



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# HEALTH AND SPORT COMMITTEE

Tuesday 5 October 2010

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**HEALTH AND SPORT COMMITTEE**  
**28<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)

Nanette Milne (North East Scotland) (Con)

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

\*attended

**THE FOLLOWING ALSO ATTENDED:**

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

**CLERK TO THE COMMITTEE**

Douglas Wands

**LOCATION**

Committee Room 4



# Scottish Parliament

## Health and Sport Committee

*Tuesday 5 October 2010*

[The Convener *opened the meeting at 14:45*]

### Alcohol etc (Scotland) Bill: Stage 2

**The Convener (Christine Grahame):** I open the 28<sup>th</sup> meeting in 2010 of the Health and Sport Committee. I remind everyone to switch off mobile phones and other electronic equipment. No apologies have been received.

We move straight to consideration of amendments to the Alcohol etc (Scotland) Bill at stage 2. Members have a copy of the marshalled list and groupings of amendments for debate. I welcome the Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon, and her team.

#### Section 10—Licence holders: social responsibility levy

**The Convener:** Amendment 57, in the name of Richard Simpson, is grouped with amendments 63 to 68.

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** The Government's regulatory review group has reported on the initial workings of the new licensing regime that was introduced under the Licensing (Scotland) Act 2005. One of the review group's main criticisms was about the lack of efficiency, consistency and central strategy, as well as the added cost that has been caused by having local approaches across different authorities.

The group said that it believes that the 2005 act

"was introduced to modernise the licensing system and address inconsistencies in licensing across Scotland which had been of concern for some time. It is our belief that in a number of important areas this objective has not been achieved and in fact the new regulations may have created inconsistencies which may be of more concern than those existing previously."

It also said that

"It was recognised that higher fees would be introduced as a matter of policy but the range, diversity and apparent disproportionality was not expected"

and that

"It is not clear whether all in the trade and Licensing Boards were aware at the outset that there was an obligation by Licensing Boards to deliver licensing fees on a cost neutral basis. Whether it is for this reason or others it is apparent that in some cases this was not achieved and in others the accounting process adopted does not allow this to be easily ascertained."

The current situation is that the industry reports that it is making contributions to solving the problems in our communities via initiatives such as the Drinkaware Trust, the best bar none scheme, Unite the union's schemes and Edinburgh and other local pubwatch schemes. From the Canadian experience, we know that partnership with the industry is important in delivering measures that can tackle alcohol problems in our communities.

Section 10, on social responsibility, is important and I accept that we should adopt the principle. Unfortunately the Government has failed to spell out in any detail what it actually proposes. The proposal for social responsibility began life with the polluter pays concept, in relation to the night economy. It was rapidly spotted that the initial proposal was flawed. One cause of alcohol fuelling can be preloading, which was mentioned in evidence to us as occurring increasingly frequently. Alternatively, it can be due to consumption in another bar or location, when the bar from which the inebriated person emerges has done nothing other than ensure that it did not serve the inebriated person. That bar might be seen as a polluter when it was not. I therefore welcome the fact that we seem to have gone beyond the initial social responsibility proposal.

The excuse that the Government has given for not coming up with any detail is the need for discussion with the industry, which is a perfectly appropriate suggestion. However, the social responsibility levy group failed to meet between August 2009 and June 2010. Even now, we do not appear to have any real detail on which option the Government favours, and what the precise proposals are going to be.

The proposed new levy is a new tax, and it will fall primarily on the off-trade and on-trade retailers. We know that three options for the levy have been discussed. Option 1 is a fault-based levy on non-compliant licensees which, as I have already said, appears to have been dropped. Option 2 is a blanket levy, and option 3 is a blanket levy with incentives for an agreed level of good practice. I hope that I am not misinterpreting the situation, convener, but the Health and Sport Committee seems to be inclined towards the third of the options.

The Finance Committee has also indicated that the financial impact of introducing the social responsibility levy and the effect of various major assumptions has not yet been spelt out. The Government had not provided any detail to address the Finance Committee's points, and I do not know whether that is still the case.

Although I support the concept, I reserve the right to come back at stage 3 with amendments that are designed to spell out much more clearly

the approach that should be taken and the parliamentary process by which it should be regulated.

In the meantime, however, I have a number of questions that I hope the Government will be able to answer. Precisely which option does it now favour for a social responsibility levy? Has it, as the Finance Committee has asked, assessed the impact of such a levy? When did the Government and industry working group last meet and what was the outcome of that meeting? What process will be put in place to ensure that the Parliament is able to scrutinise and debate any future increases to a levy? What is the intended initial rate of the levy? On what basis will it be calculated? How often will it be reviewed? Does the Government have any idea of the overall sum of money that it intends to raise? Will the money be used in ways other than those that are set out in my amendments?

Amendments 57 and 63 are technical amendments that underpin the other amendments in the group. Amendments 64, 65 and 68 seek to include health boards as having a pivotal role in working with the local authority—as main and lead agency for ensuring that the health impact of licensing is appropriately ameliorated—in drawing up plans for the levy's effective use within the legal restrictions on local taxes imposed by the Scotland Act 1998.

I have lodged amendment 66 in its current form because my much more detailed amendment, which involved amending the long title and described alcohol treatment and testing orders in some detail, was ruled as not being permissible. That amendment would have established ATTOs on a basis similar to that on which drug treatment and testing orders were established under the Labour and Liberal Democrat partnership earlier in the decade. As ATTOs would operate through the criminal justice authorities, which are local authority agencies, I hope that, if amendment 66 is agreed to, it will be possible, on a voluntary basis to begin with and working with the courts and the offender, to pilot such orders.

The orders, which have not been tried anywhere else, are being promoted by Labour as an important diversionary measure and their importance can be seen in the fact that of the 45,000 or so male admissions to our prisons each year around 18,000 cite alcohol misuse as a factor in their offence but only 1,000 currently undergo formal alcohol programmes and only 400 complete them. We know of the high rate of reoffending, particularly in the younger age groups. Indeed, two thirds of young offenders cite alcohol, specifically alcohol that is fortified with caffeine, as a factor in their offence. ATTOs could be financed initially by the social responsibility levy, but in the longer term

they should, if successful, become a credible diversion from the current custody programme.

Amendment 67 is designed to underpin some concerns that have been expressed by the chief medical officer and the Government that foetal alcohol spectrum disorder and its full range of deficits have been neither sufficiently understood nor adequately identified and have not been a sufficient target for prevention. I believe that it is important to raise awareness of the range of damage that can occur through drinking in pregnancy.

I move amendment 57.

**Helen Eadie (Dunfermline East) (Lab):**

Although I support all of Richard Simpson's comments on the social responsibility levy, I point out that on 24 February the Subordinate Legislation Committee published its report on the Alcohol etc (Scotland) Bill, to which the cabinet secretary subsequently responded. On the levy, the committee had serious concerns about

"the appropriateness of using subordinate legislation for the purpose of establishing a social responsibility levy"

and questioned whether the issue had

"been adequately addressed by the Scottish Government."

Moreover, echoing Richard Simpson's points, the committee went on to say:

"The Bill and accompanying documents provide only limited information about the principles of the levy; the details of the policy are still being developed by the Scottish Government. As a minimum, the Committee would expect details of the levy, such as who is to be responsible for administering it, the basis on which liability to pay it will be determined, the maximum charge permitted, the implications for non-payment and any right of appeal to be set out in the Bill itself."

Finally, the Subordinate Legislation Committee drew to the

"attention of the lead committee"—

that is, the Health and Sport Committee—

"the evidence received from the Scottish Government regarding the proposed use of subordinate legislation for the purpose of establishing a social responsibility levy."

This committee expressed similar concerns. The Subordinate Legislation Committee, of which Ian McKee, Rhoda Grant and I are members, agreed that, depending on what happens at stage 2,

"Should the power remain in the Bill, the Committee will consider its scope again after Stage 2."

The Scottish Government simply noted the Subordinate Legislation Committee's views and its intention to revisit the scope of the power after stage 2. I am a little bit disappointed that the cabinet secretary and the bill team have not made a little more progress on this matter.

**The Convener:** I think that those comments are slightly off the actual amendments in question, but I will let them run. Your—

**Helen Eadie:** The point is still important.

**The Convener:** Please let me finish. Your point is that the power should be in primary legislation, not in subordinate legislation. That is more of a general point than a point that is specific to this group of amendments, and I ask other members to speak to the amendments. I am sure that Ross Finnie will do so.

**Ross Finnie (West of Scotland) (LD):** As a preliminary observation, I point out that when the general principles of the social responsibility levy were discussed and debated at stage 1 there was some agreement about the measure but also a great deal of reservation about its implementation and operation. I have to say that, now that we are well beyond stage 1, I am still concerned about those matters. In the light of the evidence that we have received, I simply find it difficult to see precisely how the levy will operate. The committee—and I—have probably made the cabinet secretary's task more difficult by not providing her with an additional source of revenue that she can tap; indeed, I might be anticipating her arguments in that respect.

As for the amendments, I wonder whether Dr Simpson or the cabinet secretary can help me with a query. I had assumed that, given the rather constrained nature of any levy under the Scotland Act 1998, it would have to be administered by the local authorities. If I am right—I stress the word “if”—although I can understand Richard Simpson's wish to include the health boards as being among the bodies that would benefit from the levy, I think that in the absence of a structure for allocating finances between local authorities and health boards, the whole measure could become unnecessarily bureaucratic. I agree with Richard Simpson that that would be unfortunate, but I think that it might turn out to be the fact. I would be grateful if either Dr Simpson or the cabinet secretary could clarify how the levy would be physically raised under the 1998 act, where any results of the levy would go and the complications, if any, of disbursing the money to different authorities.

**Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Health and Wellbeing):** Richard Simpson, Helen Eadie and, to a lesser extent, Ross Finnie have all made general points to which, with the convener's permission, I will respond as I deal with Richard Simpson's amendments.

On Richard Simpson's question about the approach to the social responsibility levy that is favoured by the Government, I hope that members

appreciate that I have paid very close attention to the committee's stage 1 report. It took a range of evidence on the issue and I took its conclusion, which Richard Simpson has accurately outlined, to be the approach that should be taken.

15:00

I have said before, and I repeat, that I am happy to accept the recommendation that the committee made in its stage 1 report, that the levy should be developed on a blanket basis, but with incentives to encourage or reward good practice. That leads to an important consideration on an important aspect of the development of the levy, which is what constitutes good practice. How should we define and measure good practice, and how should we reflect that in the application of the levy? As others have indicated, the licensed trade demonstrates good will in some respects through some of the national and local activities that it undertakes, and it is important that when we think that those efforts are genuine, we value them and do not undermine the work that is already under way. All that adds a layer of complexity to the considerations that we must undertake but, on balance, I agree with the committee's view that it is the right approach.

Therefore, we intend to hold further discussions with the alcohol industry and with the Convention of Scottish Local Authorities. It is our intention to endeavour to provide the committee with draft regulations before stage 3 to assist the Parliament with further consideration of section 10. The level of the levy, how much we would hope to raise from it and how that will be done are issues that will be finalised and decided on as we finalise the regulations. As with any regulations, we will carry out impact assessments and the committee will be able to scrutinise fully the detail of that when it scrutinises the regulations. It has always been our intention that the purposes of the levy should be set in primary legislation but that the detail should be dealt with in subordinate legislation. That approach not only allows us to get it right initially, but gives us the flexibility to refine the detail in the light of our practical experience of the levy in operation.

Members might be interested to know—I am sure that many of you already know—that that approach is very similar to the one that was taken with the Licensing (Scotland) Act 2005, when some 30 sets of regulations and orders were needed to put flesh on the bones of the principles in the primary legislation. Among the matters that those regulations dealt with were fee arrangements and fee levels, the powers to set which were included in the act.

In general, we all seem to agree that the concept of a social responsibility levy is right. We

all agree that people who sell alcohol and other licence holders—for example, those who serve the same night-time economy as the pub and club trade—should contribute to dealing with the harm that it causes. We still need to work on the detail, and I am keen that we continue to take the time to get that right.

I was not going to make the point that Ross Finnie invited me to make but, as he has invited me to make it, I will do so. If we had minimum pricing—on which I have not quite given up, as we have not had stage 3 yet—that would lead to an increase in revenue for the industry, as others have pointed out. It is clear that we would in some way want to attach a social responsibility levy to that revenue source. If we do not have minimum pricing, that revenue source will not exist and we will have to go back to looking at the issue in more general terms, but it is important that we get the detail right. I hope that that gives the committee a steer that I accept the general approach that the committee recommended, and that I am keen to ensure that we get the detail right.

Turning to the amendments in the group, amendment 64 seeks to extend the purpose of the levy so that it includes the funding of certain expenditure by health boards as well as by local authorities. I am sympathetic to the thinking behind amendment 64 and the associated amendments because we know that health boards play a major part in dealing with the consequences of alcohol misuse and overconsumption. In principle, I have no difficulty with the argument that it should be possible for the levy to be used by health boards to help to contribute to the costs of dealing with alcohol misuse, but once we get beyond that principle, we run straight into Ross Finnie's point.

The social responsibility levy is likely to be regarded as a tax rather than as a charge. If that is the case, to ensure that the levy does not breach the taxation reservation in the Scotland Act 1998, it will need to be a local tax to fund local authority expenditure. The levy need not be administered by local authorities, but it can be imposed only for the purpose of funding local authority expenditure, not to fund expenditure by other bodies. For that reason, notwithstanding my sympathy for the principle behind it, I cannot support or recommend support for amendment 64.

I do not object to amendment 65 in principle, but I do not consider it to be strictly necessary, as there is currently nothing to prevent the local authority from consulting the relevant health board on the expenditure to which the levy might be applied, provided that the levy is used only to fund local authority expenditure.

Amendment 66 would extend the purpose of the levy to include alcohol treatment and testing

orders. Scottish courts are already able, where they consider it to be appropriate, to impose probation orders that include a condition that the offender undergo alcohol treatment or education. That option is used extensively: more than 1,000 such conditions were imposed in 2008-09. Provision will also be made for those opportunities when the new community payback order is introduced under the Criminal Justice and Licensing (Scotland) Act 2010.

Amendment 64 would have no effect in allowing courts to impose alcohol treatment and testing orders, and does not even define what such an order would be. The amendment in isolation, without any legislative infrastructure to support it, would have no practical effect whatever, and I am unable to support it.

I sympathise with the sentiment behind amendment 67, but I do not believe that it is necessary to amend primary legislation in that regard. The Government has already undertaken scoping work on foetal alcohol spectrum disorder, and we will establish a working group across a range of policy areas to prevent alcohol-exposed pregnancies and to support affected individuals and families.

Although I have a great deal of sympathy with some of the amendments, I believe that they are not necessary, and that the amendments to allow health boards to spend any proceeds from the levy are outwith the Parliament's competence.

**Helen Eadie:** You said that the detail will be in the regulations that will return to the Parliament in due course, but you did not say—perhaps you are not in a position to do so just yet—whether those would be subject to negative, affirmative or super-affirmative procedure. It would be useful for the committee to know because, as you are aware, the possible scope of the external scrutiny and consultation depends on your answer.

**Nicola Sturgeon:** The regulations will be subject to affirmative procedure.

**Helen Eadie:** They will not be subject to super-affirmative procedure.

**Nicola Sturgeon:** As the bill stands, they would be subject to affirmative procedure, although obviously—without putting ideas in anyone's head—it is open to members to lodge amendments to different effect.

**The Convener:** I think that you have just put an idea in someone's head.

**Nicola Sturgeon:** I think I have; I will get into trouble for that.

**Dr Simpson:** The debate has been useful. We realise that the situation is complex, as my colleague Ross Finnie said, and we need to move



forward with our partners in industry, the licensing boards and the local authorities that would have to implement the proposals.

I understand the difficulty that amendment 64, which seeks to include the health boards, might engender, as it is local authorities rather than health boards that would have to be involved in the levy if it is to be a tax and not a charge. I appreciate that, and I will not move amendment 64.

However, I will move amendment 65, which states that the use of the funds should be

“in agreement with the relevant health board”,

unless it goes against the Scotland Act 1998. If that turns out to be the case, the amendment would need to be removed at stage 3 unless it is voted down by the committee today.

I welcome the cabinet secretary's comment about the conditions imposed through probation orders, but the conditions that would be imposed in an ATTO are somewhat different. The DTTOs are underpinned by specific legislation and—as I indicated—amendment 66 seeks to do the same for ATTOs in the bill. However, the convener decided, as it is her prerogative to do—

**The Convener:** With legal advice, I hasten to add; it was not decided willy-nilly.

**Dr Simpson:** I accept that it was entirely her prerogative, on advice, to act in the way that she did. On alcohol treatment and testing orders, we have made the point that within the current system of conditions, those orders could perhaps be tested in a much more specific way. I would be happy to provide the cabinet secretary with a much fuller description of exactly what would be involved, but it would build on the excellent work that has already been done in Glasgow in respect of supervised disulfiram distribution.

With regard to foetal alcohol spectrum disorder, I will make two points in respect of amendment 67. The first is that the syndrome had an original narrow definition of very high-level damage. We now know that much slighter damage can also be done by imbibing alcohol during pregnancy. I think that “muddled” is the best word for the advice that is given to those who are pregnant. It is suggested that there may be a safe level of consumption, because we do not know. I hope that we will get much clearer guidance on the matter. I accept, given that there is a working group, and in the light of the other work that the cabinet secretary has described, that amendment 67 is perhaps not necessary at this stage. We will examine the issue to see whether we come back to it at stage 3, but I seek leave to withdraw amendment 67.

**The Convener:** We have not reached that point yet.

**Dr Simpson:** I mean when we get to that point, convener.

**The Convener:** You are overtaking yourself.

**Dr Simpson:** I am.

I seek advice from the clerks on whether, if I did not press amendment 68, that would affect amendments 65 and 66.

**The Convener:** Amendment 68 is a definition. The answer is therefore yes.

**Dr Simpson:** Does it need to be left in?

**The Convener:** No.

**Dr Simpson:** It can be taken out, so I will not move amendment 68 when the time comes.

**The Convener:** Are you pressing amendment 57?

**Dr Simpson:** Yes.

**The Convener:** The question is, that amendment 57 be agreed to. Are we agreed?

**Members:** No.

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

#### For

Eadie, Helen (Dunfermline East) (Lab)  
Finnie, Ross (West of Scotland) (LD)  
Grant, Rhoda (Highlands and Islands) (Lab)  
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

#### Against

Grahame, Christine (South of Scotland) (SNP)  
Matheson, Michael (Falkirk West) (SNP)  
McKee, Ian (Lothians) (SNP)

#### Abstentions

Scanlon, Mary (Highlands and Islands) (Con)

**The Convener:** The result of the division is: For 4, Against 3, Abstentions 1.

*Amendment 57 agreed to.*

**The Convener:** Amendment 58, in the name of Mary Scanlon, is grouped with amendments 59, 60 to 62 and 69. I draw members' attention to the pre-emption information in the list of groupings.

#### **Mary Scanlon (Highlands and Islands) (Con):**

Given that the social responsibility levy is mentioned in the long title of the bill, I sought legal advice, which was that the levy cannot be removed from the bill. My amendments therefore seek to restrict the implementation of the provision on charging licence holders a levy. You will want it on the record, convener, that I dissented from certain paragraphs on the social responsibility levy in the committee's stage 1 report—I am sure that others will refer to that.

My amendments would restrict the scope of the social responsibility levy to licence holders convicted of a relevant or foreign offence, as

described in what was previously amendment 51. If the social responsibility levy were to be introduced, many trade organisations and others would favour a fault-based approach, which does not seek to punish the majority of responsible businesses who comply effectively with the law of this country. If a levy is to be applied, it should, in all equity, be directly attributable only to those premises licence holders who have been convicted of a relevant offence or a foreign offence under the Licensing (Scotland) Act 2005 and, in like manner, to the holders of street trader licences, public entertainment and late-hours catering licences who have been convicted of an offence under section 7 of the Civic Government (Scotland) Act 1982. As Richard Simpson said, there is undoubtedly a lack of clarity around the levy, which many in the hospitality industry claim will be very difficult to implement and it could lead to responsible licensees being punished.

15:15

It is also worth noting that 51 per cent of the responses received by the committee in evidence were in favour of the social responsibility levy and 49 per cent were against it. The committee and the Parliament have hardly received a ringing endorsement of a social responsibility levy.

I hope that the amendments will help to put greater emphasis on the enforcement of existing law, such as on the offence of selling alcohol to a person who is intoxicated—how often did we hear about that in evidence?

The Scottish Grocers Federation has raised concerns about the disproportionate effect of the levy on smaller shops and said that there ought to be a fault-based measure, rather than an indiscriminate blanket levy, which could send a dangerous message that no individual needs to be responsible for their own actions, because a blanket approach is being taken.

The hospitality industry is united in its opposition to what the cabinet secretary said was a tax on the industry. The latest edition of *Holyrood* magazine, which we received today, has done very well in reproducing a quotation from the *Official Report* of 16 November 2005:

"The measure is unenforceable ... impossible to interpret and implement ... it is punitive".—[*Official Report*, 16 November 2005; c 20730-1.]

That is what the Scottish Government's Minister for Community Safety, Fergus Ewing, said about a version of social responsibility levies when they were rejected by the Scottish Parliament in 2005. Nothing has changed. I invite my colleagues to reject the proposals for a blanket social responsibility levy today and in future.

Amendment 59 is a probing amendment on street vendors, which the Law Society of Scotland suggested. It would limit relevant licence holders to holders of premises licences or occasional licences granted under the 2005 act. The Law Society questions whether holders of licences other than premises licence holders can reasonably be called on to contribute to the social responsibility levy that is proposed to meet or contribute to expenditure incurred or to be incurred by any local authority in furtherance of the licensing objectives and which the authority considers necessary or desirable with a view to remedying or mitigating any adverse impact on those objectives attributable, directly or indirectly, to the operation of the businesses of relevant licence holders in the authority area. The Law Society notes that the relevant licence holders referred to at sections 10(2)(b), (c), and (d) of the bill are not at present subject to the licensing objectives that are contained only in section 4 of the 2005 act.

I move amendment 58.

**Ross Finnie:** I have a difficulty with Mary Scanlon's intention. It is legitimate to have an argument about whether you have a social responsibility levy. However, the effect of introducing a provision that seeks to restrict it by reference to criminal behaviour is to change the levy from a social responsibility levy to a criminal reparation levy. The two things are entirely different. I understand the need to apply the law as it stands, but if the relevant authorities believe that the way in which a licensed premises is operating gives rise to increased levels of criminal behaviour, it seems to me that the remedy lies in going to the licensing board and either having the licensee dealt with or having the licence removed.

I am not persuaded that turning the levy into a criminal reparation levy is the right approach. However, given my earlier comments, that is not to say that I am entirely satisfied with how the levy might operate. I remain unconvinced about the whole concept and welcome the cabinet secretary's offer to produce a draft of the regulations before stage 3.

Let us make it clear that even with a social responsibility levy, you do not have to be guilty of an offence to contribute to improving the way in which we address the alcohol problem. If it is only to be left to those of a criminal disposition, we have the wrong idea of what a social responsibility levy is about.

**Dr Simpson:** I agree with much of what Ross Finnie has just said. Amendment 58 changes the levy into a punitive levy, which is radically different from a social responsibility levy.

We should establish as far as we can, in regulations or in guidance, that the intention should be one of co-operation with retailers and industry. A number of them are already contributing.

As I said earlier, Canada has a proven track record. In Canada, a partnership with industry allows measures to be implemented in such a way that attitudes to alcohol improve radically. That is the exact opposite of what is being proposed here. In Canada, it is not a punishment. It is a tax, though. It will allow those whose programmes the local authority approves and adopts, to continue. On the other hand, those who have not contributed in the past or have no intention of contributing to such programmes will simply be able to pay the levy and allow the local authority to undertake the programme.

The only thing that I would add is that while I welcome the cabinet secretary's undertaking to provide more detail before stage 3, I hope that that will be in time to allow us to lodge amendments, if that proves to be necessary.

**Nicola Sturgeon:** I agree with Ross Finnie and Richard Simpson. The amendments seek to limit the scope of the social responsibility levy in a way that is unacceptable. They seek to change its entire nature and completely fly in the face of the clear recommendation of the committee, although I appreciate Mary Scanlon's frankness about her intention.

Amendment 59 seeks to provide that the levy can be imposed only on holders of premises licences and occasional licences if they relate to the sale of alcohol. However, the point has already been made that other businesses that are open late at night, such as takeaways, contribute to the night time economy and may also contribute to antisocial behaviour and disorder. Along with pubs and clubs, such businesses have an impact on the policing of town and city centres. We should not remove the possibility of those businesses being part of any social responsibility levy arrangements.

Amendments 58, 60, 61, 62 and 69 all limit the scope of the levy by applying it only to those licence holders who have been convicted of certain offences. In that regard, I could not put it better than Ross Finnie so I simply align myself with his remarks. The amendments completely change the nature of the levy and it is not an approach that was recommended by the committee at stage 1.

As I said in relation to the previous group, I gave careful consideration to the committee's recommendation that a blanket approach should be taken to the imposition of the levy, with reductions in the amount of the levy for those who demonstrate good practice. That is my favoured

option, although we need to work on the detail of that. If the committee were to agree to any of the amendments, it would seriously undermine our intentions in that regard. I invite the committee to reject the amendments.

**Mary Scanlon:** The cabinet secretary did not respond to amendment 59. Does she have any comments on that amendment?

**Nicola Sturgeon:** With respect, I did respond. Amendment 59 seeks to limit the levy to premises where licensees are selling only alcohol, which does not take account of takeaways and so on that also contribute to the night time economy.

**Mary Scanlon:** Okay, that is fine. Sorry about that.

I repeat that 51 per cent of evidence submissions were in favour of the levy and 49 per cent were against it and that, although the majority of committee members signed up to the recommendations on the levy in the committee's stage 1 report, I dissented. First, we do not have sufficient information about the levy. Secondly, we are talking about a blanket approach, which the whole industry says will be harmful to responsible licensees.

My amendments seek to consider a fault-based system. Ross Finnie made the good point that the remedies should lie with licensing boards. I said in my comments that I hoped that the amendments would lead to better enforcement of existing laws.

Richard Simpson made the point that amendment 58 changes the levy to a punitive levy. The proposal is to change it to a fault-based system that would be punitive for irresponsible licence holders. There is undoubtedly a lack of clarity and detail on all the measures relating to the social responsibility levy.

**The Convener:** The question is, that amendment 58 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Scanlon, Mary (Highlands and Islands) (Con)

**Against**

Eadie, Helen (Dunfermline East) (Lab)

Finnie, Ross (West of Scotland) (LD)

Grahame, Christine (South of Scotland) (SNP)

Grant, Rhoda (Highlands and Islands) (Lab)

Matheson, Michael (Falkirk West) (SNP)

McKee, Ian (Lothians) (SNP)

Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

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

*Amendment 58 disagreed to.*

*Amendments 59, 60, 61 and 62 not moved.*

*Amendment 63 moved—[Dr Simpson].*

**The Convener:** The question is, that amendment 63 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Eadie, Helen (Dunfermline East) (Lab)  
Finnie, Ross (West of Scotland) (LD)  
Grant, Rhoda (Highlands and Islands) (Lab)  
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

**Against**

Grahame, Christine (South of Scotland) (SNP)  
Matheson, Michael (Falkirk West) (SNP)  
McKee, Ian (Lothians) (SNP)

**Abstentions**

Scanlon, Mary (Highlands and Islands) (Con)

**The Convener:** The result of the division is: For 4, Against 3, Abstentions 1.

*Amendment 63 agreed to.*

*Amendment 64 not moved.*

*Amendment 65 moved—[Dr Simpson].*

**The Convener:** The question is, that amendment 65 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Eadie, Helen (Dunfermline East) (Lab)  
Finnie, Ross (West of Scotland) (LD)  
Grant, Rhoda (Highlands and Islands) (Lab)  
Scanlon, Mary (Highlands and Islands) (Con)  
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

**Against**

Grahame, Christine (South of Scotland) (SNP)  
Matheson, Michael (Falkirk West) (SNP)  
McKee, Ian (Lothians) (SNP)

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

*Amendment 65 agreed to.*

*Amendments 66 and 67 not moved.*

*Amendment 68 moved—[Dr Simpson].*

**The Convener:** The question is, that amendment 68 be agreed to. Are we agreed?

**Members:** No.

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

**For**

Eadie, Helen (Dunfermline East) (Lab)  
Finnie, Ross (West of Scotland) (LD)  
Grant, Rhoda (Highlands and Islands) (Lab)  
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

**Against**

Grahame, Christine (South of Scotland) (SNP)  
Matheson, Michael (Falkirk West) (SNP)  
McKee, Ian (Lothians) (SNP)

**Abstentions**

Scanlon, Mary (Highlands and Islands) (Con)

**The Convener:** The result of the division is: For 4, Against 3, Abstentions 1.

*Amendment 68 agreed to.*

**The Convener:** Amendment 24, in the name of the minister, is grouped with amendments 25, 26, 26A and 70.

**Nicola Sturgeon:** I have already made general comments this afternoon about our intention to have the principles and the broad purposes of the social responsibility levy in primary legislation, and to deal with the detail in regulations. The amendments make further provision in respect of the levy.

Section 10 sets out those licence holders on whom the levy may be imposed, states the purpose of the levy and makes it clear that the levy can be used only to contribute to expenditure by local authorities connected with the licensing objectives.

Amendment 24 sets out the licensing objectives in the bill. Amendment 25 would remove the definitions of “local authority” and “area” in relation to a local authority from section 10(5) of the bill because those definitions are now contained in the Interpretation and Legislative Reform (Scotland) Act 2010 and do not need to be repeated here.

Amendment 26 will require ministers to consult representatives of licensing boards, local authorities and licence holders about who could be subject to the levy, before they lay draft regulations that relate to the levy before the Parliament.

15:30

On amendment 26A, I have no objection in principle to health boards also being consulted on draft regulations on the levy. However, I ask Richard Simpson to consider not moving the amendment, so that we can lodge another amendment on the matter at stage 3, because if amendment 26A were agreed to it would leave amendment 26 with cumbersome and unhelpful wording. It would be better to tidy the matter up before stage 3. I hope that Richard Simpson will agree not to move amendment 26A on the basis of my assurance about the principle.

On amendment 70, in Mary Scanlon's name, I am mindful of the economic conditions and I have always said that the prevailing economic conditions will need to be factored into decisions about the timing of the introduction of a levy. The

Government is mindful of that, but it is not necessary to set out in primary legislation the artificial and arbitrary date of 1 September 2014 as the earliest date that regulations on a levy could be made, which is the purpose of amendment 70. Such an approach would overly tie the Parliament's hands and remove flexibility in relation to decisions about the introduction of a levy.

I move amendment 24.

**Dr Simpson:** I thank the cabinet secretary for agreeing that the principle behind amendment 26A is good. I note that paragraph (b) of the new subsection that would be introduced by amendment 26 provides that the Scottish ministers must consult

“such other persons (if any) as they think appropriate.”

However, it would be helpful if health boards were specified in some way. I look forward to working with the cabinet secretary's team to come up with an appropriately worded amendment at stage 3. Convener, I give notice that I will not move amendment 26A—just to help you along.

**The Convener:** That was a bit patronising, but I will let it pass. I am in a good mood—so far.

**Mary Scanlon:** We are all in a good mood, because we are discussing the final amendment in a long, long list.

It is strange to talk to amendment 70, given that the cabinet secretary has provided an answer on it. Amendment 70 is a probing amendment and I am sure that the cabinet secretary understands that the approach was suggested by the industry, in particular the Wine and Spirit Trade Association and the Scottish Grocers Federation. The idea was to allow small shops in particular to come to terms with the implementation of the Licensing (Scotland) Act 2005, which came into effect in September, and to take account of the economic downturn, so that people would not face additional costs at such a time.

I think that I am right in saying that the cabinet secretary has given a commitment to work with the industry in future and to come to an agreement on a date for implementation, whether a levy is introduced for small and large shops at the same time or another approach is taken. Given her commitment to work with the industry, I see no need to move amendment 70, when the time comes.

**The Convener:** That was discreetly put. I invite the cabinet secretary to wind up the debate.

**Nicola Sturgeon:** I think that I have said all that I need to say to allow the committee to draw stage 2 to a close.

*Amendment 24 agreed to.*

*Amendment 25 moved—[Nicola Sturgeon]—and agreed to.*

*Amendment 69 not moved.*

*Section 10, as amended, agreed to.*

### **Section 11—Regulations under section 10(1): further provision**

*Amendment 26 moved—[Nicola Sturgeon].*

*Amendment 26A not moved.*

*Amendment 26 agreed to.*

*Amendment 70 not moved.*

*Section 11, as amended, agreed to.*

*Sections 12 to 14 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill.

*Meeting closed at 15:35.*

**Note:** columns 3523 to 3556 are intentionally blank.



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