Martin (Glasgow Springburn) (Lab): I intended to make similar points.

Tommy Sheridan: I support the thrust of what David Davidson said. I recall that the police's evidence to the committee suggested that one of the problems with people who are not the best

licence holders is that they simply put the licence in the name of a partner or a relative to avoid being refused at board level. If we had a register that was readily available to be checked, the number of instances of such situations would be reduced. I am not saying that such situations would not arise at all, but a register would certainly undermine the ability of bad licensees to avoid detection. I wait to hear whether the minister has persuasive arguments.

George Lyon: We are fully aware of the concerns that were expressed by the Association of Chief Police Officers in Scotland and the committee, which feel that a central database would be a valuable tool for licensing boards under the new system. As Bruce Crawford rightly pointed out, I have already written to the committee to confirm that I acknowledge the benefits of such a tool and will consider the issue further.

However, amendment 133 is not needed. At this early stage, it is important that options on the approach that we will take are not discarded. Amendment 133 makes no mention of the role that licensing boards will play in maintaining local databases. It would make more sense for boards to input the information that they collect directly on to a central database, but we need to discuss matters with the United Kingdom Government, which is considering whether to establish its own database, before we decide what is the best way forward.

Furthermore, the bill does not preclude Scottish ministers facilitating the setting up of a national central database and under section 81, ministers will be able to regulate data sharing by licensing boards. However, a decision about whether to establish a central database must ultimately take into account the availability of resources. That is not something that should be ignored by the Executive or the committee.

I hope that members accept my firm commitment to consider the matter further and to report back to the committee. I would be grateful if Mr Davidson sought to withdraw amendment 133.

Mr Davidson: The minister has gone a long way towards satisfying me. However, I would like to know why he is still talking about boards having their own databases, which they will have to share, rather than a national database. His comments on that made me slightly uneasy. I am not sure whether that accords with what he said in his letter to the committee, but that is my interpretation of what he has just said. There will obviously be a cost to the proposal, but that is true of any proposal. The most effective way of dealing with cost would be to set up a national resource that would be accessible not just to the police authorities, but to the public. It would be easy to collate and present the relevant information.

I think that the minister has satisfied me and, on that basis, I am prepared to seek to withdraw amendment 133. However, I reserve the right to lodge a similar amendment at stage 3 if the minister does not meet the committee's requirements in the meantime.

The Convener: Mr Davidson has indicated that he is prepared to withdraw amendment 133, so I would prefer not to reopen the debate.

George Lyon: I just want to clarify what I said. My point was that it would make more sense for boards to input the information that they collect directly on to a central database.

The Convener: David Davidson has indicated that he wishes to withdraw amendment 133. Is that agreed?

Tommy Sheridan: No.

The Convener: The question is, that amendment 133 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Sheridan, Tommy (Glasgow) (SSP)

AGAINST

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

Jackson, Dr Sylvia (Stirling) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)

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

Muldoon, Bristow (Livingston) (Lab)

Robson, Euan (Roxburgh and Berwickshire) (LD)

ABSTENTIONS

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

The Convener: The result of the division is: For 1, Against 6, Abstentions 1.

Amendment 133 disagreed to.

Section 9 agreed to.

After section 9

The Convener: Amendment 134, in the name of David Davidson, is in a group on its own.

Mr Davidson: Amendment 134 seeks to make available to the minister of the day a national licensing forum that would firmly and permanently incorporate representatives of both off-sales and on-sales licensed trade. I accept that current members of the licensing forum have the relevant experience and connections, but that situation is not set down in tablets of stone. I want the industry to be a serious partner in the long term. I have seen nothing to suggest that the industry does not want to play a constructive role in dealing with the problems in Scotland and in ensuring that we have a good, robust and fair licensing system that protects the public at large.

I intend to press amendment 134 because the three people in the licensing forum who currently have a connection with an industry body may not necessarily be there for ever and a day. I want future ministers to be tied into ensuring that the off-sales and on-sales interests are part and parcel of the forum and that they are involved in its research and its advice to the minister.

I move amendment 134.

Bruce Crawford: I speak in support of amendment 134. First, I remind members what we agreed about the national licensing forum in the stage 1 report. We noted the progress that had been made on the forum and we said that we might take further evidence from the minister. The committee also welcomed the then deputy minister's commitment to keep the committee informed of progress on the forum over the summer. It was therefore a surprise to me when the Executive made a public announcement during the summer about the make-up and size of the forum.

Obviously, there was considerable disquiet in the on-sales licensed trade, because the forum does not include anyone who has substantial experience of operating in that arena; it has a person who has only some relevant experience. Had the minister come back and talked to the committee about the potential composition and size of the forum and kept us informed of progress, we might not have reached the current impasse, which has fractured the good work that the Executive and the various arms of the licensed trade did earlier.

I therefore have considerable sympathy with what David Davidson seeks to achieve. Through amendment 134, he seeks to ensure that voices that are raised about the difficulties of the national licensing board can influence the board's deliberations. The on-sales licensed trade is the biggest part of the licensed trade in Scotland and the forum will be weakened if it does not have a representative from that sector. Amendment 134 would ensure that the forum had a representative from a part of the Scottish economy that is important for tourism and how we greet people who come to our country.

The minister may be able to persuade me that everything is hunky-dory, but I am sure that organisations such as the Scottish Beer and Pub Association and the Scottish Licensed Trade Association will tell us bluntly that they are concerned about how the forum has developed. I support amendment 134.

14:30

Paul Martin: The issue for me is that amendment 134 proposes a specific kind of

membership for the forum. I would welcome a commitment from the minister to allow the forum to evolve. Previous legislation has specified how similar organisations will operate.

If the forum is to become a powerful force, it should be given the opportunity to evolve; it is not for us to be prescriptive. The commitments that I seek from the minister are that the forum be given the opportunity to consider its representation over a reasonable period and that it be allowed to evolve over that period. We appreciate that organisations change over time, but if the bill is too prescriptive it will, in effect, become a straitjacket. I would welcome an amendment that says that we will look at allowing the forum to evolve “within a specified period”. We should let the forum take some of the decisions on representation. We have had representations from all the organisations that should be involved, but the forum’s representation needs to be spread more widely. Other organisations will be interested in being represented.

George Lyon: Amendment 134 asks us to appoint to the national licensing forum at least one representative of a body representing the interests of the on-sales trade and one representative of a body representing the interests of the off-sales trade. It may be helpful and useful to the committee if I set out further details on the national licensing forum.

The purpose of setting up the forum is to establish a national body on which issues concerning the licensing and control of alcohol can be aired and debated by all those with an interest in an effective licensing system in Scotland. The forum has been looking at detailed work on overprovision, training and the development of the LSO role, all of which are important underpinnings of the bill. We expect therefore that health, education, the police and consumer associations as well as representatives of the licensed trade will be actively involved. Representation has to be wider than the trade itself.

That is the background to the setting up of the national licensing forum. It is definitely not meant to be a body on which the trade has any form of privileged position and we do not want to send out a signal to that effect. The trade is well represented on the national forum, but without anyone else being ruled out. Two of the current members are Mr Paul Smith, deputy chairman of the Bar Entertainment and Dance Association, and Mr Scott Landsburgh, chief executive of the Scottish Grocers Federation.

Having served on a leading representative body, I understand the concerns that are out there. It is always important for bodies to be involved and to be seen to be involved. I say to Paul Martin that the national licensing forum, which will run with its

current membership for two years, is to be reviewed at the end of that period. If the forum continues in future, there will be an opportunity to look again at its membership when it is reconstituted.

It is important to stress that the national licensing forum and the sub-groups that are dealing with overprovision, training and LSOs are in regular discussion and consultation with the representative bodies in the licensing trade throughout Scotland. Those bodies are having an input on the formulation of the policy content of those three areas. I hope that the committee accepts my assurance that they are not excluded from the process; indeed, they are very much part of and involved in it. They have been consulted in regard to those matters.

I also hope that David Davidson will accept my assurances that the matter will be looked at again. As I said, there will be a further opportunity to look at the membership again when the break comes at the end of the forum’s first two years. On that basis, I hope that he will seek leave to withdraw amendment 134.

The Convener: I invite David Davidson to respond to the debate and to indicate whether he will press or seek leave to withdraw amendment 134.

Mr Davidson: Like the minister, I am a member of the National Farmers Union of Scotland—I think that I know which body he was referring to. It would be strange for a body that gives advice to a minister on agriculture to have no farming representatives within its membership. The situation of the forum is similar.

We have adequately seen that the organisations that represent licensed premises have been constructive, adult and progressive in assisting the minister. Because the bill is targeted at a very large body that is vital to the Scottish economy, it is common courtesy that those organisations should have a place on the forum as of right. At the moment, the minister chooses who sits on the forum and that will apply also in future. I seek to ensure that the essential partners in the process—and I deliberately talk about off-sales as well as on-sales because the evidence has shown that one of the big problems relates to off-sales—have the right to have a representative on the forum. I understand that people retire from business and that it is possible that someone who is on the forum just now might not be there in future. I want to cover that for the longer term to ensure that off-sales and on-sales licensees are involved and are able to speak directly to the minister without having to go through another body.

I am not decrying or talking down anyone who is on the forum; I have a lot of respect for some of

those people. However, I am looking to the future and I am not convinced by the minister's arguments that it will be all right in two years' time when someone takes another look at the situation. We are making legislation just now and it should be good and pragmatic and not based on the promises of a minister who might not be in power or even in the Parliament in years to come. There might even be a different Government, although I will not bring that into it at this stage.

I will press amendment 134 because we have to flag up that the licensed trade in its different forms has to be involved in giving first-hand advice to the minister.

The Convener: The question is, that amendment 134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 134 disagreed to.

Section 10 agreed to.

Schedule 2

LOCAL LICENSING FORUMS

The Convener: Amendment 10 is grouped with amendments 135, 11 and 12. Amendments 10 and 135 are direct alternatives, so if amendment 10 is agreed to and then amendment 135 is agreed to, amendment 135 will replace amendment 10.

George Lyon: Executive amendments 10, 11 and 12 deal with local licensing forums and address the issues that the committee raised in its stage 1 report. Local licensing forums are an essential element of the new licensing system. They will provide a valuable opportunity for local representation and local voices to be heard. It is important that we get the membership structure right. I want to respond to the committee's concerns that the current maximum membership of 10 might not allow for sufficient local representation. It is with that in mind that we have lodged amendment 10, which seeks to increase the maximum figure for membership to 15.

Amendment 11 would allow ministers to amend that number in light of experience gained in the future. In addition, in order that local forums are seen to be open and transparent, we have lodged amendment 12, which requires that meetings of the forums be held in public.

Mr Davidson has lodged an amendment that seeks to increase local forum numbers further to a maximum of 20. I am interested to hear what he will say about that, because I might be minded to withdraw amendment 10 in favour of his proposal for 20 members, if he convinces me.

I move amendment 10.

The Convener: There is a challenge for you, David.

Mr Davidson: I have listened carefully to our gracious minister. The committee heard a lot of evidence about the sort of groups and individuals who might bring good value to the debate in the local licensing forums. We should consider some of the forms of representation in the large cities, for example in relation to youth work and health. By limiting the number of members to 10, we would not get an adequate cross-section of an area to give good advice.

My thinking in lodging amendment 135 was that if the Executive was going to raise the number to 15, why should we not raise it to 20. That would ensure that there is a reasonable number of members. It would not be so many that meetings could not to be conducted efficiently but would be enough to allow—possibly as Mr Sheridan has talked about in the past—community representation, and so on, to feed in good information.

I find it strange that the minister is so prescriptive in limiting the membership. There are licensing forums out there with very large numbers involved. I am looking for a reasonable number that will ensure democratic input as well as practical input, without getting out of control.

Tommy Sheridan: I support amendment 135 and refer again to the Glasgow experience. From the evidence that we have received from Glasgow City Council and from the convener's conversations with Councillor Macdiarmid, who is the current convener of the licensing board, it is clear that Glasgow City Council intends to have only one licensing board, which means that Glasgow will have only one licensing forum. A membership of 10 would be very small, given the named agencies that the bill requires to be represented on the forums, and it would leave a maximum of three places for community representatives.

Amendment 135 proposes to increase the forum membership to 20. I would prefer something even

more prescriptive for the bigger authorities, as that should be the minimum number of people for them to have on their forums. However, a membership of 20 still gives much more room for community representatives from throughout a city such as Glasgow. There are nine defined areas and nine area committees in Glasgow, so the idea of having just three community representatives for the whole city is ridiculous. I strongly support the idea of increasing the membership of local licensing forums to 20 and encouraging the bigger authorities to make that their minimum.

I welcome the Executive's amendment 12, which seeks to ensure that local licensing forum meetings are held in public. That is a good amendment, but I invite the minister to clarify how that would be determined. What does he mean by saying that the meetings will be held in public? Will notice of them have to be given in specific journals or in other ways? It is fine for meetings to be held in public, but the public need to know that meetings are being held.

Michael McMahon (Hamilton North and Bellshill) (Lab): I am glad that Tommy Sheridan spoke after David Davidson. If the minister was waiting for David to convince him why the membership should be increased to 20, "I'll see your 15 and raise it to 20," was not a particularly strong argument.

The evidence from Glasgow on community representation was especially persuasive. As someone who represents Lanarkshire and can see the diversity of local communities in that area, which would want to be represented on as large a body as possible, I think that raising the membership to 20 would be much more conducive to allowing effective community involvement. A figure of 20 allows a bit more flexibility in the system than either 10 or 15 would. I hope that the minister accepts that as an explanation as to why the membership should be 20 and not 15.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I apologise for not being here at the start of the meeting.

The flexibility that amendment 135 would permit could be beneficial in some circumstances. Section 10 states:

"Each council must establish a Local Licensing Forum for their area."

It goes on to say:

"where the area of a council is divided into licensing divisions, the council may, instead of establishing a Local Licensing Forum for their area, establish separate such Forums for each division."

In Highland Council, I imagine that the latter would apply, with separate divisions in each area. Indeed, it is hard to see how one forum serving the

whole of the Highland Council area could be workable. However, if there were to be only one forum, then, as is often the case with meetings that are held in Inverness, many members of the forum would be physically unable to attend all the meetings. One would expect a certain accretion of people who, because of business or other commitments, would find it difficult to attend every meeting. The bigger a council area was, the more difficult it would be to have meetings attended by all forum members.

Like amendment 10, amendment 135 does not give a mandatory number of members—the number is discretionary. The forum could have up to 20 members, but the power to specify that there should be 20 members would not necessarily be exercised. Indeed, on balance, meetings with 20 people tend to be unwieldy. A maximum of 15 people is desirable—I do not want to reveal any state secrets, but that at least is my experience of the Scottish National Party's executive, which often involved more than 15 people.

Amendment 135 would allow more flexibility. It may not be sensible to appoint more than 15 members to the forum, but it would be useful to have the power to do so. For that reason, I am inclined to support David Davidson, despite the irony of a Conservative apparently supporting bigger government. Until today, I thought that the Conservatives were committed to the opposite.

Finally, I have a question for the minister. I do not understand what the phrase "for the time being" in amendment 11 means. It seems to be otiose.

14:45

The Convener: I see that the SNP is committed to trying to get its group size down to 15 as quickly as it can to make group meetings more effective.

Paul Martin: We will help the SNP with that.

Bruce Crawford: I am not sure that 29 September is on anybody's mind.

Fergus Ewing raised an issue that I wanted to talk about among other issues that relate to amendment 11. I think that the committee is predisposed to accept that an upper limit of 20 is right, but if we agree to amendment 11, we will give the power to the minister to change that number by order, which seems a bit perverse. We are arguing in a particular direction, but the minister will have the power to do anything that he wants to do about the maximum or minimum number of members of forums in future. I am all for flexibility, but such flexibility for the minister seems to stretch the envelope a tad.

Like Fergus Ewing, I think that using terminology such as "for the time being" in legislation is

strange. I presume that it means in perpetuity, until the minister decides to act. In those circumstances, the number will no longer be for the time being.

I have grave concerns about amendment 11. If the committee is serious about suggesting an upper limit to the number of members of forums, which does not mean that there must be 20 people on them, but gives the minister the power to change that number in future, that would seem to take away from what we are trying to achieve. Perhaps the minister can persuade me otherwise.

George Lyon: I am not a lawyer, of course, but I have been informed that the phrase “for the time being” in amendment 11 refers to the power to change the number of members, which can obviously be changed more than once.

I am persuaded by the argument that there should be a maximum number of 20 members on a forum, but I will not say who persuaded me. Michael McMahon and Mr Sheridan certainly put forward strong arguments. I intend to seek to withdraw amendment 10 in favour of amendment 135 and to move amendments 11 and 12.

Tommy Sheridan: What about the point that I made about meetings being held in public?

George Lyon: We envisage that meetings will operate on the same principles as those on which community council meetings operate. It will be up to councils to advertise that a meeting is open to the public and to promote the meeting to ensure that members of the public are aware that it is taking place.

Bruce Crawford: The minister—

The Convener: I do not want to reopen the debate.

Bruce Crawford: The minister did not answer my question about whether, once the act is passed, he will have the power to change the number of members on the local licensing forum as and when he sees fit.

The Convener: Obviously, he would have that power, if the order was accepted by the Parliament. The minister does not need to come back in on that point—I think that the member just wanted that point of clarification to be included in the *Official Report*.

Amendment 10, by agreement, withdrawn.

Amendment 135 moved—[Mr David Davidson]—and agreed to.

Amendment 11 moved—[George Lyon].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Sheridan, Tommy (Glasgow) (SSP)

ABSTENTIONS

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 6, Against 0, Abstentions 3.

Amendment 11 agreed to.

Amendment 12 moved—[George Lyon]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 11 and 12 agreed to.

Section 13—Licensing Standards Officers

The Convener: Amendment 13, in the name of the minister, is grouped with amendment 14.

George Lyon: Amendments 13 and 14 address the committee's view at stage 1 that licensing standards officers should be able to cover more than one local authority area. I firmly agree that that is extremely desirable in the interests of efficient government, as it would allow smaller local authorities to share LSOs. Members of the national licensing forum also support the proposal. Amendment 13 will achieve that policy and amendment 14 is consequential on it.

I move amendment 13.

The Convener: No members wish to speak, so it looks as though the amendments are finding favour.

Amendment 13 agreed to.

Amendment 14 moved—[George Lyon]—and agreed to.

Section 13, as amended, agreed to.

Section 14 agreed to.

Section 15—Powers of entry and inspection

The Convener: Amendment 15, in the name of the minister, is grouped with amendments 136, 16, 137, 138 and 17 to 19.

George Lyon: ACPOS and the committee expressed concern at stage 1 about the right of licensing standards officers to enter and inspect unlicensed premises. I agree that we should not place LSOs in situations that could expose them to danger, so we have lodged amendment 15 to

remove that power. Amendments 16 to 19 are consequential. As we believe that the Executive amendments more fully meet ACPOS's concerns, I ask Mr Crawford to consider not moving amendment 136.

I move amendment 15.

Bruce Crawford: I will speak to amendments 136 to 138. I acknowledge what the minister said about amendment 15, which follows through on concerns that were expressed, as the minister outlined. I am minded not to move amendments 136 to 138, given that LSOs will no longer have the power to act in the way that the amendments would control. That is a sensible course of action for me to take.

Euan Robson: I understand that amendment 19 will delete paragraph (c) of subsection (5) so that paragraph (d) becomes paragraph (c). If that is the case, I question the term

"any person working on the premises".

Does that mean people who work in a paid or unpaid capacity? Including unpaid people will be difficult. I have experience of being on licensed premises of the Royal British Legion, for example, when a voluntary coffee morning has taken place and the licensed premises have operated. It would be unreasonable for an unpaid volunteer who was, for example, standing behind a stall to have to co-operate with a licensing standards officer. I realise that you will not be able to consider the matter today, but perhaps you can take it away and think about whether an amendment is needed to ensure that there is no confusion and that a distinction is made between people who are employed on premises and people who work there voluntarily.

George Lyon: I will be pleased to consider that matter—

The Convener: Minister, I will let you reply to Euan Robson's comment after everyone else has contributed.

Mr Davidson: I thank Bruce Crawford for suggesting that he might not move amendment 136. After all, if it is agreed to, it will put licensing standards officers on a par with HM Customs and Excise and the police. We really do not want to go down that route. I am sure that, given the connections between the LSOs and the police force, the police would give any required support as a matter of routine. I do not want such connections to be undermined. I also suspect that such a move would raise questions about the safety of the individual in question and create a minefield of legal difficulties. As a result, I encourage Bruce Crawford to be firm in not moving his amendments.

George Lyon: I am grateful for members' support for our amendments. I could respond to

Bruce Crawford's comments on amendments 137 and 138, but he appears to be indicating that he will not move them. In that case, I will leave the matter at that, if that is okay with the committee.

The Convener: I believe that Mr Robson was seeking a response to his comments.

George Lyon: I assure Mr Robson that we will take his comments away and examine them.

Amendment 15 agreed to.

The Convener: Bruce, I understand that you do not want to move amendment 136.

Bruce Crawford: I am not going to move it, but not for the reasons that David Davidson suggested.

Amendment 136 not moved.

Amendment 16 moved—[George Lyon]—and agreed to.

Amendments 137 and 138 not moved.

Amendments 17 to 19 moved—[George Lyon]—and agreed to.

Section 15, as amended, agreed to.

After section 15

The Convener: Amendment 20, in the name of the minister, is in a group on its own.

George Lyon: Amendment 20 seeks to give ministers the necessary power to prescribe national training requirements for LSOs and, in particular, to accredit course content or course providers. The amendment mirrors similar provisions in the bill that provide for ministers to prescribe and accredit training for licence holders and staff. That additional power was specifically recommended by the national licensing forum.

I hope that the committee agrees that the training of LSOs will be crucial in providing them with the necessary expertise to carry out their functions. National training requirements will ensure the consistency of the high standards that are expected from officers. As a result, I hope that colleagues will agree to amendment 20.

I move amendment 20.

Mr Davidson: Will the minister circulate details of the national licensing forum's advice on this matter before stage 3 to ensure that the Parliament has the chance to consider it?

George Lyon: I assure David Davidson that I will write to him shortly about the national licensing forum's work. It might take a little longer to receive full details of training provisions for LSOs, because that work is still being developed. As soon as that information is available, I will forward it to members—and before stage 3, if possible.

Amendment 20 agreed to.

Sections 16 and 17 agreed to.

Section 18—Meaning of “premises manager”

15:00

The Convener: Amendment 21, in the name of the minister, is grouped with amendment 46.

George Lyon: Executive amendment 21 provides that no individual may be a premises manager of more than one premises at a time. The amendment ensures that each premises has a person who can be held responsible for its day-to-day running and that that position cannot be held by a manager who runs several premises and is therefore absent for much of the time. Although we do not require the premises manager to be on the premises at all times, we expect that person to be there for a considerable amount of time, because of the responsibilities attached to the position.

Executive amendment 46 is a technical amendment. It ensures that, when a person becomes incapacitated for whatever reason, his appointment as current premises manager ceases. When that happens, the licence holder of the premises is required to notify the fact to the board, after which the licence holder will be given a period of grace to allow the premises to continue operating pending the recruitment of a new manager. I hope that the committee will see fit to support the two amendments.

I move amendment 21.

Bruce Crawford: I would like clarification on whom amendment 21 is intended to capture. I understand what you say about not wanting a premises manager to be in charge of several premises at one time. However, I know of licensees who have a pub next door to an off-licence or who have two pubs in the same street. Even though those are small businesses, would you expect them to have separate premises managers? I understand the reason behind amendment 21, but I am concerned that it is too restrictive. Particularly in small towns in rural parts of Scotland, it may be that the hotelier also owns the grocer's and feels that having one premises manager is adequate. Under amendment 21, that would not be possible. Is that right? If so, I have some concerns.

Mr Davidson: My point is along similar lines. A country house hotel may have a restaurant, a public bar and a residents bar. Usually, they would all be in one building. However, if they were divided—by a car park, for example—I presume that that would create a new premises. Also, like Bruce Crawford, I can think of people who own

more than one premises in an area. Does the minister intend that each premises should have somebody with a personal licence? Will he allow the manager or the owner to be flexible in moving between two or even three premises? I am not certain what the minister is pushing for.

Paul Martin: We have to consider the concerns that members of the public have raised with the committee. It is often difficult for people to identify who is in charge of licensed premises. Our stage 1 report reflects what was said in our public meetings—that people wanted someone to be identifiable as the manager. We cannot have it both ways. We cannot say that one person should be identifiable as the manager but also say that, in rural areas, we have to consider how that would affect a person with two premises. There has to be a person who is identifiably responsible.

Tommy Sheridan: Difficulties arise when we try to have a one-size-fits-all solution. The problems with licensed premises in urban areas are different from the problems in rural areas. That is a fact of life and there is no getting away from it.

I agree with the thrust of what Paul Martin said. The worries that have been expressed in our public sessions and in members' surgeries are clearly about the running of premises. From the public's point of view, a well-run premises is a good premises and few complaints will be received. The difficulty is the small minority of premises that are not run properly. Those premises tend not to have a responsible person who can be held to account.

Amendment 21 might mean that, in rural areas, a lot of people will be upgraded to become premises managers. I hope that they will get a consequent increase in their wages, but that might be a matter for another day. The Executive's amendment is welcome because it further defines that a licensed premises must have a responsible person. That person does not need to be there 24 hours a day—that would be impossible—but they need to be held to account and they need to be available. That is impossible if someone is the manager of three or four premises, so I strongly support the amendment.

Fergus Ewing: It may be that I should know the answers to these questions. If that is the case, I apologise, but I did not understand the meaning of amendment 46. It seeks to amend section 51, which deals with the following events:

“(a) the premises manager ceases to work at the premises,

(b) the premises manager dies, or

(c) the personal licence held by the premises manager is revoked or suspended.”

Section 51 states:

"The premises licence holder must, not later than 7 days after the occurrence of the event, give notice of it to the appropriate Licensing Board."

Amendment 46 seeks to add the following to the list of events in which that duty to notify the licensing board would exist:

"the premises manager becomes incapable for any reason of acting as premises manager".

I ask the minister to clarify the circumstances in which incapacity would be held to exist. Do they include physical incapacity, mental incapacity or inability, for whatever reason, to continue to perform the duties of the job? Would personal sequestration constitute incapacity in that regard? As I said, I am just asking questions to which I should know the answers—perhaps they are contained elsewhere in the bill—so that we are clear.

Secondly, if it is not clear at what point incapacity arises, is it correct to impose an obligation to notify the licensing board within seven days? If it is not possible to ascertain when something happens because the date is imprecise, it is impossible to fulfil a duty to act on it within seven days. Finally, is breach of that duty to be a criminal offence? It does not appear so, but I want to be clear about that.

George Lyon: First, on amendment 21, I will deal with the concerns that have been raised about the premises manager and the management of the pub or business. The terminology might be misleading, because the term "premises manager" in the bill refers to the personal licence holder; it does not refer to the manager of the business per se. The intention is to ensure that at each licensed premises there is someone who is designated as the personal licence holder. That person will have undergone training and they have a responsibility to ensure that the other staff have been trained and are aware of their responsibilities under the law.

The term does not refer to the management structure, although the terminology might make people think that—because the person is described as the "premises manager", someone might think that we are prescribing that there should be a manager in every outlet that is owned by a single organisation. We are trying to ensure that, for each premises that is operated as a licensed establishment, there is a designated person who has undergone the appropriate training. I hope that that clarifies matters for members.

Amendment 46 refers to illness or incapacity that renders the individual incapable of performing his duties as the personal licence holder. It will be up to the owner of the establishment and the

premises licence holder to determine at what stage he or she is unable to perform their duties and to report that to the board. Sequestration is not one of the reasons why the personal licence holder might become incapacitated. Not reporting will not be a criminal offence, although clearly there is an obligation under the terms of the licence to ensure that there is a licence holder on the premises who is able to deal with issues as they arise. Clearly, if the licence holder is incapacitated and unable to be around the premises for a significant length of time, that would be a breach of the requirements under the legislation. I hope that that clarifies the points that have been raised in the debate.

Amendment 21 agreed to.

Section 18, as amended, agreed to.

Section 19—Application for premises licence

The Convener: Amendment 22, in the name of the minister, is in a group on its own.

George Lyon: Amendment 22 is intended to clarify our policy on the important issue of access of children to licensed premises. We originally intended to deal with the issue through the Scottish ministers' powers under section 19 to stipulate by regulations and by guidance what had to go into the operating plan. However, the committee specifically requested that the Executive's policy on access of children to licensed premises should be dealt with in the bill. The Executive's policy is clear. It is that we would like licensed premises to allow access to children, but only where access is suitable and appropriate. There is to be no presumption that premises are suitable. The fact is that many on-sales licensed premises are unsuitable for children.

We therefore propose in amendment 22 that applicants who apply for a premises licence must specify in the operating plan their proposals for the access of children. The type of activities to be carried on in the premises in addition to the sale of alcohol will be relevant to the board's consideration of the issue. Not all entertainment may be suitable for children or for children of a certain age, so the operating plan must detail those activities and the ages of the children. The size of the premises and the times at which children are to be allowed access—it might just be lunch time—are relevant, as is whether an area for children can be segregated off. When the licensing board is armed with that type of detailed information, it can make the kind of informed decision in the best interests of children that all of us want to see being taken. I think that amendment 22 is a carefully balanced measure and hope that the committee is minded to support it.

I move amendment 22.

Mr Davidson: The minister has put his detailed arguments to the committee. The first subsection that he proposes to insert into the bill through amendment 22 states that there should be

“a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises”.

How would the applicant know when they lodged the plan whether there would be a quiz night or a music evening, for example? Would there be a notice period? Does the minister intend to work up a system through which licence holders have to issue a public notice that they intend to hold a quiz or whatever? The process does not seem to be fully thought out, unless the detail is somewhere else in the bill. If it is, I have not seen it.

There will be problems if we expect all the ad hoc activities that occur in licensed premises to be flagged up at the beginning of the year. We discussed with the minister's predecessor the fact that the weekend on which events such as a music festival are held might vary from year to year, so the date cannot be stated in advance. There needs to be flexibility and clarity for those who will have to operate under the provisions in the amendment if it is agreed to.

Paul Martin: I seek clarification from the minister about the suitability of premises in respect of facilities for children, such as baby-changing facilities. That issue was raised in our stage 1 report. We made it clear that, if premises were to be accessible to children, there would have to be a requirement to provide such facilities. Can the minister confirm that such a requirement is in the bill or will the matter be addressed at stage 3?

15:15

Bruce Crawford: I understand exactly where David Davidson is coming from. The proposal seems a bit restrictive, although I understand the Executive's intent. Overall, the amendment illustrates where Scotland needs to be at. I will be interested to hear what the minister says in response to David Davidson's points.

Will the minister consider creating an order-making power? I am not usually in favour of ministers taking order-making powers for themselves, but that might allow the section 19 provisions to be amended in future, as Scotland moves on and as we get in a position to develop a more liberal approach, so that children might be accepted more in pubs. We can change the emphasis when Scotland is ready to do so, rather than necessarily introducing primary legislation at the time. I hope that the minister sees where I am coming from.

Fergus Ewing: I seek clarification from the minister on the operating plan. Amendment 22 requires the applicant to include in the plan information about children. I can absolutely see the purpose of including within the operating plan and the application for the premises licence the intentions of the pub or hotel in relation to children. Obviously, we would like children to come into appropriate premises and be part of society, rather than being excluded. We would welcome such a move. We would also welcome premises being encouraged to show their intentions.

However, the wording of the amendment potentially raises an unintended consequence. The amendment says that the operating plan should contain

“a statement as to whether children or young persons are to be allowed entry to the premises and ... in particular ... the ages of children ... the times at which they are to be allowed entry, and ... the parts of the premises to which they are to be allowed entry”.

A pub might conclude that, for example, children should be able to attend at lunch time, but not in the evening. That might be included in an operating plan. What happens if an establishment finds that the arrangements are working well and wants to extend the times when children or young people can attend the premises outwith and beyond the hours stated in the operating plan and in accordance with the original intention? Would proprietors in that situation be able to have children in during hours outwith the hours stated in the original operating plan? If the answer is yes, that is the end of the matter, but the full information about the intent of the pub in relation to children might not have been given to the local community.

Could there be an unintended disadvantage to a pub or hotel that had originally said that it would have kids in, but only at lunch time, but that later, perhaps through popular demand, wanted visitors to come in beyond those times? Would that not mean in practice that there is a compulsion for pubs and hotels to say at the outset that they would like children to be able to come in at any time? If proprietors did not do that, they might later be prevented from expanding the hours within which children are allowed to come in.

As with our previous discussion, it might be that I should know the answer to these questions, in which case I will get my apologies in, but I can see an unintended disadvantage resulting from the provision. Hotels and pubs might generally apply for the whole lot, as it were, because they might lose out if they do not.

Euan Robson: I reinforce the point about the operating plan and the statement of times at which “any other activities” in addition to the sale of alcohol may take place. To use an extreme

example, such an activity could be someone turning on the television to watch a football match on a satellite channel. The amendment could be read that way. Clearly, that would be absurd, but a literal interpretation could reach that point. I ask the minister to consider that.

On a more serious level, how can the operating plan predict when a voluntary organisation might book a particular room at a particular time in the course of its normal activities, whether or not on a regular basis? The point was raised by another member and it should be clarified. I have no objection to a general statement of types of activities, but if the plan is too prescriptive, we could end up restricting the activities of clubs such as legions and Burns clubs that we have no intention of restricting. The minister may want to take that point away, rather than speaking about it this afternoon.

Tommy Sheridan: I am compelled to ask the minister to clarify the issue. I am troubled that we are encouraging licensed premises to be more child friendly. I am worried that we are forgetting the type of substance that is being sold on those premises. It is a dangerous substance that we do not want to normalise. We should not make it part and parcel of everybody's life or bring up children to accept that it is part and parcel of life. I would like to hear from the minister that the Executive recognises that we are talking not about bread and milk, but about a dangerous substance. That must be taken into account when we are thinking about children and normalisation. It should not be taken as read that children should be encouraged to be in licensed premises.

George Lyon: I do not know where to start, so I will start at the beginning. Many of the concerns are about unforeseen consequences and changes to the operating plan after the licence has been applied for. Under the 1976 act, people apply for a new licence every three years. Most businesses probably apply annually for their regular extensions and so are before the licensing board on a regular basis. The big difference under the new system is that people will apply for a one-off licence in perpetuity and will have to set out in their operating plan details of how the premises will operate.

We recognise that an operating plan cannot cover every eventuality, because people cannot predict what is coming down the track. Therefore, we will make provision for minor variations to allow changes to the conditions. If the variations are minor, any changes will be administrative. If they are major, the same full-blown process will apply as applies now, with an application to the board for a major variation. That might result from a change of circumstances, a change of business, a change to allow children in or some other reason. We

acknowledge the point, which is why there will be an opportunity to make changes. The bill already provides for variation of premises licences.

If businesses wish to hold one-off events, they will be able to apply for a minor variation to accommodate the circumstance. The aim is to get the balance right in setting down as much as possible in the operating plan. When LSOs or communities raise concerns about the operation of premises, any report-back to the board will be judged on what is in the operating plan. Clearly, there has to be an opportunity to amend the plan. If, for example, a quiz night takes place regularly on a Monday night, that can be set down in the operating plan. If there is a decision at a later date to alter that, the premises can apply to have a variation on the operating plan.

Mr Davidson: May I ask for clarification on that point?

The Convener: I prefer to let the minister respond, because I do not want the debate to go to and fro.

George Lyon: Paul Martin expressed concern about the licence conditions. Those conditions will be set out in the regulations that will be published in due course. If it will help, given some of the issues that have been raised, I can write to the committee to set out the matter in black and white so that members can understand exactly how the system will operate.

The Convener: That will be useful. However, you have not responded to Mr Sheridan's point.

George Lyon: The fact that alcohol is a substance that can cause damage is a point that I fully recognise. That is why the sale of alcohol is licensed. Tommy Sheridan made an excellent point. The whole point of the bill is that alcohol is a substance that causes considerable harm to many communities and individuals, so we need a licensing regime to control it.

Bruce Crawford: Convener—

The Convener: I do not want you to reopen the debate, Bruce.

Bruce Crawford: Convener, I seek just a point of clarification. Will the minister confirm whether the minor variation process that is provided for in section 27 is intended to capture things such as the installation of a sound system or juke-box, a pool table or a one-armed bandit? Will all that sort of stuff be caught under the minor variation process?

The Convener: I will allow the minister to clarify that. Paul Martin has a point of clarification as well.

Paul Martin: I seek clarification from the minister of the term "in due course". Will the committee have an input into the guidelines, so

that we can be clear about what will be expected of licensed premises that provide facilities for children? The minister said that there would be guidelines in due course, but we need to know when they will be published and what they will contain. The issue ties into some of the matters that Tommy Sheridan raised—although I would not go to the extreme that he has gone to.

The Convener: Will you clarify those points, minister?

George Lyon: In November next year, all the regulations will be published and they will come before the committee.

The Convener: Will you also clarify for Mr Crawford whether premises will be required to submit a variation to their licences for the installation of facilities such as a juke-box or pool table?

George Lyon: Our intention is that such changes to the layout of premises would be deemed to be a minor variation.

The Convener: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Jackson, Dr Sylvia (Stirling) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Sheridan, Tommy (Glasgow) (SSP)

AGAINST

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

ABSTENTIONS

Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Amendment 22 agreed to.

Section 19, as amended, agreed to.

Section 20—Notification of application

The Convener: Amendment 23, in the name of the minister, is grouped with amendments 25, 40, 41, 43, 44, 115 and 116.

George Lyon: As currently drafted, section 20(1) places a duty on licensing boards to ensure that an application for a premises licence is notified to the council within whose area the premises are situated. However, in cases in which the applicant is the council, it would be inappropriate to ask councils to notify themselves of their own application. Executive amendment 23

will clarify that matter. In doing so, it will put beyond doubt the fact that a council can be an applicant and, consequently, can hold a premises licence.

Executive amendments 25, 40, 41, 43 and 44 result from the comments that were given to the committee at stage 1 by Sheriff Principal Nicholson, who asked us to clarify references in the bill to ensure that the connected persons provisions will work in cases in which the council is the applicant for a premises licence. The connected persons provisions broaden out the cases in which police can check beyond the applicant to determine whether any connected persons have a conviction. We have decided not to apply those provisions to councils because we think that they will be unnecessary for councils. As well as clarifying that matter, the amendments will also disapply the connected persons provisions to individuals in cases in which the concept of connected persons is problematic. However, we will address the matter through our proposal in a later group of amendments in relation to the police's ability to raise concerns about individuals with links to serious organised crime.

Executive amendments 115 and 116 seek to amend the definition of "connected person" in section 137. They will define the phrase, in relation to other incorporated or unincorporated bodies, as those persons who have

"management or control of the body."

I hope that the committee will support the amendments.

I move amendment 23.

Amendment 23 agreed to.

15:30

The Convener: Amendment 24, in the name of the minister, is in a group on its own.

George Lyon: Amendment 24 is a small technical amendment that reflects the terminology used in the Fire (Scotland) Act 2005.

I move amendment 24.

Amendment 24 agreed to.

The Convener: Amendment 139, in the name of Paul Martin, is grouped with amendments 140 and 145.

Paul Martin: Amendments 139, 140 and 145 relate to the inconsistency of police reporting to licensing boards, on which we heard a great deal of evidence. Through the amendments, I seek to achieve a consistent approach to police reporting on local activity and on the profiles of individual applicants. I seek to ensure that a recognised format exists for reports so that all activities, not

just those within the premises, but those in the vicinity of the premises—as determined in 1972 legislation—are clearly identified and that there is a consistent approach to reporting activities to licensing boards.

If the minister does not accept the amendments, I seek from him an assurance that a recognised format for reporting activities will be introduced at stage 3. As the previous minister confirmed would happen, I would like that to be negotiated with the relevant police authorities.

I move amendment 139.

Tommy Sheridan: I strongly support the amendments, as they would take on board the soundings that we received from the public in our open sessions. It was obvious that much of the antisocial behaviour that is obviously connected with licensed premises does not take place inside the premises, but in the vicinity, which means that it is not always taken into account when decisions are made on licence applications. One particularly well-known premises in Glasgow—of which Glasgow members will be aware—that has been highlighted in this connection is a place called Bonkers. It took a long time for action to be taken because the behaviour could not be pinned to the premises. The inclusion in reports of activities within the vicinity of premises rather than just in premises is long overdue.

I hope that the minister will clarify for the record whether the measure would also apply to off-licence premises. One of the big issues in local areas is antisocial behaviour around off-licence premises—such behaviour rarely takes place inside the premises, so it can be easy to avoid requests to refuse a licence on that basis. If police reports can refer to behaviour in the vicinity of an off-licence premises, that would make it easier for communities to oppose licences. The behaviour might not be the licence holder's responsibility, but what they do about that remains to be seen. I am afraid that the right of the community in such instances is more important than the right of the individual licence applicant. I strongly support the amendments and I hope that Paul Martin will press them.

Fergus Ewing: I welcome the aim behind amendment 139, which would qualify section 20(3). Section 20 deals with the notification of application procedure. The chief constable is entitled to be notified as a statutory consultee, so the chief constable receives the application. Section 20(3) goes on to state that the chief constable must, within 21 days of that notification, respond

“by giving the Licensing Board one or other of the notices mentioned in subsection (4).”

Amendment 139 states that there must be a report within those 21 days.

I wonder whether ACPOS supports such a provision. It occurs to me that 21 days is a short time in which to accomplish all the work that might be involved in some cases to satisfy the dual provisions of the amendment. I know that the police would be supportive in principle of ensuring that the licensing board has relevant information, but I question whether Paul Martin has support for his specific provision from ACPOS or from other representatives of the police and whether 21 days is enough time.

Amendment 139 also talks about cases of antisocial behaviour. Do we know what antisocial behaviour actually is? Is it to be equated with a criminal offence? I presume that the definition of antisocial behaviour is wider than that, but does it have a clear statutory definition or is it vague?

According to amendment 139, the second part of the report must set out

“all complaints or other representations”.

So the report must contain not only details of complaints but details of other representations. I wonder whether that is a practicable prospect and whether an amendment that allows the police an element of discretion to present the information that they believe to be truly salient and critical might be the way that we all want to go.

I certainly support Paul Martin's aim, however, and welcome the fact that he lodged amendment 139 for debate today.

Euan Robson: Will the minister say whether “in the vicinity of” is an understood legal term and whether there is any cross-reference to other statutes? For instance, is there a difference between “in the vicinity of” and

“in the immediate vicinity of”?

Bruce Crawford: I, too, welcome what Paul Martin tries to achieve in amendment 139—it is dead right. Too many of our communities in Scotland are under attack and we need to do something to help control the situation.

I am more concerned about the technicalities of the amendment, particularly where it refers to

“all complaints or other representations made to police officers”.

That would include every complaint, regardless of how vexatious or accurate, whether it had been proved or whether the police considered it to be so frivolous that it did not matter. If the amendment were passed, they would not have a choice and all complaints would have to be included in the report. That would put the board in a difficult situation because it would not be able to make a

judgment about the nature, strength, level and appropriateness of the complaint.

I hope that, if the minister foresees similar difficulties with the technical aspects of the amendment, he will be prepared to give us a commitment today to consider the amendment and come back with something that would overcome those obvious difficulties.

Mr Davidson: I am totally sympathetic to what Paul Martin is trying to achieve, but there are issues about proof in paragraph (b) of his amendment. Perhaps he can answer my questions in his winding-up comments. Is he looking for a list of all proven offences in an area? That would be fine, because they could all be justified. What about general complaints or if people believed that an area was unruly and it just happened that the premises were in the middle of it all but had nothing to do with the antisocial behaviour?

I am concerned about the burden of proof and the chores that would arise from it. I wonder whether the amendment could be reworded: proven crimes would be easy to deal with as they are a matter of record. The amendment is a bit vague in parts and I wonder whether Paul Martin might give us a bit more information on it.

George Lyon: Amendments 139, 140 and 145 would require the police to submit a report listing antisocial behaviour around the vicinity of premises applying for a new premises licence. I am sympathetic to what Paul Martin is trying to deliver with amendment 139. It is important that licensing boards are as aware as possible of criminality and antisocial behaviour in the vicinity of premises applying for licences and of public concern about such behaviour. Crime prevention is a key objective and opening licensed premises in such vicinities might be pouring oil on fire.

Under the licensing regime in the bill, information such as Paul Martin mentions can go directly to the licensing board. Unlike under the 1976 act, everybody is entitled to object, including neighbours and all those who would be affected directly or indirectly by the opening of the premises.

Nevertheless, I recognise that Paul Martin is making the strong argument that we should consider seriously how to make the amendments fit. Members have raised a number of issues about police workload and the practical impact the amendments would have on police time. I assure the committee that I will engage with ACPOS and Paul Martin in order to come back at stage 3 with proposals to deal with the issue. I support the purpose of the amendments, but think they need more work. I hope that, given that assurance, Paul

Martin will consider withdrawing amendment 139 and not moving amendments 140 and 145.

Paul Martin: I want to deal with a number of the fair points that members have made. First, in connection with the definition of "antisocial behaviour", amendment 140 states:

"'antisocial behaviour' has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004".

I have taken seriously the issue of vexatious complaints. The Freedom of Information (Scotland) Act 2002 defines vexatious requests and I hope that the police would be able to use that definition to report whether they consider complaints to be vexatious.

On the point that Fergus Ewing made, when there have been a number of telephone calls about incidents at an off-sales or some other facility, it is up to the police to agree a format to set out how many crimes were detected and how many calls were vexatious. Negotiations on that could take place between ACPOS and others.

I will press the amendments on the basis that I expect the minister to amend them at stage 3. They give us a starting point from which to progress. I expect the minister to return to the matter after negotiations with ACPOS. I understood at stage 1 that he had agreed to negotiate with ACPOS and return with amendments at stage 2. We can start with my amendments; I expect the minister to make further amendments at stage 3.

The Convener: The question is, that amendment 139 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Robson, Euan (Roxburgh and Berwickshire) (LD)

ABSTENTIONS

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

15:45

The Convener: The result of the division is: For 5, Against 1, Abstentions 3.

Amendment 139 agreed to.

Amendment 25 moved—[George Lyon]—and agreed to.

Amendment 140 moved—[Paul Martin]—and agreed to.

Section 20, as amended, agreed to.

Section 21—Objections and representations

The Convener: Amendment 141, in the name of David Davidson, is grouped with amendments 142, 27, 143, 28 and 150 to 152.

Mr Davidson: Amendment 141 seeks to increase the role of the police; to set out more clearly their power to comment and object, if they want to; and to enable them to comment on more than only the relevant offences.

It might be an unintended consequence, but I think that the bill dilutes somewhat the powers of the police. I am keen for chief constables to have a clear role, not a watered-down role. As we heard in the debate on amendments 139 and 140, there are obligations on the police to provide certain evidence and so on, but I think that they should have that power in their own right because, in many ways, they are the custodians of the community. My other amendments in this group are consequential on amendment 141.

I move amendment 141.

Bruce Crawford: The amendments in my name in this group are amendments 142 and 143. I recognise that the committee's stage 1 report welcomed the proposal to allow anyone to object to a licence application but, having reviewed the evidence on pages 52, 53 and 54 of the report, I have doubts about whether we chose the appropriate route. The Scottish Licensed Trade Association said:

"Unfortunately, we must draw a line somewhere. We would say that that line should correspond with the licensing board's area of jurisdiction."—[*Official Report, Local Government and Transport Committee*, 12 April 2005; c 2269.]

The West Lothian licensing board highlighted a suggestion that objections should be permitted only from persons who live in the board area. That was supported by Glasgow's licensing board. The Law Society of Scotland said that there could be serious administrative delays if the proposals in the bill relating to objections were enacted as drafted. Sheriff Principal Nicholson, who is one of the main architects behind what we are trying to achieve in the bill, was also of the view that it should not be open to everyone to object. The Scottish Beer and Pub Association argued that

"the right of 'any person' to lodge objections as defined in the Bill is too wide"

and the Convention of Scottish Local Authorities argued something similar.

During the evidence-taking process, only Robert Millar, the clerk to the City of Edinburgh Council,

and the minister said that objections should come from everyone. If we are to base our legislative process on the evidence available, we have to admit that we have a pretty strong body of evidence that suggests that the objection process should not be as open as it is in the bill.

Amendment 142 would enable "any interested person" to object or to make representations to the licensing board under section 21, which sets out the procedure for objecting to an application and refers simply to "any person". I think that that is too broad a category and that its use might result in administrative delays and additional costs. That view was put to us strongly by the Law Society.

The bill as currently drafted would cause all the costs that are associated with the new licensing regime to be absorbed by the licensed trade. I think that we all accept that principle, but I am concerned that some of the administrative burden that might flow from allowing any person to submit an objection will end up being costly for the licensed trade. One of the biggest difficulties that we will have further down the road is the impact of the licence fee on the licensed trade. We will suffer some resistance in that area.

Amendment 143 is an attempt to provide a definition of an interested person for the purposes of making section 21 stick up. It is consequential on amendment 142 and would provide certainty about who an interested person is by focusing on who can raise objections or make representations. Members might recall that, during the evidence sessions, I raised section 158 of the Gambling Act 2005 as an example of a definition of interested persons. I am trying to follow through on that with amendment 143.

I feel quite strongly that I should have raised some of the strong evidence from seven different sources to counter the two pieces of evidence—one of which came from the minister—that said that objections can come from any person.

George Lyon: I am fully aware of the concerns that were raised by ACPOS and by the committee during stage 1 about what is considered to be a limited role for the police in objecting to premises licence applications under the new system. That is reflected in David Davidson's amendments 141, 150, 151 and 152, and in Executive amendment 27.

I have considered the issues further and my predecessor, Tavish Scott, met ACPOS to discuss its concerns. ACPOS argued that it wants the police to be able to comment if they have intelligence that an individual or persons connected to him is involved in organised crime and they want to be able to bring forward information on an individual's character and suitability to be a licensee.

I recognise that the police have a key role to play in the new system and that there might be instances when they can provide useful intelligence on the involvement of the applicant, or someone connected with the applicant, in organised criminal activity, such as money laundering. I am therefore content to give the police the right to object to a premises licence application when the chief constable has reason to believe that the applicant or a connected person is involved in serious organised crime. That is in addition to the duty to notify the board of convictions for relevant offences.

I see no benefit in returning to the position where objections can be made on the basis that the applicant is not a fit person to hold a licence, based on subjective police impressions of past behaviour or character and in the absence of convictions. If we are to allow the police to object and bring forward intelligence, even if it is not concrete evidence of convictions, it is important that a boundary is placed around that right. That boundary would be achieved by amendment 27, which would link the intelligence to serious organised crime such as money laundering. We have now extended that by agreeing to Paul Martin's amendments, so the police will now have a significant role to play in bringing forward evidence of antisocial behaviour complaints about the premises and any offences of which they are aware. All that will give the police a significant role during the initial application for a licence.

Bruce Crawford's amendments 142 and 143 seek to narrow the definition of who is able to object to and make representation on premises licences by reintroducing the geographical and other restrictions that were imposed under the 1976 act. That would be a major backward step. The committee has recognised the benefit of the Executive's approach in its stage 1 report. We do not believe that the administrative inconvenience of handling more objections can be set against the benefits to communities of being able to make their views known. Do we really want to return to the position where a school board is unable to comment on a proposal to site an off-licence at the school gates? Do MSPs want to reject the right to make our views known in our constituencies by objecting to or supporting applications?

The committee supported our approach and it is generally considered to be fair. It implements a system that has been running successfully for 20 years under the Civic Government (Scotland) Act 1982, and it focuses on the need to allow local voices to be properly heard. In view of that, I ask Bruce Crawford not to move amendments 142 and 143.

Finally, amendment 28 is a technical amendment that achieves consistency between

sections 21(3) and 34(6). I intend to press amendment 27.

Dr Sylvia Jackson (Stirling) (Lab): I can see what Bruce Crawford is aiming at, but I am a bit worried by the definition in amendment 143:

"lives sufficiently close to the premises".

People who have approached me about noise and so on have not necessarily lived as close as Bruce Crawford seems to be suggesting.

I am also worried about something else. Let us say that this is somebody's route for going home in the evening. There could be antisocial behaviour or even an attack. I am a bit worried that the definition is not big enough to make it as workable as we would want it to be.

Mr Davidson: The minister seems to be sympathetic to what I am trying to do, and amendments 141 and 27 do not clash much. There is a chance for that issue to be refined for stage 3. The minister may have it in mind to come back with further clarifying amendments at stage 3.

There is a lot of sense in what Bruce Crawford says but, like Sylvia Jackson, I am a bit concerned about the tightness and inflexibility of amendment 143. I am in support of people from outwith a licensing board area who are affected by licensed premises being able to comment. That is perfectly valid. I note what was said in evidence to the committee about certain people making vexatious comments by rote to every application in Scotland. Dealing with such comments puts a big burden on the licensing authority. We need to ensure free speech up to a point; it is about getting the balance right. Although I have sympathy for amendment 143, I would prefer Bruce Crawford to bring it back with more beef on the bone—if the committee will forgive another farming pun. I will press amendment 141.

The Convener: The question is, that amendment 141 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 141 disagreed to.

Amendment 142 moved—[Bruce Crawford].

The Convener: The question is, that amendment 142 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

AGAINST

Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 142 disagreed to.

Amendments 26 and 27 moved—[George Lyon]—and agreed to.

The Convener: We now come to amendment 143, in the name of Bruce Crawford.

Bruce Crawford: Given the views expressed by other members, I shall try to come back with an improved definition of interested person.

Amendment 143 not moved.

Amendment 28 moved—[George Lyon]—and agreed to.

Section 21, as amended, agreed to.

Section 22—Determination of premises licence application

16:00

The Convener: Amendment 29, in the name of the minister, is grouped with amendments 29, 30, and 48 to 50.

George Lyon: Amendment 29 is a technical amendment that makes it absolutely clear that, when determining an application for a premises licence, licensing boards must take the operating plan in the documents specified in section 19(2)(b) into account.

In his submission to the committee at stage 1, Sheriff Principal Nicholson suggested that section 22 did not make it sufficiently clear that an application for a premises licence must be decided by the board on its merits, regardless of whether any objections had been made. That has always been our intention and, although the bill as introduced delivers that, we are content to lodge amendments to put the matter beyond reasonable

doubt. Amendment 30 makes the position clear. Amendments 48, 49 and 50 are consequential. I ask the committee to support the amendments.

I move amendment 29.

Amendment 29 agreed to.

Amendment 30 moved—[George Lyon]—and agreed to.

Amendment 144 not moved.

Amendment 145 moved—[Paul Martin]—and agreed to.

Amendment 146 not moved.

Section 22, as amended, agreed to.

Sections 23 to 25 agreed to.

Schedule 3

PREMISES LICENCES: MANDATORY CONDITIONS

The Convener: Amendment 147, in the name of David Davidson, is grouped with amendments 31, 153 and 52.

Mr Davidson: I have suggested before that the 48-hour rule will be very damaging to certain parts of the industry. It will also limit the activities of certain groups, such as old-age pensioners. It is not a question, as the previous minister suggested, of advocating binge drinking for pensioners all night long. That is not what I am talking about at all. I am talking about a small social practice that happens in some public houses for perhaps two hours a week. The bill would stop it happening.

We had evidence from the universities that they could not maintain long-term promotions in competition with the nightclubs. The bill does nothing to cut down on the irresponsible sale of drinks in nightclubs. The Executive seems to think that it is all right for a nightclub to hold a promotion for 48 hours as long as it can afford to do so, but that does not seem to be in the spirit of the legislation.

Take the example of restaurants near theatres that encourage people to come for after-theatre supper. They might wish to run a promotion for—for the sake of argument—an hour after a theatre closes in order to encourage people to come in for a meal. However, under paragraph 7(2) of schedule 3, they would not be able to do that. They would have to do it on a 48-hour basis, whether they were open for that particular activity or not.

The provision is not terribly well constructed. It is biased in favour of large businesses that can maintain low costs for a long period. Amendment 153 is consequential on amendment 147.

I move amendment 147.

George Lyon: The need to tackle irresponsible promotions and their associated problems is accepted by almost everyone and is central to the new licensing system's policy objectives. We recognise that not all alcohol promotions are irresponsible and that the majority of licensees run their businesses responsibly. However, the undesirable health and social consequences of binge and underage drinking, which can be encouraged by irresponsible promotions, must be tackled.

We consider "irresponsible promotions" to be those that actively encourage people to consume in a short period a larger quantity of alcohol than they would otherwise consume. Obviously, that includes happy hours, which are often responsible for the drunken and rowdy behaviour of individuals who attempt to drink as much alcohol as they can at a cheaper price while the period lasts. However, amendments 147 and 153 would allow happy hours to continue, even though most sectors of the licensed trade are happy to see them brought to an end.

Executive amendments 31 and 52 seek to lengthen the period during which prices must be fixed from 48 to 72 hours. I should point out that the committee's stage 1 report referred favourably to that proposal, which is based on evidence from the Scottish Grocers Federation. Moreover, the amendments require the 72-hour period to begin at the start of a period of licensed hours to prevent any attempts to circumvent the policy.

Under those circumstances, I ask David Davidson to consider withdrawing amendment 147 and not moving amendment 153.

Mr Davidson: The minister's comments do not draw a line under his definition of "irresponsible promotions". I am also concerned about how people will be able to introduce new products to the market. If someone seeks to give away—for argument's sake—a brand-new stout at half price for 72 hours, we need to ask whether such a promotion is sensible and what the manufacturers really want to do.

I am not arguing against putting controls on irresponsible promotions. After all, we have seen how some nightclubs allow people to drink themselves silly for as long as they like and then put them out on the street for the police and the community to deal with. We do not have any issues about controlling such activities. However, I do not believe that the minister has worded the provision carefully enough or has built in enough flexibility to ensure that responsible licence holders can operate a business in competition with others in a way that does not damage members of the public or lead to community breakdown and unrest.

I will press amendment 147.

The Convener: The question is, that amendment 147 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Jackson, Dr Sylvia (Stirling) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)

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

Muldoon, Bristow (Livingston) (Lab)

Robson, Euan (Roxburgh and Berwickshire) (LD)

ABSTENTIONS

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

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

The Convener: The result of the division is: For 1, Against 5, Abstentions 2.

Amendment 147 disagreed to.

Amendment 31 moved—[George Lyon]—and agreed to.

The Convener: Amendment 32, in the name of the minister, is grouped with amendments 33 to 37 and 53 to 58.

George Lyon: Amendment 35 and consequential amendments 32, 33, 36 and 37 introduce the new policy of extending to off-sales some of the controls on irresponsible on-sales promotions. The committee identified that matter as a key concern and, recognising the consensus of opinion, we agreed to lodge amendments.

We propose to extend to off-sales controls on promotions that

"appeal largely to persons under the age of 18,"

that are

"based on the strength of any alcohol,"

that reward or encourage, or seek

"to reward or encourage, drinking alcohol quickly,"

or that offer

"alcohol as a reward or prize".

We think that that is a sensible way forward. It does not preclude the extension of more controls to off-sales, or the introduction of further controls, in due course. We intend to monitor the implementation of the new controls and we will adjust them if we need to.

Amendment 34 adds to the list of irresponsible drinks promotions the practice of upselling, which involves, for example, persuading someone who had expressed an intention to order a single measure to upgrade to a double. I am sure that we have all experienced that. The practice is not

adequately caught by paragraph 8(3)(c) of schedule 3, which rules out promotions that are linked to measures of alcohol. The proposed new provision will target upselling specifically. Our amendments 53 to 58 seek to make the same changes to schedule 4 in respect of occasional licences.

Some sectors of the industry have expressed concerns about paragraph 8(3)(c) of schedule 3 and the corresponding paragraph of schedule 4—paragraph 7(3)(c). It has been suggested that the description of irresponsible promotions that is contained in those paragraphs would have the additional result of introducing linear pricing, by which I mean that a double measure of a drink would have to be twice the price of a single measure and so on.

It is clear that that is not our intention. The provisions are directed specifically at promotional activity, not pricing activity. We have chosen to prevent the irresponsible promotions that are listed in schedules 3 and 4 from being carried out on licensed premises, but we have not chosen—and do not intend to dictate—the prices at which any alcohol or measure of alcohol is to be sold.

I move amendment 32.

Bruce Crawford: I understand where the minister is coming from—he is following through on a previous commitment.

Amendment 35 seeks to insert a provision at the end of paragraph 8(3) of schedule 3, at line 15 on page 88. If the amendment is agreed to, paragraphs (b) to (d) of paragraph 8(3) will apply only to on-licence premises. I assume that that is why the minister has included in the amendment the phrase,

“alcohol sold for consumption on the premises.”

In those circumstances, off-licences would still be free to engage in

“the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks)”

and

“the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink”.

Off-licences could also engage in

“the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises)”.

although such practice is unusual in off-licences. In other words, it would still be possible to conduct all those activities in an off-licence.

You will not be surprised to hear that representatives of the on-licence trade are upset that the bill will mean that they are not on a level

playing field. My question at this stage is whether the Executive has gone far enough in dealing with off-licences. If not, we must consider whether we can support what the Executive seeks to achieve with amendment 35 or whether, by voting against amendment 35, we should encourage it to come up with a more robust set of regulations covering the off-licence trade so that there will be a level playing field for the different types of premises.

I am highly concerned about the issue. The minister will have to persuade me that at stage 3 he will lodge an amendment that will apply the same conditions to off-licences. It would be difficult to vote against the provisions on drinks promotions in licensed premises, as they are good, but the Executive should go further. If it is not prepared to do so, committee members will find it difficult to support the Executive's position.

16:15

Dr Jackson: I am thinking along the same lines as Bruce Crawford. I do not have a problem with what has been suggested; in fact, I welcome it, because irresponsible promotions and off-sales are big issues for the committee. However, the minister said that there might be further measures and I wonder whether he is thinking about including a provision that will allow him to introduce through subordinate legislation further measures that he has not thought of yet or will not have thought of by the time the bill is passed. Is there a provision in the bill that will allow further measures to be introduced? If there is, I have missed it.

Mr Davidson: Returning to amendment 35, I find it odd that off-licences appear not to be caught by the provision. The committee heard in evidence that off-licences appear to be the basis of most of the social problems with alcohol that we face. If we encourage the continuation of price promotions in off-sales, there will be a distortion of the marketplace. I suggest that, if the minister is not careful, he might find himself in front of the European courts on restraint-of-trade issues.

The minister is sending out the wrong signal by seeming to say that it is okay to go to the off-licence, where alcohol is cheaper. People will take that alcohol home and consume it, possibly in front of children. Today, we need a clear statement from the minister about why the amendment has been framed as it has. Either that, or we will have to go on a course about how to read some of the proposed legislation more carefully.

Fergus Ewing: I have three points to make. First, there should be a level playing field for on-licence and off-licence premises. I find it difficult to understand why there should not be. The minister conceded that the matter might be examined

again later, but that does not explain the anomaly. The committee agreed at stage 1 that we should aim to tackle the problem and we should surely do so across the board. It may be—and it is logically true—that fewer types of activity are possible in off-licences than in an on-sales licensed premises, but nonetheless it will be possible for off-sales premises to indulge in drinks promotions that would be deemed irresponsible in on-sales premises. I am puzzled about that. In the representation that we received from Patrick Browne, who is the chief executive of the Scottish Beer and Pub Association, he argues for a level playing field for all operators. I endorse that.

Secondly, I will address Sylvia Jackson's point about whether the bill contains a power that will enable the Executive to bring forward similar measures for off-sales premises at a later date if it is advised to do so. I hope that the answer is yes but I fear that it is no. It seems to me that paragraph 8(4) of schedule 3 does not readily allow the bringing forward of subordinate legislation to extend the provisions to off-sales premises. However, no doubt the civil servants have looked at the matter much more closely than I have.

Perhaps the minister will confirm whether it would be necessary to introduce primary legislation later. If so, that would be a great shame, because who knows when there would be time to do that? At the very least, I hope that he will think about adding, if necessary, powers that will allow the provisions to be extended to off-sales premises without the need for primary legislation.

Finally, the minister was careful to answer the industry's point about linear pricing in relation to paragraph 8(3)(c) of schedule 3, which states that a drinks promotion is irresponsible if it

"involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink".

He argued that there is a distinction between a reduced price and a drinks promotion, but I found that to be a distinction without a difference. If a pub or a hotel charges a second measure at half the cost of the first measure, I fail to see how that would not qualify as a drinks promotion. It seems to me that it is exactly the same as what he is trying to classify as irresponsible.

That leads me to question whether the phrase "drinks promotion" has a clear definition. What does "promotion" mean in that respect? Is it necessary for a premises to advertise in its window or by other means the fact that a second measure—to take this example—is being charged at half the rate? To avoid that being a promotion, is it necessary for the pub to keep it a secret until asked? Would I have to go up to the bar and say, "Excuse me, can I have a single—but do you

charge for a double at a lower price?" That does not seem a very likely scenario even for someone who is thrifty.

I would be grateful if the minister could say whether he thinks that the distinction is a real and accurate one—I do not think that it is—and whether he feels that the phrase "drinks promotion" has been sufficiently clearly defined.

Paul Martin: We need to be fair and say that part of the stage 1 report was about consistency between the off-trade and the on-trade. Tavish Scott accepted that there was an issue about ensuring parity between the off-trade and the on-trade. The distinctions in that respect relate to some of the principles of the bill, which are about looking at the problem of alcohol abuse. I would not like to see the problem moved from the on-trade to the off-trade, where there is already abuse. That abuse could increase as a result of our taking care of some of the issues concerning drinks promotion in the on-trade.

I accept that the minister faces challenges in the fact that there is not a level playing field. There are differences in the environments of the off-trade and the on-trade: we have to recognise that. However, the alcohol abuse that the bill is meant to address would just be moved. The issue of antisocial behaviour was touched on earlier. There is absolutely no doubt, in my experience and in what we see through representing our local communities, that there is an element of antisocial behaviour surrounding drinks promotions that take place in local communities. I ask the minister to consider withdrawing amendment 32 with a view to lodging a more detailed amendment at stage 3 that will ensure that there is parity in application of the legislation in the off-trade and the on-trade.

George Lyon: I recognise the committee's concerns on the matter. In the stage 1 report, the committee acknowledges, right enough, that there are differences between on-sales and off-sales and that sound evidence would be required to justify an intervention in the off-sales market. Members clearly believe that we need more evidence to underpin that, showing the linkage between the purchasing of alcohol at off-sales and drunken and disorderly behaviour, binge drinking and so on. That is more difficult to prove for off-sales than for on-sales, where the drink is purchased for immediate consumption, not to take away to a house.

I recognise that the committee wants us to go further. At the moment, however, we do not have the evidence to go further and to do so would be to risk a challenge. We hope to gather more evidence to allow us to go further and we have the power to extend schedule 3 to take further measures once we have that evidence in front of us.

I hope that members will accept our assurance that we will follow that approach in the coming weeks and months, ensuring that the committee's recommendation that we go further is considered seriously. We will then decide whether we can actually take further action in this regard.

Fergus Ewing asked about the definition of "drinks promotion". We have firm legal advice that our definition refers to a drink's promotion, not to its price. We are therefore confident that it will do the job and will not be linked into linear pricing. Part of the belt-and-braces approach here is what I have said in that regard.

Amendment 32 agreed to.

Amendments 33 and 34 moved—[George Lyon]—and agreed to.

Amendment 35 moved—[George Lyon].

The Convener: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

AGAINST

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

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Amendment 35 agreed to.

Amendments 36 and 37 moved—[George Lyon]—and agreed to.

Schedule 3, as amended, agreed to.

The Convener: We have now reached the end of schedule 3, which is the point at which we agreed to go no further today. Stage 2 of the Licensing (Scotland) Bill will resume at our next meeting, on 27 September. A target point for that meeting will be published in tomorrow's *Business Bulletin*. I thank all committee members and the minister for their concise contributions today, which have allowed us to reach our target point in good time. I hope that we will carry on in that vein and make good progress towards completing the bill at stage 2.

Meeting closed at 16:27.

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