



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Wednesday 22 September 2010

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HEALTH AND SPORT COMMITTEE
26th 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:

Jackie Baillie (Dumbarton) (Lab)

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

CLERK TO THE COMMITTEE

Douglas Wands

LOCATION

Committee Room 1

Scottish Parliament

Health and Sport Committee

Wednesday 22 September 2010

[The Convener *opened the meeting at 09:30*]

Alcohol etc (Scotland) Bill: Stage 2

The Convener (Christine Grahame): Good morning and welcome to the 26th 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.

Item 1 is day 1 of consideration of amendments to the Alcohol etc (Scotland) Bill at stage 2. Members have a copy of the marshalled list and the groupings of amendments for debate.

I welcome the Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon.

Section 1—Minimum price of alcohol

The Convener: Amendment 2, in the name of the cabinet secretary, is grouped with amendments 3 to 5, 1, 6 and 7.

The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon): I apologise in advance for my relatively lengthy opening remarks as I attempt to address all the amendments in the group.

Amendments 3 and 5 are technical amendments that address a point raised with us by the Scottish Government alcohol industry partnership. The Food Labelling Regulations 1996, which implement European Union law, require certain prepackaged alcoholic drinks to be labelled with what is referred to as the declared alcohol by volume. The declared ABV of a product is the strength shown on the label, which may be slightly different from the actual strength of the product. For example, a declared ABV of 12 per cent on a bottle of wine means that the actual strength of the wine lies between 11 and 13 per cent, as positive and negative tolerances of plus and minus 1 per cent are permitted for wine.

The amendments have the effect that in calculating the minimum price of alcohol to which regulation 30 of the 1996 regulations applies, the strength of alcohol is to be the declared ABV. The amendments do not change the policy intention or the substance of the bill; they simply respond to a request from the industry that we put it beyond doubt that the declared ABV required by the

regulations must be used as the strength of alcohol when calculating the minimum price.

Most drinks have the ABV shown on the container, so determining the strength of alcohol will be straightforward. For drinks with a number of alcoholic elements, such as cocktails, the strength of each alcoholic drink and the minimum price of each alcoholic drink will have to be calculated in order to calculate the minimum price of the whole drink.

I invite the committee to agree to amendments 3 and 5, which are straightforward points of clarification.

Amendments 2 and 4 respond directly to the recommendation in the committee's stage 1 report that a price should be included in the bill.

During stage 1, the committee had before it detailed modelling that showed the likely effect of a range of minimum prices. On 2 September I advised the committee by letter that I would lodge an amendment to include a price of 45p per unit in the bill. That letter, and the document that accompanied it, set out the likely impact of a 45p per unit minimum price and the reasoning behind our view that that price complies with European law.

A minimum price of 45p per unit is likely to achieve significant benefits when compared with other interventions, including lower minimum prices. For example, the health benefits that would likely arise from a 45p minimum price are in many cases double those for a 40p minimum price. In the first year, a 45p minimum price would likely see benefits of 50 fewer deaths from alcohol-related harm; 1,200 fewer hospital admissions; 400 fewer violent crimes; 23,000 fewer days' absence from work; a £5.5 million reduction in health care costs; and a £52 million reduction in total harm in terms of health, crime and employment. After 10 years, those benefits would be expected to increase significantly.

The group most likely to be affected by a 45p minimum price is the harmful drinker category, whose consumption is estimated to reduce by 7.9 per cent, with an additional cost of £116 per year. By contrast, moderate drinkers are estimated to reduce their consumption by 2 per cent, with an additional cost of only £8 per year.

I know that the committee has shown interest in the potential effect of minimum pricing on those on low incomes. I want to reiterate that analysis of Scottish health survey data shows that those on low incomes are most likely to drink nothing, very little or very heavily. In the first two instances, they will either not be affected at all or will be affected in only a very small way, and in the last instance, they will be affected, but that is because they are drinking heavily.

On the issue of legality, I consider that a minimum price of 45p per unit complies with European law and I have already set out details of that in my letter.

I am aware that some members have sought to highlight in a negative way that minimum pricing would raise extra revenue for the alcohol industry. Some have referred to a figure of "£140 million for supermarkets." That is a complete misrepresentation of the modelling. The modelling shows a potential increase of £67 million for the entire off-sales sector, including supermarkets, convenience stores and corner shops, and £37 million for pubs. Those who use those figures to help to justify their opposition must also accept the figures for the lives saved and harm reduced, because they come from the same model. With such modelling, it is completely illogical to accept some figures but reject others.

Some members have expressed the perfectly valid view that modelling is not evidence. That is true, but we should be careful not to diminish or doubt the value of econometric modelling in policy development. The Sheffield modelling is well respected internationally, has been peer reviewed and is accepted as a tried and tested way of assessing the likely impact of a new policy.

It is worth repeating that the international evidence shows that one of the most effective measures of reducing alcohol consumption and harm is taking action on affordability, and that is what a minimum price does. The Scottish Parliament can implement a 45p minimum price and put in place now the provisions required to help tackle our alcohol problem.

Of course, minimum pricing is only one part of a package of measures in our alcohol framework that we have introduced to tackle alcohol misuse. However, we must acknowledge that the low price of high-strength alcohol is now part of our culture that has to be changed, and that cannot be tackled without addressing price.

The price that we have brought forward in an amendment to the bill would reduce consumption and harm; affect mostly high-strength, low-price drinks, not premium brands; and impact mostly on harmful and hazardous drinkers, not moderate drinkers. It is proportionate, efficient, effective and deliverable and it complies with European law.

Some members have said previously that they cannot take a view on minimum pricing without knowing the price. I hope that amendment 2 helps, alongside amendments 6 and 7, which I will come on to, which provide for a sunset clause.

The sunset clause responds to concerns from some members that minimum pricing has not been tried anywhere else, which means that there can be no specific evaluation of the impact of minimum

pricing as proposed. I find it disheartening that some colleagues feel that we cannot be the first to try a new approach and that we must stand back and wait for someone else to pursue an action before doing something ourselves. The scale of our problem means that we need to take action now that will address the affordability of alcohol and lead to reductions in consumption and harm.

However, I recognise the concerns that were expressed by some members of the committee and I am therefore happy to propose a robust and comprehensive sunset provision. Amendment 6 will mean that minimum pricing ceases to have effect six years after it comes into force unless the Scottish ministers and Parliament agree that it should continue. Amendment 7 will require the Scottish ministers to evaluate the effect of minimum pricing five years after it comes into force and to report that to Parliament. Given the robust nature of the modelling and the unequivocal evidence of the link between price and consumption and harm, I am confident that the evidence will prove to be that minimum pricing is effective and efficient.

The committee will be aware that the Sheffield modelling estimated the likely impact of minimum pricing after one year and after 10 years. Ideally, amendment 6 would allow for a 10-year period in order to be consistent with the modelling. However, I appreciate that that may be too long a timeframe for some and I therefore propose that minimum pricing will expire after six years of being in force, by which time ministers and Parliament will be able to take a decision on whether it should continue.

Amendment 7 will require ministers to present to Parliament a report on the operation and impact of minimum pricing. The report will consider five years of minimum pricing being in place, which will provide sufficient time for the impact of the policy to be seen. The report will have to include information on the effect on the licensing objectives, for example protecting and improving public health and reducing crime and disorder; the effect on premises licence holders, such as the pub trade, retail sector and wider licensed trade; and the impact on alcohol producers.

I consider this to be a fair and reasonable way in which to introduce a new policy and, hopefully, overcome what appears to be a stumbling block for some members. My suggestion to the committee is simple: let the policy run for six years, let ministers come back after five years with evidence of what impact it has had, and then take a decision on whether it should continue or be scrapped.

I turn to amendment 1, in the name of Mary Scanlon. Against the backdrop of robust international evidence, detailed modelling, a

specific price in the bill and the amendments on a sunset clause, amendment 1 represents a disregard for the health and wellbeing of the people of Scotland. Mary Scanlon is asking the committee to put aside the potential benefits of a minimum pricing policy without presenting any credible alternative. She fails to accept that minimum pricing would be effective, efficient, targeted and proportionate, and that it would make a real impact on consumption and harm.

We have heard arguments that minimum pricing would be a blanket approach that would hit moderate drinkers. That is not the case. Various reasons have been suggested for not trying minimum pricing, including cross-border purchasing. Will people travel to England to buy cheaper alcohol? The saving on alcohol needs to be balanced with the time and money spent on getting to places such as Carlisle.

From the start of this process, we have said that we are open minded to other suggestions about how we can address the pricing issue and reduce consumption and harm. However, we are considering the bill at stage 2 and no other credible and workable alternatives have been proposed. If amendment 1 is agreed to, the committee will send a clear message to the people of Scotland that party politics are more important than public health.

Pricing interventions are supported by clear evidence. Our proposal is supported by comprehensive, robust modelling. It is likely that we would start to see the benefits of the policy in year 1. We have offered a sunset clause to reassure those who remain sceptical. If we are wrong, minimum pricing would end. If our opponents are wrong, it would continue.

I ask the committee to support the amendments in my name and to reject amendment 1.

I move amendment 2.

Mary Scanlon (Highlands and Islands) (Con): Since the Scottish National Party came to power as a minority Government, we have faced many difficult decisions, but no one could accuse the Scottish Conservatives of bringing party politics into those decisions. That would apply to our support for the SNP Government's budget over the years. Nicola Sturgeon's comments, therefore, are not what we have come to expect from her.

No one in Scotland can be in any doubt about the worrying levels of alcohol consumption but, as parliamentarians, it is our duty to scrutinise evidence and decide whether the measures proposed will address the problem that Scotland faces. The evidence base for minimum pricing shows that it has not passed the test of reducing alcohol consumption. Minimum pricing would penalise responsible drinkers, harm the Scottish

whisky industry and cost jobs. It is still questionable whether it complies with European law. As the cabinet secretary has said, it has been likened to the weather forecast, and anyone who lived in the Highlands last year will have little faith in that.

The Conservatives accept that there is a relationship between price and alcohol consumption, but we reject the proposals for minimum pricing. As we have consistently said, alongside banning the sale of alcohol below cost price, the most effective method is to target problem drinks with extra tax and duty on a United Kingdom-wide basis. That would avoid responsible drinkers being penalised, would be more effective at reducing consumption and would stop the undoubted proliferation in cross-border and internet sales.

There is no doubt that minimum pricing affects people on the lowest incomes most. Some problem drinks will be unaffected by the measure, and other drinks, such as whisky, will increase in price, proving that the SNP policy of blanket, indiscriminate minimum pricing is a blunt instrument. Far better that we target problem drinks and target help at problem drinkers than that we cost sensible consumers extra millions of pounds per year. As others have said in the committee, the majority of the extra revenue would go to retailers and producers, unlike a tax, which would bring revenue to the public purse at this difficult time for the economy.

09:45

Common sense, economics and public opinion have all called time on the minimum price, and I have lodged amendment 1 to scrap the SNP's blanket minimum pricing policy. My view is supported by many in the industry, such as Whyte & Mackay, the Scottish Beer and Pub Association and the Scottish Grocers Federation, as well as producers and retailers such as Morrisons and Sainsbury's. I hope that it will be supported by other members.

With regard to the sunset clause that is proposed in amendments 6 and 7, frankly, a lot of damage could be done to Scottish businesses in six to seven years and we are not willing to take that risk.

In the Sheffield study, there is no evidence on the substitute effect, which would undoubtedly come into play as a result of the minimum price. There is also no evidence on cross-border sales or sale over the internet, which is the fastest-growing means of buying alcohol. There is no evidence on the effect of a minimum price on binge drinkers, and there is no evidence on the effect on people on low incomes. However, there is evidence from

Finland that, when the price falls, demand for alcohol increases and that, when the price rises, consumption remains the same. I have heard nothing today, in evidence—both oral and written—or during our visits to Finland and France that tells me that a minimum price would reduce the level of alcohol consumption. Therefore, I stand by my amendment.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I started the process by acknowledging, along with all other members, that Scotland had a serious problem with alcohol—a problem that was growing. The Labour Party, along with our Liberal Democrat partners, began looking for change in 2001, with the Nicholson review. Arguably, that review of the licensing laws of Scotland, which resulted in the Licensing (Scotland) Act 2005, created many new approaches. The act was implemented in full only in September 2009, and it is generally agreed that we may yet see more beneficial effects. There are amendments that we will consider to strengthen that.

In relation to the proposed sunset clause, I refer to the most recent annual report of the registrar general for Scotland, which shows a substantial and sustained downward trend in male alcohol-related deaths that has occurred against a background of little change in price or consumption. That welcome trend came alongside the evidence that was presented to the committee about price effects. We accept the World Health Organisation assertion that price and availability are important factors in determining alcohol consumption. The evidence also included the important literature review by the University of Sheffield that was the first part of that study. Particularly important were its references to the two meta-analyses and to a number of the 400 published papers that the authors reviewed and analysed in detail.

The evidence that was reviewed separately by Labour's alcohol commission also began from the premise that price matters. What became clear in that commission's report and in the evidence that was presented to the committee is the fact that the issue of price is complex. There is no simple relationship between price and consumption, or between consumption and health harm. The strongest evidence that we received—on which, I believe, we can all agree—is that price reduction is followed by an increase in consumption. As Mary Scanlon has said, that was most strikingly demonstrated in Finland, which the committee visited. The big reduction in tax in Finland was followed by a substantial rise in consumption, especially in men aged between 45 and 55, with evident harmful results. When Finland increased the price, however, that was not accompanied by an equal and opposite reduction in consumption or harm. The French increased the tax on white

spirits, but that did not produce the expected decrease in white spirit consumption. Indeed, white spirit consumption has increased. The French tax on wine, on the other hand, has remained stable but wine consumption in France continues to decline steadily.

The complexity of the pricing issue does not end there. Twenty years ago, France had the greatest rate of harm and deaths from alcohol in the European Union. At that time, consumption was 18 litres of pure alcohol per capita annually. Today, the level of consumption in France is equal to ours at 12 litres per capita annually, yet the rate of alcohol-related deaths in France is half the rate in Scotland.

A final point about price being a complex and not a simple issue—which is perhaps the most important point of all to us here in Scotland—is that although there is equality of pricing across the UK, consumption in Scotland is 25 per cent higher.

Today, the Government has argued, as it has done over the past 14 months or so, that minimum unit pricing is evidence based, but if it examined the literature review, it would have to accept that there is only one study that supports such a policy. That study was conducted in an aboriginal culture that is totally different from ours and in a community where there were no supermarkets. Revealingly, Australia did not adopt MUP as its solution to its growing alcohol problem.

If the Government is honest, it must accept that what it has claimed repeatedly in front of us and ad nauseam in the chamber to be evidence is the University of Sheffield's econometric modelling study alone, which is untested, untried and not free from criticism of its assumptions. All the clamour of supporting voices, many of which represent overlapping groups, simply amounts to opinion and the expression of a hope and a belief that Sheffield is right. Not one new piece of evidence has emerged.

However, there is no doubt that the Sheffield study has some merit; it has been peer reviewed. Nevertheless, it is still a model, and if the assumptions are changed, as we have seen in the revised version of the study, the outcomes can be very different. One would have expected the retrospective application of real data to the most recent model to have made its validity clearer, but that has not happened. The model has not predicted the decline in the number of alcohol-related deaths that we are now seeing.

The main author was very straightforward and honest with the committee when she said that although Sheffield's study was acknowledged to be the best of its kind, it was, in making its predictions, still like a weather forecast. The Labour alcohol commission was also very

straightforward and honest in saying that although it had found no evidence for MUP other than the Sheffield model, it was uncertain that a floor price of duty plus VAT plus the cost of production—which is the alternative proposal that the Labour Party has been considering—would have much effect without an increase in taxation. However, the commission was clear that the main merit of floor pricing was that it would address some of the main criticisms of MUP.

For MUP to be credible, it must be effective across all income groups; it must be fair; it must be effective across all age groups but especially younger drinkers; it should not have any harmful or unintended effects; it should have the greatest effect on harmful drinkers and the least effect on moderate drinkers; any profit from it should accrue to the community, not to the producers or the retailers; and it must have the certainty of being legal. Does MUP meet all those criteria in the theoretical untested model that we are being asked to sign up to?

Let us deal first with income groups. We have a problem in our community in that the more income we have, the greater the proportion of us who will be hazardous drinkers, so if we are to change our consumption patterns, we need to change them for all hazardous drinkers, not just some.

An MUP of 45p would have the greatest effect on the lowest 30 per cent, by income, of households. Anne Ludbrook's histogram of purchasing patterns by income decile—that is, each 10 per cent of the population, by income—shows that the poorest 30 per cent of the population would purchase cheap alcohol the most at an MUP of 30p, would purchase it less at an MUP of 40p and would purchase it the least at an MUP of 50p, whereas the richest 30 per cent of the population would purchase cheap alcohol the most at an MUP of 50p, would purchase it less at an MUP of 40p and would purchase considerably less of it at an MUP of 30p. The proportion of hazardous drinkers increases as we rise up the income groups, but people in higher income groups would be much less affected by MUP because the better-off are much more likely to substitute or switch. That deals with the first criterion.

The second criterion is whether the proposal will be fair. A pensioner couple who consume between them one standard bottle of own-brand vodka a week—that is 26 units between them—are well within the moderate range and under the maximum of 35 units a week. That couple, who might live on an income of less than £200 a week between them, would face an MUP tax of £200 per annum. For them, a reduction in consumption might be an unfair economic necessity imposed by the provision.

It is common sense that, the better-off one is, the less likely one is to be affected by a minimum unit price. Whether to switch products will be a matter of choice.

A view that has been expressed repeatedly to me, although it was not expressed in evidence, is that, even if the proposal hits the poorest much harder, that will not matter as long as it works, because many more alcohol-related deaths occur in the lowest two socioeconomic groups—groups 6 and 7. That is true and, indeed, the number of deaths has increased more in those groups in the past decade than it has in groups 1 to 4.

However, in my experience as an addiction psychiatrist, I have rarely seen an alcoholic death in which the individual did not start drinking when they were in a higher socioeconomic group than the group that they were in when they died. Such people lose their jobs, their families and their homes. They drift steadily downwards into the socioeconomic group in which they die.

Therefore, whereas any price rise would be regressive, minimum unit pricing is highly regressive. To be frank, it is unfair.

Which age groups have the greatest proportion of hazardous drinkers? The evidence is clear: the 18-to-24 age group has the most hazardous drinkers and the numbers decline steadily with each age group, until the eldest group, which has the fewest drinkers and the fewest hazardous drinkers. Will minimum unit pricing have its greatest effect on the 18-to-24 age group, which has the most hazardous drinkers, as we want it to? Sheffield says that it will not—at an MUP of 40p, the average reduction in consumption in the whole population will be 2.3 per cent, but the reduction among 18 to 24-year-olds will be only 0.6 per cent. That is another test failed.

What about harmful effects? The Labour alcohol commission heard that criminal gangs would be likely to exploit a price difference between Scotland and England if they regarded that as worth their while. A price difference between Scotland and England could have the consequence of increased criminal activity.

What about unintended effects? The committee received evidence that home brewing increased after price hikes were imposed in Canada and Sweden. Creating a significant price difference across borders has effects, as we have seen between Northern Ireland and Eire, between Finland and Estonia and at times—it depends on the euro rate—between the south of England and France.

A price difference between Scotland and England could have an effect across the Scottish border. White van man could perfectly legally take orders for vodka from purchasers in Scotland and

go to England to purchase that vodka. The price per bottle of own-brand vodka will increase by £3.80 in Scotland. White van man could share the windfall with the purchaser by keeping £2 to himself and giving the purchaser a £2 discount on their perfectly legally purchased alcohol. He would not be selling the alcohol to them—they would purchase it in advance. Fifty cases could make white van man a profit of £1,200 per trip—all perfectly legally.

As Mary Scanlon said, the Government has given us no information about the likely effect on internet sales. It would be perfectly legal to order a delivery from England, and such sales are growing fast.

Sheffield says—rightly—that it could not take into account any of those elements in its modelling and it called for more work on them and on profits, to which I will come shortly.

What about those who will be affected? We have seen that the effect will vary with income and with age. Some published studies contain evidence that suggests that harmful drinkers—the main group whom doctors all want to tackle and whom we as a society most want to tackle—are less price sensitive.

10:00

Even the children's organisations, which have given qualified support to minimum unit pricing, have qualified their support with concerns about the effect on children in households with harmful drinkers. We received a late submission from the grandparents' organisation, saying exactly that in its opposition to minimum unit pricing.

Public health doctors want a minimum unit price of 60p, not 45p, as 60p is most likely to have the effects that they seek. Other doctors have suggested 50p. Will 45p be effective, considering that those eminent opinion formers wanted a higher level?

There is also the matter of profits to retailers, to which the cabinet secretary has referred. There is no doubt that minimum unit pricing will produce financial gain for the industry, producers and retailers. The division of that gain might be a matter for discussion, but the majority of it will go to off-sales retailers. Some of it will arise as a result of ending discounting—and some of it can be recouped should the bill contain social responsibility levy provisions that we can actually understand and make work. However, tens of millions of pounds will not go to the community. The Sheffield report is silent on the issue. The researchers indicate that they have not been able to do market studies. The only thing they say is that market response has not been examined.

Turning to the issue of legality, the imposition of minimum unit pricing will undoubtedly be challenged in the European Court of Justice, and that challenge might be successful. I do not propose to go into the whole debate or all the evidence that we have received on that, but it has been substantial. We will see.

I regret that we have concentrated almost all our efforts and energy on discussions about the minimum unit price. On a number of occasions in the chamber, I have contrasted the Scottish Government's approach on drugs with its approach on alcohol. On drugs, the Government consulted before the publication of its proposals, and it achieved a rare degree of cross-party consensus. On alcohol, the Government produced a flagship policy of minimum unit pricing without prior consultation, and it has pretty well ordered us to take it or leave it, attacking us—certainly the Labour Party—for not deciding immediately, when we wanted time to consider the issue.

After six months we rejected minimum unit pricing, following our consideration, which included some of the best-attended private briefings that I have seen since first being elected to the Parliament. Following that, however, there was no debate—there was simply an attack on us for being party political. Cabinet Secretary, that is not an acceptable debating point.

I ask the committee to support Mary Scanlon's amendment 1, to delete section 1. If that is successful, I call on the Government to discuss alternative pricing approaches to tackling Scotland's problem with alcohol.

I turn to the sunset clause. In 2009, the most significant change in the annual report of the registrar general for Scotland was a continuing and dramatic decline in alcohol-related deaths among men. That has received very little publicity, yet, along with a stabilisation in the number of deaths of women, following a rising trend for many years, that reduction of 20 per cent among men, which is almost 200 fewer deaths, demonstrates that something is already happening.

The combination of the new licensing laws and the continuing debate that we have been having since 2001 might have been assisting with those changes. They are real, they have continued for a number of years and the decline is dramatic. The question that concerns the sunset clause is how we could ever assess the impact of the differing variables, including the minimum unit price. In year 1, it is expected that 50 fewer lives would be lost. That figure would be lost in the background noise if the current trend continues. If the UK Government raises duty, as I believe it should and must, that will make interpretation even more difficult.

We already know that there will be an increase in VAT in January next year. We also know that reduced income resulting from unemployment, and the impending benefit cuts that are to be imposed by the coalition, along with tax rises, will all have to be factored in, because they are likely to produce reductions in consumption.

I am against minimum unit pricing and will not vote for the sunset clause. I apologise for taking so long—I have never before made a speech of this length at stage 2.

The Convener: I have no wish to suppress submissions from members. However, where members agree with something that another member has just said, it would be helpful if they merely indicated that they support it. That will allow us to hear more.

Helen Eadie (Dunfermline East) (Lab): I support everything that Richard Simpson and Mary Scanlon have said in connection with amendment 1. As we have heard, both the cabinet secretary and the committee have considered two University of Sheffield studies. The committee has not been persuaded by those reports, although there is absolute consensus on the scale of the alcohol problems that challenge us in Scotland.

A policy of minimum pricing for alcohol is wrong first and foremost because, as Richard Simpson said, it will impact disproportionately on poorer people in our communities and, at the same time, put £144 million into the pockets of business. The cabinet secretary said that the figure is £67 million, but the fact is that the policy will put money into the pockets of businesses and not into the pockets of people in our communities. People in my constituency did not send me here to do that.

The proposed policy will not put a penny towards paying for extra health or addiction services or putting extra police on our streets. Although I favour using price to limit the consumption of alcohol, in a country such as the United Kingdom that should be done on a consistent basis, with no anomalies, through taxation. The revenue should be invested in the facilities and services that we need.

Other views that have been expressed on minimum pricing are straightforward. Some believe that the policy is well intentioned but marginal at best, badly targeted, irrelevant to the aim of changing culture and, probably, illegal within the EU context.

Advocates of minimum pricing may argue that the additional costs are a necessary evil to reduce alcohol abuse, but they operate on the assumption that heavier drinkers—those who are causing the problems—are more responsive to price changes than are moderate drinkers. However, there is no direct correlation between alcohol misuse and

consumption; on the contrary, it could be argued that responsible, moderate drinkers are more likely than those who regularly abuse alcohol to mind their wallet and abstain from buying their alcohol at increased prices. In addition, an unintended consequence could be that those who cannot afford to purchase alcohol will obtain it by theft or other dishonest means. We have seen that with drugs.

It is important to recognise that a minimum pricing policy would mainly penalise responsible drinkers by blindly raising alcohol prices for everyone in Scottish society. Such a scatter-gun approach cannot be right. The policy is a crude tool to punish those who are not a problem, while doing nothing to combat those who are.

The Government and Scottish National Party back benchers have acknowledged that they do not know how the European Court of Justice will rule if the industry challenges the policy, as we anticipate might happen. We believe that minimum pricing may be illegal under EU rules on competition. The committee heard evidence that it may also influence wider global issues and cost jobs in our vital spirits industry.

The most recent submission that we have received from the Law Society of Scotland refers to the opinion of Advocate-General Mengozzi in case 108/09, *Ker-Optika Bt v ÁNTSZ Dél-dunántúli Regionális Intézet*. We see that, once more, the European Court has not agreed to the Hungarian Government's arguments about health benefit, proportionality and so on. The Scottish Government has told us that those arguments will feature highly when it discusses its policy in the European Court, as I am certain it will have to do.

I am extremely concerned that if the Scottish Government imposes an extra duty on spirits on health grounds, that will be a green light to every other Government in the world to do the same. We know that in the past, countries such as South Korea have tried to impose punitive taxation on whisky imports to protect the domestic market.

The cabinet secretary has not shared the legal opinion given to the Government by its advisers, despite the precedent for doing so cited by Jackie Baillie. If the cabinet secretary really cares about securing this policy, she will share the advice and persuade members of the Scottish Parliament once and for all about the legal competence of the proposed measure. My understanding is that a precedent was provided by the Shirley McKie case.

The proposal would penalise responsible drinkers. Based on a minimum price of 50p per unit, the policy would lead to an increase in the price of Stowells of Chelsea wine while the price of Buckfast would not go up by a penny.

Relevant legislation has only recently come into force. I endorse entirely the views that we have heard in committee that we need better enforcement of legislation. I take the point that much of the relevant legislation is recent and will take a while to bed in, as Richard Simpson so eloquently said.

Minimum pricing is wrong because it will do immense damage to the vital spirits industry in Scotland. The Scotch Whisky Association estimates that whisky exports alone could fall by in the region of £600 million per year as Governments across the globe sought to copy the Scottish Government's lead and increase duties on whisky. It is lamentable that no economic impact study was ever undertaken by the Government.

When we took evidence on the policy from the authors of the Sheffield study, they likened it to a weather forecast. We must bear it in mind that the country was brought to a standstill last winter because of the weather forecast, the policies and the bad winter that we had. We were gridlocked, we were tied up in our homes, there was no policy and there was no way that we could move across Scotland, simply because this Government did not produce the right policies so that we could access our roads during the winter. Given that, how can we have confidence in a policy that has been likened to a weather forecast?

The Scottish ministers consistently argue that because Scotch whisky is a premium product, minimum pricing will not affect it, but that is not the view of the Scotch Whisky Association, Whyte & Mackay, Pernod Ricard and others. Opposition to minimum pricing is widespread throughout Scotland and among politicians from all parties. Gordon Brown and the Labour Government at Westminster rejected the policy, arguing that it was important to take properly targeted and effective action.

Drinking levels in France are falling, but the figures mask the rise in binge drinking and an increase in the drinking of spirits. As the convener reported to the committee following her visit with other committee colleagues, drink prices are extortionate in Finland. She said:

"The problem for Finland is external, with Estonia being so close. Because the prices for alcohol in Finland are so high—of course, the tax revenues go to the state—"

—which is different from the Scottish Government's policy—

"people simply make a short trip to Estonia to load up. There are also special boat trips to Estonia. Cheap alcohol can even be ordered on the internet. For all I know, it is possible for people to get it delivered to their door, like Tesco and Sainsbury's deliveries."—[*Official Report, Health and Sport Committee*, 10 February 2010; c 2696.]

Yet the Cabinet Secretary for Health and Wellbeing has been in denial that such cross-border issues or internet trading will undermine her proposed policy. We heard evidence from the retailers that such cross-border trading happens in Enniskillen. We also know about the issue from my colleague Hugh Henry, who discussed the issue with the TDs who represent border areas in the Republic of Ireland. They told him that more than 60 per cent of all alcohol sales in Ireland are now made in Northern Ireland. We heard that up to a third of the people travel from southern Ireland to Northern Ireland to shop, which has consequences on both sides of the border. Those are facts and evidence, not simply assertions, as the cabinet secretary has claimed.

The cabinet secretary, I and others who are well paid and have internet access and credit cards can go online to do our shopping and have deliveries made from Carlisle to any Scottish destination, especially destinations such as Edinburgh, Fife and Glasgow. Such facilities are simply not available to the poorer people in our communities, so the policy has a prejudice in favour of the better-off. From the start, this Government has been about helping the better off in society and not helping the least well off.

The proposal would create the opportunity for booze runs to Carlisle or Berwick-upon-Tweed, not only for people like me who have the means to load up the car and have a day out but for those people with white vans who sell tobacco illegally in our communities, who could load up and return to sell alcohol along with tobacco. Many such people are associated with the drugs trade, so we should worry about that. What we do has the potential to reinforce criminality.

We should also worry about the impact on Scottish retailers. Some European studies have shown that people may turn to more harmful drinking patterns—for example, pre-loading, in which they consume cheaper alcohol at home before they go out—in response to price increases.

The cabinet secretary has never explained to the Parliament why the drop in alcohol consumption between 2003 and now has not resulted in all the benefits that she talks about, so she has not persuaded me.

10:15

Ross Finnie (West of Scotland) (LD): I will not vote in favour of the Government's minimum price policy; I will vote for Mary Scanlon's amendment. I will do that because I am not persuaded by the evidence, for the reasons that I will give in a moment.

However, I am bound to say that if we are not careful, there is a real risk that we will run this debate on an entirely polarised basis whereby everything that the SNP Government says on alcohol is rubbish and everything that I say on behalf of the Liberal Democrats is absolutely right. Such an approach would not contribute to the public's believing that we are taking the debate on alcohol seriously.

It is perfectly right for all members present to express their legitimate criticisms—I will make mine—but we must do so in terms that leave open questions. For example, I believe that taxation and price could have a role to play, therefore I will be extraordinarily cautious not to advance arguments against price that could equally apply to taxation. I urge some caution.

It would be churlish not to acknowledge that the committee expressly asked the cabinet secretary to give us a price so that we could discuss the matter in advance of today's final decision—the final decision in the committee, but not the Parliament—understanding exactly where we were in relation to the proposal. It would also be churlish not to acknowledge the cabinet secretary's genuine attempts to assuage some of our concerns by suggesting reporting and sunset clauses. We may not agree with those measures, but it would be churlish, in my humble opinion, not to recognise that they have been advanced in good faith.

I also do not agree with the cabinet secretary. In the context of a public health measure, I am prepared to accept the Sheffield model as the best evidence that is available to us. I do that because other public health measures that have not previously been used or advanced in any other country may be brought before the Parliament, and the only possibility of our considering such measures would be by reference to econometric modelling. Therefore, I am cautious not to slight such models.

Of course, we can take out of context the reference to the weather forecast. I observe only that the Finns get exactly the same weather forecast but manage not to be gridlocked. That might suggest that they do different things with weather forecasts than we do in Scotland.

I am not even persuaded that the minimum unit pricing policy is illegal. I am not prepared to have the Scottish Parliament adopt a policy whereby the prospect of a European challenge emasculates the Parliament's actions. Parliamentarians have to take the evidence that is presented to them and come to a judgment. We might say, "Good gracious! This might be challenged," but of course it might be challenged in the Supreme Court or the European Court. Any decision of any Parliament in

Europe can be challenged in court, so I do not base my legislative approach on that argument.

Time marches on, so I will turn to the matters that have caused me some difficulties. The price that the Sheffield study projects for deployment, combined with the evidence that it produces for the impact of that price, has not withstood close and searching examination when set against the differential effects of lowering price and raising price that have arisen in Finland and elsewhere. It may be that there is further work to be done on that, as that would have an impact on what is done with taxation. However, there is no doubt that the bare evidence that was presented to us leaves us in some doubt about, and makes us question, the impact that was projected. The questioning on that particular evidence showed that it was not persuasive.

I listened carefully to the evidence on the impact on the low-paid that was brought before the committee for the first time, although we had seen the report by Professor Anne Ludbrook and others at an earlier stage. Again, that evidence is not to be considered in isolation. The disproportionate impact on the low-paid is accentuated by the fact that minimum unit pricing of itself, on the evidence that has been put before us, appears to have the reverse effect on people on not even higher incomes but medium incomes, and, more critically, people in those income groups who are harmful or hazardous drinkers. I therefore found the argument to be much less persuasive. Indeed, that was the issue. As a health measure, the measure is not designed specifically to deal with those whose behaviour is antisocial. It is proper that the Cabinet Secretary for Health and Wellbeing has promoted it, as its main thrust is its medium and long-term health impacts. However, the lack of persuasive evidence that it will, as it is constructed, address hazardous drinkers is a serious problem that cannot be answered in the proposal that has finally been posited.

Finally, there is genuine concern, which has certainly been expressed in my party, about the monetary benefits. Notwithstanding the corrections that the cabinet secretary made in her opening remarks on where those monetary benefits might arise, they nevertheless would arise for retailers, publicans and producers. There does not seem to be any particular social benefit from that, and there are no counter-measures. No amendments on that have been lodged, and in discussions that I have had with others, I have not been able to see a simple mechanism that would produce a way of recouping that money for the public purse for the benefit of dealing with alcohol problems.

For those major reasons, I support Mary Scanlon's amendment 1. However, I do not do so on the basis that I believe that the Government

has been attempting to dupe or mislead. I think that it has been genuinely motivated by a desire to address a matter of public health, and I have no doubt that the issue of price will return for parliamentary consideration in a different form or when forms of taxation are discussed, because I believe that there is, at heart, a causal link between price and consumption. We have all found that the difficulty is finding a means of dealing with that which addresses the problem of harmful and hazardous drinkers in an equitable way across income groups.

Rhoda Grant (Highlands and Islands) (Lab): I have some short comments to make. I will not rehearse all the arguments that other people have made.

It is clear that there is a dispute in the committee about the effect of price increases, but there is no dispute whatsoever about price decreases. That brings me to the proposed sunset clause. If minimum pricing were implemented and found not to work, we could never implement that sunset clause, because that would lead to a price decrease, which would lead to an increase in consumption. The sunset clause would never work, because it would encourage people to drink by decreasing prices after a six-year period.

Ian McKee (Lothians) (SNP): As we know, the result of the vote is more or less preordained, so members will be relieved to hear that I do not intend to add greatly to the logorrhoea to which we have already been exposed on the subject.

It is a bit rich of Richard Simpson to say that the Government has not listened to the evidence when his party dismissed the concept of minimum unit pricing on the day that the bill was published, before the committee had officially heard one shred of evidence. Those who complain loudly and volubly about weather forecasting would not go out in a small boat without having heard the shipping forecast, or get on board an aircraft with a captain who had ignored the Met Office report. Forecasting is well accepted—indeed, it has been accepted by members of Opposition parties, who have taken elements of the Sheffield report to boost their case but ignored other elements because those are weather forecasts. That is illogical.

Almost all members have agreed that price has a part to play in dealing with the alcohol problem, and I believe that minimum unit pricing is the only pricing mechanism that has been suggested that has a chance of working. We heard about alternative methods last week when we took evidence from Labour's commission. It suggested a pricing mechanism of cost plus alcohol tax plus VAT, but there would be many drawbacks to that. The commission itself accepted that there was absolutely no evidence for it, and that it had no

idea how the cost of manufacture would be established or what tax changes would be required to produce a beneficial effect.

If we rely on action by another Government, it will not necessarily agree with what this Government asks, and the problem in Scotland is much greater than it is in England. The Labour commission also accepted that if that system was implemented, it would succeed in raising the price of alcohol and put money into the pockets of retailers.

Minimum unit pricing has peer-reviewed modelling evidence behind it—which has been accepted by Labour in other situations—and it has the support of health organisations, health boards and the police. We heard that evidence in committee; I am not just talking about private briefings or letters that I have received. Week after week, we heard evidence from royal colleges, health boards, health groups of all sorts and the police, and they were all in favour of minimum unit pricing.

Every single director of public health in every single territorial health board in Scotland has supported minimum unit pricing. Those people are not members of the Scottish National Party—the Royal College of Physicians is not an SNP coterie, and nor is the Royal College of Psychiatrists. They are independent scientific people who have looked at the evidence, such as there is, and come to that conclusion. Today, we are going to turn down all of that on the grounds of a few submissions that have come mainly from alcohol manufacturers, supermarkets and retailers.

As for the effect on poor people, we heard from Anne Ludbrook that 67 per cent of people in the lower deciles do not drink at all, and therefore her evidence about what drinkers consume relates to only 33 per cent. We heard evidence that the vast majority of people in the lower deciles who drink at all drink very little, so Richard Simpson's example of the people who drink a bottle of vodka a week relates to a tiny minority.

Those who successfully vote against minimum unit pricing—which looks as if it will happen today—having heard all the evidence and tested witnesses will have to live with their consciences as the effect of alcohol does its work, blighting the lives of thousands of Scots and causing unnecessary deaths.

Michael Matheson (Falkirk West) (SNP): I believe that the minimum unit pricing proposal in the bill is a serious attempt to implement an effective measure to tackle Scotland's relationship with alcohol. In engaging in a rather polarised debate on the issue, particularly around the evidence that the Sheffield report presented, and given the rather desperate measures that some

individuals and organisations took to discredit it, we have set a precedent that the modelling approach is not to be trusted when considering public health measures. No matter what the outcome of the vote is in committee today, I believe that we as members, as a committee and as a Parliament should remain open to modelling of that nature, as it can play a valid part in developing innovative public health measures.

10:30

It is interesting that every member of the committee, I think, recognises that price has an important part to play in tackling Scotland's relationship with alcohol. However, for some members, minimum unit pricing is simply not the way to go about that. As someone who has been in the Parliament for almost 12 years and sat on several committees, I find it surprising that some members were closed to the idea of minimum unit pricing before a single piece of evidence on the matter was presented to the committee.

I turn to some of the arguments that have been made against minimum unit pricing, particularly the argument that it might impact on those who are on the lowest incomes. I find it bizarre that some who argue that recognise that we must do something about pricing, but say that we should do it through tax. Well—surprise, surprise—people on low incomes pay tax, too. That measure would have a similar impact on them if they consume harmful levels of alcohol. Unfortunately, some of the arguments that have been put forward are to a large extent artificial and, in some instances, contrived so that members can avoid supporting a progressive measure that could have a significant impact on our relationship with alcohol.

As we face up to trying to tackle Scotland's relationship with alcohol effectively, we must recognise that, by taking minimum unit pricing out of the bill, we will in effect take out one of the most significant tools that we can have in the box in trying to deal with our problem with alcohol, as it deals with the issue of affordability. All the international evidence demonstrates clearly that affordability plays a significant role. I regret that it appears that a majority of committee members, in voting to remove minimum unit pricing from the bill, will ensure that we do not have that tool in our box in trying to deal with the issue.

The Convener: Unusually, I will say something from the chair. The cabinet secretary might recall that, many moons ago, when I was in a shadow cabinet, I was completely opposed to minimum unit pricing, for the reasons that have been given about the effect on people on lower incomes. However—I say this sincerely—based on the evidence, I have become not only a convert, but

that worst person of all, a proselytiser, on the issue.

Everyone accepts that price is important for many products, and alcohol is no different. It is important to look at the evidence that the committee tested. I do not wish to criticise people who have subsequently sent evidence, but we have not cross-examined it, so it has a different status. Based on the evidence that is before the committee, I have come to the view that minimum unit pricing is part of the solution to Scotland's alcohol problems. That is based not only on the Sheffield modelling—others have given that the status that it deserves as a proper way of trying to determine a prognosis for the effect of proposed measures—but on the evidence from health professionals to which my colleague Ian McKee referred. I defer to him on that matter.

The argument that minimum unit pricing is regressive is rather illogical. As Michael Matheson said, any kind of duty—be it excise plus VAT or whatever—that is put on alcohol is regressive. Minimum unit pricing is less regressive, because it is targeted at very cheap products and is based on units of alcohol, which of course excise duty is not. Further, excise duty can be very political. When chancellors make announcements about putting excise duty on things, they tend to be careful about what they target for fear that it will affect voters. Minimum unit pricing is not political in that sense; it is a genuine attempt to tackle the problem.

I am not persuaded by the cross-border arguments. Another illogicality in the evidence to the committee from Labour's alcohol commission relates to the proposal to legislate on caffeinated drinks in Scotland. If we did so, would not people just take white vans over the border? If we are to argue that people would take white vans backwards and forwards over the border, we must accept that they would do that for caffeinated drinks, too. That is an inconsistency in the evidence.

It is my understanding that minimum unit pricing would affect own brands such as vodka from the supermarkets. Helen Eadie rightly says that people trade down when prices are put up. That is right—they will trade down to the cheap brands unless we do something about those own brands. As I understand it, minimum unit pricing would not attack labelled whisky and wines with the same venom that it would attack the likes of White Lightning and supermarket-brand alcohol.

As for the argument on profits, I find an illogicality in what has been said. If the profits are going to the supermarkets, why is only Tesco for minimum unit pricing while all the others are against it? If I thought that I was going to get super-duper profits out of something, I would

support it. I fail to understand the argument that has been put forward. I am more persuaded by the line that alcohol is a loss-leader in supermarkets, which put a little bit more on the price of everything that we need to buy—the Whiskas, the margarine and the bread. That is how they sustain the subsidies on alcohol products.

The proposed sunset clause is entirely sensible. This is a test, but it is a good test for Scotland against all the other issues that we must deal with regarding our culture, the social responsibility levy and licensing being enforced. I completely support Ross Finnie's submission about the prospect of a European challenge. If the policy were to be carried through, either by the committee or at stage 3, that would be an excellent challenge to face. As Helen Eadie rightly said, we would then have to balance the health benefits against whether the policy was anti-competitive. Other nations have done that in different circumstances, and we should not be frightened to tackle such a challenge.

I support the minister on the basis of the evidence that I have heard.

Nicola Sturgeon: I am grateful to all members for their contributions to the debate today. Unsurprisingly, I do not agree with all of them; nevertheless, the debate has been detailed and of a quality that we have all come to associate with debates at this committee, and I am grateful for that. Unless we are going to be here until lunch time, I will not be able to respond to every point that has been made, but I will address some of the key themes that have emerged.

Richard Simpson and Helen Eadie seemed to suggest that the Government has not consulted on minimum pricing. I counter that by saying that nothing could be further from the truth: the Government has been consulting on the measures since September 2007. Some may argue that there has been too much consultation and not enough hard action. There has definitely been no shortage of consultation.

Some members have taken issue with my suggestion that there are party politics at play in the debate. It is not an assertion that I would make lightly. I agree with Ross Finnie in regretting that the issue has become as polarised as it has. Over the past few months, I have done my level best to avoid that by consistently saying that I am open minded about alternatives, by responding as openly and constructively as I possibly can to all the recommendations of the committee at stage 1—many of which have resulted in amendments that are before the committee today—by bringing forward the minimum price, and by suggesting a reasonable compromise in the form of a sunset clause. I have tried to avoid polarising the debate.

My regret and deep frustration about the debate is that parties have reached the view that they oppose minimum pricing not after having listened to, interpreted and weighed up all the evidence; the Opposition parties reached that view before we had heard a shred of evidence. In Labour's case, that view was reached on the day we introduced the bill to the Parliament, when Labour members said that they would not support minimum pricing. It was not that they were not persuaded and were sceptical but would listen to the evidence; they said categorically that they would not support minimum pricing. That has been very frustrating and leads me to believe that party politics are at play, at least on the part of some parties.

Richard Simpson said at the outset of his remarks that, at the start of the process, he acknowledged the problems of alcohol misuse. I recall that, at the start of the process, before the bill was introduced, Richard Simpson was in favour of minimum unit pricing. It seems to me that his opposition and his determination to find grounds for opposing minimum pricing arose when it was the SNP Government that proposed the policy. That is the basis for my comments, and I stand by those comments.

I have consistently said that I would be open to alternatives. The hard reality, though, is that here we are at stage 2, debating minimum pricing and no one has come forward with an alternative. Mary Scanlon points to the taxation and pricing review that is being carried out by the Treasury, but not to the fact that one of the first actions that the UK Government took was to reverse an increase in duty on cider, nor to the fact that the UK Government's commitment to address below-cost sales in England and Wales in the proposed police reform and social responsibility bill seems to have fallen by the wayside. Those actions are not being taken forward, and that is before we consider Mary Scanlon's apparent suggestion that as a Parliament, although we have the power to act, we should abdicate responsibility for the issue to Westminster.

The Labour alcohol commission—which I was glad to hear Richard Simpson refer to as “the Labour alcohol commission”, as opposed to the pretence that it is in some way independent—came up with an alternative that, according to my reading of last week's meeting, seems to have no evidence behind it. Of course, if Labour had thought that that was a credible alternative, it would have been open to Labour to lodge amendments to put that alternative into the bill. Labour has failed to do so, and is yet again in the position of opposing minimum pricing without offering any alternative.

I shall deal, in no particular order, with some of the other key points that have been made. First, there is the argument that minimum pricing will put money into the hands of the supermarkets. As I said in my opening remarks, some of the comments that have been made completely misrepresent the scale of the profit—if I can use that term—and who the recipients of that profit would be. However, as others, such as Michael Matheson and the convener, have said, the opponents of minimum pricing seem to be happy to rely on modelling to support the argument about excess profits while refusing to accept modelling when it comes up with things that they do not accept.

It is also the case that the issue of excess revenue for the industry arises with a ban on quantity discounts which, although we have not yet come to the relevant amendments, I understand all parties oppose. It is therefore not consistent to use that as a reason to oppose minimum pricing while ignoring it when it comes to policies that you support. Lastly, I have said repeatedly that there is the opportunity to use the social responsibility levy as a way to deal with the issue.

The second substantive point to which I want to respond comes from one that Richard Simpson made—I am paraphrasing him here, before he suggests that I am misquoting him. He seemed to be saying that the problem of alcohol is somehow solving itself, so we do not need to take action. Yes, we have seen in some indicators and some short-term movements in the right direction, but it is far too soon, against the backdrop of the long-term trends, to say that those movements will be sustainable. It also ignores the facts that those are reductions from a very high base in Scotland, and that they are much smaller reductions than are being seen in other countries, even within the UK.

Richard Simpson quoted mortality and death statistics. Yes—there has been a slight reduction in alcohol-related deaths among men in Scotland over the past two years and there has been a stabilisation in female deaths, but alcohol-related deaths in Scotland have doubled over the past 10 years. Scottish men are twice as likely to die an alcohol-related death as men in England. The next statistic appals me even more: Scottish women are more likely to die an alcohol-related death than English men. I utterly reject any suggestion that there is room for complacency.

On the comments about the Sheffield report, this Government has never sought to overclaim what Sheffield does. I said in my evidence to the committee at stage 1 that it is not hard evidence, but modelling, and it is the kind of modelling that Governments throughout the world use on which to base policy changes. The former Labour

Government in the UK based its national minimum wage policy on econometric modelling that was similar to the Sheffield modelling, so it is credible evidence. I think that some people have taken the reference to weather forecasting out of context and are using it unfairly to denigrate modelling and a methodology that are credible.

10:45

A number of points have been made about the impact of minimum pricing. I will not go into them all in detail because I do not want to rehearse arguments and debates that we have already had, but some people have suggested that minimum pricing would not impact on harmful and hazardous drinkers, even though the Sheffield modelling suggests that those are precisely the categories on which it would have the biggest impact. Some have said that it would unfairly penalise low-income groups, but we have produced research for the committee that shows that the vast majority of people in low-income groups either do not drink at all or drink very little. My main comment about that group of comments echoes what Ross Finnie said. Some of the comments display confusion, because many of the comments that have been made to attack minimum pricing in relation to the impact on certain groups would apply to any increase in the price of alcohol regardless of how it was achieved. We have people who say, “Yes, we accept that price is an important part of tackling alcohol misuse” but then use an array of arguments that seem to suggest that any price increase would have that effect on certain groups. That is inconsistent.

Some members have selectively quoted other interests. I have always accepted that not everybody supports minimum pricing. It would be extraordinary if every expert group and every stakeholder interest supported it, but many of them do. Richard Simpson quoted children’s charities as giving conditional support. He is right: they have said that they would like the impact on low-income groups to be monitored, but they also say that they want the policy of minimum pricing to go ahead. He quoted other opinion formers as preferring 60p to 45p, and in some respects that is true, but he did not say that almost all the opinion formers whom he mentioned prefer 45p to no minimum pricing at all. We should make sure that we quote those opinions fairly.

I have two final points. First, on the issue of legality and the possibility of a European challenge, I say to Helen Eadie that the precedent that Jackie Baillie mentioned was never identified by Jackie Baillie, so I am not aware of a precedent such as the one that Helen Eadie mentioned. Members will be aware that I sent the committee a

letter of several pages that went into some detail about the basis of our legal argument. It probably contained more information on legal issues than a minister has ever shared with a committee. The committee and all members have to recognise that every and any act of the Parliament is potentially challengeable in the courts, but that that is not a reason, if we are confident about our legal basis, not to proceed.

Lastly, I guess that what I find most frustrating about the debate is the notion that we cannot do anything unless we can prove beyond a shadow of a doubt that all the possible benefits will definitely be realised and all the possible unintended consequences will definitely be avoided. Sometimes, when we are faced with a problem of the magnitude that we face with alcohol misuse, we have to dare to take action. That is what the Parliament did with the ban on smoking in public places and I believe that it is what it should be prepared to do on minimum pricing. The sunset clause is a reasonable attempt to recognise the scepticism that some members have about the impact of the policy, and to allow us to test it in practice and gain the hard evidence that many people say is missing.

Convener, I will stop there, but my very last comment is that I suspect, given the comments that have been made round the table, that the committee is about to vote against minimum pricing, as it has a right to do. I respect the views and the votes of the committee. However, I think it is right that the issue comes back to the Parliament at stage 3 to allow the whole Parliament to vote on it, and the Government intends to lodge an amendment at stage 3 to allow that to happen. I know that there are differences of opinion in all the Opposition parties about the issue and I think it would be right to allow the whole Parliament to take the final vote.

The Convener: I thank the cabinet secretary and members of the committee for conducting a testy debate in a dignified manner, if I am allowed to use the word “dignified”.

The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Eadie, Helen (Dunfermline East) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Abstentions

Finnie, Ross (West of Scotland) (LD)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 3, Abstentions 2. I exercise my casting vote in favour of the amendment.

Amendment 2 agreed to.

Amendment 3 moved—[Nicola Sturgeon].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Eadie, Helen (Dunfermline East) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Abstentions

Finnie, Ross (West of Scotland) (LD)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 3, Abstentions 2. I exercise my casting vote in favour of the amendment.

Amendment 3 agreed to.

Amendment 4 moved—[Nicola Sturgeon].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Eadie, Helen (Dunfermline East) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Abstentions

Finnie, Ross (West of Scotland) (LD)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 3, Abstentions 2. I exercise my casting vote in favour of the amendment.

Amendment 4 agreed to.

Amendment 5 moved—[Nicola Sturgeon].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Eadie, Helen (Dunfermline East) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Abstentions

Finnie, Ross (West of Scotland) (LD)
Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 3, Against 3, Abstentions 2. I exercise my casting vote in favour of the amendment.

Amendment 5 agreed to.

Amendment 1 moved—[Mary Scanlon].

The Convener: The question is, that amendment 1 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 1 agreed to.

After section 1

Amendments 6 and 7 not moved.

The Convener: This is a suitable time for the committee and the cabinet secretary to have a short break.

10:53

Meeting suspended.

11:03

On resuming—

Section 2—Minimum price of packages containing more than one alcoholic product

The Convener: Amendment 33, in the name of Mary Scanlon, is the only amendment in the group.

Mary Scanlon: Amendment 33 seeks to maintain the status quo whereby a package containing two or more alcoholic products, whether the same product or different, may be sold at a price that is less than the sum of the prices at which each alcoholic product is for sale only on the premises where each of the alcoholic drinks is separately for sale and regardless of whether the package contains any other item that is not an alcoholic product. As you might have guessed, the amendment has been suggested by the Law Society, which is of the view that the proposal in section 2 restricts specific types of promotion to consumers and accordingly is a law aimed at the seller's conduct. The measure therefore relates to consumer protection and competition law and, in the Law Society's view, is a matter reserved to the UK Parliament.

The Law Society is also concerned that the proposal could create two separate markets in the UK for alcoholic products, as it might lead to shoppers purchasing in England and Wales to take advantage of savings that would not be available in Scotland if the bill were passed. Given the existence of internet retailing and ease of transportation between Scotland and England, that is a real possibility. Indeed, the same point was made in relation to minimum pricing.

It is unclear from proposed paragraph 6B(3) of schedule 3 to the Licensing (Scotland) Act 2005, which would be inserted by section 2(2), whether the container included in the package has to be capable for sale on the premises separately for the purposes of calculating the cost of the package.

Finally, the society believes that one of the unintended consequences of section 2 would be to discourage licence holders from selling items individually, as proposed paragraph 6B(1) would apply only where, in terms of proposed paragraph 6B(2)(a), each of the alcoholic products is for sale separately on the premises. Perversely, it might encourage a person to purchase more alcohol than they had intended and, accordingly, be considered an "irresponsible drinks promotion" in terms of paragraph 8(2)(e) of schedule 3 to the 2005 act. The amendment is also supported by many trade organisations.

I move amendment 33.

The Convener: Does anyone else wish to comment? Minister—[*Interruption.*] Sorry, Richard. You have to be quick with me.

Dr Simpson: I was hoping that I would not be first up.

The Convener: But you will be shorter this time.

Dr Simpson: Indeed.

We should support section 2, as it contains a number of important principles. Along with section

3, which we also support, it tackles all forms of discounting. Encouraging people to purchase more through volume discounting in any form of package is unacceptable and should be tackled.

However, I have a question that I hope the cabinet secretary can answer in her summing up. With regard to section 2, the explanatory notes cite as an example two bottles of wine or a case of beer sold with a non-alcoholic drink. I am unclear whether the price of the alcohol could, in effect, be discounted by the non-alcoholic drink being offered free as part of the package.

I believe that sections 2 and 3 are important, particularly if they level the playing field with the on-trade and help to reverse the substantial movement over the past 20 or 30 years from on-sales to off-sales, which now account for 70 per cent of alcohol sales compared with, I think, less than 60 per cent 20 or 30 years ago. Although the growth in off-sales is partly accounted for by the growth in wine sales, the trend needs to be redressed. The on-trade has already been restricted by the 2005 act, but I note that restaurants still sell wine and sometimes draught beer at a lower relative price for greater volume—for example, they might sell 125ml for £2.50 and 250ml for £4.50, which is a 50p discount for volume sales. The issue is probably covered in section 3, but I thought that I would comment on both matters at once. Will the bill address that kind of volume discounting in restaurants and the on-trade to ensure that any encouragement to drink through offering greater volumes at a discount is removed?

Nicola Sturgeon: As has been said, amendment 33 relates to section 2, which is intended to complement the quality discount ban and prevents retailers packaging products together and selling them for less than the cost of the individual product.

The provision means that the retailer cannot both sell a product individually and offer a discount to the buyer for buying a package containing a multiple of alcoholic products that includes that product. As some members have indicated, it would prevent a retailer from shrink-wrapping two bottles of wine or vodka to suggest that they are one item and selling them as one item at a price lower than the cost of buying the two bottles individually. Section 2 complements the quantity discount ban; it is important to recognise that distinction. It is an important provision, notwithstanding the decision that the committee took on minimum pricing a wee while ago.

I do not accept Mary Scanlon's suggestion that section 2 impinges on reserved responsibilities. Later in stage 2, I will oppose amendments to which I am sympathetic in policy terms, because I believe they impinge on reserved responsibilities

and are, therefore, outwith the competence of the Parliament. I do not believe that that is the case here.

With regard to Richard Simpson's first point, section 2 ensures that if two bottles of wine and a soft drink are sold together, the package will not be sold for less than the price of the wine. Potentially, we could allow discounting by including the soft drink, although I would like to reflect further on that point. If the committee agrees to amendment 33, we will look at the matter. If the provision needs to be tweaked further at stage 3, I will be happy to do so.

Richard Simpson's second point was about up-selling. The 2005 act contains provisions that deal with the point.

I ask the committee to reject amendment 33, to allow us to ensure that the bill includes a quantity discount ban that is as comprehensive as possible.

Mary Scanlon: I thank the cabinet secretary for her assurance that this is not a reserved matter. Given that she intends to tweak the provision further at stage 3, I would like to put amendment 33 to a vote, so that we can re-examine the matter at that point.

The Convener: The question is, that amendment 33 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 33 disagreed to.

After section 2

The Convener: The next group of amendments concerns off-sales: variation of pricing of alcoholic drinks. Amendment 8, in the name of the cabinet secretary, is the only amendment in the group.

Nicola Sturgeon: Amendment 8 responds to concerns that the off-sales trade has expressed and seeks to reduce some unnecessary regulation that has resulted from the 2005 act. The 72-hour rule in the 2005 act imposes a licence condition in premises and occasional licences prohibiting the

price of all alcohol for sale on the premises from being varied for 72 hours after a variation in price of any alcohol has taken place. As members are aware, the purpose of the provision was to ban happy hours in pubs and bars, but the licence conditions apply to off-sales as well as to on-sales of alcohol.

The structure of price variations in off-sales differs from that in on-sales—price variations tend to be in place for much longer than 72 hours. Information from off-sales retailers suggests that the restriction is not achieving any meaningful effect but is limiting pricing flexibility for them. For example, if they change the price of one brand of whisky on a Monday morning, they are unable to vary the price of any other alcohol product—either by increasing it or by decreasing it—until 72 hours have expired. The provision is causing difficulties without having any meaningful positive impact.

The amendment that we propose applies only to off-sales of alcohol and maintains the current provision to the extent that, once the price of alcohol has been varied, there can be no further variation of the price of that product for 72 hours. However, the amendment removes the restriction on varying the price of other products for 72 hours following the variation of the price of one product. That means that, in off-sales of alcohol, the price of any alcohol product can be varied at the beginning of a period of licensed hours, as long as it has not been varied in the previous 72 hours. There is no change to the position for on-sales of alcohol: the full extent of the existing licence condition that prevents happy hours will remain.

I submit to the committee that this is a commonsense amendment that addresses an unintended consequence of previous legislation.

I move amendment 8.

11:15

Dr Simpson: I have just one question. At the moment, when retailers reduce the price of alcohol as part of a marketing approach, they display both prices. I presume that that will simply continue—that there will be no change to that practice. I do not think that it is covered by the existing licensing law or the bill. Will retailers still be able to display the old price alongside the new price?

Nicola Sturgeon: We will come on to the issue in later amendments. There are issues of consumer protection legislation and reserved and devolved competencies, but amendment 8 does not affect the status quo in that regard.

Dr Simpson: Thank you.

Amendment 8 agreed to.

Before section 3

The Convener: Amendment 27, in the name of Ian McKee, is grouped with amendments 28 and 29.

Ian McKee: The general purpose of my amendments is to prevent those who sell alcohol from selling it at a lower-than-advertised price by means of loyalty cards, vouchers and combined sales of alcohol and other goods when the effect of discounting the non-alcohol component of the sale has that result.

Amendment 27 would amend the Licensing (Scotland) Act 2005 for licensed premises and when an occasional licence is held to prevent the sale of alcohol with a combination of products and/or services in a way that supplies the products and services at a price lower than they would be for sale on those premises if alcohol were not included in the package.

Amendment 28 is designed to prevent coupons, products or services being made available to the public on the premises by being given free or at substantial discount or such coupons being redeemed, if the purpose or effect of such transactions is to promote an alcoholic drink or drinks generally. The Scottish ministers may by regulation define “substantial discount”, and the provision would apply to permanent and occasional licences.

Amendment 29 sets out to exclude the purchase and supply of alcohol from reward schemes by rewards or benefits accrued from purchases of any sort.

I am aware that a variety of interests have brought individual situations to the attention of committee members and that those interests argue that the amendments have an unwelcome effect. Although I believe strongly that the price of alcohol in any outlet should be realistic and openly advertised without hidden ways of lowering it, I am happy, if the amendments are accepted at stage 2, for beneficial alterations to be suggested before stage 3.

I move amendment 27.

Helen Eadie: I declare an interest, which is in my register of interests: I am a Labour and Co-operative Party member of the Parliament. I have concerns about the amendments.

In seeking to exclude alcohol from reward schemes and loyalty cards operated by some retailers in Scotland, amendment 29 may inadvertently impact on the Co-operative Group membership scheme. Under the Co-operative scheme, members receive a dividend payment—a fair share of the profits of the Co-operative. That is a fundamental principle of the Co-operative and

has been for all its history. The size of the dividend is based on the individual's level of transactions with the Co-operative in much the same way as a shareholder would receive a dividend based on the size of their shareholding.

The Co-operative seeks clarification that the amendment would not impact on the operation of its scheme as, at the time of purchase, there is no immediate benefit or reward to the consumer for his or her alcohol purchase. The dividend payment, if there is any, is based on the recommendation of the board to the members' annual general meeting at a later stage—which occurs up to 12 months later.

The Co-operative Group has more than 5 million members in the United Kingdom. Collectively, the members own the business. Members of schemes such as Clubcard and Nectar are participants, and those schemes have nothing to do with ownership of either Tesco or Sainsbury's. It can be argued that a Co-operative member has more in common with a Tesco or Sainsbury's shareholder than a Clubcard or Nectar member. They all own their respective businesses and receive a regular dividend payment based on the profitability of the business.

The primary purpose of the Co-operative Group membership scheme is to share distributable profits with members based on the trade that they have undertaken with the group. That fulfils the obligations outlined in the third principle of co-operation:

"Member Economic Participation ... benefiting members in proportion to their transactions with the co-operative".

When a Co-operative Group member purchases any item, be it alcohol, bread or tea, they have no way of knowing what the ultimate dividend resulting from their purchase will be. The purchase attracts points, but their value is agreed by the board and approved by members at the society's AGM. If the society makes no profit or makes a loss, the board could decide to recommend that no dividend payment be made. If that were to occur, the points accrued by the member would, therefore, have no financial value. That arrangement is quite different from that of a Nectar or Clubcard member, whose reward or benefit is known to them at the time of any purchase. A rational consumer looking to buy alcohol in return for a fixed benefit or reward would choose to purchase their alcohol at Tesco or Sainsbury's, where a reward or benefit would be guaranteed, not at the Co-operative, where it would be unknown.

The membership scheme is not a promotional device or designed to encourage the purchase of particular products or brands. It is not promoted externally or used in advertising to drive

businesses to the Co-operative. If the Co-operative Group scheme were to be captured by the amendment, that would interfere with the right of a member to receive back their fair share of the profits of the Co-operative—a fundamental principle of co-operatives whereby members benefit in proportion to their transactions with the co-operative. Given the fact that all the political parties around the table subscribe to the ideas of mutuality and co-operation and to the Co-operative's principles, I hope that members will not support amendment 29.

At this stage, I also have concerns about the part of the amendment that relates to meal deals, which we know are available from some prominent supermarket chains. We have all taken the view that we should encourage people to eat when they drink. Indeed, when the cabinet secretary was questioned in the chamber, she said that she did not expect meal deals to be captured by the bill. I hope that she will reassure us again today that she supports the view that we should encourage people to eat when they drink.

Dr Simpson: I, too, declare my membership of the Co-operative. These amendments were proposed and supported by the BMA, among others. Indeed, they have been supported by Asda in recent correspondence. The principle that Ian McKee is trying to get into the bill is one towards which I am sympathetic, but the points that Helen Eadie made about the Co-operative and the fact that some loyalty cards already have exclusions should be considered in our thoughts about how the amendment would be applied. I, too, ask Ian McKee to address, in summing up, whether the amendment is too wide and would catch credit cards. If I go to Sainsbury's or one of the other stores—I will not name them all—and pay for alcohol with a Nectar card, a Tesco Clubcard or other loyalty card and a credit card, I get a reward for using both. Would the amendment attack only the loyalty card, or would I be unable to use my credit card if I stood to gain a benefit from doing so?

Mary Scanlon: I am not in favour of the amendments on the basis that there is no compelling evidence that off-trade promotions are causing alcohol misuse, particularly when overall alcohol consumption is declining. There is no evidence that banning alcohol promotions will reduce harm. Promotions take many forms and are predominantly used by businesses to persuade customers to switch from one retailer to another or from one brand to another. Restricting businesses' ability to promote their products would, without doubt, make it harder for them to launch new products and harder for new retailers to find points of differentiation on entering the market.

Helen Eadie mentioned Marks and Spencer's meal deals. I support what she said. I feel that meal deals are anything but irresponsible. We do not want to encourage people to drink more alcohol, but it is responsible to have alcohol with a meal.

The amendment also applies to a range of promotions, such as hotel and restaurant deals in which a bottle of wine can be purchased at a reduced price alongside a meal, or reductions in hotel restaurants are offered when someone books or reserves a room.

On amendment 28, I am not aware of any evidence to suggest that vouchers increase alcohol misuse. A voucher enables manufacturers and retailers to explain the quality credentials of the product on the voucher itself. It acts as a one-off discount.

Amendment 29 relates to the exclusion of alcohol from reward schemes. Although the BMA has supported the amendment, I am not aware of any suggestion or evidence that loyalty cards and reward-points schemes increase alcohol misuse. The primary aim of each scheme is to reward customers for their loyalty for shopping regularly in a particular store. Retailers that operate such schemes are very concerned about the impact of the amendment: they believe that if it is agreed to there would be a further incentive for a significant shift of trade and economic benefit away from Scottish shops and towards online alcohol retail. Richard Simpson referred to credit cards. I think that we could include air miles and other benefits.

When we took evidence, I seem to remember the person from Asda saying that there is nothing in the bill to stop people buying a £5 bottle of wine in Asda and getting that £5 off their groceries. Regardless of whether these amendments are passed, we are fully aware that supermarkets and retailers are highly innovative and entrepreneurial and they will find other ways to incentivise customers.

Nicola Sturgeon: I welcome the opportunity that this group of amendments has given us to discuss this issue and I have listened carefully to all the contributions that have been made. Our view has always been that alcohol is not an ordinary commodity and that it should not be promoted as such. Ian McKee's amendments, and representations from the BMA and Asda, demonstrate just how much of an ordinary commodity alcohol has become. We have seen it included in multiple reward schemes and promotional offers. Retailers do not and cannot award customer loyalty points when customers purchase tobacco, lottery tickets, prescription medicine or baby milk formula, so Ian McKee is absolutely right to provoke a discussion as to

whether alcohol should be subject to similar restrictions.

That said, this is a very complex area—we have heard some of that complexity rehearsed in the contributions this morning. We are concerned that this group of amendments might give rise to some unintended consequences. For example, they could prevent free samples of alcohol being offered in the alcohol display area of premises. We do not think that there is anything irresponsible about free samples being offered in that context as a way of introducing people to a new product.

The points that Helen Eadie made about co-operatives certainly merit further consideration and reflection. She is right to point to the fact that I am on record—and I will go on record again today—as saying that it is not our intention to ban the Marks and Spencer's meal deal, for example.

I am sympathetic to the issues that the amendments raise, but I invite Ian McKee to work with us to ensure that we iron out any unintended consequences before stage 3.

Ian McKee: This has been a very useful interchange of ideas. I return to the point that I made at the start: my aim is that, wherever possible, alcohol is sold at an agreed price and there are no hidden ways of making it available for much less, because we have all agreed that alcohol is a special problem. I totally agree with the cabinet secretary that there is already a precedent; there are restrictions in relation to tobacco, prescriptions and baby milk formula. It seems to me that alcohol could fall perfectly well into that category.

I was interested to hear Helen Eadie's argument about the co-operative movement. All I can say is that when I drafted the amendments I was well aware of how difficult it was to cover every situation and that there were situations that I had probably not even considered. I do not think that there is any shame in that. I wanted to lodge amendments that established the principle, with a view to being open to suggestions, before stage 3, about how they could be altered beneficially so that organisations such as the Co-operative movement, which I totally support, could see that they did not fall foul of the provisions.

11:30

Richard Simpson made an important point about the points that people get on credit cards. It would be quite difficult to cover credit cards without having a huge revolution, but I would be happy to go backwards and forwards and discuss that.

The important thing is that we agree that the problem of alcohol in Scotland is enormous and that alcohol is a particular commodity. As Mary

Scanlon so rightly says, supermarkets are very clever and wily and can think of all sorts of ways of getting round legislation. Therefore, I would like the co-operation of the committee, people outside the committee and the Government in finding ways of strengthening my amendments so that we can cover as many loopholes as possible, while not affecting beneficial schemes that we all agree are good.

I ask the committee to support my amendments and give an assurance that they will be looked at carefully before stage 3. I move—

The Convener: You have already moved amendment 27. I took from the tone of your remarks that you were moving in the direction of withdrawing it, with a view to bringing back a better amendment at stage 3. That is what I read into what you said. Did I misunderstand you?

Ian McKee: I will seek to withdraw it, on the understanding that we can make improvements and bring it back at stage 3.

The Convener: I think that that would be better. I counsel that if an amendment is pressed and sinks into the sand at stage 2, it is extremely difficult to bring it back at stage 3, so I think that that was a wise decision. From the tone of the remarks that have been made, I think that the committee hopes that better amendments will be lodged at stage 3.

Amendment 27, by agreement, withdrawn.

Section 3—Off-sales: restriction on supply of alcoholic drinks free of charge or at reduced price

The Convener: Amendment 34, in the name of Helen Eadie, is grouped with amendment 35.

Helen Eadie: Amendments 34 and 35 are intended to be probing amendments. Section 3 would remove off-sales retailers, including supermarkets, from the prohibition on running one of the irresponsible promotions that are defined in schedule 3 to the Licensing (Scotland) Act 2005—a type of promotion that they have been banned from running since 1 September 2009, when the new licensing regime started. The relevant restriction, which appears in paragraph 8(2)(e) of schedule 3 to the 2005 act, bans off-sales and on-sales retailers from running a drinks promotion that

“encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume”.

In the bill, the Scottish Government has proposed a change to exempt off-sales retailers from that provision, albeit by bringing them under the ambit of another restriction—that in paragraph 8(2)(b) of schedule 3 to the 2005 act.

I find the proposed change even stranger in light of the fact that in his speech to the national licensing conference in Aviemore last year, the Cabinet Secretary for Justice, I am told, encouraged licensing boards to use all the provisions of paragraph 8 of schedule 3 to their maximum effect, including the one in paragraph 8(2)(e), especially in relation to off-sales retailers. If that provision was valid in relation to off-sales retailers last September, why is it no longer to apply to them? I am not aware that any evidence or justification was given for the proposed change in any of the evidence to the committee, and I intend to move my amendments so that the Scottish Government will have to explain the reasons for it.

As I said, section 3 would bring off-sales retailers under the ambit of paragraph 8(2)(b) of schedule 3 for the first time. That provision relates to drinks promotions that involve

“the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks)”.

I move amendment 34.

The Convener: No other member has indicated that they want to speak, so I invite the minister to comment.

Nicola Sturgeon: I understand why Helen Eadie has lodged amendments 34 and 35. Our position may appear counterintuitive in view of some of our other proposals and our direction of travel, so I will explain to the committee why it is as it is and the safeguards that we consider to be in place.

Section 3 seeks to end the confusion about the application of a particular restriction in schedules 3 and 4 to the 2005 act. The act states that a promotion that

“encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume”

is prohibited as an irresponsible promotion in relation to both on-sales and off-sales of alcohol.

The licensed trade and licensing boards have expressed concern that use of the word “measure”—a phrase that is more commonly associated with pubs—is causing confusion when it is applied to off-sales of alcohol. Section 3 seeks to address that concern by disapplying that prohibition in respect of off-sales of alcohol. It also extends the quantity discount ban to off-sales of alcohol.

If we were to accept Helen Eadie’s amendments, we would revert to the current position under the 2005 act and maintain the confusion that we seek to eliminate. However—and this is the important point—the provisions in

section 3 do not mean that we cannot take action if new promotions that are not banned under the 2005 act are developed and we consider that they should be. If a specific drinks promotion in the off-sales or on-sales sector is causing concern, there are powers in the 2005 act for ministers to make regulations to add to the existing list of drinks promotions that are prohibited under the 2005 act. That is our preferred way of dealing with issues that arise in relation to irresponsible drinks promotions.

I am aware that Derek McGowan of the City of Edinburgh Council raised the issue in evidence at stage 1 and that Helen Eadie considered it in some detail in oral evidence. We have discussed the issue further with Mr McGowan and I understand that licensing standards officers are content with our proposed approach. We consider that our approach will deal with the confusion, improve the situation and strengthen the position over the status quo in the 2005 act.

I am sure that Helen Eadie's amendments are well motivated and well intentioned, and I am glad that they have given me an opportunity to explain the background to section 3, but I do not agree that they are necessary. In light of what Helen Eadie has said about the amendments being probing amendments, I hope that she will agree to withdraw amendment 34 and not to move amendment 35.

Helen Eadie: I will withdraw amendment 34 and I will not move amendment 35, as I find the cabinet secretary's answer very full and helpful. I will go back and consult the organisations that have put the issue to me and, provided that they are happy, I will leave it at that; otherwise, I have the opportunity to bring the amendments back at stage 3.

Amendment 34, by agreement, withdrawn.

Amendment 35 not moved.

Section 3 agreed to.

After section 3

The Convener: Amendment 36, in the name of Mary Scanlon, is grouped with amendment 37.

Mary Scanlon: Amendments 36 and 37, which are supported by some of the retail and trade associations, seek to insert a sunset clause and a reporting requirement in relation to the effectiveness of the restrictions on multibuy promotions.

Those associations believe that it is important that the Scottish Government effectively evaluates the policy after two years and reports back to Parliament on its impact in meeting the objectives of the 2005 act, and the impact on consumers—particularly those on low incomes—the cross-

border and online retailing of alcohol, and the competition in the market for online retailing.

I move amendment 36.

Nicola Sturgeon: Extending the quantity discount ban to off-sales of alcohol is a proposal that has broad support. We have our differences on minimum pricing, as we heard earlier, but I think most people agree that we need to level the playing field with regard to quantity discount promotions and bring the off-sales sector into line with the on-sales sector.

The 2005 act put in place comprehensive restrictions on how pubs and clubs may promote alcohol. One of those restrictions is a licence condition that bans on-sales quantity discount promotions. That prevents promotions on or in connection with premises applying to on-sales and involving the supply of alcohol free of charge or at a reduced price on the purchase of one or more drinks.

The previous Administration did not, under the 2005 act, provide for the quantity discount ban to apply to off-sales, although it indicated the need for further research on the issue. It commissioned research on the impact of off-sales promotions, and the issue was also considered in the University of Sheffield modelling.

Our simple view is that, if a quantity discount is irresponsible in a pub, it is also irresponsible in a supermarket. In principle, it is wrong for alcohol to be promoted in a way that is designed to encourage the customer to buy, and therefore consume, more than they intended to. Although some argue that people do not necessarily drink their off-sales purchases over a short space of time, the harm statistics that we are all familiar with at least suggest that such an assumption might not be correct.

The quantity discount ban for on-sales of alcohol will be evaluated as part of a comprehensive programme to evaluate our alcohol strategy. There have already been some positive changes as a result of the discount ban in the on-sales trade. For example, pubs have shifted from offering two-for-one deals on drinks to offering free snacks or free entertainment instead. The evaluation programme, which is being led by NHS Health Scotland, will contain an evaluation of the measures in the bill, including the quantity discount ban.

For those reasons I do not consider that Mary Scanlon's amendments are necessary. I am sure that there are all sorts of ironies in the fact that I have failed to persuade her of a sunset clause in relation to minimum pricing and she is failing to persuade me of one in relation to the quantity discount ban. The key difference is that, unlike minimum pricing, a quantity discount ban is not a

new or untested policy. We already have it in the on-sales trade, and the proposal is simply about equalising the situation between on-sales and off-sales.

I ask Mary Scanlon to withdraw amendment 36 and not to move amendment 37. If she does not agree to do so, I ask the committee to reject the amendments.

Mary Scanlon: I am happy with the response from the cabinet secretary. As she will understand from having been on my side of the fence previously, many organisations across Scotland seek further clarity on the issues. I feel that we have got additional clarity today.

Amendment 36, by agreement, withdrawn.

Amendment 37 not moved.

Section 4—Off-sales: location of drinks promotions

The Convener: Amendment 38, in the name of Mary Scanlon, is grouped with amendments 9, 39, 40, 10, 41, 11, 42, 12 to 14, 43, 15, 44 and 45. I draw members' attention to the pre-emption information as shown on the groupings sheet.

Mary Scanlon: There are eight amendments in my name in this group. Amendments 38, 42 and 43 have been suggested by several retailers that think that the bill is too restrictive regarding promotions.

Amendments 39 and 40 recognise the competitive disadvantage that the bill places on small shops whose only means of advertising promotions often consists of leaflets and window bills.

Amendment 39 seeks to level the playing field between small shops and supermarkets by allowing shops under 280 m²—that being the size used in tobacco legislation—to continue to display promotional material throughout the store.

Amendment 40 would enable small shops to distribute leaflets within the local neighbourhood. That would remove the anomaly from the bill whereby the holder of a licence for off-trade premises can conduct a promotion outside the premises of a competitor whereas that competitor is unable to do so.

Amendment 41 relates to beer gardens. It would allow the operation of promotions in unlicensed beer gardens and similar places to be considered as drinks promotions on the premises. The Law Society of Scotland notes the intention in section 4

“to extend the provisions of paragraph 13 of Schedule 3 to the 2005 Act (as inserted by the Licensing (Mandatory Conditions 2) (Scotland) Regulations 2007 (SSI 2007/546)) to provide that any drinks promotion in respect of off-sales of alcohol in a premises may take place only in the alcohol

display areas, or any tasting rooms such as those operated by some specialist retailers.”

On taking alcohol outside for consumption at such premises, the Law Society's view is that

“Regard requires to be paid to e.g. beer gardens which are normally unlicensed and therefore taking alcohol outside becomes an off-sale transaction”.

11:45

Amendment 44 would allow alcohol to continue to be advertised in supplements in publications such as national newspapers and magazines. The Law Society supports the amendment because it is concerned that the current definition of drinks promotions might include legitimate advertising by wine clubs, for example, in supplements in national newspapers and magazines. Accordingly, the amendment would exclude such advertising from the definition of drinks promotions.

I apologise for advertising the magazine that I am holding up. It runs to 100 pages and it contains many good recipes and information on healthy lifestyles, but it also contains four pages that relate to alcohol. With amendment 45, I question the principle of banning the advertising and marketing of alcohol in stores when alcohol is a legal product, staff are required to be fully trained in dealing with it, challenge 25 operates successfully and clear codes of conduct apply to alcohol advertising.

Under the bill, it would be legal for supermarkets and other companies to pay for alcohol advertising in newspapers and magazines, but it would not be competent for such advertising to be available in stores. For example, it would be illegal to provide a magazine free to customers, except in the alcohol aisles. If the convener wanted her free recipes and information on a healthy lifestyle, she would have to go to the alcohol aisle for her free magazine. It would be legal to pay for an alcohol promotional leaflet to be distributed as an insert in any paid-for newspaper or magazine and to have that in stores but illegal to provide a free publication other than in the alcohol aisles.

I have quite a lot of reasons to give, but I will not state them all. It would be legal to sell alcohol-branded products anywhere in a store but illegal to put a poster by the cheese counter to suggest a port or wine that would complement a cheese. It would be illegal for a company to print a free recipe card for customers that suggested that they should buy alcohol for a recipe or to accompany a recipe. It would be legal for supermarkets to advertise alcohol to customers who shop over the internet but illegal to put a poster in a supermarket foyer to say that alcohol is for sale. It would be legal to include alcohol advertising to customers in direct mail but illegal to give such advertising to customers who lived in the vicinity of a store.

Like other amendments, amendment 44 is a probing amendment. I lodged it on the basis of concerns that the industry has expressed.

I move amendment 38.

Nicola Sturgeon: I apologise again for the length of my remarks; I will speak to all the amendments in the group. Several amendments have been lodged to section 4, which deals with the location of drinks promotions that relate to off-sales of alcohol. The Government amendments arise from helpful discussions with the alcohol industry and the Law Society of Scotland's licensing law sub-committee. The amendments seek to respond in a commonsense way to points that retailers have made, while maintaining our policy position.

Our broad policy intention is that any drinks promotions on the premises that relate to alcohol that is for sale for consumption off the premises should take place in the alcohol display areas or in any tasting rooms. That is a logical extension of the licence condition that is in place to require alcohol that is displayed for sale for consumption off the premises to be confined to designated parts of the premises.

Mary Scanlon's amendment 45 seeks to remove section 4, and her amendments 38, 42 and 43 seek to remove the restrictions on drinks promotions on the premises and the ban on drinks promotions in the vicinity of the premises. I cannot support those amendments, as I consider that drinks promotions for off-sales of alcohol should be confined to alcohol display areas or to a tasting room, for specialist retailers that have them, as that will help to emphasise that alcohol is not an ordinary commodity and should not be promoted as such. It will also help to deter impulse purchasing of alcohol, which can result in people purchasing alcohol when they had not intended to.

Since the requirement to display off-sales of alcohol in alcohol display areas was imposed, there has been an increase in other activities that encourage impulse buying, such as banners draped across car park entrances and piles of wine carriers inside shop doorways promoting quantity discounts. We note that Labour's alcohol commission made recommendations on the issue, too. Although we do not propose a shop within a shop for alcohol sales, we think that it is perfectly reasonable that drinks promotions on premises should take place only in an alcohol display area or a tasting room, rather than in other parts of the store, and that drinks promotions in connection with the premises should not take place in the vicinity of the premises. Therefore I do not agree with amendments 38, 42, 43 and 45.

When we introduced the bill, the alcohol industry came to us with certain concerns, some of which

Mary Scanlon seeks to address in her amendments. Amendment 39 would provide an exemption for mid-size stores that would allow them to promote alcohol by displaying printed materials in any part of the premises provided that those materials also promoted other non-alcoholic products for sale. I do not consider it appropriate to exempt retailers of such stores from the restrictions on drinks promotions. Promotional material on premises is aimed at encouraging impulse buying of alcohol. That is the case whether it is in a small retailer or a 24-hour supermarket.

I accept that Mary Scanlon's amendments stem from discussions with the Scottish Grocers Federation, which represents SPAR stores, Somerfield and other convenience store retailers. I am not convinced that there is a special case that warrants an exemption from the restriction on drinks promotions on premises. Her amendment 39 would also benefit many Tesco Express stores, which I am sure is not her intention.

Amendment 40 would remove the ban on drinks promotions taking place in the vicinity of the premises. Again, I cannot support that, as it would allow promotional material to be placed right outside the door to premises. As stated in the policy memorandum, promotions outside shop doorways are specifically intended to encourage the impulse buying of alcohol.

The Government has provided some comfort for licence holders and the further clarification of the policy that retailers requested on drinks promotions in the vicinity of premises. That comes in the form of amendment 10, which provides that the restriction on drinks promotions in the vicinity of the premises applies only to drinks promotions

"in connection with the premises".

That means that a promotion that is carried out by somebody other than the licence holder and which is not otherwise connected to the premises will not breach the condition. So an alcohol producer who places an advert on a bus shelter that happens to be outside a convenience store would not be captured by the provisions. I consider that to be a commonsense approach, as long as the convenience store and the licence holder have no involvement in that promotion.

Amendment 11 responds to a request from the Law Society of Scotland and others that we further define the term "vicinity". The bill as introduced would prevent drinks promotions from taking place in the vicinity of premises, which led to a discussion as to what is meant by "vicinity". Amendment 11 provides that

"'vicinity' means the area extending 200 metres from the boundary of the premises (as shown on the layout plan)."

In effect, that means that, generally, retailers will not be able to promote alcohol that is available for off-sales on the street near the store or in their car parks. We believe that that additional clarity will be helpful to retailers, LSOs and licensing boards.

On amendment 41, I am happy to say that I agree with Mary Scanlon's intention. A concern was raised with us that the restriction on drinks promotions could have unintended consequences for pubs that have alcohol-branded furniture in their beer garden, because in some cases that could be considered to be a drinks promotion. We did not set out to change the look of the Scottish pub and we have no intention of doing so. We were therefore happy to lodge amendment 9, which provides that the restrictions on drinks promotions on or in the vicinity of premises apply only to premises that sell alcohol wholly or primarily for consumption off the premises, which will mainly be shops and supermarkets.

As drafted, amendment 41 would not disapply the restriction on drinks promotions in the vicinity of the premises where a licence holder sets up tables and chairs on the pavement outside the premises and allows alcohol to be consumed there as that area is not wholly within the control of the premises manager. I consider that amendment 9 captures that scenario. It is more comprehensive than amendment 41 and it achieves the objective that Mary Scanlon is attempting to achieve.

I hope that Mary Scanlon has been able to consider my amendments 9 to 11, which address the same issues as her amendments 40 and 41.

Mary Scanlon's amendment 44 amends the definition of "drinks promotion" to include

"the advertisement of any product in the media."

Certain matters related to advertising are reserved to Westminster. However, I presume—and Mary Scanlon confirmed—that the amendment is intended not to relate to reserved matters but to address the display of magazines, newspapers and other publications that might contain alcohol promotional material. If that is the case, I consider that the Government's amendments 12 to 15 deal with those concerns.

Amendments 12 to 15 respond to a point that we discussed with retailers, who were understandably concerned that the display of newspapers and magazines, which invariably contain alcohol advertising, could in some cases fall within the definition of drinks promotion. We agree that it would be nonsense to require paid-for newspapers and magazines to be confined to alcohol display areas. Accordingly, amendments 12 to 15 make it clear that the display of newspapers and magazines that are sold on the premises should not be considered to be drinks promotions and thus do not need to be confined to

alcohol display areas, although I note that retailers might choose to put specialist wine or whisky magazines in their display areas.

However, the display of free leaflets, flyers, newspapers and magazines might constitute drinks promotions, in which case they will be required to be displayed in the alcohol display areas. I return to Mary Scanlon's example of the Asda magazine. If it really is about healthy living, it will presumably not be full of alcohol adverts and promotions, and in those circumstances there will be no restrictions on where it can be displayed in the store.

I ask the committee to agree to the Government amendments in the group and reject the non-Government amendments. I disagree with some of those in principle, and in other cases I am sympathetic to them but consider that the Government amendments cover the situation more comprehensively.

Dr Simpson: We will support amendments 9 to 15. The cabinet secretary will be pleased to hear that, for once, we are on the same side as her. We are in favour of limiting drinks promotions in both the on-trade and the off-trade to the display areas.

However, we are slightly concerned about a couple of issues. We believe that the main thing is to limit price-based advertising rather than brand advertising. The cabinet secretary said that it is okay for producers to advertise in the vicinity of a licensed outlet provided that the licensed outlet is not involved in the promotion, but I have a question in relation to the Asda magazine. I am sorry that that keeps coming up, but it was Asda that sent it to us. The magazine contains a substantial number of recipes with an associated drink and priced adverts. Will those be affected? Only a couple of pages purely comprise alcohol adverts with prices on them. I would like to know precisely what effect the Government's amendments will have on that issue.

The other issue that has been handed to us is the question of recipes. I have quite a number of them here, convener.

The Convener: Have you tried any of them?

Dr Simpson: No. They include hot toddy ice cream, which sounds like something we might need at the end of this meeting. Will it be okay to display food recipes that include alcohol in food areas, or will they be allowed only in alcohol display areas? It would be helpful if the cabinet secretary could enlighten me on that.

The Convener: I will let the cabinet secretary answer those points before I bring in Mary Scanlon, but I also have Ross Finnie waiting. I will wait to see whether there are more questions for the minister.

12:00

Ross Finnie: My point is not dissimilar to that just raised by Richard Simpson. I am broadly supportive of the general thrust of the argument that the cabinet secretary has adduced in response to Mary Scanlon's amendments and I am minded to support the cabinet secretary in every case, but amendment 45 raises a slightly different issue. As a matter of principle, the cabinet secretary drafted amendments that excluded all such material, so the approach was simple: whether or not a publication was paid for, she moved against it. She has responded to representations from the industry by inserting, in amendment 15, the phrase

"newspaper, magazine or other publication."

However, that is preceded by wording that makes clear that it applies to paid-for publications, which is where we get into some difficulty. Even I, conceptually, can see the difference between a flier that is wholly and exclusively intended to promote alcohol and the aforesaid magazine, which I shall not name again—

The Convener: It is too late; we all know what it is.

Ross Finnie: Yes, but that gets me—although not you—out of jail.

The aforesaid magazine is a magazine in the ordinary use of the English language. When you compare it to another publication, it is very difficult to differentiate between them; of course, the only differentiation is that one is paid for and one is not. That becomes a rather narrow point if one has crossed the rubicon of accepting that it is unreasonable to confine magazines to alcohol display areas and if the content, even in the aforesaid magazine, goes across a range of produce in the store.

The cabinet secretary may want to reflect on the matter, but I think that we may need further clarity before agreeing to the general thrust of her argument. As I say, I am not disputing the thrust of where she is coming from and I am not minded to support Mary Scanlon's amendments, but I think that we need to clarify the point.

The Convener: Does the cabinet secretary want to address those points?

Nicola Sturgeon: I am happy to address them; they are useful, and it is useful to air the whole issue. We have clarity at both ends of the spectrum. The amendments make it clear that paid-for newspapers and magazines will not be confined to alcohol display areas. I should say that there has been a difference of opinion between industry lawyers—you may say that there are always differences of opinion between any lawyers—about whether the bill as drafted would

ever have captured paid-for newspapers and magazines, but the amendments put that beyond doubt.

At the other end of the spectrum are fliers that purely promote alcohol and which clearly fall within the provisions of the bill. In the middle, if I can characterise it in that way, are publications such as the Asda magazine. I have not seen the particular edition of the Asda magazine that has been described—

Ross Finnie: You are the only human being who has not.

Nicola Sturgeon: I should say that the magazine that Mary Scanlon held up is different from the one that Richard Simpson held up.

The Convener: For balance, the committee now has a Tesco magazine. I think that all the other supermarkets will now flood us with magazines.

Nicola Sturgeon: Perhaps this is just my bad eyesight, but Richard Simpson's one looks more like *Cosmo* than an Asda magazine, but I will leave him to defend his position

Dr Simpson: For the record, I promise you that it is a Tesco magazine.

Nicola Sturgeon: I am happy to look again at the issue.

The current position in the bill is that it covers magazines that promote alcohol. An important point to bring to the committee's attention is that some supermarket magazines contain recipes with drinks promotions attached to them. They often contain promotions for particular brands of alcohol because the producers of those brands fund the magazine. In that respect, I am minded to say that they fall into the category of alcohol promotions, but I am more than happy to look at the issue again before stage 3 to see whether we need to tweak the provisions to give further clarity around this particular classification of publication.

The Convener: I ask Mary Scanlon to wind-up. Please do not show any more magazines.

Mary Scanlon: I will simply say that the magazine contains 100 pages, of which four are dedicated to alcohol. There are "37 flavour-packed recipes", according to Asda—although we do not even have Asda in Inverness.

Ross Finnie: That is too much information.

The Convener: If we see a wee packet of Asda goods outside your office, you are in trouble.

Mary Scanlon: I cannot even shop in Asda.

I thank the cabinet secretary for her response. In particular, I am delighted that she will look again at the provisions. Fifteen amendments have been

lodged to this section on off-sales: location of drinks promotions. I lodged eight of those amendments on behalf of various organisations that have raised concerns, and the Government lodged the other seven. I do not know how the organisations that suggested my eight amendments will respond to what the cabinet secretary has said. It is for them to balance the measures in the Government's amendments with the measures in my amendments. I am delighted that the cabinet secretary will come back to the matter at stage 3, and I will consult those who raised concerns with me with a view to lodging further amendments at that stage.

On that basis, I seek to withdraw amendment 38.

Amendment 38, by agreement, withdrawn.

Amendment 9 moved—[Nicola Sturgeon]—and agreed to.

Amendment 39 not moved.

The Convener: If amendment 40 is agreed to, I cannot call amendments 10 and 41, as they will be pre-empted.

Amendment 40 not moved.

Amendment 10 moved—[Nicola Sturgeon]—and agreed to.

Amendment 41 not moved.

Amendment 11 moved—[Nicola Sturgeon]—and agreed to.

Amendment 42 not moved.

Amendments 12 to 14 moved—[Nicola Sturgeon]—and agreed to.

The Convener: If amendment 43 is agreed to, I cannot call amendments 15 and 44, as they will be pre-empted.

Amendment 43 not moved.

Amendment 15 moved—[Nicola Sturgeon]—and agreed to.

Amendments 44 and 45 not moved.

Section 4, as amended, agreed to.

The Convener: I am being given help with the procedure by those on either side of me. At my age, I need it. Just keep me right, please.

After section 4

Amendments 28 and 29 not moved.

The Convener: Amendment 46, in the name of Rhoda Grant, is grouped with amendment 47.

Rhoda Grant: The purpose of amendments 46 and 47 is to stop a licensee advertising alcohol using price. The 2005 act dealt with promotions,

but advertising using price has remained a loophole.

Amendment 46 would stop licensees of on-sales and off-sales premises advertising the price at which they sell alcohol to entice people into their licensed premises. It seeks to stop licensees promoting the price to encourage people to buy more alcohol from their premises but would allow prices to be displayed at the point of sale. For bars and restaurants, the point of sale would include menus, even if they were displayed outside the premises. I believe that it would also include shopping websites and, indeed, mail-order catalogues for members of a wine club, for example, or people who have subscribed to receive the information by e-mail. At that point, the customer makes a decision about whether to buy, so it can be regarded as the point of sale.

Amendment 47 is an alternative to amendment 46 in that it applies only to off-sales.

I move amendment 46.

Helen Eadie: I support amendments 46 and 47 in Rhoda Grant's name. I note that Alcohol Focus Scotland supports the amendments and that it has called for some time for a ban on advertising promotions that attract people into shops. It has also called for alcohol price promotions to be restricted to the alcohol section within shops and alcohol awareness information to be clearly visible at the point of sale. Such information should cover the units contained in different drinks, the recommended daily limits, the recommendation for one or two alcohol-free days a week and a health warning that excessive alcohol consumption can damage health.

Alcohol Focus Scotland also supports the children's charities' call for point-of-sale information to remind people that their drinking can have a negative impact on others, including family members.

Mary Scanlon: I ask the minister and Rhoda Grant to respond to comments from the Scottish Grocers Federation, which is very concerned about the disproportionate impact that amendments 46 and 47 could have on small shops. It believes that the amendments would be open to wide interpretation, creating further confusion among licensing boards. It also says that promotions in leaflets are the main method of advertising that small shops use and that the amendments would play into the hands of supermarkets, which have the resources available to use radio and television advertising.

Nicola Sturgeon: Amendments 46 and 47 are the ones to which I alluded in another debate earlier. I am very sympathetic towards Rhoda Grant's intentions with them. When the Government considered provisions for the bill, it

looked at measures such as these in considerable detail. Our intention and desire was to prevent alcohol from being promoted on price. The measures that we considered would have affected the way in which prices of alcohol could be displayed. The effect of these amendments likewise restricts the way in which prices of alcohol can be displayed.

We did not progress such measures in the bill because of concerns about legislative competence. For the same reason, I am unfortunately and reluctantly unable to support these amendments, as they relate to the regulation of price indications, which is a reserved matter. The price indications reservation covers all matters relating to the regulation of price indications, including the relevant provisions in the Consumer Protection Act 1987 and the Price Marking Order 2004. The 2004 order includes requirements as to how and where prices are displayed.

Amendments 46 and 47 would have the effect of regulating where prices could be displayed and, in relation to on-sales of alcohol, would regulate the form in which they may be displayed. Therefore, we have reluctantly concluded that they relate to the regulation of price indications and are outwith our competence. We do not consider that the amendments come within the exception to the price indications reservation, as we do not consider that they relate to the subject matter of section 16 of the Food Safety Act 1990.

Helen Eadie raised issues to do with point-of-sale information. I point the committee to an amendment that will come up later in the name of Michael Matheson, which will deal with such information in more detail, so I will not go into that at this stage.

Although I agree with the thinking behind the amendments and am sympathetic to the intentions behind them, I am not able to support them and, reluctantly, must ask Rhoda Grant to withdraw amendment 46 and not move amendment 47.

Rhoda Grant: When drafting the amendments, I was aware that the Scotland Act 1998 might cause problems and I sought to draft them in a way that would avoid those problems. However, given the new information that the cabinet secretary has just given, I seek to withdraw amendment 46 and will not move amendment 47.

Amendment 46, by agreement, withdrawn.

Amendment 47 not moved.

Section 5—Requirement for age verification policy

12:15

The Convener: Amendment 16, in the name of the minister, is grouped with amendment 17.

Nicola Sturgeon: The amendments respond directly to a specific recommendation by the committee in its stage 1 report. The bill introduces a requirement for an age verification policy to be in place as a condition of premises licences and occasional licences. The bill proposed that 21 should be the minimum age in such a policy, but the committee has recommended that that be increased to 25.

Neither the bill as introduced nor the amendments change the offences regarding the sale of alcohol to persons under 18. However, age verification policies such as challenge 25 can help to empower staff to challenge customers where there is doubt about their age and to ensure that customers are more aware that they are likely to be asked to show proof of age. That can help to avoid confrontation at the checkout.

Amendment 16 is consistent with both the committee's recommendation and one of the recommendations of Labour's alcohol commission. Given that there is widespread—although perhaps not universal—support for 25 as the appropriate age, I am happy to commend the amendment to the committee.

I move amendment 16.

Dr Simpson: I thank the cabinet secretary for taking our recommendation on board. This is a welcome move that should produce a clear and uniform policy across retail outlets, give considerable force to programmes such as serving it right that support individuals who sell alcohol and give clarity to the public on the procedures that will be followed.

Amendment 16 agreed to.

Amendment 17 moved—[Nicola Sturgeon]—and agreed to.

Section 5, as amended, agreed to.

After section 5

The Convener: Amendment 30, in the name of Michael Matheson, is the only amendment in the group.

Michael Matheson: Amendment 30 is a probing amendment that reflects the negative impact that parental alcohol misuse has on the health, safety, education, life chances and happiness at home of at least 80,000 children in Scotland. Despite the importance of the issue, only a limited amount of information is available to parents to encourage them to consider the impact of their alcohol use on their children. Some children's organisations and organisations that work with those who suffer from

alcohol problems believe that more action needs to be taken to encourage individuals to think about their children when making decisions about alcohol consumption.

The primary purpose of amendment 30 is to make provision for a simple notice to be provided in licensed premises to draw parents' attention to the matter. However, I would welcome an indication from the minister of other measures that might be more effective than having a sign at the point of sale.

I move amendment 30.

Ross Finnie: To be fair to Michael Matheson, we received representations from third parties on this issue. Although I understand the thrust of the amendment, I am not sure that its wording, which is as was suggested, will have a material effect. Like Michael Matheson, I am interested in whether there are other ways of achieving his objective. However, unless there is some persuasive evidence in favour of the amendment, I will not be able to support it, for the reasons that I have given.

Mary Scanlon: I support the amendment in principle, although I appreciate that it is unusual for me to support an amendment from Michael Matheson.

The Convener: I thought that harmony was breaking out, Mary.

Mary Scanlon: I would call it an uncomfortable consensus.

Amendment 30 reminds me of the very clever and persuasive advertising that we saw during our visit to Finland and which I have mentioned quite a few times since our return. It was certainly the first time that I had seen ads that asked adults to consider the effects of their alcohol consumption on their young children.

The Convener: And the two of you have made up now.

Nicola Sturgeon: I thank Michael Matheson for lodging amendment 30. We have said repeatedly that there is no single or quick fix to our alcohol problem and we all acknowledge the importance of challenging and changing our drinking culture over the longer term. Amendment 30 seeks to contribute to that change by reminding those who buy—and, indeed, sell—alcohol that they are not trading in an ordinary product and I fully support the principle behind it.

That said, I think that Michael Matheson has touched on a broader issue of the information that should be made available to consumers at the point of sale. There is scope to improve significantly the information that we make available to consumers by, for example,

publicising sensible drinking guidelines, increasing awareness of the unit content of alcoholic drinks and enhancing understanding of the impacts of alcohol misuse by providing information of the kind that Mary Scanlon referred to at the time when and the place where people make their purchasing decisions. Such requirements can be taken forward through regulations under the 2005 act to apply mandatory conditions as part of a premises or occasional licence and do not require primary legislation.

The Scottish Government is happy to work in consultation with the industry to consider what information should be provided to consumers at the point of sale with a view to introducing such regulations. In response to Ross Finnie, I make it clear that such regulations would have to be underpinned by evidence and subject to consultation.

Although I thank Michael Matheson for raising this important issue, I ask him to withdraw amendment 30 on the basis that we will carry out further work on these issues.

The Convener: I agree with Mary Scanlon that a great amount of information educating people on the dangers of alcohol was available and had a high profile in Finnish alcohol outlets—which, of course, are run by the Finnish Government.

Michael Matheson: I am very grateful for members' comments, in particular Mary Scanlon's very kind contribution. However, her very positive overtures will not necessarily persuade me to support some of her later amendments.

To reassure Ross Finnie, I repeat that amendment 30 was always intended to be a probing amendment because I suspect that the matter is better handled in regulations rather than in the bill. I am reassured by the cabinet secretary's comments that the area is being actively considered. Providing more information at the point of sale highlighting to parents, in particular, the potential impact of their alcohol consumption on their children would be a very welcome step and I look forward to seeing more detail on that in future. With that, I seek the committee's agreement to withdraw amendment 30.

Amendment 30, by agreement, withdrawn.

The Convener: Amendment 48, in the name of Jackie Baillie, is in a group on its own.

Jackie Baillie (Dumbarton) (Lab): I am very grateful to the committee for the opportunity to speak to amendment 48, even though it has arisen a week earlier than I had expected.

The Convener: Hold it right there, Jackie. We are just being very efficient.

Jackie Baillie: I was just about to say, convener, that the committee has clearly been very efficient under your tutelage.

The Convener: It has been a collegiate effort.

Jackie Baillie: I must apologise because this morning I sent the committee further supporting evidence for the amendment that I realise and appreciate you will not have had time to consider. However, I am happy to take members through some of that evidence now.

Amendment 48 seeks to introduce a legal limit on caffeinated alcohol of 150mg per litre of alcohol. It applies to pre-mixed drinks because we took the view that the measure would benefit from clarity in enforcement and that applying it in any other way might lead to confusion. I also make it absolutely clear that we are targeting not a single product but any pre-mixed combination of caffeine and alcohol. In the past, we have highlighted at least two or three such products.

I turn to our reason for lodging the amendment. As I think most members would agree, alcohol markets elsewhere, particularly the US, are often more developed than they are here. What happens in America six months ago starts to make its way into our alcohol markets and on to our shelves. Increasingly in America, various products are being added to alcohol. The companies' reason for doing that is to create new products, new market shares and new opportunities to sell an increased number of products to consumers. There has been interest in and reaction to that in America, which is why several bits of evidence that I will cite relate to the experience there. Such is the concern there that even the industry is starting to take action. MillerCoors, which I understand produces beer—most members will know that—withdrew a product called Sparks Red because of the concern that is building in America about the addition of caffeine to alcohol.

There was much discussion at the committee last week about the evidence for the proposal. I will start with two pieces of evidence from Scotland, but first I must mention an offer from Associate Professor Mary Claire O'Brien that, if the committee should at any stage want a videoconference on the impact of caffeine in alcohol, she would be more than willing to take part in one. I suggest a videoconference because she is at Wake Forest University in America and I do not anticipate the committee going there or her coming here.

The first report from Scotland is from Strathclyde Police. A BBC freedom of information investigation uncovered that, between 2006 and 2009, 5,638 crime reports—that is an average of three crimes a day—mentioned the taking of one brand of caffeinated alcohol before the

commission of the crime. Bob Hamilton was quoted differently at last week's meeting, but what he actually said to the BBC when asked about an association between violence and tonic wine was:

"I think it's clear from the figures that there is an association there."

I have heard it argued, and I accept, that 0.5 to 1 per cent of the overall alcohol market is small in relative terms, but the impact is therefore, frankly, disproportionate.

The second piece of evidence from Scotland is the McKinlay report, which was produced for the Scottish Prison Service in 2009. It is entitled "Alcohol and Violence among Young Male Offenders in Scotland (1979-2009)". It states:

"Of those who admitted to drinking before their current offence, and who could remember what they had been drinking, according to the 2007 survey 43.4% had consumed Buckfast tonic wine, 42.0% any type of spirits, 31.0% any type of beer and 21.0% any cider. Consumption of other types of alcoholic beverages was uncommon."

That demonstrates the disproportionate effect.

Laurence Gruer, the director for public health science of NHS Scotland, in a submission to Labour's alcohol commission on 5 March 2010, said:

"There is little published evidence that combining alcohol with caffeine increases the risk of aggressive or violent behaviour. This may simply be because the research has not been done rather than because there is no link. Nevertheless, we think there is sufficient information to support regulation to restrict the amount of caffeine in combination products."

I could go on but, rather than read the exact quotes, which I have sent to all members, I will give some examples of the studies and evidence that we bring to the committee. There is a study entitled "Risks of Alcoholic Energy Drinks for Youth" by David L Weldy in the *Journal of the American Board of Family Medicine*. I can make all the documents available to the committee. Professors from the centre for substance abuse research, directors of toxicology, professors from a department of psychiatry and neuroscience and a research institute on addictions as well as Associate Professor Mary Claire O'Brien, who is from the department of emergency medicine and the department of social sciences and health policy at Wake Forest University, all say that there is an issue with caffeinated alcohol.

Looking much closer to home, to our colleagues in Europe, I note that there is a study on the intake of energy drinks in association with alcoholic beverages in a cohort of students at the school of medicine at the university of Messina. There are studies from the Netherlands, France, Ireland and Sweden, and others from Australia and Quebec. There is an interesting comment from the European Commission on research. In 1999, the

European Commission commented on the lack of research on the effects of energy drinks in combination with alcohol and/or fluid loss during exercise. It said that serious ethical problems would be involved in conducting research to study directly the combined effects of high blood alcohol concentrations, exercise, dehydration and the consumption of energy drinks in humans. Perhaps that points to why numerous studies consider the consequences but no direct study of human consumption has been undertaken—such a study would be unethical.

12:30

I have also heard about the difficulties that would be caused if we asked for product recipes to be changed. I will describe a caffeinated alcohol product that can be bought here in Scotland and the same caffeinated alcohol product, by the same manufacturer, which can be bought in Ireland. In Scotland, the product can be found in a green bottle. It is a red wine-based aperitif that contains 15 per cent alcohol and 37.5mg of caffeine. In Ireland, the same product comes in a brown bottle. It is also described as red wine and it is 14.8 per cent alcohol, but its caffeine level is far greater—it is 55mg per 100ml. It is clear that a recipe can be changed, so it is possible and enforceable to introduce a legal limit on caffeine.

It is time to take action on caffeinated alcohol and the bill presents a useful legislative opportunity to do so.

I move amendment 48.

The Convener: I suggest to Jackie Baillie, although I am sure that she does not need me to tell her, that if she puts that research in the Scottish Parliament information centre, it will be available to the whole Parliament at stage 3 and subsequent to our ponderings—we are pondering today.

Helen Eadie: I confess that, when we started to discuss caffeine and alcohol, I was completely unaware of the implications and of how serious the issue could be for all of us in Scotland. I realised that only after I had gone online to trawl through many papers and after I had listened to what Jackie Baillie said and to other discussions in the Parliament.

Some of the most compelling information, which I read last week, was about the MillerCoors agreement, to which Jackie Baillie referred. That agreement was initiated and generated by the Ohio Attorney General, Nancy Rogers, who was joined by attorneys general from 13 other jurisdictions in announcing the agreement with MillerCoors to stop producing its best-selling pre-mixed alcoholic energy drink, Sparks.

Further detail in the information about that agreement says:

“‘Young people in particular drink more when an alcoholic drink contains caffeine,’ said Attorney General Rogers. ‘When they feel alert, they don’t realize that they are already impaired. As an educator, I have seen many young people destroy promising futures because of excessive drinking ... We commend MillerCoors for removing caffeine from their alcoholic products. Anheuser-Busch has also done so. We hope the remaining manufacturers will follow their lead. Removing caffeine from alcoholic drinks will brighten the future for many of our young people.’”

In May 2008, the attorneys general announced that Anheuser-Busch had agreed to stop producing alcoholic energy drinks, including Tilt and Bud Extra. The elimination of other drinks from the market followed that. In total, nearly 85 per cent of all the alcoholic energy drinks that were available at the start of 2008 were eliminated from the market. That information is compelling.

In the other evidence that we have read, I was impressed by what US Senator Charles Schumer said in July this year. He said:

“Drinks such as Four Loko and Joose contain up to twice the amount of alcohol than a bottle of beer and high amounts of caffeine—mixing alcohol and caffeine can be extremely dangerous for teens”.

If we consider all the drinks in Scotland that are similar to the drinks that have been named in America, we can see how those drinks have consequences for our young people that we do not know about.

The report from the European centre for monitoring alcohol marketing states:

“Recent scientific literature warns for the harmful combination of alcoholic beverages with energy drinks. This combination strengthens the risks of alcohol related problems since the energy drink masks the level of intoxication. Nevertheless, this mix of drinks is very popular especially among young people. Alcohol producers make use of this demand by introducing canned alcoholic energy drinks.”

I will not take up the committee’s time; members can read the report for themselves.

One other issue concerns the drinks that have been affected in Denmark and France, and we must consider how those countries have followed through on that. I urge members to read the available papers with regard to what has been said in Australia and elsewhere.

The Convener: That can be taken up with SPICe, which can make the papers available to all members for the stage 3 debate.

Ross Finnie: I believe that amendment 48 raises a serious difficulty, although that will be for the committee to decide. I have no difficulty in accepting the bona fides of Jackie Baillie’s—or anyone else’s—serious concerns around

caffeinated alcoholic drinks. My difficulty relates to the method by which evidence ought properly to be led before the committee, which it has debated at length—some might say ad nauseam.

I am genuinely concerned that caffeinated drinks might indeed have the impact to which Jackie Baillie alluded in presenting us with evidence. She had three papers—a letter to the convener and two attached documents—which I clutched from my printer as I left my office this morning.

I am not disputing the validity of that evidence, and I am certainly not about to dispute the validity of the evidence that Helen Eadie has looked at online. I am concerned at present with how we reach a position in which we might properly consider the impact of caffeinated drinks in a way that is consonant with the committee's procedures. For all the other sections of the bill, evidence has been led before the committee in a way that has enabled us to test that evidence and come to a conclusion on it.

I do not wish to be silly and nitpick on the matter. If there is a genuine issue with caffeinated alcohol products, it is perfectly proper for the committee to deal with it, and I am certainly not about to play silly buggers by trying to prevent it from taking that view. However, if I find that evidence is being led before me when I am about to consider an amendment, whichever number it is, I need to square that circle. I do not know whether the clerks can advise us on that.

I said earlier that I do not regard the potential legal challenges from the Supreme Court or the European Court of Justice as being good reasons for not proceeding. However, I become uneasy when it seems that the process of the committee might be materially altered with regard to the way in which it considers a particular amendment.

I would be much more comfortable if I had some guidance, either through the convener or from the clerks, on how the committee can properly address a serious issue in a way that is consistent with the way in which we have addressed other issues that have been raised before us and on which we have taken evidence.

Jackie Baillie has cited evidence that others have given, but she might want to reflect on the fact that, unfortunately, what those people said in a BBC interview was not entirely consistent with what they said before the committee last week. That is not helpful. I am afraid that I have to tell you directly that that is what was said to us—it is in the *Official Report*—and it does not wholly support your proposition. I am not trying to be obstructive, but the evidence that we have at the moment does not allow us to continue as you might wish.

The Convener: I am sorry to have been mumbling away at your side, Ross.

Ross Finnie: I managed to continue despite the almost constant background noise.

The Convener: You always do. You are almost like a husband.

Ian McKee: And you are almost like a wife.

Ross Finnie: I think that your comment might be defamatory, convener. I might have to consider my position.

The Convener: The position is this: amendment 48 has been moved, so a decision must be taken on it. Ms Baillie can decide either to withdraw it or press it to a vote, but we will have to move on with our consideration of the bill. Although it is open to committees to take further evidence on an amendment, we cannot take that decision at the moment; we would have to go into private session and discuss whether there was a collegiate, collective and majority view on taking more evidence. However, I will leave that in the air. The door remains wedged open for the committee to discuss the issue later.

I call Ian McKee, to be followed by Michael Matheson and Richard Simpson. By the way, Ian, I am not like a wife.

Ian McKee: I am just rather surprised that Ross Finnie regards the term "husband" as defamatory.

The Convener: Only in relation to me.

Ross Finnie: I think that the convener has adequately explained that already.

Ian McKee: I thank Jackie Baillie for explaining with such eloquence the motives behind amendment 48. We are, like everyone else in Scotland, very concerned at the notion that adding caffeine to alcoholic drinks leads to greater aggression and violence, so her comments have to be seriously considered.

However, I would be grateful if Jackie Baillie could attend to two particular concerns. First, we have already heard Opposition members articulate with great eloquence their fear that the introduction of minimum unit pricing will lead to a stream of white-van men selling alcohol that they have bought cheaper across the border. Would not the same problem arise if, say, the Buckfast that is sold in Carlisle has a higher level of caffeine and the good folk of whatever area of Scotland—I will not mention any—who enjoy drinking large quantities of it regard the new version that you have proposed as Buckfast lite? If they want the real macho stuff, will not they get that from the white van man coming across the border? Does the same principle that caused her party such concern about minimum unit pricing not apply here as well?

My second point reflects Ross Finnie's concerns. Just seven days ago when Michael Matheson asked Chief Superintendent Hamilton of Strathclyde:

"what impact do you think that banning Buckfast would have on those with an alcohol problem who tend to get involved in violent activities?"

the chief superintendent replied:

"It would have no great impact because people would simply drink something else. ... As a result, I do not think that banning Buckfast would lead to a significant increase or decrease in violent crime."

Later in the meeting, he also said:

"The violent crime that we deal with is continuing to decrease and we have not seen any real rise in problems that we could evidence as being related to Buckfast or caffeinated alcohol."

Finally, at the same meeting, Dr Alasdair Forsyth of Glasgow Caledonian University said:

"Another question that needs to be researched is whether caffeinated alcohol has an effect on aggression. I do not think that anybody has even looked at that because it is not seen as an issue in America. As you say, the problem there is student campus drinkers who can drive at a younger age and are drinking illicitly."—[*Official Report, Health and Sport Committee*, 15 September 2010; c 3308-14.]

Jackie Baillie has said that there is evidence in America and other places, but we have not had time to look at that. The only evidence that we have had is the evidence that was presented a mere seven days ago, which was not challenged in committee with any refutation; it was just accepted as evidence. I feel that it is impossible to go ahead on the ground of evidence that I received only this morning, before I came to the meeting, and which I have not had time to study. I agree with Ross Finnie in that respect.

12:45

Michael Matheson: I have some difficulty with the issue. Today, Jackie Baillie presented a few names and made reference to a few studies and I believe she has e-mailed us copies of a couple of letters and a document. As a number of members have said throughout the process of considering the bill, the provisions in the bill should have an evidence base to support the action that they are intended to implement.

The process is not just about presenting evidence. It is also about having the opportunity to test the veracity of that evidence. We have not had the opportunity to do that for these areas, although we have had an opportunity to question Superintendent Hamilton on the details in the BBC report. If I recall correctly, he suggested that the BBC's reporting of the statistics was not entirely accurate in that it referred to the term "Buckfast" being contained within a crime report, which is not

the same as saying that the person who committed the offence had been consuming alcohol. He pointed out that it could be that the victim had consumed Buckfast at the time. He was concerned about the way in which that so-called evidence was presented.

The study from Polmont refers to some 40 per cent of the young offenders in Polmont having consumed Buckfast at the time of committing their offence, but 42 per cent of them had also consumed spirits at the time of committing the offence. It strikes me that, if we are to take measures to try to address the issue, we should also be looking at spirits, if that is the type of evidence that we are going to use to justify the approach.

There is an inconsistency in the suggestion that we should take action here in Scotland solely on the basis that Jackie Baillie suggests, for the reasons that Ian McKee outlined. There is potential for white van man simply to stock up with high-value Buckfast and drive it up the road or, as Helen Eadie stated eloquently today, people could just purchase it over the internet and have it delivered to their door. How do we address that issue?

A further point is that, in the on-trade, people can purchase drinks such as vodka and Red Bull that contain twice the limit of caffeine that is proposed in Jackie Baillie's amendment. Should we be looking to ban such drinks from being available in the on-trade as well, given the concerns that Jackie Baillie has on the matter?

My view is similar to those of Ross Finnie and Ian McKee. If we are to consider the issue seriously, we must have an opportunity to look at these matters in detail and to test the evidence that has been cited in support of amendment 48 to see whether it is justified and merited.

Dr Simpson: It is a difficult topic. It should be noted that amendment 48 is trying not to ban pre-mixed caffeinated drinks but to limit the caffeine in them. That is a significant distinction.

I will deal with some of the background issues. It is interesting that the Food and Drug Administration in America is considering the issue to determine whether such drinks are safe. It is now requiring the industry to produce evidence. Before the industry did so, two of the major producers, MillerCoors and Anheuser-Busch withdrew their pre-mixed caffeinated drinks. The industry has itself recognised the arguments that such drinks appear to be contributing to growing and significant problems.

I accept that this is an area where the body of evidence is growing. It is certainly not true to say that there is no evidence on the matter—there is already considerable evidence. Denmark has

been running controls on an individual drink basis for some years. At least one jurisdiction that is often praised in the Parliament has seen fit to take measures on an individual drink basis. I understand that the Danes are considering moving to a general ban, but that has not actually occurred. Iceland has also been considering the issue, albeit on a different basis.

I have some sympathy with the comments that Ross Finnie made earlier about the requirement to test the evidence, but I am really concerned about the intuitive evidence, which is very clear: if a stimulant and a depressant are mixed, the effect will be contradictory between the two. The American peer-reviewed publications have demonstrated considerable scientific merit in the concept of an impairment of awareness of intoxication. As Ross Finnie has said, the issue is what and how great are the effects, and the research is as yet unclear about that.

We have a particular problem in the west of Scotland, and that cannot be denied. No matter whether it is perfect, there is a considerable amount of evidence that the use of tonic wine fortified with caffeine is a problem.

There is a further cross-border issue. I do not think that there will be a price differential between north and south of the border. I was quite impressed by the evidence that we received from Dr Forsyth, and I see considerable face validity in it: the people drinking the drink do not know what is in it, and they do not know what the effect of it is. It has become a cultural drug in the west of Scotland, in some respects. People will not look at the quantities of caffeine, as they do not regard caffeine as being a drug. Coffee is not regarded as a drug, although of course it is because caffeine within coffee is a drug, as it is within tea. The point is that people do not actually know what they are drinking.

I have some sympathy with Ross Finnie's point. If there is some way in which we can take further evidence before stage 3 to determine whether or not the amendment should stand, I would be happy with that. At the moment, I support amendment 48.

Mary Scanlon: I, too, thank Jackie Baillie for her contribution today. Jackie has listed many pieces of research, but I arrived at the committee too early to pick up the information from my computer. Not only have we not had a consistent approach on taking evidence on caffeinated alcoholic drinks, but we have not had the opportunity to take an informed approach.

The evidence that was given to the committee last week was not compelling. I was hoping that Jackie Baillie would respond to the significant discussion that we had in the committee last week,

initiated by me and involving others, about over-the-counter headache and pain-relief drugs, which can be mixed with non-alcoholic drinks. It is my understanding that that would achieve the same effect as having a drink containing caffeine. That was confirmed by Dr Forsyth. Supermarkets can be innovative and enterprising, and someone who is looking for a certain effect from a certain drink could also be innovative and enterprising. I would like more information on that—I would not want to ban pain relief and headache tablets over the counter.

Helen Eadie: First, we should consider the process issue that Ross Finnie identified. I make no apologies to anyone inside or outside the Parliament, because we have worked exceptionally hard over the summer. Some of us have been on two or three committees. I had four committee meetings last week and this week. The issue that amendment 48 addresses has been around over the summer and we have had reports and papers about it. The fact that we chose not to highlight it in the work that we did was purely a consequence of our not being aware of how serious it was.

Last week, arising from what was said at the committee—

The Convener: Helen, can I stop you there? We still have a bit to go, so I do not want to get into a debate at this point about whether to take further evidence. I have said that that is a matter for the committee to discuss.

Helen Eadie: Can I finish on this small point? I will not go on. Ian McKee made a valid point but, because it was said last week that there was no scientific evidence on the matter—the cabinet secretary has also said that—I went away to examine what the scientific evidence said. I accept, convener, that you are going to take more evidence on the matter.

The Convener: No. That is for the committee to decide.

Helen Eadie: I accept that we will discuss it more. It is such a serious issue that we should not just let it go.

The Convener: I have no doubt that you will make your representations at the correct time.

I have a concern, which picks up from Mary Scanlon's point, about the term "ready-mixed alcoholic drinks" in Jackie Baillie's amendment. I do not want to be difficult, but the evidence last week from Dr Forsyth said:

"If we get rid of pre-mixed alcohol and caffeine products, people could mix their own, or bars could do it for them."—*[Official Report, Health and Sport Committee, 15 September 2010; c 3317.]*

That is another hurdle.

Chief Superintendent Hamilton also said:

"The reality for the police is that we do not attend many violent disturbances outside coffee shops—the violence is all linked to the antisocial behaviour that is linked to alcohol abuse. People could mix and match whatever, but it is the alcohol consumption—whatever brand it is—that gives us the greatest concern."—[*Official Report, Health and Sport Committee*, 15 September 2010; c 3318.]

That is the issue.

Although one can be sympathetic to the thrust of amendment 48, it does not get over the problem one bit. To be frank, if people have been abusing drinks and did not realise that the caffeine was leading them to drink more than they were aware, then they ken noo—as my grannie would say—because we have certainly told them.

Nicola Sturgeon: I will respond to some of the points that have been made and suggest a possible way forward, recognising that it is entirely a matter for the committee.

Jackie Baillie was right to indicate at the outset of the debate that pre-mixed caffeinated alcohol drinks represent less than 1 per cent of total alcohol sales in Scotland. However, I recognise the sincere concerns that have been expressed about the possible links between products such as Buckfast tonic wine and criminal behaviour. Therefore, I find myself in a similar position to Ross Finnie: I am not on a mission to disprove the arguments that Jackie Baillie has made, nor am I necessarily in a position to do so.

I hold no brief for pre-mixed caffeinated alcohol products. I am simply of the view that, at this stage, we do not have the evidence that would make an amendment such as Jackie Baillie's compliant with European law. In the light of the debate on minimum unit pricing and the importance that members of all parties placed on having the evidence to justify that policy in legal terms, members will be aware how important that point is. It is simply and straightforwardly the case that prohibiting sales of alcohol that contain more than a specified level of caffeine would comply with European law only if there was evidence to show that such a prohibition was necessary to protect health or prevent crime and that it was a proportionate way of achieving those benefits. We remain open to considering any new evidence that any member produces but, at present, we do not consider that there is sufficient evidence that amendment 48 would prevent crime or protect health.

I have not seen all the evidence that Jackie Baillie cited. I am not sure whether it was sent to me; in any event, I did not pick it up before I got here. However, I will be happy to consider that evidence when I get the opportunity to do so. I will respond as briefly as I can to some of the

evidence that Jackie Baillie cited and which I have not yet had the opportunity to look at.

13:00

Jackie Baillie cited the report entitled "Alcohol and Violence among Young Male Offenders in Scotland (1979-2009)". She was right to say that 43 per cent of the 172 offenders who were interviewed said that they had drunk Buckfast before committing their offence. However, I think that Michael Matheson made the point that the same amount also said that they had drunk spirits—vodka, in most cases. It is also the case that the FOI statistics that Strathclyde Police provided show that the word "Buckfast" was mentioned in 1.3 per cent of total recorded crime and offence cases. I think that Michael Matheson said that that does not necessarily mean that the offender had drunk Buckfast before committing the offence or that there was a causal relationship.

Jackie Baillie pointed to experiences from several other countries. For the sake of accuracy, it is important to point out for the record that many restrictions that were in place in the Nordic countries have now been removed. In Norway, for example, the restriction on the maximum amount of caffeine that can be added to any product—not just alcohol—has been lifted, and there is no longer a restriction on caffeine content in Denmark.

On a point that Richard Simpson made, I note the US Food and Drug Administration's recent call for evidence to show that products that contain both caffeine and alcohol are safe. Should its findings be published, we will, of course, consider them carefully and consider whether further research or action is necessary.

It is not just that we do not have evidence on the general thrust of the proposed move; as far as I can see, there is no evidence on the specified amount of 150mg of caffeine per litre. I would be interested to hear what Jackie Baillie has to say about the basis on which that particular level was chosen.

Members have quoted Alasdair Forsyth, who said in last week's committee meeting:

"There is no research that suggests that mixing caffeine and alcohol is related to moods in any way".

Chief Superintendent Bob Hamilton said that the police

"have no evidence that that type of caffeinated product is a cause of violence or increases violence."—[*Official Report, Health and Sport Committee*, 15 September 2010; c 3308.]

Indeed, he went on to say that one of the bigger concerns is the mixing of Buckfast with other alcoholic drinks rather than just Buckfast on its own. Others have made the point that banning

drinks with a high caffeine content does nothing to prevent people from mixing caffeine and alcohol themselves.

Jackie Baillie referred to a study by Mary Claire O'Brien. It is true that that study suggests that the consumption of caffeinated drinks with alcohol can be linked to risk-taking behaviour, but its author also noted that further research is needed to understand that association better.

In the absence of clear evidence at this stage that restricting the caffeine content of alcoholic drinks would have the impact that some people sincerely believe that it would have, my judgment is that such a move would be unlikely to comply with European law. However, if further evidence emerges, I would be open to considering addressing the matter in legislation.

My final point, which is entirely for the committee's consideration, is about process. Any such restriction would require a notification in draft form under the European technical standards directive. Such a restriction would be unenforceable unless that procedure were followed. For that reason, I propose that, if further evidence emerged, the appropriate means of bringing about legislative change would be by regulations under the Licensing (Scotland) Act 2005 rather than by amending the Alcohol etc (Scotland) Bill. That would ensure that the relevant procedures under European law would be complied with. I stress that the matter is entirely for the committee, but that might offer a way forward for the committee to consider the matter outside the context of the bill. If it thought that the evidence was available I, as the minister, and the Government would certainly commit to pursuing the matter in regulations.

The Convener: On that point—not to pre-empt anything that Jackie Baillie might say—if the committee were to take that route, it would be useful to have a note from the Government on the legal process by which the issue could be dealt with in regulations. I appreciate that it seems as if I am asking for legal advice.

Jackie Baillie: I will attempt to do justice to everyone's comments.

Helen Eadie was right to point out that the impact of the proposal in the States involved companies coming to agreements to withdraw caffeinated products from the market or to modify their recipes.

I must stress that we are not seeking to ban an individual product; we are seeking to limit the amount of caffeine in pre-mixed drinks that contain alcohol. Studies have found that young people drink more when they are drinking caffeinated alcohol and that they are more likely to be violent, to be victims—I acknowledge that point—to risk

injury to themselves, to drive while intoxicated, to be subject to sexual assault and to be involved in dangerous behaviours. That was the effect not just of alcohol but of alcohol with caffeine.

I accept Ross Finnie's concerns about process, but I respectfully point out that the committee took evidence on that matter. Indeed, members of the committee insisted that the report of the alcohol commission and its supporting evidence be published. That was placed in the Scottish Parliament information centre. It is not for me to alter the process of the committee but I thought that, given the discussions that you had last week, it would be appropriate to provide additional submissions to the committee. It is for the committee to decide what to do with them.

The Convener: I can reassure you that the witnesses that we call are agreed by the committee. It is always open to members of the committee to ask to speak to other witnesses, but the witnesses from whom we heard were those who were decided on by members.

Jackie Baillie: Absolutely—and I have suggested witnesses to whom the committee might speak if it decides to take further evidence. However, I believe that there is already sufficient evidence in the public domain. Equally, the Scottish Government has been collating relevant evidence. I will deal with that when I turn to the cabinet secretary's remarks.

I am sure that Bob Hamilton will take this matter up with the BBC but, on 18 January 2010, he said,

"I think it's clear from the figures that there is an association there".

He went on to say that

"The figures are fairly clear that Buckfast is mentioned in a number of crime reports and over the period requested, the Buckfast bottle was used 114 times as a weapon."

Ian McKee and Michael Matheson talked about white van man. I point out to them that Buckfast, and caffeinated alcohol more generally, represent a small proportion of the market, as the cabinet secretary and other members of the SNP have said. It is not a significant proportion of the market and it would not bring about the white-van-man effect that overall changes to pricing on alcohol would.

We must consider the fact that some of the publicity around particular brands of caffeinated alcohol talks about them being specially made for Scotland. I do not think that that is particularly helpful. Further, we must recognise that, rather than a full-population measure, such as one on pricing, my proposal would affect one particular demographic that has a tendency to drink caffeinated alcohol.

Michael Matheson spoke about the victim as well as the perpetrator drinking caffeinated alcohol. I accept that point. In response to Helen Eadie's comments, I pointed out that the likely impact of drinking caffeinated alcohol applies both to the victim and the perpetrator. I think that the fact that it makes people more vulnerable is equally serious.

On the question whether spirits or Buckfast is the problem, I say again that the consumption of Buckfast—to use the cabinet secretary's word; I prefer to talk about caffeinated alcohol—is relatively small compared to the consumption of spirits, which means that we should have regard to its disproportionate impact. The fact that 43 per cent of those in the young offenders survey said that they drank one particular brand of caffeinated alcohol that, compared to spirits, represents a tiny percentage of the market should make us concerned and encourage us to do something about it in policy terms.

On the issue of mixing vodka with Red Bull or medicine, I say to you that the Licensing (Scotland) Act 2005 placed an obligation on the on-trade to be responsible. Most members of the on-trade are very careful indeed about meeting that obligation. I think that you will find that they are able to spot someone who is clearly intoxicated through their drinking habits, and that the responsible majority take appropriate action on the back of that. I do not see the on-trade suddenly saying, "We'll not be responsible when you mix energy drinks with alcohol" and to say so is to talk nonsense.

Amendment 48 will not limit or ban the sale of over-the-counter pain relief drugs. Our approach needs to be proportionate. Our proposal relates to ready-mixed drinks because such provisions are enforceable. I make it clear that we are not suggesting—indeed, we cannot suggest this, nor would anyone do so—that you can control what someone does in the confines of their own home.

I was going to spend a bit of time telling you about caffeine's impact on the brain, receptor antagonists and all of that, but I suspect that with the exception, perhaps, of Dr McKee, the committee might lose the plot. Nevertheless, Richard Simpson was absolutely right to say that stimulants and depressants cannot be mixed because, as the evidence makes clear, that kind of mixture creates wired, wide-awake drunks.

I say to the cabinet secretary that I certainly believe the evidence to be sufficient. We have presented it. I also know that on 13 July the Government itself wrote to Associate Professor Mary Claire O'Brien, whose submission contains compelling evidence about why what I have set out in my amendment should happen. She

acknowledges that more research might indeed be required, but in an e-mail points out:

"there is no research in humans that replicates the Buckfast phenomenon, nor is such research likely to be permitted"

because

"Ethical constraints prohibit such research".

Enough evidence already exists for proportionate action to be taken.

Some Nordic countries have introduced restrictions and I was interested to find that countries are moving from considering new caffeinated alcohol products on a case-by-case basis as they enter the market to introducing provisions that are applied across the board. We decided on the 150mg per litre level because other countries have determined that level to be reasonable.

I hear what the cabinet secretary says about notification but, after checking the issue out well in advance with the clerks, I understand that the measure could be agreed to today and notified to Europe without delaying the bill or inhibiting anything else to do with it. I am grateful for her recognition that this is a problem, but the committee has a real opportunity to make a difference now and without further delay and, as such, I will press the amendment.

The Convener: The question is, that amendment 48 be agreed to. Are members agreed?

Members: No.

The Convener: There will be a division.

For

Eadie, Helen (Dunfermline East) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)

Against

Finnie, Ross (West of Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Falkirk West) (SNP)
McKee, Ian (Lothians) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)

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

Amendment 48 disagreed to.

Section 6 agreed to.

The Convener: With that, I conclude today's proceedings. I thank the cabinet secretary for her attendance.

Before members dissolve into the ether, I advise members that at its next meeting, at 9.30 am on 29 September, the committee will take evidence from three panels of witnesses on the Patient

Rights (Scotland) Bill and then continue with stage 2 consideration of the Alcohol etc (Scotland) Bill. If members wish to have a private discussion about testing the effects of caffeine and alcohol, that can be put on the agenda. I know that everyone is taking part in this afternoon's Parliament debate—the timing has been very good, especially for Helen Eadie, who has had four meetings this week already—so I will close the proceedings. I will see you all again at 2.30 pm.

Meeting closed at 13:14.

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