



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# HEALTH AND SPORT COMMITTEE

Wednesday 24 March 2010

Session 3

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**HEALTH AND SPORT COMMITTEE**

**11<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

\*Christine Grahame (South of Scotland) (SNP)

**DEPUTY CONVENER**

\*Ross Finnie (West of Scotland) (LD)

**COMMITTEE MEMBERS**

\*Helen Eadie (Dunfermline East) (Lab)

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Michael Matheson (Falkirk West) (SNP)

\*Ian McKee (Lothians) (SNP)

\*Mary Scanlon (Highlands and Islands) (Con)

\*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

**COMMITTEE SUBSTITUTES**

Joe FitzPatrick (Dundee West) (SNP)

Mr Frank McAveety (Glasgow Shettleston) (Lab)

Jamie McGrigor (Highlands and Islands) (Con)

Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Gary Cox (Scottish Government Justice Directorate)

Rachel Rayner (Scottish Government Legal Directorate)

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Health and Wellbeing)

**LOCATION**

Committee Room 1



## Scottish Parliament

### Health and Sport Committee

*Wednesday 24 March 2010*

[The Deputy Convener *opened the meeting at 10:00*]

### Decision on Taking Business in Private

**The Deputy Convener (Ross Finnie):** Good morning and welcome to the 11<sup>th</sup> meeting in 2010 of the Health and Sport Committee in the third session of the Scottish Parliament. I remind everyone to switch off their mobile phones and any other electronic equipment.

We have received no apologies except for an apology for lateness from the convener, who is attending a meeting on the Control of Dogs (Scotland) Bill, which she introduced to the Parliament. She hopes to be with us for the major part of the meeting.

Agenda item 1 is to decide whether to take in private item 6, under which the committee will consider its approach to its forward work programme. Do members agree to take item 6 in private?

**Members** *indicated agreement.*

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** Should not we also take item 4 in private?

**Ian McKee (Lothians) (SNP):** And item 5.

**The Deputy Convener:** We decided at previous meetings that we would discuss the draft reports in question in private.

**Dr Simpson:** Thank you.

## Subordinate Legislation

10:01

**The Deputy Convener:** Agenda item 2 is subordinate legislation. We have five instruments that are subject to negative procedure to consider. Members have a copy of each in their papers and a cover note from the clerk that summarises them and highlights comments that the Subordinate Legislation Committee wished to draw to our attention. As Mary Scanlon pointed out before the meeting, the instruments are negative instruments rather than “negavite” instruments, as the word is printed on paper HS/S3/10/11/1. Full marks to her for spotting that.

### Food Hygiene (Scotland) Amendment Regulations 2010 (SSI/2010/69)

**The Deputy Convener:** The regulations will amend the Food Hygiene (Scotland) Regulations 2006 by updating the definitions of certain European Union instruments that are referred to in the regulations. Do members have any comments on the regulations?

**Mary Scanlon (Highlands and Islands) (Con):** Forgive me if I am the only member who does not know what the things that I am about to refer to are. I understand that explanatory notes are meant to explain to us exactly what will happen. I appreciate that the instrument is a negative instrument, but I am not sure what a domestic ungulate or a lagomorph is. I understand that those things are being slaughtered in our abattoirs daily, but it would have been helpful if the explanatory note had let us know what they are.

**The Deputy Convener:** Mary Scanlon gets brownie points for pointing out the spelling error at the top of paper HS/S3/10/11/1 and for getting as far in considering the regulations. We believe that a form of cow is being referred to, but we will try to get a definitive answer to your question. I take it that you are seeking clarification and that you do not want to hold up the regulations because of that.

**Mary Scanlon:** Not at all. If a cow is being referred to, it should be called that rather than an ungulate.

**The Deputy Convener:** There may be technical reasons to do with legal definitions why that has not been done. However, it would certainly help if the explanatory note explained why that technical definition was used.

Are members content to make no recommendation to the Parliament on the regulations?

**Members** *indicated agreement.*

**Recovery of Expenditure for the Provision of Social Care Services (Scotland) Regulations 2010 (SSI/2010/72)**

**The Deputy Convener:** The regulations will provide that expenditure that is incurred by an authority that provides services or facilities under arrangements that are made under the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995 or the Mental Health (Care and Treatment) (Scotland) Act 2003 is recoverable from the authority that has arranged the placement. Members have no comments. Is the committee content to make no recommendation to Parliament on the regulations?

**Members** *indicated agreement.*

**National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2010 (SSI/2010/73)**

**The Deputy Convener:** The regulations will amend the National Assistance (Assessment of Resources) Regulations 1992, which concern the assessment of a person's liability to pay for accommodation that is provided under the Social Work (Scotland) Act 1968. Do members have any comments on the regulations?

**Mary Scanlon:** The disregarded amount is 10p a week per person and 15p a week per couple. I appreciate that it is an annual instrument, but could we ask the minister for information about who was consulted about the instrument and whether those who were consulted agreed with it? It seems to be a pitiful amount.

**The Deputy Convener:** I do not know whether anyone present can assist in that matter.

**The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon):** I am not here to answer questions on the instruments, but I am more than happy to comment. Mary Scanlon will correct me if I am wrong—I do not have the instrument in front of me—but I think that the amounts that she referred to are increases in the disregarded amount rather than the disregarded amount itself.

**Mary Scanlon:** That is right.

**Nicola Sturgeon:** I am more than happy, if it is helpful, to arrange for the committee to get information about the consultation process and the general process that is undergone annually to arrive at the proposals.

**The Deputy Convener:** We are much obliged, cabinet secretary.

Are members content to make no recommendation on the instrument?

**Members** *indicated agreement.*

**National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2010 (SSI/2010/74)**

**The Deputy Convener:** We move to the next instrument. Under the National Assistance Act 1948, as amended, a local authority is required to make certain assumptions in assessing a person's liability to pay for accommodation that is provided under the Social Work (Scotland) Act 1968 as well as such sum that is required by them per week for their personal requirements. The regulations will update the prescribed levels and sums from 6 April 2010.

If there are no comments, are members content not to make any recommendation on the instrument?

**Members** *indicated agreement.*

**Tobacco and Primary Medical Services (Scotland) Act 2010 (Ancillary Provisions) Order 2010 (SSI/2010/77)**

**The Deputy Convener:** We move to the final instrument, which has been made in order to address some unintended consequences of the coming into force of schedule 2 of the Tobacco and Primary Medical Services (Scotland) Act 2010.

The schedule came into force when the 2010 act received royal assent on 3 March, and it repealed certain provisions in existing tobacco legislation. However, as the substantial provisions of the 2010 act that will implement the intended successor provisions to those that were repealed have yet to come into force, it has been necessary—oh dear, Mary: it says in the brief “to temporarily reinstate”, but I shall adjust that split infinitive—to reinstate temporarily the provisions that were repealed by schedule 2 until the whole of the 2010 act is in force. The instrument closes that loophole. Are there any comments?

**Dr Simpson:** If split infinitives were our only problem, convener, the committee would be short lived.

I welcome the measure, because clearly the unintended lifting of the provisions in the Children and Young Persons (Scotland) Act 1937 would have been somewhat embarrassing for us all. I welcome the fact that the Government has spotted the problem and acted on it with great speed.

**Helen Eadie (Dunfermline East) (Lab):** The only concern that I would raise is that, not for the first time, the Government has brought before us subordinate legislation that, in effect, has been enacted before it has complied with the 21-day rule. We have had considerable debate about that in the Subordinate Legislation Committee with Ian

McKee, and I gave this order as an example last week, when I was voted down many times by four votes to two. Nevertheless, I made the point then and I make it again: it is not satisfactory for legislation that comes before the Parliament already to have been enacted.

**The Deputy Convener:** Those points are noted for the record. Are members content not to make any recommendation on the instrument?

**Members** *indicated agreement.*

## Alcohol etc (Scotland) Bill: Stage 1

10:09

**The Deputy Convener:** That allows us to move on to item 3, which is the committee's final oral evidence-taking session of its stage 1 consideration of the Alcohol etc (Scotland) Bill.

With us today we have the Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon. She is accompanied by Gary Cox, who is the head of the alcohol licensing team; Mike Palmer, who is the deputy director for public health; and Rachel Rayner, who is a senior principal legal officer. All are from the Scottish Government. I welcome you all to the committee.

Cabinet secretary, I understand that you wish to make a short statement on your position prior to questions.

**Nicola Sturgeon:** I will do so briefly, convener; thank you for the opportunity. It is worth repeating at the outset that the Scottish Government is not anti-alcohol. We are concerned, as I am sure everybody is, about alcohol misuse. However, it has become clear that alcohol misuse is not confined to a small minority of Scots; it is estimated that up to 50 per cent of men and 30 per cent of women regularly exceed the sensible drinking guidelines. Alcohol consumption has increased by about 20 per cent since 1980, and that increase has been driven by an increase in affordability of about 70 per cent during the same period. Increased consumption is driving increased harm. Almost 42,000 hospital admissions in 2008-09 were alcohol related, and it is estimated that 1 in 20 deaths in Scotland is alcohol related.

It is the scale of those harms and the worrying trends that persuaded the Government that a new approach is required—one that is proportionate and draws on the best available evidence and research. That is why we consulted on a package of proposals in 2008 and published the alcohol framework in 2009. The framework contains 41 actions from diversionary activities and improved education for young people, to a tripling of investment in prevention, treatment and support services, as well the specific legislative measures that are before the committee.

There is clear international evidence of a relationship between affordability, consumption and harm. The modelling that was undertaken by the University of Sheffield, which has since been peer reviewed, built on that evidence base and drew on existing data and statistics in order to consider the effect of different pricing options. It

provides estimates of the positive impact that minimum pricing is likely to have on health, productivity and tackling crime in Scotland. It is that evidence and research, I believe, that has persuaded not just the four chief medical officers in the United Kingdom, but the British Medical Association, the royal colleges, all directors of public health in Scotland, the House of Commons Health Select Committee, the Association of Chief Police Officers in Scotland and a range of other organisations, to back minimum pricing. That is why the Scottish Government considers that minimum pricing is an important component of a serious strategy to tackle alcohol misuse in Scotland.

With those contextual introductory remarks, I am happy to answer any questions from the committee.

**The Deputy Convener:** Thank you, cabinet secretary.

**Helen Eadie:** I welcome the cabinet secretary. We have had long deliberations on minimum pricing and some long papers to study, so it has been hard work for all members of the committee. However, it is obviously an important topic, so none of us is concerned about that level of work.

You talked about the evidence on minimum unit pricing, which is clearly indirect evidence. It is based almost exclusively on modelling evidence rather than on direct evidence from elsewhere in the world. I say that with the caveat that the evidence on social reference pricing in Canada might be something for us to consider, although the difference in Canada is that the money goes to the Government and not to the industry and the retailers. I have a concern about the fact that the money that is raised in Scotland would go to the industry rather than to the Government.

We have heard lots of illustrations based on modelling of minimum prices of 40p, 50p, 60p or even 70p. Today is your chance to name your price. What do you believe is the appropriate minimum unit price? We have heard many different interpretations of the impact in Scotland. We believe that you need to stop hedging your bets on the matter. Are you asking the Scots to buy a pig in a poke or—I apologise to Mary Scanlon—to be guinea pigs, as Margaret Thatcher made the Scots when she introduced the poll tax. I really do have strong concerns and reservations about minimum pricing, so I would be glad to hear your comments.

10:15

**Nicola Sturgeon:** I will do my best to answer the various points that Helen Eadie has raised, culminating in her question about the specific price.

Helen Eadie referred to evidence: it is important to stress to the committee, as previous witnesses have done, that there is very strong evidence from a range of studies in European countries, the United States, Canada, New Zealand and other countries about the relationship between price and consumption. I believe that people accept that link.

The Sheffield study modelled what the effect of changes in consumption might be, based on various pricing options. That modelling approach is well respected, and it gives us an important and significant indication of what the effect of minimum pricing would be on consumption, on health harms, on crime and on productivity. The Sheffield written report, and the evidence that was given by one of its authors, are clear about the limitations of the study; it is a modelling exercise, not an evaluation of a policy that is in place in any country. Nevertheless, it is an extremely valuable contribution to the evidence base, and it gives us a strong indication of the effect of the policy.

Helen Eadie referred to profits going to the industry. I will make a number of observations about that. The greatest estimated increase in profits going to industry for the price being set at 70p, for instance—although I am not aware that anybody has been talking about that—comes to about 8 per cent of the total value of alcohol sales in Scotland. That gives the context. It is important to recognise that that amount would not all go to supermarkets. There is likely to be some increase in profit to pubs and small corner shops. Pubs are finding it difficult to compete just now, and lots of people are concerned about them finding it difficult to survive. Small corner shops find it difficult to compete with supermarkets. The levelling of the playing field that would result from minimum pricing would, it can be argued, bring a competitive advantage—or would, at least, remove a competitive disadvantage—to pubs and small corner shops. Currently, cheap booze is often paid for by increases in the prices of non-alcoholic goods. An increase in alcohol revenue may well result in reduced costs elsewhere.

We might come on to discuss this further. As the committee is aware, the bill proposes an enabling power for a social responsibility levy. As we discuss the detail of such a levy, I am open to considering whether that levy could operate so as to recoup some of the increased alcohol revenue for reinvestment in some of the areas that we all feel strongly about.

That takes me to Helen Eadie's question about the price. Although the temptation is great, I will resist some of her more political comments and will not respond in kind. This is an important issue. The bill deliberately proposes the principle of minimum pricing. It sets down the formula by which a minimum price will be established. It is

important that Parliament takes a view, first of all, on the principle of minimum pricing.

For reasons that I am sure we will come on to discuss later in relation to the benefits that a minimum price at a particular level would deliver, and taking into account issues around the legality of minimum pricing, it is important that care is taken in setting the price. We are considering that very carefully just now.

One important piece of information that we require before coming to a final decision on the level at which the price should be set will come from the rerun Sheffield model. When the University of Sheffield first published its study, some members—I am not sure whether any members of the committee were included in this—observed that the Scottish health survey data that were included in the Sheffield study were from 2003, not from 2008. The reason why was that the 2008 information was not available at the time. It is available now, so the Sheffield study is being rerun. That will be an important piece of the jigsaw for us in determining the price.

I am not hedging my bets; the Government is working carefully through the different issues that we require to take into account. When we have done that, we will come to a view on what the minimum price would be set at to allow us to get the health and other benefits that we believe minimum pricing will lead to, while satisfying all the tests that will be required to be met by a minimum price.

**Helen Eadie:** I will challenge one of your points. According to papers that I have received, the cost of alcohol in Europe has gone down, but so too has consumption of alcohol. Furthermore, in Professor Stockwell's papers, he says that the measures in the bill would be only temporary. There is also the issue of the 1978 decision by the European Court of Justice relating to prior legislation on minimum unit pricing.

What we have learned from witnesses about the Sheffield report is what it does not do. A major criticism is that the report did not advise Parliament of the wider economic impact of minimum pricing—an impact that your Government's policy would have. Fortunately, the committee has had the good sense to take evidence on the economic impact on the people of Scotland. You may wish to comment on that. What are the Government's deliberations on the impact on jobs in Scotland? What discussions on the impact did you initiate with industry in Scotland? Studies from Canada show that social reference pricing has resulted in job losses. The committee heard from Whyte & Mackay that 83 jobs may be lost as a direct result of the introduction of minimum pricing. Responding to a question that I asked him last week, Mr Beard of Whyte &

Mackay replied by letter saying that a further 900 indirect jobs would be lost: one company would lose about 900 jobs, and that would be replicated throughout Scotland. That is of some concern to the committee.

**Nicola Sturgeon:** To go back to the start of Helen Eadie's second point, I do not say this to be provocative, but I detect confusion at the heart of what some members are saying. On the one hand, I hear from members of all parties that they accept the relationship between consumption and price, yet Helen Eadie seems to argue against that by quoting research with which I am not necessarily familiar that says that there is no relationship between consumption and price. There are several studies—

**Helen Eadie:** I was quoting a report.

**Nicola Sturgeon:** You were quoting a report that says that as price goes down, consumption does not go up. I can point you to examples from Switzerland and Finland that show that cuts in taxation for alcohol led to significant increases in consumption. The wealth of evidence from various studies that shows a relationship between price and consumption speaks for itself.

Sheffield university was asked to consider, using its modelling methodology, the results of different price options on, for example, health, crime and productivity. On the economic impact, we have consulted on our proposals, not just in the bill but in the alcohol framework to which I referred. I have consulted various stakeholders about the impact. There is no evidence that minimum pricing would lead to job losses. The committee has taken evidence from Whyte & Mackay on two occasions, and I have read the evidence from last Wednesday. I think that it was in response to a question from Ian McKee that Whyte & Mackay eventually confirmed that a minimum price in Scotland—set at 40p, for example—would lead to no job losses whatever, which is a considerable departure from Whyte & Mackay's original evidence to the committee. I have heard the content of the supplementary note from Whyte & Mackay about indirect job losses. All the company seemed to do is multiply a figure by 3, which does not seem to me to have much of a robust basis in fact.

All those issues are extremely important and should continue to be discussed, but I come back to the big-picture central point, which is that we have a significant and serious problem with alcohol misuse in this country. That problem is costing us a considerable amount through the burden that it places on our health service and on our police services, which need to deal with the additional crime. There is also an economic impact; lost productivity due to alcohol misuse is considerable. The combined estimated cost of

alcohol misuse adds up to £900 a year for every man and woman in the country. That is significant. In my judgment, the problem requires effective action, which is why we have introduced the proposals in the bill.

**Helen Eadie:** I have one last question.

It is a pity that you should challenge the veracity of a major company such as Whyte & Mackay. When we lost jobs at the naval dockyard in Rosyth, as councillors—I was a councillor at that time—we took into account not just the direct job losses but the ripple effect throughout the entire economy of Fife, where the job losses were multiplied by perhaps three or even four. The letter from Whyte & Mackay confirms that the proposals would result in 83 direct job losses as well as indirect job losses that would bring the total up to 900.

On internet sales, we heard evidence yesterday and we read the submissions about what happened in Canada, where smuggling and illegal sales rose by something like 3,000 per cent in one year alone. Obviously, that has major implications for the black-market economy, so discussions would be needed with HM Revenue and Customs about border controls as well as with the various police forces across Scotland. We have seen no costings of the likely cost increases to the Scottish Government arising from the policing of the proposals.

A major concern is not simply that extra cost—and the whole new black economy that might be created—but the effect on the health of the nation. Without effective controls in place, alcohol could become lethal. We saw that on a BBC programme last week, which showed just how lethal some of the major stocks of alcohol are that have been captured by the Serious Organised Crime Agency. That is something that I am really very worried about.

**Nicola Sturgeon:** Before I comment on that, let me just round off on the point about the whisky industry. I have the greatest respect for the Scotch whisky industry, which contributes enormously to our economy. The Scottish Government is committed to working with the whisky industry to promote it and the contribution that it can make. Notwithstanding the industry's difference of opinion—if I may call it that—with the Government over minimum pricing, I am sure that the industry would agree that we can work together on a range of different issues.

I was not criticising Whyte & Mackay specifically: I was simply pointing out—the fact that it had to reappear before the committee bears this out—that the first figures that Whyte & Mackay gave for job losses turned out to be based on assumptions that were, to say the least,

misleading. Its figures were based on a minimum pricing policy applying across the UK at a rate of 50p per unit. As I understand it—obviously, I have not heard all the evidence that the committee has heard—the revised figure of 83 job losses was based on a minimum price of 50p per unit. As I said earlier, we have not taken a decision on what the minimum price will be, but many of our discussions are based on the illustrative price of 40p per unit. As I understand the evidence that was given last week, Whyte & Mackay eventually said that a minimum price of 40p per unit in Scotland would not result in job losses. I do not underestimate the effect of job losses in any scenario in any industry, particularly in the current economic climate, but it is important that we do not overestimate, or scaremonger about, the effect that minimum pricing would have on jobs. That is the point that I sought to make.

On illegal sales, I understand—again, I am not being pejorative here—that people who oppose a certain policy will always seek to highlight, and to some extent to magnify, the potential negative consequences of that policy while, perhaps, downplaying the positive consequences. I think that the positive consequences of minimum pricing are potentially considerable. When set against the significant problem that we have with alcohol misuse, they are a prize worth striving for.

10:30

On illegal sales, Helen Eadie will be aware that it is an offence under the Licensing (Scotland) Act 2005 to sell alcohol without a licence. That offence attracts considerable penalties. There is no indication from our inquiries with police forces that the illegal sale of alcohol has been a particular problem.

The police forces and Her Majesty's Revenue and Customs undertake intelligence gathering and engage with other agencies to respond quickly to any reports of illegal products. On the effect of minimum pricing, I refer the member to the evidence that Chief Constable Shearer of Dumfries and Galloway Police gave the committee on 17 March. He said:

“A lot depends on the differentials, but if you set that issue against the whole volume that can be pushed out ... through ... off-sales ... it is relatively insignificant. ... It has never been a major issue, but we would have to assess whether it was becoming one.

In terms of the overall proportionate gain or benefit from minimum pricing, such behaviour would be a cost worth bearing that we would just have to focus on. There is no evidence, however, that there would be any real or significant impact on the market in that respect.”—[*Official Report, Health and Sport Committee, 17 March 2010; c 2982.*]

That is the view of somebody who could be described as working on the front line in this area.

The police and HMRC clearly have an on-going responsibility to look at such illegal practices, as well as other illegal practices, and they take the action that they consider to be appropriate. The police's view, as expressed by Chief Constable Shearer, is that they do not consider illegal sales to be a significant concern.

**Helen Eadie:** But, as you know, that act applies only to Scotland. I could buy alcohol from anywhere in the world from my armchair at home. The white van man could get an accumulation of orders and deliver them across borders. We heard yesterday that Canada had at least 10 border control points for just one province. We would have a similar problem with border control points. That is a cost issue. The act that you mentioned simply would not address the black economy.

**Nicola Sturgeon:** You mentioned white van man. I am not trying to put words in the chief constable's mouth, but the evidence supports his view that that is not a significant concern. The impact would depend very much on the level at which a minimum price was set, because that would determine the price advantage to anybody of doing what you suggest. Given the likely minimum price and the products that it is likely to affect, cross-border trade involving white van man is not likely to be significant.

I think that you referred also to internet sales. The 2005 act applies to internet sales in the same way as other sales. Minimum pricing would apply to internet sales where the delivery was dispatched from premises in Scotland.

**Helen Eadie:** Only from premises in Scotland.

**Nicola Sturgeon:** Where the premises are in England, the English licensing legislation would apply. Until such time as the UK Government introduces minimum pricing, it would be possible to order alcohol over the internet from elsewhere, but the judgment and the assessment is that the majority of people would not switch to internet sales from the current way that they buy alcohol because of the effect of minimum pricing.

I point members to the bigger picture. Minimum pricing is about trying to make a dent in the enormous toll that alcohol misuse is taking on our health, economy and levels of crime in Scotland. We should focus on the bigger picture, rather than try to magnify the potential downsides in order to distract attention from the very real upsides of the policy.

**Helen Eadie:** Professor Stockwell said that your policy would be only temporary.

**Nicola Sturgeon:** I am sorry; I do not understand what you mean by that.

**Helen Eadie:** His point, which is on page 2 of his paper, is that because of the way in which you

have framed your bill, the measure would be only temporary and would not have long-term effects, in the same way that when a penny was put on a barrel of beer in the States, over a period, it became clear that the policy was not worth the paper it was written on.

**Nicola Sturgeon:** Forgive me, convener, but I have not read that evidence, so I am not sure that I understand what is meant by the statement that the measure would have a temporary effect. I am more than happy to consider that evidence and to provide the committee with a written response on that point.

I may be getting the wrong end of the stick, but one argument for not putting a specific price in the bill is to give Parliament flexibility in the future—subject, of course, to regulations, which will be subject to the affirmative procedure—around the price level to ensure that it keeps pace with other changes. I do not know whether that is the point that the witness was making.

**The Deputy Convener:** I think that that is a slightly different point. If your officials could provide a response on Helen Eadie's point, that would be helpful.

Before we move on, I hand over the chair to the convener.

**Helen Eadie:** For the record, the evidence to which I referred is on page 3 of the submission from the Centre for Addictions Research of British Columbia.

**The Convener (Christine Grahame):** Thank you very much.

I have been at another committee meeting. Ross Finnie tells me that you are much better behaved with him, so I hope that that continues and that you do not take advantage of my easy nature.

**Rhoda Grant (Highlands and Islands) (Lab):** I have a couple of questions on minimum pricing and one on the social responsibility levy. Should I stick to minimum pricing?

**The Convener:** Stick to minimum pricing, and allow other members to come in with supplementaries if they want to.

**Rhoda Grant:** In response to Helen Eadie, you referred to the issue of including the minimum price in the bill; that was not the question she asked, but it is the question that I want to ask. As you are aware, the Subordinate Legislation Committee said strongly that the minimum price should be included in the bill to ensure that the certificate of legislative competence would look at the minimum price. It would be possible to include in the bill both the minimum price and the powers to increase that price as necessary. There is no

reason why that could not be done. Will you give a commitment to come back at stage 2 with an amendment that states a minimum price?

**Nicola Sturgeon:** No. I will not give a commitment to do that right now, but I give a commitment to consider the matter in the light of the Subordinate Legislation Committee's report, in the same way that I will consider the recommendations of all the committees that are looking at the bill. Until now, we have taken the view that it is right to encompass in the primary legislation the principle of minimum pricing and to set the level of the minimum price in subordinate legislation that will be subject to the affirmative procedure. In my view, that gives the right balance, but I will consider views to the contrary and make my view known once I have done so.

**Rhoda Grant:** The minimum price not being included in the bill is a big issue for the committee, because it avoids scrutiny from the Parliament. The fact that you will not publish your legal advice on the minimum price creates a problem for us in trying to establish whether the legislation is competent.

**Nicola Sturgeon:** First, Rhoda Grant is as aware as every other member is of what the conventions and, indeed, the ministerial code say about the publication of legal advice. The ministerial code prevents me from publishing such advice, but I am more than happy—I dare say that we will get into this territory later—to talk about the legal position as I understand it. Secondly, there is no substance to the suggestion that the Government is trying to avoid scrutiny. You will recall that when we originally introduced the proposal for minimum pricing, there was a view that the whole thing—rather than just the setting of the price—could be done by subordinate legislation. We listened to views in Parliament and took the view that it was right to have the policy of minimum pricing in principle decided by primary legislation to ensure maximum scrutiny. That is what we are doing.

As things stand, the setting of the price will be done through regulation that is subject to the affirmative procedure. As I know from my experience of appearing before the committee to deal with affirmative orders, that process involves considerable scrutiny. Parliament will have the opportunity to scrutinise the relevant affirmative orders in the normal way, so there is absolutely no suggestion that scrutiny is being avoided. We are seeking to strike the right balance between what is contained in primary legislation and what is better suited to being dealt with in subordinate legislation so that, in future, Parliament will have the maximum flexibility.

As I said, I will reflect—as you would expect me to—on the reports of all the committees that are considering the bill.

**Rhoda Grant:** It might be worth reflecting on the fact that an affirmative order does not need a certificate of competence, whereas primary legislation does. That is one of the big issues.

My second question—

**The Convener:** Are we still on minimum pricing?

**Rhoda Grant:** Yes. It is about hazardous drinkers. Evidence has shown that members of the 16 to 24-year-old category tend to be among our most hazardous drinkers. The Sheffield report points out that a minimum price of 40p would have little or no impact on that group. We are using a hammer to crack a nut—we should be concentrating on the young people in that age group, but in trying to affect their behaviour, we will punish responsible drinkers.

**Nicola Sturgeon:** I do not accept that. The Sheffield study shows that those who buy the most alcohol are the people who will be most affected when it comes to changes in consumption of alcohol. For example, the Sheffield modelling showed that if a minimum price of 40p were introduced in combination with a discount ban, heavy drinkers' consumption would reduce by much more than the consumption of moderate drinkers, because the effect of minimum pricing is to raise the price of the cheapest, strongest alcohol products. It is the hazardous drinkers who will be most affected.

**Rhoda Grant:** You have not addressed what the Sheffield report said about 16 to 24-year-olds, who are hazardous drinkers and who are not as open to being affected by price as members of other age groups.

**Nicola Sturgeon:** The figures on people who drink at harmful or hazardous levels—which I have in front of me—show that that group is not limited to younger people. The reality is that in every pre-retirement age category, the drinking of between 50 and 58 per cent of men exceeds daily or weekly limits, or both, so it is simply not true to say that harmful or hazardous drinking is confined to younger age groups.

**Dr Simpson:** That is not what Rhoda Grant said.

**The Convener:** Please do not comment while a question is being answered.

I think that Rhoda Grant feels that her question is not being answered; she might be right, but we should let her pursue the matter for herself.

**Rhoda Grant:** The Sheffield report makes it quite clear that only 0.7 per cent of 16 to 24-year-

olds would be affected by a minimum price of 40p per unit. A minimum price at that level would not really impact on their drinking. You said in your opening statement that MUP is an important component of how we deal with alcohol misuse. My point is that a minimum price would not affect the members of that group, who have been pinpointed as hazardous drinkers and who are in the process of forming their life patterns. MUP would not deal with that issue, and there is nothing else in the bill that would.

**Nicola Sturgeon:** I say in all sincerity that I am attempting to answer your question. Neither the Government nor I has ever said that minimum pricing is the only solution, or that it will solve every problem of alcohol misuse, and I have reiterated that today. Even if I were to fully accept your argument that minimum pricing would not affect hazardous drinkers in the very youngest age groups, my answer to you is that that does not negate the policy, because minimum pricing would affect people across the age groups who are drinking at harmful or hazardous levels. A key message of the Sheffield report is that minimum pricing most affects those people who buy and consume the most alcohol—in other words, harmful or hazardous drinkers.

On what else we are doing, I said in my opening remarks that the bill that the committee is scrutinising is not the sum total of the Government's assault on alcohol misuse. The alcohol framework has 41 recommendations, many of which are not included in the bill because they do not require legislation. We are taking measures across the spectrum, from awareness raising to education and considerable additional investment in treatment and rehabilitation. There is a comprehensive package. The measures in the bill are the ones that require legislation to implement, but it is not correct to say that they are the only measures that the Government is introducing or pursuing.

10:45

**The Convener:** We will move on. Mary Scanlon, Ross Finnie and Richard Simpson have questions on minimum pricing.

**Mary Scanlon:** This is one from the A list.

The cabinet secretary said that an affirmative order would be introduced to set the minimum price, but we know from Gavin Hewitt of the Scotch Whisky Association that there will be a challenge to minimum pricing on its competence under European law. We do not know whether the challenge will come from the Scotch Whisky Association, but we have confirmation that there will be a challenge.

My question comes on the back of Rhoda Grant's point. I understand that the European Union will deem minimum pricing to be competent only if it is seen to be effective in that it has a correlation with reducing health harms. We can park the issue about the affirmative order because, after stage 3 in the Parliament, there will be a challenge to the European Union. At that point, the Government will have to say what the minimum price is, because the European Union cannot determine whether the measure is effective unless it knows what the predicted health harms are and can calculate the effect in some way. I leave aside the point that there is no evidence of such an effect. Is it not disrespectful and discourteous to the Subordinate Legislation Committee, the Health and Sport Committee and the Parliament that we will scrutinise the bill right up to stage 3 not knowing what the minimum price would be but that, after that, a challenge will be taken to the European Union, and the minute that that happens, we will all know what the minimum price is? Under those conditions, is it not competent to tell us now what the minimum price will be?

**Nicola Sturgeon:** I will not tell the committee that now, for the reasons that I outlined earlier. The process of setting the minimum price must be followed carefully and has to take account of all the required evidence. We have commissioned a rerun of the Sheffield model; many members from various parties suggested that we should do that because, since the first study was completed, more up-to-date information has become available. We will not make the decision until we have the most up-to-date evidence available. I have said previously—although perhaps not to the committee—that our intention is to give the Government's view of the level at which the minimum price would be set before the conclusion of the bill process, so that members have that information before a final vote is taken.

On Mary Scanlon's point about the European Commission, members should be aware that the European Commission has said that, if there was a legal challenge, it could not consider the issue until such time as a minimum price had been set and was in force. That is an important point of clarity.

**Mary Scanlon:** Before I move on to my other points, I just want to say that the really worrying point is that the Parliament might pass legislation that is not competent. That is a serious point.

**The Convener:** Have you finished your minimum pricing questions? I have other members on the list.

**Mary Scanlon:** I would like to return to minimum pricing.

**The Convener:** Fine—not a problem.

**Mary Scanlon:** The Government has focused on minimum pricing, which is why we tend to talk so much about it, but that has been at the cost of not considering the proposals and information on promotions.

**The Convener:** We will come back to promotions. You are still on my A list, but I have other members who want to ask questions on minimum pricing.

**Ross Finnie (West of Scotland) (LD):** I intended to ask two questions about minimum pricing, but I will change them round to provide some continuity with the question that Mary Scanlon has just asked. I accept the point that the cabinet secretary makes about what the Commission may or may not do, but it is still important for us to be able at least to come to a view on the issue of legality. The bill does not specify the minimum price, but even the cabinet secretary could not argue that that question does not hang over us.

I do not expect you to give us your legal advice. It is a well-known protocol that legal advice should not be disclosed; I ought to understand that better than anyone else in the room. It is fine that we will not get your legal advice. However, I find it difficult, if not impossible, to believe that you and your officials did not have to prepare a report on which that advice was based. The Government must have stated—I am not referring to the legal advice—where it thinks the bill sits in relation to the quantitative restrictions that are set out in article 34 of the Treaty on the Functioning of the European Union. It must have indicated that it has a view on the 1978 Netherlands case and explained why it thinks that the proposals in the bill fall outwith the mischief of the treaty and meet the necessity and material health benefit tests in article 34.

You and your officials must have given consideration to the important remarks that were made, albeit obiter, in the French tobacco case. Paragraph 25 of the judgment in that case states:

“a system of minimum prices is capable of producing damaging effects for public health”.

Paragraph 28 states that the Commission’s preference is that member states

“may maintain high prices ... by increasing the level of taxation”.

Paragraph 53 states that loss leading can be prevented by prohibiting sale

“at a price below the sum of the cost price and all taxes”.

If you were to address those issues or to put your report into the public domain, the committee would have an opportunity to test your views and to

come to an opinion on the legality of minimum pricing.

**Mary Scanlon:** Hear, hear.

**Ross Finnie:** We might not agree, but at least we would have a substantive basis for our views. These are complex issues. The committee is not being petty in suggesting that it is difficult to come to a view on the principle of a bill if hanging at the back of our minds is the possibility of the bill’s being illegal. That is my first question.

**The Convener:** It was long but worth while.

**Nicola Sturgeon:** I will try to answer the question as fully as I can. Once I have done so, I will hand over to Rachel Rayner, who is a lawyer and can comment in more detail on the 1978 Netherlands case to which Ross Finnie referred.

I do not think that the committee is being at all petty—these are exactly the issues that it should probe. I will do my best to respond to the points that have been made. It is the committee’s job to raise such issues, and it does so well.

The bill is within legislative competence. It has a certificate of legislative competence and legislates for the principle of minimum pricing. European law does not ban minimum pricing as such. I will state the law as I understand it. As I do so, the committee will be aware of the factors that we must weigh up and take into account in reaching a decision on the level at which the minimum price should be set.

Whether a minimum pricing measure is contrary to European law depends on whether it constitutes an interference with trade between member states or discriminates against products from another member state. Even if it does, it is still possible for the measure to be justified, if it is appropriately directed towards achieving a legitimate objective and as long as any interference or discriminatory effect is proportionate.

That means that, in any particular case, it is necessary to consider the facts and evidence before deciding whether a specific measure complies with European law. In principle, interference can be justified on the basis that it is a proportionate measure aimed at the protection of human health. It may also be possible to justify it as contributing to the reduction of crime. Therefore, in the process of setting the minimum price, we have to balance the price and any interference that may result from it against the health benefits. In the context of those comments, I hope that the committee will appreciate that we take all the best and most up-to-date evidence into account.

A measure must also be the least intrusive way of achieving the objective. As Ross Finnie rightly pointed out, taxation is often regarded as a less

intrusive measure than minimum pricing. However, in the case of alcohol misuse, taxation would not be the best way of achieving our objectives for a variety of reasons. First, at the moment, taxation on alcohol in the United Kingdom is not related to the alcoholic strength of the drink, so a policy that was based on taxation would be based on pretty flawed foundations. Secondly, alcohol duty tax increases are not necessarily passed on to the consumer so they do not necessarily affect the consumer price of alcohol and, therefore, do not necessarily provide the same benefits that a minimum price related to the unit content of an alcoholic drink would provide. That is the basis on which we argue that minimum pricing is not only proportionate and capable of delivering the health benefits, but the least intrusive way of doing so.

Members will appreciate that the majority of the recent judgment on minimum pricing of tobacco in France related to a specific tobacco directive that does not apply to alcohol. The ruling went on to discuss some of the more general issues on minimum pricing but did not specifically consider whether the minimum prices for tobacco would be consistent in general terms. What was commented on did not change case law; it simply restates the law as I have outlined it and does not change the factors that the Government is required to take into account in setting the detail of the price.

I hand over to Rachel Rayner, who may want to say something about the 1978 case. I will be more than happy to take follow-up questions on the points of law.

**Rachel Rayner (Scottish Government Legal Directorate):** The 1978 case that was referred to was a case about the minimum pricing of alcohol, but there were different prices and different formulas for different types of product. The court considered that the way that that measure had been designed disadvantaged imported products. There was no discussion in that case of whether the measure could be justified on the grounds of health, so the case cannot be read as meaning that the Scottish Government's proposals for minimum pricing will breach EU law. The case law has now moved on and it is accepted that there would be a discussion about whether the Scottish Government's proposals could show a health benefit and that that would be relevant.

**Ross Finnie:** That last point is helpful. We have had no previous evidence in relation to it, which slightly makes my point, cabinet secretary. Having that information is helpful, even at this late stage. For clarity and the record, I did not suggest for a minute that the substantive decision in the three tobacco judgments had any bearing on the issue—I think that article 9(1)(c) of the tobacco directive is the one that comes into play—but I referred to the obiter remarks, to which you

responded in part. The clear impression from those is that, for whatever reason, the Commission has formed a view about the efficacy of taxation and of setting a minimum price by reference to cost of sale plus excise duties. Therefore, although you have indicated the general direction in which you would seek to come to a final view, you are saying to the committee that you want to get the best and most up-to-date advice before coming to that view. Well, I think that the committee, too, needs the best and most up-to-date advice before coming to a view.

11:00

That leads to my second, and related, question. I am not sure that it is entirely reasonable to expect a committee to reach its final view on the principles of the bill in the absence of firm information. I found your detailed explanation of the tax issues most helpful. I accept that we could debate those issues for much longer, but the principle is there.

With regard to the Sheffield study, even if I accept its limitations and its strengths, in terms of the public health efficacy of the use of such studies, the committee has been invited to pay particular attention not to the general study but to the one that was updated initially by the Scottish data. You are saying that you would like to see the revised data—so would we—but we would also like to test them and subject them to the same level of scrutiny that the original report received.

If that study has a serious defect, it is in its failure to model the impact of the proposals on low income groups. That matter has been raised seriously in the committee. The outcomes could be varied. It might simply be proved that, because low income groups are the most affected by several levels of alcohol use, the health benefit outweighs the impact on their income. However, in the absence of such evidence, it is difficult to draw a firm conclusion in that direction. Further, in terms of the alternatives to tax that you have to consider, you must also demonstrate why, although you will be placing more money in the hands of those who might wish to spend more on advertising, you are not placing any restrictions on their doing so.

Those are the issues that have been raised in connection with the Sheffield study. In the absence of information about those quite fundamental issues, I find it difficult to come to a conclusion on those matters.

**Nicola Sturgeon:** The committee will have the opportunity to take a view on the level at which the minimum price would be set, because the subordinate legislation will be subject to the affirmative procedure and will have to be agreed to by this committee or a successor of this

committee. The primary legislation contains the principle of minimum pricing. It does not bring into force a minimum price for alcohol; it gives ministers the powers to introduce a minimum price by subordinate legislation. If the committee is not satisfied with the level at which the minimum price is set at the time when the regulations are being proposed, it can reject the affirmative order.

**Ross Finnie:** Just one second. I am not suggesting for a minute that that is not the case. I am genuinely trying to stick to the matter of principle. However, unless I have misunderstood you, in order for you to determine whether this policy will deliver the appropriate and proportionate health benefit while satisfying the requirements of European law, you will have to have in your mind what the minimum price will be. Therefore, in order for the committee to decide whether it believes that, in principle, the policy will deliver that proportionate health benefit, we should have in mind a much narrower price range than the range in the Sheffield report, which goes from 25p to 75p.

**Nicola Sturgeon:** Based on the Sheffield report and the other evidence that is available, I am convinced that minimum pricing will have a desirable effect on alcohol consumption and therefore on reducing some of the associated harms. The question of what the minimum price should be is not about the principle of minimum pricing; it is about the level at which that price has to be set to deliver the required benefits in a proportionate way while complying with EU law.

I repeat that the Government cannot decide the minimum price unilaterally and without parliamentary scrutiny. The regulations require to be brought to the committee by way of affirmative procedure. I believe that the Subordinate Legislation Committee suggested that the regulations should be laid under the super-affirmative procedure, and we are considering that. The committee will have to satisfy itself that the price meets the test at that stage, just as the Government will have to satisfy itself in proposing the price. That is the proper way of proceeding.

**Ross Finnie:** What about the impact on low-income groups and price advertising?

**Nicola Sturgeon:** I have alluded to the latter of those two points already. The Sheffield model quantifies the increased revenue to the industry at different prices. It is not possible to be exact about what sections of the industry will benefit most from the increased revenue, because we are not privy to deals between producers and retailers, for example. It is not the case that the benefit would all fall to supermarkets. As I said, pubs and small corner shops' existing competitive disadvantage would be removed or partially removed. I have also made it clear that, in our continuing

discussions about the social responsibility levy, we are open to considering how some of it can be recouped for reinvestment by the state.

The Sheffield group did not model the impact on low-income individuals because our information was that the Scottish data that were available to Sheffield were not robust enough to allow the modelling to be done. We understand that data are now available that will allow for more robust modelling, so we are looking at the possibility of doing that.

However, the Sheffield study is clear that the impact on moderate drinkers will be minimal: it puts the price rise at £11 per year for moderate drinkers. Also, in looking at the impact on low-income drinkers, it is not appropriate or acceptable to look at only one side of the coin. For example, supermarket deep discounting of spirits is paid for elsewhere in people's grocery shopping. If I may generalise for a second, the cost of deep-discounted vodka or whisky is felt through the increased cost of other commodities, such as bananas or teabags. People simply pay for that discounting in other ways. It is also the case that low-income individuals, like the rest of us, pay the more general costs of alcohol misuse—£900 for every man and woman, as I said. The cost is felt in many different ways.

It is vital to take all those points into account when we are discussing the impact of minimum pricing on low-income people or anyone else.

**The Convener:** If we exhaust the topic of minimum pricing after Richard Simpson, Michael Matheson and Mary Scanlon make their points, we will move on to Rhoda Grant and a question about social responsibility.

**Dr Simpson:** I should say at the outset, cabinet secretary, that I would prefer it if you did not suggest that other topics are a distraction, as you did to my colleague Helen Eadie. She raised the issue of internet, cross-border and illicit sales, and they are not distractions; they are issues that the Sheffield study clearly said need to be considered.

There are two other issues that the Sheffield study said need to be considered. As my colleague Ross Finnie said, the producers and retailers will collectively obtain £90 million if the minimum price is 40p, but nobody has done any studies or, indeed, any modelling on what that money would be used for. The health professionals suggest that it would reduce the cost of bananas. Well, frankly, I think that that is bananas—it is not going to happen. The money is much more likely to be used in marketing. I am not an expert in that field, and I just cannot understand why we do not have some modelling to indicate how the £90 million will be used. Certainly, marketing is a huge driver in our culture.

The other point is that there are three elements to tackling the alcohol problem—the World Health Organization refers to two of them but not to the third, which is equally important—and they are price, availability and culture. My colleague Helen Eadie made it clear that culture is hugely important. She indicated that, in France, where the spirit price and tax have gone up hugely and the wine tax has remained very low, consumption of spirits has risen against the price and wine consumption is falling against the price, so the cultural element, which we have not talked about at all and which is not referred to, is fundamental. It was clear from the Canadian evidence yesterday that culture is important.

On the question of minimum unit price, an answer to a parliamentary question from Stewart Maxwell makes two things clear. The first is that the percentage of hazardous drinkers rises with each income group quintile: the highest income group quintile has the highest level of hazardous drinkers and the lowest and poorest groups have the lowest level of such drinkers. My colleagues Rhoda Grant and Ross Finnie have asked that that issue be addressed. Sheffield offered to do the study, based at least on the English data, which are clear. That would have given the committee some clue as to whether MUP would disproportionately discriminate against low-income groups. The Sheffield study refers entirely to baskets of alcohol. When it refers to an £11 a year reduction for a moderate drinker, it assumes that all moderate drinkers consume only 16 per cent of their basket of alcohol as cheap alcohol. Frankly, that is just not common sense. People who are poorer will buy cheaper alcohol; people who are richer will drink the single malts, the fine wines and the rest, because they can afford to do so. The MUP will therefore be a discriminatory and regressive tax on lower-income groups.

Certainly, until I see evidence to the contrary, I simply cannot support the principle of MUP. It would have a highly discriminatory effect, as is made clear in the second part of your answer to Stewart Maxwell, which refers to which groups are hazardous drinkers. The top group is the pensioner group, which is an increasing proportion of our population, in which 8 per cent of women and 21 per cent of men are said to be hazardous drinkers. They are a poorer group in our society, so MUP is more likely to affect more of them than any other group. Frankly, until I see some evidence on income, MUP as a principle will not get my support.

The other issue that Ross Finnie tried to get you to address—

**The Convener:** Can we address the socioeconomic point first?

**Dr Simpson:** Okay.

**Nicola Sturgeon:** Various points were raised there. First, as all members of the committee know, I treat the committee with the utmost respect; I did not suggest that any issues that the committee has raised are not important, because they all are. I will seek to address them as best I can. I was simply making the point to Richard Simpson that, frankly, some people decided that they were against minimum pricing before a single word of evidence had been led by the committee—that was the point that I was making.

**Mary Scanlon:** There is no evidence.

**Helen Eadie:** There is no evidence.

11:15

**Nicola Sturgeon:** Richard Simpson has just quoted figures. I think that I am entitled to ask that the figures quoted here by members are accurate, just as members are entitled to ensure that my figures are accurate. He said of pensioners that 21 per cent of men and 8 per cent of women drink excessively, but that refers to over-75s. The comparable figures for 65 to 74-year-olds are 39 per cent of men and 21 per cent of women. It is important that we view those figures in context.

Richard Simpson made three specific points. First, he echoed what others have said about the increased alcohol revenue as a result of minimum pricing. The Sheffield report openly sets out some figures on that. At no time today have I said that we should not consider that issue seriously, but it does not detract from, negate or diminish the benefits of minimum pricing. As well as putting some of the figures in context, I have said on two occasions today that there is an opportunity through the social responsibility levy to consider how we maximise the use of some of the increased revenue.

I fundamentally agree with Richard Simpson about the importance of marketing and advertising. In the dim and distant past, as an Opposition member in the Scottish Parliament, I introduced a member's bill on tobacco advertising. I am passionately of the view that we cannot ignore the issues, but many aspects of marketing and advertising are outwith our competence. We are therefore seeking to work with the UK Government to look at what we can do throughout the UK to deal with marketing and advertising.

I also agree with Richard Simpson's second point. We agree on a great deal, so much of the discussion does not need to be adversarial. I agree that there are three factors—price, availability and culture. My point in return, though, is that low price is part of the culture that we have around alcohol in Scotland. Although I agree that tackling price in and of itself will not change the culture, I do not believe that we will substantially

change the culture without addressing the issue of low price and its relationship to consumption. Although there are those three issues, they are interlinked, sometimes fundamentally.

I take Helen Eadie's point about the French example. There are different cultures in different countries, and the relationship between price and consumption will not operate in exactly the same way in every country as a result. However, it is clear from a vast wealth of evidence—and I have heard Richard Simpson agree with this—that there is a relationship between price and consumption.

Richard Simpson's third point, which Rhoda Grant and others also made, was about people on low incomes. The Sheffield modelling did not include those people because we understood at the time, I believe correctly, that the Scottish data were not available in a form that would make the modelling robust. I believe that the data are now available, which is why we are looking at doing further modelling. However, I stress again that harmful and hazardous drinkers, not moderate drinkers, are most affected by minimum pricing.

I can comment in more detail on some of the statistics in the answer to Stewart Maxwell that Richard Simpson mentioned. For example, there is little variability for men across all the deprivation quintiles. The percentage of men who exceed guidelines varies between 48 and 52 per cent. I accept that the variability is greater for women, but for men there is little variability.

The other point is that people on low incomes pay the price for cheap alcohol. Richard Simpson can dismiss the point that cheap supermarket alcohol leads to more expensive goods elsewhere, but something has to pay for the loss leaders. People on low incomes, like the rest of us, also pay the price for alcohol misuse in various ways, from the added burden on the health service to the additional crimes that are committed and the lost productivity in our economy. We all pay that price.

I accept that those are legitimate issues and it is right to raise them, but let us also keep our eye on the bigger picture of the benefits that a pricing policy can deliver.

**Dr Simpson:** The cabinet secretary made a strong attempt to answer my question, except for the fact that the highest 60 per cent—the top three quintiles—will not be affected by minimum unit pricing at all, and the percentages in those groups are higher. Perhaps the difference for men is not great, but as the cabinet secretary said it is significant for women.

I have one final point to make on minimum unit pricing. We all agree that it would not be difficult to obtain evidence for an econometric model. From yesterday's evidence session, we now know that social reference pricing is radically different from

minimum unit pricing. We had hoped that that session would give us some answers, but it has not helped us to solve the problem. The econometric model is what we have to fall back on—it is the only thing that applies, because the so-called evidence exists, although it is simply the opinions of a large number of people. If the English data for 2004 to 2008 were applied to an econometric model, would there be evidence of reductions in the level of crime and the number of hospital admissions in England? Those are the immediate effects that are predicted for year 1 of minimum unit pricing. We are told that minimum unit pricing at 40p will produce such-and-such a reduction in the level of crime and such-and-such a reduction in the number of hospital admissions in the first year, not the long term. We know that there has been a fall in the consumption of alcohol in England. If we apply the econometric model to that fall in consumption, do we see the reductions that have been predicted? I think that the answer is no. Until we see that the econometric model works and is not, as Dr Petra Meier said to the committee, like weather forecasting, the principle of MUP is seriously holed below the water line.

**Nicola Sturgeon:** I am not here to speak for the University of Sheffield, but it is fair to say that the University of Sheffield has always been very open—and Petra Meier was very open with the committee—about the fact that it has done a modelling exercise, not an evaluation of a policy that has been implemented. I hope that, if a minimum pricing policy is introduced in Scotland, whatever Government is in office will ensure that it is subjected to rigorous and robust evaluation so that we can assess its impact in reality.

I am not trying to dodge the question, but I did not fully understand the second part of Richard Simpson's question. If different data are put into a model, the outcomes will be different. The sales data from Scotland show that consumption of alcohol in Scotland has remained stable over the past five years, whereas in other parts of the UK consumption has been reduced. Our consumption data are, to an extent, self-reported, and there is a strong belief that self-reported data underestimate consumption by up to 50 per cent. All of that must be taken into account. The up-to-date Scottish consumption data from the 2008 Scottish health survey are being run through the Sheffield model by the University of Sheffield and will appear in the re-run report, which I will see and which will be published and made available for others to read and test.

**Dr Simpson:** I do not expect an answer, but I will clarify my question. As the cabinet secretary has just said, alcohol consumption in England has dropped. The Sheffield model predicts certain consumption reductions, which should lead to a drop in crime and hospital admissions figures in

England. However, in my view there is no drop, and if there is no drop we are at risk of introducing a policy that does not do what it says on the tin. Somebody must apply the data to places where there have been such reductions to show whether the model works in reality and whether, irrespective of the minimum unit price, a reduction in consumption leads to the predicted consequential reductions in the number of crimes and hospital admissions.

**Nicola Sturgeon:** I get the point. It is obviously not for me to say whether the University of Sheffield will do that with the English figures. However, I make the point that reported consumption figures underestimating real consumption figures would have a direct bearing on that.

**Dr Simpson:** We should use the Nielsen data, not self-reported figures. The University of Sheffield does not use just one set of data in its reporting. It uses the Nielsen figures—which are the closest that we get to real consumption figures—as well as figures from the household survey and the other surveys. I know that the figures for tourism and so on are not stripped out, but they are the closest that we will get.

**The Convener:** I do not want to close down the debate, because we are talking about a very important part of the bill. However, in the last half-hour, I want to get into some other topics to ensure that we cover everything with the cabinet secretary.

Michael, is your question still on minimum pricing?

**Michael Matheson (Falkirk West) (SNP):** Yes. To pick up on concerns raised by other members about the policy's potential impact on people on lower incomes, I think that it is worth keeping in mind that Barnardo's, Aberlour Child Care Trust and a number of charities and organisations concerned about this area support minimum pricing, but want its impact to be properly evaluated. The cabinet secretary has stated that new data might be available to allow the policy's potential impact on people on lower incomes to be evaluated. Is the Government going to commission that work and, if so, when might we expect to get the results? If the policy is introduced, will she take on board the charities' concern about the need for active monitoring of its potential impact, particularly on those on lower incomes?

**Nicola Sturgeon:** There are two issues to address in that question. First, now that better data are available, we are considering carrying out Sheffield modelling on the impact on people on low incomes. I cannot give the committee a definitive timescale, because we are still at a very

early stage, but we envisage carrying out the work before we ask Parliament to agree a figure for minimum pricing.

Secondly, the policy must be evaluated post-introduction. In fact, I strongly believe that any policy, particularly one as ground breaking as minimum pricing, must be rigorously evaluated. Richard Simpson is right to say that the Sheffield study is a modelling exercise. The researchers have never tried to hide the fact that it is not a definite and definitely accurate prediction of what will happen; instead, it is our best estimate of what will happen based on the available data. As we would be the first country to introduce minimum pricing, I think that not just Scotland but other countries across the globe would be keen for the policy to be evaluated.

**Michael Matheson:** It is clear from the evidence that we have received that the majority of those who have examined Scotland's relationship with alcohol recognise that price is one of the key components that need to be addressed. Indeed, in evidence on their own national alcohol strategy, witnesses from Canada told us that price was one of the key tools in the basket for dealing with alcohol misuse in the provinces. You might already have touched on this issue, but I would be interested to find out the other options that the Government considered for addressing the price of alcohol in Scotland before it decided to go down the minimum pricing route.

**Nicola Sturgeon:** Taxation was another option but, aside from the fact that we do not have taxation powers at the moment, I have other reasons for believing that taxation is not the best way of tackling the problem. For a start, alcohol taxation in the UK is not related to alcohol content and it does not necessarily affect the end price, because tax rises are not always passed on to consumers. That is particularly the case in the off-trade, which sells more alcohol than the on-trade.

The other option relates to what has been called the floor cost—or cost floor; I can never remember which way round it goes—under which approach alcohol cannot be sold below the duty and VAT level. The problem with that is the same as the problem with using taxation more generally: duty is not currently related to alcohol content, so we would start with a fairly flawed foundation. In addition—I think that this has been drawn out in some of the evidence to the committee—it would operate effectively as a minimum price would, but the price would be set so low that it would be unlikely to pass the test, which we discussed earlier, of compliance with the law.

11:30

The Canadian model is another option, but it would, in my view, be unfair to the whisky industry in a way that I do not believe minimum pricing would.

That is the range of other options that we examined, but, for a variety of reasons, did not pursue.

We believe that minimum pricing that is related to alcohol content is non-discriminatory, in that it treats all products the same and makes no distinction between imported products and those that are produced in Scotland. It is the best, fairest and likely to be the most effective way to proceed.

**The Convener:** I call Mary Scanlon; we are still on the subject of minimum pricing.

**Mary Scanlon:** I will come back to minimum pricing, but I am glad to have the opportunity to finish my questioning on the back of Richard Simpson's points.

First, Michael Matheson talks about Scotland's relationship with alcohol, but in fact more than 18 sets of data in the Sheffield study are based on English data. As we are considering Scotland's cultural relationship with alcohol, we could do a wee bit better by trying to get Scottish data.

Secondly, as our Canadian colleagues confirmed yesterday, there is no evidence worldwide that a minimum price is effective in reducing alcohol consumption.

Thirdly, the cabinet secretary keeps coming back to the point about regulation; I know that we will have an affirmative regulation, but we are missing the point. The minute that the bill passes stage 3, there will be an EU challenge and a minimum price will have to be set. That has been confirmed by the Scotch Whisky Association.

My final point, to bring in the figures, is that in order for the legislation to pass the EU competence test, we will have to ensure that the minimum price will reduce health harms. The figures in the 2008 Scottish health survey, which cover the period from 2003 to 2008, show that consumption has at best levelled off. The cabinet secretary's figures cover the period since 1980, and Jack Law referred to the level of alcohol consumption since 1950, but I am talking about recent figures from the past five to 10 years. However, alcohol-related discharges have increased by 9.3 per cent—I am talking not about the 10-year chronic time lag discharges but about the type of discharges to which the Sheffield study refers when it states that there will be 800 fewer hospital admissions within the first year.

There has been an increase in alcohol discharges, but a levelling off in alcohol

consumption. On the back of those figures, how can the cabinet secretary introduce a proposal that states not only that a minimum price will reduce alcohol consumption but that the reduction in alcohol consumption will reduce health harms? From the figures in Scotland, it appears that that does not work.

**The Convener:** That will be your last question, Mary, because you have asked just about everything. We want to move on to other topics.

**Nicola Sturgeon:** I have taken a note of Mary Scanlon's main points.

She said that some of the data that were used in the Sheffield study were not Scottish data. We have never denied that; it is why we are re-running the Sheffield study. The original study had to use some English data sets because the Scottish data were not available, but we now have the Scottish data. I hope that clears up that point.

Secondly, Mary Scanlon is making what seems to be a circular argument. She says that there is no evidence that a minimum pricing system is in place anywhere in the world, and therefore we do not know that it works, so we cannot introduce it. On that basis, we would never do anything. The fact that such a system is not in place anywhere in the world is the reason why we have undertaken modelling through the Sheffield study to give us the best estimate of what the impact would be, and why we will have to evaluate the effects when the system is in place. I believe that the harms that alcohol misuse does are such that we should be bold and prepared to innovate and to lead, which is what Scotland would do with minimum pricing. If we introduce minimum pricing, we should be proud of it.

As for Mary Scanlon's point about a legal challenge, it is not for me to say whether anybody would raise a legal challenge, but it is for me to say—as I think the Commission would confirm—that something that is not in force cannot be legally challenged. If the bill is passed at stage 3, it will introduce not a minimum price but the right to introduce a minimum price, so nothing could be legally challenged at that stage. A legal challenge could be made only when a minimum price was set and in force; only at that stage would anything be able to be challenged legally. Of course, before that could happen, the committee or its successor would have required to recommend that an affirmative resolution be passed to set the minimum price. In that process, the committee would have to satisfy itself about the position.

Mary Scanlon's last point was about consumption. Consumption in Scotland has levelled off, but it is important to note that it has levelled off at a high level, at which too many people drink more than is recommended as safe.

The fact that consumption has levelled off is not something to be complacent about, because the level is too high.

I do not want to drown the committee in statistics about alcohol-related hospital discharges, so I am happy to provide a bit more information in writing. However, the number of alcohol-related hospital discharges was 43,045 in 2007-08 and 41,922 in 2008-09. The figures have fluctuated around the same level for the past five years, which suggests that they are broadly in keeping with overall consumption levels—in other words, they are fairly stable, when we want them to reduce.

**The Convener:** I will move on, because we must do justice to our scrutiny of other provisions in the bill. Rhoda Grant will ask about the social responsibility levy and Ross Finnie has questions about under-21s. Michael Matheson, Richard Simpson and Mary Scanlon are still on my A list; if they want to ask supplementaries, they should let me know.

**Rhoda Grant:** It is clear from the bill that the social responsibility levy will not apply across the board and that its aim is to deal with licensees who might be irresponsible—those who sell drink to people who are already drunk or who are underage—and with premises that might have problems. How will you identify such premises?

**Nicola Sturgeon:** The Subordinate Legislation Committee has commented on the fact that the bill does not detail how the social responsibility levy will operate in practice. The levy will not necessarily work in the way that Rhoda Grant described.

We have deliberately decided that it is better to involve stakeholders—the licensed trade and retailers—in developing the levy and the best way for it to operate to have the effect that we want than to present them with a fait accompli. We have had much discussion with stakeholders in the past year, and that continues. The discussions are at a relatively early stage and work has still to be done, but it is better that we go through that process before we reach definite views on how the social responsibility levy will operate.

Some people, including Rhoda Grant, have expressed the concern that the operation of minimum pricing would reduce the profits of retailers and others in the alcohol industry. One advantage of not defining absolutely in detail the social responsibility levy is that we still have the opportunity to use the levy to mitigate some of that effect and perhaps to remove at least one of the concerns that people have.

**Rhoda Grant:** That leaves us with a huge problem, because our task is to scrutinise the bill. If we do not know what will be in the bill, it is hard

for us to make a recommendation to Parliament. We have heard evidence that, if a blanket levy is imposed, it will punish reasonable licensees and discourage some good behaviour. If a responsible licensee pays the same levy as the irresponsible licensee next door, what is the incentive for them to behave reasonably?

**Nicola Sturgeon:** The committee has been asked to agree or disagree in principle with whether it would be a good idea to give Government the power to set a social responsibility levy. The committee might wish to make suggestions as to how a social responsibility levy could work. As with minimum pricing, the detail of the social responsibility levy will have to be dealt with in subordinate legislation under the affirmative procedure. At that stage, the committee will have to satisfy itself on the detail. At this stage, however, it is being asked to decide on the principle.

We have an opportunity here—the committee has an opportunity to be part of the process of deciding how we use a lever of this sort to deliver the benefits that we want, and perhaps to deliver increased revenue for investment in alcohol treatment services or diversionary services, as we see fit.

**Rhoda Grant:** Our role in scrutinising the bill is impossible if we have no detail. The cabinet secretary is aware that subordinate legislation—of whatever kind—does not attract the same scrutiny as primary legislation. The Parliament does not have the resources for that. It becomes very difficult for us to make any recommendations without having the detail.

**Nicola Sturgeon:** The affirmative resolution procedure is robust. Not long ago, I sat before the committee when it refused to recommend an order because of a point that Ross Finnie raised in relation to health board elections—I struggle to remember the order's precise name—and I had to come back with a revised order. Committees have real powers under the subordinate legislation procedure if they are not happy with the detail in Scottish statutory instruments. If I was on the committee, I would not be underplaying its power in that regard.

**Rhoda Grant:** The committee has powers, but it does not have the same ability to call witnesses and scrutinise subordinate legislation that it has in relation to primary legislation. I have questions about the social responsibility levy, but I cannot help feeling that if I ask them you will tell me, "But that's not what the levy is." I cannot really scrutinise the proposal, and I cannot question you on it, as you cannot give me any idea about what it will involve.

**Nicola Sturgeon:** We will consult before we lay any regulations—there will be a consultative process. I, or whoever has my job at the time, will be sitting here, answering questions as you scrutinise that subordinate legislation. What you are being asked to do now is to agree—or not, as you see fit—with the principle of a social responsibility levy.

**The Convener:** I will leave that issue there. I wanted to go on to whether you agree with some aspects of the principle of the levy, on which there was conflicting evidence. However, as no member wants to come in on that, we will move on.

**Ross Finnie:** I refer to section 8, which covers detrimental impact statements in relation to off-sales to under-21s, and to the possibility that such statements could give rise to the age at which young people might be eligible to enter premises being raised in individual local authority areas. I will leave aside the question of doing that by local authority area for the moment. Much of the policy is predicated on the view that young people have greater access to cheap alcohol from off-sales premises. However, one of the principal thrusts of the bill is to reduce the prospect of easy access to cheap alcohol for everybody, which would have an impact on younger people. The policy memorandum puts the point prominently, saying that that is a key aim. Are we not trying to do two things? We should really be concentrating on trying to reduce access to cheap alcohol, rather than discriminating between 21-year-olds, 18-year-olds and people who are older. There seems to be an illogicality there. The policy memorandum refers repeatedly to cheap alcohol, but the thrust of the bill is to ensure that we do not have that.

What is the difference between Parliament passing legislation that seeks to discriminate against under-21s at first hand and legislation that could discriminate against them at second hand? What is the fundamental difference in principle?

11:45

**Nicola Sturgeon:** Okay. I will take both those points. I share Ross Finnie's liking for logic in these things, but I think that what we are proposing is logical. It goes back to a point that Richard Simpson made about the different factors that drive alcohol misuse. Affordability and availability are interlinked, but they are not one and the same thing.

There could be two reasons why young people access alcohol through off-sales premises as opposed to on-sales premises. The first is that it is more affordable. That applies across the age ranges. Minimum pricing will help to raise the price of the cheapest, strongest alcohol products, which tackles that aspect. However, a lot of young

people—not just people aged 18 and over but some people under 18—seek to access alcohol through off-sales premises because it is more available. It is easier for them to access it there than it is for them to go into a pub, because they would perhaps not get served in a pub if they were, or looked, under 18. Alcohol is more affordable and more accessible through off-sales premises. The evidence suggests that that is why more younger people access alcohol through off-sales premises than through on-sales premises.

Raising the age limit to 21 throughout Scotland, which, as you said, the Government initially wanted to do in the bill, would have a number of benefits. As I said earlier, it would make it harder for 16 and 17-year-olds to access alcohol from off-sales premises. It is one thing for a 16-year-old to pass for 18 but quite another for them to pass for 21. That is a potential benefit. Raising the age limit would reduce the availability and ease of access to alcohol through off-sales premises that some young people have.

On your second point, the difference is that if we were to proceed in the way that the Government originally wanted, we would simply say that it was not possible for anybody under the age of 21 to buy alcohol from an off-sales premises. That blanket policy position would apply throughout Scotland, and it would not take account of different circumstances or different realities in different parts of the country—it would apply uniformly.

We heeded the fact that not many people who responded to the consultation agreed with that. In fact, I think that it was one of the least supported proposals in our original consultation. We responded to that and modified our proposals to give local licensing boards the duty to consider raising the age limit and the power to raise it, and to give chief constables the power to ask for that to be done. The difference is that that approach will allow local licensing boards to make such policy on the basis of the evidence that pertains in their area, or in parts of their area. Evidence of particular problems with youth disorder around certain off-sales premises or increases in accident and emergency admissions of young people in a particular area might justify such a policy in one part of the country but not in another, where such issues do not exist. The approach is much more sensitive to local circumstances and much more driven by evidence in the local area.

**Ross Finnie:** You advanced two principal arguments in the first part of your answer. One was about how much easier it is to access alcohol from off-sales. I accept that it is easier to access alcohol from off-sales in general; nevertheless, that argument has been made before there has been any monitoring of the quite serious changes that have been made under the 2005 act. I refer to

the layout of licensed premises and to the licence holder observing, if they so wish, who is removing alcohol products from the shelves. The argument seems to anticipate the failure of section 5 of the bill. There is no discrimination in a verification procedure; you are simply asked to prove your age. If you prove that you are over 18, you will be allowed to purchase. There is, however, a discriminatory element in raising the age limit for purchasing in off-sales and saying, "Unless you are 21, too bad." There seems to be a conflict in that and, as we are trading logic, an illogicality in trying to provide in the same bill a measure for proof of age and a measure that says that, in case that fails, we will have as a bolt-on discrimination against under 21-year-olds at a local level.

**Nicola Sturgeon:** I do not think that there is an illogicality in that, although I accept that one of the illustrations that I used may be vulnerable to a suggestion of such an illogicality. I talked about the fact that raising the age limit to 21 would make it more difficult for under-18s to access alcohol, but I accept that, if an age verification policy is in place, it should ensure that nobody under that age accesses alcohol.

However, there may be other reasons why, in individual areas, local licensing boards take the view that it is not only sensible to be able to ensure that somebody is of a particular age before they can buy alcohol but beneficial to ensure that people who are under 21 should not access alcohol from off-sales. For example, if there is a problem of 18 to 21-year-olds causing antisocial behaviour in a particular area, the licensing board may take the policy position that raising the purchasing age to 21 would have other benefits in relation to antisocial behaviour, crime or health. In such a situation, an age verification policy would still be in place so that people would have to prove that they were 21.

On the strength of the bill, as somebody who initially favoured working in an all-Scotland way but was persuaded to look again, I accept that there is an advantage in the duty and power lying with local licensing boards. They can make judgments based on the circumstances that pertain in their own areas.

**Dr Simpson:** I have a quick point. Armadale and Stenhousemuir tried out the policy, which is part of what led to the original proposal—although it was a much more comprehensive approach than just a ban on under-21s. However, if they were able to do it, why can other places not do it?

I understand that you want to put the approach into law because that will make things much clearer, but we must remember the local licensing forums. Those forums do not really get a mention—the position under the 2005 act needs further development. The forums, which have all

the stakeholders, including young people, should be involved, too. A licensing forum could identify a problem in a particular area and say that it wanted, for a specific length of time, a programme in the area to limit sales to people under 19, 20, 21 or 24—whatever people decided. That does not seem to be illegal. Armadale and Stenhousemuir have done it, so why can it not be done elsewhere?

**Nicola Sturgeon:** That is a fair point, as far as it goes. However, the bill not only gives people the right to introduce such a policy but places a duty on local licensing boards, as part of their three-year licensing statements, to do a detrimental impact assessment and therefore to consider that policy actively. It also gives chief constables or licensing forums the power, which does not exist formally in statute at present, to request, within the three-year period, that a local licensing board carries out such an assessment.

I am perhaps straying into speculation here, but I am not sure whether under the existing legislative framework we could convince some of the bigger retailers to take such action on a voluntary basis. That may be another reason for placing the provisions on a statutory basis.

Did you ask me another question?

**Dr Simpson:** No, that was it—very short and sharp.

**The Convener:** And soundly answered too, if I may say so.

**Michael Matheson:** I can perhaps help a little on the Stenhousemuir experience, as it was in my constituency. The problem with that scheme was that the big retailers did not agree to it. It was a voluntary scheme, and it was the small, independent retailers who participated. Providing a statutory footing for such a provision would help by ensuring that the big retailers participated.

The minister may be aware of some of the evidence that we received from the Scottish Licensed Trade Association about the taxation of its members' premises and the distinction between how rates are calculated for their premises and how they are calculated for supermarkets and the off-trade. It pointed out that the rates for on-trade premises are calculated on the basis of turnover, which is different from the calculation for the off-trade. It highlighted that as an issue and suggested that dealing with it could address some of the difficulties around the costs that are associated with trying to deal with alcohol misuse and which could be recovered by the Scottish Government. Have you had an opportunity to consider the concerns that the SLTA raised and whether there are mechanisms in the bill to address them?

**Nicola Sturgeon:** I will attempt to answer that. I understand that the evidence to which Michael Matheson refers is that the smaller retailers feel that their rateable value is affected by the fact that alcohol sales are taken into account whereas, for the bigger retailers—the supermarkets—that is not the case. Am I right?

**Michael Matheson:** I might not be 100 per cent correct, but my understanding is that, for the on-trade, rateable value is calculated on the basis of turnover, which is not the case for the off-trade. For example, people in the on-trade said that they could on average pay in the region of 8 per cent of their turnover. In comparison, the figure for the off-trade might be only 1 per cent.

**Nicola Sturgeon:** I think that we are generally in the same place. I have a lot of sympathy with that view. However, rateable values are set not by the Government, but by an independent assessor. In the context of the bill, we could not change rateable values, but I am happy to give further consideration to whether anything else could be done, perhaps through the social responsibility levy.

**Mary Scanlon:** I have a question on promotions. We had evidence from Asda that there is nothing in the bill to say that someone who buys a £5 bottle of wine cannot get £5 off their shopping. The Scottish Grocers Federation said that the bill would lead to the closure of many small shops, particularly in remote and rural areas, and that promotion is one of the few marketing tools that they have that give them a competitive advantage, through, for example, window bills and leaflet distribution.

My final point is from the Scottish Parliament information centre briefing on the bill. By the way, in case anyone asks for further background figures, I should say that I tried to get further figures for the meeting, but no one was available in SPICe because of the strike that is taking place. The SPICe briefing states:

“There is no evidence that promotions in off-sales encourage people to drink more. Some believed that promotions offer good value to responsible drinkers who take the product home for later consumption. Therefore banning promotions will not reduce consumption.”

Why does the Government want to go ahead with the measure when it will be detrimental to small shops and will not reduce consumption, and when we know that the larger stores and supermarkets will undoubtedly find ways round it?

**Nicola Sturgeon:** There are two principal points in that. First, in relation to quantity discounts, the bill covers quantity discounts and does not currently cover other price reduction mechanisms, because there is an issue about devolved competence on that. The Liberals and others have

suggested that, at stage 2, we should consider whether we can tighten that aspect of the bill further. I am open to that, within the context of what I have just said about competence.

Secondly, the bill will not ban promotions; it will restrict them to areas where alcohol is sold. It will allow promotions in those areas. I cannot give Mary Scanlon the precise reference, but the Sheffield report says that, from its modelling exercise, the measure will make a difference.

**Mary Scanlon:** I have two points. First, there is an issue about whether the measure is competent under European law, and the Office of Fair Trading told us that there are risks in relation to competition law.

Secondly, our evidence says:

“banning promotions will not reduce consumption.”

Is that accurate?

**Nicola Sturgeon:** Can you tell me what you are quoting?

**Mary Scanlon:** I am quoting from the SPICe briefing on the bill. Unfortunately, there was no one in SPICe this morning to discuss the issue.

**Nicola Sturgeon:** But what is SPICe quoting?

**The Convener:** Just a minute. Mary, you read out a quote that

“banning promotions will not reduce consumption.”

Where is it from?

**Mary Scanlon:** It is from page 29 of the SPICe briefing, which is dated 18 February 2010.

**Dr Simpson:** Convener, that is a straight quote that was lifted from the industry and put in the SPICe briefing as representing some people's view.

**The Convener:** Is that correct, Mary?

12:00

**Mary Scanlon:** I do not know whether that is correct. I tried to contact SPICe staff this morning, but they are on strike. I was unable to get information about that because of the strike. I do not know where the quote came from.

**Nicola Sturgeon:** I am happy to look at what was said. If Richard Simpson is correct, somebody's opinion has been quoted.

**The Convener:** For clarification for the record, the quote is under a section in the SPICe briefing entitled “KEY ISSUES”, under which

“The main points used in opposition”

to the provisions are outlined and the arguments of those who oppose banning any kind of

promotion are paraphrased. Opinions rather than facts are given.

**Mary Scanlon:** There is no reference to who that came from, and I was unable to find that out.

**The Convener:** The briefing says:

“Most of those in support were of the opinion that these promotions encouraged people to consume more alcohol than they intended”.

It goes on to outline

“The main points used in opposition to these provisions”.

Opinions are given. Some say that promotions increase the consumption of alcohol, but opinions either way are not facts. My head is all right with the matter. I understand what has been said.

**Nicola Sturgeon:** In the confusion, I have forgotten Mary Scanlon’s question. I am sorry about that.

**Mary Scanlon:** I asked about what the OFT said in relation to competition law and whether the proposals on promotions are competent. The OFT said that there were at least risks.

**Nicola Sturgeon:** Gary Cox wants to say something in response to that question.

**Gary Cox (Scottish Government Justice Directorate):** The bill will bring the off-trade into line with the promotions bans that are already in place for the on-trade. Those provisions have been in place since 2005. They were brought into force in September last year, and so far nobody has suggested that they wish to challenge them. Basically, the bill will extend the application of what already exists to the off-sales sector.

**Mary Scanlon:** Finally, we are going to get new figures from Sheffield that will, I hope, be based on Scottish data, although we will receive them after our stage 1 scrutiny of the bill. Will we get figures from Sheffield on binge drinking, cross-border activity, internet sales, income elasticity of demand, cross-price elasticity of demand, the marginal propensity to consume, and illegal sales, so that we have a full set of data instead of weather-forecasting economic proposals?

**Nicola Sturgeon:** We will get figures on cross-price elasticity. On the rest of the figures, the same model is being produced with updated data from the 2008 health survey as opposed to the data from the 2003 survey. We now have Scottish crime and sales data as opposed to the English data that were used.

**Mary Scanlon:** When will we get that information? We have not had it for our scrutiny. Will we have it for our stage 1 debate?

**The Convener:** I think that the cabinet secretary said something in evidence about when she might have it.

**Nicola Sturgeon:** We hope that we will have the data soon. We will endeavour to get them to the committee as soon as we can. I think that Petra Meier said in her evidence—I hope that I am not putting words into her mouth—that, although the final results are not yet available, the early indications are that there will not be substantial changes in the impacts that were outlined in the first report.

**The Convener:** Does Helen Eadie want to ask a question on a new issue?

**Helen Eadie:** I have an important question. I understand that, last night at 5.41 pm, the Finance Committee clerk passed the Finance Committee’s report on the bill to the clerks of the Health and Sport Committee, which is the lead committee. We have not seen that report. I have just had a quick scan read of it. There are issues that we need to address with the cabinet secretary, and I need to know what opportunity we will get to put questions that are raised by it to her.

**The Convener:** I have not seen that report either. If, once we have had the opportunity to see it, we find that there are issues that the cabinet secretary requires to address, we can simply ask her to come back to the committee. I have no idea what is in the report.

**Nicola Sturgeon:** I make it clear that I am happy to answer questions right now on that report, because I have seen it.

**The Convener:** You may be, but we—

**Nicola Sturgeon:** I just want to put on the record that I am happy to answer questions on it. However, as the committee has not seen it, I would be more than happy to come back or to answer questions about it in writing.

**The Convener:** Of course.

**Helen Eadie:** There are many questions, and we have not seen the report.

**The Convener:** That is why we cannot ask anything about it. Helen Eadie has got on the record what she wanted to say. We are good at recalling people, as she knows. We will wait until we see the Finance Committee’s report.

I thank the cabinet secretary very much.

12:05

*Meeting continued in private until 12:33.*



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