The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 14 January 2015

Session 4

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
2nd Meeting 2015, 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)
*Cara Hilton (Dunfermline) (Lab)
*Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Eric Anderson (Aberdeen City Council)
Andrew Cox
Janet Hood (Association of Licensed Adult Entertainment Venues Scotland)
Professor Phil Hubbard (University of Kent)
Guy Jefferson (Scottish Power)
Michael McDougall (Glasgow City Council)
Mairi Millar (Glasgow City Council)
Jon Morgan (Federation of Scottish Theatre)
Peter Smith (Senior Licensing Officer)
Stewart Stevenson (Banffshire and Buchan Coast) (SNP) (Committee Substitute)
Laura Tomson (Zero Tolerance)
Gary Walker (Scottish Environment Protection Agency)
Sandra White (Glasgow Kelvin) (SNP)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 14 January 2015

[The Convener opened the meeting at 09:33]

Interests

The Convener (Kevin Stewart): Good morning and welcome to the second meeting in 2015 of the Local Government and Regeneration Committee. Everyone present is asked to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Some committee members may consult tablets, because we provide meeting papers in digital format.

We have apologies from Clare Adamson, who cannot attend, and I welcome Stewart Stevenson as her substitute. Thanks for attending, Stewart.

Agenda item 1 is a declaration of interests. First, I thank Anne McTaggart for her contributions to the committee and wish her well with her new committee appointment. Colleagues who have served on the committee for a while with Anne will recognise her value, particularly when it comes to going round the country and meeting the public. Anne has the ability to get folk to open up, and she got them to tell us things, which was sometimes very difficult to do. I wish her all the best and thank her for her efforts.

I welcome Cara Hilton to the committee, and I invite her to declare any relevant interests.

Cara Hilton (Dunfermline) (Lab): I just refer to my entry in the register of members' interests.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): If it is convenient, convener, it might at this point be useful to declare that a member of my family is a freelance stage manager in the theatre industry. I do not believe that that will touch on the matter that we will deal with under agenda item 4, but I just want to put it on the record in case it does.

The Convener: Thank you, Mr Stevenson. It is better to be safe than sorry.

European Union Reporter

09:34

The Convener: Agenda item 2 is the appointment of a European Union reporter. I asked members for expressions of interest, and I suggest that we ask John Wilson to take on the role. Do members agree to that suggestion?

Members *indicated agreement.*

Public Petition

Scottish Public Services Ombudsman Investigations (Transparency) (PE1538)

09:35

The Convener: Agenda item 3 is consideration of petition PE1538 by Dr Richard Burton on behalf of Accountability Scotland. The petition asks us

"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."

We discussed the issue during last week's evidence taking from the Scottish Public Services Ombudsman, and we have had the benefit of a written response from the SPSO and the petitioner's comments thereon. We have also received the internal guidance on information sharing that is used by SPSO staff. Do members have any views on the petition?

As members have none, I suggest that we close the petition. Is that agreed?

Members *indicated agreement.*

The Convener: Although the matter is not covered by the petition, I am aware that the Public Petitions Committee has discussed a review of the operation of the SPSO. It is my opinion that such a review would be premature, given that the parent act—the Scottish Public Services Ombudsman Act 2002—was reviewed by a committee of this Parliament in 2009. That review led to a number of changes being made to the 2002 act, including to section 19, which is the subject of the petition.

The 2009 review, which looked at all the bodies that were supported by the Scottish Parliamentary Corporate Body, included consideration of their operation and whether they were needed or could be amalgamated. Given the outcome of that review, consideration of a further review at this point would be premature. Do members have any views on that position?

As members do not, we will move on to the next item.

Air Weapons and Licensing (Scotland) Bill: Stage 1

09:37

The Convener: Agenda item 4 is our fifth oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We will begin with a round-table session, which will be followed by evidence from a panel.

I ask our witnesses to introduce themselves. We will go round the table, starting with Janet Hood.

Janet Hood (Association of Licensed Adult Entertainment Venues Scotland): I am from Janet Hood Consulting. I offer specialist licensing services to the trade. I am representing the Association of Licensed Adult Entertainment Venues Scotland. We thank the committee for the opportunity to present evidence. Do you just want a brief introduction?

The Convener: That is fine for now—we will come back to you on other matters.

Cameron Buchanan (Lothian) (Con): I am an MSP for Lothian and a member of the committee.

Andrew Cox: I am one of the managers in Glasgow's Seventh Heaven lap-dancing club.

John Wilson (Central Scotland) (Ind): I am deputy convener of the committee and an MSP for Central Scotland.

Professor Phil Hubbard (University of Kent): I am from the University of Kent. I am the leading academic authority on the licensing of lap-dancing and sexual entertainment venues in England and Wales.

Alex Rowley (Cowdenbeath) (Lab): I am the MSP for the Cowdenbeath constituency.

Mairi Millar (Glasgow City Council): Good morning. I am legal manager for licensing at Glasgow City Council and clerk to the city of Glasgow licensing board.

Sandra White (Glasgow Kelvin) (SNP): I am the MSP for Glasgow Kelvin. I have an interest in relation to part of the bill. I thank the committee very much for allowing me to be here.

Cara Hilton: I am the MSP for Dunfermline.

Jon Morgan (Federation of Scottish Theatre): I am director of the Federation of Scottish Theatre, which is a membership body for dance and theatre companies and venues. We have around 160 members across Scotland.

Stewart Stevenson: I am the member of the Scottish Parliament for Banffshire and Buchan Coast.

Eric Anderson (Aberdeen City Council): Good morning. I am deputy clerk to Aberdeen city licensing board and legal adviser to the licensing committee, which is the committee that deals with civic government legislation.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Hello. I am the MSP for Kilmarnock and Irvine Valley.

Laura Tomson (Zero Tolerance): I am from Zero Tolerance, which is a charity that works to end violence against women.

The Convener: I am the convener of the committee.

We have received apologies from Willie Taylor of Dumfries and Galloway Council. He is unable to attend because of bad weather conditions.

The panellists are most welcome. When you are called to speak, you do not need to press the button on your console to put on the microphone; that will be done for you. If I call you to speak, hands off the consoles—that would be grand.

My first question is about sexual entertainment premises. Many of us who represent areas where there are such venues know that there are often complaints from folks who live close by. These venues cause a little bit of controversy. What are folks' feelings on that situation and on the positioning of some of the premises? Janet, would you like to go first?

Janet Hood: Yes, I would. The Scottish Parliament very cleverly regulated adult entertainment venues, which are what exist at the moment, under the Licensing (Scotland) Act 2005. One of the great boons in that act for anybody who has difficulty with any type of licensed premises is that any person can raise a complaint and any person can raise a review. If there are complaints about the running of these premises, they can easily be brought to licensing boards, which I have no doubt would deal with them.

The act is predicated upon five objectives, which include the protection of people; the preservation of public safety; the prevention of crime and disorder; and the protection of health. It is highly surprising that comments are made that these complaints are out there, given that—as far as I am aware; of course I am not omniscient—there have been no complaints on those grounds to do with the running of premises.

One could say, "Oh well, people might feel intimidated about coming to a licensing board," but the Scottish Parliament thought about that. There are licensing standards officers and the police, to whom complaints can be made. I had experience of people complaining about noise nuisance from a noisy pub. The licensing standards officer took the complaint to the licensing board, as is his right, on behalf of the people who were making the complaint because they did not have the confidence to do so.

It is therefore surprising that, as far as I am aware, nothing has been raised with licensing boards to date.

The Convener: Thank you very much. Others should feel free to indicate if they want to come in. Professor Hubbard, would you like to comment?

Professor Hubbard: Yes. The academic evidence suggests that there is no particular association between criminality and the presence of lap-dance clubs or gentlemen's clubs in particular communities, but we need to acknowledge that those clubs do create anxiety and moral disapproval from certain sections of society. There is a great deal of evidence that people are anxious about them being located close to residential premises, places of worship, schools and other community facilities.

The introduction of the Policing and Crime Act 2009 in England and Wales gave adoptive legislation to local authorities, allowing them to control these premises with a degree of flexibility and discretion and in many cases that has been done successfully. However, the introduction of the act in England and Wales was by and large farcical in the way that it was allowed to proceed.

We have a situation in England and Wales that I would like to see avoided in Scotland—I think you could learn the lessons from England and Wales. The legislation is adoptive, not mandatory. We have a situation, in London for example, where there is a licensing regime for these establishments in one local authority but not in a neighbouring one. The fees for the establishments range from £300 to £26,000. Some local authorities will ban nudity and others will not.

The situation has given rise to a whole range of appeal cases and litigation in which legal unreasonableness and inconsistency have been raised as valid concerns. Some of those appeals have been upheld. It has created a great deal of anxiety, expenditure and time for many local authorities, which have been left to evolve policies of their own.

My recommendation is that if Scotland introduces the bill, which I think it should, it should ensure that licensing of these types of premises is mandatory for all local authorities in Scotland and that the legislation provides a much clearer definition of sexual entertainment, because that is being challenged in England and Wales at the moment. The legislation needs to distinguish that form of entertainment from theatre performance. It also needs to ensure that it does not allow for massage parlour owners in effect to license their

premises as brothels, which, as we know, would be contrary to other criminal law.

Finally, we need to ensure that there are clearer grounds for refusal in the primary legislation, not just in guidance notes. It needs to be stated in the legislation that local authorities should pay particular attention to the uses in the vicinity where those uses include education, places of worship, community facilities and so on. That should be stipulated in the legislation, so that if a case goes to appeal it is clear that the primary legislation indicates the grounds for refusal.

09:45

Sandra White: I would like to touch on what Janet Hood said about no one having objected. I appeared at the city of Glasgow licensing board in John Street with regard to clubs that were opening in Royal Exchange Square, along with a number of businesspeople who had businesses there, so it is untrue to say that people have not gone along to object. It is quite intimidating when you go to a licensing board, because the owners of the clubs are there as well, and you have to appear before a panel of councillors and give evidence. It is like a mini court, so it is quite intimidating, but I and others have certainly been there.

I would also like to pick up on the point that Professor Hubbard made. I agree with most of what he said, but when I was putting forward the bill we were advised that to make licensing mandatory would be much more difficult. The legislation in England and Wales went through before we managed to put our Scottish bill through.

The Convener: Could you clarify whether, when you talk about putting forward the bill, you are talking about the member's bill that you intended to introduce, rather than the Air Weapons and Licensing (Scotland) Bill, which we are dealing with now?

Sandra White: Yes, my intention at the time was to introduce a member's bill that would make the licensing of such premises mandatory, but our legal advice was that it would be much better to make it a matter for local authorities. It costs local authorities, such as Glasgow City Council, a lot of money if a case goes on appeal to the Court of Session, so they would invariably drop their cases as the owners appealed. It was therefore felt at the time that allowing each individual local authority to make its own choice was the best way forward, because that way the people who live in an area could ask their councils to adopt the legislation.

I shall leave it at that, convener, but thank you very much for allowing me to come in at that point. I may come back in on some other points later.

The Convener: We shall hear from Mairi Millar next, and then from Cameron Buchanan, Janet Hood and Stewart Stevenson.

Mairi Millar: I agree with some of the comments that Janet Hood made. In Glasgow, there are four lap-dancing clubs, or licensed premises with adult entertainment, and there have not been any reviews brought by members of the public against those premises. Equally, however, there have been no reviews brought against any licensed premises under the new provisions by any member of the public. That probably says a lot about people's understanding of and involvement in the licensing process.

We had an objection to a lap-dancing club at the time of the transitional arrangements, brought by one of the licensing standards officers, and that led to the appeal in the now famous case of Brightcrew Ltd v City of Glasgow Licensing Board. One of the issues that we have now is that, because of the Brightcrew decision, it became clear that the licensing board's responsibility is primarily in terms of the licensing objectives relating to the sale of alcohol. Licensing standards officers now do not regulate adult entertainment activity because of that decision, so the premises are largely unregulated.

I also support Sandra White's comments. When we have had new applications—going back quite some time—there has been a significant level of objections to those applications. Again, that supports the comments made by Professor Hubbard about the feelings of local communities about new establishments opening up in their area and the impact that that could have on a residential area.

Janet Hood: My understanding is that there have been no new applications for some time, certainly in Glasgow, and that we are in a falling market. There were 20 lap-dancing clubs in Scotland and we are now down to 17. Two of those 17 premises happen to be owned by the same person in the same building, so I suppose that we could say that there are 16. Aberdeen City Council turned me down for an application for a lap-dancing club in Chapel Street on the grounds of the protection of children from harm. It turned down another application in Union Street—I did not act for the client at the time—on the grounds of location, and it turned down another on the grounds of the unsuitability of the location.

The Licensing (Scotland) Act 2005 and, indeed, the Civic Government (Scotland) Act 1982 set out various criteria, one of which is that local government is a statutory objector or statutory consultee. As a result, local government already has the ability to comment or complain, but I have no idea whether it has commented on or complained about any of these licensing

applications. It certainly has not done so with regard to any clients with whom I have dealt.

Taking up Professor Hubbard's point, I should point out that location, character and condition already form part of the 2005 act. Licensing boards look at where the club in question is, and if it is near a school, a church or something of that ilk, it is highly unlikely that an adult entertainment licence for a premises where such activity takes place will be granted. If the character of the building overtly demonstrates what is going on within it—which is barred in the bulk of Scotland—not only the licensing board but the planning committee, which deals with advertisements, will comment on its unsuitability. That can be linked directly to the sale of alcohol because such advertising, whether it be a sign for Tennent's or anything else, can lead people into the premises.

I find it unfortunate that it is being implied that local government has no say in this matter; it has a say, but so far it has chosen not to say anything—or so it appears.

Cameron Buchanan: I seek some clarification from Professor Hubbard. In England and Wales, is the licensing for theatre performance the same as that for sexual entertainment? You said that things in that respect were rather loosely worded.

Professor Hubbard: My expertise is in the area of sexual entertainment venue licensing, which is separate from the public entertainment licensing regime. As far as I know, no theatre or theatrical performance has applied for an SEV licence. At the moment, 221 venues in England and Wales are licensed for sexual entertainment, the majority of which are gentlemen's clubs. There are five gay clubs with what are called dark rooms or fumble rooms that gay men frequent to have sex with each other, and there is one licensed swingers club. As far as I know, no theatrical entertainment or burlesque spaces are licensed in that way.

Cameron Buchanan: Thank you.

The Convener: Did you wish to make a point, Mr Morgan?

Jon Morgan: With regard to the licensing of theatres in England and Wales, I point out that they come under a single catch-all licence called a premises licence, which covers alcohol, public entertainment, theatres and cinemas.

Stewart Stevenson: This early part of the discussion has focused on the point that any such premises or activities taking place in communities need to be properly located away from sensitive areas such as schools, churches and so on. That immediately draws me to the exemption in the bill under which it is possible for premises to host sexual entertainment on no more than four occasions over the 12-month period. In other words, they are outside the regime altogether.

I wonder whether I can draw on the expertise of the people with us this morning by asking whether that might create disproportionate discomfort in communities. Because there would be no control over the location, there would in law be nothing to stop premises immediately next to a school being used for such activities—infrequently, perhaps, but enough to cause disproportionate concern to people whose kids go to that school. In fact, it might bring into disrepute the whole attempt to bring some sanity to the situation through this legislation.

Can the experts around the table contribute to that discussion? I have to say that I am quite uncomfortable about this exemption, particularly with regard to the issue of location.

The Convener: I will take Eric Anderson next, given that Aberdeen City Council has been mentioned. Perhaps you can also cover the point that Mr Stevenson has highlighted, Mr Anderson.

Eric Anderson: Certainly, convener. We expressed the same concern in our response to the consultation, and we think that it might create a loophole that organisers could exploit. Instead of having a permanent premises with a licence and proper facilities for performers, they could simply transfer the activity to different venues where there are no such facilities or protection. Such an exemption could therefore mean defeating the aims and purposes of the amendments to the 1982 act.

The Convener: Ms Hood made some comments about Aberdeen City Council. Do you want to react to those comments?

Eric Anderson: As far as the refusal of licences is concerned, I can confirm that, since the 2005 act was put in place, we have refused one premises. We have refused others in the past under the previous legislation—that is correct.

Laura Tomson: What has been missing from this conversation so far is what is different about sexual or adult entertainment and how that fits in with other policies across the Scottish Government. The Zero Tolerance position, along with the position of many other equalities organisations in Scotland and the Scottish Government's violence against women strategy, is that sexual entertainment is a form of commercial sexual exploitation with links to violence against women.

The introduction of a separate licensing structure is important not just because we have had issues with alcohol licensing, but because there are so many issues around prostitution being accessed through lap dancing; research in

Scotland shows that that is very prevalent. There are also issues around prostitution itself—for example, women who are involved in prostitution are much more likely to be victims of violence against women; women feel unsafe around the venues; and women who work in the venues face abuse and harassment.

If a new licensing regime is to be introduced—we support that, with the caveat that we would like to see an end to that kind of exploitation—the regime needs to take those broader themes into account. That is why I agree with Professor Hubbard that it should be mandatory for all local authorities in Scotland to take it up. If that does not happen, we will be ignoring a lot of very important issues, such as those around child protection; it should not be up to local authorities to decide whether those issues are relevant to them.

The regulations should include guidance for local authorities on what they should inspect and what they should expect licensed venues to do, for example in terms of allowing in welfare visitors to speak to their workers or contact between customers and workers. That is all very important.

On the point about the number of times that sexual entertainment happens in a venue, when those themes are taken into account, how many times it happens is irrelevant. The potential for harm is there no matter how many times it happens. In their submissions to the consultation, a lot of people expressed worries that organisers would simply move from venue to venue, which would make it much more difficult to regulate those harms. If sexual entertainment occurs once a year, the venue should have to have a licence for it.

When it comes to signage around schools, I point out that if you walk down Lothian Road—or what is called the pubic triangle by locals—in Edinburgh, you will see that it is very clear that very sexualised, very obvious signage is being used. It is being challenged by Zero Tolerance, but nothing has changed. The signage is within one or two streets of at least three schools, so obviously nothing is happening there.

The Convener: One thing that the committee has looked at in previous sessions is occasional alcohol licensing. The four-times-a-year allowance seems to raise that kind of occasionality again. Do such situations cause real difficulties for licensing boards?

Mairi Millar: It would be almost impossible to enforce the number of times that the activity is held. Licensing boards or licensing standards authorities simply would not know how many times it had happened, because there would be no requirement for them to know. They would be reliant on the premises to self-regulate and admit if they had not kept it to four times. We simply cannot rely on licensing standards authorities being able to cover all licensed premises to keep track of the number of times that an activity takes place. I share the concerns about it being unregulated generally, but I feel that a limit on the number of activities would be impossible to enforce.

Eric Anderson: I concur with everything that Mairi Millar just said. Control and monitoring would be very difficult if a premises were not properly licensed.

Professor Hubbard: Such restrictions are being introduced to deal with the situation that one finds in some holiday resorts in England and Wales, such as Newquay and Scarborough, and in particular for things that happen around the Cheltenham gold cup, for example, when, for the seven days' duration of the event, premises will put on lap dancing—they will not have it for the rest of the year. That falls within the 12-times-a-year limit that has been set in England and Wales.

Local authorities would become very much aware of the fact that particular premises were abusing that law for the whole week, say, of a particular sporting event. If a particular pub or club was putting on that type of entertainment during the Edinburgh festival, for instance, it would become clear to the licensing board, through reports.

10:00

The Convener: I look to the licensing clerks to see whether they agree with that position. I imagine that, in certain cases, it might be a little bit more difficult for you guys to get to grips with what is going on at some private members' clubs. Is that the case?

Mairi Millar: With regard to the example that has been given of a pop-up, one-off annual event, I suppose that there would be more visibility there. I was thinking about the idea of such entertainment being taken around different premises. It would be very difficult for a board or a licensing standards officer to keep track of that among licensed premises.

The Convener: There are a number of private members' clubs in sports and social clubs in Aberdeen. Would you be able to keep track, Mr Anderson, if such a timetable was used?

Eric Anderson: There are indeed. It is difficult to keep track of all the activities. Where there is an opportunity to have an itinerant type of entertainment, which moves from place to place—here one day and gone the next—that makes monitoring, control and keeping tabs very difficult. I would certainly consider opposing that proposal.

As Professor Hubbard said, a one-off major event with consistent types of regular entertainment on an annual basis is one scenario. However, if things are arranged on a day-by-day or week-by-week basis, that is a different story altogether.

Janet Hood: I find myself, and my clients find themselves, in agreement with the licensing boards and with Zero Tolerance on this point. At the moment, the clubs that I represent in the Association of Licensed Adult Entertainment Venues are highly regulated. They have vast numbers of stewards, closed-circuit television and high levels of training for management. The premises are properly and well regulated. The dancers are not employees, and they are not forced to dance. They apply to dance within the premises, and they come there to dance.

We have particular concerns about the arrangement for allowing four events a year. Those events could take place in unregulated public places. That is bad enough, but what is happening now—we feel that the Scottish Government should be turning its eye on this—is that seriously unregulated sexual entertainment is going on in Scotland.

I spent an exceedingly unpleasant weekend last weekend typing “strippers Dundee” or “strippers Perth”, among other things, into Google—even “strippers Edzell”, which is where I live. I discovered to my horror that, although I am unlikely to do this, groups of young men or whoever could engage women to come to their premises for the purposes of performing a striptease. They could say that it was for a stag night or for something else. The women can come to a private house or to a hotel room. They will not turn up in tassels and a G-string; they will turn up and go to the room looking as if they are normal human beings.

That is completely unregulated. On each one of the websites, I asked whether I would have to pay for a chaperone, and I found out that there are no chaperones. Those women are the people who are being seriously exploited in Scotland, and my clients have serious concerns with that.

Among the comments that were made at a previous committee meeting, there was an implication that striptease performances and so on for hen nights or stag nights were not particularly serious. I would say that those instances are where the serious harm is likely to lie in Scotland. If the provisions involving four days a year are used, such events could probably happen in pubs and clubs. At least they will be in public, and there is a chance that the girls might get away unscathed.

However, they will not be regulated in the way that adult entertainment venues are currently regulated. My clients have an immigration and migrant toolkit, which has been presented to this committee, whereby girls are identified with a passport or driving licence and their next of kin is sourced. Photographs are taken of their identification documents and are passed to the police. That all helps to keep people safe—and not only within the clubs. Payments are made only to the girls’ bank accounts or into their hands; no payments are made to third parties. That is not the case when someone goes online to book a girl to come to their flat or bedroom. Those are matters with which the committee should be concerned.

Andrew Cox: In the club that I work in, no one has ever been arrested or charged with people trafficking, prostitution, money laundering or any of the other things that have been targeted at us.

Laura Tomson talked about letting welfare in. We are open to anybody. We let the police and licensing standards officers in. Anybody here is welcome to come in and talk to the girls.

My main concern, other than the girls, is myself. If there is a ban or zero licences for Glasgow, I will get put out of a job. I would like to know what is going to happen to me. Is there provision to help retrain me? There are nine or 10 full-time employees in my club—that is just one club—so you could quite easily be talking about 1,000 jobs, including the dancers. Will I get redundancy pay? Once the club loses its licence, the money will dry up. Who will help me pay my mortgage or plan for my future? I just want to know if that is going to be mentioned.

Stewart Stevenson: I want to follow up on Professor Hubbard’s description of the 12 occasions provision in the English legislation. As a substitute member of the committee, I am afraid that I might not be quite up to speed with some of my colleagues. I want to explore with the professor and with others who can make informed comment what the practical effect is. The example that was given was the Cheltenham gold cup, which is fair enough. Does the way that the 12 exemptions provision works inform the committee? I started from the point of view of whether taking those occasions entirely outside the licensing system, particularly if it meant that no drinks licence was associated with them—after all, bring your own bottle is common in other circumstances and it could apply here—causes difficulties for communities in England. Practical examples would help inform our understanding of what we should do in Scotland.

Professor Hubbard: I think that this issue is a red herring in relation to what we are talking about. We are talking about the licensing of a premises, not the licensing of an activity. If an activity is

highly itinerant it is not likely that any community would identify a particular premises as being associated with it. Therefore, I cannot think of any particular situation where itinerant striptease at a venue has caused anxiety for communities. It is where a particular premises becomes identified, visibly known and advertised as a lap-dancing club that opposition and anxiety begins to be perpetuated.

Stewart Stevenson: The itinerant activity is presumably advertised by some means, otherwise it would be difficult for clients to arrive at the venue. How does that work in practice? Forgive my naivety.

Professor Hubbard: There are agencies in England and Wales that will provide dancers to certain striptease pubs. You cannot find websites for those pubs; they do it as an irregular activity and they will generally advertise through word of mouth or just by putting something on the chalk board outside. It might happen on a Sunday lunch time once every six months; it might happen on a regular Friday or Saturday night. Those places are not particularly known or reputed for sexual entertainment; they would not be understood by most residents as specifically having that type of entertainment and it might alternate with other forms of entertainment such as live music and comedy. This is a bit of a red herring. If you have particular anxieties about itinerant adult entertainment, you should license the dancers and the performers, not the premises.

Stewart Stevenson: What you are saying to the committee is that the premises that operate on the exemption basis are all premises that are otherwise regulated. You are suggesting to me—or at least I am hearing—that there are no cases in which premises that are not regulated by some regulatory regime are exploiting the exemption. Is that what I am being told?

Professor Hubbard: It is possible that some escape regulation, but the majority will be issued with a standard premises licence for alcohol.

Sandra White: I want to raise a number of issues. We are talking about local authorities, which have a very hard job to do. I would be interested to know how many times clubs in Aberdeen have appealed the decision.

In Glasgow, we have two lap-dancing clubs, at either end of the city, that are a street away from a church—the Gaelic church and the church at Nelson Mandela Place. However, that has not stopped the clubs appealing the decision and winning, which has cost council tax payers money. I am pleased that Andrew Cox says that he would welcome anyone into his club. I have been in the club. I did my homework before I embarked on this bill—

The Convener: Can I stop you again, Sandra? You said "this bill" again. You are talking about your previous proposed bill and not the bill that we are discussing.

Sandra White: Yes. I suppose that it is all experience to take us forward. I am very pleased that the committee is scrutinising the bill.

What struck me in some of the clubs that I went in was the lack of customers. I often wondered how the clubs made enough money to remain open.

We are missing an important point here, though. Laura Tomson raised the issue of how women are looked on by the men who frequent the clubs. In one of the clubs that I was in, I spoke to a group of young men. I felt that they were being exploited because they were being egged on by their friends to put money—blah, blah, blah—to get a dance. I asked these young men what they thought about the women in the clubs and I could not repeat the language that they used. When I asked what they would do if it was their wife, girlfriend or sister, they said that they would never do that. That is another point that we have to consider.

We talk about employment. These dancers are self-employed. They pay to dance—they pay for their costumes and the tables. These girls are being exploited in many ways. It is about a perception that men in particular have of women when they see these dancers, or whatever you wish to call them. We talk about the pubic corner in Edinburgh, which is very well advertised. A lady who works in one of the clubs was accosted by a customer outside a club when she was not working. The treatment of that poor lady says a lot to me about how men perceive these dancers.

In my area, people coming from Central station—people coming from work and going about their business—have to walk past these clubs. We need to look at it seriously.

The Convener: Eric Anderson, there was a specific question about Aberdeen.

Eric Anderson: In Aberdeen, I mentioned that, since the 2005 act, we have refused one application for a sex entertainment premises. That was not appealed by the applicant. Of course, we cannot read anything into that particular scenario. The other two came under previous legislation going back into the mists of time. As I recall, the case in question attracted objections into double figures.

Janet Hood: There were 22 objections. Sorry, I beg your pardon. It is just that it was mine.

Eric Anderson: I did not clerk that meeting. There is a particular concern, as you can perhaps detect from that.

Mairi Millar: I want to follow up on points regarding the occasional use of premises. It could be that the temporary licence provisions would suit, so that, if premises are to be used on an occasional basis, an application could be made for a temporary licence, just as a one-off public entertainment event can be covered by a temporary licence. I am not sure whether the provisions currently extend to include the temporary licence provisions—I would need to check that—but it would certainly be an option, rather than having the de minimis provision.

10:15

On a more general point, following on from Sandra White's comments, it strikes me that we have licensing legislation and regulations to cover everything from window cleaning to selling burgers from a van or selling chewing gum at 3 o'clock in the morning under late hours catering regulations, but adult entertainment activity is currently not regulated. There are no provisions and there is no control over the conduct of such activity, and that is a fundamental point about what the bill would allow local authorities to do that is not currently available to them or to licensing boards.

Janet Hood: I would like to come in on Laura Tomson's point about the advertising of clubs in the Lothian Road area. Advertising is in the control of local government planning committees. If advertising is deemed by the local authority, which might, according to Mairi Millar, be anxious to control such venues, to cause offence, one would have thought that such advertising, which was mentioned by Laura Tomson and Sandra White, should be controlled by the planning authority. That is a matter that should be taken up with planning authorities.

Mairi Millar suggests that the Brightcrew decision has removed any element of control. The five objectives, and the requirement to consider any form of criminality through the fit-and-proper-person test that is coming back in, give licensing boards huge control. My clients' premises are among the most controlled premises in Scotland. That is why we have so few incidents of any harm happening. The controls are implemented by management, staff and stewarding. All the activities in the clubs are open to scrutiny by the police, licensing standards officers and, as has been indicated by Andrew Cox, any other person from local government, or from anywhere else, who wishes to come in, and they are always welcome. My clients are not trying to hide anything that they do. They welcome scrutiny because they wish to be in a position to demonstrate how well the clubs are regulated.

Part of the issue in the Brightcrew case was whether a kettle should be produced in a changing room. There were issues that really had nothing to do with the preservation of order and good practice within premises. I defy anybody round this table to suggest that the clients I represent do not carry out good practice and care for the dancers, the public, the staff and people in the vicinity.

Andrew Cox: Sandra White said that it is quite daunting going to a licensing board. It is just as daunting for me to give evidence to this committee.

Sandra White mentioned that the premises were near a church. As a layman, I would have assumed that churches are morning things, so I do not think that the two crowds would bump into each other. I thought that that was a bit strange. People have been talking about this club and that club, but I am interested in my club. We have succeeded in meeting every single regulation that we are hit with, and we are happy to do it. It has been said that the girls are self-employed and that there is a lack of customers. The girls obviously make money, and it does not matter how many customers there are. If it is quiet, one millionaire is as good as many other people who are spending the same money on the same things.

People have also commented on how the girls are looked on by men. My girlfriend, who is my future wife, was a dancer and how she was looked on by men has done no damage to her. She is more than happy, so I do not really see how you can categorise everything with the one thing. Every girl is different and every club is different.

Sandra White: Could I come in on that?

The Convener: I have a list of people who want to speak, Sandra, but I will let you come back in later. Let us hear from Professor Hubbard.

Professor Hubbard: I return to the issue of advertising. In general, I am in favour of the introduction of the new power, because licensing provides flexibility and discretion to local authorities that the planning system does not. It allows people to react to changes in a way that, once initial permission has been given, perhaps cannot be dealt with under the remit of a planning committee.

I note that the system has to be proportionate. The fees must not be contrary to EU competition rules, particularly the EU services directive, which says that businesses should be unfettered by unfair legislation—they should not be overregulated.

On advertising, I point out that the bill is proposing an amendment to the schedule to the Civic Government (Scotland) Act 1982 on sex shops, which mentions the control of advertising in or on sex shop premises. That should be amended to read "in, on or in the vicinity of". In

England and Wales, A-frames are being located on the street indicating "lap dancing this way". That might not be mentioned in the licensing conditions, given the current framing of the sex shops legislation. There is also touting, pamphleting and so on. Adding "in the vicinity of" to the provisions would allow licensing committees to impose some fairly commonsense rules and conditions on advertising in, on and in the vicinity of premises that are licensed for sexual entertainment.

Laura Tomson: The aim of the regime should be to make it easy for communities to complain about or object to planning decisions, sexual entertainment venues or alcohol licences—for example, if people feel that the advertising signage outside the venues on Lothian Road is not suitable two streets away from a school. Different things are covered by different planning and licensing authorities, which is confusing for people. The point should be to bring everything under sexual entertainment venue licensing, which would make things easy.

Andrew Cox said that all venues are different, all managers are different and all the women who work there are different. That is the point. That is why licensing should be mandatory and coherent across Scotland. Just because one venue is run effectively does not mean that they all are.

The Convener: Do you have examples that you have dealt with where folks have gone from pillar to post with their objections? Their objection might not necessarily be against the venue per se; it might concern some of the advertising.

Laura Tomson: Yes. Different people object to different things. There are probably people who feel comfortable with things happening as long as their children do not have to walk past the venues on the way to school every morning. It is very obvious in the Lothian Road area what happens there, and there are some very objectifying views of girls and women. There is more and more research linking that to violence against women and to inequality.

It is important that people get to raise their objections in a simple way. Colleagues have raised objections about the signage on Lothian Road, but nothing has happened even though, as far as we can see, it contravenes policy. We have been told by people we have spoken to that we have taken our eyes off those places. From our experience, I personally do not see that the policy is functioning well at the moment.

The Convener: I will let you come back in briefly, Sandra, although other folks are on the list.

Sandra White: That is fine. I just wanted to say to Andrew Cox that I did not make up the rules about the churches and schools. That is part of the parcel, as Janet Hood has explained. I will leave it at that.

There is a further issue that I want to discuss, which nobody else has mentioned: the immigration and licence toolkit. Is it okay to mention that just now? I know it is something different.

The Convener: Yes—go ahead.

Sandra White: I spoke to Janet Hood earlier, and she will be sending me an immigration and licence toolkit. I have never heard about such a proposal for any other form of employment.

The Convener: Janet Hood mentioned earlier that the committee has had sight of that toolkit. I have spoken to the clerks, and we do not have that information. It would be extremely useful for us to have that information, so that we can have a look at it in the course of our deliberations.

Janet Hood: We would be delighted to send it in. We included it as part of our sexual entertainment venues consultation response. We are sorry that it has not come to MSPs and to members around this table. We will certainly ensure that it is sent to your clerk.

The Convener: Could that have been in response to the Government, rather than to the committee's call for evidence?

Janet Hood: Yes, it would have been.

The Convener: That is a separate process. I ask you to send that to our clerks.

Janet Hood: With pleasure.

The Convener: That would be grand—thank you.

Sandra White: I will wait until I see the toolkit. Is that all right, convener?

The Convener: That would be the best way forward.

Sandra White: That is fine.

The Convener: We will ensure that it is disseminated to you, Sandra, as well as to other committee members.

Sandra White: Thank you.

Willie Coffey: Could our city council colleagues clarify the issue of financial gain? The submissions of both Aberdeen and Glasgow councils mentioned a lack of clarity in the bill's proposal on that point. Could you tell us exactly what your concern is and how it might be addressed and tidied up in the bill? Perhaps we could also hear what the response of the club operators or association colleagues might be to that.

Mairi Millar: My concern is that the bill would allow an escape provision. It would be arguable

that the premises owner was not making any financial gain from a sexual entertainment activity—that an event was laid on free of charge, for example, and that their financial gain was through the sale of alcohol or some other activity. Litigation would then be required to determine whether they were properly making a financial gain. The concern is over the interpretation that could be given to the link to financial gain and the difficulty of enforcement.

Eric Anderson: Again I find myself endorsing what Mairi Millar has said. The definition of financial gain appears sufficient, but some more clarity may be useful. It is interesting that, if we look at the changes to the 1982 act and what had gone before, we see that similar provision for the payment of money or money's worth has recently been removed from the licensing of places of public entertainment, yet the financial gain element is to be stipulated for this particular activity, which is a concern. That is just a general comment on the bill.

Professor Hubbard: Again, I think that this issue is a red herring. The provisions clearly refer to direct or indirect financial gain. There has been no case in England in which anybody has challenged the idea that somebody providing free striptease entertainment may not be benefiting indirectly from increased patronage, which results in increased alcohol sales. I think that the definition is adequate in that sense.

My concern is that—and licensing authorities and a licensing solicitor have advised me of this—there is a disjunction where the bill says that the definition of sexual entertainment is

"any live performance, or ... live display".

I think that it should read "any live performance involving live nudity". As the bill is drafted, it could involve just a live display of nudity, which would begin to include massage parlours, because in a massage parlour there is a live display of nudity in some instances, where a massage is provided by somebody who is topless or naked. We know that that goes on—it is advertised, and it is known to be for the purposes of sexual stimulation. There is financial gain for the organiser who runs the massage parlour, even if he or she denies knowledge of that. As the provisions are framed, there is a danger that they bring massage parlours into the equation. Although we would like to turn a blind eye to the fact that it goes on, in Scotland, as in England and Wales, saunas and massage parlours are known and advertised as places where sex is purchased.

There needs to be an additional section inserted that suggests, under section 45A(7), that the bill should exclude any premises resorted to or used by more than one woman or man for the purposes of prostitution or fornication. Otherwise, one could get into a situation in which a licensing board, on a very good day, decides to issue a massage parlour a sexual entertainment licence. Then we would have a civic regime that is licensing massage parlours contrary to the criminal law, which forbids the running of a brothel, or a disorderly house. That situation has not been challenged in England and Wales, but it is going to be challenged soon.

Janet Hood: I am quite surprised by Professor Hubbard's comments. It appears that we should be turning a blind eye to prostitution and serious abuse of women. If that were the case, it would be rather depressing.

However, I would say that the main point for local government—and I have 21 years of experience on clerking boards and committees in local government—is going to be the challenge of trying to marry two separate definitions. Adult entertainment is defined differently from sexual entertainment. I think that it would be almost impossible to decide how anybody is going to determine what is happening in a premises. That in itself could tie local government up not only in the local courts but in courts furth of Scotland, should the legislation come in. My clients are particularly concerned about that, because it will be impossible to get the two regimes to marry.

My clients would certainly be happy if grandfather rights were issued to those places that are currently operating under the safely and properly regulated system under the Licensing (Scotland) Act 2005, and they hope that the Government will look at the licensing of sexual entertainment venues coming in for new places. However, if you do not manage to marry up the two definitions, it will cause enormous cost and difficulty for local government. The issue has been canvassed by Jack Cummins, Stephen McGowan and other people who have appeared before the committee, and it is something that you will have to take on board in deciding how it will work.

10:30

The last question on that point is what you are going to do about the places that are currently licensed under the 2005 act to provide adult entertainment. They have been deemed fit to provide adult entertainment. There has been no slipping in under the rug or under the counter. Under the Licensing (Scotland) Act 1976, you had to declare the type of entertainment that took place in those premises. That was accepted by licensing boards then, with all the rules that we have already talked about concerning location and so on.

Under the 2005 act, the activities had to be declared, and the premises have been deemed to be fit for those activities to take place. How are you going to marry that up with the new regime if, for instance, Glasgow City Council decides—as it has already declared in the press—that it wants a zero number? That is rather odd, because it has not considered anything. How will Glasgow deal with the premises that already exist that are providing legitimate activities in a well-regulated set-up? How can that consent be removed from the licensed premises under the 2005 act? That is a quandary for everybody.

Jon Morgan: On definitions and exclusions, I would like to explore the potential implications for theatre, dance and other kinds of legitimate performance.

The Convener: While you are at it, maybe you can tell us about a number of your practical concerns around the bill's impact on theatres, because I know that we have missed that out.

Jon Morgan: I was not quite sure when would be the right moment to come in.

The Convener: You go ahead, sir.

Jon Morgan: I will deal first of all with licences for sexual entertainment venues. We do not have a position on the substantive proposal, but we are certainly not speaking in opposition to it. Our main concern is around the definition of sexual entertainment as it is currently constituted and the potential impact on freedom of artistic expression for legitimate artists.

We are pleased to see that there are provisions elsewhere in the bill to continue the ban against censorship, which was in the Theatres Act 1968, and to prevent local authorities from attaching conditions to public entertainment licences about which plays may be performed or the manner in which they may be performed. Those are important safeguards for freedom of artistic expression. Our concern is that the bill might inadvertently—we know that it is not the intention—have an impact on freedom of artistic expression.

We surveyed our members about the issue and they were unanimous in their concerns, which are threefold. One is about the potential misinterpretation or misapplication of sexual entertainment venue licensing to restrict unreasonably their legitimate artistic performances. The second is the potential for individual members of the public to make vexatious complaints, perhaps on the ground of taste or decency rather than on the ground of a performance being an example of sexual entertainment. The third is about self-censorship by our own sector: out of fear of falling foul of the legislation, people may simply choose not to put on a particular performance or production.

I will not go into detail, but there are examples, such as burlesque artists and artists whose performances explore questions of sex, sexuality, prostitution and pornography. Such examples include the production of "Wonderland" that was on at the Edinburgh international festival two years ago, which explicitly explored pornography and involved nudity on stage. There was also a performance at the festival last year called "Sister", which involved a lap dance as part of the performance, to demonstrate the different attitudes of the women in the performance to that kind of sexual performance. We are concerned that such performances, which push at the boundaries of taste and decency for many people but which are not illegal, may fall foul of the definition.

We have some proposals about how the definition might be changed. We would request an exemption under proposed new section 45A(7) of the 1982 act for venues with a public entertainment licence, and an explicit exemption for artistic or theatrical performances, whose intention is artistic or creative.

I noted that, when the consultation on the matter came out in June 2013, the guidance notes contained an explicit statement that the proposed measures were not intended inadvertently to affect artistic performances. However, that explicit statement does not exist anywhere in the bill at present. We would like to see that in the bill and in the accompanying guidance.

Professor Hubbard: I would demur slightly from that. As proposed new section 45A(3) already indicates,

"'sexual entertainment' means—

(a) any live performance, or

(b) any live display of nudity,

which ... it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating ... the audience (whether by verbal or other means)."

Our understanding would be that an artistic or theatrical performance would not be construed as being

"solely or principally for the purpose of"

sexual stimulation.

One could add—and I am advised that it may be prudent to do so—the phrase "including advertising" after

"whether by verbal or other means".

There is a clear difference. I could set up premises called "Bottoms Up", for example, or "Cuddles" or something along those lines, and the act of advertising in that way would indicate that the

entertainment that I was providing was for the purpose of sexual stimulation. If I have premises that I call a theatre, it becomes clear that my primary objective is not sexual stimulation, but artistic entertainment.

Jon Morgan: Here in Edinburgh, there are lots of venues that are not normally called theatres, but which become theatres during the fringe and the festival. I am not sure that that approach would provide sufficient protection.

Professor Hubbard: Yes. There have been similar instances but, given the nature of advertising, a commonsense view would be that "verbal or other means, including advertising," would indicate that a programme of entertainment was part of a particular cultural season. If it was indicated, somewhat differently, that the entertainment was about sexual stimulation, the outcome would be very different. The issue is something of a red herring, and the legislation as it is framed makes adequate provision for local authorities to distinguish between what is and what is not exempted.

The Convener: I will play devil's advocate. If I wanted to get round some of the regulations, I might say that my venue was a theatre, rather than anything else. Were some of the original venues for sexual entertainment in Soho not dubbed "theatres" at one point?

Professor Hubbard: I do not think that such instances are likely to occur. With regard to advertising and likely patronage, people would be unlikely to follow that particular route. There has been no such occurrence in England and Wales over the past five years.

John Wilson: I wish to ask Mr Morgan about theatre performances. I have a fear that, because of the way in which the bill is laid out, different licensing authorities may have different interpretations of a theatre production.

Let us say that a theatre production containing live nudity takes place in Glasgow, and the same production tries to go to West Dunbartonshire, East Dunbartonshire or North Lanarkshire, where the licensing authority decides that it is not fit for performance in its area. Part of my difficulty is with trying to ensure that the legislation will have the same effect throughout Scotland, and that audiences in Glasgow, for example, will have the same rights as those elsewhere in Scotland: we are relying on 32 licensing authorities interpreting the legislation.

Mr Morgan can comment on this, but I feel that there may be an issue with artistic licence being taken away from theatre productions, based on the decision of licensing boards in some areas. That is the difficulty, and we should try to define the provisions in such a way that does not allow that to happen.

Jon Morgan: That is our concern. The phrase "must reasonably be assumed" means that interpretation and subjectivity are involved. We are concerned that different local authorities or licensing boards could take a different view of the same show or production, as you said.

We feel that the simple inclusion of a section that provides for an exemption for legitimate artistic or theatre performances and an exemption for venues with a PEL would provide a sufficient safeguard.

I take your point that someone could say, "Well, I run a theatre and I have a public entertainment licence," but the issue is about proportionality. There are hundreds of theatres and community arts venues up and down the country, and we are talking about 20 sexual entertainment venues. Surely it must be possible to verify that someone is legitimately running a theatre or a sexual entertainment venue.

The Convener: I will let John Wilson come back in. If he does not pick up on that, I will.

John Wilson: You should pick up on it, convener, because I was going to move on.

The Convener: My question is on the definition of "legitimate theatre performance". You and I may think that something is a legitimate theatre performance, but others may not agree. The issue is about that definition in law.

I often think that the more that we legislate on things, the more that we create a rod for our own backs, in some regards, because definitions often cause us great difficulty.

Jon Morgan: The definition in the Theatres Act 1968 will subsist under the bill, because not all of the 1968 act is being repealed. There is a definition of "play", which would cover a legitimate theatrical performance. One could use that definition.

John Wilson: My next question follows on from Laura Tomson's point about signage outside premises, on which I seek clarification—maybe one of our witnesses can clarify it. My difficulty is that the licensing of premises is done by the licensing board or licensing committee, but the display of signage is covered by planning regulations. The licensing board determines what is acceptable to it, in terms of licensing, whereas, as Ms Tomson indicated, signage outside those premises falls into the planning regime. Has there been any discussion of that crossover? Is it clear to people when they make a complaint about signage that they are complaining to the right department? The licensing officers around the room might be able to clarify the link between the

planning department and the licensing board in ensuring that signage does not impinge on decency, in terms of residents and other citizens in the area concerned.

Laura Tomson: I do not have an answer to that. We think that signage should come under the licensing of the venue, because as far as I am aware—and I am not an expert on this—planning objections can be raised only once. A school or a religious centre could be built down the street from premises that have already been given planning permission for a certain type of signage, and there is nothing that the community can do about that. It can be a very convoluted process, in terms of local people understanding who they should approach.

The Convener: I will bring in the licensing folk. I imagine that some clubs are in areas that may be conservation zones or have other planning strictures around them. You might want to comment on that, because if that were the case it would allow not just a single objection but an on-going scenario.

Eric Anderson: I refer to one case that took place a few years ago, regarding premises that a business wanted to expand and which displayed signs that led to a number of complaints from members of the public. Those complaints went to the local authority in general—some went to planning and some went to the licensing board. To deal with the situation, we put everything to the planners, who were able to investigate. As a result, the offending signs were adapted and were displayed within accepted terms.

The Convener: Had an application been made for that, or had the business existed for a while, with changes made?

Eric Anderson: The premises were fairly new. The business wished to expand and develop, and I guess that the sign was a form of advert. Such things are in the eye of the beholder as far as signs are concerned; nevertheless the signs attracted a number of complaints. The issue was dealt with fairly quickly, I must say.

10:45

Mairi Millar: Our approach is that the licensing and planning regimes are entirely separate and do not cross over. In my experience, that tends to be the biggest single frustration for members of the public. There is certainly a big misconception around the fact that one cannot enforce the decisions of the other. People who come to the licensing section to complain about advertising on licensed premises become frustrated that that issue does not sit with the licensing board and that we have to pass it on to planning to deal with. Members of the public struggle with that distinction.

The Convener: I take it that you have a level of co-operation in your local authority and that the licensing board will deal with the planning department and pass on any such complaints.

Mairi Millar: If I received a complaint, I would pass it on to my colleagues in planning to deal with. However, I would not necessarily request a report back on the issue because there would not be anything that I could really do with that information.

Professor Hubbard: I am sorry to come in again on this, but it is in my area of expertise. I refer members to a case law example from south Buckinghamshire in 2003, where a local authority gave planning permission for a lap-dance club in a rural location and approved signage, advertising and elevation. It had all the information and approved it. However, two weeks later, the licensing committee rejected the licence application. It is entirely possible for a licensing committee to draw completely different conclusions from those drawn by planning from the same set of evidence. They are separate regimes and case law suggests that they can be treated as such.

By moving the control of advertising to the licensing regime, you would have flexibility through annual renewal to look at what had been happening and to impose new conditions on signage and advertising in, on, or in the vicinity of particular premises. It would seem sensible to acknowledge that and give licensing committees that control.

The contradiction between the two regimes and the fact that they do not have to pay much attention to each other is interesting and unresolved as far as I can see, given that they both consider the material effect of premises on a locality. The bill is particularly mindful of the impact of premises on a locality, with the definition of the locality to be decided in accordance with the facts of the application. Again, a planning committee and a licensing committee can define the locality differently, but it cannot be defined in advance.

John Wilson: I have no further questions.

Janet Hood: I have a quick point on advertising. One of the objectives of the Licensing (Scotland) Act 2005 is “preventing public nuisance”. If people are offended and upset by signage, that could be a route by which they could make a complaint to the licensing board. The licensing board would then have a legitimate reason for at least looking at the effect of signage, and it would no doubt report back to the planning service.

I know this because my clients change their signs all the time, but if somebody changes a sign—for example, if they call their hotel Janet Hood’s hotel today and Stewart Stevenson’s hotel

tomorrow—they require planning consent for the new sign, even though there was, we would hope, nothing offensive in either of the two names. It is quite important that the committee realises that. The signage in the Lothian Road area must have been approved by the City of Edinburgh Council. The local authority—after all, the planning committee is part of the local authority—must have made a decision about that, and it is subject to ratification at council level. Therefore, we must be careful.

The licensing board is undoubtedly the appropriate place to deal with such venues; it has the powers to control these matters. I think that dual licensing will confuse the issue and make it harder for the public to know where to bring their complaints—or where to attack.

The Convener: One thing that may be a little bit difficult for us today as regards the signage aspects is that we do not have anyone present from planning. We may have to write to authorities and ask for clarification on how they deal with the issues. I imagine that some of them have been dealt with not by planning committees per se but by officers under delegated powers. Some of the difficulty may well lie in the fact that there is no elected member overview at some points. We will write to some planning committees or to local authorities to get their planning views on that.

Cameron Buchanan: I will pick up on Professor Hubbard's point. The word "vicinity" is very important in relation to signage. A-frame boards are sometimes spread all over the place, which is not very helpful.

What do the panel members think of occasional licences? The policy memorandum suggests that venues that host sexual entertainments on no more than three occasions a year will be exempt. What do the panel members think about that? I could not gather what people thought.

The Convener: We have already covered some of that.

Cameron Buchanan: Only some of it.

The Convener: Does anyone want to come in?

Mairi Millar: I do not support the exemption. I do not think that there should be a de minimis rule.

Eric Anderson: I agree with Mairi Millar.

Janet Hood: We agree with that point.

Willie Coffey: What are the panel's views on the proposal to permit under-18s to work on the premises, albeit outwith the operational hours of the entertainment?

Janet Hood: Our clients have nobody under the age of 18 working on the premises and I do not think that it is something that would happen. Licensed premises such as ours and other licensed premises are often not suitable for persons under the age of 18 to work in.

Laura Tomson: I agree with Janet Hood. We are talking about premises, not just activity that happens within the premises. There is an issue with the images in such premises and, I would argue, with the attitudes and daily work of most of the people who work in them. It is not appropriate for under-18s to be in such premises.

Professor Hubbard: I suspect that that proposal was added as a result of equalities legislation, which suggests that anyone of working age ought to be able to have employment within such premises. Issues in relation to the age of consent may also come into play.

The Convener: Are there any other views on that aspect of the bill?

Sandra White: I want to raise the important issue of artistic performance and expression. We have said that the bill would not have a negative effect on that and you have admitted that.

The premise of the bill is to enable local authorities to license premises that provide a certain type of sexual entertainment that has nothing to do with artistic expression, or with theatres where there are visiting theatre companies and every so often there is a different type of entertainment. Jon Morgan and others have raised concerns about that. The licensing laws that we have at the moment mean that some local authorities will not allow some forms of entertainment under "artistic expression" in their theatres, but it is allowed in other council areas. There is an anomaly, but the bill should clarify things. As the committee is scrutinising the bill, perhaps that could be specifically included somewhere in it. The bill is in no way intended to prevent artistic expression in places such as those where Edinburgh festival events are held and in various other fantastic entertainment venues.

Jon Morgan: Thank you for that reassurance. We understand that that is not the intention or purpose of the bill, but we would like an explicit statement to that effect in the bill, as you suggested. We want very clear guidance for local authorities.

At some point I would like to comment on theatres and public entertainment licences, although it is a completely different subject.

The Convener: I intend to get all of that in.

Jon Morgan: Okay. Thank you.

Alex Rowley: I want to pick up on that point. Glasgow City Council's submission says that consideration should be given to repealing the Cinemas Act 1985. Are there practical concerns in

moving to a new licensing regime, and if so, what are they?

Mairi Millar: That is part of a wider point that we are making about having so many different licensing acts and regulations. The system in England and Wales is effectively covered by one act—the Licensing Act 2003—and a single premises licence authorises all the various activities. We are some distance from that in Scotland.

The proposal to repeal the licensing requirement under the Theatres Act 1968 and to bring theatre licensing into the general public entertainment provisions of the Civic Government (Scotland) Act 1982 is a significant step forward, but something has been missed: the Cinemas Act 1985 has not been looked at for a long time; to bring cinemas into the scope of the 1982 act, so that we would not require so many separate licences, would represent progress.

Eric Anderson: Licensing legislation, in its broadest sense, needs consolidation. For example, for liquor licensing we have the 2005 act and about 40 statutory instruments, to which have been added two more acts: the Criminal Justice and Licensing (Scotland) Act 2010 and the Alcohol etc (Scotland) Act 2010. Now we have the Air Weapons and Licensing (Scotland) Bill, and bits and pieces are being added to the 1982 act. What is needed is consolidation, rather than bits being added piecemeal. I heartily endorse what Mairi Millar said about including the provisions of the Cinemas Act 1985, but in any event what we need is far broader consolidation of the licensing legislation.

The Convener: Thank you. That is extremely useful. Does Alex Rowley want to come back in on that point?

Alex Rowley: No.

Janet Hood: May I quickly make a point about the differences between licensing boards? It would be unwise to try to fetter the decision making of licensing boards, licensing committees or planning committees. We have to allow local decision making, whether we are talking about sexual entertainment venues, alcohol licensing or anything else. I do not think that it is the purpose of the Scottish Government to try to impose a draconian regime to be followed by elected members who consider what is required in their communities.

"Life of Brian" was banned in Glasgow for 20 years, and "Emmanuelle" was barred from certain rural cinemas for years, although those films could be viewed openly virtually everywhere else in Scotland. Those were decisions taken by local government for whatever reasons the decision makers had, and whether or not we approve of the decisions, they were taken legitimately by people who were concerned about people in their areas. My clients recognise that; their position is not that there should not be differences between local authorities but that they should be treated fairly and how they operate should be recognised.

The Convener: That inevitably leads me to ask whether authorities should be able to set the number of venues at zero.

Mairi Millar: Local authorities should be given the power to set the number of venues at zero. However—this follows on from Janet Hood's comment earlier—each local authority would have to gather a significant amount of research evidence to determine the appropriate number in its area. It is not my position, on behalf of my local authority, that the number would automatically be zero. Such a decision would have to be based on wide-ranging consultation and evidence gathering.

Local authorities should have the ability to limit the number of venues, including setting the number at zero, but it is important that we have clear guidance and regulations about whether existing licensed premises should be granted grandfather rights.

Eric Anderson: The local authority should be given the flexibility to consider the number of premises in its locality. That said, the decision cannot be arbitrary; it has to be made properly, with proper evidence. Guidance and proper legislation to assist local authorities in making that decision would be welcome.

Professor Hubbard: I have strong views on this. The whole notion of setting a nil limit in advance is legally unreasonable and indefensible, and would put a huge burden of proof on the local authority to demonstrate in advance that it had no suitable localities in which sexual entertainment could occur. The approach would be extremely burdensome. Local authorities would have to draw up a policy that reviewed localities and established a basis for why sexual entertainment should not be present. The policy would have to be renewed annually, because localities change annually, which would create a huge burden for local authority officers. I would strike out all reference to a nil limit from proposed new sub-paragraph 5A of paragraph 9 of schedule 2 to the 1982 act.

I would also be mindful of situations such as that of Andrew Cox's club, which has been running lawfully for a good number of years. A nil limit would be legally unreasonable in that regard. The bill should make it clear that every case should be decided on its merits and in relation to the facts of the case, to provide flexibility to local authorities to do that.

The Convener: Does Andrew Cox want to say anything on that point?

Andrew Cox: No—I am fine.

The Convener: Does Eric Anderson want to come back in?

11:00

Eric Anderson: Proposed new sub-paragraph 5A in the bill says:

"For the purposes of sub-paragraph (5)(c)"—

which is what we are talking about just now—

"a local authority must ... from time to time determine the appropriate number of sexual entertainment venues for their area and for each relevant locality, and ... publicise the determination in such manner as they consider appropriate."

I have an issue with the words, "from time to time". That means that, once a local authority has determined how many such venues can be in their locality—which might be zero—it

"must ... from time to time determine the appropriate number"

of them. That is too general. I would be looking for something more specific so that a local authority would have proper guidance.

I had originally thought that it would be better if the word "may" were used, as in: "if a local authority considers it appropriate or reasonable, it may from time to time determine the appropriate number". However, if the word "must" is used, it would be better if, rather than saying "from time to time", a more specific timeframe were set out.

Laura Tomson: It will come as no surprise that Zero Tolerance would welcome local authorities being able to set a limit. It is up to the local authority to decide whether that is suitable for it. It is completely appropriate that local authorities should decide that, based on their violence against women and equality policies. That is a completely reasonable rationale.

Janet Hood: The matter could easily be dealt with by the Licensing (Scotland) Act 2005, which permits licensing boards to consider overprovision in their areas in terms not only of numbers but of types of premises. As has been pointed out by many people today, it is hardly difficult to spot an adult entertainment venue. There are 17 in Scotland—they are quite overt—and it would be easy for licensing boards to identify them. When my application on behalf of a client was refused, the Aberdeen licensing board suggested that overprovision might come into the matter, because, at that time, there were eight venues in Aberdeen. The chairman of the board stated that she was concerned about overprovision, although that was not the basis of the decision.

The aspects of law that we are discussing already exist in the 2005 act, and the challenge is for boards to decide to take them up. New legislation is not required. This committee has to consider whether the provisions in the bill are actually necessary.

Stewart Stevenson: There are few benefits of being older than colleagues, but one of them is that I remember things that others might not remember. Some might recall the veto poll provisions, which were abolished in—I think—1964. Basically, they involved people in a ward voting on whether to allow any licensed premises at all. I think that the last area in Glasgow to have a veto was Cathcart—that is my distant memory. So, in the past, there have been ways in which such matters have been handled. However, that provision was abolished. My grandfather, who was a Rechabite, would no doubt be desirous of that provision being brought back, but I suspect that, today, communities would be unlikely to vote for it. We should not discount the fact that there are ways in which it is possible to add legitimacy to a community's quite properly deciding on whether it wants such premises, and on other matters as well.

The Convener: I will turn to theatre licensing. I appreciate Mr Morgan's patience, as a lot of the discussion so far has been around sexual entertainment.

Do you have concerns that some theatres might be exempt from a requirement to hold a public entertainment licence because they have a licence to sell alcohol?

Jon Morgan: We welcome the fact that the provision simplifies things somewhat. As Mr Anderson and Ms Millar said, things could be simplified even further by having a single licensing regime to cover alcohol, theatre and cinema, as is the case in England. It certainly helps to simplify matters for some venues in our membership. Some hold only a theatre licence at the moment. Some, even though they do not need to, hold a theatre licence and a PEL because there is confusion and they were not sure. Village and community halls up and down the country, which typically have an alcohol licence or, perhaps, a PEL but not a theatre licence, will no longer have to apply for a temporary theatre licence for the occasional showing of a touring theatre company.

From that point of view, the fact that there is flexibility between operating within an alcohol licence or a PEL is welcome. The only concern is that alcohol licensing does not give much guidance on the specifics and safety issues of running a theatre venue. We want those rules to be retained and licensing officers to continue to have a close relationship with theatres on safety issues, which are specific to theatres, rather than relating to pubs or other alcohol-selling establishments.

The other question for us concerns cost. There is huge variation around the country in the cost of a PEL, let alone a theatre licence. In one local authority area, it will cost £140 for a year if the venue is up to 5,000 seats and, in another, it will cost £1,855 for the same size of venue. There is a huge discrepancy. The regulations in England and Wales also introduced consistent fees across the country for premises licences, which makes the system much fairer and simpler for everybody concerned. Although that is not within the bill's current remit, we would certainly like it to be considered.

We also assume that there would be no reason for licensing authorities to increase the current costs of their public entertainment licences because of the changes in the bill, and we would not be happy if that were to happen, because the bill simplifies the system and makes it cheaper and easier to obtain a licence rather than more expensive.

Those are our main views on the matter.

Mairi Millar: Glasgow City Council certainly supports the inclusion of the theatre licence provisions within public entertainment and the abolition of the separate licensing regime. We already include theatres in our public entertainment resolution because, having worked with the theatre trade, we recognised and took on board the difficulties of applying for a theatre licence for the plethora of different types of premises. We also have a broad range of fee categories that suit the different types of premises. Therefore, we support the provisions in the bill.

Eric Anderson: Aberdeen City Council supports the provisions in the bill. If the bill becomes law, it will be interesting to see what the effect will be on some premises that have gone for a theatre licence because, although they do not restrict themselves to producing plays and might have other activities, they do not also require a public entertainment licence.

The Convener: Will you give us examples?

Eric Anderson: The Aberdeen Exhibition and Conference Centre puts on a number of different activities, dependent on its programme. There could be plays and there could be different activities to do with sport, or there could be concerts, if it is used as music venue, which can be covered by a public entertainment licence or by a theatre licence. If that is to be changed and there is a need for a public entertainment licence, rather than a theatre licence, the centre will have to have a public entertainment licence for a range of named activities. If the centre wished to broaden the range of activities, it would have to apply for a variation. That is one of the implications that could result from the bill.

The Convener: Mr Morgan looked a bit puzzled.

Jon Morgan: Yes. Surely all those things are included in a PEL anyway, so there would be no need for a variation.

Eric Anderson: They are included now, if the premises has a theatre licence, but with a public entertainment licence, the activities that are to be carried out must be named. Therefore, for example, if somebody names three activities, which may include theatre, but wishes to add another, they will have to apply for a variation.

The Convener: What you describe is maybe an argument for consolidation.

Janet Hood: It is exactly that. A lot of my licensed premises—that have nothing to do with SEVs, you will be pleased to hear—have ticked the boxes for theatre and cinema on the list of activities. Those are usually bigger premises, but they are often village premises that used to be wedding function rooms, where a variety of things occur. If the measure comes into force, will those premises have to apply for a public entertainment licence?

There was a lacuna in the Criminal Justice and Licensing (Scotland) Act 2010 in relation to the requirement for late-hours catering licences. With places such as supermarkets that had 24-hour opening, although not for the sale of alcohol, some local authorities decided that they had to get late-hours catering licences to enable them to sell tins of beans, while others decided that they did not. The 1976 act dealt with that by making liquor licensing cover those things, so they were exempt.

We should ensure that we do not have multiple licensing on premises, because that leads to confusion and difficulty not only for local government licensing boards but for police and enforcement officers and, more particularly—from my clients' or anybody's point of view—for the trade. As you say, convener, consolidation might be the answer.

The Convener: Mr Morgan, we have kind of strayed away from theatres.

Jon Morgan: It is all related. My understanding is that, under the proposed legislation and in the 1982 act, a public entertainment licence is not needed for entertainment if there is a premises licence for alcohol, provided that the entertainment is during licensed hours. In one respect, the bill simplifies things and in another respect it complicates things. My understanding is that, if the bill is passed, local authorities will not be able to oblige people who run theatres to have a public entertainment licence. They could simply say that they will put on plays, dance performances or whatever during the licensed hours under the

alcohol licence that they hold. I think that I am right in saying that. Is that correct?

Mairi Millar: Yes—there is an exemption under which a separate public entertainment licence is not required if the activity is within the licensed hours in the alcohol licence. However, I have a more general concern about that, which relates to the idea of unregulated activity that can occur because of the restraints that are placed on the ability of the licensing board to regulate matters that go beyond the sale of alcohol.

Eric Anderson: To give an example, if somebody has a liquor licence, there are rules and regulations for the sale of alcohol, but that could be in a theatre, where there are all the props and everything that goes with a theatre, and those are not necessarily covered by the liquor licence.

The Convener: We will certainly try to clarify some of those points with the Government and find out its intentions.

Mr Morgan—is there anything else that you want to bring to the committee's attention on theatres?

Jon Morgan: I have a slightly left-field issue that has been raised with me by some of our members. Increasingly, people are performing in pubs. The point has been raised that alcohol licences can be used to permit performances, although the licensee has to ensure that they have ticked the box for theatre on their operating plan. If they have not done that—many licensees do not think of it when they first apply for their licence—and then change their mind and want to put on a play, even if it is a one-off performance, they have to apply for a major variation. It would not be considered to be a minor variation, so I believe that it means going back in front of the licensing board.

Theatre companies are increasingly performing in pubs, which is great as it gives access to different audiences and a different demographic. However, theatres such as the National Theatre of Scotland and the Village Pub Theatre in Leith are finding that pubs just will not do that because they do not want to go back before the licensing board for a full review of their licence just to put on a play. I am not sure whether that could be dealt with in the bill or somewhere else, but we would like that change to be regraded to a minor variation to the alcohol licence, or for there to be provision for pubs to apply for a temporary public entertainment licence to put on a play. It seems to be using a sledgehammer to crack a nut to require pubs to go through a major variation of their alcohol licence just to put on a play for one day.

The Convener: I thank all our witnesses for their evidence, which has been extremely useful.

I suspend the meeting for five minutes to allow for a change of witnesses.

11:16

Meeting suspended.

11:21

On resuming—

The Convener: I welcome our next panellists: Michael McDougall, solicitor, Glasgow City Council; Gary Walker, principal policy officer, waste unit, national operations, Scottish Environment Protection Agency; and Guy Jefferson, director, SP Distribution, Scottish Power.

Would you like to make some opening remarks, gentlemen? Mr Jefferson, do you want to go first?

Guy Jefferson (Scottish Power): Good morning, convener, and thank you for the opportunity to give evidence. SP Energy Networks, which I represent, maintains the electricity network in the central belt of Scotland and we also have infrastructure interests in England and Wales, so I guess that we are well placed to look across those three regimes and compare and contrast.

Metal theft has been a serious problem for us. Over the past four years, we have had more than 1,000 incidents of attempted or actual metal theft to deal with. That has cost us about £4 million in direct repairs, but we could probably double that to take account of loss of revenue and the number of proactive security measures that we have had to put in place.

The cost is rather outweighed by the risk to health and safety, however. We have had a number of instances of fatalities of thieves who have attempted to steal metal, and also some what I would describe as near misses with members of the public and customers who have been affected by metal thefts. It is not a victimless crime.

On that basis, we fully support the bill. The key areas that we wish to see included, which are in our written submission, are: the removal of all cash transactions; effective record retention; verification of proof of identity for those who sell metals, as we see that as a big deterrent; establishment of an accreditation scheme or a list of registered, compliant and trustworthy dealers; and appropriate penalties for those who are found to have breached the legislation.

In addition, whatever the shape of the legislation, it will be vital to put in place a robust mechanism to implement the new processes and monitor them accordingly.

Gary Walker (Scottish Environment Protection Agency): Thank you for inviting us to give evidence. As you may know, SEPA is Scotland's principal environmental regulator. Our main purpose is to protect and improve the environment, but it is also to contribute to the health and wellbeing of the people of Scotland and to the achievement of sustainable economic growth.

SEPA is responsible for regulating the environmental impacts of scrap yards through a system of waste management licensing, and we also regulate waste carriers. Although SEPA has no role in the implementation of a scrap metal dealers licensing system, there is an overlap with the regimes in relation to businesses that are impacted on and targeted by them, albeit for entirely different purposes.

SEPA welcomes the bill. We are concerned about metal theft and have been involved with the metal theft task force and in multi-agency work with the British Transport Police and Police Scotland. The bill offers a series of proposals to disincentivise metal theft.

Michael McDougall (Glasgow City Council): Thank you for the invitation to give evidence. Glasgow City Council, as a licensing authority, regulates scrap metal dealers. For some time, the council has been concerned about the extent of metal theft at both national and local level, not just because of the financial implications, but because of the risk to the public and to perpetrators themselves, which has been mentioned.

Glasgow City Council welcomes the bill's proposals, especially the introduction of cashless payments and the removal of the exemption warrant system.

The Convener: Mr Jefferson talked of a loss of some £4 million, and probably greater losses beyond that. Obviously, those costs are likely to be passed on to your customers, are they not?

Guy Jefferson: Yes, we have an allowance as part of our regulatory regime, which we utilise, but the costs so far have gone well beyond that given what we have had to do, not only to perform repairs to our network but to put in proactive measures, such as security cameras, to ensure that we keep the thieves out and the lights on.

The Convener: Have there been any examples of major safety difficulties because of the theft of metal, or have you been lucky thus far?

Guy Jefferson: I can give you a couple of examples; we have had a number of issues. Probably the biggest issue was in Govan, about three years ago, when thieves got access to some 132,000-volt cables and set them on fire, expecting the protective systems to trip out the cables so that they could saw them up and take them away to sell for scrap. They caused a major fire that closed the M8 because of the smoke and took out the infrastructure to the Govan area and the west end of Glasgow, putting around 30,000 customers at risk for a period of about three days while we repaired the cables. We had to invoke the gold command emergency authority, and we could have had a situation in which Govan was blacked out for the repair time for a cable—about 36 hours. We came close to a major incident in that case.

In other cases, we have seen theft in substations cause high fluctuating voltages to customers' premises, and that has caused house fires. We had such a situation in Greenock about a year and a half ago. We worked with a member of the Scottish Parliament who used to be on the Local Government and Regeneration Committee, Stuart McMillan. He was directly involved in dealing with the incident, in which an elderly lady suffered from smoke inhalation because of a small fire caused by voltage fluctuation in her premises.

Those are two examples, but there are a number of others that I could relate.

The Convener: That is useful, Mr Jefferson. Thank you.

Cameron Buchanan: The cash ban is obviously worth while, but having heard some evidence already, I was concerned that, because somebody could pay by cheque, they could just go next door and cash the cheque; therefore, photographic identification is obviously essential. Do you all think that banning cash is right and that photographic ID is essential?

Gary Walker: As I said, SEPA has no experience of the operation of the scrap metal dealers' system; it is not something that we are responsible for. However, as a regulator, we can understand the importance of identifying the people involved in transactions. We are undertaking some work through the Regulatory Reform (Scotland) Act 2014 to improve our own identity checks when it comes to licensing, so we think that the provisions concerning identification are a good part of the bill.

We also understand and recognise the benefits of cashless transactions in making metal theft less attractive or less easy and convenient.

Michael McDougall: The licensing authority supports the ban on cash payments and the adoption of a cashless system. We are of the view that it will be a vital tool in combating stolen metal entering the system through metal dealers. I understand that the Scrap Metal Dealers Act 2013 requires photographic identification and proof of address, such as a utility bill. We support the introduction of a similar measure.

11:30

Guy Jefferson: It would probably be appropriate to mention evidence that we have seen in England and Wales, where, as my colleague suggested, the system of cashless transactions and identification is already in place. There has been a big drop in metal theft in England and Wales, certainly partly—although probably not wholly—as a result of the legislation, and what I would call opportunist thefts have been almost completely removed. Those are the ones that we would expect to involve transactions of the level of cash that we are talking about. I believe that that is almost wholly down to the introduction of cashless transactions in England and Wales, alongside the use of photographic identification and, in many situations, CCTV.

Cameron Buchanan: An issue that was raised in one of the submissions was that someone who wanted to sell their car for scrap for a minimal amount would be put off, with the result that they might just dump their car. The same might be true of someone who wanted to get a fiver for their fridge. Would not such people be put off, or would you want to ban all transactions anyway?

Guy Jefferson: My expertise in that area is limited, but in our industry we have seen the complete eradication of opportunist thefts. That is because the people who might have carried out such small thefts now have nowhere to go to get cash.

The Convener: Does SEPA have concerns about an increase in dumping if cash payments are not made for small amounts of scrap metal?

Gary Walker: I think that it is a legitimate concern. There is the potential for that to happen on a small scale with materials that are not valuable but, along with local authorities, we operate a system called flycapture, which monitors and tracks fly-tipping, so we should be able to monitor the impact. I would not expect it to be massive. The value of the materials that are stolen is relatively high, so I do not think that there would be much of an effect.

Michael McDougall: I agree with Mr Walker that it is a genuine concern, but such is the extent of metal theft that a balance needs to be struck, and I submit that a cashless payment system is a vital tool in tackling metal theft.

The Convener: An issue that some of the scrap metal dealers raised when they gave evidence to the committee was that itinerant waste dealers who are licensed by SEPA might be left out of the regime. Mr Walker, would you like to comment on that? Should itinerant waste dealers also have to be licensed for scrap metal dealing if that is what they are doing? If they do not have to be licensed for scrap metal dealing, might the bill not stop some of the things that are currently going on?

Gary Walker: The itinerant metal dealers on our books are dealers who do not operate from a site—they might operate from a vehicle that they use to transport waste and would be registered as waste carriers, if they have registered and comply with the legislation. We have many thousands of registered waste carriers and, within that portfolio of registered carriers, it is not possible to identify who is an itinerant scrap metal dealer, so our systems do not help with coverage of that area.

Should those people be licensed as scrap metal dealers? That is more a matter for the experts on scrap metal dealing licensing, but I understand that the split is about 50:50—50 per cent of scrap metal dealers operate from sites and 50 per cent are suspected of being itinerant. From my perspective as a regulator, it would make sense to try and capture the entire sector. That would be my approach to environmental legislation and waste management licensing. I suspect that itinerant scrap metal dealers should be covered by the bill but, as I said, we are not experts in scrap metal dealing licensing.

The Convener: Do you have any information about how many of the folks who are licensed by you for the waste aspects would be dealing in scrap metal at any point in time?

Gary Walker: We have somewhere in the region of 267 licensed premises, which are licensed specifically to deal with scrap metal. That could involve end-of-life vehicles, precious metals or a combination of metal dealing. We have 69 sites registered with us that are exempt from licensing.

The Convener: Why are they exempt?

Gary Walker: Although they are exempt from licensing, they still have to register with us. There is not an exclusion from the licensing system altogether; it is a lower tier within the licensing system, with basic standards in the legislation rather than in the licences. The sites concerned operate in the breaking of depolluted cars, for example—it is perceived that there is less of an environmental risk with cars that have already been depolluted. Operators that depollute cars deal with oils. They operate within the upper tier of the licensing system, and they require a licence.

There are 69 sites that are registered with SEPA as exempt. It is not possible to tell how many of them are also registered with the 32 local authorities as scrap metal dealers. We do not have that information.

The Convener: The scrap metal dealers who were here seemed to indicate that some of the itinerant folks were handling quite large amounts

of scrap metal. Do you have any evidence that that is the case?

Gary Walker: We do not have any evidence on that.

John Wilson: I seek Mr Walker's view on whether SEPA would wish to operate a national registration scheme, rather than what we have at present. You mentioned the 32 local authorities and the number of scrap dealers that are licensed with them. Would it not be preferable, and in the greater interest of everyone concerned, to have a national licensing scheme that SEPA or some other national body oversaw, with everybody being registered with that body?

Gary Walker: There were a couple of different questions there. There is the issue around dealing with the applications, which is perhaps different from the question of the register itself; there is also the matter of the difference between having a national register and the option of using SEPA to host that register. SEPA's view is that a national register could deliver benefits and improvements. That is the kind of system that we operate. That would allow better co-ordination and multi-agency efforts to tackle metal theft, and it could improve information sharing between the authorities, Police Scotland and the British Transport Police. It could also help to address some of the concerns around the control and oversight of itinerant metal dealers.

We think that a national register could be beneficial. However, any move to a national register would require a thorough evaluation of options, costs and benefits. The matter would need to be considered alongside the licensing process. Do we separate out the licensing process and retain it with the 32 local authorities, with a central national register? Would that national register necessarily have to be hosted by one body? Could a virtual national register be operated by the 32 local authorities? There are a range of potential options that would need to be explored.

At the moment, SEPA is not resourced to provide a national register of scrap metal dealers, but we recognise that delivering a national register through SEPA could be an option. We would be happy to explore that.

Guy Jefferson: I would support a national register. We deal with quite a lot of scrap, and our contractors deal mainly with our scrap. It would be helpful to have the capability to put it in contracts that the register exists, and that we expect our contractors to work within the register and to go to registered scrap dealers, so as to ensure that the scrap metal may be traced through its various cycles.

I echo some of Mr Walker's comments. I know, because of our involvement in England and Wales, that a parliamentary group will meet in three weeks to discuss the implementation in the south of the provisions of the Metal Theft (Prevention) Bill. The biggest issue for them is how they maintain a national register in terms of the responsibilities of local authorities and of—in this case—the Environment Agency as the overseeing body. I know that they are having problems getting the registers in place because the responsibilities are not absolutely clear. There are a number of on-going discussions about the resources that are available to undertake the task.

Having a national register is key and I think that there is a good opportunity for Scotland to take the lead on that.

Michael McDougall: There is clearly a strong argument for having a national register, particularly because, as you will appreciate, once an itinerant metal dealer is granted a licence they can trade Scotland-wide. However, the Civic Government (Scotland) Act 1982 is very much predicated on the local level and having visibility for local voices to act on local conditions. Any move to a national licensing system would require evaluation of all the options, which would include a national register.

John Wilson: Mr Walker said that SEPA might be in favour of a national register. Mr Jefferson gave a good example of what is happening in England and Wales regarding a register because of perceived conflicts about who would be responsible for what. In relation to that and to Mr McDougall's response, I know that SEPA works closely with local authority planning departments and environmental health departments but could that same arrangement be applied to SEPA so that it had overall authority?

According to what Mr McDougall said, if an itinerant scrap metal dealer gets licensed in Glasgow, they can also operate in Dumfries and Galloway, for example. Given that, would it not be better if all dealers were registered with SEPA as the overarching authority instead of having the current situation whereby 32 local authorities issue licences to itinerant scrap metal dealers? At the moment, depending on a local authority's decisions, dealers can operate throughout Scotland in different local authority areas with no apparent control over what they do.

Gary Walker: We recognise the benefits of local decision making for local licensing considerations. We understand that and can quite easily work alongside and complement it. As I said earlier, the licensing process could be distinct from a national register and the two aspects could work in a complementary fashion, if that was desired and it became evident after an options appraisal that it was the right way forward. However, to pick up on the experiences of our colleagues down south, it would have to be clear what the responsibilities

were and that they would be effectively implemented by all involved: the 32 local authorities and SEPA. Itinerant dealers could be registered with a local authority, if that system could be made to work, or directly with a national body, such as SEPA, that hosted a national register. The pros and cons of all the options could be considered.

On the point about SEPA having the ultimate authority over decision making, it would not be good to have local decision making with a licensing board and then for a national authority such as SEPA to have a second bite at it. A distinct streamlining of licensing decisions would need to be part of any proposed system.

John Wilson: The convener raised the issue of local authority licensing of itinerant scrap metal dealers. I referred to the example of somebody being licensed in Glasgow but being able to operate in Dumfries and Galloway; they would also be allowed to operate in Orkney or Shetland, for example. Who has the authority to oversee how they are gathering the materials that they are trading and what they are doing with them? When an itinerant scrap metal dealer is licensed in one authority but operates throughout Scotland, who has ultimate oversight of what that dealer does?

11:45

Gary Walker: As I said, we are not experts in the scrap metal dealer licensing system. We have no role in that and I am not sure how local authorities would handle an itinerant scrap metal dealer who did not comply with the law, or how the system would work if an authority in a different part of the country had concerns.

The Convener: How would Glasgow handle that?

Michael McDougall: We would look to Police Scotland to be the enforcement body to take action. Obviously, Police Scotland would deal with unlicensed dealers. If there was a breach of condition we would be able to make a complaint that would be brought before the licensing committee, so it would probably be dealt with in that way. Glasgow's local authority officers would not have knowledge of what was happening in Orkney, so we would turn to Police Scotland. That is one of the benefits of a joined-up police force, and we would look to it to make the committee aware of a complaint.

John Wilson: In effect, you are saying that if Glasgow issued an itinerant scrap metal dealer's licence, it would not always know what that dealer did in other parts of the country and that you would rely on Police Scotland to intervene.

Michael McDougall: Yes.

John Wilson: I assume that Police Scotland would report to Glasgow, and Glasgow would then have to take action to remove the licence.

Michael McDougall: I am not aware of any specific examples—

John Wilson: But speaking hypothetically—

Michael McDougall: Yes. The police would be able to bring a complaint to the Glasgow licensing committee.

John Wilson: Clearly that highlights an issue with the current licensing regime, particularly for itinerant scrap metal dealers. Oversight of what such dealers do and how they operate in other areas of Scotland becomes difficult. That raises another issue regarding Police Scotland's role and the link between Police Scotland, other agencies and local authorities.

Michael McDougall said that he did not have any examples of Police Scotland reporting incidents. Is SEPA aware of any incidents of itinerant scrap metal dealers acting illegally or outwith their licence agreement?

Gary Walker: I am not aware of any circumstances.

John Wilson: We might have to contact Police Scotland to seek clarification on that.

The Convener: We have used the terminology "itinerant scrap metal dealer". What about itinerant waste dealers who might not be registered as scrap metal dealers because they fall outwith the current regulation? Are you aware of any of them having been reported to Police Scotland for metal theft and metal dealing?

Gary Walker: I am not aware of any cases in Scotland.

The Convener: Okay.

Willie Coffey: Guy Jefferson mentioned 1,000 incidents. I will ask the question the other way round: how can the bill reduce that figure? I am interested in what happens in those incidents. Is the stolen metal repurposed really quickly and does it disappear into the system? Is there an issue there? How does the legislation help with that? Alternatively, is it all about the registration scheme and its cashless nature? Would that reduce the number of incidents? Perhaps you could give us a couple of examples of the incidents and say how they get through the system undetected.

Guy Jefferson: I am happy to do that. Speaking from our experience in England and Wales, my view is that two types of thieves are associated with metal theft. There are the organised groups that hit a variety of sites in a short period. That could involve overhead lines, for example; across

the country we have seen a big upsurge in activity in that area. An organised group might concentrate in the Falkirk area. We have 25,000km of overhead lines, so it is very difficult to proactively manage and secure that asset base. The thieves will hit an area over a week and get quite a lot of scrap; they then—I believe—take it abroad via containers. The legislation would not necessarily assist in that area.

The other type is the smaller opportunist thief, and the implementation of the scheme has had a big effect in that respect in England and Wales. You are right to note that the thieves do not get ready cash for the scrap metal. They have to present themselves with identification, and there may be CCTV on the site. The scheme acts as a general deterrent, and—as I said—we have seen a big reduction in that type of theft in England and Wales since the legislation was introduced.

I am happy to provide the committee after the meeting with evidence on that. Such activity started to increase in Scotland as some of the opportunists came north to take advantage of our less stringent system. Evidence exists not only for electricity infrastructure, but for other utilities too.

Willie Coffey: Is the material pretty much unidentifiable soon after it has been stolen?

Guy Jefferson: Yes, in general. We provide information to Police Scotland on our specific types of cables so that, on days of action—in which we get involved—with scrap dealers in central Scotland, the police are able to identify our cables. They are not marked with "Scottish Power" or any other identifying mark, partly because of the cost. It would cost us significantly more to do that, and the reality is that we turn over perhaps 1 to 2 per cent of our assets every year, so the benefit that we would gain from doing that in terms of addressing theft would be fairly limited for the extra expense.

We tend to invest more in proactive measures such as CCTV and guarding high-risk sites and sites that are often targeted by thieves. Generic cables can be identified, but they are not marked specifically with our name.

Willie Coffey: I have one last question. Should the 48-hour rule on retaining metal on the premises be fixed or retained? Should it be flexible, or more stringent?

Guy Jefferson: Again, that is probably a matter for Police Scotland rather than for us. As long as sufficiently detailed records are kept, it is not critical to have the metal on site for a prolonged period, but Police Scotland would be better equipped to answer that question.

Gary Walker: My answer runs along similar lines: Police Scotland's views are foremost in that respect. We have noted the British Metals Recycling Association's concerns about the tag-and-hold system and a potential conflict with the waste management licensing conditions that are part of our licensing system.

We are comfortable with the current proposal in the bill to remove the so-called tag-and-hold provision. If that system was brought back in, we would just have to do a bit more work with Police Scotland to ensure that our efforts were co-ordinated collaboratively and effectively.

Michael McDougall: As Mr Jefferson and Mr Walker have said, it would be useful to hear Police Scotland's comments on the issue.

The licensing authority recognises that the tag-and-hold requirement may be a burden on metal dealers owing to the market in which they work and the need to turn around metal quickly, and—as Mr Walker mentioned—the requirements of a SEPA licence. Given the introduction of new record-keeping requirements, the licensing authority believes that the provision could be done away with.

The Convener: Are the record-keeping requirements that are proposed in the bill sufficient to deal with the matter?

Michael McDougall: Yes, they are.

The Convener: Do you agree, Mr Walker?

Gary Walker: Yes.

The Convener: And Mr Jefferson?

Guy Jefferson: Yes.

Alex Rowley: I have a question on the 48-hour requirement for the witness from SEPA. The scrap metal dealers have argued that larger dealers would have to find more land and run a much bigger operation. Would that create difficulties for SEPA in trying to regulate compliance with conditions that require extra land?

Gary Walker: Yes, there can be a knock-on effect. I have visited scrap yards and I know that on many sites space is constrained. For environmental protection reasons, we often impose conditions, such as maximum quantity and storage limits and storage conditions—for example some material has to be stored on impermeable concrete. Tag and hold—the requirement to store metal for 48 hours—can have an impact on how operators respond to our licensing conditions and may cause them some difficulties. As I said, we might have to work through that with Police Scotland and individual operators.

The Convener: Does the current legal penalty for failure to comply with the licensing regime, which is a maximum fine of £5,000, need to be increased?

Michael McDougall: The licensing authority does not have a specific view on the matter.

Gary Walker: The fine level is comparable with that for some environmental offences. If it would be helpful, I could provide some information to the committee on environmental offences and fine levels, which would allow you to see whether there is parity there.

The Convener: That would be extremely useful for the committee. If that could be sent to the clerks, we would be grateful. Mr Jefferson, do you have a view on the fine?

Guy Jefferson: Speaking from my experience, I do not believe that that level of fine has been a sufficient deterrent for the thieves that Police Scotland and the police authorities in England and Wales have apprehended on our sites. A higher fine or some other penalty needs to be considered. I talked earlier about the impact on communities. This is not a victimless crime. It would be beneficial if the penalty were to make a significant statement. This is not my area of expertise but, given my experience in England and Wales and in Scotland, I do not believe that £5,000 is a sufficient deterrent.

The Convener: What is the value of some of these thefts? In the Govan example that you gave earlier, what was the cost to Scottish Power and its customers?

Guy Jefferson: The cost of that individual event was in the region of £750,000. That was an extreme event—it is the worst that we have had in the past four years. At the other end of the scale, there is the Greenock example that I gave, in which there were a small number of house fires and an elderly member of the public suffered smoke inhalation. The value of the metal that was stolen that resulted in that incident was probably no more than £10.

The Convener: Going back to the Govan scenario, was £750,000 the cost of the metal that was stolen or the cost of the entire event?

Guy Jefferson: It was the cost of the entire event. No metal was stolen.

The Convener: No metal was stolen but the event cost £750,000.

Guy Jefferson: A fire was set but it went out of control and the thieves had to abandon the scene without recovering any metal.

John Wilson: I want to put a similar question to Mr Jefferson. In earlier evidence you talked about the theft of £4 million-worth of material. The £750,000 cost of putting right the incident in Govan gives us a good indication of the cost to Scottish Power of carrying out work to bring power back to a line and of repairing the damage caused, even though, in that case, the thieves did not steal any metal.

On the £4 million, it would be useful if you could provide us with the estimated costs to Scottish Power of replacing the scrap metal that was stolen. In the Greenock incident, you said that the value of the metal would have been about £10; however, the cost to Scottish Power would have been substantially more than £10. Will you indicate the cost of putting right the thefts that have taken place so that we can compare that with the fines that are being imposed—or might be imposed—on the criminals involved?

12:00

Guy Jefferson: I clarify that the £4 million that I mentioned is the direct cost of repairs and not the value of the metal. As I said, we could approximately double that to take account of revenue losses and the other costs associated with the events and managing our response to them. I will provide you with some information on the value of the metal that has been stolen, but it is significantly lower than £4 million.

The Convener: It would be useful for us to get an idea of the value of the metal, but the overall cost is of great interest to us, as is the inconvenience to your customers. The more that it gets out there how much this is costing people, the better, because it is your customers who are bearing the burden of the costs that arise because of the thieves. We would be immensely grateful for any additional information that you can provide, Mr Jefferson.

Guy Jefferson: Okay.

Stewart Stevenson: To supplement that, if there is anything available about the cost that is borne by your customers—there may not be—that would be helpful.

The Convener: Mr McDougall, you are involved in the licensing regime. Are you aware that Glasgow City Council has removed licences from scrap metal dealers in recent times? How many refusals have there been in recent times for scrap metal dealing licences?

Michael McDougall: Unfortunately I do not have those figures to hand, but I could provide them, if appropriate, to your clerk.

The Convener: That would be useful. It would also be extremely useful if we could have an indication of how many applications you have had, as an authority, for scrap metal dealing licences in recent times. That would give us an idea of the scale of what local authorities have to deal with. As you are a larger local authority, that information would give us a good indication.

Alex Rowley: On the point about enforcement, I assume that for a licensing authority such as Glasgow City Council, or indeed any of the 32, the majority of breaches of licences will be picked up by the police. I assume that you do not have enforcement officers who are constantly checking on what is happening.

I also want to ask SEPA about that issue in relation to licensed scrap yards. Does SEPA have enforcement officers who carry out regular checks or are we very much reliant on Police Scotland to ensure that people are sticking to what they say?

Michael McDougall: My view is that Police Scotland is responsible for the bulk of enforcement. There are proposals in the bill relating to civic licensing standards officers, who, if the bill is passed, may also have a role in relation to metal dealers. I will not go on about that at length, but the bill proposes that they have an information and guidance role. That could assist not just with enforcement but with bringing people who should have a licence into the system, so that they are subject to the scrutiny of the licensing regime.

Gary Walker: SEPA has waste management licences and there is a licensing functionality that covers people going through the process of applying for licences and our issuing them. Beyond that, there is an enforcement resource within SEPA. We have environment protection officers who routinely visit licensed and authorised sites to check compliance with licence conditions and we publish on our website compliance assessment scores for all our licensed and permitted premises.

The Convener: Thank you. Are there any other questions?

Alex Rowley: I have a question about the differences between the licensing regime in Scotland and the one in England and Wales. A comment was made about some opportunistic people coming up here because the rules are different. What are the main differences?

The Convener: Mr Jefferson, I think that you mentioned that. Do you know the main differences?

Guy Jefferson: Are you asking about the licensing regime that exists at the moment?

Alex Rowley: Yes.

Guy Jefferson: The registration system is different. I do not think that identification is required to the same extent as is proposed in the bill and is in place in England and Wales. Also, cash can be transacted.

I do not believe that there is a huge difference between what is proposed for Scotland and what exists in England and Wales, but there are one or two things that are still being debated about the legislation in England and Wales that it would be important for us to ensure are included in the bill. As I said, the main one concerns the administration of the scheme. We need to get absolute clarity on that.

I also strongly support the idea that we have some sort of national accreditation system, because that would provide an incentive to the scrap dealers as well. If they are on it, companies such as Scottish Power are much more likely to use them for managing scrap, so there is an incentive for them to be accredited at a national level. Unless we have some incentives in the system, people will not necessarily comply.

The Convener: Mr Walker, do you have anything to add on that?

Gary Walker: I have nothing to add.

The Convener: How about you, Mr McDougall?

Michael McDougall: As Mr Jefferson remarked, the main difference is that England and Wales already have a cashless payment system in operation. I believe that they also do not have an exemption warrant system. The implementation of those two measures in Scotland will be fundamental in preventing regime shopping—that is, people coming from England and Wales to dispose of scrap metal in Scotland.

The Convener: Thank you very much for your evidence. Some of the information that you have provided will be helpful when we hear from Police Scotland on the issue on 28 January.

12:07

Meeting continued in private until 12:50.

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e-format first available
ISBN 978-1-78534-683-5

Revised e-format available
ISBN 978-1-78534-702-3

Printed in Scotland by APS Group Scotland