

# **FINANCE COMMITTEE**

Tuesday 9 February 2010

Session 3

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## FINANCE COMMITTEE

### 4<sup>th</sup> Meeting 2010, Session 3

#### CONVENER

\*Andrew Welsh (Angus) (SNP)

#### DEPUTY CONVENER

Tom McCabe (Hamilton South) (Lab)

#### COMMITTEE MEMBERS

\*Derek Brownlee (South of Scotland) (Con)  
\*Malcolm Chisholm (Edinburgh North and Leith) (Lab)  
\*Linda Fabiani (Central Scotland) (SNP)  
\*Joe FitzPatrick (Dundee West) (SNP)  
\*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)  
\*David Whittom (Strathkelvin and Bearsden) (Lab)

#### COMMITTEE SUBSTITUTES

Gavin Brown (Lothians) (Con)  
\*Lewis Macdonald (Aberdeen Central) (Lab)  
Stewart Maxwell (West of Scotland) (SNP)  
Liam McArthur (Orkney) (LD)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)  
Shona Robison (Minister for Public Health and Sport)  
Karen Whitefield (Airdrie and Shotts) (Lab)

#### THE FOLLOWING GAVE EVIDENCE:

Gary Cox (Scottish Government Justice Directorate)  
Alison Douglas (Scottish Government Chief Medical Officer and Public Health Directorate)  
John Drummond (Scottish Grocers Federation)  
Campbell Evans (Scotch Whisky Association)  
Alison Ferguson (Scottish Government Justice Directorate)  
Gavin Hewitt (Scotch Whisky Association)  
Marjorie Marshall (Scottish Government Health Finance Directorate)

#### CLERK TO THE COMMITTEE

James Johnston

#### SENIOR ASSISTANT CLERK

Terry Shevlin

#### ASSISTANT CLERK

Allan Campbell

#### LOCATION

Committee Room 2



# Scottish Parliament

## Finance Committee

*Tuesday 9 February 2010*

[THE CONVENER *opened the meeting at 14:01*]

## Public Services Reform (Scotland) Bill: Stage 2

**The Convener (Andrew Welsh):** Good afternoon and welcome to the fourth meeting of the Finance Committee in 2010 in the third session of the Scottish Parliament. I have received apologies from Tom McCabe and, therefore, I welcome to the committee Lewis Macdonald, who is his substitute. I ask members and the public to turn off mobile phones and pagers, please.

Agenda item 1 is consideration of the Public Services Reform (Scotland) Bill at stage 2. I welcome to the committee Shona Robison MSP, Minister for Public Health and Sport, and her officials. I intend to move straight to amendments, as we did last week.

### Section 55—Applications under Chapter 3 in respect of conditions

**The Convener:** Amendment 133, in the name of the minister, is grouped with amendments 134, 172, 173 and 178.

**The Minister for Public Health and Sport (Shona Robison):** Amendment 133 will give people who are providing a care service the ability to request that social care and social work improvement Scotland add a condition in relation to their registration. At present, that can be done only by means of an enforcement notice, which is inappropriate when a care service is actively seeking a condition notice. For example, a care home that offers personal nursing care may lose the nursing staff who are qualified to carry out that level of care and may therefore request that a condition be attached to the service that states that it may not look after individuals who need personal care until appropriate qualified staff are found.

Amendment 134 is a technical amendment that will ensure that, in granting an application under section 55, SCSWIS states any conditions that have been added.

Amendments 172 and 173 set out the same amendments for healthcare improvement Scotland in respect of independent health care services.

The amendments have been prepared as a result of representations from the Scottish

Commission for the Regulation of Care, based on its experience in this area.

Amendment 178, which is similar to section 84, in relation to care services, will ensure that if any local authority health board or special health board makes arrangements for the supply of an independent health care service on its behalf, it must ensure that the service is registered appropriately with HIS.

I move amendment 133.

*Amendment 133 agreed to.*

*Amendment 134 moved—[Shona Robison]—and agreed to.*

*Section 55, as amended, agreed to.*

*Sections 56 to 62 agreed to.*

### Section 63—Regulations: care services

*Amendments 135 and 136 moved—[Shona Robison]—and agreed to.*

*Section 63, as amended, agreed to.*

### Section 64—Complaints about care services

**The Convener:** Amendment 137, in the name of the minister, is grouped with amendments 138, 139, 142 to 144 and 174 to 176.

**Shona Robison:** Independent care providers are unlikely to be listed authorities under the Scottish Public Services Ombudsman legislation and will not be directly required to comply with SPSO guidance, therefore such guidance will not apply specifically to SCSWIS when undertaking its duty to deal with complaints about care services. Nevertheless, it would be good practice for SCSWIS to develop its procedures for handling such complaints in line with SPSO guidance and to consult the SPSO on its proposed procedures. Amendment 137, therefore, requires SCSWIS to consult the SPSO on its proposed procedures. Amendments 138 and 139 remove the requirement for SCSWIS to seek the approval of the Scottish ministers, as that is not considered necessary.

Amendment 142 requires SCSWIS to consult the SPSO when drawing up its procedures for handling complaints about how it has carried out its functions, and amendments 143 and 144 remove the requirement for SCSWIS to seek the approval of the Scottish ministers for its complaints procedure or for changes to it, as that is not considered necessary. Amendments 174 to 176 make the same amendments for HIS procedures for handling complaints about independent health care services.

I move amendment 137.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** I have a brief point about amendment 142, which is about the complaints procedure. I may just have misread something, but I am sure that the minister will clarify. Replacing “Ministers” with “Public Services Ombudsman” in section 81 is welcome, but am I correct in thinking that as a result of that change, ministers will not have to approve the SCSWIS complaints procedure? If the ombudsman has to approve the complaints procedures, might what is effectively a statutory body have ministerial powers of direction, and might ministers not have any responsibility for the complaints procedure? The ombudsman will have no power over SCSWIS, so a constituent with a complaint might prefer ministers to be accountable for the complaints procedure.

**Shona Robison:** The amendments provide that the body will consult the SPSO in drawing up its procedures for handling complaints. The body will not be directed by the SPSO, but it will consult the SPSO on best-practice procedures for handling complaints. The amendments that remove the requirement for the Scottish ministers to oversee and approve the complaints procedure recognise that, given that the body will follow SPSO best practice, there is no requirement for ministers to approve the complaints procedure. It is unlikely that either body will seek to put in place complaints procedures that are somehow not in line with SPSO guidance or are out of the ordinary, therefore I am comfortable that the requirement for the bodies to consult the SPSO, get their complaints procedures in good order and follow good practice means that ministers’ approval will not be required.

*Amendment 137 agreed to.*

*Amendments 138 and 139 moved—[Shona Robison]—and agreed to.*

*Section 64, as amended, agreed to.*

*Sections 65 to 71 agreed to.*

#### **Section 72—Right to make representations to SCSWIS under Chapter 4 as respects conditions**

**The Convener:** Amendment 140, in the name of the minister, is grouped with amendments 146, 154, 161 and 168.

**Shona Robison:** Amendment 140 is a technical amendment to ensure that two similar sections have a consistent effect: it brings the wording of section 72 into line with that of section 57.

Amendment 146 is a small technical amendment to ensure that section 84 is grammatically correct. Amendment 161 corrects a typographical error and amendment 168 inserts two words that were omitted in error when the bill was introduced.

Amendment 154 is a technical amendment to ensure that any regulations that might be required to ensure a smooth transition to the new body, SCSWIS, can be made.

I move amendment 140.

*Amendment 140 agreed to.*

*Section 72, as amended, agreed to.*

*Sections 73 to 80 agreed to.*

#### **After section 80**

**The Convener:** Amendment 141, in the minister’s name, is grouped with amendments 159 and 180.

**Shona Robison:** The bill gives SCSWIS powers to issue general and more specific guidance, advice and information about its social services functions. Under the Mental Health (Care and Treatment) (Scotland) Act 2003, the Mental Welfare Commission for Scotland has powers to promote best practice in relation to that act’s operation and to publish information or guidance on any matter that is relevant to its functions.

Amendment 141 requires SCSWIS to consult the Mental Welfare Commission as appropriate when exercising its powers to issue guidance, advice or information on issues on which the commission could issue similar guidance. The amendment will ensure that the commission’s expertise on mental health and learning disability informs SCSWIS guidance as appropriate and will help to eliminate conflicting or duplicate guidance from the two bodies.

Amendment 180 makes a similar amendment in relation to HIS. Amendment 159 is a consequential amendment to ensure that a reference to a section is correct.

I move amendment 141.

*Amendment 141 agreed to.*

#### **Section 81—Complaints procedure**

*Amendments 142 to 144 moved—[Shona Robison]—and agreed to.*

*Section 81, as amended, agreed to.*

*Section 82 agreed to.*

#### **Section 83—Liability of persons exercising functions**

*Amendment 145 moved—[Shona Robison]—and agreed to.*

**Section 84—Arrangements entered into by local authority or health body: services to be registered**

*Amendment 146 moved—[Shona Robison]—and agreed to.*

*Section 84, as amended, agreed to.*

**After section 84**

14:15

**The Convener:** Amendment 147, in the name of the minister, is grouped with amendments 147A, 147B, 147C, 179, 179A and 179B. I point out that an amendment to an amendment is disposed of before the original amendment.

**Shona Robison:** The Finance Committee's stage 1 report recommended that SCSWIS should have a role working with local authorities to ensure that quality of service is given greater weight when the commissioning of services is being considered. We agree with that recommendation. It makes sense for local authorities to be aware of any relevant information from the regulators when commissioning services and, indeed, when providing services themselves. Amendments 147 and 179 will require local authorities and health boards, in providing care services or arranging for others to provide such services, to make themselves aware as far as is reasonably practical of any reports, information or notices that SCSWIS or HIS have produced. In doing that, the authorities must follow any guidance that the Scottish ministers issue, including published inspection reports, gradings and any other relevant information, such as condition notices produced by the regulator. The information from SCSWIS and/or HIS could also be about services that are provided elsewhere in Scotland by providers that are tendering to provide a service.

I cannot support amendment 147A. Amendment 146 will address concerns that were raised at stage 1 about the commissioning of care services. It is neither appropriate nor necessary to extend the scope of the new duty to cover social work services, as amendment 147A seeks to do. SCSWIS reports on local authorities' exercise of their social work service functions will be sent to the authorities concerned in just the same way as Social Work Inspection Agency reports currently are. There is therefore no need to require local authorities to make themselves aware of such reports, because they will be made aware of them anyway.

Arguably, amendment 147B would make the provisions in amendment 147 more positive by replacing making "aware of" with taking "into account". Our concern in drafting amendment 147 was to ensure that we did not elevate the status of

the reports to such a degree that they could carry more weight than the decisions of local authorities when procuring services. However, on reflection, I am content to accept amendment 147B. As amendment 179A proposes an equivalent provision for HIS, I am content to accept it also. Amendment 147C appears to seek to remove the discretion of local authorities and health boards in making themselves aware of reports and so on produced by SCSWIS. I am content to accept amendment 147C and the equivalent provision relating to HIS that is proposed in amendment 179B.

I move amendment 147.

**The Convener:** I welcome Karen Whitefield to the meeting, and ask her to move amendment 147A and to speak to the other amendments in the group.

**Karen Whitefield (Airdrie and Shotts) (Lab):** During its stage 1 evidence taking on the bill, the Education, Lifelong Learning and Culture Committee heard a considerable amount of evidence from Community Care Providers Scotland, which recommended that a duty be placed on local authorities to consider SCSWIS reports at the point of retendering services that are provided by the voluntary and private sectors. Amendment 147A was lodged in response to the Education, Lifelong Learning and Culture Committee's recommendation in paragraph 200 of its stage 1 report.

I appreciate the minister's point that local authorities will already know the outcome of inspection reports. However, the committee is trying to ensure that such reports are given due consideration when local authorities decide to retender services. Local authorities will undoubtedly be aware of SCSWIS reports—as they currently are aware of SWIA reports—but we want to ensure that reports' findings are part of local authorities' deliberations when deciding whether it is appropriate to retender services. I seek the minister's clarification on that point. I am not trying to be unhelpful, nor do I think that the CCPS was trying to be unhelpful when it asked for the duty to be placed in the bill.

I move amendment 147A.

**The Convener:** I welcome Jackie Baillie, who is returning to familiar territory.

**Jackie Baillie (Dumbarton) (Lab):** Thank you, convener. Clearly, I cannot stay away from the Finance Committee.

I welcome the minister's amendments 147 and 179 in relation to SCSWIS and HIS. It makes sense to ensure that local authorities have regard to reports about care providers that are produced by either body. I also welcome the explicit

reference to guidance. It is important to link up the forthcoming guidance on social care procurement, which is currently out for consultation.

I was going to narrate all the various reasons why the minister should accept amendment 147B, but she has pre-empted that. The aim of the amendment is to improve on her otherwise excellent amendment 147. I am delighted that the minister has accepted it.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** Amendment 147C is, in a sense, complementary to amendment 147B, which Jackie Baillie has just discussed. Similarly, amendment 179B is complementary to amendment 179A.

I hesitate to make a speech in case the minister changes her mind. I welcome the fact that she has accepted that this important provision needs to be strengthened. For me and perhaps others who support the provision, the background is the example of social care retendering in Edinburgh. It is probably not appropriate to go into the details of that now, although I remind the minister of what I said about it at question time last week. The important point is that amendment 147, as strengthened by the amendments to it, will emphasise the importance of taking account of quality when decisions are made about tendering and retendering.

It just remains for me to welcome the minister's acceptance of Jackie Baillie's amendment 147B and my amendment 147C.

**Shona Robison:** I will respond to Karen Whitefield's comments on amendment 147A. The concerns and arguments of the CCPS were one of the reasons for lodging Government amendments 147 and 179. Amendment 147 is enhanced by Jackie Baillie's amendment 147B and Malcolm Chisholm's amendment 147C. What distinguishes Karen Whitefield's amendment 147A is that it seeks to place the duty on councils' own social work services. They are already reported upon by SWIA and councils take its reports seriously, because they are about how councils' own services are performing. That does not relate to the CCPS's concerns about tendering for other services. The two issues are distinct. SCSWIS will complete reports in the same way that SWIA does for local authorities' own internal monitoring of service performance. Councils use SWIA's reports extensively, but that is a separate issue from the CCPS's concerns and the requirement for local authorities to look at the reports when they tender for external services. That is just to reiterate the distinction. I therefore ask members not to support amendment 147A.

**Karen Whitefield:** The minister's clarification is helpful. Amendment 147A was lodged to attempt to thrash out some of the issues and ensure that

the concerns that were raised with the Education, Lifelong Learning and Culture Committee were fully addressed. I believe that the minister's amendment 147 has done that, and given her comments I seek to withdraw amendment 147A.

*Amendment 147A, by agreement, withdrawn.*

*Amendment 147B moved—[Jackie Baillie]—and agreed to.*

*Amendment 147C moved—[Malcolm Chisholm]—and agreed to.*

*Amendment 147, as amended, agreed to.*

*Section 85 agreed to.*

### **Section 86—Transfer of staff etc**

**The Convener:** Amendment 148, in the name of the minister, is grouped with amendments 149 to 153, 181 and 186.

**Shona Robison:** Amendments 148 to 152 and 186 are technical amendments to ensure that the references to the sections in amendments 153 and 181 are correct.

Amendment 181 allows for an order to be drafted to provide for some staff who are currently employed by the care commission to be transferred to HIS. Although the majority of staff from the care commission will transfer to SCSWIS, there are a few staff who work on the regulation of independent health care whose function will move to HIS. Amendment 181 ensures that the power is available for those staff to be transferred to HIS. The amendments also allow for care commission property and/or liabilities to be transferred to HIS.

The bill already provides that staff from the care commission and SWIA may be transferred into the new body, SCSWIS. Amendment 153 allows for an order to be made to provide for some of the staff who are currently employed by Her Majesty's Inspectorate of Education to be transferred into SCSWIS as appropriate.

*I move amendment 148.*

*Amendment 148 agreed to.*

*Amendments 149 to 152 moved—[Shona Robison]—and agreed to.*

*Section 86, as amended, agreed to.*

### **After section 86**

*Amendment 153 moved—[Shona Robison]—and agreed to.*

### **Section 87—Orders and regulations: procedure**

*Amendment 154 moved—[Shona Robison]—and agreed to.*



*Section 87, as amended, agreed to.*

*Sections 88 and 89 agreed to.*

### Schedule 10

SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND:  
MODIFICATIONS OF ENACTMENTS

*Amendments 155 and 156 moved—[Shona Robison]—and agreed to.*

*Schedule 10, as amended, agreed to.*

### After section 89

**The Convener:** Amendment 157, in the name of the minister, is grouped with amendment 158.

**Shona Robison:** These are technical amendments that make provision for the Scottish Social Services Council to review and revise the process of notifying decisions on applications for registration that are made by social service workers, to place social service workers and their employers under an obligation to have regard to the code of practice, and to allow the Scottish ministers to issue directions when necessary to social service employers and workers. The amendments also provide for the council to consult the SPSO in drawing up complaints procedures.

The current procedures for issuing a decision on an application for registration are time consuming and administratively burdensome. The amendments will allow the council to replace the current processes with a more streamlined approach, which will benefit applicants while still protecting their rights of appeal in the registration process.

Most employers take account of the code of practice, but the amendments will ensure that all employers and social service workers must have regard to it. The power to give ministerial directions in respect of certain aspects of the code will mean that, where necessary or appropriate, ministers can direct persons to comply with certain aspects of the code.

14:30

**The Convener:** As no member wishes—

**Shona Robison:** I am sorry, but there is more, you will be glad to hear. [*Laughter.*]

Should employers fail to provide training and development opportunities for staff, or fail to comply with council proceedings, or should workers fail to respect the rights of services users or to improve their skills and knowledge, directions can be made to rectify those situations. I am sure that it is helpful for the committee to have examples of that. It is intended that the council will

be a listed authority for the purposes of the SPSO, and the amendments will require the council to consult the SPSO on future changes to its procedures, but the council will no longer be required to seek Scottish ministers' consent to the procedures.

I move amendment 157.

**The Convener:** A full explanation is a virtue, as is brevity. Do you wish to wind up, minister?

**Shona Robison:** No.

*Amendment 157 agreed to.*

### After schedule 10

*Amendment 158 moved—[Shona Robison]—and agreed to.*

### Section 90—Healthcare Improvement Scotland

*Amendment 159 moved—[Shona Robison]—and agreed to.*

**The Convener:** Amendment 160, in the name of the minister, is grouped with amendment 162.

**Shona Robison:** Convener, I will be brief. The amendments seek to add independent ambulance services to the list of independent health care services in proposed new section 10F of the National Health Service (Scotland) Act 1978. The type of activity that would be captured would be patient transport to or from a place of medical treatment, where that transport is accompanied by a medical or other care element; attendance at events such as sporting events, music festivals, and so on; the provision of first aid services that might range from minor to more serious treatment; and the transport of persons from events to permanent medical facilities. Regulation by HIS would apply to services that act outwith the national health service. The Scottish Ambulance Service will, of course, be regulated when it is providing a service outwith the NHS, such as when it provides cover for private events for which it is remunerated.

Ambulance services that are provided or secured under the NHS will fall to be reviewed by HIS under proposed new section 10I, "Inspections of services provided under the health service", of the National Health Service (Scotland) Act 1978.

I move amendment 160.

**Jeremy Purvis:** I seek clarification on amendments' drafting, although I understand the reason for them. Can the minister make it clear that, for example, volunteer drivers who have a financial relationship with NHS Scotland will have their expenses covered? Will they be covered by the definition of "independent ambulance service"? Charities such as the Red Cross and others

operate in this way, but there is also a network of volunteer drivers. I am slightly alarmed that I cannot see anything in the bill that would exclude them from the definition of “independent ambulance service”, although they are clearly not that.

**Shona Robison:** That will depend. The definition of “independent ambulance service” that will apply, under amendment 162, is a service that includes

“provision ... of medical treatment, medical care or other care to relevant patients while such patients are being transported to or from a place of medical treatment”.

The issue for volunteer drivers is whether the service that they provide comes within the orbit of that definition.

**Jeremy Purvis:** I understand that. For the sake of absolute clarity, will you reconsider the matter of definitions and volunteer drivers in advance of stage 3?

**Shona Robison:** I am happy to take that on board.

*Amendment 160 agreed to.*

*Amendments 161 to 164 moved—[Shona Robison]—and agreed to.*

*Amendment 199 moved—[Malcolm Chisholm].*

**The Convener:** The question is, that amendment 199 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division. All those—

**Malcolm Chisholm:** I am sorry, convener, but I moved amendment 199 in error.

**The Convener:** Because you moved it, we have to take it to a vote.

**Joe FitzPatrick (Dundee West) (SNP):** Cannot the member seek leave to withdraw amendment 199?

**The Convener:** I have been told that he can do that.

**Malcolm Chisholm:** That is kind of you, convener. I was thinking not about the amendment but about the speech that I will make in a moment. I seek leave to withdraw amendment 199.

*Amendment 199, by agreement, withdrawn.*

*Amendment 165 moved—[Shona Robison].*

*Amendment 165A moved—[Malcolm Chisholm].*

**The Convener:** The question is, that amendment 165A be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Brownlee, Derek (South of Scotland) (Con)  
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Macdonald, Lewis (Aberdeen Central) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

**AGAINST**

Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

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

*Amendment 165A agreed to.*

*Amendment 165 agreed to.*

*Amendments 166 to 178 moved—[Shona Robison]—and agreed to.*

*Amendment 179 moved—[Shona Robison].*

*Amendments 179A and 179B moved—[Malcolm Chisholm]—and agreed to.*

*Amendment 179, as amended, agreed to.*

**The Convener:** Amendment 193, in the name of Malcolm Chisholm, is grouped with amendment 194.

**Malcolm Chisholm:** This may be the only point of controversy this afternoon, convener. That said, perhaps my luck will hold and the minister will agree to the two amendments in the group. I am sure that she supports the Scottish health council. The question is whether we should ensure that it continues to exist through the bill or leave the decision to the new body, healthcare improvement Scotland. I am a great admirer of NHS Quality Improvement Scotland, which is the predecessor body to healthcare improvement Scotland and has done a great deal to improve the quality of health care in Scotland.

The Scottish health council was set up, to be located in NHS QIS, by a statutory instrument in 2005, although debates about it took place during consideration of the National Health Service Reform (Scotland) Bill in 2004. At that time, the Health Committee—which included the minister, Shona Robison—was concerned about placing the Scottish health council within NHS Quality Improvement Scotland and thought that the council should have its own status, because it had to be an independent body. Eventually, the committee was persuaded that it would be acceptable for the council to be part of NHS Quality Improvement Scotland, but only if its independence within the body was guaranteed. Over the years, that aspiration has been fulfilled; the council has been part of NHS Quality Improvement Scotland but has been an independent body with which NHS Quality

Improvement Scotland cannot interfere. It is important that we preserve the council's independence and do not leave it to healthcare improvement Scotland to decide its future.

The Scottish health council should remain independent because it has an important role to play in the public involvement agenda in health. Great progress has been made in that area over recent years, partly because of the council's work in monitoring and reporting on health boards' activities in respect of public involvement. The role of healthcare improvement Scotland, following on from NHS Quality Improvement Scotland, will relate to quality, but that does not intrinsically mean that there must be full public involvement; there can be a quality agenda that is based on the notion that "we know best". That is not the approach that has been taken in Scotland but, potentially, the quality agenda is not identical with the public involvement agenda. That is why it is important that the council continue to have guaranteed its future and its independence within the new health improvement body.

There is much concern about the use of "may" rather than "must" in the bill. The Health and Sport Committee expressed that concern in its report and recommended that the word "may" be replaced by "must". Amendment 193 would effect that change; amendment 194 is consequential on it.

I move amendment 193.

**Shona Robison:** I do not support amendments 193 and 194 and will outline why. As Malcolm Chisholm said, the Scottish health council plays an important role in supporting public engagement and patient focus in the NHS. We wish that role to continue. When HIS is established it will establish the council as a committee. However, we also want HIS to develop a strong public engagement and patient focus role. Under part 6 of the bill, HIS is subject to the user focus duty. We are of the view that, as HIS develops that role over time, there may be a case at some point in the future for the role and functions of the council to be absorbed into HIS more fully. Under the bill as it stands, there is sufficient flexibility to allow that to happen. If amendment 193 were to be agreed to, that flexibility would be removed from HIS.

If Malcolm Chisholm's amendments are agreed to, the council will be established as a statutory committee under primary legislation and there will be no scope for HIS to reorganise the council's functions in the future. There are many changes on the horizon, not least of which is the impact of direct elections to NHS boards. There are other on-going developments. I ask for HIS to have the flexibility to take such changes into account in the future by reorganising the council's functions, if HIS's doing so is deemed to be appropriate. I urge

the committee not to support the amendments and to allow HIS that flexibility.

**Malcolm Chisholm:** In a sense, the minister's comments confirm the worst fears that the Health Committee voiced a few years ago, and which were repeated in a different way by the Health and Sport Committee.

Much as I admire the health improvement body as it exists and, no doubt, will exist, I do not think that it should have the freedom to take over and assimilate the Scottish health council. That would be a decision for politicians. One of the good things about having political leadership of health is that the whole patient focus and public involvement agenda has been led by politicians of both Administrations. I am sure that the current Administration would want to claim credit for having pushed forward with that agenda

14:45

There may be many aspects of the quality agenda that ought to be led by clinicians rather than politicians, but the patient focus and public involvement agenda ought to be directly led by politicians. I do not think it right that the quality improvement body should have the freedom to, as it were, downgrade that agenda. The minister will say that it is just going to do the same thing in a different way, but there is always a danger that the important focus on public involvement and patients will be downgraded. We must reassert the importance of that agenda. It is a good thing for the Scottish health council to be set up through primary legislation, because it is a primary guardian of that agenda; however, we must change the wording of section 90, as amendment 193 proposes.

I press amendment 193.

**The Convener:** The question is, that—

**Shona Robison:** I am sorry. Can I just respond to be helpful? There are two things here. This is about providing more flexibility for future changes; nothing is ever set in stone. The debate around reform of public services requires us all to remain fairly open-minded and flexible about the future, instead of embedding things for forever and a day. Perhaps I could address Malcolm Chisholm's concern about Parliament's role by lodging at stage 3 an amendment that would require a fundamental change to the Scottish health council to be brought back to Parliament through an order-making power. That would address his concern about Parliament having the final say—that would be protected—but would not require us to go back to primary legislation for every reform of, or change to, a public body, which is what we are trying to get away from.

If Malcolm Chisholm's concern is that politicians should have the final say in such things, I would be happy to lodge an amendment at stage 3 that would give him that security without making flexibility more difficult in the future through a requirement to revert to primary legislation. I would be happy to discuss any such amendment with Malcolm Chisholm as we progress to stage 3, if he would be reassured by that.

**Malcolm Chisholm:** That is getting us entangled in the broader debate about part 2. I want to press amendment 193. If the amendment is passed and the Government wants to introduce an alternative at stage 3, it can delete the amendment and substitute its own proposal. We could be open minded about that. However, in the absence of an alternative, I want to put the matter to a vote.

**The Convener:** The question is, that amendment 193 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### FOR

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Macdonald, Lewis (Aberdeen Central) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Brownlee, Derek (South of Scotland) (Con)  
Fabiani, Linda (Central Scotland) (SNP)  
FitzPatrick, Joe (Dundee West) (SNP)  
Welsh, Andrew (Angus) (SNP)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0. I use my casting vote against the amendment, which therefore falls.

*Amendment 193 disagreed to.*

*Amendment 194 not moved.*

*Amendment 180 moved—[Shona Robison]—and agreed to.*

*Section 90, as amended, agreed to.*

#### After section 90

*Amendment 181 moved—[Shona Robison]—and agreed to.*

*Section 91 agreed to.*

#### Schedule 11

HEALTHCARE IMPROVEMENT SCOTLAND: ESTABLISHMENT ETC

*Amendments 182 and 183 moved—[Shona Robison]—and agreed to.*

*Schedule 11, as amended, agreed to.*

#### Schedule 12

HEALTHCARE IMPROVEMENT SCOTLAND: MODIFICATIONS OF ENACTMENTS

*Amendments 184 and 185 moved—[Shona Robison]—and agreed to.*

*Schedule 12, as amended, agreed to.*

**The Convener:** That ends the third day of stage 2 consideration of the bill. The target for the next day's consideration will be the end of part 6. I remind members that, although the February recess is next week, the deadline for lodging amendments is this Thursday, 11 February, at 12 noon.

14:51

*Meeting suspended.*

14:56

*On resuming—*

## **Alcohol etc (Scotland) Bill: Financial Memorandum**

**The Convener:** The next item is evidence on the financial memorandum to the Alcohol etc (Scotland) Bill. Our first panel of witnesses is from trade bodies. I welcome to the committee Gavin Hewitt, chief executive of the Scotch Whisky Association; Campbell Evans, director of government and consumer affairs at the Scotch Whisky Association; and John Drummond, chief executive of the Scottish Grocers Federation. We will go straight to questions.

**Malcolm Chisholm:** I have a few questions, the first of which is for the Scottish Grocers Federation. In paragraph 10 of your submission, you suggest that, without a minimum pricing mechanism, restrictions on promotions could lead to the closure of small shops. Does that mean that if the pricing mechanism was taken out of the bill, you would have great concerns?

**John Drummond (Scottish Grocers Federation):** Absolutely. We would have great concerns in that, if the promotional programme that is available to retailers relates only to price, in the absence of a price mechanism that will control the floor price, we could see some very deep discounting, particularly by those that can afford to do it—the supermarkets, which have deeper pockets and greater bargaining power than small shops have. Small shops would suffer, because they would not be able to run the kind of promotions that remove price as the key element of such activity.

**Malcolm Chisholm:** Is it true to say that, in a sense, you are in favour of minimum pricing as a way of creating a more level playing field for small retailers?

**John Drummond:** It would certainly create a more level playing field. We are of the view that it would not make any great difference to our trade but, in the absence of a minimum pricing control mechanism, if the only promotional mechanism that is left to retailers is price, we are likely to suffer.

**Malcolm Chisholm:** I have some questions for the Scotch Whisky Association, too. Thank you for your submission. To some extent, people are perhaps rather surprised by the position that you are taking, given that most of us would think that the vast majority of whisky that you produce would not be affected by minimum pricing. What percentage of whisky produced in Scotland would be directly affected by minimum pricing?

**Gavin Hewitt (Scotch Whisky Association):**

About 30 per cent of the whisky that is sold in Scotland is value brands, which sell below the indicated price—if we are talking about 40p per unit of alcohol—of £11.20.

15:00

**Malcolm Chisholm:** Could you confirm that the vast majority of whisky that you produce is for export? What percentage of the whisky that is produced in Scotland is for export?

**Gavin Hewitt:** The United Kingdom represents about 8 per cent of our global market; it is our third largest market.

**Malcolm Chisholm:** And Scotland?

**Gavin Hewitt:** What percentage of the UK market does Scotland represent, Campbell?

**Campbell Evans (Scotch Whisky Association):** It is about 20 per cent. Our concern is that it is not just what happens here that matters; it is the knock-on effect internationally.

**Malcolm Chisholm:** I will go into that. So 20 per cent of the whisky that you produce is sold in Scotland.

**Campbell Evans:** No, 20 per cent of UK sales are in Scotland.

**Malcolm Chisholm:** My calculations suggest that about 3 per cent of what you produce will be affected directly. I will go on to ask about the international market, but I just wanted to have that kind of basic framework. The majority of your members would not be directly affected by minimum pricing. Some of the arguments that you have advanced are about jobs but, on the basis of the figures, it is hard to see how whisky jobs in Scotland would be affected.

**Gavin Hewitt:** I do not think that that is the position. Let me explain why. Given the brands that are sold in Scotland and the nature of the Scottish whisky market, it is inevitable that there would be consequences for the supply side in Scotland if a minimum price were introduced. The consequence would be for those companies whose business models involve the supply of value whisky. You might find that the supermarkets cease to stock those value brands because the branded product is sold at or near the minimum price. We cannot predict what the exact consequences would be, but we think that there would be considerable knock-on effects, particularly for those in the value brand market.

**Malcolm Chisholm:** But that is a small percentage of the whisky that is produced in Scotland.

**Campbell Evans:** It is but, for some companies, that is their business. They are not in the export or premium malt business, so supplying value whisky is their business model. It is not a case of saying that a company at the premium end loses a slice, because, for some companies, that is their business.

**Malcolm Chisholm:** The other aspect that you are concerned about is the effect on overseas markets. How did you arrive at a figure of between £150 million and £600 million?

**Gavin Hewitt:** We calculate that about 20 per cent of our export market would be at risk if minimum pricing were introduced in Scotland. We are experts in what the overseas markets do and how they treat the import of Scotch whisky. Scotch whisky happens to be the global number 1 premium spirit drink. In many markets, it is in competition with the local spirit product. In our response to the Scottish Government's consultation on the proposals, we identified certain markets where we have won cases of blatant discrimination, such as Korea, Chile, Japan and Uruguay—and I could go on. Korea, in particular, has tried to protect its local spirit product, soju, against imports of Scotch whisky. Soju is not produced beyond 25 per cent of alcohol by volume, whereas whisky has a minimum of 40 per cent ABV. Korea has deliberately tried to find ways to discriminate against imports of Scotch whisky into that market, even by suggesting a health tax.

By looking at what markets do and how price is relevant in all the markets round the world, we have calculated an equivalent increase in price that is commensurate with the Scottish Government proposal of, let us say, 40p per indicative unit, and what impact that would have on our sales in critical markets. We have also looked at what effect that would have on our potential sales in markets where we are trying to reduce the price. I have personal experience of people coming to watch what is happening in Scotland and asking, "Why should we reduce the price, which is protected by protectionist measures, when your Government is increasing the price?" I use India as an example. Taking those two elements together—current practice and what our share of the market is in our major markets, as well as the potential that exists in other markets—we believe that we could lose as much as £600 million, which is about 20 per cent of our exports.

**Malcolm Chisholm:** Can you make public the modelling studies on which that is based? You are highly critical of the modelling in the University of Sheffield study, but at least that is a public report that has been peer reviewed. It seems that what you are telling us is all highly speculative.

**Gavin Hewitt:** We use exactly the same elasticities of demand that the Scottish Government uses and to which it makes reference in the report. The study by Wagenaar indicates the elasticity of demand effect—in other words, by how much volume would reduce if the price were put up. We use the same elasticities of demand as the Scottish Government, which it recognises to be good and accurate.

**Malcolm Chisholm:** I will let others in.

**Joe FitzPatrick:** You said that the value brands were important for some sectors of the whisky industry. You also said that value products accounted for 30 per cent of sales overall, and that 20 per cent of those sales were in the UK and 8 per cent of those were in Scotland; I might not have got those figures the right way round. Whichever way round they go, we are talking about 30 per cent of 20 per cent of 8 per cent. By my quick calculation, 0.46 per cent of the whisky production industry in Scotland is involved in value sales. That is the proportion of companies that would be affected by the minimum pricing policy. Which companies make up the less than 0.5 per cent of the industry that is dependent on the bulk production of whisky for its survival?

**Gavin Hewitt:** My arithmetic is not as good as yours, so I will not comment on the percentages, but there are companies that work exclusively in the UK market whose product is geared to the UK market and for which Scotland provides a considerable part of their UK market share. The business model of those companies is geared to the value brands—those that are being sold in the market at a price that is below the indicative price of 40p per unit.

**Joe FitzPatrick:** It would be useful to the committee if we could be given the names of some of those companies. I would be particularly interested to find out for which companies the value brands are the most important part of their business model. I would also like to know whether some of the parent companies of the whisky companies concerned are involved in the bulk production and sale of vodka and cider, which are a bigger health concern in Scotland than quality whisky. It would be useful if we could have that information to look at.

**The Convener:** It would be helpful if you could write to us on that matter.

**Campbell Evans:** We can do that.

**Gavin Hewitt:** I think that certain companies have already made submissions to you.

**Joe FitzPatrick:** As well as raising concerns about a loss of income threatening the viability of some of the whisky industry, which we have discussed, you also indicated that the social

responsibility fee would impose a further cost on the whisky industry. How does that square with the argument that some people have made that minimum pricing would put £90 million into the coffers of supermarkets and the drinks industry? Those arguments cannot both be right. Minimum pricing cannot pump money into your industry and suck it out.

**Gavin Hewitt:** On the social responsibility fee, we have no idea what will be proposed because that is still under discussion.

On the other issue, the reports that are available in front of you indicate that, depending on whether just a policy of minimum pricing is adopted or whether the policy includes discounting as well, there could be an advantage to the alcohol industry in its very widest terms of up to about £90 million. The nature of the relationship between the retailer and the producer is such that we cannot estimate exactly where that money would go, but we understand that if there were a minimum price of 40p per unit, none of that £90 million would go to the Scottish Government, and none of it would be available for the Government or voluntary bodies to use to address the issues of harm.

**Joe FitzPatrick:** I was asking whether you will have extra money, as has been suggested by some members—£90 million is the figure that is being bandied about—or whether there is concern about the industry losing money and, potentially, jobs.

**Campbell Evans:** I do not think that we have suggested that we envisage any of that £90 million going to producers.

I will pick up on your point about the social responsibility levy. The Scotch Whisky Association supports virtually everything that the Government is trying to do in the bill. We have not come out against the social responsibility levy; what we have said is that, if such a fee is to be introduced, there should be a fault-based system, rather than a blanket system that catches everybody. It should be about encouraging the highest possible standards and, if people fail to meet their responsibilities, there should be a fee.

**Joe FitzPatrick:** You talked about the situation in Korea and other countries that have tried to increase taxes and introduce trade barriers. What has been the whisky industry's success rate in challenging such barriers?

**Gavin Hewitt:** About 600 trade barriers remain in 143 countries. The matter is our top priority in securing market access. We have had huge success in challenging discrimination—primarily tax discrimination—but the difficulty arises when we get into more subjective areas, such as public health, which is the only way of justifying

discrimination and overriding European Union and international trade rules.

The critical factor in that regard is that, if minimum pricing is introduced in Scotland, it will require the approval of Brussels. The European Commission is the only body in the world that can argue our trade and market access issues. It is the only body that can take issues to the World Trade Organization for us. If Brussels had already approved minimum pricing in Scotland for exceptional public health reasons, it is obvious that the Commission's ability to argue our stake in Geneva at the WTO would be seriously undermined.

**Joe FitzPatrick:** The proposals on minimum pricing would apply across the board and not to specific alcohol products. I do not see how that can be twisted into a suggestion that Scotch whisky is a health risk and other alcohol is not.

**Gavin Hewitt:** Let me explain, again using Korea as an example. Soju is the Korean spirit, which has 97 per cent of the spirits market in Korea. Scotch whisky has, in effect, 98 per cent of the remaining 3 per cent of the market. We are a small player in a big spirits market but a significant player in imported spirits. We won a tax discrimination case in 1999 but, ever since, Korea has tried to find methods of discriminating against Scotch. One proposal, in 2006, was a health tax. If Korea were to introduce a health tax on the basis of a precedent in Scotland that had been approved by Brussels, the Commission would find it almost impossible to argue against such a proposal when it took the issue to the WTO.

**Campbell Evans:** Joe FitzPatrick asked how a system that affects all alcohol will disadvantage only Scotch whisky elsewhere. The issue is not that countries overseas would model exactly the same system but that they would be able to override trade rules on public health grounds and therefore use any other type of public health justification for their own trade purposes. They would not say, "We must take exactly the same model"; they would say, "The precedent of international trade rules being broken allows us to do our own type of modelling." It is not about picking up the same model; it is about the example that would have been set.

15:15

**Joe FitzPatrick:** I am sorry, convener, but I have one last question.

**The Convener:** Yes, I would like to move on.

**Joe FitzPatrick:** Finland has recently increased tax on alcohol. Is there any evidence that that has had an impact on the trade in Finnish vodka, which is a premium product in some parts of the

world? Have there been any trade embargoes against it?

**Gavin Hewitt:** The Scottish Government, particularly the current Administration, has always argued that the policies of the domestic Government have an effect on other Governments' attitudes on tax rates and processes. They have traditionally taken that position, but I do not know the answer on Finland.

**Campbell Evans:** I can give some personal experience from being in Japan many years ago. I was trying to get tax down, but the Ministry of Finance asked me why it should cut tax in Japan when our Government applies high discriminatory taxes against Scotch whisky at home.

**The Convener:** Scotch whisky predominates in the Scottish psyche, but I offer Mr Drummond from the Scottish Grocers Federation a chance to intervene.

**John Drummond:** I will make some more mundane comments on the minimum pricing policy. There are some unintended consequences that we think would affect the small-store sector in Scotland in particular and retailers in general. One is cross-border trading. Stores in the Borders and even central Scotland could be affected by consumers skipping down over the border to buy alcohol that would not be affected by any minimum pricing policy.

There could also be further escalations of what we call white van man trading. The first effect that I mentioned would be legal, but this one might not be, as such people sell their products at car boot sales, on street corners or wherever else they want to.

The other unintended consequence could be an increase in internet trading in alcohol that is dispatched from south of the border to evade the minimum pricing policy.

All those would have an adverse effect on retail business and could be particularly damaging for small stores.

**Linda Fabiani (Central Scotland) (SNP):** I will address most of my questions to the Scotch Whisky Association, but my first question is for Mr Drummond. Do you take comfort from the fact that the United Kingdom Government is considering minimum pricing south of the border? That may alleviate your fears about white van man.

**John Drummond:** If that is the case, it will avoid the issues that I have just mentioned.

**Linda Fabiani:** I will go back to what Joe FitzPatrick asked—I am afraid that it is about percentages again, gents. From what the Scotch Whisky Association witnesses said, I understand that various suppliers and manufacturers made

submissions. In the association's view, what percentage of the products of the companies that operate in the domestic market for cheaper spirits would be whisky as opposed to other alcohol products?

**Gavin Hewitt:** I am afraid that you will have to ask the detail of the companies. I have in mind two companies in which whisky represents a significant part of their products.

**Linda Fabiani:** In the section of your written submission that concerns domestic implications, you estimate that 400 jobs could be lost because of minimum pricing. Do you have an estimate of how many jobs have been created in the whisky industry over the past 20 or 30 years?

**Gavin Hewitt:** The history is that the number of jobs has decreased as the industry has consolidated and productivity has grown. Only last year, we saw further examples of consolidation and job losses.

**Linda Fabiani:** How did you arrive at the figure of 400 jobs?

**Gavin Hewitt:** The job losses relate particularly to the companies we have in mind whose business model is almost exclusively in the value brands.

**Linda Fabiani:** From what we have heard and from the thrust of your submission, it seems that the Government's proposals are targeted at cheaper drinks and cheaper whisky. Given that the Scotch Whisky Association tries hard to promote whisky as a premium brand, does the huge discounting of some fairly decent whiskies in supermarkets concern you?

**Gavin Hewitt:** The matter is for retailers and producers. You must understand that, in many cases, retailers drive the business.

**Linda Fabiani:** I am not convinced by your contention that minimum pricing for cheaper whisky would necessarily have a knock-on effect on the premium brands that are exported. Will you convince me of that?

**Gavin Hewitt:** I do not want to overstate or exaggerate the effect of minimum pricing in Scotland on Scotch whisky sales in Scotland. Minimum pricing would affect sales, because 30 per cent of whisky is sold at below 40p per unit, so that 30 per cent would, obviously, be at risk. However, our big concern is that the overriding of international trade rules would establish a precedent that would be copycatted in other countries. That would seriously affect our exports and damage the industry and Scotland's economy.

**Linda Fabiani:** I note from your submission and from what Mr Evans has said that you have concerns about international trade rules and that



you feel that some countries might well be in breach of those rules. Has the association lobbied the UK Government to lobby the World Trade Organization on those issues?

**Campbell Evans:** The support of the UK Government and politicians of all parties in Scotland has been fundamental in our battle against trade barriers around the world. If a national Government does not approach the EU and the EU does not approach the WTO, a body will not go far in making a claim against other Governments. Having the Government standing behind a body is fundamental. That is why we are gravely concerned that, if a precedent against international trade were set in Scotland, the rug would be pulled from under our feet and the Government here would be unable to fight discrimination overseas.

**Linda Fabiani:** Unfortunately, Scotland does not have a voice in the EU—it can only make representations to the UK to make representations to the EU on its behalf. I opened my questions by saying that the UK Government is talking about introducing minimum pricing south of the border. What is your view on that?

**Campbell Evans:** One newspaper report suggested that one Cabinet minister had expressed a view on minimum pricing. I understand that that does not reflect the UK Government's view. Other politicians are also against the proposal. The UK Government does not propose minimum pricing at the moment, but I acknowledge that the newspapers debated the subject a couple of weeks ago.

**David Whitton (Strathkelvin and Bearsden) (Lab):** I address my first questions to Mr Drummond. Did I understand you to say that many of the small grocers whom you represent do not sell own-brand whiskies?

**John Drummond:** I did not mention own-brand whiskies, which most of our members sell. Were minimum pricing to be introduced, they would be vulnerable. A retailer decides what to stock according to demand and assumes that, if prices are similar or the same, the consumer is more likely to purchase a brand rather than an own-brand product.

**David Whitton:** You said that your federation does not oppose minimum pricing.

**John Drummond:** We have said that we do not oppose minimum pricing per se. My concern is that, if minimum pricing were not applied, no safeguard mechanism would protect small stores from the deep-discount competition from supermarkets.

**David Whitton:** However, the supermarkets will not be able to offer discounts if there is a fixed minimum price per unit.

**John Drummond:** What I am saying is that, in the absence of minimum pricing, supermarkets could engage in deep discounting.

**David Whitton:** But they do that now.

**John Drummond:** Yes, but we are allowed to have promotions in competition with the supermarkets using different mechanics that would not be available to us under the proposals in the bill.

**David Whitton:** Let me come on to that. Your submission also refers to point-of-sale advertising and advertising on window displays. Can you say a bit more about how smaller shops will be disadvantaged if such advertising is banned?

**John Drummond:** Small stores rely very heavily on window bills and promotional leaflets that are circulated and put through doors in the immediate vicinity of the store. Typically, small stores cannot afford to advertise on television or in the press or elsewhere, so they are reliant on in-house facilities such as window bills and leaflets. However, the bill proposes that alcohol promotions may be advertised only within the alcohol area of the store. On the face of it, that means that window bills will not be allowed and even promotional leaflets cannot be situated at the check-out because they will be outwith the alcohol area. Those provisions are open to interpretation and are not clear-cut, but that is the indication that we have been given. If those proposals are implemented, the larger supermarkets will still be able to advertise on television and on billboards outwith the alcohol area in their stores. Indeed, they might even step up such advertising, which would be detrimental to small stores.

Our fairly simple view is that, if you want to ban the advertising of alcohol, you should ban all such advertising, not just window bills and leaflets. However, that touches on the Scottish Government's responsibilities, which are obviously subject to limitations.

**David Whitton:** So—this is probably a side issue, but I will ask anyway—would you ban the advertising of alcohol on, say, football jerseys?

**John Drummond:** That is a side issue that relates to the bigger picture. We do not have a view on that, quite honestly.

**David Whitton:** There can be nothing more visible than teams running about on telly advertising different drinks products on the front of their jerseys. You have just said that, if we want to ban the advertising of alcohol, we should ban all such advertising. I assume that such a ban would need to apply to that extent.

**John Drummond:** We would not fall out about it if that were to happen.

**David Whitton:** Finally, will you say a word about the social responsibility levy? What impact is that likely to have on smaller stores?

**John Drummond:** As has already been noted, the bill gives no detail on the social responsibility levy. We are in discussion with the Government about some options that might apply.

I applaud and commend the Scotch Whisky Association's suggestion of having a fault-based system, under which those who offend—those who flout the law—would be punished. It would be totally unfair to impose a blanket charge across all licensees. Such a charge would imply that we are all to blame for the antisocial behaviour and the harmful effects of alcohol consumption, whereas that is clearly not the case. We ask that any social responsibility levy that is introduced and approved be fair, reasonable and proportionate.

**David Whitton:** I also have just a couple of questions for the Scotch Whisky Association. Is the association a member of the Scottish Government's alcohol industry partnership?

**Campbell Evans:** We are a founding member.

**David Whitton:** Your submission says that there was no discussion with the alcohol industry partnership about the minimum pricing proposals and the Sheffield report. Are you a bit disappointed by that?

**Campbell Evans:** The issue facing the Government, I think, was that it did not want to discuss policy while it was being developed. Although broad discussions took place, we could not get into the detail of matters because that would have taken us into policy development, as I understand it.

**David Whitton:** However, the alcohol industry partnership could have had a broad discussion on the likely impact of the introduction of minimum unit pricing.

**Campbell Evans:** That would have been helpful, particularly in allowing us to understand the modelling that was taking place in the background, as we could then have explained our concerns about that modelling.

15:30

**David Whitton:** A lot of the unit-pricing argument has focused on a perceived minimum price of 40p. I have seen reports that, for unit pricing to be really effective, it would probably have to be about double that. It is only at that level that the cost becomes an issue and changes people's decision making on whether they will buy

even a premium product. Do you have any views on that?

**Gavin Hewitt:** We did some modelling work last year on the effect of raising the price of a bottle of whisky to around £14. The consequence of that would be a further reduction in sales of more than 25 per cent. Admittedly, I am talking about UK figures, but there is no reason to believe that there would not be the same reduction in Scotland. A price of £14 is 50p per unit. If you are suggesting that we should raise the cost to 80p per unit—which is way beyond even what the Sheffield report suggested—you are talking about a very serious impact on the sales of Scotch whisky in Scotland.

**David Whitton:** The reports that I saw were from health professionals who said that charging 40p per unit was fine but that, to have a real impact on drinking, we would need to charge a serious unit price of, they suggested, 80p.

**Gavin Hewitt:** All I am saying is that I know the effect that that would have on the sales of Scotch whisky.

**David Whitton:** You are not very complimentary about the Sheffield report. You seem to imply that a lot of its evidence does not relate to Scotland. Will you share your thoughts on that?

**Gavin Hewitt:** As the authors of the report readily acknowledge, a great deal of the evidence is not available from Scottish sources, so they do not use Scottish data in many cases. They make some serious assumptions that are wrong, and there are deficiencies in the data. Moderate consumption, which they use as a basis for calculating the effect of a price rise on moderate drinkers, is calculated at 5.6 units, although the guideline is 21 units a week for men and 14 units a week for women. We do not understand how they work out the consumption of a moderate drinker to be 5.6 units.

In suggesting that price rises have most effect on harmful drinkers, the Sheffield report also flies in the face of and is contrary to international literature and evidence that show that price rises have least effect on harmful drinkers. We believe—on the basis of literature that is totally contrary to the report—that price rises have least effect on addressing the harm that is caused to harmful drinkers.

**David Whitton:** You mentioned Brussels. In your written submission, you say that you believe that the introduction of minimum pricing would be illegal. Is that based on your legal advice? Where has that come from?

**Gavin Hewitt:** I refer first to an opinion by the Advocate General in a recent case in Brussels that, admittedly, relates to tobacco. In that case,

the Advocate General addressed the defence that France, Austria and Ireland used against the minimum pricing of tobacco, under article 30 of the treaty before the Lisbon treaty. The Advocate General made it absolutely clear that, even if it had been an issue of minimum pricing in terms of the open market rather than the tobacco directive, she would have ruled that that was not a defence—that is, that the public health exception could not be used to set a minimum price for tobacco. There are long bits of European jurisprudence indicating that using a health exception to justify minimum pricing has been ruled illegal and has not been allowed. It can be done on public health grounds but we believe that, if you are going to override international or EU trade rules, you must show that minimum pricing specifically—not all the rest of the package of measures—is proportionate and necessary by itself to address the public health issue in Scotland.

**David Whitton:** I am pretty sure that I remember the First Minister telling us in Parliament that the introduction of unit pricing was not targeted at premium products such as malt whiskies. You seem to be saying that he is wrong and that it will have a major impact on a premium product. Am I correct in that assumption?

**Gavin Hewitt:** I repeat what I said earlier: overriding international and EU trade rules by establishing minimum pricing in Scotland would have a devastating effect on our overseas exports.

**The Convener:** Before I call Derek Brownlee, I will allow Linda Fabiani to ask a very quick question.

**Linda Fabiani:** I have two very quick questions, which are based on what I asked earlier.

**The Convener:** Be very, very quick.

**Linda Fabiani:** I have had time to think over some of the witnesses' answers. On the estimated loss of 400 jobs, the value of whisky sales has increased substantially over the past 20 to 30 years. However, you say that, even though there was an increase in the value of sales, there were still job losses because of consolidation and so on.

**Gavin Hewitt:** The value of sales has been demonstrated in our exports, where we have substantially increased the value to Scotland. I do not think that the value from Scotch whisky sold in Scotland has increased; I think that it has been going down quite dramatically. Most of the cost of whisky is now tax; more than 70 per cent of the cost of a standard bottle of whisky around the £10.50 mark is tax.

**Linda Fabiani:** So the value of sales has not had any added value for shareholders.

**Gavin Hewitt:** There has been virtually no added value to the Scotch whisky industry in terms of Scottish sales.

**Linda Fabiani:** Right, but it is more than just Scottish sales: it is overall sales. Export sales must have a value for the shareholder.

**Gavin Hewitt:** No, not for the particular companies that we have in mind, which are involved in the value brands in Scotland and whose sales are directly related to that segment of the market.

**Linda Fabiani:** Does your estimate of 400 job losses relate entirely to whisky?

**Gavin Hewitt:** The Scotch Whisky Association is looking at the situation purely from the point of view of whisky.

**Linda Fabiani:** Given that you are providing written submissions on other matters that we have discussed, could you quantify your estimate?

My very last question—

**The Convener:** Perhaps you could confirm that to us in writing—that would be helpful.

**Linda Fabiani:** I thought you were talking to me, convener, and that that was my last question.

**The Convener:** No.

**Linda Fabiani:** My question is for Mr Evans. Returning to the issue of newspaper comment on the UK Government's policy on minimum pricing, have you had confirmation from the UK Government that it is not considering introducing minimum pricing either now or after the next election, should it win?

**Campbell Evans:** I can go only by what we have read in the newspapers, which is that the Prime Minister said that he does not favour minimum pricing. I understand that the Treasury does not favour it, that the Home Office is yet to be persuaded on it and that the Secretary of State for Health, having said that he was looking at it, somewhat qualified that statement. I think that it is quite clear that minimum pricing is not part of the current UK Government's picture at the moment. I understand—in fact, I know—that the Opposition is on record as being against minimum pricing. I therefore think that it is not part of the UK equation at the moment.

**Linda Fabiani:** But you have not had any confirmation from the UK Government in that regard.

**Campbell Evans:** I have had some confirmation from officials, but I have not spoken to any Cabinet ministers.

**Derek Brownlee (South of Scotland) (Con):** This question is aimed at the SWA. You state in

your submission that you do not believe that minimum pricing is legal under European law and you think that it is contrary to international trade regulations as well. Has the SWA taken a view on whether the minimum pricing proposals are competent under the Scotland Act 1998?

**Gavin Hewitt:** We have some views on that. I would certainly encourage the Parliament's committees to investigate that aspect.

**Derek Brownlee:** I ask that question because of what the situation would be if the bill was passed. I appreciate that the bill has been certified as competent both by the Government and by the Presiding Officer, but of course that is not the only hurdle that, within the framework of the 1998 act, a bill needs to overcome in order to be competent. Let me fast forward a few months to when the bill is passed. It seems to me that a challenge under the 1998 act would probably have to be made before the bill comes into force. A challenge under European law would take some time and, if I am correct, the bill would have to come into force, with a challenge being made some years down the line. Have you considered the timing of challenges? For example, if the bill was challenged under European law, for roughly how long do you think its measures would be in force before a judgment was finally given one way or another?

**Gavin Hewitt:** There is an issue of notification. Our advice is that the Scottish Government would be obliged to notify Brussels, probably not of the proposal to introduce a minimum price—although that is a moot point—but certainly of the proposal of a minimum price. Following notification to Brussels, it would be open to the 26 other member states to consider whether the proposal was challengeable. There is a three-month window, which the Commission can extend to six months. If the Commission decided that the proposal was not acceptable, the Scottish Government would have to take note of that, because the Scotland Act 1998 makes plain that it cannot act contrary to the UK's EU obligations.

Notification of the minimum price is a hurdle that we believe the Scottish Government will have to face. However, the bill provides for the principle of a minimum price, rather than notification of the minimum price. There are some timing issues that must be considered.

You are absolutely right: if the Commission approved the concept of a minimum price—I believe that the hurdle is sufficiently high to place in question whether it would—and we found ourselves facing copycat action in other countries, either in Europe or elsewhere, we would have to fight that case long and hard and would be unable to gain redress quickly. Some cases take up to five years to resolve in the WTO or even in the

EU. By that point, the damage will have been done.

**Derek Brownlee:** If I understand you correctly, the challenge under European law would be around the principle of a minimum price rather than around whether the price was 25p, 70p or 40p.

**Campbell Evans:** I understand that there is clarity about setting the price but that there is also a grey area. That suggests that notification of the principle, too, is required.

**Derek Brownlee:** In other words, a challenge might come not when Parliament passes the bill but when ministers make an order under section 1.

**Campbell Evans:** Of course, if Brussels is not notified but should have been, the whole thing collapses.

**The Convener:** I offer Mr Drummond the opportunity to intervene.

**John Drummond:** I do not wish to do so on this issue.

**Lewis Macdonald (Aberdeen Central) (Lab):** Does the Scotch Whisky Association recognise that, although there are different views in the health profession and among those responsible for law enforcement about the significance of price in contributing to harm caused by alcohol, price has a role in that regard and that the price and availability of potent alcohol are an issue? This week, the role of caffeinated alcohol such as Buckfast tonic wine, which is not covered by the bill but is clearly associated with harm in various forms, has been highlighted.

**Gavin Hewitt:** It would be perverse to suggest that price does not have some effect on consumption. However, we do not accept that price necessarily leads to harm—that equation does not exist. There is no literature to justify the contention that raising the price will address harm. We are second to none in backing the Scottish Government's wish to address harm caused by alcohol and alcohol misuse in Scotland, but we do not believe that setting a minimum price, which is a blunt instrument, across the board will do that, although it will affect consumption.

**Lewis Macdonald:** For the general public, who see potent alcoholic drinks on sale for a price lower than that of bottled water when they visit supermarkets, for example, it can seem perverse that retailers are able to sell alcohol at less than the cost of production. Do you think that there is a role for Government—either the Scottish Government or the UK Government—to address the question of alcohol that is sold for less than the cost at which it is produced?

15:45

**Gavin Hewitt:** My members would agree that there is a concern, but the Competition Act 1998 means that that cannot be addressed by the producers and retailers. There has to be an environment in which it can be addressed; if we acted otherwise now, we would be in contravention of the Competition Act 1998.

**Campbell Evans:** The Scotch Whisky Association has said that we will support the end of loss leading, if I may describe it as that. We have put on the table a ban on sales below tax as a starter for discussion and as part of a range of measures that we have talked about in relation to trying to tackle the problems.

As I have said, we support most of what the Government is trying to do. If banning loss leading is one way for us all to reach agreement on the way forward, we are happy for it to be considered.

**The Convener:** Mr Drummond, you are outnumbered two to one, but now is your chance.

**John Drummond:** I was going to make the same point as Mr Evans—I support his view. Selling alcohol below cost price is irresponsible, and we like to think that SGF members are responsible retailers in all that they do, in challenging customers in age-restricted sales and so on.

We would go as far as defining the cost, because it means different things to Mr Tesco and Mr Spar. The definition that we suggest for starters is the duty on the alcohol plus VAT. In that regard, I echo Mr Evans's comment about tax being a threshold below which products should not be sold.

**Lewis Macdonald:** As it is tax based, such a policy approach would have to be adopted by the UK Government. Would that address your concern about cross-border evasion of a minimum price policy, which would clearly be possible under the current proposal?

**John Drummond:** If the policy applied across the UK, it would certainly negate problems with cross-border trading.

**Lewis Macdonald:** The Scotch Whisky Association has referred to the international trading aspects and the issues that you have had in dealing with discriminatory tax regimes that overseas Governments have imposed to exclude Scotch whisky. If there was a proposal at UK level that was based on a floor price of duty plus VAT—as Mr Drummond suggested—would that create the same problems for you in dealing with the risk of discrimination against Scotch whisky products in international markets, or would that fiscally based approach avoid the creation of a precedent

that would be used against Scotch whisky exports?

**Gavin Hewitt:** The concept of a floor price of tax plus VAT, or a similar local tax, would not cause us problems and would not have the same consequences as a minimum price per unit of alcohol.

**Lewis Macdonald:** In other words, as long as the approach taken is consistent throughout the United Kingdom and compatible with international competition expectations and requirements, both the Scotch Whisky Association and the Scottish Grocers Federation could support a price intervention to address the irresponsible retailing of alcohol. Is that correct?

**Gavin Hewitt:** Yes.

**Campbell Evans:** Yes.

**John Drummond:** Yes.

**Jeremy Purvis:** I would like to follow that up, although it is perhaps more an issue of policy than one that comes from the financial memorandum.

In rejecting the concept of preventing the sale of alcohol below the price of duty and tax, the Government said:

“As the foundations for this approach are anomalous (being based on the type of drink rather than the alcohol content), and the ‘floor price’ would be likely to be so low as to have little or no effect on public health, the Scottish Government does not believe this approach would be effective nor does it consider that it would be able to justify restricting the market in this way.”

What are your views on the restriction of the market? The Government does not define any further what it means by “restricting the market” but, given that the SGF represents the vast bulk of that market, what are your views?

**John Drummond:** I am not clear about the meaning of the phrase—I cannot see its relevance. I assume that products would be made available for sale in every retailer that wanted to sell them. I do not understand the reference to restriction.

**Jeremy Purvis:** Does the Scotch Whisky Association have a comment?

**Campbell Evans:** No.

**Jeremy Purvis:** Before I move on to the costs to the economy, I have a question on differentials. The Government's explanatory notes, which you will have seen, give a helpful indication of the likely impact of setting the minimum price at 40p. There is quite a differential between the on-licence prices that would be set for pubs and so on and the off-licence prices. Paragraph 8(f) says:

“the minimum price for a 25ml measure of spirits at 37.5% ABV would be 38 pence”.

I am sure that the Government's bill team will provide us with a breakdown of the costs involved in buying from the off-trade and from the on-trade. What is the Scottish Grocers Federation's view of a differential that would increase the price of alcohol purchased from the off-trade but which has no impact on the price of alcohol purchased in pubs and clubs?

**John Drummond:** That does not concern us. The trend is that consumption is moving from on sales to off sales, which is driven by many factors in addition to the price of alcohol. The generic issue is home entertainment—the advent many years ago of video, followed by DVDs and so on. The trend over the past 20 or 30 years has been for more people to drink not in pubs but at home. That is a general trend—obviously, it is not the case in all sectors.

**Jeremy Purvis:** It is for the Scotch Whisky Association to say whether it thinks that the trend will be reversed. After all, minimum pricing would mean that the price of a measure of whisky would be 38p, a vodka and tonic would be 55p and a pint of lager would be £1.13.

**John Drummond:** No pub would offer such prices. A higher price has been established, and prices in pubs will remain at that level.

**Jeremy Purvis:** I guess that that is for others to say. You made the point, Mr Drummond, that the impact of minimum pricing is that it would change the whole nature of how the retail industry prices alcohol.

**John Drummond:** Yes.

**Jeremy Purvis:** Why would there be different impacts on the off-trade and the on-trade if the statutory minimum of 40p per unit were to be applied? Why would that change the way in which any business sold alcohol?

**John Drummond:** The on-trade already has the opportunity to sell vodka at 38p or whatever and a pint at £1.13. Apart from the very large pub chains such as Wetherspoons that do special offers from time to time, most pubs sell drinks at higher prices than the figures that you quoted.

**Jeremy Purvis:** I turn to how the off-trade sets prices. Is there scope for price setting to have a neutralising effect? Could the overall cost of some alcohol be reduced? I am thinking of not discounts or promotions but general reductions in the overall price of premium brands or whatever. If the margin or differential is less important to the retailer and overall costs level out, surely minimum pricing will have little impact on reducing consumption.

**John Drummond:** That could well be the case. I have heard people from certain quarters saying that they intend to sell everything at the minimum price. That bears out your comment about

reductions on certain products. The measure will offer more of a level playing field for large and small operators in the off-trade.

**Jeremy Purvis:** What discussions has the Government had with you, as the representative body, on that valid point? Has it sought your views?

**John Drummond:** We have been in regular contact with Government officials. Most of the arguments around the bill have been debated.

**Jeremy Purvis:** I will move on to the cost that could well come to the public purse and the impact on the Scottish economy, and will follow up on the comments that Mr Evans made. In your modelling of the impact on the economy, you looked at 50p per unit. As you know, the Government has been looking at 40p per unit. I do not know whether you did modelling for 40p per unit. Given what you said about the potential reduction in exports, has the Minister for Enterprise, Energy and Tourism been representing the industry in discussions within the Government?

**Gavin Hewitt:** Currently, it is not the Minister for Enterprise, Energy and Tourism who looks after the Scotch whisky industry; it is the Cabinet Secretary for Rural Affairs and the Environment.

**Jeremy Purvis:** I will rephrase the question then. How has Mr Lochhead been speaking up for the industry?

**Gavin Hewitt:** I think that you will want to interview Mr Lochhead and ask him how he has been doing that.

**Jeremy Purvis:** You are the industry. I am trying to get your view. The significance of the industry to Scotland cannot be overstated. It was quite telling that when the Minister for Transport, Infrastructure and Climate Change met the Governor of California, he gave him a bottle of whisky to congratulate him on climate change reductions. The industry permeates lots of different areas. Do you know whether the cabinet secretary has been making representations about the impact on the industry and the knock-on effect on the economy?

**Gavin Hewitt:** I do not believe that he has been.

**Jeremy Purvis:** I do not know whether you have the financial memorandum in front of you. I am looking at table 3, which shows the financial value of harm reduction as a result of a 40p per unit minimum price and discount ban. It indicates that the cumulative employment costs that would be avoided over 10 years are £267 million. That is what the Government says the benefit of the measure will be. Is your estimate of a reduction in whisky exports of £600 million the figure per annum?

**Gavin Hewitt:** Yes.

**Jeremy Purvis:** So, we should compare a benefit of £267 million over a 10-year period with a reduction of, broadly speaking, £6 billion to the Scottish economy.

**Gavin Hewitt:** Yes.

**The Convener:** I remind the committee that we have a second panel to come. I will allow Malcolm Chisholm in if he is very quick.

**Malcolm Chisholm:** This is important. I am being allowed to ask only one question. The witnesses will agree, I think, that their main argument is about exports. I and others are sceptical about the arguments that they put. It is important for the debate that the modelling studies that I assume they have done to come up with the figure of £600 million in potential export losses are made publicly available. That would be in their interest, because otherwise people will say that they are scaremongering. People have suggested other motives, too, which I will not repeat at present. Can you produce those modelling studies, so that we can continue the debate on the basis of evidence? You have, unfairly in my view, criticised the Sheffield study, which at least is in the public domain and is peer reviewed. You are coming up with figures without presenting us with any modelling studies. If you cannot present them, people will, quite rightly, be sceptical about what you are saying.

**Gavin Hewitt:** We will do that.

**Joe FitzPatrick:** I want to clarify two points.

**The Convener:** Be very quick.

**Joe FitzPatrick:** David Whitton asked about discussions with the Scottish Government. Is the Scotch Whisky Association saying that the Scottish Government, or any of its officers, made no attempt to discuss the financial impact with it? There was no attempt at communication around the financial impact.

**Campbell Evans:** I think that Mr Whitton asked what discussions took place in the alcohol industry partnership—there was no discussion there. We were asked to contribute to the regulatory impact assessment, on which we submitted a paper.

**Joe FitzPatrick:** Okay, thanks for that. People said that they supported the idea of being able to sell a bottle of whisky for the cost of duty plus VAT. What would that price be?

**Campbell Evans:** I would have to find out the exact cost, but it would be about £8.

**Joe FitzPatrick:** Thank you.

**The Convener:** If you can confirm the exact cost, please do.

**Campbell Evans:** I will give you the exact figure.

16:00

**The Convener:** I will leave the final word to our witnesses. Do you wish to make any final comments?

**Gavin Hewitt:** I emphasise that, despite our strong opposition to the proposal for minimum pricing, we support the Government's wish to address alcohol-related harm and alcohol misuse in Scotland and we are highly supportive of many of the other proposals in the bill.

However, it is important to recognise that we understand the effect on the overseas market, as we have been working on that area for a long time. I wish that MSPs and Government ministers would give our concerns about the effect of introducing minimum pricing in Scotland on our exports the serious attention that we believe they are due.

**John Drummond:** I emphasise my earlier point: the absence of a price mechanism to control the floor price of alcohol could cause serious damage to small retailers on whom communities throughout Scotland rely to do a reasonable job in offering goods.

**The Convener:** I thank our witnesses for sharing their expertise and giving practical evidence that will help the committee in its deliberations.

There will be a short suspension to allow the witnesses to change over.

16:01

*Meeting suspended.*

16:04

*On resuming—*

**The Convener:** Our second panel of witnesses is from the Scottish Government bill team. I welcome to the committee Gary Cox, the head of the licensing team; Alison Douglas, the head of alcohol policy; Marjorie Marshall, the economic adviser for the public health and sport team; and Alison Ferguson, the policy manager of the licensing team.

**Joe FitzPatrick:** The witnesses have obviously heard some of the previous discussion. The whisky industry called for the introduction of a compromise system of duty plus VAT. Why would that not have the health impact that minimum unit pricing will have?

**Gary Cox (Scottish Government Justice Directorate):** We considered that option when we developed the policy that led to the bill, but there

are a number of problems with it. The first is that the current alcohol duty arrangements are based not directly on the ABV—the strength—of the product but, to a certain extent, on the type. At the moment, whisky is taxed unfairly in comparison to vodka, for example, and beers are taxed unfavourably in relation to ciders of similar strength. The fundamental basis for the proposal is flawed.

The second difficulty concerns public health. The driver for the minimum pricing policy is to reduce consumption and harm. Imposing an arrangement whereby it would not be possible to sell alcohol below tax would, in essence, create minimum pricing—it is minimum pricing by the back door. However, it would create a low minimum price of somewhere around 22p per unit, depending on the type of product, so it would have a negligible impact—if any—on public health. That is referred to in the policy memorandum, which states that we would find it difficult to justify on public health grounds an intervention that made little impact on public health.

**Jeremy Purvis:** Presumably, that depends on the tax. If the tax increased, there would be a return to the public purse, which could be invested in alcohol reduction programmes. There would be a change in consumption and a public return that could be invested in supporting harmful drinkers.

**Gary Cox:** I will ask Marjorie Marshall to comment in a bit more detail, but the fundamental difficulty with the taxation arrangements is that there is no requirement for retailers to pass any tax increases on to the consumer. There have been reports—and we have seen evidence—of retailers absorbing tax increases, transferring them to other products or transferring them back to producers. A Government may choose to increase tax, but that is not always passed on to the consumer and, therefore, does not necessarily affect the price.

**Jeremy Purvis:** Forgive me, but I thought that we were talking about a statutory provision that would prevent anyone from selling alcohol below duty. That is the point of considering it as an alternative to minimum unit pricing.

**Gary Cox:** The difficulty is that the minimum price created would be so low as to have no impact on public health.

**Jeremy Purvis:** The Government gave some consideration to a statutory provision that would prohibit alcohol being sold below duty, as the policy memorandum says. However, the issue is that, if tax was increased—I am not talking about the level of the tax increase but about ensuring that alcohol could not be sold for less than duty—what you have just said would be irrelevant because the tax would reach a level that had an

impact on consumption and the money could be invested in helping to reduce harm through Government programmes.

**Alison Douglas (Scottish Government Chief Medical Officer and Public Health Directorate):**

You are correct that, if the taxation regime was based on alcohol content and if there was a requirement for that to be reflected in the price to the consumer, additional revenue would accrue to the Exchequer and could be used to support people with alcohol problems.

**Jeremy Purvis:** The Scottish Grocers Federation said that there was a possibility that the approach that the Government is taking could level out pricing across the different alcohol products sold in stores. That does not appear in any of the Government consideration or modelling, but the federation said that there had been a number of discussions with it. Why does the possibility not appear anywhere? I presume that the Government does not think that it would happen.

**Gary Cox:** Today the Scottish Grocers Federation seemed to take the view that the price of a large number of products would automatically drop to the minimum price for the strength of alcohol concerned. We have received no indication from alcohol manufacturers that prices would level off in that way.

**Jeremy Purvis:** To be fair, the federation did not say that prices would automatically fall to the minimum level—it said that the price of some alcohol that is currently sold at an increased margin might level off. Retailers might decide to do that when the price of other alcohol increased, as they were getting their profit in other areas. There might be a change in how alcohol is sold, such that net consumption does not change.

**Marjorie Marshall (Scottish Government Health Finance Directorate):** I am not entirely sure about the point that Mr Drummond was making about prices levelling off. During that discussion, there was an allusion to the price of alcohol that is sold at on-sales premises. Mr Drummond agreed that there would be a reduction in the differential between off-sales and on-sales and referred to the large increase in off-sales that has taken place over the years and the deep discounting at off-sales premises.

In the modelling that is used in much of the supporting evidence, it is acknowledged that there will be a change in behaviour and that some people who would previously have bought at off-sales will buy at on-sales premises. There is a great deal of switching behaviour among consumers in response to changes in pricing across the whole set of products. We cannot second-guess whether retailers will level prices



down. The minimum price is designed specifically to ensure that certain products rise in price.

**Jeremy Purvis:** I appreciate that, but is not the whole thrust of the Sheffield report that introducing minimum pricing will lift the floor of the current cost of alcohol? The report models the impact of such a change. However, the market is much more sophisticated than that. In the explanatory notes, you say:

“the minimum price for a standard size bottle of wine ... would be £3.75”.

That leaves a massive amount of flexibility in how the market operates when selling wine above £3.75. The vast bulk of the wine that is sold at supermarkets and shops costs more than £3.75. Potentially, minimum pricing will have no impact on the sale of wine in Scotland, because the market will absorb the effects of raising the price of own-label Tesco or Asda wine from £2.99 to £3.75. There is a great deal of scope in the mid-range of all the wine that is to be sold. I am concerned that that point does not appear anywhere in the modelling.

**Marjorie Marshall:** What you describe is part of what we anticipate will be a sophisticated response on the supply side. To be fair to the Sheffield modellers, they were not asked to look at the supply side—they were asked to look at the impact on consumption and health and the societal benefits of minimum pricing. We do not have access to a lot of industry data—it would be nice if we did—and cannot second-guess the supply-side response. You are correct to say that the market is sophisticated. Even the industry representatives who have given evidence may not be able to tell you exactly what the supply-side response will look like.

**Jeremy Purvis:** Let us be fair on both sides. We now know that supply-side elements, which are a massive component of the debate, are not being taken into consideration. Therefore, is there not a margin of error in many of the assumptions about the impact of minimum pricing that are before the committee?

16:15

**Marjorie Marshall:** On the impact, clear evidence shows that consumption responds to price. At the population and individual levels, people respond differently, but a wealth of theory and empirical evidence shows that people respond to the price of alcohol and that a clear link exists between consumption levels and harm. The modelling of the benefits and the response builds on well-established theory and empirical evidence. A model has been used because we have no empirical evidence, as the policy is new.

**Jeremy Purvis:** Table 2 in the financial memorandum, which is entitled “minimum price & discount ban: impact on consumption and spending”, shows the effect of a minimum price of 40p per unit, which is the Government’s illustrative figure, on harmful drinkers—I presume that you really want to affect them. Let us take as an example a harmful drinker whose main alcoholic drink is cheap bottles of wine—I see you raise your eyebrows. The Government estimates that such drinkers will spend £137 more per year—that is £2.60 a week more—and that consumption will reduce by 8.7 per cent. We just discussed the estimated minimum price of a bottle of wine, which is £3.75, and the range of choices on the supply side. Given that the measure could have no impact on more than 95 per cent of all the wine that is sold in Scotland, is it questionable for the Government to present almost as fact the statistic that I cited?

**Marjorie Marshall:** As you said, the minimum price of a bottle of wine will be £3.75. However, harmful drinkers are much more likely to drink cheap cider or cheap spirits. The modelling showed that about two thirds of the really cheap alcohol, which is sold at way below 40p per unit, is drunk by harmful drinkers.

**Jeremy Purvis:** That is bought in the off-trade.

**Marjorie Marshall:** Yes.

**Jeremy Purvis:** What proportion of harmful drinkers buy drink in the on-trade?

**Alison Douglas:** Harmful drinkers buy most of their alcohol in the off-trade.

**Jeremy Purvis:** I have a final point about redoing the modelling and the impact on the off-trade. You say that you want to focus on the more typical drinks for harmful and hazardous drinkers. The Government’s policy thrust is to deal with domestic Scottish hazardous and harmful drinkers and the typical drinks that they consume. However, you discounted as discriminatory alternative measures that have done exactly that—focused on the type of drink that is consumed. What has been said seems contradictory.

**Alison Douglas:** It is important to realise that what people—particularly harmful drinkers—drink has changed over time. Peter Rice, who chairs the Royal College of Psychiatrists in Scotland, says that people drank super-strength lager 20 years ago but that they have moved towards white ciders and cheap spirits because those drinks give them the most bang for their buck. That is part of the anecdotal evidence that shows that people switch their consumption. Clear research evidence shows that harmful drinkers respond to price. As Marjorie Marshall said, two thirds of cheap alcohol is sold to harmful drinkers. The policy does not

target particular drinks, but it identifies drinks that are cheap for the volume of alcohol that they contain. Those drinks happen to be white ciders and cheap spirits.

**The Convener:** You are going into complex modelling. If you wish to supplement your answers in writing, please do so.

**Jeremy Purvis:** I have a specific question on the modelling. The financial memorandum mentions the amount that has been paid to the University of Sheffield for the work that it has done so far. Will the extra work that the Scottish Government has asked for from the university cost more, or will it come within the envelope of the money that has already been paid? What is the extent of the remodelling that the University of Sheffield has been asked to do?

**Marjorie Marshall:** We have asked for an additional piece of work, partly in response to some of the criticisms around the availability of Scottish data. The researchers will rerun the model with data that were not available when the original modelling was carried out. With such pieces of work it is inevitable that new data are always about to be published and will be available just around the corner, but one cannot keep waiting for them to come out every three or six months. However, we have an agreement under which the researchers are currently rerunning the model with updated Scottish health survey data, updated Scottish crime survey data and some commercial data that we have purchased.

**Jeremy Purvis:** Will any of that information be available to our committee before the bill progresses?

**Gary Cox:** Yes, it is certainly our intention that the revised modelling will be available from the University of Sheffield reasonably soon. That will kick off the next stage in the process for us and we will ensure that the committee receives the report as soon as it is available. As Marjorie Marshall said, the researchers are rerunning an existing model, so the process will be quicker than when the first report was being developed.

**The Convener:** We look forward to receiving that.

**Jeremy Purvis:** I think that the Scottish Parliament information centre has been told that the report will be available in mid-March.

I have one final question about the economic impact of the proposals. The panel will have heard the Scotch Whisky Association's estimate of the economic impact that would result from a minimum price per unit of 50p. An interesting question is why all the information from the Scottish Government picks out a minimum price per unit of 40p, which is in the lower part of the

suggested range. I do not know why 40p was picked. Why was 40p chosen?

**Alison Ferguson (Scottish Government Justice Directorate):** We asked the associations what the financial implications would be of a minimum price per unit of 25p, 50p and 70p to try to get a low, middle and high range rather than focus on 40p.

**Jeremy Purvis:** On the positive economic impact of the proposals, table 3 in the financial memorandum suggests that the cumulative benefit in respect of employment costs over 10 years will be £267 million. Is that correct?

**Alison Douglas:** That is correct.

**Jeremy Purvis:** I understand that the £267 million figure is based on a minimum price per unit of 40p. As the panel will have heard, the Scotch Whisky Association's best judgment about the economic impact on exports is that Scotland will lose £600 million annually. Does that not blow out of the water any potential benefits for Scotland's economy as a result of the bill?

**Alison Douglas:** The basis of that assumption is that an action taken by the Scottish Parliament could result in action being taken against Scotch whisky around the world. However, our starting point is that—as the Scotch Whisky Association argues very effectively at the moment—Scotch whisky is currently sold internationally in a context in which it is disproportionately taxed in its domestic market. The second point is that minimum pricing is entirely fair in its effect on every type of alcohol. The policy treats every product in the same way because it is based on the alcohol content of each product rather than differentiating between, for example, whisky, cider or beer. Therefore, in principle, there should be no basis on which other countries can single out Scotch whisky and treat it differently from how they treat their domestic products. The fundamental principle of minimum pricing is that all products are treated fairly on the basis of their alcohol content.

**Jeremy Purvis:** Is it the Government's estimate that the measure will have zero impact on international trade?

**Alison Douglas:** It is difficult to know whether other Governments may attempt to use the measure as spurious grounds for protectionist action. However, the Scottish and UK Governments will continue to support the SWA in fighting such cases internationally. There is no reason to believe that they will be any less successful than they have been to date in that regard.

**David Whitton:** We have heard a lot about potential minimum prices. Has the Government

made a final decision on what the unit price would be?

**Gary Cox:** No decision has been made. We chose to set out in the bill the principles and formula for determining the minimum price. As you will know, we propose an affirmative regulation-making power to set the price. As Marjorie Marshall mentioned, we are asking the University of Sheffield to rerun the model. The results of that rerun will enable us to consider with our economists and lawyers some of the issues on the specific prices that were modelled. Coming to the Parliament with a specific price involves our working very carefully with the lawyers and the economists to get something that we are happy with and that is robust.

**David Whitton:** You said in your opening remarks, Mr Cox, that the driver for the bill is to reduce consumption and harm. Ms Marshall said that consumption responds to price—we could use the pricing of cigarettes to show that. Table 1 in the financial memorandum shows that, for a minimum price of 40p, the change in consumption would be -5.4 per cent; and, for a minimum price of 70p, the change in consumption would be -20 per cent. If the Government is trying to implement a health-driven measure and you want consumption to respond to price, does it not follow that you should think of introducing a unit price that is more like 70p rather than 40p?

**Gary Cox:** We cannot consider only public health when working out what the minimum price might be; we must take other issues into account. For example, the minimum price must be proportionate and must not interfere unreasonably with the market. If we consider only the public health aspect, you are right that the higher the price, the more dramatic the impact on consumption and harm. However, as I said, there is a careful process to go through with lawyers and economists to find a price that will be proportionate and reasonable and still have an impact on public health.

**David Whitton:** Is the driver to reduce consumption and harm?

**Gary Cox:** Yes, it is.

**David Whitton:** If that is so, surely you go for the highest unit price that you think can be borne to achieve that aim. You will have heard the earlier evidence. I have seen reports that people in the medical profession say that, if the Government is serious about the matter, it should consider a unit price of 80p, because that would make people think twice about whether they should purchase alcohol of the type that you describe.

**Gary Cox:** You are right that the higher the price, the bigger the reduction in consumption and harm, but we must go through a careful process.

We cannot just pick a figure out of thin air, which I think is what some commentators have done. When we come back to the Parliament with a draft regulation proposing a specific price, we will provide a regulatory impact assessment, show the working of how we arrived at that particular price and explain to the Parliament the rationale for proposing a specific price. However, as I said, that work is happening in parallel with the bill process.

**David Whitton:** Some people might say that you have picked a figure out of thin air at the moment, but I will not ask you to comment on that.

I am sure that you heard what the SWA said about whether introducing a minimum unit price is legal under European legislation. Do you agree with what was said? Can the Government's lawyers give a view on that before we go further in the process?

**Gary Cox:** I will touch on that briefly, convener, in the absence of my lawyers—we brought economists today, given that we were coming to the Finance Committee. About two weeks ago we discussed in detail with the Subordinate Legislation Committee the issue to which Mr Whitton referred. Our lawyer gave a very full explanation at that meeting of the issues involved in setting a minimum price. If I may, I refer Mr Whitton to the *Official Report* of that meeting. If the committee wants a fuller explanation, we can write to you.

16:30

**David Whitton:** I apologise for not having seen the *Official Report* of that meeting. If the Government's lawyers have explained, that is fine; I can check the *Official Report*.

I am sure that you heard Mr Drummond's evidence about the possibilities of cross-border trading and white van man selling out of the back of his van. That would also have an impact on the Scottish economy. What is your view on that evidence?

**Alison Douglas:** There is no hard evidence of illicit sales, or people going to a shop down south. That is conjecture. It would depend at what level—

**David Whitton:** I hate to interrupt you, but if you go to Glasgow Barras on any Sunday and speak to Glasgow City Council's trading standards officers, you will find that they raid the Barras regularly and arrest people for selling cigarettes, for example.

**Alison Douglas:** The price differential between a legal packet of cigarettes and an illegal one is substantial. I was going on to say that the financial incentive for people to operate illegally, or indeed, to drive to Carlisle to do their weekly shop, depends on the minimum price. A 40p minimum

price would provide a very limited incentive for people to do that, either on their own behalf or to supply others.

**David Whitton:** The converse of that is that if we went for a 70p minimum price, for example, and it became very painful, the scenario that Mr Drummond painted might become more likely.

**Alison Douglas:** It gets more likely the higher the minimum price.

**David Whitton:** Why has no limit yet been set on the social responsibility levy?

**Gary Cox:** We are discussing with the licensed trade and retailers how that should work. During the consultation we asked for suggestions for how the framework for a social responsibility levy might work, and the responses we got tended to be of the “yes, we agree with it” or “no, we don’t agree” type. From that, we took the view that it would be better to involve the licensed trade in the development of the policy and to thrash out the options so that we can get a social responsibility arrangement to which it feels able to sign up. That was quite a deliberate approach; we did not want to dream up a scheme and thrash it out later. Our experience of working with the licensed trade has taught us that we usually get a better result if we involve it from day one.

**David Whitton:** You heard Mr Drummond say that he does not think that it should be a blanket levy, but that those who offend should pay the price.

**Gary Cox:** A number of options are being discussed, as you can imagine.

**David Whitton:** So that suggestion has not been ruled out.

**Gary Cox:** Nothing has been ruled out. We want to discuss it with the trade and get to a point where we have some options that we can then present to ministers. As you can imagine, discussions that involve the pub trade and the supermarket sector bring out huge differences of opinion, and some particular agendas are in play. Our job is to try to make sense of all that and come up with something workable.

Again, we will be using the affirmative resolution procedure. We intend to consult on draft regulations on the social responsibility levy that will be subject to affirmative procedure when they come back to the Parliament.

**Joe FitzPatrick:** David Whitton talked about the impact on consumption of various minimum prices, from 40p to 70p, and he seemed to be arguing for a level of 70p. What would the profile of the impact on consumption and health of drinkers be? Who would be drinking less? Who would be hit first?

**Marjorie Marshall:** At 40p?

**Joe FitzPatrick:** As the minimum price goes up, who will be affected first?

**Marjorie Marshall:** The price affects everyone’s drinking.

**Joe FitzPatrick:** I am asking about consumption.

**Marjorie Marshall:** An increased price affects all groups, but it affects different groups in different ways. That is an important point to make about the Sheffield study. An allusion has been made to people’s responsiveness to price changes, and a well-recognised meta-analysis by Wagenaar, from which we quoted, has been referred to. That study considered the responsiveness to price changes of different drinking groups, but not the complicated behaviour of people who drink heavily. The Sheffield study considered that behaviour. Such people switch behaviour and move between different types of drink in response to the changing prices of products.

It is difficult to say. There is not a sliding scale with the most harmful drinkers getting hit first; it is more about the degree to which people respond to prices. The Sheffield study is different in that it shows that people who drink heavily respond to price changes. Their behaviour is complex as they switch between products in order to drink to the maximum. Obviously, if there were a minimum price, they would not be able to use very low-price products, so the greatest health benefit impact would be among hazardous and harmful drinkers, but there would be a small benefit for many moderate drinkers.

**The Convener:** Derek Brownlee was next to ask a question, but does Malcolm Chisholm want to ask a quick question first?

**Malcolm Chisholm:** I want to get my shot at some point. I do not mind when that is.

**The Convener:** You are on the list.

**Derek Brownlee:** I apologise for starting off with a question that might sound a bit parochial. The area that I represent includes the Borders and Dumfries and Galloway, so you will understand that cross-border dynamics are of particular interest to me. We understand that, if the provisions come into play, people who shop weekly in Dumfries might not decide to shop in Carlisle because they want cheaper wine, but there is already significant cross-border traffic, particularly in the Borders area and Dumfries and Galloway. In areas where cross-border shopping is bound to be more of an issue, has the impact on retailers on the Scottish side of the border been considered? I appreciate that I am talking about a narrow area and a specific part of the country—people in Aberdeenshire, say, will not drive to Carlisle to get cheaper wine.

**Gary Cox:** As Alison Douglas said earlier, the likelihood of people travelling to buy alcohol will depend on the minimum price. We have not considered that matter in precise detail, but it is clear that we will need to address it when we come back with a specific price and a more detailed impact assessment.

**Derek Brownlee:** I will not labour the point, but it would be helpful to those of us who cover that geographical area if greater thought was given to the impact there. The issue is more likely to have an impact on that part of the country.

**Gary Cox:** The point that you make is similar to that which was made when the Smoking, Health and Social Care (Scotland) Bill was being considered in the previous session. It was said that we would perhaps suffer because people would travel to England to have a fag and a pint.

**Derek Brownlee:** With respect, my point is slightly different. The smoking legislation relates to public places; my point is about off-sales as well. People will be buying things for consumption later.

I would like to develop the point. In the past few years, an obvious trend in retailing has been the decline of independent chains of off-licences. I assume that that decline is the result of people increasingly buying their alcohol from supermarkets, which they are increasingly doing on the internet. Would the proposals have any impact on Scottish residents who buy alcohol on the internet?

**Gary Cox:** The Licensing (Scotland) Act 2005, on which some of the provisions are built, applies to internet sales. Any premises that carry out internet sales in Scotland would be subject to the same licence conditions. Obviously, the provisions do not apply to internet sales in the rest of the UK. Until other countries have similar promotion arrangements in place, there would be that difference.

**Derek Brownlee:** So nothing in the bill would prevent a retailer of whatever kind from setting up premises anywhere in England and selling on the internet at a price below the minimum price in Scotland.

**Gary Cox:** Nothing in the bill addresses that. The retailer would be subject to the Licensing Act 2003, as it applies to England.

**Derek Brownlee:** That seems to be a major loophole. Has the Government raised the issue with the UK Government or thought about how it might be addressed? It seems to drive a coach and horses through what you are trying to achieve.

**Gary Cox:** We have raised the issue with the UK Government, through the Department of Health and other colleagues. We keep in constant

touch with the UK Government, and we will be happy to report back to the committee on that.

**Derek Brownlee:** In answer to Mr Whitton's question about setting the price, you said that the price would be set after consultation with "economists and lawyers". Why do lawyers need to be consulted? Are you concerned about the legality of a minimum price?

**Gary Cox:** Lawyers are involved with any legislation or regulation that comes to the Parliament. That is part of the normal process. The approach that we take to setting a minimum price and making draft regulations will be no different from the approach that we take in respect of any other regulation.

**Derek Brownlee:** On page 11 of the financial memorandum you said:

"the modelling estimates that there are around 2.4 million moderate drinkers in Scotland, around 1 million hazardous and around 270,000 harmful."

In relation to the million drinkers whose drinking is regarded as hazardous, can you give a flavour of the spectrum? Are the numbers evenly distributed towards the lower end, or are they bunched up in a particular area? We are talking about a large group of people that will probably encompass people who do not think that they are drinking to a level that merits the term "hazardous".

**Alison Douglas:** I do not think that we have data that break down that figure further. We have self-reported health survey data on people's levels of drinking, but the difficulty is that we know that people consistently underreport how much they drink. That is why it has been so important and useful to get hold of the data from industry sales in Scotland, which we recently published. We think that those data give a far more accurate representation of how much alcohol is consumed in Scotland. They show that, on average, drinking levels are 25 per cent higher here than in England and Wales. There are genuine difficulties in getting accurate estimates of how much particular groups or sub-categories drink.

**Derek Brownlee:** On whether there is a particularly Scottish problem, as opposed to a UK problem, in the policy memorandum you said that

"Consumption has increased by around a fifth in Great Britain since the early 1980s"

but that

"alcohol has become 70% more affordable over the same period."

That suggests that although there is elasticity, it is relatively limited. If alcohol has become 70 per cent more affordable but there has been only a 20 per cent increase in consumption, it is clear that price is not the only factor that drives consumption. Do you have data that suggest that

elasticity is different in Scotland, in addition to the data that suggest that drinking levels are 25 per cent higher in Scotland?

**The Convener:** If the witnesses want to consult further and write to us, that would be helpful.

**Marjorie Marshall:** If the committee is interested, we can consider the issue in the context of comparing the new, more Scottish report that we will get from the University of Sheffield with the original, English report. I am not aware of large differences between Scotland and England, but there are differences in patterns of drinking and in the type of drink that is consumed. We tend to consume more spirits, proportionally, than English consumers do. In response to your question about affordability, I am not aware of a significant difference in that regard.

16:45

**Derek Brownlee:** Table 3 in the financial memorandum breaks down drinkers into groups. Using the societal value, it is clear that the bulk of any benefit relates to the smallest group—the 270,000 harmful drinkers. We all understand that a section of society is drinking to excess—we can see it on any Friday or Saturday evening in many towns—and that there are serious health issues for people who drink to excess. But I wonder whether we are in danger of making similar mistakes with alcohol policy as have perhaps been made in relation to other substances in that, by trying to influence behaviour, we overstate a case.

Throughout the financial memorandum, you put a lot of emphasis on the three groups of moderate, hazardous and harmful drinkers. However, in a report some years ago in *The Times*, a member of the Royal College of Physicians working party that came up with the limits that those groups are founded on was quoted as saying:

“it’s impossible to say what’s safe and what isn’t because ‘we don’t really have any data’”.

He said that the limits were produced because of

“a feeling that you had to say something”.

He continued:

“Those limits were ... plucked out of the air. They were not based on any firm evidence at all. It was a sort of intelligent guess by a committee”.

We all appreciate that people who drink excessively will damage their health, but does the Government have any more data, particularly peer-reviewed medical data, that are more robust than the analysis using various drinking limits that, on the basis of that report—although it might well have been rubbished since then—does not seem particularly robust? There must surely be empirical medical evidence to link the health damages to consumption in a more reliable way.

**Alison Douglas:** The effect of alcohol on Scotland and on the health of Scottish people has not been exaggerated. We have been improving the evidential basis that is informing policy. The trend in hospital admissions is increasing, with a record figure of 42,000 last year, and it is estimated that one in 20 deaths in Scotland is alcohol related. At population level, 51 per cent of men and 40 per cent of women in the Scottish health survey reported drinking above either the daily or weekly sensible drinking guidelines. I accept the member’s point that only a small proportion of Scots drink at harmful or dependency levels, but large swathes of Scots drink at levels that will, over time, be damaging to their health. That is borne out in the health trends. We have the fastest growing rate of liver cirrhosis in western Europe.

The sensible drinking guidelines were considered in 1995 by a group of experts at UK level. The group found a J-shaped curve in the effect of consumption on all-cause mortality. So if someone drinks nothing, they are more likely to die than if they drink a small amount. Part of the reason for that is that some people who do not drink at all are ex-dependent drinkers; another is because of a small cardiovascular protective effect, particularly for older men. Increasingly, we are finding that even small amounts of alcohol consumption increase women’s risk of breast cancer, for example.

You are right that setting sensible drinking guidelines is not an absolute science, but it was the considered view of the expert panel that the guidelines of two to three units a day for women and three to four for men represented a reasonable population level of when the risk starts to head up the sharp curve. That is the basis of those guidelines.

**Derek Brownlee:** I do not want to labour the point, as it is not exactly what the committee is looking at, but a lot of the financial consequences that you are modelling depend on the classification. You are unable to say, for example, whether 80 per cent of the 1 million people in the mid group are towards the lower end or whether they are evenly spread throughout. There is a significant section of the population that, if you are right about the health costs, you need to be able to influence through pricing, and I am not entirely sure that pricing will influence that number of people unless you can also produce more health evidence. There are two aspects: we all recognise that tobacco consumption has fallen not just because of pricing, but because of broader health messages that have successfully penetrated into society.

**Alison Douglas:** It might be worth making the point that the bill covers only a small number of

the actions that the Scottish Government is taking on alcohol. The alcohol framework has 41 actions, and with every week that passes we seem to add yet another one or two to the list. Although a lot of attention has focused on the bill and minimum pricing in particular, ministers are conscious of the fact that the policy must be multifaceted and work over the long term to create culture change. However, as we have seen with tobacco, legislation can play an important role in helping to raise the profile of an issue with the public and drive behaviour change.

**Lewis Macdonald:** Can you remind us briefly why you conclude that the introduction of a minimum unit price for alcohol will increase the earnings of alcohol industry but reduce the revenues to the Exchequer?

**The Convener:** Who would wish to answer that one?

**Marjorie Marshall:** I am getting it.

What we are looking at is a response to an increase in price that results in a reduction in the amount of alcohol that is sold, but at a higher price. You will see from the report that, although people will reduce their consumption, they will spend slightly more—hence the revenue increases to the industry as a whole, initially to the retailer and thereafter to wherever the revenue goes in the supply chain. People will decrease their consumption but spend a little more for what they are buying.

**Alison Ferguson:** The volume of sales will go down but the price will increase.

**Lewis Macdonald:** So in effect there will be no increase in the duty take because the duty is fixed.

**Alison Ferguson:** That is right—less alcohol will be sold.

**Marjorie Marshall:** The money that accrues to the Exchequer is made up of two parts. The first is VAT take, which will increase as there will be an increase in the base cost, but there will be a reduction in duty because the number of units sold will reduce.

**Lewis Macdonald:** I understand that the legal position is that the Scottish Government would have to compensate the Treasury for that lost revenue. Have you had discussions with the Treasury on how you would do that?

**Alison Ferguson:** The statement of funding is a technicality that we have to include in the financial memorandum. Any discussions on any money changing hands would happen between Scottish Government finance and the Treasury, and we are not aware that the Treasury has contacted finance about that.

**Lewis Macdonald:** Would it not be for Scottish Government finance to contact the Treasury, given that we are talking about a Scottish Government measure?

**Alison Ferguson:** The Treasury is aware of the bill and the proposals in it. It would be for the Treasury to contact the Scottish Government.

**Lewis Macdonald:** You do not think that the onus lies with the Scottish Government as the body that is bringing forward the legislation.

**Alison Ferguson:** No.

**Lewis Macdonald:** Okay. That is interesting.

**Alison Douglas:** There is precedent with the anti-smoking legislation. Not dissimilar levels of money could in theory have been recovered by the Treasury, but that has not happened.

**Lewis Macdonald:** That is helpful.

In response to earlier questions, Mr Cox said that it would be important in setting the unit price not only to consider the health impacts but to be proportionate and not to interfere unduly in the market. In making that judgment, what would you consider to be unfair or undue interference in the market? What criteria will you apply to assess whether a given price was unduly restrictive or interfering in the market?

**Gary Cox:** I am not able to answer that question today. As I said to Mr Whitton, a process lies ahead. As we go through that process with lawyers and economists. Ultimately, ministers will have to take a decision. When going through the process, our job is to present ministers with as much information as possible about the impacts of a specific price, not only on health and criminal justice harms and the economy, but on industry and other considerations.

**Lewis Macdonald:** I asked not what the price would be—clearly, that process is still to come—but what criteria you would apply to determine whether you were interfering unduly in the market.

**Gary Cox:** With respect, I cannot answer that question today.

**Lewis Macdonald:** Who will be responsible for making the judgment?

**Gary Cox:** I am happy to write to the committee on that point.

**The Convener:** I remind the committee that we are receiving evidence from officials. Some of the questions would be better posed to the minister.

**Lewis Macdonald:** That may be the case. I am simply keen to understand the advice on the economic and financial aspects of the measure that officials are giving to ministers; we are aware of the health aspects. If responsibility for providing

advice on market impacts does not lie with Mr Cox, I would be interested to know whether it lies with another department of Government, for example.

**Gary Cox:** As you would expect with a bill of this nature, it is a joint effort between us, public health colleagues, the food and drink industry division, economists, lawyers and a range of other people. We will go through that process and provide advice to ministers.

**Lewis Macdonald:** I do not want to test the definition too tightly, but one of my colleagues asked witnesses from the Scottish Grocers Federation and the Scotch Whisky Association about the proposal for a floor price based on duty plus VAT. The Scottish Government's rebuttal of that proposal included a reference to restricting the market. The witnesses were asked whether they understood what the Scottish Government meant when it said that the proposal would restrict the market unduly. Are officials in a position to comment on that aspect of the market impact of the measure that is proposed?

**Gary Cox:** The point that we were seeking to make in the policy memorandum was that such an approach would create a very low minimum price of around 20p per unit. When we match that with the Sheffield report, it is difficult to see what impact, if any, it would have on public health. For that reason, the argument that the measure would have an impact on public health is diminished.

**Lewis Macdonald:** I understand the public health argument; my question concerned the point that was made in the memorandum about restricting the market.

**Alison Douglas:** It comes back to the issue of proportionality. In our view, if there is little or no public health benefit, there is no proportionality with regard to interference in the marketplace.

**Lewis Macdonald:** In other words, a demonstrable public health benefit is a basis for interference in the market and the absence of such a benefit is a basis for not interfering.

I have a specific question about the measure that is proposed. If my recollection is correct, recently there was evidence that Buckfast tonic wine, which has a high level of caffeine, was involved in 70 per cent of cases involving alcohol-related violence that were reported by Strathclyde police. I am interested to hear your comments on that report. Are you interfering in the market enough, assuming a unit price of 40p or even 50p, which would not affect the price of Buckfast fortified wine?

**Alison Douglas:** I do not have the precise figures in front of me. However, if memory serves me well, the figure that was quoted in the press

was 5,000 incidents over about three years, which is about 2 per cent of the total number of incidents in Strathclyde during that period. That is a small proportion, which is not entirely dissimilar to the figure for fortified wine as a percentage of total sales in Scotland. The conclusion that Buckfast or any other particular drink is fuelling crime or violent crime is something of a leap and does not seem to be borne out by statistics.

**Lewis Macdonald:** As was said earlier, your judgment is that low-price ciders and spirits contribute to alcohol-related crime and harm but Buckfast does not.

**Linda Fabiani:** She did not say that.

**Alison Douglas:** The relationship between alcohol consumption and crime in Scotland is clear but complex and—

**The Convener:** I think that we are straying into other committees' work. Do you have a final question, Mr Macdonald?

17:00

**Lewis Macdonald:** I just want to understand whether there is a concern in that respect.

**Alison Douglas:** About Buckfast in particular?

**Lewis Macdonald:** Yes.

**Alison Douglas:** We have not seen any international research evidence that the combination of caffeine and alcohol is linked to violence.

**Lewis Macdonald:** Or harm.

**Alison Douglas:** Or harm.

**The Convener:** We have had quite a long session. Linda Fabiani has a final, very quick question.

**Malcolm Chisholm:** I have been waiting half an hour to ask a question, convener.

**Linda Fabiani:** On you go, Malcolm.

**The Convener:** I apologise. Malcolm Chisholm will ask a question.

**Malcolm Chisholm:** Given the time, I will not detain the witnesses; in fact, my two questions have already been asked. However, my only concern about the financial memorandum was the statement of funding policy. I presume from your comments about the smoking legislation that that is a formality and that you do not expect any penalties from the Treasury to be triggered.

**Alison Ferguson:** For the smoking ban, the reduction in duty to the Treasury was estimated at between £15 million and £30 million. The Scottish Government finance directorate has not been asked for that money. We estimate that a 40p



minimum unit price combined with a discount ban would result in a £12 million reduction in duty, so we are well within the same ballpark.

**Malcolm Chisholm:** I was going to ask about your response to the Scotch Whisky Association's comments, but you have substantially answered that question.

Obviously, after looking at the evidence, I have been persuaded of the case and the only other point that I want to make is that I feel that your emphasis on addressing harmful drinking is really important. A recent study carried out at the alcohol problems unit at the Royal Edinburgh hospital concluded from its very large sample—in the hundreds, I believe—that the problem was preponderantly with cheap alcohol. Even a 40p minimum unit price would make a significant difference to the harm being done to those people, and the whole health community has certainly been persuaded of those arguments. I know that you are putting those arguments across, but I hope that they will feature even more strongly in the weeks ahead.

**The Convener:** Again, I apologise to Malcolm Chisholm.

Linda Fabiani and Jeremy Purvis have promised that they will each ask one short question. Shall we put that to the test, Linda?

**Linda Fabiani:** Oh, let Jeremy go first or he will go in the huff.

**Jeremy Purvis:** As Linda Fabiani would say, my question is in two very short parts. [*Laughter.*]

**The Convener:** If the witnesses think that the questions they have been trying to answer have been complicated, I must tell them that what I have to do is even worse.

**Jeremy Purvis:** If it helps, the two parts of my question are directly related to tables in the financial memorandum.

I have a question of clarification about table 4, which is related to the differential between off-trade and on-trade sales. When I pursued this line of questioning earlier, Ms Marshall indicated strongly that the off-trade was the focus of the legislation. Given that, I am a bit concerned that, according to table 4, the lowest differential in the increase in costs for off-sales and on-sales is actually in the group of harmful drinkers, which is the group that I understand the Government most wants to tackle and on whom, as we heard, the impact of the minimum price provision with regard to the on-trade will be the most negligible. Can you explain that?

**Marjorie Marshall:** Just to clarify, are you talking about the increase in sales?

**Jeremy Purvis:** Yes.

**Alison Ferguson:** It is the value of sales, so it is the price—

**Jeremy Purvis:** It is the total value of sales in the population. I am looking at how much more the group that is categorised as harmful is expected to be paying.

**Marjorie Marshall:** Yes.

**Jeremy Purvis:** That being correct, and if the thrust of minimum pricing is to up the off-sales costs—meaning that both the volume and the price would go up—we would expect the differential between off-sales and on-sales in the harmful category to be the most. However, it is the least.

**Marjorie Marshall:** That is because that group of drinkers do the most complex switching behaviour between different types of product and between on-sales and off-sales.

**Jeremy Purvis:** Thank you. In effect, that is the point that I was trying to make earlier. We heard from the Scottish Grocers Federation, which summed up the situation. At the moment, people in pubs have the flexibility to sell as they wish. As we can see from examples (f), (g) and (h) in paragraph 8 of your tables, the increase has no impact on on-sales. The minimum price for a dram of whisky would be 37p, with a vodka and tonic at 55p. A pint of lager would cost a minimum of £1.13.

**Marjorie Marshall:** Can you clarify which table you are referring to?

**Jeremy Purvis:** It is in paragraph 8 of the explanatory notes. I am referring to sub-paragraphs (f), (g) and (h).

**The Convener:** It would be helpful if the witnesses considered that further and wrote to us. We will let you have the detail—it was a detailed question. If you do not have the answer now, it would be good if you could write to us.

**Jeremy Purvis:** On table 3, under paragraph 67, I am interested in how you estimated the cumulative impact. Earlier in the memorandum, in paragraph 45, it says that the annual health costs are estimated by the Government to be £405 million. The 10-year health costs, if we do not do anything, and if we do not factor in any increase in trend, presumably come to £4 billion. The cumulative health benefits from a 40p minimum price and discount ban would be £115 million. The Government says that the policy will have a big impact, yet that £115 million of savings comes to less than 3 per cent of the health costs. At 2.8 per cent of health costs benefit, that is not a big impact at all. Are those figures correct?

**The Convener:** Do you wish to answer, or—

**Marjorie Marshall:** The quick answer, if there is

one, is that the £405 million is from a separate study. It is not directly comparable. It comes from a cost-of-illness study, which shows a cost of alcohol misuse. The two studies used a lot of similar data and literature, but they are not directly comparable.

That was the quick answer. I am happy to write with a more detailed answer, if that would help.

**The Convener:** These are very detailed questions.

**Jeremy Purvis:** I am concerned about that last reply. One of the footnotes to the explanatory notes refers to the

*"Costs of Alcohol Use and Misuse in Scotland, Scottish Government, May 2008".*

I looked at that document and printed it off, and I have it in front of me. The figures tally, with regard to that £405 million cost to the NHS.

**Marjorie Marshall:** Yes: that figure comes from that report, but the savings that you are quoting from table 3 come from the Sheffield modelling.

**Jeremy Purvis:** Does the Scottish Government have any comparable figures? I am not sure why you would put figures for which there is no comparable basis into a financial memorandum. I think that the figures are comparable, anyway.

**The Convener:** This is a question of great detail, which could perhaps be followed through. I am sure that the clerks will make contact to ensure that Mr Purvis can get an answer to his question.

Mr Purvis having failed the single-question test, I turn to Linda Fabiani.

**Linda Fabiani:** I would never let you down, convener.

**David Whitton:** The question will be in three parts.

**Linda Fabiani:** No, just one—a long one, though.

You heard the evidence from the Scotch Whisky Association. I think that the SWA said—I will check its evidence in the *Official Report*—that despite the fact that profits and the value of sales have risen in the whisky industry during the past three decades, there have been job losses. It now says that minimum pricing might result in a reduction in profits, which would result in job losses. It seems that the worker cannot win, while the shareholder always does.

The SWA quotes a figure of 400 jobs that are directly related to the whisky industry and which could be lost, but it has not backed that up, as Malcolm Chisholm pointed out, with much quantification in its evidence to the committee. Has the SWA given any evidence in discussions

with the Government to support that figure of 400 job losses?

**Gary Cox:** The SWA has not given us any direct information on that. As you might imagine, companies that make cheap supermarket whisky could be affected by minimum pricing. I would hazard a guess that those distillers also make cheap vodka, so minimum pricing might have a bigger impact on their production in that area.

As you said, it would be interesting to hear from the Scotch Whisky Association which specific companies it is referring to. It would also be interesting to have an understanding of how frequently the contracts between supermarkets and producers change. At any given time, a particular company might be making cheap supermarket whisky, whereas in six months an entirely different company might be doing so. It would be useful for us to have that level of detail.

**Alison Douglas:** We have had conversations with a number of different supermarkets and heard different responses to the question whether minimum pricing would mean that supermarkets would no longer continue to sell own-brand spirits. It is something of an assumption to conclude that all supermarket own-label or value brands would disappear.

**The Convener:** I draw this section to a conclusion; I see that the witnesses wish to make no final comments. The committee has sought information on a complicated pattern of variables and unknowns, and we appreciate the inbuilt difficulties in the nature of your work. I thank you for your evidence; if you wish to supplement any aspects in writing, please do so.

## Decision on Taking Business in Private

17:12

**The Convener:** Item 3 is consideration of whether to take our draft report on the financial memorandum to the Alcohol etc (Scotland) Bill in private at future meetings. I propose that we do so. Are members agreed?

**Members** *indicated agreement.*

## Scottish Parliamentary Commissions and Commissioners etc Bill: Financial Memorandum

17:12

**The Convener:** Item 4 is consideration of our approach to scrutiny of the financial memorandum to the Scottish Parliamentary Commissions and Commissioners etc Bill. Hard copies of the bill and the clerk's paper have been circulated to members.

Joe FitzPatrick was a member of the Review of SPCB Supported Bodies Committee, which helped to develop the proposal for the bill. As a result, standing orders rule 9.13A precludes him from taking part as a member of the Finance Committee in our consideration of the financial memorandum to the bill.

The clerk's paper suggests that we may wish to adopt level 2 scrutiny in relation to the financial memorandum, and provides us with a list of affected bodies from which we may wish to seek written evidence. Are members content with those suggestions?

**Linda Fabiani:** I am.

**The Convener:** I see that members are so content. That concludes our public session.

17:13

*Meeting continued in private until 17:29.*

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