LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Monday 3 October 2005

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE
26th Meeting 2005, Session 2

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)
*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)
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

Monday 3 October 2005

[THE CONVENER *opened the meeting at 14:05*]

Subordinate Legislation

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2005

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2005

The Convener (Bristow Muldoon): I open the 26th meeting in 2005 of the Local Government and Transport Committee and welcome the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, George Lyon, and Carol Elder from the Scottish Executive. I have received only one apology, from Tommy Sheridan MSP.

Under agenda item 1, the committee will consider motion S2M-3205, in the name of Tom McCabe, on the Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2005, and motion S2M-3206, in the name of Tom McCabe, on the Public Appointments and Public Bodies etc (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2005. The minister will speak to both motions.

As the orders are affirmative instruments, they can come into force only when the Parliament has approved them. The committee's responsibility is to question the minister and then to debate whether to recommend approval of the instruments. The minister will make introductory remarks on both instruments at the same time. Members can then ask him questions. If the questions are technical, the civil servant who is present may respond. After that, there will be a formal debate on the instruments. I propose that we have one debate, although the two decisions will be taken separately.

Are members clear about the procedure? Do they agree to it?

Members *indicated agreement*.

The Convener: I invite George Lyon to make some introductory remarks.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): I am pleased to bring the committee's attention to the orders for updating the Public Appointments and Public Bodies etc (Scotland) Act 2003. The orders are technical and will ensure that the commissioner for public appointments continues to have formal authority for regulating appointments to the most significant public bodies in Scotland.

The Public Appointments and Public Bodies etc (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2005 will amend schedule 2 to the 2003 act by adding and removing public bodies that have been replaced or abolished, or have had their name changed. The Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2005 will allow bodies that are in the process of being established to be regulated by the commissioner as if they were included in schedule 2.

From time to time, it may be necessary for further orders to be presented to keep the schedule up to date. That is a routine matter and will not bring about any change to the Executive's policy on public appointments.

Bruce Crawford (Mid Scotland and Fife) (SNP): I have a technical question on the Public Appointments and Public Bodies etc (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2005, which omits the water industry commissioner for Scotland in the amendment to the list of specified authorities. I cannot see an explanation for that omission in the Executive's note. There may be a good reason for it, but I want the minister to clarify what that reason is, if he would not mind doing so.

George Lyon: The water industry commissioner for Scotland will be deleted and the Water Industry Commission for Scotland will be added to reflect a change of circumstances. The situation has been modified, because a commission has been set up that includes a number of appointees as well as the current water industry commissioner. The order reflects the change from there being an individual commissioner to there being a commission. I hope that that satisfies Mr Crawford.

Bruce Crawford: That seems sensible, but as far as I can see only the omission is specified in the order; nothing is added back in. Does the other order do that?

George Lyon: It is added back in in annex B. Five bodies are added in, the second last of which is the Water Industry Commission.

Bruce Crawford: So that is done in the other order. That is fine—I am satisfied by that.

The Convener: If there are no other questions for the minister, we can move to the formal debate. If the minister does not wish to add anything to his introductory remarks, I invite him to move the motions.

Motions moved,

That the Local Government and Transport Committee recommends that the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2005, be approved.

That the Local Government and Transport Committee recommends that the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Amendment of Specified Authorities) Order 2005, be approved.—[*George Lyon*.]

Motions agreed to.

The Convener: Thank you, colleagues. Those decisions will be reported to the Parliament pending its consideration of the orders.

Licensing (Scotland) Bill: Stage 2

14:11

The Convener: Agenda item 2 is further consideration of the Licensing (Scotland) Bill. Members should have with them their copies of the bill, the latest marshalled list of amendments, which was published on Friday morning, and the groupings of amendments. I remind members that we hope to complete our stage 2 consideration of the bill today.

Section 115—Excluded premises

The Convener: Amendment 86, in the name of the minister, is grouped with amendments 87, 88, 3, 89 and 90.

George Lyon: The committee raised some concerns over how rural petrol stations would be dealt with under the new licensing system. The committee did not wish to see such petrol stations being penalised unduly if they doubled as the only local shop. We made a commitment at stage 1 to re-examine the issue to ensure that our policy is absolutely clear in the bill, and we have lodged a series of Executive amendments that will do just that. I am confident that the amendments address the committee's concerns.

Executive amendment 90 will provide that premises, or parts of premises, that are used as a garage will be able to apply for an alcohol licence under the new system if the local community is, or is likely to become, reliant on the premises as a principal source of either fuel or groceries. Amendment 90 will ensure that the vital existence of rural petrol stations is not compromised, and it will protect local amenities. However, its effect will not be limited to rural areas, because there might be cases in urban or other areas in which the community is reliant on the local shop. Licensing boards will determine whether applications for premises licences for petrol station forecourt shops fall within the exemption. Amendments 86 to 89 are consequential.

Opposition amendment 3, which was lodged by Bruce Crawford, is not needed. It seeks to achieve largely the same purpose as the Executive amendments. The only difference that I wish to point out between Mr Crawford's amendment and ours is that his is more confined to rural areas, whereas ours can also apply to urban situations in which a petrol station is the only shop in an area. I ask Bruce Crawford not to move amendment 3, given the assurance that Executive amendment 90 not only addresses his concerns but goes slightly further to address issues around petrol stations in urban areas that provide the only local amenity.

I move amendment 86.

Bruce Crawford: The minister uses words such as "his", "ours" and "Opposition" in relation to the amendments. I thought that we were trying to get together to make the bill work for everyone. Nevertheless, I accept entirely the minister's points. What he said about the difference between rural and urban locations was correct. My amendment 3, as members can tell from its number, was lodged a good time before the Executive's amendments in an effort to flush out exactly the position that we now find ourselves in. I am glad that we have reached that position.

Might the minister consider, at stage 3, introducing to proposed section 115(4A) a further paragraph (c) that would enable him to introduce categories of premises other than those that sell groceries, petrol or derv? There might come a time when another venture, which we do not know about at present, in a rural or urban area, is dependent on sales of petrol for its survival. I hate to think that we would need to introduce primary legislation to deal with that. It might be useful to have a catch-all regulation that the minister could use to deal with such unforeseen situations.

14:15

Mr David Davidson (North East Scotland) (Con): Earlier, the minister talked about objections from the local community. Perhaps he could define exactly what he meant by that so that it is quantifiable and we can get a better understanding of what is intended by his amendments.

George Lyon: The amendments are designed to ensure that petrol stations that also sell groceries and provide other amenities can retain a licence that defines them as the sole source of groceries and petrol in that vicinity. I am not sure exactly what Mr Davidson is referring to.

Mr Davidson: If I may return—

The Convener: Just one thing, so we do not—

Mr Davidson: I am totally supportive—

The Convener: Wait a minute. Before any of you jump in, you should wait until you are asked by the convener. David, you may speak now.

Mr Davidson: The minister made a point about the absence of local objections and I wanted him to explain what he meant by that. What sort of number was he talking about? Would the objections be the routine ones that relate to licence applications or would they be something slightly different?

George Lyon: To ensure that there is no dubiety, I state that the provision is intended to be a routine measure that the licensing boards can use to determine whether there is a local need for the particular licence application. We are trying to set out the circumstances in which the boards would determine that position.

The Convener: Do you want to respond to the points that were made by Mr Crawford about the possibility of adding paragraph (c) to proposed section 115(4A) at stage 3?

George Lyon: I would be willing to consider that issue before stage 3.

Amendment 86 agreed to.

Amendments 87 and 88 moved—[George Lyon]—and agreed to.

Amendment 3 not moved.

Amendments 89 and 90 moved—[George Lyon]—and agreed to.

Section 115, as amended, agreed to.

Section 116—Exempt premises

The Convener: Amendment 180, in the name of the minister, is grouped with amendments 183, 157, 158 and 185.

George Lyon: The committee's report noted the concerns of the ferry operators about their proposed inclusion in the new licensing regime. The subject is of great interest to me. Last week, at the committee's request, I set out our proposed policy for ferries. Executive amendments 180, 183 and 185 will deliver that policy. We propose to exempt any vessel that is engaged on a journey that forms part of a ferry service from the requirement to hold a premises licence. That is set out in amendment 180.

Amendment 183, which is consequential, will insert a definition of ferry service that is based on the transport of goods or passengers. The amendments will ensure that party vessels or booze cruises will still require a licence. We see the case for exempting lifeline ferry services, but we do not see a case for exempting vessels that serve a purely social purpose. Those vessels must be licensed.

Executive amendment 185 will allow the police to apply to a sheriff to prohibit the sale of alcohol on ferries when there is a likelihood of disorder. Similar provisions exist for trains. The amendment will ensure that the police can take action to prevent the sale of alcohol on problem routes or on single problem journeys.

David Davidson's amendments 157 and 158 take the alternative approach of modifying the system in its application to passenger ferries, rather than exempting ferries entirely. There are three points to be made in relation to amendments 157 and 158. First, the definition of premises does not appear to allow sufficient flexibility to cover the common scenario whereby a particular vessel is

not always used on the same route. Secondly, basing the definition of a board on the location of the premises of the operator does not work if the operator is a foreign company. Even when the operator's headquarters are in Scotland, the licensing board in whose area the headquarters are based might not be the most appropriate. Thirdly, the bill does not prevent anyone, including a ship's master, from refusing a sale of alcohol, thus subsection (3) of the proposed new section in amendment 158 is superfluous. Given that the Executive amendments in the group seek to exempt ferry services completely, I ask Mr Davidson not to move his amendments.

I move amendment 180.

Mr Davidson: I appreciate the minister's points. However, he misunderstands subsection (1) in amendment 158, which states:

"'premises' means all vessels used by a particular operator on a particular route".

That addresses the minister's first point. I did that because, as the minister well knows, Caledonian MacBrayne rotates its vessels and the controls are geared to a particular route as opposed to the vessel on that route. We are at cross-purposes.

I accept part of what the minister said about the location of an operator's headquarters, but I do not know of any ferry company that does not have an operational base as opposed to a company registered office. Again, we are splitting hairs.

Could you remind me of your third point?

George Lyon: The bill does not prevent anyone, including a ship's master, from refusing a sale of alcohol.

Mr Davidson: I seek an assurance that due recognition was given to the Maritime and Coastguard Agency's international rules on the right of a ship's master to decide on their own account, without any reference to licensing laws, whether a bar should be open or closed and who should be served and who should not. If I have that assurance from the minister, I will not move amendment 158.

George Lyon: I give Mr Davidson the reassurance that he seeks. I would be pleased if he did not move his amendments in favour of the amendments in my name.

Amendment 180 agreed to.

The Convener: Amendment 181, in the name of the minister, is grouped with amendment 182.

George Lyon: Executive amendments 181 and 182 are technical amendments to further clarify the exemption for premises that are occupied by the armed forces—such as forces canteens—from the requirement to hold a premises licence.

I move amendment 181.

The Convener: Do you have any remarks on amendment 182?

George Lyon: It is a technical, consequential amendment.

Amendment 181 agreed to.

Amendments 182 and 183 moved—[George Lyon]—and agreed to.

The Convener: Amendment 184, in the name of the minister, is in a group on its own.

George Lyon: Executive amendment 184 is a technical amendment to clarify the definition of an international journey. It will ensure that cruise ships that travel to and from Scotland need not be licensed and that, provided that the journey has an international element, ships with more than one stop in Scotland are not unintentionally caught by the licensing system.

I move amendment 184.

Amendment 184 agreed to.

The Convener: Amendment 91, in the name of the minister, is grouped with amendments 92, 111 and 120.

George Lyon: Executive amendments 91, 92, 111 and 120 are technical. They will introduce a tighter definition of a railway vehicle to remove any doubt about the treatment of underground trains and trams. Underground trains will be treated in the same way as trains are and defined as exempt premises. Trams will not be exempt and will be capable of being licensed should that ever be required for any reason.

I move amendment 91.

Amendment 91 agreed to.

Section 116, as amended, agreed to.

After section 116

The Convener: Amendment 186, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford: We took extensive evidence from a range of witnesses about the arrangements for transition from the current licensing regime to the new system under the bill. I am sure that everyone remembers that.

When we took evidence, the licensed trade expressed the view that reassurance should be given about continuity of trade into the new regime and about trading hours, which are clearly linked to business profitability. I hope that committee members have seen the correspondence that was received in the recess from the Scottish Beer and Pub Association, the British Hospitality Association in Scotland and the Scottish Grocers Federation.

Their members, who represent 10,000 of the 17,000 commercially licensed premises, seek reassurance on the various issues that are covered in amendment 186.

Amendment 186 would create a presumption that a currently licensed premises would be entitled to a licence under the new regime with the same trading hours and conditions that relate to those hours as it currently enjoys, subject to the licensing board's approval—I stress that—and provided that the board is satisfied that the continuing operation of the premises contradicts none of the licensing bill principles.

I am sure that members remember that we heard a fair bit of evidence at stage 1 on concerns about licensed premises simply moving automatically into the new regime. I shared those concerns, but amendment 186 would not provide for that and would allow objections to and the expression of views on a new licence. The amendment would reassure the vast majority of well-run licensed premises, provided that no issues are outstanding, that they should have some continuity of trading into the new regime.

A few weeks ago, the minister made an announcement that I am not sure gave the trade—and particularly the pub industry—the assurances that it seeks. I hope that he will clarify some issues in responding to my amendment. I understand that in a series of meetings with the licensed trade in the past couple of months, the minister has said that he expects a currently licensed premises that operates without problem to be able to retain its hours, subject to it reapplying for its licence. I believe that he confirmed that publicly in response to a question at the national licensing conference in Dundee a few weeks ago. I seek to put some of that on the record, because it is important. I will make up my mind whether to press amendment 186 on the basis of what the minister says.

While I am sure that the minister will not wish to pre-empt decisions by the new licensing boards, which will not be elected and appointed until 2007, it would be helpful to the trade if the minister put on record the Executive's intentions in relation to the continuity of trade by premises in the transition to the new regime. I am not trying to paint the minister into a corner, but he should reassure the trade, including John Murphy, the landlord of the Scotsman's Lounge, whom I know well, and whose establishment the minister mentioned last week. Alternatively, if the minister gave public reassurances to a licensing conference, I am sure that that would be acceptable. The 17,000 licensees would welcome the minister putting his view on the parliamentary record, if that is possible. I look forward with anticipation to what the minister will say.

I move amendment 186.

14:30

Mr Davidson: I listened to what Bruce Crawford said. I have picked up from the minister and his predecessor an inclination to allow currently well-run establishments to proceed, although not to have a further opening hours advantage. In other words, they will be able to open for the total number of hours for which they open at present as a maximum. We need continuity—the trade in its various forms has been quite agitated about that. Bruce Crawford's amendment 186 would allow for objections to weed out poor or bad premises; it would not create a two-tier licensing system; and it would not mean automatic transfer. Given that, I would like to hear what the minister has to say to clarify the issue. The trade has been exercised about the issue, which, I believe, is why amendment 186 was lodged.

George Lyon: I am happy to respond to the concerns, as the issue is important and is causing some concern to the industry. I will start by placing the issue in context. We must be clear that, under the proposed new system, premises licences will be granted in perpetuity and three-year licence renewals and annual renewals of extensions of hours will be abolished. If we are to grant someone the right to retain a licence, potentially for their lifetime, it is absolutely right and fundamental that the granting of the licence is a full and proper determination process.

The committee's stage 1 report states that there should be no automatic transfer of licences to the new system, a view that I very much support. Grandfather rights should not be granted wholesale in Scotland, as that would result in a two-tier system. Amendment 186 seeks to provide grandfather rights to existing licensees who retain their existing opening hours or who plan to open for the same number of hours in a day. The amendment would remove the need for such premises to present planning, building standards or food hygiene certificates; it would remove the grounds for refusal that relate to overprovision or the character, location and condition of the premises; and it would remove the need for a board to specify reasons for a licence refusal.

I wrote to the committee on 17 August setting out our proposal for handling the transition and our conclusions on grandfather rights. We have already recognised three of the points that are included in amendment 186. First, we accept that existing licensees should be exempt from the need to present certificates; secondly, we accept that they should be exempt from the overprovision assessment and the overprovision ground for refusal; and, finally, we have offered a concession so that, if a board considers that it would be minded to refuse the licence on the grounds of the location, character or condition of the premises but

thinks that suitable modifications can be made to address those concerns, the licence must be granted and the licensee given a period of 12 months in which to make the necessary modifications. Those measures followed considerable discussion with the licensed trade associations and met the key concerns that were expressed to us. I hope that Mr Crawford and Mr Davidson will accept that the measures go a significant way to reassure the trade on the continuity issue. Our announcement has been welcomed by the Scottish Licensed Trade Association.

Mr Crawford ignores the fact that existing licences are granted on a three-year basis, which means that licensees have to apply for a renewal every three years, and that, at present, extensions of hours are granted on a 12-month basis. He also ignores the fact that licensing boards want to consider licensed hours proactively due to the open-ended nature of the premises licence under the bill.

Mr Crawford's amendment 186 would allow concessions for people who are maintaining the same hours but who may be completely changing the activities that they plan to carry out, and for circumstances in which the board may have a legitimate reason for concluding that the premises are not suitable. Another concern is that, by allowing exemptions for those who plan to open for the same number of hours in a day but at different times, amendment 186 fails to recognise that that might lead to a consequent change in the nature of the premises and their suitability for the sale of alcohol and in their clientele. Why should the premises be granted exemptions from consideration of those issues?

I believe that our proposals on grandfather rights provide the right balance. They provide some reassurance to the licensed trade through the concessions that have been offered, but they also recognise that maintaining the same hours should not entitle people to any special rights under the new system. In view of the reassurances that I have given Mr Crawford, I ask him to consider withdrawing amendment 186.

Bruce Crawford: Amendment 186 was always of a probing nature, as I am sure the minister is aware, and was lodged to enable us to get some of the issues on the record. I am not sure that the minister's reassurances go as far as I would have liked them to go, and I am not sure that the trade will think that they do, but I recognise the difficulties that the minister has painted with regard to amendment 186. It is worth emphasising, however, that I do not think that amendment 186 would have created any automatic transfer for all premises—the committee had concerns about that matter previously—and that it would have allowed objections and consideration by the board when there were outstanding issues. Moreover, it would not have created a two-tier licensing system. I do not agree with some of the criticisms that were made.

I hope that the minister will take up my suggestion that he clarify the matter even further at a future event involving the licensed trade, so that people can be persuaded that what the minister suggests is reasonable. I wish that the minister had gone a wee bit further and had said more about the rights of individuals in carrying forward and about the circumstances in which they might be able to keep their current hours. However, I recognise that amendment 186 was a probing amendment, so I seek leave to withdraw it.

Amendment 186, by agreement, withdrawn.

Section 117—Special provisions for certain clubs

Amendments 154 to 156 not moved.

Section 117 agreed to.

Section 118—Vessels, vehicles and moveable structures

Amendment 157 not moved.

Amendment 179 moved—[George Lyon]—and agreed to.

Section 118, as amended, agreed to.

After section 118

Amendment 158 not moved.

Section 119—Power to prohibit sale of alcohol on trains

Amendments 92 and 93 moved—[George Lyon]—and agreed to.

Section 119, as amended, agreed to.

After section 119

Amendment 185 moved—[George Lyon]—and agreed to.

The Convener: Amendment 159, in the name of David Davidson, is in a group on its own.

Mr Davidson: Amendment 159 would make it possible to lift the ban on the sale of alcohol at sports grounds in Scotland while still allowing the police or the ground authority to enforce such a ban in certain situations—in others words, the amendment would introduce flexibility.

It has been proven that certain matches and occasions cause difficulties with unrest either inside or outside the stadium. The intention is not

to introduce a blanket lifting of the ban. However, I believe that the Scottish economy has been somewhat damaged by the overrigidity of the blanket ban. I am thinking in particular of the rugby league finals that have been held in Scotland. Traditionally, alcohol has been on sale at such events and there have never been any problems of which I am aware, other than the usual problems outside grounds that are associated with any activity.

If amendment 159 is agreed to, we would have pilot schemes. The control of the police force would be maintained. No ground management would want to do anything that would damage the interests of their sport or the ground or risk the safety of individuals inside it. The police report that there are few problems with rugby internationals in England, although there are problems with certain football matches—the same could be said for shinty matches when they get over the top on occasion.

The cross-party group on sports supports the aim to seek leeway to trial pilot schemes. My concern is broader than that, however. I want to allow us to have control over what goes on. We should not have a blanket ban; we should take a local approach, leaving it to the discretion of the police force and ground authorities to determine the appropriateness of lifting the ban.

I move amendment 159.

The Convener: I am sure that many members would agree that Maggie Thatcher's Government caused much damage to the Scottish economy. I am not sure that the ban on alcohol sales at sports grounds would be top of the list of reasons for that.

Michael McMahon (Hamilton North and Bellshill) (Lab): I, too, was at the cross-party group's discussion at which representatives of a football club argued that it was time to loosen the chains, if you like. I was not convinced by the argument that I heard then and I am not convinced by the one that I have heard from David Davidson today.

I do not think that amendment 159 is necessary. Under the current legislation, a sporting event can be granted an exemption. Therefore, the events that David Davidson mentioned are already covered; all cases are considered on their merits. The idea that the economy was damaged because for 90 minutes the supporters of two English rugby league teams who had travelled to Edinburgh could not get a drink inside Murrayfield takes the argument a bit far. Edinburgh benefited from hosting the event and I do not think that there was any loss to the economy because the supporters were required to sit in their seats and not drink alcohol for the 80-odd minutes of the game.

The issue is wider than that. The bill is aimed at addressing problems in our society. The measure proposed in the amendment would be a Trojan horse that would cause difficulties in areas with social problems. I know that we would rather that this was not the case, but our football grounds are not ready for the ban on alcohol sales to be lifted. If we agreed to the amendment, every football club would want the ban to be lifted and I do not think that every football ground is capable of allowing supporters to drink alcohol and watch football. That is a sad indictment of Scottish society, but it is the reality. Given the additional problem of sectarianism in our football grounds, the measure would cause real problems. Amendment 159 is out of kilter with what the bill aims to address.

It is not appropriate to agree to an amendment that would allow the return of the problems that we saw in the 1950s, 1960s and 1970s. It was those problems that led to the requirement for legislation to prevent the drinking of alcohol in sports grounds. We have not eradicated those social problems and I do not think that we can wish them away just because one or two proprietors of sports grounds want to make a bit more money from hosting events. That would be the wrong move. The amendment is out of step with the bill's aims.

14:45

Bruce Crawford: I can see where David Davidson is coming from, but I am not sure that the bill is the right place to do what he suggests. If we are to lift the ban on the sale of alcohol in sports grounds, we will need a lot more evidence than we have at present. Except in passing, we did not take any evidence on the issue at stage 1—at least, none that I recall. I have always believed that we should try to introduce legislation based on evidence, but in this case we do not have that.

It is time for the Executive to review the whole process in relation not just to football grounds, but to other sporting venues. There may be a case for the ban to be lifted, but it has not been made yet. I do not accept Michael McMahon's presumption that football grounds are not ready for the ban to be lifted. That might be the case, but I find it difficult to understand why alcohol is freely available at English football grounds while it is not available at Scottish ones. I do not think that the difference in culture is that big.

The only way in which we will get underneath the issue is for the Executive to carry out a proper review to examine the matter as a whole, to consider experience from other countries and to apply it to the situation in Scotland. If appropriate, the Executive could then introduce legislation. The minister should perhaps consider giving himself

some powers by regulation under the bill, which would avoid the need for primary legislation later.

At this stage, the committee has not seen substantial amounts of evidence on the pros and cons of the proposal. On that basis, it would be wrong for the committee to agree to the amendment. It might have merit, but before we decide we need a much wider review of the matter by the Executive, with a proper consultation process. If the Local Government and Transport Committee is the appropriate place, we will then consider the evidence and make decisions, but now is not the right time to do that.

Paul Martin (Glasgow Springburn) (Lab): Bruce Crawford touched on a couple of issues, including evidence. Michael McMahon and I were having a dispute about when the Rangers and Celtic pitch invasion happened. I think that it was in 1981.

The Convener: It was in 1980.

Paul Martin: That incident—and others that took place during those years—led to where we are now. Scottish football found itself in an appalling situation, which is why we banned alcohol in sports grounds. The alcohol abuse that took place at that time meant that families could not enjoy football in the way that they can now. For me, that is the main issue. The football clubs have tailored themselves effectively. A number of small clubs, such as Livingston, are to be commended for the hard work that they have put into creating a family environment. That environment would be dismantled by the introduction of en masse alcohol opportunities.

David Davidson's point about the economy is false. If we said to the clubs, "Yes, let the supporters consume alcohol," that would have an effect outside the clubs. For example, it would have an effect on pubs that use football as their source of income.

The proposal has no real support other than from the clubs. I would not mind if the clubs were simply concerned about the needs of their supporters, but it is no coincidence that the clubs have promoted the proposal at a time when they face serious economic challenges. The clubs are concerned not so much about their supporters as about their profits. The main priority for the Parliament should be to deliver for the people of Scotland, not for the football clubs of Scotland.

We should err on the side of caution. As Michael McMahon pointed out, we already have the opportunity to make rare exemptions from the rule, but I would like such exemptions to remain rare rather than to become the norm.

The Convener: Before the minister responds to the debate, I will just observe that when Murrayfield hosted the recent Heineken cup final European rugby match, which I attended, alcohol was available on the premises. Perhaps the minister can explain how, for such major unique sporting events, exemptions are possible.

George Lyon: Many arguments have already been made against amendment 159, but I will add one or two more to clarify the issue and to reassure the committee.

As Paul Martin indicated, controls at certain sporting events were introduced in 1980 for reasons of public order and safety. Among other things, the controls prevent drink from being consumed in any shape or fashion at designated sporting grounds for designated events. Designation of both the sporting ground and the event is by ministers, who can change the designation—as they did in 2004—by laying an order before the Parliament.

The control measures include restrictions not just on alcohol, but on controlled substances such as fireworks or flares and controlled containers such as bottles. In focusing purely on alcohol, amendment 159 overlooks the fact that the existing control measures for sporting events are designed as an integrated package. They cover alcohol, fireworks, flares and bottles, all of which we know to be issues of great concern at sporting events.

Let me also take the opportunity to remind the committee that the controls are limited and specific. The alcohol controls, which were first imposed under the Criminal Justice (Scotland) Act 1980, do not apply to non-designated events at designated grounds, such as rugby league matches at Murrayfield, non-international rugby union matches at Murrayfield and American football matches at Hampden. As the convener pointed out, alcohol was allowed to be served during the Heineken cup final, which was not a designated event because it was a European rugby union club competition.

Local licensing boards also have discretion to allow the sale of alcohol inside designated sports grounds for non-designated events if they think that that is the right thing to do. Police advice to licensing boards now routinely includes an assessment of the risk to public order and safety, which is made for each event or category of event. An example of that approach was the decision to allow the sale of alcohol at Murrayfield during last year's BT cup finals day.

In conclusion, given that ministers can by order change the designation of sports grounds and sporting events—the most recent change was made in 2004—the current legal position is not rigid and we do not need the extra powers that amendment 159 would provide. Even if ministers

decided that pilot projects should be carried out, powers exist under current legislation for them to do that. The committee can be reassured that we have sufficient flexibility if we were to decide to go down that road in future. However, given the arguments that committee members have advanced, I believe that we are right to hold to the current position of preventing alcohol from being sold at designated grounds and designated sporting events.

Mr Davidson: I will take the speakers in order. I whole-heartedly agree with Bruce Crawford that primary legislation might be needed in future. I support his view that the Executive should conduct a review of the matter if it is felt that the bill is not the appropriate piece of legislation to deal with the issue.

Others have talked about alternative activities such as cricket, rugby league or whatever. I have never spoken in the committee only about football. A much wider interpretation of sport and sporting events is involved.

It was said that the committee has not taken evidence. However, when I raised the issue previously, the committee did not want to take evidence, which is why we are discussing the amendment today.

Paul Martin mentioned the family approach and the potential damage to outside hostelries. Currently, people get fairly well stoked up, as is said, before they go to a match, as Grampian police can testify. The onus is therefore on the police and the authorities to ensure that anyone who is in a poor state does not enter the ground. That control already exists. As far as the effect on outside pubs is concerned, that is simply the law of the marketplace and I have no difficulty with that.

The minister mentioned designation. Proposed new subsection (2B) of section 18 of the Criminal Law (Consolidation) (Scotland) Act 1995, which amendment 159 would introduce, clearly refers to

"the chief constable for the area"

and

"the managers of the sports ground".

I want real decentralisation, or devolution, if you will, away from the minister—who would no doubt retain a power of final resort—in order to allow local people, with the licensing board, to make decisions on controls and to look for exemptions where risks can be reduced or where they can be held to be fair. I totally agree with what everybody has said about risks to the public, but I do not want to leave things to the whim of ministers; rather, I seek to give powers to chief constables and managers of sports grounds to deal with local issues. As I have said previously, no one would do anything foolish, but it would be helpful if the bill allowed at least for a pilot scheme to be operated.

Someone mentioned losses. A loss of £20 million has been confirmed by a number of authorities, but allowing for family-based activities is a restraint in itself. Bruce Crawford has said that we need to make public houses and restaurants more family friendly in order to help to change the culture. I believe that condensing drinking patterns to pre-match and post-match drinking and not spreading it encourages the overuse of alcohol and means that people come to grounds inflamed, possibly about religious divides or whatever. I want to press the amendment if only to put the matter on the record.

The Convener: The question is, that amendment 159 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
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)

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

Amendment 159 disagreed to.

Section 120—Relevant offences and foreign offences

The Convener: Amendment 94, in the name of the minister, is in a group on its own.

George Lyon: The bill already allows ministers to prescribe offences that are to be relevant offences for the purposes of the new licensing regime. Amendment 94 will go one step further and allow the persistent commission of a lower-level offence—which would not by itself be sufficiently serious—to amount to a relevant offence. Convictions for a relevant offence may result in the board refusing to grant a licence or the review of a licence. A review may, of course, ultimately lead to loss of the licence.

One use to which the regulation-making power is intended to be put is to make additional links between the bill and the Smoking, Health and Social Care (Scotland) Act 2005. Section 1 of that act makes it an offence for a person with management and control of no-smoking premises knowingly to permit others to smoke. There is a

further offence under section 3 for such a person to fail to display warning notices.

We consider that people with management and control will include the premises manager and could include the premises licence holder. It is our intention that the offences under sections 1 and 3 of the Smoking, Health and Social Care (Scotland) Act 2005 should be relevant offences for the purposes of the bill for both personal and premises licence holders.

It is right and proper that a licensee should face consequences in relation to his licence for smoking offences. However, we do not feel that it would be appropriate to initiate the potentially fairly serious consequences for licensees over a single commission of a lower-level offence. We intend instead that regulations will specify that lower-level offences, including the smoking offences, must be committed on three occasions before being treated as relevant offences. Amendment 94 ensures that the general concept of persistent commission of offences is recognised in the bill and can be used when we are drafting regulations.

I move amendment 94.

15:00

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Given what the minister has said about the specific offences that he intends to create, would it not be better, in light of the importance of the matter and the desirability of clarity when any criminal offence is created, for those offences to be created in the bill rather than through subordinate legislation later on? Given the lack of any facility to amend subordinate legislation and the limitations, with which we have all become familiar, on our capacity to scrutinise it when it is introduced, is there not a strong case for reconsidering the issue, particularly in relation to the most important offences, which ought to be brought forward for proper debate at stage 3?

George Lyon: I have two points to make in response to Mr Ewing's concerns. First, we are not creating offences; we are just providing a linkage between the two pieces of legislation. Secondly, members can accept or reject subordinate legislation, so the Parliament can give its views if members are unhappy with the regulations that are introduced.

Amendment 94 agreed to.

Section 120, as amended, agreed to.

Section 121 agreed to.

Section 122—Appeals

The Convener: Amendment 95, in the name of the minister, is grouped with amendments 96 to 101.

George Lyon: My predecessor, Tavish Scott, explained to the committee at stage 1 that the appeals provisions had not been fully worked up when the bill was introduced. That was because we were still in consultation with the sheriffs principal about how those provisions should operate. We have subsequently agreed with the sheriffs principal a procedure that will deliver what Sheriff Principal Nicholson had in mind in his report.

Sheriff Principal Nicholson's primary concerns were the following. First, he was keen to ensure that appeals should be made to a senior judge. Our amendments provide that all appealable decisions relating to premises' licences are made to the sheriff principal rather than to a sheriff. As amendment 96 makes clear, only appeals relating to personal licences would go to a sheriff.

Secondly, Sheriff Principal Nicholson felt that, when a licensing board's decision to suspend or revoke a premises' licence is being appealed, there should be a procedure for the recall of that suspension or revocation while the appeal is being determined. Amendment 101 and consequential amendments 97 and 100 deliver that judicial safeguard against premises being closed until an appeal is heard.

Finally, Sheriff Principal Nicholson's policy was that only substantive decisions, not procedural ones, should be appealable. Amendments 95 and 98 deliver that, by setting out a user-friendly list containing a schedule of all decisions of the board that may be appealable and of who may appeal them. That list now contains two sets of rights of appeal that are not currently contained in the bill. One allows a personal licence holder or an applicant for a personal licence to appeal against the refusal of a personal licence or other order in relation to a personal licence. The other allows both applicants for and objectors to an occasional licence to appeal against the granting or refusal of an occasional licence application. That is necessary because, for occasional licences, there is no right of review, which would not be appropriate given the fleeting nature of the occasional licence.

Rights of appeal are being given to objectors at the review of a premises licence rather than at the initial application stage. We recognise the importance of rights of appeal, but we believe that that is the appropriate time for such rights to be available. As soon as the premises in question are up and running, any person can, if there are any problems, apply for the review of the licence, including an objector to the original application. If the objector is overruled at the review hearing, they have the right to appeal the decision in the courts all the way to the House of Lords if they wish.

I remind the committee that, under the bill, we are greatly extending the right to object to a licence application in the first place. Under the Licensing (Scotland) Act 1976, only a very restricted range of people may object to a licence application. Given that the bill allows any person to object and to make a licence review application once the premises is up and running, we are now offering a much wider right of appeal at a different stage of the process.

I hope that the committee will agree that the amendments will deliver a fair and well-balanced appeals process.

I move amendment 95.

Amendment 95 agreed to.

Amendments 96 and 97 moved—[George Lyon]—and agreed to.

Section 122, as amended, agreed to.

After schedule 4

Amendment 98 moved—[George Lyon]—and agreed to.

Section 123—Appeals: supplementary provision

Amendments 99 to 101 moved—[George Lyon]—and agreed to.

Section 123, as amended, agreed to.

Section 124 agreed to.

Section 125—Form etc. of application and notices

Amendments 102 to 104 moved—[George Lyon]—and agreed to.

Section 125, as amended, agreed to.

Section 126 agreed to

Section 127—Fees

The Convener: Amendment 160, in the name of Paul Martin, is in a group on its own.

Paul Martin: I want to clarify a couple of points about amendment 160. I am not proposing a blanket approach to the recovery of costs. Amendment 160 would give licensing authorities the opportunity to recover the public service costs attached to a licence if, for example, there were an application to extend it to cover a longer period. The police authorities are mentioned in the amendment, but there would also be an opportunity to recover the costs of closed-circuit television, which is required in a number of licensing authority areas, and council service costs.

I respond to the arguments against the proposal by saying that there has been a lot of public support for it, such as from people at our meetings in Glasgow who have suffered as a result of an increase in licensed premises' activities. There is a strong feeling that there should be an opportunity for the licensing authorities to recover costs. I also understand that a number of police authorities support the opportunity that would be available to the licensing authorities. I stress that the measure would be available if the licensing authority felt that there was going to be an increase in police activity as a result of applications being accepted.

There has been a suggestion that the antisocial behaviour element of the police's duties would be involved. The police would be carrying out their role as a result of a licence application. That would relate not just to antisocial behaviour, but to patrolling outside a number of licensed premises whose applications might be accepted.

I move amendment 160.

Fergus Ewing: I have listened carefully to what Paul Martin has said, but I am not persuaded that we should support his proposal, for the following reasons. First, licensed premises already pay a substantial sum for policing, particularly through non-domestic rates and through public general taxation. Singling them out for extra charges is, in principle, not to be supported. Business rates are very heavy for licensed premises and I am pretty sure that most licence holders would already say, and argue with force, that they pay their taxes, they pay their way and they pay for policing.

Secondly, if the amendment were passed, it is not clear how it would be possible to measure any increase in the cost of providing public services. That concept would be immeasurable and subjective, almost by definition. Any system of taxes should be the opposite: clear and ascertainable.

Thirdly, there might be a case for businesses—perhaps all businesses—to make a contribution towards the cost of providing CCTV. I am aware from cases in my constituency that informal arrangements can be considered. However, I do not see why public houses should be singled out to pay for it, rather than the generality of businesses in city centres or town centres, all of which would have an interest in benefiting from the provision of CCTV.

For those reasons, I am not inclined to support amendment 160.

Mr Davidson: I raised earlier the issue of proof that a certain problem has emanated from a public house and is not just something that has appeared in the street outside it. I cite as an example a non-licensed premises in Aberdeenshire that attracts a large element of young people who are very

disturbing of the peace. They frighten people to death outside a particular chip shop, close to a village hall. Some of the young people there are under the influence of alcohol. Because it is a small town, the police cannot be there all hours to cover the situation.

Turning to the thinking behind amendment 160, it is difficult to say whether the fault lies with the off-licence or public house that might have served the young people with alcohol or whether it lies with the chip shop outside which there is a constant problem, which can extend to fires in bus shelters, vehicle fires and so on. There is a similar problem by a video shop in another area. It is brightly lit, has a sort of balcony and seems to be a gathering point.

The real issue is that, quite apart from the fact that establishments collect revenue for the Chancellor of the Exchequer, they pay their way. There is evidence that, where town centre partnerships get involved with CCTV schemes, they are managed very well. They tend to be well funded by all the local shopkeepers. It is not a case of treating the problem as if it exists only in the area immediately outside the pub in question; other people have an interest in law and order.

If a public house or restaurant is continually the cause of problems, the powers for it to be got at by the licensing board are already present in the bill and in existing legislation. It is an issue for the management of those premises. That relates to a point Tommy Sheridan raised previously and with which I have some sympathy. Will there be proper training for doormen? Will they be licensed? Will they be under control? Will they become heavy-handed to ensure that any problems happen off the premises rather than on the premises? I do not want them to take the place of the police. I am a bit concerned about what exactly Paul Martin's amendment would do that cannot be done already.

15:15

Bruce Crawford: Paul Martin is right to say that we took informal evidence. Paragraphs 364, 365 and 366 of the committee's stage 1 report deal with the informal evidence that we took during our visit to Glasgow. The view was expressed to us that in certain circumstances it might be appropriate for licensees to contribute directly to the increased costs of cleansing and policing where problems were directly attributable to the existence of licensed premises. The report states:

"The Committee recognised that it had taken no formal evidence on this matter, and that there could be a number of potential difficulties, for example, in seeking to impose an additional levy on businesses which already pay non-domestic rates."

Paul Martin mentioned that some police authorities favour the idea. I would like to know which they are, because that would be additional evidence that we could bring to bear in the argument. I cannot remember whether we took informal evidence from the police at our session in Glasgow—my memory fails me. I cannot remember any of the policemen who gave the committee evidence at stage 1 suggesting the idea. It would be useful to hear from Paul Martin who those people are.

Fergus Ewing dealt with the amendment's potential impact on businesses from a business rates perspective. Evidence that we received in an e-mail this morning suggests that the licensed trade in Scotland pays about £50 million a year in business rates. Goodness knows how many more millions of pounds it gives to the Chancellor of the Exchequer in excise duties each year. A considerable amount of tax revenue is raised from the licensed trade.

The more compelling argument is that when antisocial behaviour outside or inside a premises causes difficulties on the streets, we would effectively legitimise that activity by putting up CCTV cameras or introducing other measures. CCTV cameras can make a contribution to dealing with the problem, but the amendment would almost legitimise such criminal activity by implying that the problem can be overcome by putting up CCTV cameras.

The way to address the problem is to deal with it through the bill and the new licensing regime. If necessary, the premises can be shut down. That is what we should do with these places. We should not enable them to bring in other measures as that could legitimise the antisocial behaviour. I understand where Paul Martin is coming from and that that is not his intent, but there is the potential to look at the amendment in that way. We should bring something to bear through the new licensing regime that either brings those places to book or closes them down. That would be the proper way to deal with them.

Whether a CCTV system that covers a wider area can make a contribution is an entirely different matter. David Davidson dealt with the issue. I recall that when I was the leader of Perth and Kinross Council we were one of the first areas in Scotland to have CCTV in the city centre to deal with those matters. A partnership approach was taken and the private sector, the police and the local authority brought money to the table to deal with a problem in a specific area. That approach works and there is nothing wrong with it, but legislation is not required to make that happen: it requires only will and it does not focus on specific premises.

I say to Paul Martin that it might be possible to introduce another amendment at stage 3 that deals with his concerns and does not effectively say that the process is a charter—I do not want to use words that are inappropriate—that legitimises some criminal activity. The committee recognised that if practical ways could be found to get round the problem, that would be fair enough, but we must deal with those points first.

Michael McMahon: I take on board a few of the points that members have made. There are issues about an additional burden being placed on those who already pay business rates, but there is a fundamental difference for licensed premises in that respect as, unlike other businesses, their rates are assessed on turnover. Some successful businesses will pay a substantial amount of money but that is because they are successful. If their success allows them to ignore what happens outside their premises, what Paul Martin asks for is not a burden that we should flinch from asking them to bear.

If licensed premises make money and are successful, they have to recognise that they are part of a community and that they provide a service that is unlike that provided by other businesses. Given that they have an impact on wider society, we can ask them to pay a bit more if they do not provide that service responsibly.

David Davidson talked about the difficulty of stewarding and costs. In my experience—I have witnessed this—stewards are paid by the premises to look after the premises. They do not get involved in incidents in the street because they are not paid to intervene in such incidents. It is their responsibility to get a troublemaker off the premises—that is where their responsibility ends. That exemplifies why Paul Martin is right to raise the issue. Once the problem is over the doorstep, the publicans do not want to know. They are not prepared to pay that bit extra—although the problem just goes outside.

We passed the Antisocial Behaviour etc (Scotland) Act 2004 to address antisocial behaviour on streets, such as outside chip shops. The point is that public houses are a different type of premises, so we have to address them differently, which Paul Martin is trying to do. During consideration of the bill, a superintendent told me that the police would like a lot of the measures in it because they would like as many tools in the toolbox as possible. That is not to say that they will always use those tools, but if the tools exist they have the option of using them.

Paul Martin might not have drafted amendment 160 as tightly as we would like, so if it is agreed to I ask the minister to make alterations to it at stage 3 to address some of the concerns that members have raised. If we agree to the amendment, we will give the bill added teeth. The amendment sends out a strong signal and I will certainly support it.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): Although I see the purpose of amendment 160, I also foresee the practical difficulties that other members have mentioned. If there is a problem in an area with three licensed premises, do we charge them all extra pro rata? How is that decided? A troublemaker might have staggered from a fourth premises some distance away. I do not see how the amendment can work in practice. The point that Michael McMahon raised is more interesting. If pubs are exporting their problems on to the street, there is perhaps room for identifying and dealing with that in a slightly different way from that suggested in amendment 160. I will not support amendment 160, because it will not deal properly with the problem.

Dr Sylvia Jackson (Stirling) (Lab): Bruce Crawford is right: an establishment should be closed down if it is causing a problem. However, it is inevitable that there will be police activity before such an establishment is closed down. I have had letters and visits from constituents about licensed premises and antisocial behaviour. People ask me to get more police activity. If that abates the antisocial behaviour, albeit for only a limited time, it is worth it. I agree that perhaps amendment 160 is not exactly what we want at the moment, but it contains the gist of it.

The Convener: I have a couple of comments to make before I invite the minister to contribute. It is right that if a premises regularly does not behave in the way that we would expect of it, we would wish to see its licence removed.

It seems to me that the principle that Paul Martin seeks to introduce in amendment 160 is that the misbehaviour of a premises' customers need not require the licence to be removed. He proposes a way of reducing the impact on society of adverse activities in premises without immediately seeking to impose that sanction. The principle that Paul Martin seeks to introduce is valid.

The normal activities of most businesses do not have a major impact on policing and other public services. However, in the football business, which we debated earlier, there is the potential for antisocial behaviour and occasional criminal activity at football grounds on match days. Because of that, policing is required at football grounds on those days, for which football clubs must pay. If we applied to the football business Bruce Crawford's argument that we should close down premises where customers misbehave, we would have to close down large parts of our football industry. The principle that Paul Martin seeks to introduce is similar to the one that applies in football and it is worthy of further consideration.

On members' arguments regarding chip shops and other premises, I am convinced that people who commit antisocial behaviour in the middle of our towns and cities every weekend do not do so on the basis of the over consumption of chips. That particular argument is ridiculous. Many of the members who introduced alternative arguments into the debate are the same people who opposed the introduction of dispersal powers as part of the Antisocial Behaviour etc (Scotland) Act 2004. Measures exist to deal with antisocial behaviour that is not particularly associated with licensed premises but takes place in a particular location. Local authorities and the police can use such measures.

I do not know whether my colleague Paul Martin intends to press his amendment 160, but the principle that underlies it is valid. I will wait to see what he decides to do after the minister responds to the debate.

George Lyon: I, too, have sympathy with the concerns that lie behind amendment 160, but I stress that our proposals for a new licensing system deal with the issues and concerns, which Paul Martin has consistently raised, about problems in Glasgow and other parts of the country. The new system will emphasise a partnership approach with the licensed trade, with mediation at a local level to solve problems. When problems arise that result in increased policing or other public service costs, such as for litter collection, the licensing standards officer will give the licensee involved an opportunity to sort the problem out themselves in the first instance. If intervention at that level does not work, the enforcement regime will kick in.

Licensees will not be able to ignore problems outside their establishments, as they currently can under the 1976 act. Either unilaterally or further to a complaint from the police or anyone else, licensing boards will review a licence and may apply a wide range of sanctions, including revocation of the licence. That means that a board will shut a place down if a licensee will not deal with problems that arise outside their establishments.

I have a good deal of sympathy with the reasoning behind amendment 160, but a number of practical difficulties could arise from its proposals—and members have referred to them. For example, how would we identify which establishment should have an extra charge placed on it? I wonder whether there would be a disincentive to calling the police out to deal with problems if a licensee had to pay for a call-out. How would we establish the extra costs that a particular police force would incur on such occasions? Licensing conditions for some establishments would require them to install their own CCTV systems.

I am willing to examine the matter further, to see whether there is a way to overcome the practical difficulties. With that assurance, I ask Paul Martin to consider withdrawing amendment 160. I guarantee to come back at stage 3 on the matter, after looking at it in further detail.

15:30

Paul Martin: The debate has been fair. I will deal with the points that members have raised. The issue that Bruce Crawford mentioned was similar to that raised by the Scottish Beer and Pub Association in evidence to us. I see the issue as one of capacity. At present, applications that councils are considering will increase the requirement for police authorities to attend premises. The issue is not about existing antisocial behaviour; it is that an increase in the activities of licence holders will result in an increase in the policing cost for an area.

My point is similar to the one that Sylvia Jackson raised—the aim is to prevent antisocial behaviour. Additional applications, particularly in Glasgow, will result in additional requirements for the services of police authorities. I see amendment 160 as enabling us to prevent antisocial behaviour. The aim is not necessarily to deal with premises that are consistently linked to antisocial behaviour. Similarly, the aim of closed-circuit television systems is to prevent antisocial behaviour—their existence can have that effect. If premises want to increase their activities to become superpubs—we are seeing evidence of them throughout Scotland—licensing authorities should be given the power to require them to pick up the related costs. The public often argue that even though we have business taxes, local council tax payers should not pay for the costs that arise from the additional activities of premises that go from an ordinary pub to a superpub. The matter is a people's issue.

I accept that we need to highlight premises that cause problems, but the anecdotal evidence is that any police officer would be able to highlight the problem premises in their area. There are well-publicised cases of premises that have caused problems over the years but have not been closed down, because that is not the way in which licensing authorities react to complaints. They do not simply decide to close premises; as Sylvia Jackson said, they are required to police the problem to a particular stage. However, during that time, members of the public suffer.

Amendment 160 is an enablement to deter operators who do not want to ensure that their premises are properly policed. Bruce Crawford is right that we should close down premises that cause problems, but the premises that we are talking about will not always be those that cause

problems. If the number of licence applications in the system is to increase, we must ensure that premises are policed properly. To enable us to do so, we must put in place a measure under which the licence holder must pick up the cost for that.

Some public organisations contribute to policing costs—a housing association in my constituency contributes towards the overtime costs of police officers. Therefore, I do not see why superpubs and nightclubs cannot do the same. I will press amendment 160 on the basis that negotiations could take place before stage 3 to ensure that the bill deals with the concerns that members have raised.

The Convener: The question is, that amendment 160 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)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
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 4, Against 4, Abstentions 0.

On that basis, I must cast my casting vote, which I do in favour of amendment 160.

Amendment 160 agreed to.

Bruce Crawford: On a point of order, convener. The convention for dealing with tied votes in committee might be different from that in the chamber but, in the chamber, the Presiding Officer casts his vote for the status quo. What has just happened does not maintain the status quo.

The Convener: I have convened a number of stage 2 proceedings and I have consulted on this matter. To my knowledge, there is no guidance on how committee conveners are required to use their casting vote. It is down to the convener's judgment.

Bruce Crawford: I accept that there is no guidance in that respect, but I asked about the convention.

The Convener: I believe that no such convention applies to parliamentary committees.

Fergus Ewing: On a point of order, convener. I do not doubt what you have said because, after all, you have been a convener for a long time. However, some members take a different view from you on the matter. They might well be incorrect, but I wonder whether we can we seek guidance from the Presiding Officer's office to clarify the position on this important issue and whether you can report back at the next meeting on the result of that exercise.

The Convener: I do not know whether we need to seek guidance from the Presiding Officer, but I can certainly seek out the guidance for conveners and make it available to the committee. My understanding is that conveners on different committees have taken different approaches to such situations and that the vote is cast at the convener's discretion.

Amendment 4, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford: First, let me say that I accept the convener's response to my point of order.

We took a lot of evidence on fees and I want to remind members what we said about the matter. It is one of the bill's most difficult issues, and our approach to it will influence whether the licensing trade accepts the legislation. We can try to take a pragmatic view of all the evidence that we have taken but if, further down the track, licensed premises find it difficult to pay fees, all our good work could well be unravelled.

I believe that the provision in amendment 4 would bring us closer to the committee's agreed position. In our stage 1 report, we deal with fees from pages 56 to 59 and say:

"The Executive has expressed support for the principle of graduated fees set at different levels for different categories of premises."

The minister will probably say that he wants to introduce a process to address that principle—indeed, I hope he does—but I want the bill to require the Executive to do so. The Executive will introduce regulations later, but the principle must be established.

In evidence, the Scottish Licensed Trade Association said:

"One thing is for sure: it is going to be difficult to come up with something that pleases everybody."

However, any regulations on fees that the Executive introduces will have to please as many people as possible. The Executive will not be able to please everyone—I acknowledge that—and although the committee is able to sit here and discuss principles with the minister, the Executive itself will have to get down to the nitty-gritty.

The SLTA went on to say:

"When we examine the potential cost of liquor licensing standards officers and so on, we can see the costs mounting up. The fair approach would be to base fees on the ability to pay, so bigger places would pay more than smaller places."—[*Official Report*, *Local Government and Transport Committee*, 12 April 2005; c 2282.]

Of course, the issue might not be size, but turnover. The fact that premises are bigger does not necessarily mean that it should have to pay more.

The Scottish Beer and Pub Association said:

"It is important that when the new regime is put in place, we try to keep costs to a minimum."—[*Official Report*, *Local Government and Transport Committee*, 19 April 2005; c 2355.]

That is true. The association then made it clear that it does not want gold-plating. Furthermore, the Federation of Small Businesses complained to the committee that

"It is obvious that the costs to a licensing board will increase significantly merely by employing licensing standards officers"

and then highlighted what would happen if a board's increased costs were

"passed on to businesses through the fee system".—[*Official Report*, *Local Government and Transport Committee*, 3 May 2005; c 2452.]

Obviously, that is a very important issue for the federation.

The Scottish Grocers Federation argued that licences should be structured in such a way that licensed premises will be banded according to their rateable value. That is another option, but it all comes back to the same principle: the system should be graduated and based on ability to pay, either through the rates or based on the site. It is for the Executive to come up with the detail. Today I am trying to establish the principle.

Finally, the committee said that it

"considers that there should not be a flat licence fee rate: fees should take account of different types and sizes of licensed premises. In the view of the Committee, a new variable fees regime should be flexible enough to take account of the many different types of licensed premises."

I agree. We cannot be prescriptive today about what the system should be. However, we can say that, in principle, the system should be based on that premise.

Amendment 4 suggests that regulations

"must provide for the level of fees charged to vary between different sizes and types of premises."

I have used that wording intentionally, as it gives the minister as much flexibility as he needs. If he wants to lodge a further amendment at stage 3 to add another category, so be it.

I have tried not to be prescriptive about the type of fee regime—it is proper that that be done by the Executive through regulations. Instead, I have tried to establish the principle that the level of fees must be based on the size and type of premises. I hope that that explains why I lodged amendment 4. The amendment is constructive and I hope that committee members will support it. As we decided in respect of the previous amendment, if the minister does not like it, he can always lodge another at stage 3.

I move amendment 4.

Mr Davidson: I am very appreciative of what Bruce Crawford is doing. He is not laying out a format and structure for fees, which is the job of the Executive. He is saying that, on the face of the bill, there should be recognition of the different overheads that apply to different establishments. Members who represent Glasgow, in particular, have commented that the size of premises is related to their cost to the public purse. It should be recognised that in some smaller and suburban areas there may be only one establishment that is an old, large building with small throughput. The situation is similar in rural areas. Rural hoteliers made the same argument about the fees structure for the former area tourist boards.

It is important that the minister should be pushed into coming back with an amendment at stage 3 that deals with the issue. A flat-rate fee would be tremendously unfair. Many other fees are charged on the basis of a mixture of premises size, rateable value and throughput. It is important to say that that principle should be established. I support Bruce Crawford's amendment 4.

George Lyon: I assure Bruce Crawford that I am very much seized by the concerns that he has expressed. Amendment 4 seeks to introduce graduated fees by reference both to size and type of premises. Unfortunately, it would not give us the flexibility that he desires, because it would limit the graduation of fees to the size and type of premises, which would exclude turnover and rates. Other people would like those conditions to be taken into consideration.

As the committee knows, a comprehensive fee review was recently undertaken by the Scottish Executive. We expect a final report on the review shortly, which will be provided to the committee before the stage 3 debate on 16 November. Part of the remit of the fee review was to examine carefully the options for graduating the fees that will be charged for premises licences. Mr Crawford's amendment is limited to one option for that graduated approach and could undermine the work of the fee review by closing off other options. The bill already clearly provides ministers with powers to deliver graduated fees under section 127(2)(a).

I am content to assure the committee that our firm intention is that fees for premises licences will be graduated. The committee will see the proposals before stage 3. With that assurance, I hope that Bruce Crawford will consider seeking to withdraw his amendment.

15:45

Bruce Crawford: The minister described a reasonable position. I acknowledged that rates were not a consideration in my amendment, which is perhaps a weakness. My amendment was drawn up early—it is amendment 4.

My concern is that that might be this minister's intention, but I do not know how many ministers will follow him. Ministers tend to change a bit, just as we have had I do not know how many members from the Liberal party on this committee. Ministers tend to move on. The bill has had a long gestation period, as we have seen. We started the process with the Nicholson committee in nineteen-ninety-whatever and we have not reached the end yet.

I appreciate what the minister said, but my concern is that if the bill is not more definitive and things change—the minister might move on and we would have another minister—by the time the fees are in place, we might not be in the comfort zone that we are in at the moment. I would prefer that the minister lodge a stage 3 amendment that will add elements to give him the flexibility that he requires. In the circumstances, it would do no harm for the committee to agree to the principle and put it in the bill, which would allow the minister in his reasonable way to lodge a stage 3 amendment. Agreement to the amendment would put the committee in the driving seat.

I respect fully the minister's intention, but I will press the amendment.

The Convener: The question is, that amendment 4 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

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)

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

Amendment 4 disagreed to.

Section 127, as amended, agreed to.

Sections 128 to 134 agreed to.

After section 134

The Convener: Amendment 105, in the name of the minister, is grouped with amendments 106 and 125 to 130.

George Lyon: Executive amendments 105, 106 and 125 to 130 are technical. They will ensure that the necessary consequential amendments and repeals of other acts are made as a result of implementation of the bill.

I move amendment 105.

Amendment 105 agreed to.

After schedule 4

Amendment 106 moved—[George Lyon]—and agreed to.

Section 135 agreed to.

Section 136—Orders and regulations

The Convener: Amendment 107, in the name of the minister, is grouped with amendments 108 and 109.

George Lyon: Executive amendments 107 to 109 are technical. They were lodged following recommendations by the Subordinate Legislation Committee, which I am happy to take on board. Executive amendment 107 lists orders and regulations that will not be subject to the negative procedure. They are orders under section 115(5) relating to the definition of excluded premises; commencement orders under section 140(2); regulations under section 25(2) relating to the extension of the mandatory licence conditions in schedule 3; and regulations under section 130(3) relating to remote sales of alcohol.

Amendment 108 provides that orders and regulations, other than commencement orders, will be subject to the affirmative procedure. Commencement orders will, as usual, not be subject to any form of parliamentary procedure. Amendment 109 is consequential.

I move amendment 107.

The Convener: Is that another victory for the Subordinate Legislation Committee, Sylvia?

Dr Jackson: Yes.

Amendment 107 agreed to.

Amendments 108 and 109 moved—[George Lyon]—and agreed to.

Section 136, as amended, agreed to.

Section 137—Interpretation

The Convener: Amendment 110, in the name of the minister, is grouped with amendments 187 and 117.

George Lyon: Section 7(3) of the bill requires licensing boards, as part of their overprovision assessment, to have regard to the number and capacity of licensed premises in a locality. Section

19(4), as amended during stage 2, will require applicants for a premises licence to state the capacity of their premises in their operating plan.

Amendment 110 provides the necessary definitions. For on-sales establishments, capacity will be the maximum number of customers that can be accommodated in the premises at any one time. For off-sales, it will be the amount of space in the premises given over to display of alcohol for sale. That will take account of the volume of alcohol on display and will catch not just shelving but other three-dimensional floor space display areas. Amendment 117 is consequential.

Amendment 187, which was lodged by Andrew Arbuckle, would put a duty on enforcing authorities under the Fire (Scotland) Act 2005 to advise on capacity. In most cases, the enforcing authorities will be the fire and rescue authority or joint fire and rescue board. Amendment 187 does not recognise the role of building standards officers in setting building capacities. However, it is unnecessary to make references here to either fire authorities or building control. Both will already be made aware of applications through section 20 of the bill and can be consulted on overprovision assessments under section 7(4). Amendment 187 also requires boards to consider the nature and extent of the likely sale of alcohol on the premises, but the overprovision assessment and consideration of operating plans should take those issues into account in any case. I ask Andrew Arbuckle not to move amendment 187.

I move amendment 110.

Mr Arbuckle: I lodged amendment 187 because concerns had been expressed within the trade about the definition of capacity, and I have suggested that fire regulations would serve to provide a uniform standard. I take on board what the minister has said, but I am still concerned that his proposal relates to the maximum number of customers who can be accommodated in the premises, and I do not know whether that links into the building control standards or the Fire (Scotland) Act 2005 for the definition of the number of people who may be allowed in the premises at any time.

Mr Davidson: Amendment 110, in the name of the minister, leaves me, like Andrew Arbuckle, a bit confused about how someone can actually define a maximum number or how any action could be taken. Are we talking about the number of people who can be wedged in, or is it common sense to suggest that space for movement is needed? I do not think that the minister has defined very cleverly what is in his amendment. I am not convinced about what the minister is seeking to achieve with paragraph (b) of amendment 110, on off-sales premises, because there is no measure relating to the strength of alcohol on sale or—as he is apparently quite happy to allow pricing promotions—to whether pricing is a factor. Do people who run retail establishments not have the freedom to lay out products as they wish?

I understand the purpose behind Andrew Arbuckle's amendment 187 but I do not think it covers all the elements that it should, because it consists of just a single line. Perhaps it should have included subsections on other aspects, as the minister said, such as planning and building regulations. Fire regulations are important because of the safety considerations that are involved.

I would like the minister to come back to us at stage 3 with something a bit more detailed that names all the regulations that would apply and which does so in a manner that people can understand.

Boards might have difficulty, as might the police, in deciding whether premises are full or not. Most pubs are not full except on perhaps two or three nights a week. However, what is the definition of full? This is legislation that we are talking about, so we have to have clear definitions.

Fergus Ewing: It seems from what the minister said that capacity has been defined because of section 7(3), which deals with the duty to assess overprovision. Section 7(3) states:

"In considering whether there is overprovision … the Board must—

(a) have regard to the number and capacity of licensed premises in the locality".

Given that a board must have regard to something, it makes sense to define that something. So far, so good.

The definition seems to be that the capacity of licensed premises on which alcohol is sold should be the maximum. Should it not be the average? Why must a board have regard to the maximum? Will not that lead to distortion of the actuality? When we look at capacity, we are not talking about licensed premises that are likely to be jam-packed and full to capacity all the time.

I do not quite understand the part of amendment 110 that is in parenthesis that seeks to define capacity in relation to licensed premises, although that is probably a failure on my part. I do not quite understand what

"(including any such premises on which alcohol is also sold for consumption off the premises)"

actually means. It comes after the words

"in relation to licensed premises on which alcohol is sold for consumption on the premises".

Does that mean a pub in which there is also off-sales? Perhaps I have just fathomed its meaning.

My second point is about paragraph (b) of amendment 110, which deals with off-sales. Capacity is defined as

"the amount of space in the premises given over to the display of alcohol for sale".

Does that include shelf and floor space? In most off-sales not only is one greeted with shelves replete with multifarious alcoholic beverages, but ones sees the floor jam-packed with large stacks of cans and cheap offers. Is it assumed that capacity is defined by reference to the amount of space that is set out in the operating plan? That is likely to vary from time to time and from circumstance to circumstance.

Are you asking the boards to consider the right figures? Would it be sensible to amend the provision at stage 3 to make it clear that boards can have regard in their deliberations not to the maxima but to the average, and to what is happening rather than to what could happen?

Bruce Crawford: After both paragraphs I have written down the words "as detailed in the operating plan". I do not know why those words have not been added to the amendments. They might appear somewhere else in the bill and so not be required, but it seems to be a sensible starting point for any examination of what is the maximum in an off-licence or an on-licence. There might be good reasons why those words have not been included. It might be to do with variation; if there was a minor variation, the licensee would not have to go for a change in the operating plan, but if there was a major variation they would. Why were those words, or something like them, not added?

16:00

Dr Jackson: As I understand it—maybe the minister will comment—section 137 is about interpretation, meaning and definition. It strikes me that it would be stretching things to expect the term "capacity" to cover all the requirements of Andrew Arbuckle's amendment 187. I am thinking particularly about proposed subparagraph (b)(i), which would be inserted by amendment 187. It uses the words

"the nature and extent of the likely sale of alcohol in the premises".

That is important: should it be included somewhere in section 137 on interpretation? Is it needed at all? Andrew Arbuckle is trying to say that it is an important issue, but I do not think that the definition of capacity is necessary.

George Lyon: I will try to answer all the points. Andrew Arbuckle asked from where the definition of capacity—especially maximum capacity—would come. Building control uses a formula for that, which can tell you the maximum capacity of any building. That is why we have relied on that being put into an operating plan. The maximum has been included because the trade requested it; it said that maxima should be put into the operating plans when they are presented to the licensing boards as part of the licence application.

Fergus Ewing made points on paragraphs (a) and (b) of amendment 187. Paragraph (a) is for premises that have off-sales and on-sales and (b) is for premises that have off-sales. Mr Ewing also raised another point about off-sales. The total volume of the shelf space and floor space is included. Members will know from walking around supermarkets or any off-sales premises that they use a mixture of both.

Bruce Crawford states quite categorically that capacity is required as part of the operating plan when it is submitted with the licence application, so the prospective licensee would have to go to building control and the capacity will go into the operating plan in application for the licence. Sylvia Jackson is quite right that the information in amendment 187 would not be needed for the operating plan or in deciding what capacity is. It is right to say that capacity is about definitions and that it is linked to the over provision assessments that all boards will be required to make when drawing up their policy statements.

I hope that that clarifies all the points that have been raised.

Bruce Crawford: Do licensed premises currently require to go to building control people to seek that information? Where does it say that in the bill?

George Lyon: Currently, that information does not have to be offered up because there is in the 1976 act no requirement to assess overprovision.

Fergus Ewing: Is it worth considering whether the licensing board should have discretion to consider average numbers instead of the maximum?

George Lyon: We need to use the maximum; to do otherwise will not work in granting occasional licences. If the board has to calculate overprovision, it has to know the capacity of establishments.

Amendment 110 agreed to.

The Convener: Does Andrew Arbuckle wish to move amendment 187?

Mr Arbuckle: If the minister can give me an assurance that he will clarify some of the points that are raised by my amendment—

The Convener: It is sufficient to say just "Not moved".

Mr Arbuckle: Okay. If I have an assurance from the minister in due course—

The Convener: You may not make a speech at this point. You must either move or not move the amendment.

Amendment 187 not moved.

Amendments 111 to 116 moved—[George Lyon]—and agreed to.

Section 137, as amended, agreed to.

Section 138—Index of defined expressions

Amendment 117 moved—[George Lyon]—and agreed to.

The Convener: Amendment 118, in the name of the minister, is grouped with amendments 119 and 123.

George Lyon: Amendments 118, 119 and 123 are technical amendments. In order to be as helpful as possible to the reader of the bill, the amendments will add "licensed hours", "licensing policy statement" and "supplementary licensing policy statement" to the list of defined expressions.

I move amendment 118.

Amendment 118 agreed to.

Amendment 119 moved—[George Lyon]—and agreed to.

Amendment 161 not moved.

Amendments 120 to 124 moved—[George Lyon]—and agreed to.

Section 138, as amended, agreed to.

Section 139 agreed to.

Schedule 5

REPEALS

Amendments 125 to 130 moved—[George Lyon]—and agreed to.

Schedule 5, as amended, agreed to.

Section 140 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. Tomorrow, an amended version of the bill will be published and the *Business Bulletin* will inform members that stage 3 amendments can now be lodged. I thank not only committee members but the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, George Lyon, and his officials for their contribution to our stage 2 debates.

I will allow members a two-minute break before we proceed to agenda item 3.

16:08

Meeting suspended.

16:12

On resuming—

Regulatory Framework Inquiry

The Convener: Item 3 is about the Subordinate Legislation Committee's inquiry into the regulatory framework in Scotland, on which it seeks the views of other committees. The deadline for committee responses is Friday 14 October, which means that, if we want to make any comments, we will need to conclude them at today's meeting. Members have not submitted views to the clerks in advance, but if they wish to make any comments at this stage, those comments can be submitted on behalf of the committee, provided that we can reach agreement on them today. If we cannot reach agreement, members may make individual submissions to the Subordinate Legislation Committee.

Bruce Crawford: The timescale is interesting. The paper came out on 31 August and is date-stamped 1 September by the committee clerks. However, it did not come before the Local Government and Transport Committee until today, although there may be good reasons for that. I did not receive the paper in the post until Saturday morning. The Subordinate Legislation Committee is undertaking an important inquiry. I recognise that we have no option now but to deal with the paper in the timescale that we have been given, but I have not had the time that I would have liked to have contributed my comments through the committee, although I recognise that I can comment as an individual MSP. The comments that I am about to make are in the context of my point about the timescale.

The Convener: I have consulted the committee clerks about the matter and it is accepted that in retrospect it might have been better if we had circulated the paper earlier. I apologise for that, Bruce. You make a fair point. Attention was perhaps focused on the legislation that was going through.

Bruce Crawford: I understand that. I was not seeking to be too critical of the timescale; I just wanted the committee to recognise that that is the context for my comments.

Transparency and scrutiny are the two words that come to mind when we think about the regulatory framework, particularly in relation to statutory instruments. We have all now had a fair bit of experience in dealing with statutory instruments and I am glad that the paper has come before us.

There are two areas about which I have had concerns for some time, the first of which is the negative procedure for instruments. It is incongruous that the effect of a committee rejecting a statutory instrument—which is the only real option that we have if we are unhappy with it—is to undo a piece of secondary legislation that is already in place.

16:15

Negative procedure operates after the fact. That is daft in a democracy. It is effectively putting a gun to MSPs' heads and saying, "Vote this down if you dare." That is the system that the Executive has inherited—that is where we are. I am not making a criticism in any shape or form. It just seems daft that we are in a situation in which, with the negative procedure, a piece of legislation is put in place and our only option if we are unhappy with any aspect of it is to reject it and cause it to be withdrawn. Any Parliament that gets itself into that situation is putting its head in a noose. We should not have any procedures along those lines. Unless we improve the negative procedure, we are in danger of bringing ourselves into disrepute if at any time an important piece of legislation, which was already part of the legal framework, is rescinded.

The second aspect that I would like us to consider is whether rejection and approval on their own are sufficient and whether, in order to improve the process of government, we should have a process through which statutory instruments can be amended. With bills, the Executive can introduce amendments that are legitimate, correct and going in the right direction. However, it can also—and it often does—introduce amendments at stage 2 that need further refinement at stage 3. A process through which we could amend secondary legislation would be an essential addition.

I do not like the negative procedure—it is contrary to democracy. We should have an affirmative procedure only and instruments should be subject to amendment. I say that for the sake of the Parliament, regardless of what has gone before or of what the Executive has said. Such a system would improve the institution, make the process more transparent and improve the scrutiny, which should make us do business a bit better.

Fergus Ewing: Bruce Crawford is right in saying that we have all now had quite a lot of experience of dealing with statutory instruments. We have all participated in debates in which SIs have been opposed. I feel strongly that there is room for improvement and I congratulate the Subordinate Legislation Committee and the clerks on their paper, which is a useful basis for discussion.

The power to amend secondary legislation would be of great benefit to democracy. It would

allow opportunities to improve and to vary statutory instruments. Given the substantial use of the conferral of powers on ministers to create regulations, one could argue that statutory instruments contain some of the most important work of the Scottish Executive.

Many bills have consisted almost entirely of a series of powers to create statutory instruments. Some of the worst that we have had are in that category—the legislation on individual learning accounts, for example. I remember that I objected to the competence of the Education and Training (Scotland) Act 2000 on the basis that it was nothing more than an act that allowed regulations to be introduced and I recall how that act came to grief with the incidence of fraud in ILAs. Perhaps if there had been more scrutiny at the beginning, we could have done better.

I feel strongly that powers to amend should exist. I do not accept that the arguments in paragraphs 1.6 and 1.7 are necessarily correct in saying that to give the Parliament or MSPs powers to lodge amendments would subrogate the power of the Executive. I do not think that that is the case. We would lodge amendments and they would either be passed or rejected, just like amendments at stage 2. I do not think that that would impinge on the distinction between the Executive and the Parliament in any way.

If we go down the line of allowing amendments, the concomitant reform would be to allow more time, because there would have to be some period within which to consult to allow the people involved to give their views on specific amendments. That process would take more time, which comes at a cost. Time is usually short, but I think that an amendment process would be necessary, beneficial and in keeping with the principles of participation, transparency and improved government. It might also help us to make better laws. I have increasingly heard people—and not just solicitors—commenting on the poor output of some of the laws that have been passed and on their ambiguity and lack of clarity. One way of addressing that problem is by allowing more flexibility in our systems, particularly when it comes to lodging amendments.

Finally, the super-affirmative procedure always seems to commend itself, for the same reasons as I have argued the power to lodge amendments commends itself. That procedure should not be used sparingly but it certainly should not be used routinely. There are major pieces of subordinate legislation that have huge impacts on people's lives, particularly in rural development, fishing and farming. I have felt frustrated, as have people coming to watch our proceedings, at the lack of opportunity to have a say on those issues and at the lack of time for full debate. People have felt general dissatisfaction with the nature of the proceedings that they have witnessed, so I hope that the committee can agree that the power to amend subordinate legislation would be a step forward and that the super-affirmative procedure should be used not routinely but in cases where the importance of the statutory instrument merits it.

Mr Davidson: I remember the day when the Health Committee insisted that a bill would not progress until the minister published his regulations. That decision was made unanimously by all members of the committee. It caused some anxiety for the British Medical Association, but that was not the point. The point was that we were being asked to agree to something without knowing to what we were being asked to agree. For that reason, I am keen on the affirmative procedure, not the negative one. The Parliament has a duty to ensure that legislation is properly thought out, properly consulted on and properly discussed. That will only make the system better and give a better impression of the Parliament.

I certainly agree with what has been said about amendments. Paragraph 4.6 of the paper talks about extending the 21-day rule for negative instruments to come into force. Anything that we can do to improve the scrutiny of what we are about has to be a good thing. Regardless of the timescale, an awful lot of stuff that we deal with in the Parliament seems to be padding to fill in time. I am sure that, with minor tweaks to our hours, it would be well worth the investment for us to conduct further scrutiny.

I agree to an extent with what Fergus Ewing said about allowing people outside the Parliament to comment. If there is early publication of instruments, there will be a chance for the public to deal with them, provided that they have a decent period in which to come together, form a view and feed that information back. If we are to continue talking about quality legislation with good, democratic input, we must make such means of commenting available to all and not just to those of us who sit on committees or in the Parliament. Public bodies and others should be able to make timeous comments and to understand what we are seeking to do. The Subordinate Legislation Committee has done a good job in producing its paper.

The Convener: I do not agree with Bruce Crawford that we should have no negative procedure at all. It seems to me that the negative procedure is perfectly appropriate for minor and technical pieces of legislation on which there is not likely to be political debate. For many instruments that are considered under the negative procedure, there is no opposition or motion to annul and members do not ask questions to dispute them.

If we were to get rid of the negative procedure altogether, we would merely add to the workload of the Parliament without any benefit in improved scrutiny. If a negative instrument is introduced to considerable controversy, members can move a motion to annul, which will provoke a full debate on it. That seems to be fine, provided that we strike the right balance in considering, on the one hand, legislation that confers significant powers, which could involve considerable debate and would therefore be more appropriate for the affirmative procedure, and, on the other, legislation whose effect is likely to be technical. For example, a bill may allow for fees to be amended regularly. I accept that in some cases that could have political significance; in others, only a minor technical amendment might be needed. Provided that the Parliament, when passing a bill, gets the balance right between affirmative and negative procedures, I do not think that we need to get rid of negative instruments altogether.

I have more sympathy with the argument that we should have the opportunity to amend instruments rather than just rejecting them. I would be sympathetic to our making comments on that and asking the Subordinate Legislation Committee to look in further detail at the implications for the Parliament's proceedings and at how we would implement such a change. In principle, however, I would be content if the committee were to say that it was open to the idea of the Parliament being able to amend instruments as they are passed.

To respond to David Davidson's point, we should recognise that many statutory instruments are consulted on extensively before being introduced. Questions that are often asked when we are debating an instrument are what consultation has there been and who has been involved in it. Sylvia Jackson, who is the convener of the Subordinate Legislation Committee, will be aware that many instruments already involve a fair amount of consultation.

My experience is that the system is not always perfect. Sometimes the consultation is wide enough to give all the interested parties in society an opportunity to contribute; on other occasions, there have probably been question marks over the level of consultation. We should recognise that consultation is already part of the process of legislation, but perhaps we should ask the Subordinate Legislation Committee to make recommendations to ensure that the consultation is robust in every circumstance.

Dr Jackson: Being intimately involved with the legislative procedure, I would like to make a few comments to clarify what has been happening. In phase 1 of our inquiry, we looked at the point that Fergus Ewing raised about clarity. I guess that what he meant was the use of English and related matters. That has been looked at already, as has the issue of consultation. Essentially, in phase 2, we are looking at the procedures whereby subordinate legislation goes through the Parliament as opposed to other issues that were considered earlier in our inquiry. The comments are, nevertheless, very useful.

The 21-day rule for negative instruments can mean that, by the time an instrument gets to the subject committee, it is already in force. That is a problem. However, the convener made a good point about negative instruments. After all, we would not want to have to go through the affirmative procedure to make what might well be a minor change. Fergus Ewing and the convener were also correct to point out that we must strike the right balance in considering whether to have an amending procedure and what such an approach would cost.

Fergus Ewing also noted that significant aspects of legislation are increasingly being dealt with in statutory instruments. As a result, subject committees—and the Subordinate Legislation Committee, which is concerned with balance in legislation—are demanding that draft instruments be seen and discussed before a bill is passed. In fact, David Davidson said as much in relation to contracts for general practitioners. I think that all members have made useful points.

16:30

The Convener: Do members have any other comments?

Mr Davidson: I was going to mention the 21-day rule, but Sylvia Jackson has dealt adequately with it.

The Convener: Members appear to agree on a number of points. I ask the clerk to draw up a paper on the basis of members' comments, which we will send off to the Subordinate Legislation Committee. If members are content, I will sign off the covering letter.

Bruce Crawford: I wonder whether Sylvia Jackson can tell us whether the national parks boundary issue was dealt with in an affirmative or negative instrument.

Dr Jackson: If I remember correctly, the designation order had to be agreed to by everyone or not agreed to.

Bruce Crawford: Was it a negative instrument?

The Convener: I think that it was an affirmative instrument.

Bruce Crawford: I thought that it was negative.

Dr Jackson: I have a feeling—

The Convener: Alastair Macfie is nodding. He thinks that it was an affirmative instrument.

Bruce Crawford: So provided that we could have amended it—

Dr Jackson: But you could not have amended that order. It had to be agreed to by everyone or not agreed to.

Bruce Crawford: That is useful.

Fergus Ewing: Sylvia Jackson's comments have helped to clarify my understanding of the issues. There seems to be a consensus on the need for some power to amend instruments or draft instruments, although we acknowledge that that would cost us time. Would we be able to make such a recommendation?

The Convener: I was taking that recommendation as read, because no one has disagreed with the proposal. We will include it in our submission to the Subordinate Legislation Committee.

Mr Davidson: Some of my colleagues and I are concerned about the gold-plating of European regulations that are introduced as Scottish statutory instruments. The Parliament must have an opportunity to examine that activity.

The Convener: That is probably tangential to the issue that we are discussing. I do not want to get into a debate about whether we should mention the European Union in our submission to the Subordinate Legislation Committee.

Mr Davidson: It is not about the EU, convener.

Fergus Ewing: Tell that to the Tory by-election candidate.

The Convener: Or the UK Independence Party candidate.

Freight Transport Inquiry

16:33

The Convener: Our final item is consideration of a draft approach paper on the freight transport inquiry that we have agreed to undertake later in the session. The paper sets out the agreed terms of reference for the inquiry and highlights a number of issues that we need to decide on, including the timetable and the question whether we meet outwith the Edinburgh area to visit relevant agencies or facilities either in a fact-finding capacity or formally as a committee. I also want to sign off paragraphs 8 and 9, which set out the inquiry's terms of reference. I will open up the discussion to members before I try to pin things down.

Fergus Ewing: I have only some relatively minor comments on the paper, which is helpful and clear. The terms of reference appear to be fine. They encompass the points that Michael McMahon and I heard when petition PE876 was presented to the Public Petitions Committee and members' comments that we should look at all modes of transport—which is good—and find out what the Executive is doing. Paragraph 9 mentions

"The contribution of all modes of freight transport".

Could we make it clear that that includes the present contribution and the potential future contribution that all modes might make?

The Convener: You would like to add the words "the present and future contribution".

Fergus Ewing: On the timescale for submissions, I thought that eight weeks might be better. I say that because I mentioned the inquiry to several people in the industry and they expressed great interest in it. It is the first time that freight will have been studied in the Scottish Parliament. A fixed period of eight weeks for submissions of evidence might allow us all to spread the word and to give local businesses, not just the usual suspects, their say.

I thought that we could come back to discuss meetings outwith Edinburgh. I can think of several potential visits, but it might better to leave that for now. It might be good to go and see the facilities at Zeebrugge or Prestwick airport—we could argue the case for a whole host of places.

The Convener: We could suggest that we think that it would be useful to have such visits. Members could e-mail suggestions to Martin Verity, who will collate them and bring them back to the committee as options.

Fergus Ewing: Yes. I was thinking that we could do that now, but we might also want to see what comes from the submissions, which might give us other leads.

The Convener: We can take suggestions at the moment without concluding the issue.

Fergus Ewing: My final point is about the timetable. I suspect that we will have to take a considerable volume of oral evidence because we want to cover all modes. There is the Road Haulage Association, the Freight Transport Association, employers, unions, economists and the Scottish Executive and we will want to consider the economic impact, road, rail, sea and air. We might be into March before we stop taking evidence, although much will depend on the feedback that we get. The remit is fairly wide, so, although the approximate timetable is fine, we might need a bit longer for taking oral evidence. We could discuss that again when the written submissions are returned.

The Convener: Absolutely. The paper contains only a draft outline of the timetable. We will not agree on the witnesses whom we want to see until the meeting in December. If it then becomes clear that we need a couple of additional sessions, we can make that decision at that stage.

Bruce Crawford: I am glad that the terms of reference will now mention potential. I am particularly interested in the potential for ferry routes other than the Rosyth to Zeebrugge route, particularly into Scandinavia and Germany. It would be useful if, as part of the terms of reference, we acknowledged the contribution of ferries to getting freight off our roads, to which the Rosyth to Zeebrugge route is beginning to make a substantial contribution.

I believe that ferries should be specifically mentioned in the terms of reference and not just included in the category "water". What does "water" mean? Does it mean barges or something more significant? Barges can make a significant contribution to the shifting of freight, but we should mention ferries specifically, particularly if we are using the word "potential". There would be merit in seeing what is happening with the Rosyth to Zeebrugge route. There is also potential for a route between Rosyth and Cuxhaven and we should see what we can do to help that along.

I realise that we are talking about freight, but there are links with other issues. The Rosyth to Zeebrugge ferry has removed a fair chunk of freight from the M74 and the A1 going south to Hull. Anything that we can do to contribute to that improvement would be good.

The Convener: I take your point about ferries, but I am not sure that we need to change the terms of reference. The point about the

"transfer of freight from road to rail and water"

quite clearly covers ferries, so I do not think that we need to be any more specific. I take your point about considering not only existing ferry links but areas for potential expansion.

Mr Davidson: I have just come back from speaking at the northern maritime corridor conference. The next stage of the project is a northern motorway of the seas. I met eight ferry operators, whose names I will be happy to give to the clerk. They are considering combined efforts to set up new channels of communication. I would like to think that we could ask those people, although they may not be Britain based at the moment, to speak about their plans and how they can come together.

The Executive has put money into the next stage of the motorway of the northern seas. Many of the players are not based here, but many of our land-based transport systems will interface with them. That interface is important. If we speak to those people, we may choose not just to visit a ferry port but to take evidence from those who use it or who could use it, so that we understand the interfaces between the various modes of transport. We should not look at transport as three separate blocks: rail, road and ferry. We should look at how they interconnect. We should ask whether the infrastructure exists to allow goods to transfer from one region or country to another.

We have a month, I think, before we say that we cannot accept any more written evidence. I would like to think that we would be a little more—how should I say it?—benign towards people who may wish to give us information after that period, particularly if they are based abroad.

The Convener: Fergus Ewing has suggested eight weeks and I am perfectly content with that. If someone makes an informative and interesting submission after that, I am sure that we will look at it. However, setting an initial deadline of eight weeks would be fair.

Dr Jackson: It is important that we have eight weeks. The effect of freight transport on the environment is extremely important and I know from my constituency work that environmental considerations have involved a community input. When we are contacting businesses to get their input, will we also be communicating with community councils to make them aware of our inquiry?

David Davidson made an important point about the integration of road, rail and ferries. However, I have become very conscious that, when one is trying to address a community concern and to find the best possible environmental way of transporting freight, one must bring a great many agencies together. That is not always as easy as

one might think. It is important that we bear that in mind.

Michael McMahon: The convener asked us to let the clerks know about places that we might visit as part of our inquiry. I think that it would be useful for the committee to visit my constituency, which contains the Eurofreight terminal, where the environmental and the transport network issues that Sylvia Jackson mentioned come together. It would be worth the committee's while hearing from those who are already operating with the support of the Scottish Executive to get from road on to rail. We should also hear from companies that are finding it difficult to do that, because of the existing transport networks. We will hear the problems, but we will also see possible solutions.

The Convener: I hope that that gives the clerks sufficient guidance. If the committee is to make external visits, we must seek approval from the Conveners Group for costs. If members have suggestions for external visits, they should throw them in as soon as possible to enable the clerks to cost them so that we can put in a bid.

That brings us to the end of today's meeting. I thank members for their attendance and contribution.

Meeting closed at 16:44.

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