The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 10 December 2014

Session 4

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
33rd Meeting 2014, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)
*Cameron Buchanan (Lothian) (Con)
*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Anne McTaggart (Glasgow) (Lab)
*Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Lee (Scottish Grocers Federation)
Stephen McGowan (Institute of Licensing)
Paul Waterson (Scottish Licensed Trade Association)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 10 December 2014

[The Convener opened the meeting at 10:15]

Public Petition

Scottish Public Services Ombudsman Investigations (Transparency) (PE1538)

The Convener (Kevin Stewart): Good morning and welcome to the 33rd meeting in 2014 of the Local Government and Regeneration Committee. I ask everyone present to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Some committee members will use tablets during the meeting, because we provide meeting papers in a digital format.

Agenda item 1 is petition PE1538. On 25 November 2014, the Public Petitions Committee referred PE1538, by Dr Richard Burton and Peter Stewart-Blacker on behalf of Accountability Scotland, to this committee. The petition calls on the Scottish Parliament

"to urge the Scottish Government to amend the Scottish Public Services Ombudsman Act (2002) to ensure that complainants are shown all correspondence between SPSO and the bodies complained about before the investigation is concluded (including emails) and that they are also made aware of the content of any verbal communications."

Members have the clerk's note and links to the petition and the *Official Report* of the Public Petitions Committee meeting. Do members have any views?

The committee is invited to consider whether to look at the petition in the first instance as part of its scrutiny of the 2013-14 Scottish Public Services Ombudsman annual report at its meeting on 7 January 2015 and, in preparation for that meeting, whether to invite the SPSO to submit to the committee written comment on the petition. Are we agreed that that is the way forward?

Members *indicated agreement.*

Air Weapons and Licensing (Scotland) Bill: Stage 1

10:16

The Convener: Agenda item 2 is our third oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We have one panel of witnesses, who will discuss the alcohol licensing provisions in the bill.

Before I introduce the witnesses, I would like to clarify the committee's approach to who we ask to appear before us and the general criteria that we adopt. This is directed towards those from the public sector, including local authorities in particular, although for others our approach is similar.

When deciding who to invite, we look to achieve a balance from across the country that covers both rural and urban. We also have in mind coverage from affluent and less affluent areas. We aim to spread the coverage across the whole country, although we recognise that those in the larger urban areas might have more experience and knowledge of particular issues to share with us. We also recognise that staff in the larger urban areas can be more specialised and potentially handle a wider variety of issues, but we are always looking to the impacts on smaller areas, too.

We consider written submissions and other pertinent information before we select witnesses, and we are always interested to hear from those who provide an opinion that may differ from the status quo. If we receive submissions that provide similar opinions, we will try to avoid duplication on our panels, and we will strive to have contrary views available to test what we are told.

When we issue an invitation, we expect witnesses to attend. We will cancel an invitation only in exceptional circumstances. These invitations are not like invites to attend Government or other working groups, and we do not consider acceptance to be discretionary. We have powers to compel, but we do not want to use them, as we appreciate that it is far better all round that people attend willingly.

If witnesses feel that they are not the appropriate person to attend, they should contact the clerk immediately. That will allow an opportunity to discuss whether there might be a better alternative. If witnesses leave it to the last minute to contact the clerks, they will not be allowed to withdraw, and we will expect them to attend.

I welcome the witnesses on today's panel, who have accepted our invitation to appear in front of

the committee. John Lee is public affairs manager of the Scottish Grocers Federation; Stephen McGowan is head of licensing at the Institute of Licensing; and Paul Waterson is chief executive of the Scottish Licensed Trade Association.

Welcome, gentlemen, and good morning. Would you like to make any opening remarks?

John Lee (Scottish Grocers Federation): The Scottish Grocers Federation is the national trade association for the convenience store industry in Scotland. There are about 5,500 convenience stores in Scotland; SGF would not claim to represent them all. There is a high density of convenience stores in Scotland relative to the rest of the United Kingdom. Convenience stores are embedded in every city and town in Scotland and in every community, whether in rural or urban areas.

Alcohol is an important category for our members. SGF is an active member of the Scottish Government alcohol industry partnership, it sits on Glasgow City Council's local licensing forum and the City of Edinburgh Council's licensing forum and is an active participant in the east Edinburgh community alcohol partnership. Alcohol is an important issue for our members.

In our written response to the committee, we focused mainly on overprovision. I am happy to answer any questions on that, and I thank the committee very much for inviting us to give evidence.

Paul Waterson (Scottish Licensed Trade Association): The Scottish Licensed Trade Association was formed in 1880. We represent the independent trade in Scotland. Our members run our nation's pubs, bars and hotels. We also have some members in the off-sales sector, and our membership includes operators of late-opening premises. We are delighted to be here to give you our views.

Stephen McGowan (Institute of Licensing): I am here to represent the Institute of Licensing, which is an umbrella organisation that represents licensing practitioners across the UK, including practitioners in private practice and practitioners who work for local authorities and police authorities. It is representative of many stakeholders who are involved in the day-to-day administration of licensing systems across Scotland and the UK. I am a solicitor in private practice. I appear on behalf of the licensed trade at licensing boards across Scotland.

In our submission, we sought to draw to the committee's attention three issues, all of which are technical. Although they are not among the larger issues, they are issues that, as practitioners, we feel are incredibly important. The first concerns the existing provisions for the transfer of licences under the alcohol licensing regime, which I think that every licensing practitioner in Scotland would agree require to be updated. I hope to address that later.

Our second key point relates to provisional alcohol licences. Such licences are sought when there is no building or when the building is under construction. There are difficulties on the ground—if I can use that phrase—with the existing system.

Finally, there is an issue with the status of licences that have been surrendered. The Licensing (Scotland) Act 2005 does not deal with the surrender of licences particularly well, and I would like to address that. In addition, I would like to address the reintroduction of the fit-and-proper-person test and some issues that the institute has identified surrounding the use of police intelligence and the reference to the reintroduction of consideration of spent convictions.

The Convener: Thank you very much.

I will start with the subject of overprovision, which Mr Lee and Mr Waterson mentioned. I was quite surprised, given previous discussions that I have had with members of the bodies that you represent, that there are real concerns in some quarters about overprovision.

Mr Lee, what is the current experience of you and your members as regards how licensing authorities deal with their duty to assess overprovision?

John Lee: Under the 2005 act, all licensing boards must have regard to overprovision in their statement of licensing policy. It seems to us that, under the new bill, licensing boards are being encouraged to look at their entire geographical area as a potential area for overprovision. We feel that that could inhibit trade and be anti-competitive, particularly for our more independent members. If they were trying to refit their store and increase the size of their alcohol sales area, it could be an inhibitor for those types of expansion and investment plans.

There are different views on boards on the idea of overprovision. There has been a lot of focus recently on arguments that the number of alcohol outlets is responsible for alcohol-related harm. We feel that that is a misguided approach. I genuinely feel that there is not sufficient evidence to say that it is the number of outlets that causes harm.

There are a number of issues around overprovision that cause us concern. Overall, boards have to judge every case on its merits. When they look at a licence application, they have to consider whether the criteria for the licence have been met and either grant or refuse it on that basis. We do not think that a blanket approach to overprovision would be helpful.

The Convener: You mentioned that a retailer may plan to expand the area that they sell alcohol from. During one of our initial panel discussions, it was suggested that retailers could have a wee shelf with some alcohol on it that they could continually replenish from a huge storeroom out the back. How do we judge the retail space compared to the storage space when it comes to defining overprovision?

John Lee: At the moment, the Edinburgh licensing board requires applicants to state in their operating and layout plans the size of their alcohol sales area in linear metres. Our concern was that, if we start to drill down into the issue of overprovision and what will make an area into an area of overprovision, the overall metreage of alcohol sales area could come into play. We could almost put a cap on the sales area in a particular area and say that it cannot be increased at all. If, for some reason such as a shop refit or changing customer needs, a retailer wanted to expand the alcohol sales area, they may be prevented from doing so because of a particularly strict overprovision policy.

The Convener: Should licensing boards take into account the storage area, however? In some regards, what matters is not the shelf area but how they manage to keep that shelf stocked.

John Lee: Indeed, but it is only that shelf area that will be open to the public. That will determine the amount of alcohol that is on display and on sale at any given time.

The Convener: Do you think that, logically, the storage area should also be taken into account?

John Lee: I do not see how that would be helpful. There have also been discussions within Edinburgh about whether the volume of alcohol that an applicant expects to sell should be included in their application. Again, I do not see what utility that would bring.

The Convener: That would be quite difficult to define, one would imagine, particularly for a new premise.

Mr Waterson, I had the pleasure a number of years back of talking to your members at their annual general meeting in Aberdeen, and I was surprised that a lot of the offline chat was about overprovision and your members' concerns about it. What do you feel about the current circumstances with licensing boards?

Paul Waterson: It is an argument that has been raging since before the Licensing (Scotland) Act 1976, going back to the days of the Clayson report. Our position has not changed since then. Overprovision is included in the 2005 act, which means that it is a ground for refusal. It is recognised in principle. The question is, how do we make it work?

We have heard the detail about what should be taken into consideration, and controversial items come up from time to time. In 2010, the board in West Dunbartonshire came up with an approach that we thought was novel and that took into account a range of factors. It decided that the whole area was overprovided. However, because of board changes, the work that we had done with others in the area fell apart. We have seen controversy in Edinburgh, where there were board changes, or changes in political attitudes, after it had been decided that off-licences would be refused.

10:30

Without going into all the details and the arguments that rage about the issue, our position has always been that there should be a freeze on the number of licences. That would not stop development, because licences could be transferred within the system, so there would be plenty room for development of new premises. If somebody wanted to open premises, they would have to have a licence of a similar kind and for the same square footage. A freeze would not stop development—it would actually help, because it would give confidence. We should remember that overprovision is covered in the 2005 act, so it is up to us to try to make that work, and a freeze is the only way that we can see it working. That happens in Northern Ireland with some success.

What could be worse for the development of our trade than all liquor licensing sales in Scotland being controlled by five or six operators? If that does not stop development, I do not know what will. How do we get some balance back into the market? Ultimately, with overprovision, we get overcompetition, which is responsible for the downward pressure on price, and that creates the problems that have led to our Government's attempts to implement minimum unit pricing. If minimum unit pricing is the short-term answer to cut pricing and the general race to the bottom and deterioration in standards, dealing with overprovision is the long-term answer. We want a trade that is based on the quality, not the quantity, of premises.

The Convener: The committee has received a petition that we are considering as part of our scrutiny of the Community Empowerment (Scotland) Bill about a major supermarket chain—I will not name it—taking over smaller premises in high streets to set up the express kind of stores. Is that the kind of business that is taking over the market?

Paul Waterson: Supermarkets blitzkrieg their way through. I do not speak for convenience stores but, through time, the best sites will be snapped up by the big operators—we have seen that happen in Edinburgh—and we will lose independent operators. The situation is the same in the on-trade. I certainly do not want to lose independent operators, because they give people choice. Independent operators will be left with the scraps. They will be forced further and further out, and we will end up with five or six operators dominating the alcohol market in Scotland. Indeed, that is the case already—the figures are there to prove it. That is not good for competition or in any other way.

Licensing legislation is there to redress that balance. There is a host of arguments for and against the implementation of measures on overprovision. It is a numbers game, and it should be a numbers game. I stress that, within the numbers, licences could be transferred and development could still take place. People do not understand that. They think that, if the numbers are frozen, there will never be a new opening and it will not be possible to transfer licences in the system, but that is not right. A freeze will help development, not stop it.

The Convener: Mr Lee, would you like to comment on the issue about big operators coming into the high street?

John Lee: Yes. I am aware of the petition that you mentioned. Our members are under severe pressure from the organisation that is named in the petition and from other big operators like it. I am not here to defend them, or to speak up on their behalf—I do not even want to do them a favour—but we think that each application has to be judged on its merits, regardless of who makes it. We do not think that we can be anti-competitive or anti-trade, so the focus for any licensing board must be to judge an application on its individual merits, regardless of who makes that application.

The Convener: Mr McGowan, do you have some comments on overprovision?

Stephen McGowan: I endorse the point that each application should be considered on its merits. That has long been the case and should continue to be so.

The institute's response on overprovision focuses on the introduction of licensed hours, which is in section 54 of the bill. There is an on-going issue around the concept known as the duty to trade. In short compass, the duty to trade says that a licensed premises must be open throughout its licensed hours—it has a duty to remain open during the hours that have been granted. Very few licensing practitioners agree with that concept: the vast majority of, if not all, licensing practitioners in both private and local authority practice believe that there is no duty to trade. The institute therefore suggests that if licensed hours are to be a factor in overprovision, it would be helpful for the law to confirm that there is no duty for a licensee to open throughout all the hours in his or her licence.

In the 1976 act there was a specific section that stated that it was not a requirement for

"any premises to be open for the sale or supply of alcoholic liquor during the permitted hours."

That wording was not carried through to the 2005 act and the institute would like to see that wording reintroduced if section 54 is to be enacted.

The Convener: Mr Waterson, do you have any comments on the licensing hours issue and the proposal to include licensed hours as part of the overprovision assessment?

Paul Waterson: That is just another point of detail that must be taken into account and further arguments will rage on that point. People will question whether other people are opening part time, or all the hours that they say they are opening. It will make the job of licensing boards far more difficult.

John Lee: We have no real desire to see licensing hours extended.

Cameron Buchanan (Lothian) (Con): I want to take up the point about occasional licences and members' clubs. How do you regulate occasional licences and private clubs? Should they be regulated in the same way?

Stephen McGowan: Under the 2005 act, a voluntary organisation can apply for an occasional licence for its premises. The effect of that is to allow the public in. Under normal circumstances a licensed club premises has members, who are able to sign in members of the public as guests. The occasional-licence route circumvents that situation and allows members of the public access to such premises.

We are aware of issues across various licensing authorities in Scotland where there are concerns about the regulation of club premises. The 2005 act provides certain exemptions for club premises, one of which is that they do not have to name a premises manager in the way that bars and off-sales premises do. Some licensing authorities have raised concerns that clubs are not as well regulated as public access premises, such as pubs, bars and off-sales. It is a policy matter for the Scottish Parliament to decide whether further regulation is merited.

Paul Waterson: That is another problem that we thought would be addressed by the 2005 act but was not. Under the 1976 act, clubs were

registered with the sheriff and there was no police entry, which we thought was not a good situation; we knew that there were some problems. Some clubs are very well run, but some are not. Under the 2005 act, clubs have to be licensed, so we thought that that would be the beginning of the end of badly run clubs, because there would be police entry. However, that did not take into account the constitutions of such clubs.

Many clubs simply run as pubs, while enjoying all the advantages of being registered clubs. That is a ridiculous situation, in which clubs are competing with pubs. In some cases, part of the club is licensed and part of it is still the club, but the club people cannot get in because the public are in—the people who want to get in for the reason that the club was formed cannot do so.

It is difficult for us to accept a situation in which the public are allowed into clubs on numerous occasions throughout the year. We would like the loopholes in the law to be closed, so that registered clubs can continue to do what they were meant to do, for their members, instead of making money from the general public.

The Convener: The issue is a bit out of your sphere, Mr Lee, but do you want to comment?

John Lee: I have no knowledge of clubs, convener.

Cameron Buchanan: Are the clubs that Mr Waterson described getting an unfair business advantage?

Paul Waterson: Clubs have an unfair business advantage to start with because they do not pay rates in the way that normal premises do, and they have other advantages. The whole basis is unfair, to start with. If clubs are then allowed occasional licences throughout the year, so that the public can go in, they become big businesses. Some clubs are well run—there is no doubt about that—but some bend the rules, and that is unfair.

Cameron Buchanan: Should we be dealing with all that together?

Paul Waterson: We should certainly go back to the approach whereby a club's constitution was taken into account and members had to sign people in, along with the other rules and regulations. With clubs now being licensed, that would close a lot of the loopholes. The constitution must be part of the licence and must be taken into account, and clubs should not be allowed consistently to trade with occasional licences until such trade becomes their main business, and the main reason why they are there is to make money.

Stephen McGowan: This might be a useful point of clarification. Under the 2005 act there is a limit on the number of occasional licences that club premises can seek—the maximum is 56 days in a calendar year. There is a wee bit more to it, but for the purposes of this discussion, 56 days in a calendar year is the maximum.

It would be useful for committee members to note that a number of club premises have varied their licences, in effect to make them full public-access pub premises, albeit that they have a constitution and appear on the face of it to be members' clubs. Because they have changed the conditions of their licence, they are allowed full public access. A number of premises in Edinburgh and throughout the country, which were historically club premises that were open to members and bona fide guests, have varied their licences and are allowed public access without those rules applying.

John Wilson (Central Scotland) (Ind): The convener asked whether licensing boards should be able to designate the whole local authority area when assessing overprovision. Is such an approach appropriate or does it go too far? If Highland Council made a decision based on overprovision in Inverness that could impact on other towns and villages in the Highlands. For example, someone might be prevented from opening up a small retail outlet in Wick or Thurso.

John Lee: That is a good question, and your point about a very large local authority such as Highland is apposite. We think that the approach goes too far and that a locality approach should always be taken, right down to local data-zone level. An application should be considered on its merits, with consideration being given to comments and objections from the police, health agencies and so on. A blanket approach to overprovision in the whole geographical area is a step too far. We would not encourage boards to take such an approach under the bill.

As John Wilson said, in Highland, if the main target was a busy urban area such as Inverness, there would be a knock-on effect on local independent convenience stores in rural areas—and such stores are very important to those areas. The provision is a step too far.

10:45

Paul Waterson: We want the area to be the whole of Scotland: you know the SLTA's answer to that.

Licensing boards are in a difficult position on the matter. If a licensing board was to designate its whole area—we believe that boards could do that anyway—and, for instance, a development was to try to get a licence in the area but decided to move into the next one, that could cause a problem for the members of the licensing board with their constituents. It is not good for boards to be in the situation of simply moving the licensing around

because one area has a less lax overprovision policy. They worry about that.

Licensing boards are also under great pressure from the bigger operators and they certainly operate a two-tier decision-making system in relation to overprovision. They are very worried about the financial problems that would occur if a decision was appealed. They know that the bigger companies will appeal and that the independent trade perhaps does not have the finance to appeal, so they look upon the bigger developments more favourably than they do on others.

The question about what the area should be becomes part of the argument. We have heard the other side of the argument. There is only one way to sort it out, which is to make the whole country one area with no boundaries, while stressing the point that licenses can be transferred to different areas within the system.

John Wilson: Mr Waterson is basically saying that he would like the whole of Scotland to be categorised as a locality in relation to overprovision. Glasgow and Edinburgh—two major cities—have a lot of bars and off-licences in their city centres. How would it work if someone in Thurso or Wick applied for a licence? Based on your proposal, could somebody in Wick be denied an off-sales licence because of overprovision in Edinburgh or Glasgow?

Paul Waterson: The situation is interesting in rural areas because we have had so many closures and many villages in Scotland have now lost their pubs. If licences were just transferred within the system, it would give people confidence to go into those areas and open pubs.

Just because a village has one or two good pubs does not mean to say that it will have three; it could have three bad ones because the market is split up, and the three could close. The system could be managed so that places that have lost their pubs could get them back. We all know that when a village or another community loses its pub, it can lose its meeting place and its heart. There being a certain number of licences would mean that such things could be managed much better.

If you go into Glasgow or Edinburgh, the circuits of pubs get bigger and bigger. I refer not only to the numbers but to the capacity of the pubs. There are enough: overprovision is agreed, and the issue is how we apply it. That is why we think that the number system would work to take all the controversy away. It works in Northern Ireland. I do not see any problem with the development of pubs in Northern Ireland. There is a good spread of pubs there and the system seems to work okay.

Overcompetition consistently pulls prices down. The rate of closures probably proves the point anyway, but the market can change. It could overheat again—it did in the 1980s, and in the 1990s it went down again and there were closures but it grew again. The constant opening of more and more pubs can create problems.

Stephen McGowan: The institute's position is that the existing law allows licensing boards to set their whole jurisdiction as an area of overprovision, notwithstanding that this bill seeks to allow that. There was, perhaps, a concern from one or two quarters that the existing terms of the 2005 act did not allow that. The Highland licensing board, for example, has an overprovision area that covers the whole of the Highland board area, but applies only to off-sales premises where the display of alcohol is $40m^2$ or greater. That is a very good example of a local licensing board taking a very specific approach to overprovision.

Mr Wilson made a comment about cities. Glasgow is another good example of how licensing boards are picking and choosing defined areas within their locality, rather than going for the whole area. The Glasgow licensing board policy on overprovision is not based on where there are the most premises, but on where there is the most harm as a result of irresponsible sale or consumption of alcohol. From memory, I think that there are eight or nine small areas within the city of Glasgow where there is deemed, based on evidence that was presented to the Glasgow board in relation to health harms and crime and disorder, to be overprovision. For example, Sauchiehall Street is not an overprovision area, albeit that it is a very busy part of Glasgow. There are various other examples that I could give you from across Scotland.

John Lee: To follow up on Mr Wilson's question, another problem with a blanket approach to overprovision is that it would not necessarily take account of the different types of premises that apply for licences. We outline the figures for Edinburgh in our submission. I apologise, because they may be out of date now. Edinburgh has roughly

"449 restaurants, 428 bars/pubs but only 243 licensed convenience stores"

so I do not think that the city is overprovided for in terms of the number of convenience stores. A blanket policy on overprovision would not take into account the differences between premises and what they offer, and the role that alcohol plays in their business model.

John Wilson: Mr McGowan quite rightly identified that Sauchiehall Street is not included in overprovision in Glasgow but that there are several localities where there are health issues with alcohol. Has any work been done by the trade or by the licensing boards on the type of alcohol

that is being sold by off-licences, in particular in the areas that are seen to be suffering most from alcohol abuse? The issue that we constantly get bombarded with is the sale of cheap spirits and tonic wine in particular areas. Traditionally, convenience stores had an off-licence on the basis that they were catering for people who wanted to buy a bottle of wine to go with their meal. That was the traditional reason for granting permission to have an off-licence in a convenience store.

Stephen McGowan: I think that each board has dealt with the issue differently. Some boards have dealt with it based on a higher level of evidence than others. If we look at the Highland licensing policy on overprovision, we can see that the board took considerable evidence from various parties—including the national health service and Alcohol Focus Scotland—about the health-related issues in its area. I think that the Highland licensing board took the view that the problems in its area were more to do with off-sales than on-sales. That is why it formed the view that it would set an overprovision policy based on off-sales in large premises with large displays and would not set an overprovision policy in relation to on-sales.

There are other examples. In East Dunbartonshire and West Dunbartonshire, evidence has been led by various stakeholders and licensing boards have responded to that evidence. Some licensing boards have taken it upon themselves to go out and investigate those matters, but I suspect that in regard to policy formulation, the vast majority of boards are responding to the consultation responses that have been put before them.

Paul Waterson: The best example is West Dunbartonshire, which took many factors into account and came up with an approach in 2010. It is one of the worst areas in the country for alcohol abuse. All that work was done for the right reasons. The approach was novel and fair, and seemed to be workable, but it fell apart due to board changes. It was not sustainable.

The Convener: Do you think that that was down to personnel change on the board?

Paul Waterson: Yes. The council granted a couple of licences to big operators. It was under pressure because one of the big operators said that it would move to another licensing board area and the council believed that it would lose those jobs. I would argue with that, but the council believed that granting the licence would create jobs. The electorate believed it, too, so the council was under pressure. That is what happens in these situations. It happened in Edinburgh—the council comes to a decision but it is not sustainable.

The Convener: It is difficult for us, as a committee, to look at individual areas when we are not aware of the circumstances within those areas. Are there any licensing boards that have had a long-term strategic plan and have stuck to that plan, irrespective of personnel changes on the board? Should boards have a strategic plan, with some flexibility if required?

Paul Waterson: My experience is that there are not such boards. Some boards have had overprovision policies, but they have for one reason or another fallen apart.

John Lee: I am sure that the committee is aware of this, but my understanding is that licensing boards' statements of licensing policy last for three years, so that is roughly the timeframe for their overall approach. I am not sure that there would be any utility in extending that to four or five years or whatever. That is probably time enough.

The Convener: Alex, is your question on this point?

Alex Rowley (Cowdenbeath) (Lab): Yes. I had intended to ask Mr Waterson to clarify what he meant by the two-tier licensing system, but I think that he did so when he talked about supermarket jobs in West Dunbartonshire. Is that the problem? How useful or realistic would it be to have a policy on overprovision if it was not implemented? What pressure are licensing boards under?

Paul Waterson: We are not saying, "Don't open supermarkets." We are saying that they should not be licensed. They can open what they want, but we are talking about licensing. The argument about the number of jobs that supermarkets take from other places will rage, but it puts boards under pressure.

There are all these resources behind big companies, which can play the system for three years. If a company is building a massive operation, three years is not too long to wait to exhaust the objections. In some areas, when people object to new licences—on and off-trade—the company plays the system and one by one, as time goes on, the objections fall apart. We cannot blame people for that. The applicant simply withdraws the application and waits. If there are 50 objections the first time the application is lodged, there might be only 20 the second time it is lodged and 10 the third time it is lodged.

If the company keeps withdrawing the application, eventually people are exhausted, because they have to go to the boards. Community councils are thwarted and lose the objection process, yet the reasons for objecting have not changed. Usually, the objections are very valid. The system is wrong in that respect.

The Convener: Should there be some kind of co-operation between licensing boards?

Paul Waterson: In what sense?

The Convener: Should there be an agreement between, say, West Dunbartonshire Council and one of the neighbouring authorities, such as Glasgow City Council, about licence provision in the boundary area?

11:00

Paul Waterson: I remember going to a licensing board many years ago and asking whether it could co-operate with another licensing board. I was told, "No, we always do the opposite of what they do." There is not a lot of communication between boards. In some cases, they could be in conflict with each other on jobs. It might suit one area to say, "We want that," if it thinks that there are more jobs in it. Because there is conflict between some boards, the area must be made wider.

The Convener: In Aberdeen, there are licensed premises in what one would think of as quite strange places. Going back in history, they were built there because they were outwith the city boundary and the travellers rule applied, on Sundays in particular. At that point, boards did not co-operate a huge amount. You argue that there should be a Scotland-wide scenario so that such conflicts do not exist.

Paul Waterson: Absolutely. It might be argued that there are too many boards anyway. When we gave evidence to the Nicholson committee, that committee said—I did not think that it was a good argument—that there are too many boards anyway and that such an approach would not make a difference, but I think that it would make a difference.

The Convener: Mr McGowan wants to come back in.

Stephen McGowan: I will make a couple of minor observations. First, the bill proposes increasing the three-year licensing period to five years. I understand that licensing board members sometimes feel hamstrung when they come in following a council election and have to pursue their predecessors' policy, so it is helpful that the term of the policy will be linked to council terms instead of being triennial.

My other minor observation relates to Mr Rowley's comment about licensing boards taking jobs and employment into account. The policy in West Dunbartonshire is clear. West Dunbartonshire Council looked at evidential studies that demonstrated that there are health benefits to employment, and the policy on overprovision was amended to allow the board to take into account the health benefits that could be brought through the creation of jobs. West Dunbartonshire's licensing board has been specific on that point and is probably more advanced than a number of other licensing boards, because it was one of the first to introduce a large overprovision policy, back in 2010.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Will you clarify what you just said about lining up the licence terms with the council terms? Would you suggest that, in the last year of a council's term, licences be granted for only a year, until the next council election?

Stephen McGowan: Licensing policies currently run for three years and, because of when the 2005 act came into force, the most recent periods have been 2010 to 2013 and 2013 to 2016. I understand that the bill will change the policy period to five years, on the basis that that is the length of a council term. That means that, when a new council comes in and a new board is established, a new policy can be written at that point and there will not be a one or two-year overlap with the predecessor policy. I believe that the boards requested that.

Willie Coffey: Will you tell us a wee bit more about the issues that you raised at the beginning of your evidence? You and Mr Waterson talked about the pros and cons associated with transfers and about issues relating to provisional licences when there is no building. You also talked about the status of surrendered licences. Will you tell us a wee bit more about your concerns?

Stephen McGowan: I am grateful for the opportunity to do so. I will endeavour to be as brief as possible. I think that licensing solicitors and practitioners would agree unanimously that transfers should be number 1 on the hit list of issues for the Parliament to look at. Licensing solicitors across the country have asked the Parliament to look at that on a number of occasions, and I ask again.

Under the legislation, transfers take place when someone takes over existing licensed premises. That happens all the time. Normally, it happens because the premises have been bought or sold or have been leased to a new tenant, but it can also happen when a licensee dies, is declared mentally incapable or becomes insolvent. There are several reasons why a licence might have to be transferred.

The 2005 act does not deal with that correctly. It completely ignores the dissolution of companies. There is no provision on what happens to a licence that is held when a company has been dissolved. We are left scrabbling around trying to come up with a fix, with the good will of licensing

clerks, to keep premises trading when such situations arise.

The legislation does not take account of the reality of how property transactions and conveyancing are done in Scotland. There are issues with the on-going operation of premises and how the 2005 act reacts to a simple case of a pub being bought and sold. Such cases happen almost every day, yet the act does not adequately deal with them.

The 2005 act does not allow what I call a deemed grant of a transfer. In other words, it does not allow someone to trade straight away while a transfer is pending in the background. However, in England and Wales, the Licensing Act 2003 allows the incoming occupier—they might have bought the premises or taken a lease—to trade before the full grant of the transfer.

The institute and—I hope that I am correct in saying this—just about every licensing solicitor in Scotland very much request that the Parliament look south of the border at the transfer provisions under the 2003 act. I know that the Law Society of Scotland's licensing law sub-committee, of which I am a member, has offered the Parliament drafting assistance on that point. I would certainly want you to take up its offer.

On provisional licences or licences when the building has not yet been constructed or is under construction, there was a process under the 1976 act for a site-only provisional licence. That allowed a new licence application to be lodged for a premises that had not yet been constructed, without it having to include full and detailed plans. The system under the 2005 act does not allow that. The institute and practitioners want us to return to the 1976 position, whereby an applicant could put in what was known as a site-only application.

The change is being asked for because of the difficulties with the current system. It is hard to produce an architect's drawing for a premises that might be three years off being built or to present a full application on those terms.

The Convener: Is there a conflict with planning legislation? A licensing board might find it difficult to grant a licence for a building that had not yet been given planning approval, and it might be seen by the public as a fait accompli for a premises to be given the planning go-ahead if a licence for it had already been granted.

Stephen McGowan: Planning approval would always come first; what I propose would not move away from that. The 2005 act requires planning approval to be in place before an application for a liquor licence can even be lodged. The proposal for a site-only application would not negate that. Planning permission would still need to be in place, but the full level of detail about where the bar and the seating were to be would not need to be demonstrated at that early point.

The change is needed because the current system puts off investment. A number of developments are based on capital ventures and loans from banks and so on. That funding often cannot be secured unless the parties know that a licence will be in place. At the early stages of developments where planning is in place but the full details of the premises layout are not yet known, it is difficult for those developments to proceed, because they do not have the certainty that a licence will be in place. That commercial certainty would be of great use. If the Parliament could reintroduce the site-only application, that would be useful. I am happy to give any ancillary points on that by written submission if that would help the committee.

I turn to surrenders of licences and thank the convener for his indulgence. The 2005 act does not deal particularly well with those surrenders. It allows licences to be surrendered, but the problem is that it does not say what the status of such a licence is thereafter. Does the licence exist or not? Is it in the ether somewhere?

Sometimes, a licence is surrendered for legitimate reasons—for example, a premises no longer wishes to trade. That is accepted, but the problem is that there are also examples of licences being surrendered out of spite. If a landlord—the owner of the premises—has allowed his tenant to hold the licence, but they fall out because the rent has not been paid or whatever, the tenant might surrender the licence out of spite. The landlord is left with a pub with no licence, which is not the best situation for them to be in.

The Institute of Licensing and other licensing professionals would like the Parliament to address that by dealing in one way or another with what happens to a licence after it has been surrendered. The Parliament could say that such licences have gone for good, in which case we will know that that is the case, or it could allow licences to be restarted in some way, perhaps through a transfer back to the landlord or to another party.

The 1976 act made no specific provision for surrender. Some parties wrote to licensing boards to say, "I surrender this licence," but such licences could be retrieved by way of a transfer. We cannot do that under the 2005 act, because it contains the specific surrender provision, which did not exist before. We would like to have that cleared up in one way or another. Either the licence has gone and that is it, or we allow the affected landlord or whoever to reactivate the licence, perhaps by way of a transfer application.

Thank you for your time on those points.

John Wilson: I seek clarification. Included in the bill is the fit-and-proper-person test. I am not saying that there are landlords out there who are not fit and proper persons but, if a licence holder who is trading decides to surrender their licence, that raises a concern—for me, anyway. You suggested that the licence could be transferred to and held by the landlord, but you mentioned other issues about the application of licences and the determination of whether, on the sale of licensed premises or the surrender of a licence, a transfer can take place to someone who might not be deemed a fit and proper person by a board.

What safeguards do you want in the bill to ensure that, in the scenario that you described of a licence holder deciding through spite to surrender the licence, the landlord that the board is asked to and may decide to transfer the licence to is a fit and proper person to hold it? There is a conflict in ensuring that we have a fit-and-proper-person test. As I said, a landlord might not be deemed fit and proper, which is why they do not hold the licence for the premises.

Stephen McGowan: The Institute of Licensing supports the proposal to reintroduce the fit-and-proper-person test. I think that most people in the system support that. I have separate comments about police intelligence, but I will leave them for the moment. If there is a chance later, I will speak about that.

The reintroduction of the test, which we support, will certainly go some way towards addressing the concern that you raise. However, there are existing safeguards in the system. Any transfer application that is lodged can be refused by a licensing board, and Police Scotland can object to it. Every transfer that is lodged is reported on by the police. They will say, "This person has no convictions and we do not object," or, "This person has convictions and therefore we object." Even when there are no convictions, the police can object to the transfer of the licence under the existing law if they believe that the licensing objectives would be prejudiced by the grant of the transfer. The existing system has safeguards and the fit-and-proper-person test will supplement them.

Willie Coffey: I will return to the surrender of licences. Did you say that there are circumstances when it is possible for licences to be lost permanently because of that process, or do they get recycled in the system and transferred? Is it possible to lose them?

11:15

Stephen McGowan: Yes. The 2005 act contains the phrase "ceases to have effect", but it does not define that. There is a debate among licensing practitioners about whether the phrase means that the licence is gone for ever or whether it means that it is somewhere in the ether and can be reactivated.

Willie Coffey: What is the solution to that?

Stephen McGowan: This is probably a policy matter for the Parliament, but the decision is either that the licence is gone or that it can be reactivated. Let us have a decision one way or the other. Practitioners would prefer to allow a licence to be reactivated by way of a transfer, rather than it being lost for ever. I suggest that it would be for the Parliament to decide which of the two options is the preferable policy, but let us have one or the other.

Willie Coffey: I presume that Mr Waterson would prefer licences to be recycled and transferred.

Paul Waterson: We need clarification.

Clare Adamson (Central Scotland) (SNP): I return to the proposal for a provisional site-only licence. Mr McGowan said that that would give investors a degree of confidence that there would be a licence for the premises, should the build go ahead. I understand that the licensing board would have to base its decision on whether it was appropriate to grant the licence on the final layout of the premises and on whether it met all the licensing requirements. The provisional site-only licence is not really a guarantee that the licensing board will offer a licence, because it has to base its decision on the final build. I am having difficulty seeing what kind of confidence or help that would offer.

Stephen McGowan: The existing provisional licence process has two stages. The provisional licence is granted and then there is a second process for confirmation. At that point, the licensing board in effect revisits the application on the basis of the work having been done and environmental health officers having inspected the premises to make sure that it complies with food hygiene requirements. When a provisional licence is granted, the premises cannot be traded from until the second process has been gone through.

To get the licence confirmed in the second process, an applicant has to show the licensing board that they have met all the building regulations and that the premises have been built safely, have passed kitchen checks and have clean sinks. The applicant also has to tell the licensing board who will be the named day-to-day manager of the premises. In some cases when there have been changes to the layout, the provisional licence has to be varied to show the board what the new layout is.

A licensing board would not confirm a provisional licence without knowing what the final layout was. That is part of the existing process. The difficulty is that people cannot lodge their application as early as some developers and applicants would like if they do not have the final layout. The licensing board will always know the final layout when it gets to the confirmation stage.

Clare Adamson: I am having difficulty seeing how a licensing board could even grant a provisional licence if the premises in question was, as you described, like an empty box. How could a provisional licence be granted when it had not been demonstrated to the board that the requirements had been met?

Stephen McGowan: There were 30 years of experience of licensing boards granting site-only provisional licences under the 1976 act without that system falling into disrepute. Under the new system, with a provisional licence, licensing plans and the layout of the premises are always a fiction. We are asking for that to be addressed. It is slightly odd that people have to invent a layout simply to get the application lodged when they do not know whether it will be the final layout.

Clare Adamson: I will return to the club issue that my colleague Mr Buchanan raised. Mr McGowan said that clubs do not have to show that they have a registered manager when they are getting a licence approved. Do all the other provisions about certificated people selling alcohol still apply to a club?

Stephen McGowan: Yes. The staff training regulations apply, which require anyone involved in the sale or supply of alcohol to have a minimum of two hours' training on various topics—I think that there are 16 in total.

Staff members still have to do the training, but clubs do not have to have a named day-to-day manager or a personal licence holder. Many clubs have personal licence holders on the books, but they might not be named on the licence as a day-to-day manager of the premises.

Anne McTaggart (Glasgow) (Lab): Good morning, panel. I want to ask about the creation of the offence of supplying alcohol to someone who is under 18. That has changed from what it used to be. What difficulties might arise from that, particularly for retailers and staff?

John Lee: That is a good question. It relates to proxy purchase, which is a big issue for us. Unfortunately, there are people aged 18 and over who are willing to buy alcohol on behalf of young people. In general we support the idea of supplying alcohol to young people being an offence but, as you imply, there will always be issues with enforcement.

It is not an easy one to crack, but I think that a multi-agency approach is the way to address it. As I mentioned at the beginning of the meeting, we are involved in a project called the east Edinburgh community alcohol partnership, which is based in Portobello and Piershill in Edinburgh. The idea is to look at underage drinking specifically, and the issue of proxy purchases.

We feel that, because retailers have been successful in implementing the challenge 25 regime in store, the problem has been shifted outwith the store. There is now very little that responsible retailers can do about the problem. We have to bring in police, social services, education and the local community generally to look at cracking it, and the only way we can do that is by establishing things such as community alcohol partnerships. The new offence might be part of that effort.

There will be problems of enforcement, but the only way that we can crack the problem is by broadening it out and looking at what happens outwith the store, in the wider community and the home. That is the only way that we are going to address the issue of proxy purchasing and make the new offence workable.

Paul Waterson: We do not have the same problems with proxy purchase, but we have some sympathy with convenience stores on that. We support the new offence regarding the supply of alcohol to children. The history of our involvement in trying to stop underage drinking and our involvement in a number of agencies show that we are determined to try to sort it out, and not simply by moving it on for someone else to worry about.

The Convener: Mr Waterson, you say that you have no problem with proxy purchasing. I realise that most of your members represent pubs and hotels, but I have seen situations in the past, particularly in licensed premises with outdoor areas, where folk have gone into the pub to buy drink for underage folk who are drinking outside it. I would not go so far as saying that that is an impossibility.

Paul Waterson: Sorry. My point is that it is not as big a problem for us.

The Convener: Before Anne McTaggart comes back in, Clare Adamson has a question.

Clare Adamson: I want to clarify how the provision will affect premises that sell food, if at all—for example, if a child is out with their parents for a meal. Also, what will be the effect in the family home, such as when a parent offers alcohol to a young person as part of a meal in that social setting?

Stephen McGowan: The bill defines where the offence applies, which is a "public place", so it

would not apply to domestic residences. I think that church premises and religious establishments are mentioned as well.

Generally, the institute welcomes the provision as a tightening up of the offence. Historically, the issue was that the offence was tied to what happened on licensed premises as opposed to outside them. The police have had an issue with that for a number of years. The institute welcomes it being tightened up.

The Convener: Anne, do you want to come back in?

Anne McTaggart: No. I have finished.

The Convener: I know that you have been dying for me to ask this question, Mr McGowan. Would it be appropriate for a licensing board to consider spent convictions and police intelligence that has not necessarily been corroborated as part of its investigations into whether an applicant is a fit and proper person?

Stephen McGowan: Thank you for the opportunity to comment, convener. The institute firmly supports the reintroduction of a fit-and-proper-person test. We see that as a good thing for the trade. At the end of the day, all the stakeholders involved in the licensing system want alcohol to be sold and consumed responsibly, and a fit-and-proper-person test would assist that.

Our concern is that the test might, in assessing whether someone is fit and proper, open the door to the use of police intelligence—in other words, unknown and unseen evidence as to whether a person is unfit. The institute's position is that human rights implications are raised in a situation where a police letter to a board suggests that someone should not hold a licence, but it will not say why. That is not something that a licensing board's decision should be founded upon. The right to a fair trial and human rights implications certainly apply in those circumstances.

The police might have good reasons why they cannot introduce certain intelligence. There might be on-going investigations or undercover work that means that they cannot produce detailed information. However, the institute's position is that it would not be correct for the police to point a finger at someone and say, "We don't want you to get a licence but we're not telling you why." Licensing boards cannot really deal with such situations.

It is open to the police to endeavour to introduce police intelligence to licensing boards. In my other capacity as a private practice solicitor, I have appeared at hearings where such intelligence has been led. However, licensing boards find it difficult to respond when there is such a lack of detail. I imagine that licensing boards would be wary of finding a person unfit in those circumstances because they will be aware that applicants who have licences refused on those grounds will probably appeal to the sheriff, and my perception is that a sheriff would say that the board should not have taken the police intelligence into account.

The Convener: You said that that is your perception of what a sheriff would do.

Stephen McGowan: Yes, indeed. Often, the police will have legitimate concerns about an applicant, and it may well be that the person is involved in serious and organised crime, for example. However, even in those circumstances, if the evidence is not put before the applicant and they are not aware of the charges against them, how legitimately can the licensing board find that they are unfit?

The Convener: I will play devil's advocate. If a person on a licensing board was deemed to be able to get more information round about intelligence, as certain members of police boards have been able to do in the past, would that be an acceptable way round the issue?

Stephen McGowan: Not if the applicant is not made aware of the information. It would not be appropriate for licensing board members to be given evidence that no one else has sight of, including the applicant.

We have accepted that licensing decisions should be made by our licensing authorities and not by the police. The institute is concerned that one of the proposals that has been made by other parties—it is not in the bill—is that a police intelligence commissioner should sit on licensing boards, pointing the finger as necessary but without giving any further information. The institute would be firmly opposed to that.

The Convener: We have concentrated on police intelligence. Do you differentiate between intelligence and spent convictions?

Stephen McGowan: Yes. There is a separate point to be made about spent convictions. Currently, licensing boards are not allowed to consider them. I would think that, before allowing that, the Parliament would have to hear evidence from Police Scotland that the licensed trade had fallen into disrepute as a result of boards not being able to consider spent convictions.

It should be borne in mind that the Rehabilitation of Offenders Act 1974 is there to allow people to move on with their lives. Certain categories of employment are not covered by that act. For example, taxi drivers and private hire drivers are not entitled not to disclose spent convictions. However, to me, there is a difference between a taxi driver, who is in an enclosed space with an individual, and someone who works behind a bar,

in a public place. On that basis, there are different considerations in relation to public protection.

11:30

The Convener: What if it is not a particularly busy bar and, at a particular time, there is only the bar person and one other person there?

Stephen McGowan: If there is evidence that the inability to refer to spent convictions has brought the system into disrepute, I am not aware of it.

The Convener: Do Mr Waterson and Mr Lee have anything to add before I bring in Mr Wilson?

Paul Waterson: We take a middle view. We believe that whether the 1974 act should apply depends on the severity of the crime. That is a decision for the police and the licensing board.

We are of the opinion that to hold a licence is a privilege. The premises manager and the personal licence holder are the most important people in the process. They are the ones who are standing there selling alcohol. We welcome the reintroduction of the fit-and-proper-person test. We should learn from 1976, when there were endless debates about what "fit and proper" meant. What we mean by it should be defined clearly, and if that takes into account training, age, the 1974 act and other elements, that will help us. Leaving the definition of "fit and proper" to people's discretion caused real problems after 1976.

John Lee: We have no real problems with the reintroduction of the test, but we feel that applicants should be able to see any evidence that is presented against them.

John Wilson: Mr McGowan, I want to tease out the issue of police information being provided to licensing boards. My understanding—you can correct me if I am wrong—is that, at the end of the day, it is up to the board to decide whether to grant a licence. It is not up to the police. The board—at present and, as I understand it, in future—can note any information that is provided by the police in relation to an applicant, such as hard evidence of spent convictions or other issues, but it is at the board's discretion to decide whether to grant a licence. Is that not the case?

Stephen McGowan: It is certainly down to the licensing board to make the decision. It has the ultimate discretion as to whether to grant a licence. In a practical situation, if someone is before a licensing board and the police say, "We don't like this guy," will that prejudice the licensing board, which will not know the full details? I think that that impinges on the right to a fair trial.

John Wilson: I equate this with other issues such as planning. National organisations go along to planning committees and say, "We don't like this application, so we're asking you to reject it." The police and others can go along to a licensing board and say, "We're not happy with this applicant" based on intelligence, spent convictions or whatever. There is an issue about what is meant by a spent conviction when somebody applies for a licence. Ultimately, however, as you said, the board has final discretion about whether to grant a licence to the applicant.

Stephen McGowan: That is certainly the case. The licensing board has the ultimate discretion. However, I reiterate that the position of the Institute of Licensing is that there is a human rights dimension to the reference to police intelligence. We do not believe that it is correct for an applicant to be faced with an allegation that is not substantiated or evidenced and to have their prospective livelihood held in the balance at a hearing without knowing what the evidence is.

John Wilson: What happens if police intelligence goes to the licensing board and says, "We suspect that this person is involved in serious and organised crime"? It goes back to the point that I raised earlier. A licence application may be being made on behalf of someone who owns the premises and is the landlord, and the police may have evidence that that individual is involved in serious and organised crime. The person who is applying for the licence could be accused of being a front person—

The Convener: A patsy.

John Wilson: —for someone who is involved in serious and organised crime and is effectively using criminal activities to fund the premises.

Stephen McGowan: Licensing boards will hear any evidence and place such weight as they deem to be appropriate on evidence that is presented to them, but the evidence has to be sufficient and probative. If it is neither of those things, the decision can be overturned on appeal.

That happened recently with a case in Aberdeen, Ask Entertainment v Aberdeen licensing board. In that case, a licensee had his licence revoked because of police information that was presented to the licensing board that a director of the licence-holding company was connected to or involved with serious and organised crime. Aberdeen sheriff court overturned that decision on appeal because of the lack of sufficiency and probativity of the evidence that the police had presented. That is the current state of play in case law under the 2005 act.

John Wilson: Thank you.

The Convener: Mr McGowan, you have offered a supplementary submission that will cover transfer provisions, provisional licences and

surrender of licences. The committee would be grateful for that. Would it be possible to get it before Christmas?

Stephen McGowan: Absolutely.

The Convener: Thank you very much.

Stephen McGowan: Consider it a present.

The Convener: Merry Christmas, Mr McGowan.

Alex Rowley: Mr McGowan has set out three areas that he believes we should look further at. Are there any other areas in alcohol licensing where improvements could be made that would make licensing more business friendly and support businesses more?

The Convener: Let us go with Mr Lee first, if you have anything.

John Lee: Consistency from boards would be helpful. That is one of the main issues that our members face. I know that it is unlikely to happen, but the Scottish Government is looking at extending something called primary authority partnerships, whereby businesses that operate across more than one local authority area can form a partnership with a single local authority for compliance, enforcement, inspection and so on. I know that it is highly unlikely but if, in future, we could do that with alcohol licensing, it would be hugely beneficial to our members. The overall lack of consistency from boards is an on-going issue for our members.

Paul Waterson: I agree. We have always had that problem since the formation of licensing boards. Inconsistency even within one board has raised its head on numerous occasions. Consistency between local licensing boards would be really helpful to us.

Stephen McGowan: I will restrict myself to one request, which is about personal licences. In the past week, committee members might have seen that almost 10,000 personal licences have been revoked as a result of failures in connection with training and notification of training to licensing boards. When almost 10,000 people have had their licences revoked, something must be wrong somewhere.

Section 57 of the bill seeks to address that by removing what I will refer to as the five-year ban on personal licensees who have had their licences revoked in those circumstances. However, the bill might not take effect for some time, so it is incumbent on me to ask Parliament to consider emergency legislation on that point to allow those 10,000 people to reapply for a personal licence rather than having to wait for the bill to be enacted in a year or so.

I am happy to write to the committee on this, but my point is that 10,000 people represents a large section of the licensed trade community. It would be great if the Parliament would consider whether the legislation could be amended, not to restore those licenses, because they have been lost through the licence holders' own failure to notify the board, but to address the situation because the five-year ban seems draconian.

The Convener: Emergency legislation is not in the gift of the committee. Only the Government can take such a step.

Clare Adamson: I am very new to the committee—I attended my first meeting last week—so I am trying to get up to speed. To help us understand the scale of what you are talking about, perhaps you can tell us how many people hold personal licences in Scotland.

Stephen McGowan: I can only give you an estimate, because there is no national database. We estimate that there are 35,000 to 40,000 personal licence holders across Scotland. At the last count there were 7,600 revocations, but several licensing boards have not yet given out figures, so we anticipate that the number could rise to 10,000 or even more.

Clare Adamson: There are a lot of people who do bar work temporarily—students and young people—to supplement initial jobs and so on. How many of the revocations relate to people who have let the licence lapse as they are no longer in that role?

Stephen McGowan: A percentage of the 10,000 people will have left the trade and in some cases the licensee will have died. Such factors will always be involved, but even if we take into account those who have left the trade and those who are not interested in having a licence for whatever reason, there is still a large number of people out there who have lost their licence as a result of an administrative oversight.

Clare Adamson: Is that an administrative oversight on their part, or on the part of the board?

Stephen McGowan: It is an administrative oversight on their part—they have a duty to undertake a refresher course within a set period and then notify the licensing board that they have done so.

The Convener: I am going to put a stop to this because, at the end of the day, it is outwith the scope of the bill that we are scrutinising and is a call for emergency legislation. You are right to point out who is responsible for the problem.

I have never served on a licensing board, but of the many notes and briefings that we have had on this subject, there is one point that sticks out for me, which is that licensing boards must hold their meetings in public, except that they are allowed to conduct deliberations on a point in private before

making a decision in public. Over the years, in my neck of the woods and elsewhere, I have heard many allegations about what goes on in the backroom. Do you have any comments on the behaviours or perceptions that there are about certain aspects of those bits and pieces of meetings that are held in private?

Stephen McGowan: I have appeared before a great number of licensing boards in Scotland. Some of them retire to consider applications before giving a decision and others will discuss everything in public. Personally, I think that all debates and discussions should be held in public—that is not necessarily the institute's view, because I have not canvassed the members' views on that point. It is preferable that applicants can see what the issues are and what issues the board members are concerned about, rather than the board retiring to consider in private.

Paul Waterson: Yes, I agree with that. However, sometimes I have seen boards that have very controversial applications before them not retire and immediately vote without any discussion at all. The members might look at one another before they put up their hands, but that probably means that the application was discussed before the meeting. In such cases, it is working the opposite way round and there are no public discussions.

The Convener: You talked about discussions taking place beforehand, but what about pre-meetings? There have been allegations that pre-meetings have been held in certain areas.

Paul Waterson: Absolutely. Stephen McGowan is right to say that any discussion should be held in public.

The Convener: Mr Lee, do you have a view on that?

John Lee: We would ask for the maximum amount of openness and transparency. The Edinburgh licensing forum is trying to move the board in the direction of podcasting and webcasting all its discussions, so that might be a way forward.

The Convener: On that note, I thank the witnesses for their evidence and close the public part of our meeting to continue our discussion in private.

11:45

Meeting continued in private until 11:57.

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e-format first available
ISBN 978-1-78534-523-4

Revised e-format available
ISBN 978-1-78534-536-4

Printed in Scotland by APS Group Scotland