



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Wednesday 5 May 2010

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HEALTH AND SPORT COMMITTEE
15th 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)

Marjorie Marshall (Scottish Government Health Finance Directorate)

Rachel Rayner (Scottish Government Legal Directorate)

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

CLERK TO THE COMMITTEE

Douglas Wands

LOCATION

Committee Room 2

Scottish Parliament

Health and Sport Committee

Wednesday 5 May 2010

[The Convener *opened the meeting at 11:03*]

Alcohol etc (Scotland) Bill: Stage 1

The Convener (Christine Grahame): Good morning. I welcome everyone to the 15th meeting of the Health and Sport Committee in 2010. I remind everyone to switch off mobile phones and other electronic equipment. We have received no apologies.

Item 1 on the agenda is oral evidence from the Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon, on the Alcohol etc (Scotland) Bill. This evidence session has been arranged following an exchange of correspondence between the committee and the cabinet secretary, and the publication of an updated minimum pricing report by the University of Sheffield's school of health and related research.

I welcome the cabinet secretary, who is accompanied by Gary Cox, head of the alcohol licensing team; Alison Douglas, head of the Scottish Government's alcohol policy team; Marjorie Marshall, economic adviser with the Scottish Government; and Rachel Rayner, senior principal legal officer with the Scottish Government.

Do you wish to say anything at this point, cabinet secretary?

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Health and Wellbeing): Not really, convener—I am happy to go straight to questions.

Ross Finnie (West of Scotland) (LD): Thank you for the various materials that you have supplied to us. I have two unrelated questions concerning different parts of the bill.

I am interested to note your parliamentary answers, which supplement what you have said about the legality of your proposal. You have laid out a lot of helpful material in that regard. I notice that the Government will contemplate placing before the European Commission the relevant material on whether the bill will meet the various relevant tests, and I understand why you have not done that yet. One material consideration is the setting of the minimum price. It seems almost impossible to construct some of the arguments relating to whether the article 30 provisions can be relieved by the article 34 provisions, under the

Treaty on the Functioning of the European Union, unless you are able to state more explicitly what the health benefit might be. If that is a material consideration, it is also a material consideration for the committee.

I return to the point that, as always, we are invited to come to a conclusion as to whether the proposed measure is correct in principle. That is what stage 1 proceedings are for. Inevitably, it is human nature to ask two questions. First, is the proposal right in principle? Secondly, what will the consequence and effect be? That is the problem. I put it to you that, just as the European Commission will not be able to determine adequately whether the policy will have a material public health benefit without knowing a price, members of the committee are also in considerable difficulty, not just in relation to the principle, but in relation to whether the effect of that principle will have a material health benefit.

Yesterday, members of the Justice Committee heard your Cabinet colleague, the Cabinet Secretary for Justice, wax eloquently on how important it was to have material matters put on the face of a bill. Therefore, would it not be helpful for the committee if the material matter of price was put on the face of the Alcohol etc (Scotland) Bill?

Nicola Sturgeon: I thank Ross Finnie for his questions. I confess that I did not listen to my Cabinet colleague at the Justice Committee yesterday, so I was not able to hear him “wax eloquently”—was that the phrase?

Ross Finnie: You would have been proud of him.

Nicola Sturgeon: The Cabinet Secretary for Justice always waxes eloquently, but I did not have the benefit of hearing his eloquent waxing yesterday. I will simply have to take Ross Finnie's interpretation of what he said.

I will deal with the questions separately. I hope that the committee realises that I am trying to be as frank and helpful as I possibly can be.

First, the committee and the Parliament are being asked at this stage to consider in principle whether a minimum price per unit of alcohol could have an effect on the alcohol misuse problem that we have. I think that is a perfectly reasonable thing for the committee to come to a conclusion on in principle.

I will deal with the setting of the price in two parts. First, there is the issue of when the Government will give an indication of or state the level at which it thinks the minimum price per unit should be set. Work to come to that decision is under way, as the committee would expect. As I have said to the committee and to Parliament

previously, we require to take care in coming to that decision. We require to take account of all the evidence that is available to us. Some of that evidence, which is now available to the committee in the form of the revised Sheffield model, has become available to us only recently. We must properly analyse it in coming to our decision. If we are to set the price at a level that will pass the legal test that it requires to pass—we have an obligation to do that, and we fully intend to meet it—we must ensure that we have taken account of all the evidence. That takes some time, although the work is now well under way.

Although, under the bill, the Parliament is being asked to consider minimum pricing in principle, I made clear in Parliament as recently as last week our intention to state the Government's proposed price once the work is completed and before the Parliament is asked to come to a final vote on the minimum pricing proposals in the bill.

That covers the issue of when. Whether the price should be specified in the bill itself is a slightly secondary issue for me. The primary issue is to ensure that minimum pricing is set at a level that brings the benefits that I believe it can bring.

As I have said to the committee before, setting the price in secondary legislation is appropriate because it gives the Government flexibility. In addition, the Parliament's secondary legislation process affords the opportunity for due scrutiny. Obviously, the committee would be able to look in detail at the specific price through that process. Those are my views on that. However, once the Government has concluded its work on the specific price and made its views known on what the price should be—as I said, that will be done before the bill's final stage—if the committee takes the view that it would be better to have that on the face of the bill rather than in secondary legislation, that is something that I would consider and give due regard to, as I do to all recommendations of the committee. In my view, how it is done is secondary to why it is done. In this case, the why is that setting a minimum price can have a big impact on the problems of alcohol misuse that we see. I hope that that is helpful to the committee. I certainly look forward to looking at the committee's conclusions and recommendations on this point and on the other parts of the bill.

Ross Finnie: I think that we simply have to agree to disagree. You said at the end of your remarks that the price can have a big impact, and indeed it can. However, the table in paragraph M2 on page 5 of the Sheffield study shows that you certainly could not make that claim for a price of 25p and figures around that level. The difficulty is that, by omitting to specify the price, you invite the committee to come to a number of conclusions, one of which could be that the impact might be

entirely unclear. That would be unfortunate and would not necessarily be what you had in mind. However, you invite that conclusion by leaving matters open.

All the evidence that we have heard is that the price is material. All the public health officials who came before us spoke not only about the pricing instrument itself, but about levels at which they believed that it would have a big impact on public health, to use your phrase. I think that they described it as a material effect, but the phrases mean the same in that regard. That is the difficulty that we have been placed in. You invite us to conclude that, while you may meet a general test, you do not meet the test set by people from public health organisations who came before the committee.

Nicola Sturgeon: Please do not take this as my trying to tell the committee how to go about its business in terms of its report—I would never do that. I am just trying to illustrate how I think the committee could easily look at the issue in principle. Let us not forget that there are people who say that they do not believe that minimum pricing would have the impact on health that I believe it would have, and people who do not think that it would have an impact at all. If the committee believed that minimum pricing could have an impact on health, it would be entirely within its powers and rights to say that, based on the evidence that it has seen, its view was that a minimum price would not have an impact if it was set below, say, 35p, but would have an impact if it was set in the region of 40p to 50p. That is how the committee could come to a recommendation in principle. Obviously, the committee's recommendation would be another factor that the Government would take into account in the work that we have under way on setting the price.

Ross Finnie said that we have to agree to disagree. I hope that we can find some agreement on this issue, but I think that there is a very important and useful job for the committee to do in principle, notwithstanding that the important part of the process is to set the specific price.

Ross Finnie: I accept that what you suggest is a possibility, but it is more usual for the committee to comment on a proposition that the Government puts to it, rather than for the committee to express an opinion on what it thinks the Government might have thought it thought—I think that that becomes rather convoluted. I accept what you say, but we are invited to express a view on the bill as introduced, and I think that there is a material omission in that regard. If I could just very quickly move on—

The Convener: Before you move on, I think that Mary Scanlon has a question on minimum pricing.

11:15

Mary Scanlon (Highlands and Islands) (Con):

Obviously, minimum pricing is quite a wide issue. Like other parties in the Parliament, my party is seriously concerned about high rates of alcohol consumption and the effects not only on individuals but on families. As a Highlands and Islands member, I am concerned about the issue. Whatever I say in scrutinising the bill, at the back of my mind is a search for solutions. I am ruling nothing out on the basis of ideology; I want to contribute positively to the debate.

We have the new figures from Sheffield, and there is no doubt that the modelled predicted effect on health of a minimum price is considerably weaker than was previously predicted. The figure for the reduction of alcohol-attributable deaths in the first year was 39; now it is 26. The figure for hospital admissions over 10 years is down by 38 per cent.

I fully support Ross Finnie's point about stating the minimum price on the face of the bill. Given that the projected effect of a minimum price is weaker than previously predicted, do you accept that, to gain European Union compliance in terms of health harms, you will now need to set a minimum price that is higher than 40p?

Nicola Sturgeon: The 40p price was used illustratively—

Mary Scanlon: I appreciate that.

Nicola Sturgeon: For all the reasons that I have set out in relation to the work that is under way, the Government is not minded to do that, and I do not accept Ross Finnie's point. If we take the illustrative example of 40p, drawing from the revised Sheffield model and comparing the figures with those in the previous model, there is still a substantial impact on health. There is also the discount ban. We often forget to talk about that, but the Sheffield research is based not on pricing alone but minimum pricing plus the discount ban. For example, there would be a 2.9 per cent drop in moderate drinkers' consumption, a 4.5 per cent drop among hazardous drinkers, and—most significantly—an 8 per cent reduction in consumption among harmful drinkers. That is a substantial reduction in consumption, and there is a demonstrable health benefit and impact from that drop in consumption. The revised Sheffield model does not necessarily lead to Mary Scanlon's conclusion. That does not take away from the fact that, as I said, we have some serious and significant work to do to ensure that we set the price at the level at which it will pass the test of demonstrating health impact while being proportionate and, of course, non-discriminatory—the key tests in terms of compliance with EU law.

Mary Scanlon: There was a 9.3 per cent reduction in consumption from 2003 to 2008, and we now have a lower projected figure for hospital admissions—the figure is now 2,200, rather than 3,600. Last week, I raised the issue in Parliament, noting that

"In the year up to March 2009, there was a reduction of 21,337 occupied bed days for patients with an alcohol-related condition."—[*Official Report*, 29 April 2010; c 25896.]

If consumption of alcohol is already falling, how can future reductions be attributed to minimum pricing?

As a committee member, I have a decision to make about whether to vote for the minimum price for alcohol, the discount ban or the social responsibility levy provisions. I appreciate the figures and what you say, but we have those decisions to make. I just want to be clear on the policy.

Nicola Sturgeon: Sure. I absolutely accept that there are separate decisions on minimum pricing, the discount ban and so on. The provisions do not necessarily come as a package—they would be better as a package, but the committee has the choice. I am trying not to quote statistic after statistic—I know that the committee is as well versed in the stats as I am. We can go through the Sheffield research and quote stats for 40 pence on its own, the discount ban on its own, or the two combined, but I will try to answer the question more generally. A number of points need to be made.

The "Scottish Health Survey 2008" shows a drop in consumption. However, let us not forget that that is a self-reported consumption study and that there are all sorts of suggestions that self-reported information underestimates consumption—but that is another argument. It was also a drop in consumption from a very high level. Therefore, I caution against the view that we have cracked the problem—I believe passionately that we have not. It is also too early to say whether that drop in consumption is part of a trend or just a blip.

Mary Scanlon: Sorry, but the drop is equivalent to the predicted drop in the new model in the Sheffield study over five years.

Nicola Sturgeon: Yes, but from a very high level.

Mary Scanlon: It is still the same.

Nicola Sturgeon: Okay, but it is a drop from a very high level and the information is self-reported. We must bear that in mind—I put it no stronger than that. It is also too early to say whether it is part of a trend. I was going to make a point about snapshots versus trends. Mary Scanlon has cited figures on hospital bed days, hospital admissions

and so on. I am not suggesting that this is what she is doing, but it is wrong to suggest that the problem is somehow resolving itself. I do not think that it is.

Mary Scanlon: I am stating the fact of the reduction.

Nicola Sturgeon: Okay, but let me illustrate my point by reference to hospital discharges. Mary Scanlon will be aware of this, as we have made the information available in parliamentary answers. The most recent data show that the number of alcohol-related hospital discharges fell slightly between 2007-08 and 2008-09. However, that was a fall in one year only; the overall trend between 2004-05 and 2008-09 was an increase of about 9 per cent. I am not arguing against the statistics that Mary Scanlon is using; I am just putting them into context. We must be cautious about what figures for individual years tell us and look instead at the trend over a number of years.

I absolutely take the point with which Mary Scanlon began. I do not doubt the commitment of anybody around the table to dealing with the problems of alcohol misuse; the debate is about how best we can do that. We all agree that, notwithstanding the figures from one year to another, we have a substantial problem to deal with and that is what we must get to grips with.

Mary Scanlon: I am pleased to hear that. It is not helpful to think that any party that takes a line against minimum pricing is not serious about addressing the issue.

My final question concerns compliance with EU law. I understand that the Government must show that minimum pricing is a proportionate response and that no other, less trade-restrictive mechanisms are available. It must demonstrate that it has tried everything and that only minimum pricing is left. What has the Government done to appraise the impact of the Licensing (Scotland) Act 2005, which came into effect last September? What other policies did you examine and rule out prior to justifying minimum pricing as the only tool left at your disposal?

Nicola Sturgeon: I know that Mary Scanlon will not argue with this, as I have been very clear on the matter. I have never said that minimum pricing is the only tool that we have with which to tackle alcohol misuse. I do not believe that minimum pricing, in itself, will solve our problem with alcohol misuse. Therefore, that is not an accurate quotation.

Mary Scanlon: I am talking about compliance with EU law.

Nicola Sturgeon: I will come on to that.

We are monitoring the impact of the Licensing (Scotland) Act 2005, some of the provisions of

which were implemented only recently, and we will continue to monitor the effect that all the provisions in the act are having. I cannot remember all the alternatives to minimum pricing that we considered. I think that we had a brief discussion about them the last time that I appeared before the committee. We considered alternative price mechanisms to deal with alcohol consumption and our conclusion was that minimum pricing is the best and most effective way of doing that.

The tests that we must pass to ensure that the bill is compliant with EU law were set out clearly in the letter that I gave to the committee a couple of weeks ago, and committee members have had the chance to read that letter. One of the tests—not the only one—is that the measure must be the least intrusive. Many people cite taxation as a less intrusive means of acting, but I have set out in my letter the reasons why the Government does not believe that taxation is a less intrusive, equally effective way of working.

There are several reasons for that, but two are the most pressing. First is the fact that duty and tax in this country are not linked to the strength of alcohol, so taxation would start from a fundamentally flawed position. Secondly, as all of us know from experience, tax increases are not always passed on to consumers—some may say that it happens seldom in the off-trade. We cannot guarantee that an increase in taxation will lead to increased retail prices for alcohol, so we are firmly of the view that taxation does not represent a less intrusive alternative.

My other point on European law is that, although we have to show that no less intrusive alternative is available, we do not have to try everything else before we can say that there is no less intrusive alternative means of achieving the objective.

The Convener: If members think that there are things that we have missed, we can get them in the wash-up at the end, but I want to cover as many topics as possible. I am not going to close down on minimum pricing, but we have the minister only for a certain time.

Rhoda Grant (Highlands and Islands) (Lab): I want to go back to your letter to the committee, minister. In paragraph 21, after going through the arguments about compliance with European Union law, you say that

“a minimum price ... is capable of complying with European law and in setting the minimum price per unit we will ensure that it does.”

I am keen to know how you will ensure that it complies.

Nicola Sturgeon: We will do that through the work that we are doing. As I have laid out both in the committee and in the letter, minimum pricing is

not contrary, per se, to European law. It requires to pass a series of tests in order to comply, and I have set out the situation in my letter. The work that is already under way, which I have referred to, will require us to reach a conclusion on a price that we are satisfied passes the tests that are set out in European law. That is the position that we are in, and I have always been very open about that.

Rhoda Grant: What are the tests, and how will you go about meeting them? Will you give the committee some comfort about when you will set the price and confirm that it will comply?

Nicola Sturgeon: I have already made some comments about the timescale for setting the price.

On the tests, we have to show that minimum pricing will not be discriminatory—that it will not discriminate in favour of one alcoholic product or country and against another. Minimum pricing is not discriminatory because it is a price per unit of alcohol that applies to all alcohol, regardless of product, brand or country of origin.

We have also to show that the measure is proportionate—in other words, that there is not a less intrusive way of achieving the same objective. I have already gone through the reasons why I believe that the way that is often cited as less intrusive is not less intrusive in practice. I have said that I do not think that taxation can achieve the same objective for the reasons that I have already set out.

We have also to demonstrate that the level at which the price is set will deliver health benefits. That is why it is so important that we properly analyse and consider the updated Sheffield model. As we have discussed previously at committee, in the absence of empirical evidence from other countries that have already tried minimum pricing the best evidence that we have is the modelled evidence prepared by the University of Sheffield. Having considered all of that, we have to make a judgment that we are satisfied, on the basis of all the advice that I receive, that the policy will meet the tests.

I am always slightly hesitant to say this, because the media could put a particular spin on it, but any piece of legislation that is passed by this or any other Parliament is potentially challengeable. That does not mean that it will be challenged or that, if it is challenged, the challenge will be successful. For every piece of legislation that a Government puts forward, it has to take the relevant steps to satisfy itself that it is acting within the law. That is what we are doing on minimum pricing.

Rhoda Grant: So you are saying that you cannot ensure that the minimum price will comply

with European law but that you will satisfy yourself that, in your judgment, it will.

11:30

Nicola Sturgeon: We will take steps to ensure that the price that we set is within European law. I cannot say that this bill, or any other bill that I might appear before the committee to give evidence on, is not challengeable or that a challenge would definitely not succeed. No minister could say that to any committee about any bill. I remember that when the bill to ban smoking in public places was going through Parliament, a challenge was talked about—indeed, it was an actuality. I am saying that, as with any other bill, we will satisfy ourselves that we are acting within the law.

I refer back to what I said about the debate on whether to include the minimum price in secondary legislation or in the bill. Without prejudicing my earlier comments, if we assume that a statutory instrument setting the price comes to the committee for consideration—such an instrument will be subject to the affirmative procedure—I am pretty confident that the committee will ask me to justify the price that we have chosen, the steps that we have taken and the factors that we have taken into account in coming to that conclusion.

The Convener: I think that we have exhausted the legal aspect.

Rhoda Grant: Can I ask another quick question on the minimum price?

The Convener: Yes, if it is different. After that, we will hear from Richard Simpson, who is on my list.

Rhoda Grant: It is different—it is about income groups. Will Sheffield be asked for further information about that? We have received a report—

The Convener: Can we leave that one just now? We will have a separate set of questions on the effect of a minimum price on lower-income groups. I want us to stick purely to minimum pricing for the moment. We will move on to socioeconomic effects later.

Is that what you were going to ask about, Richard?

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Yes, my main question is on income groups, but there is another issue that I want to ask the cabinet secretary about.

Do you agree that the problem with the bill, unlike every other bill—I totally agree that every bill could be challenged—is that it is not the principle that will be challenged, but the level at

which the minimum price is set? As the minimum unit price increases, the degree of intrusion into the market and the comparison with other mechanisms will get stronger and stronger. Regrettably, the minimum unit price will need to be set higher and higher to get the desired effects on health. There is a serious risk that the bill will be challenged not just once but repeatedly if the price is reset, which the use of affirmative procedure will allow. I am concerned that the bill is unique in that regard.

I reinforce what my colleague Ross Finnie said. Unless the initial minimum price is put in the bill, we will find ourselves in an extremely difficult position.

Nicola Sturgeon: In the spirit of consensus and trying to be constructive, I agree, in part, with what Richard Simpson said. I have always said that it is in the setting of the price that we must ensure compliance with EU law. That reinforces my point about the need for the Government to properly, systematically and robustly do all the work that it requires to do in coming to that decision.

I make the comment—which is more of a general comment than one that is directed at the committee—that those who are most vociferous in questioning the legality of minimum pricing and those who say, “Set the price now,” are often the same people. Setting the price prematurely, before the work that I have mentioned has been done, would undermine our legal position. Those two positions are a bit contradictory.

I am trying to be helpful. I genuinely appreciate the depth of the committee’s work on the bill and the time that you are spending on it. I have already said quite openly that, notwithstanding the need to do the work and to take due care and time in setting the minimum price, once we have got to that stage, if it is the committee’s view that it would prefer us to amend the bill to insert the price in the bill rather than to set it in secondary legislation, I would consider that. I return to the point that I made earlier: for me, that is the how rather than the why, and I have always taken the view that the why is more important. If our ability to set a minimum price comes down to a decision about the use of secondary legislation versus the use of primary legislation, I do not know that I would go to the wall on that.

Dr Simpson: My other, small point is that we already have the Licensing (Scotland) Act 2005. Although I was not in the Parliament when it was passed, I understand that the thrust of the debate on it was to try to eliminate irresponsible selling. I say to my colleagues on the committee as well as to the cabinet secretary that we really have not had a debate about whether some of the supermarkets’ selling practices have been—and are—irresponsible and are therefore capable of

being dealt with under the 2005 act. If they are not, should we not look to lodge amendments to the Criminal Justice and Licensing (Scotland) Bill to ensure that licensing committees can say that they will not tolerate supermarkets selling alcohol more cheaply than water and that they regard it as irresponsible? I have not met anyone who does not regard that as irresponsible. Why has the 2005 act failed? Addressing that act might be part of the challenge of justifying minimum pricing as the least intrusive measure.

Nicola Sturgeon: I take Richard Simpson’s point. We have to do all those things if we are properly to tackle the problem that we face. The 2005 act in large part applies only to the on-trade, not the off-trade. I do not think that it is fair to say that it has failed in that respect, because it does not apply to supermarkets and off-licences. The bill applies to the off-trade some of what currently applies to the on-trade. Much of the debate has focused on minimum pricing. I take my full share of the responsibility for that, and it is understandable, because it is a radical measure that no other country has ever taken. Perhaps we have not looked enough at some of the other provisions in the bill, such as those on a discount ban and so on. Richard Simpson is right—the Sheffield model would bear this out—that minimum pricing coupled with a discount ban and a real assault on irresponsible pricing would have a bigger effect than minimum pricing on its own.

Helen Eadie (Dunfermline East) (Lab): I am surprised that the cabinet secretary said that minimum pricing has never been tried anywhere in the world. According to evidence that we received from the Gin and Vodka Association, the Russian Government gave up minimum pricing approximately six years ago, because it failed to achieve the Government’s aim of reducing deaths caused by alcohol and was seen as contrary to free market principles.

My question is on Catherine Stihler’s parliamentary question, which has been much quoted in the Scottish Parliament, especially by the First Minister. I took the trouble to get the full version of the parliamentary question and the full answer.

The Convener: Can you tell us the number of the question?

Helen Eadie: The question in the European Parliament—I can give you a copy of it afterwards, convener—said:

“The key section in the answer to my question from the European Commission is that minimum pricing must apply to the whole member state, not just a nation within it.”

The answer was from the European Commissioner for Enterprise and Industry. It answered a written question from the Scottish

socialist MEP Catherine Stihler on the minimum retail pricing of alcohol. The question does not have a number; the date on it is 3 July 2009.

The Convener: Give us a moment to find the quotation.

Nicola Sturgeon: I will start to reply to Helen Eadie's question and I will give Rachel Rayner, the lawyer who is on hand to help with some of the finer detail of the legal issues, a chance to find the reference.

It will relieve the committee to know that I will not pretend to be an expert on Russian licensing laws or alcohol pricing. I am trying but failing to remember the detail, but I recall that around the turn of the year, Russia took specific steps to raise the price of vodka to try to cut consumption. There have been recent moves in Russia to try to raise the price of alcohol. I am not au fait with any previous system that Russia might have had in place, but, to the best of my knowledge, no country has introduced a system precisely the same as the one that we propose.

The Convener: Do you require a moment to find the quotation to respond to Helen Eadie's question?

Rachel Rayner (Scottish Government Legal Directorate): I have the response, but I cannot find the sentence that Helen Eadie quoted.

Helen Eadie: I am quoting from correspondence that I have from Catherine Stihler, which says:

"The key section in the answer to my question ... is that minimum pricing must apply to the whole member state, not just a nation within it."

My point from that is that if the Scottish Government wishes to go ahead—

The Convener: Excuse me a moment. In fairness, when a question is put quoting something—

Helen Eadie: I have the quotation here—

The Convener: Bear with me a minute, Helen. I thought that you were quoting an answer, but you are actually quoting correspondence that refers to an answer. Is that correct?

Helen Eadie: I have the full version of the question, but I also have another item from Catherine Stihler's office—

The Convener: Sorry, I am a bit muddled about that. Were you quoting from the answer that was given in the European Parliament?

Helen Eadie: The answer given by Mr Verheugen on behalf of the Commission states what I said.

The Convener: Has the cabinet secretary found the relevant line in that answer?

Nicola Sturgeon: Actually, no. I have in front of me the full text of Mr Verheugen's answer—I hope that I have the correct pronunciation of his name—but, on my initial reading, it does not say that. I will read it again just to ensure that I am not misleading the committee, but the answer does not contain that sentence. I do not know whether Helen Eadie has quoted a bit of commentary that was inserted by someone else.

The Convener: Yes, we need to know that.

Helen Eadie: Another point, which stems from that issue, is that the Scottish Government seems intent on going ahead with the legislation in the full knowledge that the member state will be responsible for any fines or other court action—

Nicola Sturgeon: That is not true.

Helen Eadie: An official research paper from the House of Commons library that I want to quote from states that—this point came out very clearly in discussions at the Health Committee in Westminster—because Scotland is not a member state but part of a member state, failure to comply with EU rules would result in the member state, rather than the Scottish Government, being fined. Will this be another case in which the Scottish Government will point a finger at Westminster and say that the issue is for the member state rather than for the Scottish Government?

Nicola Sturgeon: May I answer that?

The Convener: You certainly may. I think that Ross Finnie was about to answer.

Nicola Sturgeon: It might be wiser to hand over to him. As a former fisheries minister, he could probably throw more light on the issue than I can. I know that Helen Eadie does not intend to mislead the committee, but there is a danger that that is what is happening.

I will answer in two parts. First, the answer from the European commissioner does not contain the sentence to which Helen Eadie referred. It is important to put that point on the record. The clear understanding of the Scottish Government is that, subject to all the tests that I have mentioned, we have the power to legislate for a minimum price per unit of alcohol.

On Helen Eadie's more general point, many of the Scottish Government's responsibilities are subject to European law but, as I understand it, any infraction proceedings would be taken against the UK, which is technically responsible as the member state. I also understand that the conventions and protocols that apply mean that, in practice, the Scottish Government is responsible. If what Helen Eadie says is true of the bill, it is also

true of every aspect of fisheries policy and any other responsibility that is subject to European law. The point is not germane to the discussion.

I am glad to see that Ross Finnie is nodding. He believes me.

Helen Eadie: My final point, cabinet secretary, relates to the response that the Law Society of Scotland's Jim McLean gave—some digging was required—to a question from Ross Finnie. In his response, Jim McLean made a key point about the most important part of the issue of minimum pricing in the context of non-compliance with the tobacco directive. Jim McLean said:

"However, the Parliamentary Question put to the European Commission did highlight that one of the more important considerations is the free movement of goods article and that may be more significant in this ruling since it affects competition."

That is the basis of the objections of a number of organisations, including the *European Journal of Public Health*, which—in an article first published in May 2008—very clearly stated:

"minimum pricing for alcohol will not be seen as permissible"

under European law. On the one hand, there is the European directive on tobacco to consider, but the more significant issue, according to Jim McLean in his answer to Ross Finnie, is that minimum pricing will be seen to affect the free movement of goods under competition law. That is why the legislation would fail to comply.

The Convener: First, I will let the cabinet secretary respond, but at some point I will let Ross Finnie comment. He may wish to say something, given that he was named as a participant in the discussion.

11:45

Nicola Sturgeon: I will do my best to respond to Helen Eadie's comments. The letter that I sent to the committee on 21 April clarifies some of the issues that she has raised. I do not want to go into endless detail on the matter, but I will deal first with the European Court of Justice's opinion, which is now a ruling, on tobacco. The ruling was based on a directive that does not apply to alcohol, so you cannot read across from it to minimum pricing.

Helen Eadie: I am not doing that.

Nicola Sturgeon: As Ross Finnie said at the previous meeting, the opinion included obiter remarks about the generality. The court did not determine on that, so no precedent was set.

Helen Eadie made a more general point about free movement of goods and so on. Paragraphs 6 to 21 of my letter run through the general

provisions on the free movement of goods in the Treaty on the Functioning of the European Union, the article 34 provisions on qualitative restrictions on imports and the ways in which such restrictions can be justified by reference to article 36—on the ground of health benefits, by not being discriminatory, by being proportionate and so on. Those provisions are absolutely in line with everything that I have said.

Helen Eadie: With respect, the letter does not mention article 80 of the treaty, which is about the free movement of goods, or chapter 3. I can find the specific references for you.

Nicola Sturgeon: I think that article 28 is about free movement of goods. I invite Rachel Rayner to comment.

Rachel Rayner: I think that article 80 relates to competition law.

Helen Eadie: It relates to free movement of goods.

Rachel Rayner: We consider that minimum pricing is capable of complying with competition law. We will ensure that the minimum price complies with competition provisions, just as we will ensure that it complies with the law on free movement of goods.

Helen Eadie: Based on the same analysis, the *European Journal of Public Health* says that it will not. The European Commissioner for Enterprise and Industry also suggested that the minimum price might not be compliant with the law. Because you are not giving the committee the basic information that it requires on the minimum price, so that we can put it to the European Commission, we may end up passing legislation that is not competent.

The Convener: There is a dispute. In my view, we have exhausted the European argument. I want to move on to other issues, because we have only another three quarters of an hour. There are other issues that we never have time to discuss. Michael Matheson has a question about minimum pricing. Ross Finnie and Richard Simpson have questions about completely different issues.

Ian McKee (Lothians) (SNP): Can you indicate what subjects will be discussed?

The Convener: No, as I do not know what substantive questions will be asked.

Dr Simpson: My question is about people on low incomes.

Ross Finnie: Mine is about the social responsibility levy.

The Convener: There you go—all is clear. Mary Scanlon has a question about cross-border issues. All of us have pitched in, so my A-list is complete.

Michael Matheson (Falkirk West) (SNP):

Some reporting on the argument about whether the minimum price should be set in the bill has given the impression that we cannot judge that the bill is compatible with European law until you tell us what the minimum price will be and include it in the bill. I am not entirely sure that that is correct. If the Government were to announce tomorrow that the minimum price will be X, we would have to amend the bill at stage 2 or stage 3. That would not automatically tell us that the bill could not be challenged, in the way in which any piece of legislation can be challenged, as you have explained. Can the Government make it clear that amending the bill to include the minimum price will not automatically prevent it from being challenged and, at the same time, will not automatically tell us that it is compliant with the law?

Nicola Sturgeon:

Michael Matheson is right. The bill has a certificate of legislative competence, which means—on the face of it—that it is within the Scottish Parliament's competence, which includes complying with European law. However, that does not mean that the bill is not challengeable. Any bill is challengeable.

We plan that judgments about whether the specific price is compliant will be made when the committee considers the statutory instrument under affirmative procedure. That is when detailed discussion will take place about the factors that the Government has taken into account to secure compliance, which will be material to the committee's decision.

Michael Matheson: I suspect that many people who oppose minimum pricing and who have used the European argument would say that the proposal does not comply with European legislation, no matter what the price is. Even after the statutory instrument to set the minimum price has been produced, it could still be challenged by the bodies that oppose minimum pricing. We as a committee and I as a committee member would be none the wiser about whether the bill definitely complied and could not be challenged.

Nicola Sturgeon: Absolutely. The Smoking, Health and Social Care (Scotland) Act 2005 was challenged, as could be every act that the Parliament passes. Some people outside this room say that they do not support minimum pricing because they do not know what the price will be. I hazard a guess that, if I named the price tomorrow, they would say that they did not support minimum pricing because they disagreed with the price—it would be too high or too low. Some people have just decided that they are against minimum pricing and are using any argument to justify their position. However, I appreciate that the committee is not in that position and that it is giving due consideration to all the issues.

The Convener: I want to move on, but I will let Ian McKee ask a short question, as he has not spoken.

Ian McKee: I have two short questions.

The Convener: Very good.

Ian McKee: Some concern has been expressed that establishing a minimum unit price will put large profits into the hands of supermarkets and the drinks industry by increasing their prices and profits. Of the increased revenue that will be generated for companies, what element will be from minimum unit pricing and how much will be from the abolition of discounting, which the bill also proposes?

Nicola Sturgeon: The question is good. In the context of the social responsibility levy, I am sure that we will discuss the idea that raising the price of alcohol increases the money that people spend on alcohol and therefore the money that alcohol retailers or producers take in.

The Sheffield report estimates that, with a 40p minimum price and a discount ban, the overall increased spend would be £113 million per annum. However, only £68 million of that is from minimum pricing; the rest is from the discount ban.

To people who cite the argument, I say that the issue is valid and that we need to consider it but, if we dropped minimum pricing today—we will not do that, incidentally—the issue would still arise with the discount ban, which all parties in the Parliament say that they support, although I acknowledge that the committee has not yet reached its conclusion. The issue must be faced up to and addressed, almost regardless of where we go with minimum pricing.

Ian McKee: A newspaper says today that what it describes as a “kamikaze” supermarket beer war has started before the world cup. It says that 24 cans of popular brands are selling for as little as £9 and that wholesalers estimate that supermarkets could lose £6 per case at such prices. It is obvious that the aim is to attract people into shops to buy other goods. What measures other than minimum unit pricing could stop such competition, which is making the price of beer absurdly low?

Nicola Sturgeon: Such promotions are indefensible. Nobody wants to stop people enjoying the world cup and all that accompanies it, but alcohol retailers must recognise that alcohol is not an ordinary product and that such promotions harm people's health.

As for what we can do, the best way to tackle such promotions is by coupling a minimum price to a ban on quantity discounts and promotions. If one measure is taken without the other, it might have some effect, but not the effect that both measures

together would have. That is why the bill recommends both.

I was going to make another point, but it has gone completely out of my head. It might come back to me.

The Convener: A senior moment at last—I have been waiting for you to have one. I have them all the time—in fact, I have them and forget that I have had them.

Nicola Sturgeon: I am sorry—I have remembered my point.

The Convener: See how I provoked you.

Nicola Sturgeon: It was on the loss-leading point. We discussed the issue at a previous evidence session and it is fair to say that some members were sceptical, but it is a fair point, advanced by people who know what they are talking about, that supermarkets, in particular, use alcohol as an enticer to get people into their stores. When it comes to the £6 loss—I think that that was the figure that you used—on a case of beer, supermarkets are not dipping into their own pockets to make up that loss; they put it on to the price of other goods. Not only are we paying in our health for these irresponsible promotions but we are also paying in our grocery shopping every time that we go to a supermarket, because other goods are priced higher to recoup the loss that retailers take on alcohol.

The Convener: I think that the latest published figures show that the profits of the major supermarkets are all up, even in this time of recession.

We have 34 minutes left with the cabinet secretary; I want to touch on other topics.

Ross Finnie: Cabinet secretary, you outline two approaches in paragraph 36 of your letter to the committee. The first is the more punitive approach, which would apply only to certain premises that you believed were acting irresponsibly. I find that difficult, as I am not sure how you would establish that that was the case and it also runs the risk that a publican who, for good reason, throws out of their pub someone who then causes some mischief will be punished for doing what the law tells them to do.

I am more attracted to your second approach, which is

“a levy applied to all premises”

that might be used, within the purposes of the Licensing (Scotland) Act 2005, for broader purposes within the community. Such a levy would apply to all premises. In that regard, I refer to paragraph 34 of your letter, in which you say that the bill

“ensures that the levy is applied by and used by local authorities.”

My difficulty with your contention is that section 10(4)(k) simply confers upon the local authority an ability to use the levy. As we have had confirmed in response to questions that I put to the Law Society of Scotland, you can give local authorities the powers to use a levy, but whether or not they use it would be at their discretion. Perhaps I have misread it, but paragraph 34 of your letter is explicit that the bill

“ensures that the levy is applied by and used by local authorities.”

I have clearly missed something in section 10(4)(k).

Nicola Sturgeon: No, I do not think that you have. I have to confess that I might have committed what, in the eyes of Ross Finnie, is probably the most heinous crime imaginable, and indulged in slightly slack wording in the letter. You are absolutely right that the bill contains an enabling power. Unless one of my officials tells me that I am getting this wrong, I think that what the letter is trying to convey by the use of the word “ensures” is that it would be only local authorities that could apply the levy and gather money, not other agencies. It would be open to the committee to recommend that the power went wider than that—I am sure that we could look at that. The enabling power in the bill is drafted in such a way that only local authorities can collect and use the levy. I apologise profusely to the committee if the wording of the letter does not make that absolutely clear.

Ross Finnie: Your response is helpful, but does it not stress that, if the Government is of a mind to pursue the wider, more socially applicable measure mentioned in the second bullet point in paragraph 36 of your letter, judging whether that approach might be successful and whether local authorities might be inclined to use the power that section 10(4)(k) confers on them, would depend on how attractive that proposition was?

I know that your letter is an expansion of your thoughts, but what further steps are you taking and what progress are you making to develop the “second approach” that you outlined in scant terms in paragraph 36? The germ of the idea is there, but without more detail it is extraordinarily difficult to come to a view on whether the approach would be effective or, more important, attractive to local authorities.

12:00

Dr Simpson: On that point, may I ask a supplementary—

The Convener: No. Other members will ask supplementaries—

Dr Simpson: It was specifically on the issue and to thank the cabinet secretary for her answer to my parliamentary question—

The Convener: Hang on. We are still talking about the social responsibility levy and its operation by local authorities.

Dr Simpson: My point relates to the question about where discussions have got to on the approach that is set out in the second bullet point in paragraph 36. I received today an answer to a parliamentary question that I lodged, which indicates that no specific discussions on the issue have taken place with retailers since August 2009, although there have been general discussions about the bill. The answer is slightly disconcerting.

The Convener: You have jumped ahead of Rhoda Grant and other members and made your point.

Dr Simpson: It was a comment, rather than a question.

Nicola Sturgeon: I was lulled into a false sense of security. When Richard Simpson started talking, I thought that he was about to be nice to me. I should have known better. That was a cruel tactic.

Ross Finnie's comments about his preference will help us, as will the committee's report, to reach a conclusion. As I said, the bill is an enabling power. We decided that it would be better to try to involve stakeholders in the development of the detail, because it is important that we have a system that is seen to be fair and effective. I will not sit here and suggest that stakeholders will necessarily put out the bunting for a levy of any description, but at least if people understand the rationale for the levy and what it will achieve there will be more chance of buy-in.

The working group of stakeholders includes Tesco, the Scottish Retail Consortium, the Scottish Grocers Federation, the Wine and Spirit Trade Association, the Scottish Licensed Trade Association and other stakeholders. It has met on a number of occasions—the most recent formal meeting was on 11 August 2009—to develop the broad proposals. As we heard from Ross Finnie when he quoted my letter, the options that are being discussed are the imposition of a levy only on people who have offended in some way and the imposition of a flat levy. A third, middle-of-the-road option that has also been considered is the imposition of a universal levy that could be discounted for people who demonstrated good practice.

In addition, we will ask the group to discuss a matter that we have discussed in the past, which is how a social responsibility levy, as well as

dealing with the things that it was originally intended to deal with, could be used to deal with additional revenue to retailers and producers from minimum pricing or a discount ban.

That is the current state of the discussions. When we have come to a conclusion, we intend to issue draft regulations, which will be subject to consultation. Of course, the committee will have an important role at that stage. When we publish the draft regulations a regulatory impact assessment will also be published, which will set out in detail not just the proposed social responsibility levy but its impact.

Rhoda Grant: The committee has had great difficulty in scrutinising the policy on a social responsibility levy, because we do not know what it is. A fair number of members are quite keen on the idea, but the idea varies depending on whom we speak to. A blanket approach might be taken, or the levy might be used to punish bad behaviour. You mentioned a third option, too.

What is the role of local authorities in making such decisions? Although the area that I cover is remote and rural, it also has inner-city problems. If Highland Council, which covers those areas, were to implement a social responsibility levy—I understand that it will be for councils to decide whether to do so—through an across-the-board approach, would the local pub, which struggles to survive, pay the same levy that the city centre pub, which might be responsible for disorder problems, would pay? We need an awful lot more information on the levy before we can reach a conclusion on it.

Nicola Sturgeon: Again, this is reminiscent of an earlier discussion. At this stage, the committee is simply being asked to agree that there should be an enabling power. It does not commit the committee or anybody else to introducing a social responsibility levy. I have detected from comments from across the Parliament's political spectrum that there is broad support for the idea in principle.

You are absolutely right that the detail will determine people's final judgment about whether it is good and effective to introduce such a levy. The committee will scrutinise the regulations when they are out for consultation and when they go through the formal parliamentary process.

The provisions give us the scope to be flexible. To return to Ross Finnie's point, the bill does not require local authorities to impose the social responsibility levy; it gives them the power to do so. However, if it was decided that it was right to require local authorities to impose it, the regulations could require them to do that. You are also absolutely right that a social responsibility levy would not require to be a one-size-fits-all levy throughout the country but could operate differently depending on local circumstances.

I am not saying that that is what we should do; I am simply saying that we have the flexibility to consider those options when we put the regulations before the committee. Ultimately, we all have to come to our own judgment on such matters. I took the view—and I hold to it—that it is better to try to include the stakeholders in discussions about the detail before we decide what it is rather than come out with a scheme from the word go that might not have had the buy-in that we might be able to get from our more inclusive approach. We might not be able to get buy-in; perhaps nobody will be able to agree and the Government will have to decide itself. However, I am hopeful that we will be able to come to a conclusion that leads to a system that, if the Parliament so chooses, will be effective in achieving its objectives.

The Convener: I want to clarify something, cabinet secretary. Rhoda Grant said that it is up to the local authority. I take it that the direction of travel is that whatever is arranged at the end of the day will not be national. The power to police the levy will be with local authorities. Would one local authority be able to say that it did not want to take on the levy and leave it? Would the councils in the Lothians and Borders be able to impose the levy but not those in the Highlands and Islands?

Nicola Sturgeon: There are two parts to the answer to that question. First, even if we devised a scheme that would apply uniformly everywhere that it was applied, under the bill as drafted, local authorities would be enabled to introduce it, not compelled to introduce it. However, we could say in the regulations that they were compelled to introduce it.

Ross Finnie: Would that not bring the Government into the reserved area of a national tax?

Rachel Rayner: It would depend on what arrangements were made for collection and enforcement. It is capable of being within the exception to the A1 reservation, as the Law Society of Scotland pointed out in its response.

Nicola Sturgeon: I may have stated that last part a bit too boldly and should probably have included a wee caveat. However, depending on the detail, we would have the option of making the social responsibility levy applicable in all areas.

Rhoda Grant's point was slightly separate. I think that she was asking whether it would be possible for one local authority to introduce a scheme that was slightly different from that which was introduced in another. It would certainly be possible to do that, but the discussions so far have considered more how the scheme would operate uniformly throughout the country.

The Convener: If you were to make it compulsory for local authorities to implement a social responsibility levy, would that not need to be in primary legislation? Can subordinate legislation state that local authorities "shall" impose a levy rather than that they "may" do so?

Rachel Rayner: No, it would not need to be in primary legislation. The power gives ministers discretion to make regulations, but the regulations themselves could set out the levy and the scheme that local authorities must enforce.

The Convener: So it can be compulsory under subordinate legislation and not the primary legislation.

Rachel Rayner: Yes, if that is what ministers decide to introduce.

The Convener: That is fine. I just wanted to clarify the technicalities.

Rhoda Grant: I will finish my first point and then move on to my second—actually, the other way round is probably best. If the Government insisted that the local authority impose the levy, would that not exceed its powers? Councils have tax-raising powers and we have tax-varying powers, and my understanding was that the point of this enabling legislation was to confer the power on local authorities to stop us falling foul of the Scotland Act 1998. If we are imposing on councils the obligation to implement the levy, does that not mean that Government is basically implementing a levy that councils have to collect?

Rachel Rayner: I do not think that that would necessarily breach existing legislation; after all, the exception to the reservation is local taxation for local authority expenditure. We have considered the reservation and, as the Law Society of Scotland has made clear, the regulations can comply with it, depending on how they are framed.

The Convener: I take it that local authorities would set the rates and so on.

Rachel Rayner: Well, local rates are not necessarily set by local authorities, but they still come within the exception to the reservation.

Nicola Sturgeon: Although important, the point is not germane to the enabling power in the bill. It will, however, be important when the committee considers the regulations. I am very happy to put together a note to the committee setting out the legal position, if that would be helpful.

The Convener: That would be useful. I think that we have now clarified the point about the enabling power.

Rhoda Grant: My question was not about different rates being set by different local

authorities, but about different rates being set in different areas by the same local authority.

Nicola Sturgeon: Again, I think that it would be possible for the regulations to make that possible. I am not saying that I think it should be done that way—that will be part of the discussion that must be had before we lay any regulations before Parliament—but, as far as I am aware, it would be possible to draw regulations that allowed for that.

The Convener: Mary, do you have a question?

Mary Scanlon: I was on the B list for questions on social responsibility.

In paragraphs 36 and 37 of your letter, cabinet secretary, you say:

“discussions ... are ongoing with stakeholders”

and that

“many detailed issues”

are

“being debated among stakeholders”.

Do you agree that those comments are very misleading, given that no one has met stakeholders for nine months?

Nicola Sturgeon: No, and I hope that the committee accepts that I would never deliberately mislead it on anything. The discussions reached the point at which the options that I have outlined could be formulated. Discussions on different aspects of the bill are going on with stakeholders all the time, and we hope that the stakeholders who are looking specifically at the social responsibility levy will meet again—next month, I think—to take the work to its next stage. I do not think that anything that we have said about that is in any way misleading.

Mary Scanlon: So it will have been 10 months since the last meeting.

With regard to cross-border sales, I note that when Finland raised its taxes in 2009 the number of travellers to Estonia increased by 23 per cent in the very same month; the transport of cars to Estonia increased by 27 per cent; and the imports of spirits and intermediate products were about 40 per cent of the sales of similar products in the Finnish monopoly shops. Many companies had to lay off people and overall alcohol consumption stayed fairly much the same.

Do you accept that a minimum unit price will lead only to increased internet sales, which is the fastest growing means of buying alcohol, and cross-border sales from England? As in Finland, the move might not lead to any reduction in overall alcohol consumption and might instead result in job losses in Scotland. Moreover, as has been shown in Enniskillen in Ireland, if people go over

the border to buy alcohol, there is nothing to stop them going over the border to do all their shopping. That must raise serious concerns for jobs and industry in general and about the overall potential reduction in alcohol consumption in Scotland.

12:15

Nicola Sturgeon: I do not accept a lot of the premises of Mary Scanlon's argument. She has a slight advantage over me in that I do not have in front of me all the figures that she has quoted about Finland and Estonia, but I am happy to look at them. It is always instructive to look at international experience.

Part of the process of setting the price is ensuring that it is set at a proportionate level that delivers impact without unintended consequences. I will talk about Ireland later, because I have some figures for Ireland that might be of interest to the committee. However, as I did the last time I was here, I point the committee to the comments of Chief Constable Shearer of Dumfries and Galloway police force—someone who works on the front line. I will not quote him, because the comments are already on the record, but his view is that the problem is not significant and that the police would monitor it in the ordinary course of events. Additionally, he said that it should be seen in terms of the bigger picture of the benefits of minimum pricing.

Ireland has been mentioned several times, and I have looked in some detail at the reality over there. I can make the figures available to the committee, if it wants to see them. The figures, which come from the Irish Central Statistics Office, show clearly that, while there is a significant amount of cross-border shopping between the Republic and Northern Ireland, alcohol is not the main driver of that. [*Interruption.*]

The Convener: Please let the minister speak.

Nicola Sturgeon: In the past year, 16 per cent of households made at least one trip from the Republic to Northern Ireland to do the shopping; 80 per cent of them bought groceries, and 44 per cent of them bought alcohol while they were there. Perhaps more pertinently, the average spend on those shopping trips was €286; alcohol accounted for €32 of that, while €114 was spent on groceries.

The point that can be drawn from that is that people will buy alcohol while they are there, but the driver for that cross-border flow is the currency difference, or the difference in value between the euro and sterling in the Republic and Northern Ireland, which makes it cheaper for people to do their grocery shopping in Northern Ireland. The figures bear that out.

Obviously, the police and customs officials will monitor such cross-border issues, as they do already. I refer members back to the chief constable's comments.

Mary Scanlon: We are all very aware that the exchange rate affects all goods, but a minimum price on alcohol affects alcohol. Chief Constable Shearer said that that is not a problem—it is not a problem just now, nor will it be a problem to the police in future, because when 100 white vans a day cross the border into England they will not be breaking the law. People will simply be doing what Scots have done over the centuries by being careful and frugal with their money.

However, we have examples from Finland. All the committee members who were on the trip got the specific evidence that I mentioned, which shows specific increases in trips to Estonia for the cheap booze, which led to companies laying off people. There was also less production in Finland itself. There is no doubt that a minimum price for alcohol can take people over the border for shopping and that, if they do that, they can buy other things as well as alcohol. Asda used Enniskillen as an example, but I am more than aware that the exchange rate on all goods is quite different from a minimum price on alcohol. The Finnish example that I gave is a reasonable factual example that shows the increase in pricing for alcohol leading to the loss of jobs, but not leading to an overall reduction in the consumption of alcohol.

The Convener: I am sorry to cut you short, but that was a long speech and we need to ask short questions because members are still waiting. We have only another 11 minutes to fit in our other points. It is fine to disagree with the minister, but that is a different thing from asking a question. We just want questions from everyone. Richard Simpson has a question on the impact on socioeconomic groups.

Dr Simpson: Cabinet secretary, your letter to us states that further work is being done. Are you referring to the paper by Anne Ludbrook of the University of Aberdeen, or is that a separate piece of work?

Nicola Sturgeon: That is separate.

Dr Simpson: Have you seen Anne Ludbrook's paper? To me, the most interesting point in it is that the amounts that are purchased at a minimum price of less than 30p or 30p to 40p represent 60 per cent-plus of the total basket in the lowest three deciles. That is one of the arguments that I have been putting forward all the time. One of my major concerns about MUP is that it will have a disproportionate effect on low-income groups.

Everyone buys cheap alcohol. Everyone likes a discount. We are not stupid. If someone is going to

buy some beer, they will buy it at a discount if they can. If someone is going to buy some wine and there is a discount or a low price on a wine that they like, perhaps because it is the end of the case, they will buy it. However, if we look at the graph in figure 1 of Anne Ludbrook's paper, we see that consumption of alcohol that is purchased for less than 40p a unit represents about 30 per cent of the basket for the top decile—that is, the 10th decile, which is people with incomes of more than £1,163 a week. By contrast, the percentage for the lowest three deciles is much higher. The third decile has the highest percentage of purchases of beer, wine and spirits at prices below 40p a unit.

The other striking thing in the paper is the difference in total consumption between the lowest and highest groups. The highest groups consume almost three times as many units of alcohol as the lowest groups. The lowest three or perhaps even four deciles will be disproportionately affected by a unit price of 40p. At 50p, almost their entire alcohol expenditure will be affected, given that the amount that they purchase at prices above that is quite low.

I wonder where you are with that. Will you be in a position to give us any further detailed commentary before we get to the stage of drawing up our report?

The Convener: That starts today.

Nicola Sturgeon: I will try to keep this as brief as possible, convener. I will come on to the further work that the Government has done in a moment, but first I will comment briefly on the Ludbrook paper. Obviously, I do not speak for that report, which is an independent report.

I am certainly happy to respond afterwards to the detailed points that Richard Simpson made, because I did not quite follow them all. However, generally speaking, the report does state that the lowest two income deciles purchase more alcohol at less than 30p a unit than the highest two, but overall the relationship between the number of units purchased at less than 30p and income is not strong. At 30p to 40p, the number of units purchased increases with income up to decile 7, and the highest decile purchases more than the lowest. From 40p to 50p, there is a clear upward trend in purchasing as income increases.

In terms of averages, the report shows that the lower-income deciles exceed the average purchase of low-price alcohol only at prices of less than 30p.

Dr Simpson: Sorry to interrupt, but you are completely missing the point that I am trying to make. I do not deny that the difference between how much the deciles buy at the lowest prices, even including the highest decile, is not vast, but

that is not my point. My point is that the alcohol basket of the lowest three deciles is predominantly made up of cheap drink. It represents more than 60 per cent of the basket in the lowest three deciles compared with only 30 per cent of the basket in the highest decile. MUP will have a disproportionate effect on the lowest deciles because their purchasing is clearly limited by their income, so there is no room for movement.

Nicola Sturgeon: I am happy to go and look at that point in detail, but that is not my understanding of the thrust of the report.

I will move on to the other work. The University of Sheffield has said that it is difficult to develop elasticities for different income groups in Scotland due to the small sample sizes that are available in the data. That is a constraint in terms of what Sheffield is able to do.

The health analytical services division has analysed the figures on consumption across income groups in the Scottish health survey in order to elaborate on the point about the socioeconomic impact. I am sorry that the committee has not yet seen that piece of work, but it has just been concluded and it will be with you today.

Richard Simpson might have alluded to the consumption levels among various income groups. The analysis from the health survey concludes that, in the lowest income decile, 23 per cent do not drink at all and 57 per cent drink moderately, which means that 83 per cent of the lowest income decile either do not drink or drink below the recommended limits. That compares with only 7 per cent of the top decile that do not drink at all and only 60 per cent who drink moderately. Effectively, people on the lowest incomes are drinking less than people on higher incomes, which means that minimum pricing impacts on them less than it does on those with higher incomes.

However, in the harmful category, those in the lowest decile drink 85 units on average while those in the highest decile drink 60 units on average. That means that the harms are greatest among the lowest income groups, which is why they are five and a half times more likely to be admitted to hospital and 13 and a half times more likely to die from alcohol-related illnesses.

I appreciate that the committee has not seen the research yet—I will be happy to continue this discussion once you have—but, effectively, it shows that minimum pricing will not impact adversely on the bulk of low-income people who do not drink or who drink moderately but that those who drink dangerously stand to benefit the most, because they are suffering the biggest harms at the moment.

I hope that that research, coupled with the Ludbrook report, goes some way towards answering the question about the differential impact, if there is one, on different income groups. I would be happy to hear further comments from the committee when you have seen the research.

The Convener: We have only three minutes left with the cabinet secretary, Helen, so I ask you to be brief.

Helen Eadie: I hope that you will not be too strict, convener, because I have a question about the financial memorandum, which, as you know, has caused us some difficulties, as it was published the night before we were due to conclude our previous considerations.

The conclusion at the end of the Finance Committee's report on the financial memorandum refers to the Parliament's standing orders and the requirement on the Scottish Government to provide information on costs that arise through subordinate legislation. It says:

"the Scottish Government's own guidance on financial memoranda states—

'Costings should not be omitted because final decisions have still to be made. Where this is the case a range of costs should be provided reflecting the possible options.'"

The committee is concerned that that was not done, and that there is a wide margin of uncertainty around the options. We would like to know why that was not done.

Nicola Sturgeon: I will comment briefly and, because it is a highly technical question, I will hand over to Marjorie Marshall, who can give you some of the more technical details.

Paragraph 83 of the financial memorandum refers to section 3 of the Sheffield report, which details the results of the sensitivity analysis that was carried out in the modelling. That information, therefore, is referenced in the financial memorandum.

Marjorie Marshall (Scottish Government Health Finance Directorate): Because there is no specific price in the bill, there is a range of impacts, going from the impact of a minimum price of 25p to that of a minimum price of 70p, with or without a discount ban. Additionally, as the cabinet secretary said, there is a reference to sensitivity analysis. A number of different sensitivity analyses were carried out within the modelling around both stages of the model. Sensitivity analysis was carried out around the responsiveness or elasticity of drinkers with respect to all the different price scenarios and around various other aspects of the harm model. Partly, that related to variation in the elasticities in line with previous research. There was elasticity and variation around—

Helen Eadie: I am sorry to interrupt, but that does not address the costs issue—

12:30

The Convener: Stop, Helen. Let the witness finish, and then you can come straight back in. Please finish, Ms Marshall.

Marjorie Marshall: There was reference to changes in the benefits and costs, taking into account differences between off-sales and on-sales. Those are all translated into costs—there is a long, detailed list of sensitivity analyses, and my understanding is that a response was given to that question.

There is a range around the policy scenarios, and a number of different ranges can be presented around the different sets of sensitivity analyses that were undertaken. A comprehensive list of ranges can be presented.

Helen Eadie: I will quote the relevant paragraph:

“Costings should not be omitted because final decisions have still to be made. Where this is the case a range of costs should be provided reflecting the possible options. Where a Bill proposes powers dependent on secondary legislation (or further primary legislation), it may not be possible to be precise. In these cases, the Memorandum should say so. However, this should be supported by an outline of the SG’s current intentions, the financial implications of these intentions, and the effect of varying the major assumptions.”

The point is that the standing orders of the Scottish Parliament require all that information. You have guidance from the Scottish Government stating that it is required, and the Finance Committee says that it has not been provided—that is covered in paragraphs 41 and 42 of that committee’s report on the financial memorandum. The Finance Committee states that it is a matter of some concern to the Parliament that the information has not been made available.

Marjorie Marshall: My understanding is that we did respond to the Finance Committee. You are right that there is a range of possible costs, and that range depends largely on where a minimum price is set and on whether or not it is combined with a discount ban. The possible cost to industry will vary according to which scenario becomes the policy that is implemented.

The Convener: You say that you responded. That was not a formal response to the Finance Committee’s report, was it? Have I picked you up wrongly?

Gary Cox (Scottish Government Justice Directorate): The reference is the cabinet secretary’s letter to the Health and Sport Committee of 21 April. That letter, from paragraphs 45 through to the end, gives the

explanation that Marjorie Marshall has just outlined. I hope that reading that letter in the context of the financial memorandum makes the position clear.

The Convener: I just wanted some clarification on your reference to a response. Your response is contained in the evidence that the committee has, and in the response letter.

Nicola Sturgeon: Sorry—that was my fault: Gary Cox is right to refer to paragraphs 44 to 49 of my letter to the committee, which deals with the point that the Finance Committee made.

Helen Eadie: That deals with

“elasticities of demand”

and

“The analyses undertaken by the Sheffield team”,

but it does not actually provide the costs of the legislation.

Nicola Sturgeon: But it does—that is the point that the Finance Committee made. To put it bluntly, the Finance Committee said that we had not dealt appropriately with the various margins of error around the different prices, including the costs. That is square on the point that the Finance Committee made.

Helen Eadie: I shall read and digest that in context.

I wish to return to two further points in the financial memorandum, which we have not really touched on, so they deserve to—

The Convener: I was not stopping your flow, Helen—I am letting you go on.

Helen Eadie: I am being defensive, because I know what has happened in the past, convener.

The Convener: That was a rather unkind comment to me, as convener—but on you go, Helen.

Helen Eadie: Okay. You are a kind convener most of the time, convener. Now and again, just as I can be twitchy and cranky, so can you—but there we are.

West Dunbartonshire Council is concerned about the court costs of taking legal action against offenders with regard to minimum pricing. Having been in local government for many years, I know that that is a legitimate concern. The council’s point is that the Government has not addressed properly the impact that taking such action would have on the ever-tightening budgets of local authorities. Is it envisaged that those court costs will be factored into the cost of the bill to the Scottish Government?

Nicola Sturgeon: West Dunbartonshire Council's point concerns the cost of licensing standards officers, and its argument is based on the assumption that they would be required to visit every premises. However, we certainly do not expect that to be required. We expect a targeted approach based on intelligence and complaints received—that would be a rational use of resources.

The Convention of Scottish Local Authorities was consulted fully on the issue. It confirmed to us that it considered that the amount of additional work arising out of the bill would be small in relation to the existing overall workload of licensing standards officers, and therefore any additional costs resulting from the bill would be marginal. That was COSLA's clear view. We have also agreed with COSLA that, a year after the bill's implementation, we will review the position to ensure that that view is borne out in practice.

Helen Eadie: I have a final question. I direct the cabinet secretary to the written submission that we have received from NHS Dumfries and Galloway. I do not want her to respond to it today, but I ask her and other committee members to note paragraphs 4 and 8 of the submission, which are especially interesting.

My question relates to the Scotch Whisky Association's written submission, which states:

"At no time was the SWA given the opportunity to comment on any financial assumptions made in the Financial Memorandum."

That seems to have been the case for some other organisations, too. Why?

Nicola Sturgeon: The Scotch Whisky Association was fully involved at all stages in the development of the impact assessment and the competition assessment.

Mary Scanlon: Can I ask—

The Convener: No, I—

Mary Scanlon: It is an important point, convener.

The Convener: Every point from every member is important, but—

Mary Scanlon: It is just that Helen Eadie's question made me look at the financial memorandum.

The Convener: Be quick.

Mary Scanlon: The figures in the financial memorandum are based entirely on the previous predictions from the Sheffield study. Now that significant changes have been made in the new Sheffield study model, will we get an up-to-date, honest and transparent financial memorandum?

The current financial memorandum is out of date on the basis of the new predictions that we have.

Nicola Sturgeon: I am looking at my officials. I do not think that the new model would change the assumptions in the financial memorandum hugely. Nevertheless, if the committee wanted us to run the financial memorandum with the updated Sheffield model figures—I am sure that officials will love me for saying this—I do not think that we would have any objection to doing that.

The Convener: Right. On that point, we conclude this evidence session. I thank the cabinet secretary and all our witnesses for coming. We have overrun somewhat. I suspend the meeting for five minutes before we go into private session, as previously agreed.

12:38

Meeting continued in private until 13:08.

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