

# **FINANCE COMMITTEE**

Tuesday 8 February 2005

Session 2

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## **FINANCE COMMITTEE**

### **5<sup>th</sup> Meeting 2005, Session 2**

#### **CONVENER**

\*Des McNulty (Clydebank and Milngavie) (Lab)

#### **DEPUTY CONVENER**

\*Alasdair Morgan (South of Scotland) (SNP)

#### **COMMITTEE MEMBERS**

\*Ms Wendy Alexander (Paisley North) (Lab)

\*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

\*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

\*Jim Mather (Highlands and Islands) (SNP)

\*Mr Frank McAveety (Glasgow Shettleston) (Lab)

\*Dr Elaine Murray (Dumfries) (Lab)

\*John Swinburne (Central Scotland) (SSCUP)

#### **COMMITTEE SUBSTITUTES**

Gordon Jackson (Glasgow Govan) (Lab)

David Mundell (South of Scotland) (Con)

Alex Neil (Central Scotland) (SNP)

Iain Smith (North East Fife) (LD)

\*attended

#### **THE FOLLOWING ALSO ATTENDED:**

Professor Arthur Midwinter (Adviser)

#### **THE FOLLOWING GAVE EVIDENCE:**

Susan Aitken (Scottish NHS Confederation)

Derek Croll (Scottish Parliament Directorate of Resources and Governance)

Richard Dennis (Scottish Executive Finance and Central Services Department)

Gordon Greenhill (Society of Chief Officers of Environmental Health)

Councillor Eric Jackson (Convention of Scottish Local Authorities)

Mr Tom McCabe (Minister for Finance and Public Service Reform)

Duncan McNab (Scottish Executive Environment and Rural Affairs Department)

Alan McKeown (Convention of Scottish Local Authorities)

Clare Morley (Scottish Executive Environment and Rural Affairs Department)

Hilary Robertson (Scottish NHS Confederation)

Stuart Ross (Scottish Licensed Trade Association)

Andrew Scott (Scottish Executive Environment and Rural Affairs Department)

Paul Waterson (Scottish Licensed Trade Association)

#### **CLERK TO THE COMMITTEE**

Susan Duffy

#### **SENIOR ASSISTANT CLERK**

Judith Evans

#### **LOCATION**

Committee Room 2



## Scottish Parliament

### Finance Committee

Tuesday 8 February 2005

[THE CONVENER opened the meeting at 10:03]

### Smoking, Health and Social Care (Scotland) Bill: Financial Memorandum

**The Convener (Des McNulty):** Good morning, everyone. I remind members and others that all pagers and mobile phones should be switched off. This is the Finance Committee's fifth meeting of 2005. Our first agenda item is consideration of the financial memorandum to the Smoking, Health and Social Care (Scotland) Bill, which the Minister for Health and Community Care, Andy Kerr, introduced on 16 December 2004.

Our evidence session will be split into two parts. Our first panel comprises witnesses from the Scottish Licensed Trade Association, the Convention of Scottish Local Authorities and the Scottish NHS Confederation. That panel will deal with part 1 of the bill, which is on the prohibition of smoking in public places. After that, the Scottish NHS Confederation will stay to give evidence on the remaining parts of the bill.

Members have a copy of the bill and accompanying documents. We also have a significant number of weighty submissions, which include submissions from our witnesses. I am pleased to welcome Paul Waterson, who is the SLTA's chief executive, and Stuart Ross, who is the SLTA's immediate past chairman. From COSLA, we expect Councillor Eric Jackson, who is the social work and health improvement spokesperson, and Alan McKeown, who is the team leader of the health and social care team, but they are not here yet. However, we have Gordon Greenhill, who is from the Society of Chief Officers of Environmental Health of Scotland. From the Scottish NHS Confederation, we have Hilary Robertson, who is the director, and Susan Aitken, who is the policy manager.

COSLA contacted us to say that the figure that is shown in its submission for the City of Edinburgh Council should be £230,000, not £403,000, but that does not affect the total implementation figure.

I propose to invite each group of witnesses to make a brief opening statement—our time is restricted—after which I will proceed to questions from members, who will seek elucidation of the evidence. At the end of the process, the

committee will make a submission that is based on its analysis of the financial memorandum to the lead committee, which is the Health Committee, before that committee takes evidence from ministers. That is the Finance Committee's standard practice.

I will give the SLTA the first opportunity to speak.

**Paul Waterson (Scottish Licensed Trade Association):** Good morning, everyone. I thank the committee for inviting the Scottish Licensed Trade Association to give evidence. We contend that the research that the Executive conducted into the health and financial impacts of the proposed smoking ban is inadequate, to an extent irrelevant and definitely incomplete. Our research clearly shows that few total smoking bans are in place worldwide from which to draw conclusions. The Irish ban, which is the closest to home, has not been in place long enough for full evaluation. Health and economic benefits could be maximised by adopting a controlled and structured approach to curbing smoking and many countries have taken that course of action.

With that in mind, in May 2004, we asked the Government to legislate on our proposals, which included a ban on smoking at the bar counter in all pubs and whenever and wherever hot food is served, and the suggestion that, within three years, 50 per cent of the total floor space of all pubs should be given over to a non-smoking area. Those are fair and enforceable proposals that our membership strongly backs. They would reflect public opinion, give our customers choice, protect our industry and contribute to improving health. We ask the Finance Committee to urge the Parliament to take more time to conduct proper in-depth research into the financial and health benefits of that alternative to a total ban.

I will finish by quoting Dr John Reid, who said:

"we believe that in a free society men and women ultimately have the right within the law to choose their own lifestyle".—[*Official Report, House of Commons*, 16 November 2004; Vol 426, c 1164.]

**The Convener:** Can Gordon Greenhill make COSLA's opening statement?

**Gordon Greenhill (Convention of Scottish Local Authorities):** I am happy to do that, but I will not use Eric Jackson's words.

I thank the committee for inviting us to give evidence today. COSLA has openly said that it supports the bill, which is groundbreaking, because it will effect by enforcement a public health improvement that will be felt for many years to come. Education has been tried for many years as a tool for changing people's habits, but the bill will make a cultural change with enforcement.

Law is effective only if it is enforced. The thrust of COSLA's submission is that enforcement must be properly funded. If the Parliament wants the law to be an effective public health tool, funding must be forthcoming for enforcement officers, training and education.

**Hilary Robertson (Scottish NHS Confederation):** I thank the committee for inviting the Scottish NHS Confederation. Our members fully support the bill's aim of reducing smoking and firmly believe that the provisions will reduce smoking. The health benefits that will flow from that will be most welcome. The provisions will make a significant difference to Scotland's health over time. Our evidence concentrates purely on those aspects of the bill that will have a direct financial impact on boards; we do not comment on the areas that will not.

**The Convener:** Thank you for your opening statements. I invite questions from members.

**Mr Ted Brocklebank (Mid Scotland and Fife) (Con):** I begin by asking the witnesses from the Scottish Licensed Trade Association how they quantify the research that they did. We would expect you to disagree with the official figures, which we got from the research that was carried out by the University of Aberdeen, but why do you disagree with them so much? How do you justify your comment that its report is "incomplete, irrelevant and rushed"?

**Stuart Ross (Scottish Licensed Trade Association):** We say that the research is incomplete and, to a certain extent, irrelevant because there are few countries in the world in which outright smoking bans have been implemented. There are only three—Ireland, New Zealand and Norway—and the bans in those countries are all recent. No research has been conducted into whether a phased approach to a smoking ban—as opposed to an outright ban—has greater benefits for health and less financial impact.

**Mr Brocklebank:** You produce statistics from the Moffat centre for travel and tourism business development at Glasgow Caledonian University, which suggest that your turnover will decline by £105 million, that

"annual profits in licensed premises may decline by £86 million",

that

"employment in the licensed trade can be expected to decline by 2,300 jobs",

and that

"some 142 average-sized licensed premises may close down as a result of decreased trade."

To an extent, the Moffat centre must be guessing

in the same way that others are guessing, because we do not know that those things will happen. Why should we believe the projections of the Glasgow Caledonian University survey rather than the projections of the University of Aberdeen survey?

**Stuart Ross:** The research by the Centre for Economics and Business Research Ltd was conducted by examining the information that is available from the situation in Ireland. It concludes that turnover in Ireland is down by more than 7 per cent in value and 10 per cent in volume and that the number of jobs has reduced by 6 per cent. It took those figures, assigned them to the Scottish situation and worked out the numbers. The figures are quite scary and they are of considerable concern to our membership.

**Paul Waterson:** The Aberdeen research considered only one study and that was from California, where there is not a total ban. That study examined hotels and restaurants but not pubs, which is one of the reasons why we think that it is fundamentally flawed. There is a sectoral difference, but the study took only an aggregate look at the situation. We do not believe that one study from California should be the basis for such an important piece of legislation.

**Mr Brocklebank:** On the one hand, you say that the Irish example has not been in place long enough for us to make any real judgments, but on the other you outline facts and figures that appear to be produced from what we have seen already from the Irish legislation. You seem to want the best of both sides from the Irish experiment.

**Paul Waterson:** We have been put in that position by the timing of the bill. We are saying that we should wait for at least a year to see what the Irish experience throws up, because it is the closest experience to home on which we can work. We had to go with something because of the timing of the situation that we are in.

**The Convener:** I welcome Councillor Eric Jackson and Alan McKeown to the meeting; Gordon Greenhill was able to give an opening statement on behalf of COSLA.

I raise an issue on which we would like a view from both the SLTA and COSLA. If people are forced outside pubs to smoke, there will be consequences in the form of litter—not just cigarettes, but other things—on the pavements and streets. Do you have any thoughts on the impact of that? Secondly, where should the responsibility lie for clearing up litter on the public pavement outside licensed premises?

10:15

**Paul Waterson:** We can imagine that when people leave pubs and stand outside—especially

pubs in tenements—noise will emanate upwards, particularly late at night. From the publican's point of view, it is difficult to control patrons and the level of noise when people go out into the street with alcohol. Also, there may be bans on drinking alcohol in the street. We can imagine that where there are a lot of nightclubs together in a street in the middle of a town, there could be more people out in the street than in the nightclubs.

In Ireland, apparently, a new society is growing up outside pubs and people like to go out to talk and so on. There are obvious problems with litter, with noise and with trying to control the number of people outside pubs. It is hard enough to control them inside pubs, let alone outside. We have a responsibility to try to do something about the problem, but it is difficult to put publicans and licence holders in that position.

**Stuart Ross:** One of the big differences between Scotland and Ireland is that we have so many more tenement properties. In such premises, there are no facilities to the rear of the pub because of the noise that would be caused to neighbours. In streets where there are rows of pubs, such as in the east end of Glasgow, there would be difficulties on busy soccer nights, with everybody spilling out of the pubs to smoke. We can imagine issues arising that do not apply in Ireland because of the different type of property structures there.

**The Convener:** Many pubs have people on the door—I will not call them bouncers—to control access and egress, and obviously bar staff have control inside the pub. Will the ban mean that pubs will have to have somebody standing at the door or in the vicinity to ensure that there is some regulation of noise and other nuisance?

**Paul Waterson:** Where does the responsibility end? Do we allow doormen to intervene in situations that arise outside public houses? Where does the police's responsibility come in? Trying to control people outside premises is a major difficulty and it is obvious that that will be a major problem with the ban.

**Stuart Ross:** Recently, Belhaven Brewery Company, which I work for, sent a team of people to Ireland to look at the situation there. They found that drinks were being poured from glass containers into plastic containers and then taken outside to be consumed. In Scotland, we have a different situation; in certain cities it is against the byelaws to drink alcohol outside, but in other cities that is permitted. When the regulations come out, there needs to be some clarification of where responsibility starts and stops on the issue.

**Councillor Eric Jackson (Convention of Scottish Local Authorities):** The litter issue is addressed in our submission. At the moment, litter

is a particular problem outside shopping centres and large office complexes and we expect similar problems to arise when the ban comes in. Local authorities have different views about the implications and the cost, and we are working through that. We assume that there will be a need for additional fixed litter appliances outside pubs.

**Alan McKeown (Convention of Scottish Local Authorities):** We have the estimated costs from a couple of councils. Glasgow City Council estimates that the cost will be about £144,000 for three years, which includes the purchase of fixed litter bins with ash-trays and the cost of additional street cleaning. If such cleaning is to be done outwith normal hours, there will be an additional cost. South Ayrshire Council estimates the cost at £81,000. We can aggregate those costs up throughout Scotland and we expect that they will be significant. It is fair to say that local government will be expected to be responsible, but we hope that people who use pubs will take some personal responsibility and that licensed and other premises will provide some signage to assist us.

**The Convener:** As well as litter issues, there are environmental health issues and possibly police issues. Would you like to say anything about those?

**Alan McKeown:** To consider the matter in the round, we need to examine the implications of the bill and the review of licensing. Gordon Greenhill can give us some more detail on that.

**Gordon Greenhill:** There are two elements. First, it is an offence to drop litter and the Scottish Executive has adequately funded local authorities under the quality of life and cleaner, safer funding streams to put in place environmental wardens and agencies to enforce the legislation on litter. We have embraced that approach in Edinburgh, but the funding for it is temporary. If we wish it to continue, the funding will have to be made permanent. If people who go outside offices and the like to smoke drop litter, they will be issued with a fixed penalty; it is as simple as that. After people have been fined, they do not drop litter again.

We have worked closely with the offices in which smoking is currently not permitted. They have agreed to clear up 20yd or 30yd on either side of their front door, so that they do not cause a nuisance to their neighbourhood. That is the law. The street litter control provision in the Environmental Protection Act 1990 can be implemented. There are street litter control notices on all the hot food shops in Edinburgh, which have to clean up after their patrons. The situation will be no different because of the Smoking, Health and Social Care (Scotland) Bill. At present, if someone smokes inside a shopping mall, pub or club, the ash-trays are not taken outside by the licensee

and emptied on to the pavement—they are trade waste. If someone steps outside a pub to smoke, the licensee should be responsible for cleaning up outside the premises.

The issue of noise has been raised. Most tenement properties are on busy thoroughfares and general speaking is covered by the ambient noise level. Loud shouting in the street is already an offence. I do not believe that there will be a major problem of litter and noise if people step outside to smoke. That can be done in an orderly manner if, when they leave the premises to have a cigarette, people are provided with a facility in which to put their cigarette end. There is legislation to ensure that that happens.

**Alasdair Morgan (South of Scotland) (SNP):** You have offered a rose-tinted view of life in cities. The idea that people standing outside a pub at night drinking will have conversations that are not above the ambient noise level is bizarre. You said that if people drop litter they are issued with fixed-penalty notices. If that provision applied to every piece of litter in Edinburgh, the coffers of the City of Edinburgh Council would be rather large, which they are not.

The SLTA is arguing for a phased approach. We have heard about the costs—probably legitimate costs—that will arise from extra litter and the need for extra policing. How would a phased approach make any difference, except to ensure that we reached the same end point over a slightly longer period?

**Stuart Ross:** Are you referring to the cost to the licensed trade?

**Alasdair Morgan:** I am referring to the general costs—the cost of clearing up litter and perhaps needing extra police to deal with people outside pubs. Even if we take a phased approach, we will eventually reach the same end point. Are you suggesting that people's behaviour will change if the policy is implemented over five years rather than one?

**Stuart Ross:** That is exactly the argument that we are making. We believe that if, over a period of years, we maintain choice for consumers but restrict tobacco in the way in which Paul Waterson suggested in his opening statement, consumers will continue to come to pubs. There will be choice for them, but gradually, through education and watching more floor space being given over to no-smoking areas, they will come to realise that smoking is an antisocial habit and get used to the idea of a smoking ban. The phased approach will bring the health benefits that the bill seeks.

**Alasdair Morgan:** You argue that there is a lack of evidence to support the Government's approach. Do you have evidence for the success of a phased approach?

**Stuart Ross:** At the smoking conference in Edinburgh, which was organised by the Scottish Executive, there were presentations from around the world, notably from Australia and America, on phased approaches and how well they have worked. Norway has been working towards a total ban for 10 years. We heard speakers give different viewpoints, but the consensus view at the conference was that giving people choice works and that we must give people time to come to terms with a smoking ban. Smoking is an addiction and people cannot stop just because politicians change the rules.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** Do you share the view that enforcement costs could be reasonable and manageable? Who should meet those costs?

**Paul Waterson:** It would be totally unfair for licence holders simply to be told that they are responsible for everything that happens outside their pubs. We have put proposals on the table that do not include a ban and would allow us to retain control of our customers inside the premises. That is the way in which we should proceed. There may be noise problems even if five or six people are having a normal conversation outside a pub that is based in a tenement. It would be wrong for us to dismiss that issue—there will be significant problems. A large proportion of pubs are located in tenement properties.

**Stuart Ross:** We must take into account the fact that, at the moment, 60 per cent of the people who use pubs are smokers. That is not a small proportion.

**Mr McAveety:** Understandably, much of your evidence has focused on the economic disbenefits of an outright smoking ban. Have you undertaken any work to analyse the opportunities that may exist for the trade in respect of people who at the moment are not encouraged to enter pub environments because of the presence of smoke? Is there a significant imbalance between those kinds of pubs and clubs that could accommodate an outright ban and the many others in areas that you have identified where there is a tradition of what have been called working men's pubs? What would be the impact of a ban on such pubs? Casual customers who would go into a city centre pub would not necessarily go into "The Wee Man" somewhere in the east end of Glasgow.

**Paul Waterson:** The health professionals keep telling us that this is a tremendous opportunity for us to attract a new range of customers. However, last week a non-smoking pub in Elgin, which had the whole market to itself, closed within a month or so of opening because there was no business there. There will be a major problem in rural areas, where I am sure the pubs will close. Such pubs are very concerned, because they do not have the



opportunity to reinvest in the environments that they offer. There is no doubt that the people who go to traditional working men's pubs will be forced out of the pub and will smoke at home. All our members are agreed on that point. Admittedly, the evidence is anecdotal, but many people say that they will not go to the pub if there is a smoking ban. That will lead to an increase in home drinking, with its associated problems. The pubs in some sectors are very vulnerable. We know that in Ireland the turnover of some pubs that are totally land-locked and have no facility for smokers is down by 50 or 60 per cent. Such pubs are especially hard hit.

**Councillor Jackson:** The issue of who should be responsible for paying for the extra work that the bill will create was raised. Our position is that, because this is a new burden on local authorities, it should be funded. It is for members to decide where the money should come from, but there is a cost to the extra work that is involved and we would expect to be reimbursed for it.

**Mr McAveety:** In its submission, COSLA notes that at the moment there is a difficulty in recruiting environmental health officers. The bill represents a substantial change in direction and there are passionate views on different sides of the argument. If the bill is implemented, whom will we recruit to enforce it, given that there are already difficulties with recruitment of EHOs?

**Councillor Jackson:** We have already raised that issue with the Executive. We mentioned the possibility of introducing a fast-track system, of the sort that has been developed for social workers. Clearly, we need to start the recruitment process now, so that we can build up the number of people whom we employ and expect to need. In part, that involves building up the profile of the job.

10:30

**Mr Andrew Arbuckle (Mid Scotland and Fife) (LD):** I am sorry to say that my identity card is still not recognised—I can get through doors in Parliament, but my card is not recognised in the Finance Committee.

Can we have more information on the enforcement or monitoring costs that will fall on local authorities? Do those costs take into account the fact that most of the work will take place during unsocial times outside normal working hours, such as at weekends?

**Councillor Jackson:** Yes—those costs are built into all the submissions that we received from our member councils. The work that EHOs do at the moment contains an element of that kind of work; they consider noise control and check establishments that sell food, so a lot of their work is done out of hours.

**Mr Arbuckle:** Will somebody expand on the view that it is the landlord's responsibility to clean up litter and cigarette ends in the area outwith his property? Is that legally enforceable?

**The Convener:** I am not sure that that is a financial question. We need to be careful not to get into the policy.

**Mr Arbuckle:** I ask about the cost implications of cleaning up.

**The Convener:** Let us get COSLA's view on the SLTA's evidence that the cost of enforcing the ban could be £6 million per annum. Perhaps Alan McKeown will respond to that.

**Alan McKeown:** The £6 million is our estimated cost in view of the fact that the bill has been published before detailed regulations have been drafted. We have tried to direct our authorities through areas such as training and recruitment costs, which includes the cost of paying for staff and introducing new systems, associated legal costs, additional out-of-hours and street-cleaning costs, the security cost for staff; the cost of providing assertiveness training or training in dealing with aggressive customers for staff; and mobile phone and other communications costs.

We have been able to pull together a detailed picture of the costs. At this stage, we think that £6 million per annum is a reasonable cost for the next couple of years, given the intensive work that will need to be done. Who will be wholly responsible for that is still to be decided—the regulations that follow the legislation will dictate that. We will all have a route into the regulations. We will look at which areas we are responsible for and which will therefore build up a cost.

Once we have the regulations, we intend to review and firm up the £6 million cost. Perhaps we will develop a framework with key headings that will be cost drivers. Then, we can discuss how that picture will be built up, how resources will be distributed and, indeed, where the resources will come from.

There will be a number of direct routes and additional resources will be provided. If there is a cost saving to the national health service, we want to know whether resource will be transferred back to local government to facilitate implementation of the ban. We also want to know what income will be generated from fines. We need to look at that picture, which is still unclear. It is just one of the things that one works through in such a process.

**The Convener:** The general view of the Finance Committee in respect of much legislation is that we want—before bills are passed—to see precisely what will happen and how the proposals will be implemented so that cost calculations can be checked. You are flagging up clearly that there

are a number of areas of uncertainty because you do not know the enforcement mechanisms and you cannot make an exact guess.

**Alan McKeown:** That is fair—we have to deal with such conflicts in the process. However, we have been able to build up a detailed picture of costs. Almost all our authorities have replied to us in some detail. There is a bit of fog around the exact numbers that they have given us and we acknowledge that that represents a slight failing in our figures, but no one could be exact in their figures right now. The figures that we have produced in our evidence are fairly close to what will be required; I do not anticipate their being hugely different one way or the other. Some of the costs could be met centrally—we could do some training and recruitment and provide information centrally. We are trying to see what best value we can get for our money.

However, individual authorities will have additional costs. Let us consider rural authorities. The Highland Council, for example, will have to cover huge distances in enforcing the ban, so it will have significant transport costs. We need to be alive to those costs and we need to be able to present a detailed picture on behalf of our members so that they do not miss out.

**John Swinburne (Central Scotland) (SSCUP):** I read with great interest the submission from the Scottish Licensed Trade Association. The amount of income and profit that will be lost if a ban is imposed is staggering. You say in your evidence that if people stop smoking, it will impact on the reduction of costs in health treatment. Recent reports have shown that alcohol is as big a danger to health as tobacco. Therefore, would it not be a good thing if sales of alcohol were vastly reduced in this country?

In your submission, you mention the cost to the country of people living longer. There is a bit of an ageist reference to “geriatric healthcare”, which I find totally unacceptable. However, I concur with one accurate point in your submission, which is that pensions are not funded adequately. Do you agree that it would help the nation's health if alcohol consumption were vastly reduced?

**Stuart Ross:** I do not think that the question is relevant to the debate, but the argument about smoking in public places potentially shifts the consumption of alcohol from public places to domestic settings. The question of why people consume alcohol is different to the question of why they use tobacco.

**John Swinburne:** That argument is not borne out by the amount of profit that you will lose. There is nothing to suggest that people will go home to drink.

**Stuart Ross:** There is, in fact. The Centre for Economics and Business Research Ltd study touches on that and contains figures on switching of alcohol consumption from on-premise to off-premise. The statistics from Ireland show that there has so far been about a 10 per cent swing; those statistics are incorporated in the report.

**Paul Waterson:** Drinking at home introduces serious problems as far as alcohol abuse is concerned. As soon as drinking is forced into a domestic setting in a jurisdiction that has a big off-sales industry, there are real problems with alcohol abuse. If we force people to drink outside the controlled environment of the pub, we will simply add to alcohol abuse problems.

**Jim Mather (Highlands and Islands) (SNP):** I am keen to ask about the overall adequacy of the financial memorandum. I ask COSLA and the SLTA whether the full financial scenario has been properly modelled. Have we captured all the positive and negative impacts on the public purse? When they answer, I ask the witnesses to consider evidence that we heard last year from the Allander series of lectures: Nicholas Crafts of the London School of Economics told us that if Scotland could bring its life expectancy up to the UK level, that would increase our gross domestic product by 21.3 per cent. He quoted W D Nordhaus of Yale University in coming to that conclusion. That 21.3 per cent represents £16 billion. If we moved towards that, what impact would that have on your business and the public purse vis-à-vis the public sector and local government in particular?

**Stuart Ross:** At the national conference on smoking that was held in September, speakers from around the world gave us an account of how the provision of choice and a phased or ratcheted approach to tobacco restrictions have worked adequately. In answering John Swinburne's question about longevity, I do not think that any research has been conducted into whether the Scottish Executive proposals would be more effective than the proposals that we make today.

As I said, there are only three outright bans in over 200 countries throughout the world—in Norway, Ireland and New Zealand—and they are all very recent. It is impossible to conduct research that would answer Jim Mather's question because enough evidence is just not available.

**Jim Mather:** Okay, I understand that. Equally, is there any worldwide example of another jurisdiction's being involved in the gradualist approach that you advocate?

**Stuart Ross:** Yes. Australia is a good example. Although there have been significant tobacco restrictions there, there has been no impact on the economy. People who do not want to smoke can go to a non-smoking bar and people who want to

smoke can go to a smoking bar. Our argument is based on allowing people the right to make lifestyle choices, which we believe is a fundamental right of anyone in this country.

**Jim Mather:** I understand that people have that right. Are you saying that the Australian migration has been public-purse neutral?

**Stuart Ross:** That is what came over at the conference.

**Councillor Jackson:** I agree with that. I will let Alan McKeown speak to the financial memorandum but, on the general point, there will be costs and there will be savings. Our experience is that, given that people are living longer, we are involved actively in looking after them when they become frail and need our support later in their lives. The fact that people are living longer means that they are living more healthily until they need our help. My view is that the proposals could be cost neutral.

**Jim Mather:** What actions could you take at local authority level to load the dice in favour of more savings being made, rather than more costs being incurred?

**Alan McKeown:** It is difficult to estimate the broader impact of a ban on the use of tobacco in wholly enclosed public spaces on life expectancy and the national health service, although that would be an interesting exercise and we should perhaps consider doing it. The cost of meeting the policy objective of maintaining the position whereby people are living longer and more healthily in the community falls invariably on local authorities. People's needs become more complex as they get older; therefore some of the care packages become more expensive. However, that debate is for another day. Research on the broader impact would be fascinating, if someone were to commission it.

On the adequacy of the financial memorandum and the stage of development that we had reached when it was produced, it is clear from the financial memorandum that there was more work to be done on the figures. Our evidence is that, in terms of costs, the financial memorandum is by no means as accurate as we would like, although it is as good as it can be right now and we are willing to work with the Executive to refine it. The message from us is that if we ain't funded 100 per cent, 100 per cent implementation of the bill will be difficult, unless costs are shifted from somewhere else, which is about making political choices.

**Mr Brocklebank:** I want to follow up that point, which relates to some of my concerns about the methodology and costings of policing the ban. As I understand it, the Association of Chief Police Officers in Scotland has said that the police do not wish to be involved in policing the ban, therefore

the burden will fall on local authorities. You say in your submission that there is a shortage of environmental health officers and that their age profile is increasing. Trying to police the ban will be a massive job for you, especially if the police are not involved. Clubs and private places will also be covered by the bill. Can you tackle the scale of work that will be involved?

**Gordon Greenhill:** All those questions are valid. The majority of the enforcement will be carried out by enforcement officers. People do not need an honours degree in environmental health to issue a fixed penalty notice, but training and management elements have to be put in place. The environmental wardens, whom many councils employ, enforce the litter legislation adequately at present. We are not criminalising smoking—if people pay their fixed penalty, the criminal offence will be discharged. Matters will become slightly complicated if cases progress to the next stage and a report is presented to the procurator fiscal, which is where training will be needed. The evidence is that the majority of people pay fixed penalties and cases do not proceed to the next stage. I am confident that throughout Scotland more than enough people can be trained up to the level that will be necessary to enforce the eventual legislation.

**Mr Brocklebank:** What is the reaction of the Scottish Licensed Trade Association witnesses?

10:45

**Paul Waterson:** The fixed penalty might be the end of the matter for the person who is smoking, but the licensed trader involved in running the premises could lose his licence. Andy Kerr stated in our journal last week that we would not be responsible for enforcement, so there seems to be confusion. Will it be worth our while to have legislation that will be so difficult to enforce? Will that be good law, given that it will be difficult to enforce at 1 o'clock in the morning, 12 o'clock at night or throughout the afternoon? There will be a massive cost to having inspectors police a business that runs 24 hours a day. We do not think that it is worth while; our proposals are far more practical, workable and enforceable.

**The Convener:** I want to wind up this discussion with a couple of questions. Stuart Ross came before the committee to give evidence on Stewart Maxwell's bill, which was the Prohibition of Smoking in Regulated Areas (Scotland) Bill. One of the debates that we got into was about the relative advantages of a partial ban, which involved structural issues for many licensed premises, compared with a total ban. I know that you would prefer a phased-in ban. Will you give a sense of the relative advantages and disadvantages of the two options from your perspective?

**Stuart Ross:** Yes. When Stewart Maxwell lodged his bill we said that we would have been happy to support the proposals if they had related to where and when food was served. There were technical issues in respect of segregation of properties, which caused us considerable concern. Obviously segregation could take place and a total ban could follow. We debated the issues that were specific to the Maxwell bill at the time. As Paul Waterson said in his opening remarks, we have not changed our position. We met the then Deputy Minister for Health and Community Care as far back as May last year, when we proposed the phased approach. Throughout the four-month consultation period we have heard nothing from any other country to make us change our minds and say that we are not on the right tack. I believe that there are health and financial benefits in going down the route that we suggest and we have done our best to put those benefits down on paper. Some of the issues are complex, but we have made a full written submission that we have backed up with research which, although we commissioned it, is independent in the conclusions that it reaches.

**The Convener:** What is COSLA's view of the enforcement of a partial ban—having smoking and non-smoking areas in pubs—compared to a total ban, as is proposed in the bill?

**Gordon Greenhill:** It is acknowledged that the Maxwell bill was almost unenforceable and difficult to put in place. I envisaged that if it became law we would spend most of our time in the courts defining premises. It is for health professionals to determine the overall effect of a phasing-in approach. The bill that is before us is simple—it will be good law because it is enforceable. Parliament must decide whether it wants phased implementation.

**Hilary Robertson:** May I comment?

**The Convener:** I was going to ask you a specific question on your estimate of £5 million funding for smoking cessation programmes and the suggestion that that might need to be supplemented. Will you give us more information on that?

**Hilary Robertson:** Yes. First, I apologise to the committee, because that figure should be the £7 million that the Executive includes in the financial memorandum. May I make a couple of points about what we heard earlier?

**The Convener:** Yes.

**Hilary Robertson:** We have not consulted our members specifically on a phased approach, but I say without doubt that they support a one-step move.

It is recognised that the majority of smokers would like to give up. Our contention is that the bill will help to provide them with the impetus to do that. However, in order to give up successfully they need access to services to support them. We are not necessarily asking for additional funding because, until we begin to see implementation of the bill's provisions, we will not know for sure what its cost implications will be. We would certainly like to hear an undertaking that there will be flexibility so that if the £7 million per annum that will be available from 2005-06 onwards proves to be inadequate, additional central funding will be available for support services. It is well documented that smoking cessation services are a very effective health intervention. As a cost-benefit exercise, smoking cessation services are very effective, so we want to ensure that boards are in a position to support smokers who want to give up, and that they do not have to divert resources from other services to do so.

I will pick up on a couple of points that were made earlier about people going home to smoke. I cannot cite any evidence, but our members' contention is that implementation of the bill would help to change the smoking culture in Scotland. We expect people to want to give up—the bill will act as a trigger to push them into wanting to give up and taking action to do it.

If the choice were between a phased ban and no ban I am sure that our members would support a phased ban, but our preference is certainly for a one-step arrangement.

**Susan Aitken (Scottish NHS Confederation):** The Executive confirmed an investment of £7 million in the breath of fresh air for Scotland strategy. Although the strategy is welcome and important, it came out before we started talking seriously about a ban, so it does not take into account the impact that the ban might have. Obviously, our hope is that the ban will have a considerable impact and that people will actively seek out the NHS's support to give up smoking. In some ways we want smoking cessation services to be flooded by people looking for support and help, but we must ensure that there are sufficient resources to back that up. The ban must not be seen as an end in itself but as a lead in the wider strategy to reduce smoking considerably throughout Scotland.

**Hilary Robertson:** It is worth remembering that many of the public places to which the ban will apply are also workplaces, so people who work there and who are not smokers will be protected from smoke to which they would otherwise be exposed. That will have significant health benefits for them.

**The Convener:** I thank all the witnesses. As I said at the beginning, the substantive policy issues

that are involved are not really for the committee; we are specifically interested in the financial matters. It has been agreed across the board that there has been a lack of definition of some issues on enforcement and other matters. We may wish to continue correspondence with the witnesses to establish the facts. I thank the witnesses for giving oral evidence today.

That concludes the evidence from the first panel. The representatives from the Scottish Licensed Trade Association and COSLA will leave us at this point, but the representatives from the Scottish NHS Confederation will stay to discuss other matters.

I remind committee members that on 1 March we will take evidence on the bill from Executive officials. The second panel is witnesses from the Scottish NHS Confederation. We will talk about the other elements of the bill. We move straight to questions.

**Dr Elaine Murray (Dumfries) (Lab):** I come from an area where there is an extreme shortage of dentists. In fact, no dentist in Dumfries and Galloway—private or NHS—has a list open. I am concerned about the costs that you identify in your submission and the burdens that will fall on boards where there are shortages of NHS dentists. The expectation might be that additional incentives may have to be given to dentists to do checks. What might happen in areas where there are no dentists to do them in the first place?

**Hilary Robertson:** There are varying estimates of the total shortfall of dentists around Scotland. One of the most recent figures is in a report by NHS Education for Scotland, which estimates—in its workforce planning for dentistry—that Scotland is lacking approximately 215 dentists in total throughout the country. We contacted our members in areas where we know there is a particular issue and we managed to get an estimate for the Grampian area based on work that was conducted there about 18 months ago. It was estimated that NHS Grampian is about 40 dentists short; that situation is likely to be replicated in other parts of the country. The picture is changing. More dentists are leaving NHS dentistry, but not necessarily all the NHS patients are going with them.

The provision in the bill that allows boards to contract with groups of dentists and co-operatives is welcome and the additional support is welcome. We think that that may be an incentive. However, we are concerned that the fact that there is under-provision, which is well recognised throughout the country, may mean that the requirement to provide the incentives falls unduly heavily on board areas where there is currently greater under-provision of NHS dentistry than in other parts of the country. When we asked our members about the issue,

they found it extremely difficult to put any figures on the cost, because until they map current provision accurately and identify where gaps exist it will be impossible for them to say what they expect the costs to be.

**Dr Murray:** Are you able to say how many Scots are not registered with a dentist?

**Hilary Robertson:** I do not have that figure.

**Susan Aitken:** I do not have the figure here, but I know that the Health Committee published a report last week that contains such figures. The figure is quite high; I think that it is slightly more than half of Scots, but the figures are slightly different when they are broken down into adults and children. That information is in the research report that the Health Committee published last week. We could certainly find the figures and provide them to the Finance Committee.

The ability of boards to offer incentives to dentists, to dental practices or to groups of dentists to set up in their area is a useful tool; it would be helpful for boards to be able to do that. However, we anticipate that although boards would not have to do it, the fact that the tool exists will lead to an expectation that financial support will be available. In many ways that is good because it is, perhaps, too much to expect dentists to come into areas where there is no provision, to set up premises and to purchase equipment on their own without any support. However, we must bear it in mind that in areas such as Dumfries and Galloway—the Health Committee's report found consistently that Dumfries and Galloway, Grampian, Ayrshire and Arran and the Western Isles are, under the various ways of measuring the situation, the ones with the biggest under-provision problems—provision of incentives could lead to significant costs.

Our argument is that boards do not currently have flexibility within their arrangements and the money is not there. Peter Collings, the director of finance in the Health Department, gave evidence to the Audit Committee a couple of weeks ago and the new NHS allocations were announced on Friday. Peter Collings estimates that £400 million to £450 million of the £550 million allocation uplift across Scotland will be accounted for by the time it reaches boards, mainly through pay modernisation, although there are other factors such as pay uplift and the annual increase in prescribing costs.

Therefore there is not a lot of money to play with for service development, although we are talking about a major service development in relation to which all boards will bear a burden and some boards will bear a particular burden. Boards will have a useful tool, which I hope will contribute to setting up dentists in areas that are not currently

served and encourage dentists to take on more NHS patients and give more time to the NHS. However, the quid pro quo is that the policy will be expensive and the funds are not really there to implement it. There is not a great deal of flexibility in the allocations.

11:00

**Dr Murray:** There is also a capacity issue. There are not enough dentists and we cannot create dentists out of nowhere. A free check-up might be desirable, but there is not much point in the patient having one and being told, "You've got a mouth full of caries", if nobody can do anything about it and the patient cannot get treatment.

**Susan Aitken:** NHS Education for Scotland calculated that as a result of the entry into the system of newly qualified dentists and better workforce planning, which will make more appropriate use of the entire dental workforce, including dental assistants and hygienists, it should be possible to make up the shortfall by 2008, which is not terribly far away. However we must ask how many of the new dentists who enter the system will be NHS dentists. There is a shortfall in the numbers of qualified professionals, but it is not so drastic that it cannot be addressed, according to NHS Education for Scotland. The key issue is how we persuade dentists to remain in the NHS and carry on treating NHS patients. That is the crux of the matter.

**Alasdair Morgan:** Do you have any idea how many extra dentist hours per year will be needed to fulfil the requirements of the bill?

**Susan Aitken:** The short answer is no, and I do not think that the boards know the answer to that yet, either.

**Alasdair Morgan:** How can we estimate the costs of the policy, if we do not know how many additional dentist hours will be required?

**Susan Aitken:** We cannot.

**Hilary Robertson:** That is the point. When we consulted our members about the implications of the bill and the accuracy of the financial memorandum, they simply could not give us an answer, because they have not yet mapped out the areas in which there is overprovision or underprovision. In most cases there is underprovision, but until there is a clear picture of the situation our members will find it very difficult to calculate the number of hours of NHS dentistry that they will need to provide to make up the shortfall.

**Alasdair Morgan:** Is there a suggestion that somewhere in the country dentists are sitting around doing nothing?

**Susan Aitken:** No.

**Alasdair Morgan:** A substantial number of extra dentist hours will be required, but we do not know how many. How can we be sure that the bill's requirements will be met by the new dentists who will come into the system?

**Susan Aitken:** Dentists are not sitting around doing nothing, but some dentists do not treat NHS patients—that is the context of the shortfall and underprovision and the reason why people have to go private. The issue is how we encourage those dentists to treat NHS patients.

**Alasdair Morgan:** Let us leave aside the suspension of credibility that is needed if we are to believe that dentists who have discovered that they can make a lot of money from treating private patients will suddenly come back to the public sector. Even if such dentists were to come back to the public sector, all the patients who were being treated privately and presumably quite liked that system would try to find another private dentist. The pressure and the demand on the system would be exactly the same. If we simply move people from one sector to the other without increasing the total number of dentists, we will not solve the problem. Somebody will still not get treatment.

**Susan Aitken:** According to NHS Education for Scotland, total capacity will increase over the next four years, not only because of an increase in the total number of dentists in practice but as a result of better planning for the entire dental workforce. Such planning is going on in other parts of the NHS workforce, in which people are working differently and not doing certain jobs when they would be better employed doing something else. For example, dentists might be undertaking jobs that a dental assistant could do. We hope that the workforce planning that is being undertaken will eliminate such situations over the next four years. That is another element of what is happening.

Boards find it difficult to put a figure on the costs because no proper mapping has been undertaken to show precisely where the gaps are and how many dentists are needed to fill the gaps. Only boards can address that matter. Grampian NHS Board told us that about 18 months ago it estimated that it needed about 40 extra dentists. The board calculated the figure using a fairly simple dentist-to-population ratio, but the situation is more complex because since then some dentists have left the NHS without taking all their patients with them, which has increased the number of patients who do not have NHS provision. A big mapping job needs to be done to identify the gaps and to consider how they can be filled, who can fill them and the number of hours that will be needed from dentists and dental teams.

**Alasdair Morgan:** The other corollary of the issue that Elaine Murray raised is that, in the short and medium term, dentists who perform free dental examinations will detect a lot of work that needs to be done on people's teeth. Has an estimate been made of the amount of work that the examinations will identify?

**Susan Aitken:** Not to my knowledge.

**Alasdair Morgan:** I presume that a dental examination takes 10 or 15 minutes, but if someone needs treatment after their examination they will need a significantly longer course of treatment. We do not know how much work the free examinations will generate, because we do not know how many examinations will take place.

**Susan Aitken:** NHS National Services Scotland might have a clearer idea of the number of examinations that will be needed. Eye and dental examinations are a slightly different issue from the one that you raise, although there are obvious connections. The issues are financially slightly separate, in that there is a centrally held general dental services budget from which boards draw down costs, whereas increases in the number of dentists and in dental provision must be funded by the boards themselves.

Free eye and dental examinations will have an impact on provision. I am not sure that anyone will be able to predict the extent of that impact until implementation begins and we start to get an idea of the number of people who currently do not go for checks because they have to pay for them but who will take advantage of the free examinations.

**Alasdair Morgan:** Would it be too cynical to suggest that the cost could be estimated quite well? We know how many dentists there will be and we know that they can work only so many hours per week, so we know what the cost would be. The more problematic issue might be whether the hours that are worked will deliver the number of dental checks and the amount of treatment that will be required. The costs will be fixed, anyway.

**Susan Aitken:** The costs will be to the NHS and will depend on the number of hours that dentists give to the NHS. We cannot predict the costs, because we do not know the number of hours.

We should remember that we are considering the matter in advance of the Executive's response to last summer's consultation, "Modernising NHS dental services in Scotland". We are in a wee bit of a vacuum, because we do not yet know how the modernisation will be effected. Also, the new dental contract is not yet with us. Elements of the bill anticipate measures that will have to be put in place to modernise the service and the contract, but we do not yet know the full details of the modernisation plans.

**The Convener:** The Finance Committee's problem is that it must consider a financial memorandum that is based on a number of imponderables.

**Jim Mather:** I apologise for returning to the provisions on the prohibition of smoking in public places, but I have a significant number of questions that I did not ask earlier because I thought that we would get a second pass.

The Scottish NHS Confederation says in its submission that the proposals will result in

"a considerable reduction of the estimated £200m per annum that smoking-related ill-health currently costs NHS Scotland."

That figure is equivalent to about 2.5 per cent of the NHS budget. Given that smoking is linked to cancer, strokes, lung disease and other illnesses, is the estimate a little low?

**Susan Aitken:** I am sure that the estimate is low. A number of academic researchers have used that figure in relation to direct links between smoking and ill health. Of course, smoking is a contributory factor in many conditions but is not the primary cause. The ultimate cost of smoking to the NHS is probably unquantifiable. Equally, the ultimate saving to the NHS of reducing smoking is probably unquantifiable. It is impossible to say how many people will not start smoking because they are not in a pub in which smoking is allowed and will therefore not contract a smoking-related illness later in life. We hope that that will be the case with many people, but we cannot put a figure on it.

**Jim Mather:** I accept all that you say. However, I am contrasting the suggested saving of £200 million, which could be higher, with the £5.7 million to £15.7 million estimated gross savings in the financial memorandum.

My question is quite simple: could the prohibition of smoking be a trigger for a higher level of personal responsibility for health, which would bring about a sea change in people's health and in the way in which the health budget is spent?

**Hilary Robertson:** We expect the legislation to act as such a trigger, because we know that a majority of smokers would like to give up. Our concern about the financial memorandum relates to the support for them to do that. When we consulted our members on the previous bill, one of the major points that was made related to the cultural aspects of smoking. If a piece of legislation can change some of those cultural aspects and ensure that the cultural norm is that people do not smoke when they are out for a drink, that will have a beneficial effect. However, quantifying all that is difficult.

**Jim Mather:** I want to try to consolidate that and get some hard numbers and hard methodology around it. Do you have any plans to talk to the health services in Ireland and other countries in which a smoking ban has been implemented to find out whether there are lessons to be learned that might result in better and more cost-effective provision of health services?

**Susan Aitken:** Do you mean health services specifically related to smoking or health services generally?

**Jim Mather:** I wondered whether you had tried to find out what other health services had done to take advantage of smoking bans, whether their efforts had worked and what they would do differently if they had a second chance, which is, in effect, what we have got. Do you have any plans to do that?

**Susan Aitken:** We have no such specific plans at the moment. However, we would be happy to support the Executive in any work that it wants to do in that regard. The lessons that might be learned are hugely important.

I am not sure that the legislation will make a huge difference to the way in which health services are funded in the short term. The bill is designed to deal with the long-term problems and is part of a wider programme of ensuring that people take responsibility for their health, which you talked about. The Wanless report on public health, which the Treasury commissioned last year, spoke about the ideal scenario being one in which people were fully engaged in thinking about and making choices about their own health. We should aspire to such a situation. The bill is an important step towards it, but it does not go all the way.

There has always been—and probably will be for some time—an issue about the balance of health spending in terms of how much goes into prevention and health improvement and how much goes into health care and health services. That is a very involved debate, which deals with questions of how much money goes into primary care and services in the community as opposed to acute services, for example. The bill will not change that balance in the short term, but we hope that it will help us to move towards a fully engaged scenario in which we are able to think about the health service differently and to move away from the current focus on acute services.

11:15

**Jim Mather:** It can be useful to consider other people's experiences. Listening to your answer, I was thinking that it might be more helpful to talk to the New York police department than to the New York health department, as its policy of zero

tolerance for fare dodging and littering on the subway had a disproportionate impact on the murder rate. The causal link between certain initiatives and their results can be somewhat oblique, but the signal can, nevertheless, be powerful. That shows that it is possible to make step changes over time, if we learn from other jurisdictions.

**The Convener:** Given the work that has been done by people such as Michael Marmot, who has clearly defined issues relating to health causation, I am surprised that it is not possible to make rather better estimates of impacts on health. For example, it should be possible to work out statistically the issues relating to smoking-connected illnesses that affect people's capacity to work for what should be the normal period of their working life. We do not know what the ban would deliver in reducing the number of people who are inclined to smoke, but it should be possible to produce a range of estimates of, for example, the impact that a 5 per cent, 10 per cent or 15 per cent reduction in the number of people who smoke would have on working hours over a period. That is the kind of figure that Jim Mather and others are looking for.

**Mr Arbuckle:** The only firm figure that we have in relation to free dental checks is the figure of £500,000 for establishing administrative back-up. I am concerned about that, because we should not go down that road until we know the financial consequences. The move is progressive, but it is quite a big one to make without our knowing what the cost will be. I am sure that it is within the committee's remit to ask for more information on what the cost will be and on whether the human resources are available for delivery.

**The Convener:** I am not sure that that is a financial question in relation to the memorandum. I think that you are quite clearly straying into policy areas. I will let our witnesses talk about the financial issues that arise from that question, but I think that we need to be a bit cautious with regard to the policy aspects.

**Susan Aitken:** The figure of £500,000 relates to the predicted increase in administrative costs as a result of the new provisions, such as the cost of administering the new list. According to our members, it is difficult to say whether that estimate is accurate but it is probably not unreasonable. If the costs fall within that scope, they could probably be fairly easily found within existing allocations. The service development element could stretch what is available within allocations at the moment.

**The Convener:** I think that we have concluded our questions. I thank Hilary Robertson and Susan Aitken for attending.



On 1 March, we will take evidence from Executive officials. The bill is quite complex and wide ranging and it might be helpful if members could identify the bits that they want to ask questions about. From what members have said so far, it is clear that we are interested in the smoking and dentistry issues. Are there any other strands that members want to pull out?

**Alasdair Morgan:** Pharmacy.

**The Convener:** Okay.

**John Swinburne:** Compensation for hepatitis C sufferers.

**The Convener:** I am not sure that that relates to finance in this particular—

**John Swinburne:** Is it not money that they are going to get?

**The Convener:** I am sure that our suggestions will be helpful to the clerks.

**Alasdair Morgan:** Basically, we are interested in a bit of everything.

**The Convener:** It is basically pharmacy, dentistry and smoking. In relation to smoking in particular, are members interested in the enforcement issues or the broader health issues?

**Mr Brocklebank:** Others may be interested in the health aspects, but I am interested in enforcement.

**The Convener:** The key financial issues are about enforcement, so perhaps we can focus on that.

## Subordinate Legislation

### Budget (Scotland) Act 2004 Amendment Order 2005 (draft)

11:21

**The Convener:** Under agenda items 2 and 3, we will consider a draft Scottish statutory instrument that seeks to amend the Budget (Scotland) Act 2004. We have a range of witnesses for the items, whom I invite to come to the table.

As well as the draft instrument, the committee has before it the budget documents that set out the background to the proposed revision, a note from the clerk and a letter from the Presiding Officer. As is stated in the clerk's note, the Subordinate Legislation Committee considered the instrument on 1 February and had nothing to report.

I welcome to the Finance Committee Tom McCabe, the Minister for Finance and Public Service Reform. Accompanying the minister is Richard Dennis, the Scottish Executive finance co-ordination team leader. We also have before us Ian Leitch, the Scottish Parliament's director of resources and governance and Derek Croll, the Parliament's head of financial resources. Ian Leitch and Derek Croll are with us because some of the amendments that the order seeks to make to the act are connected to the Scottish Parliamentary Corporate Body budget.

Consideration of the instrument has been split into two parts. First, I will ask the minister to make some brief opening remarks, after which I will give members the opportunity to ask any technical questions that they may have. Members may put their questions not only to the minister, but to the Executive and SPCB officials.

Secondly, once the technical questions have been put, I will ask the minister to move motion S2M-2358, which seeks approval of the instrument. As we are considering the instrument under the affirmative procedure, the order cannot come into force until it has been approved by the Parliament. After the minister has moved the motion, we will move to the debate on the motion. Under standing orders, the debate can last no more than 90 minutes; I hope that it will not last as long as that, but we will see. At the end of the debate, I will put the question on the motion. If the committee agrees to the motion, the Parliamentary Bureau will lodge a motion seeking parliamentary approval for the instrument.

I invite the minister to make a brief opening statement.

**The Minister for Finance and Public Service Reform (Mr Tom McCabe):** Good morning everyone. I am sure that the committee is getting used to the regular procession of budget revisions throughout the year—the summer, autumn and spring revisions. Members will be aware that the revisions are simply a regular piece of Government business, under which we seek parliamentary authorisation for the inevitable changes that have to be made to our spending plans as they arise throughout the financial year.

Last week, the committee discussed with Tavish Scott the Executive's spending plans for 2005-06. Today's budget revision is the last opportunity for the Executive to amend budgets for the current financial year 2004-05. In this opening statement, I want to draw attention to a few of the highlights in the revision. As the convener rightly noted, SPCB representatives are also at the committee today. They will answer questions on the non-cash adjustment that was made to the SPCB budget as a result of the valuation of the Parliament building.

Of course, the most significant presentational change in the revision is the separating out of the pension schemes from the main schedules for the Finance and Central Services Department. That is a parallel change to the one that was discussed last week in respect of the Budget (Scotland) (No 2) Bill. Members will see the change if they look at article 2(3)(a)(iii) and article 2(3)(a)(iv) and also article 2(4)(k) and article 2(4)(l) of the draft order, which make up a large part of the text of the instrument.

Table 1.4 on page 6 of the supporting document—the spring budget revision—will help in understanding the changes. On a departmental basis, the table lists the overall impact of all the revisions. Members will see that the most significant apparent change in the numbers comes from the Health Department, in which the proposed change is a reduction of £146 million in the resources sought. The committee will note the stress that I placed on the word "apparent". In reality, the revision makes a slight increase in the Health Department's budget as it draws down resources from the central unallocated provision. However, the change is more than offset by an increase in the share of health spending that is notionally funded by national insurance contributions. Further details of the change are given on page 3 of the supporting document.

Members will see in table 1.4 that, as a result of the larger allocation from national insurance contributions, the figure for the total resources that are sought for the Executive is lower than that which was authorised by the autumn budget revision. If members turn to table 1.6 on page 7, they will see that the total cash that is sought by the Executive is increasing. It is most unusual to

see cash and resource totals going in different directions in such a manner.

I am sure that the committee is eagerly awaiting the additional information on the errors in the way in which our cash requirement was calculated, which Tavish Scott promised last week. I apologise in advance that the explanation is technical—it is inevitably so. If I give the impression that I understand every bit of it, I will be doing okay.

Members know that, because the cost of capital is a non-cash adjustment, it is one of the items that we take away from the resource total in order to work out our cash requirement. However, for public corporations such as Scottish Water, the Executive's cost of capital is set to balance out the interest that is received on voted loans. The effect of that is that the net departmental expenditure limit impact on the cost of capital is exactly offset by the DEL impact of the interest payments received. So, the cost of capital on our investment in Scottish Water has no impact at all on our resource budget. Of course, we still have the cash from the interest payments in the Scottish consolidated fund.

In terms of the cash authorisation that we seek from the Westminster Parliament, which is then drawn down from the United Kingdom consolidated fund, the cost of the capital charge should be taken away from our resource budget, as that much cash is already in the Scottish consolidated fund. The error was made because we did not realise that we needed to think in three different currencies, not just in two. Although the cash is sitting in the consolidated fund, we cannot draw it down without the approval of the Parliament. Therefore, in bringing budgets to the Parliament, we should not take account of the particular cost of the capital charge in calculating our cash requirement.

The impact of the error is best seen by making a comparison between table 1.7 on page 8 of the spring budget revision and the similar table in the supporting document to the autumn budget revision. The comparison shows that the capital charges that we are deducting from our resource budget in order to calculate the cash requirement have fallen by £131 million.

I hope that members understood that explanation every bit as much as I did. We made the mistake only after the classification rules for public corporations changed at the end of the 2002 spending review. The real-world impact on the budget is zero. We are talking about paper transactions that have no impact on the things about which elected members concern themselves, namely the size of budgets and how they are applied.

I will bring the discussion back to more familiar territory. I am sure that members will have spotted, on page 21 of the supporting document, the reduction of £30 million in Scottish Water's capital budget—those are resources that have been transferred to the CUP for use in future years.

The committee has taken a keen interest in the delivery of Scottish Water's investment programme, so it will want to know about the impact of the budget reduction on the programme. I reassure the committee that there has been no further slippage. The latest forecasts show that Scottish Water continues to be on course to deliver the investment of £505 million this year, which is the same level of investment that was forecast back in the summer. Scottish Water achieved a monthly run rate of £60 million in December alone. All the indications are that it is on track to meet its agreed investment figure.

To try to square the circle, we must remember that what scores in the budget is not spending, but net borrowing, which is affected by movements in creditors and debtors and, more particularly, by the timing of cash getting out the door. A significant part of this year's investment will actually be physically paid for next year. Curiously enough, net borrowing is one of the parts of the budget that is not affected by the resource accounting and budgeting move to accruals.

I will do my best to answer any questions that members have.

11:30

**The Convener:** I point out to members that only they may speak when we get into the second part of the discussion, after the minister has moved the motion. Before we reach that stage, there is an opportunity to ask technical questions to which the minister and his officials may respond.

I flag up an issue that arises from what the minister said about water services. I and colleagues fully appreciate the efforts that have been made to get Scottish Water's capital spend up to a higher level than it was at before, but you will be aware that there is discontinuity between the current and the next quality and standards processes. The first process ends in 2006 and the next one goes from 2006 to 2014. For money to be spent in 2006, proper planning for projects must be carried out prior to 2006. At the start of the quality and standards II process, there was a period of around 12 months in which planning was not in place to allow capital money to be spent, which had an impact on the flow of capital. I accept that spend is now running along at a rate, but the discontinuity between Q and S II and Q and S III is an issue. A mechanism is needed to put in place planning and identify early-start

projects. We must ensure that no loss of momentum arises from the fact that two different regulatory regimes are being dealt with.

I ask that Mr McCabe and Ross Finnie learn from what went wrong last time. Clear ministerial oversight is required to ensure that we do not lose momentum on such an important spend issue.

**Mr McCabe:** I fully appreciate your point. There is an understanding in the Executive of the issues that you raise. All the information that is available to me is that that has been considered and that all that can possibly be done is being done to avoid such a disconnection.

**Ms Wendy Alexander (Paisley North) (Lab):** I, too, want to talk about water, which is an incredibly difficult issue for us all. It is surprising that, a year ago, we thought that £212 million gross capital expenditure would be the contribution to Scottish Water, but the figure has now fallen to £101 million. Therefore, in the past year there has been a fall of more than 50 per cent in what we expected to be the Executive's contribution to Scottish Water's capital spending.

I hear what you say about there not being any slippage in Scottish Water's planned expenditure of £550 million for this year, but why did the £212 million estimate prove to be as inaccurate as it apparently was? As you know, many of our discussions with Scottish Water in the past year have involved it telling us that its close relationship with the Executive allows for accuracy in forecasting, in planning cash requirements and so on. It is probably unfair to ask the minister to do this, but perhaps one of his officials could say why the figure has turned out to be £101 million rather than £212 million, which we thought that it would be last year. Why were we out by so much in what it would take to deliver a £550 million investment programme over the year?

**Richard Dennis (Scottish Executive Finance and Central Services Department):** Two main factors are driving the change between the autumn budget revision and the figures that we now have in the spring budget revision. The first is movements in debtors and creditors, which are a fairly significant factor. Obviously, there are many short-term fluctuations. The turnover is around £1 billion, so we would expect to see significant movement, and I understand that that accounts for around £40 million of the change.

The minister spoke about the fact that accruals do not affect net borrowing numbers, and that is one of the big drivers. I will do my best to explain things, although doing so is not easy.

Usually, making a commitment scores in the Executive's budget. The moment a capital project is started, it hits the budget. The timing of when the cash is actually passed over is neither here

nor there. With net borrowing, because one goes to the market and borrows the cash only the day before it is handed over, when one physically hands over the cash matters. Quite a lot of investment will take place at the end of this year in particular. It can be seen from the £60 million run rate in December that investment is being backloaded quite a lot this year. Indeed, quite a lot of investment will be physically paid for next year. That is simply a difference in timing of the allocation of projects.

**Ms Alexander:** I have two things to say in conclusion, which it would be better to deal with by correspondence. It is encouraging that the minister said that there has been no slippage in Scottish Water's capital programme, but there should be reflection with Scottish Water on whether the net reduction in the requirement from the Finance and Central Services Department from more than £200 million to £100 million makes any difference to its delivery of the investment programme. If things have changed in any way, it would be helpful if we were written to, not least because Ross Finnie's letter to us indicated that progress on investment and programme expenditure would not generally be published. We have gained a helpful piece of information today.

There is a second issue that you might deal with in writing. Given what you have said about the uncertainty of the timing of going to markets, will we have to live in perpetuity with variability in excess of 50 per cent? Is that the most appropriate way for things to be treated in the documents? Obviously, the creation of the central unallocated provision has been a significant development and we are trying to bring greater certainty about how departments profile investment. It would be helpful to reassure us that the figures reflect no slippage in the capital programme and to say whether the Finance and Central Services Department might reflect on whether it must live with such uncertainty in its budget, which is associated with the timing of going to markets. I will leave matters at that.

**The Convener:** Can the minister give us an indication of what the impact of any reduction in the net budgeting total will be on end-year flexibility? Over the past several years, water has been a big factor in EYF. What is likely to happen this year? Will that impact on interest payments, for example?

**Mr McCabe:** We will come back to you on those matters, unless Richard Dennis wants to add anything about that specific point. On what Ms Alexander said, I would want to confirm that the capital investment is unaffected. She rightly spoke about considering whether we would want to continue with the disparity in totals or whether there is a better way of accounting for things.

**Richard Dennis:** It is clearly right that borrowing less this year means that future interest payments will be slightly less, and the total of interest payments will also be slightly less.

**The Convener:** You might be able to give us some quantification of that.

**Richard Dennis:** I cannot do so off the top of my head, but I will see whether we can do so in writing.

**The Convener:** You could do so by correspondence.

Incidentally, I should have welcomed back Arthur Midwinter as our adviser.

**Jim Mather:** On Scottish Water, the run rate is £60 million in December. What steps are being taken to ensure value for money? Specifically, how are Scottish Water Solutions Ltd and Scottish Water adhering to competition rules?

**Mr McCabe:** That is a matter for Scottish Water. We are reassured that it pays adequate attention to competition rules and complies with other obligations that are placed on it. We have no indication that that is not the case.

**Jim Mather:** Okay; I will take up that issue directly with Scottish Water.

The adjustments make me suspicious that the charges on Scottish Water are too high and that too much of the capital expenditure is being funded by the present generation of water-charge payers. You might want to answer this question in writing, but what percentage of the £550 million of capital expenditure has been paid for by current water-charge payers?

**Mr McCabe:** We will answer that through correspondence.

**The Convener:** We need to stay on the budget revision—I am anxious that we do not get drawn too far away from it.

**Alasdair Morgan:** I have a couple of questions. The first is about the big increase for winter maintenance in the roads budget, which is in schedule 3.15 on page 59 of the spring budget revision. I am not sure whether that money comes out of the integrated transport fund, although that fund shows a big decrease. I would have thought that the routine and winter maintenance of roads is a fairly predictable item, but it has gone up by about £24 million.

**The Convener:** That is nearly a 50 per cent increase.

**Richard Dennis:** I will just look up the exact chapter and verse, but I am fairly confident that the Enterprise, Transport and Lifelong Learning Department stores a fairly large amount of the

transport budget in the integrated transport fund at the start of the year until it is clear where progress will be made. The figures do not necessarily show an increase in the budget; they simply show how the department allocates the total that was in the integrated transport fund to different projects as we go through the year.

**Alasdair Morgan:** Routine and winter maintenance is not a project; it happens every year.

**Richard Dennis:** Yes, but the exact amount that is spent in any one year depends on weather conditions, which determine the amount of maintenance that can physically be done.

**Alasdair Morgan:** That is why I am surprised that the figure has gone up. We have had a fairly mild winter this year.

**Richard Dennis:** It is not obvious from the figures that the budget has gone up. I am fairly confident that, at the start of the year, the department says, "We can guarantee that we will spend this much on these projects, but we would like to spend this much more." It then collects all the this-much-mores in one place. Nine months into the financial year, it might become clear that one project is running a bit late, so not all the budget for it will be spent, whereas another project is on course and more can be spent. The department then allocates extra provision.

**Alasdair Morgan:** That does not quite answer my question. I accept the answer in relation to changes under other headings, but given the number of years for which we have been doing routine and winter maintenance, one would think that we would have a fairly accurate idea about the figure in a normal winter. I understand that the figure might go up if we had a particularly inclement winter.

**Richard Dennis:** I have found the right page in my notes.

**Alasdair Morgan:** That is good.

**Richard Dennis:** The answer is a mix of what I said and the fact that because the winter has been relatively mild, as you say, more progress has been made and the backlog of maintenance has been eaten into further than was assumed would happen at the start of the year.

**Alasdair Morgan:** Right. Now I understand: the routine element has gone up. Winter maintenance does not refer to dealing with winter conditions; it means taking advantage of summer-like conditions in the winter.

**Mr McCabe:** I confirm that our roads infrastructure is getting better by the day.

**Alasdair Morgan:** I thought that you would say that.

**The Convener:** There are some areas in Scotland where that does not necessarily apply.

**Alasdair Morgan:** My other question is about schedule 3.3 on page 98, which shows that the modernising government fund has been reduced by £14 million to £1 million. Perhaps that means that government has been modernised and there is no need for the money.

**Richard Dennis:** Again, that is a centrally held fund that is run by the minister's department. Through the year, when he makes awards, resources are transferred to the departments and agencies that have won funding for their projects. Therefore, the £14 million will be reappearing all over the place.

**Alasdair Morgan:** But it will all be to modernise government.

**Mr McCabe:** The modernisation is continuing apace.

11:45

**The Convener:** May I have clarification on a couple of things? One is the reference in schedule 2.1 on page 61 of the budget document to a £48 million transfer from the CUP to health. What is the purpose of that? Further, what is the purpose of the £160 million transfer from capital to revenue, which is noted in schedule 2.2 on page 62? Is the item being transferred or simply the cash? How does that relate to our shared perspective, if you like, on increasing capital as opposed to revenue spend?

**Richard Dennis:** I will take your questions in reverse order. At the start of every year, the Health Department sets a capital budget in total. As health boards work through the year, the Health Department considers which elements of investment, maintenance and new procurement have added value and which is non-value-added maintenance work. At the spring budget revision, the department transfers the non-value-added element, which does not score as capital in our terms, across the resource. That is what is going on with the £160 million. The department has got far enough through the year to say that, out of its total capital budget, £160 million is non-value-added. That is the money that moves across.

On the transfer from the CUP to health, the Health Department has a problem in that its budget is £8 billion-plus and it needs to forecast that down to the last day. However, £8 billion-plus breaks down to well over £48 million a day. Therefore, through the transfer from the CUP, the department is giving itself extra cover to ensure that it does not have to hold back spending as the

end of the year approaches. Members will remember that this particular money came originally from Scottish Water and was the £85 million that we loaned across a year and a half ago. Scottish Water was allowed to retain it at the start of this year just to give it flexibility for plans coming in bang on budget. If it slips a little over budget, that figure gives it some safety.

**The Convener:** So it is a disguised contingency.

**Richard Dennis:** Yes.

**Dr Murray:** In schedule 3.2 on page 27 of the spring budget revision, headed "Regenerating Communities", there is a line that indicates that Scottish Homes grant in aid increased by more than £17 million. I just wondered what that refers to, since Scottish Homes does not exist any longer and has become Communities Scotland.

**Richard Dennis:** I have no knowledge of that other than that my notes tell me that the increase of £17 million in Scottish Homes' grant in aid is being used to meet the costs of redeeming remaining debt.

**The Convener:** I think that the committee would welcome a note to give us a bit more detail on that.

**Mr Brocklebank:** I have a couple of points for clarification. In schedule 3.1, on page 45, headed, "Student Awards Agency for Scotland", there seems to be a reduction of £14.7 million in "Fees, Grants & Bursaries". Does that reflect a reduction in demand for student places?

**Richard Dennis:** There are quite a few changes within that £14.7 million. However, the main element is an adjustment to bring the budget in line with predicted spend. You are probably right that it reflects a reduction in demand, but I would like to confirm that in writing to the clerks.

**Mr Brocklebank:** It would be useful if you could let us know that. My other point for clarification, in which I have a personal interest, is in schedule 3.4 on page 75. When you talk about "Receipts from Scottish Safety Cameras", is the revenue of £8.2 million from speeding cameras?

**Richard Dennis:** Yes.

**Mr Brocklebank:** I say rather bitterly that I have contributed to some of that £8.2 million in recent times. Is that figure in line with expectations? If so, why was it not included in the original budget? Furthermore, what receipts do you expect to get next year? Is the figure likely to go up?

**Richard Dennis:** I am tempted to say that I am sure that no one will get caught by a speed camera next year.

**Mr Brocklebank:** But is the £8.2 million in line with your expectation?

**The Convener:** We are talking about a budget revision, so it is unlikely to be in line with anyone's expectations. [*Laughter.*]

**Mr Brocklebank:** Okay, then. Looking ahead, do you expect the figure to rise exponentially?

**The Convener:** I think that we can deal with that matter when we come to next year's budget.

**Ms Alexander:** Table 1.8 on page 9 helpfully sets out figures for capital spending and net investment. However, although the figure for public-private partnership spend is obviously fixed—after all, such obligations are fixed—the figures for the other four categories of capital spend are down from those in the autumn budget revision. Perhaps we should discuss this question with the Finance Committee's adviser, but I wonder whether the Executive would consider presenting a summary table that shows movements in net capital spend not only from the autumn revision but from the beginning of the year. For example, the table shows that, since the autumn budget revision, there has been a decrease in direct capital spend of £94 million—or about 8 or 9 per cent—and a decrease of more than 10 per cent in the much smaller figure for capital grants to the private sector. Adding into those figures the £60 million reduction in direct capital spend on water that we have discussed would give us a 15 per cent fall in overall direct capital spend since the budget was presented last year. Such a decrease is significant.

As a result, would it be possible for the Executive to consider including figures from the start of the year in this very helpful summary table? I am also led to ask why Scottish Water is not presented separately in this table. I acknowledge that that happens later on, but surely its distorting impact and its unique status as a non-incorporated body—or whatever we call an organisation that does not fall into the non-departmental public body category—must raise questions about how it is handled in the table. I leave that matter on the table for you to reflect on.

Moreover, are there any particular drivers for the quite significant 8 to 9 per cent fall in direct capital spend over the past six months? I also point out that an overall 15 per cent drop over the year is quite a lot.

**Richard Dennis:** The committee will not find this response very helpful, but the most major factor in that fall is reclassification of certain elements of transport spend. We are spending the same amount of money on the same projects; however, our accountants, who had previously told us that we could score that expenditure as capital, are now telling us that we have to score it as resource.

**Ms Alexander:** But none of the resource elements has increased; in fact, the table shows that they have all fallen. That worries me.

**Richard Dennis:** Perhaps the table is not presented in the most helpful fashion. The capital and resource banners at the top of table 1.8 show how things score in our accounts. The first four columns show items that score as capital in the Treasury's books; the item in the fifth column, PPP, does not score as capital. However, the rest of the budget—the other £23 billion—scores as resource in the Treasury's books. As a result, some items of transport spending have moved from the first four columns in table 1.8 out to the bit that is not shown in the table. I apologise if our presentation of the table is not quite right. Perhaps I will get together with Arthur Midwinter and the clerks to find out how we can present the figures more clearly.

**Ms Alexander:** But moving those figures into the resource budget means that that money is not capital investment. We are still left with the significant issue of capital spend being down in each of the first four columns of table 1.8 and the largest spend—direct capital spend—being down by about 15 per cent over the year. Given the committee's interest in getting the balance of capital spend right in this spending review—after all, we all know that spending will be tighter in years to come—I am just not convinced that this is a matter of presentation. It might be helpful if the minister could comment directly on why the spend is slipping. Is it simply slippage in the delivery of projects that are still planned, or are substantive policy decisions being made about projects that will not go ahead?

That is probably the single most important matter for the minister to have a chance to comment on, although, God knows, it is the one on which the poor minister cannot be expected to write his own comments. However, relative to the issues that jump out from the statement, a 15 per cent fall over the year in direct capital spend in all four columns is probably the matter in which the committee has the greatest interest. I will leave it at that.

**The Convener:** I suspect that one relevant issue is land acquisition in relation to future transport projects. One transport project might be distorting the facts.

**Mr McCabe:** I suspect that the case is the former rather than the latter, but I will consider the matter and I will perhaps write to the committee with a more detailed explanation. The question is important, because it is in the Executive's interest to have that capital balance right, for the reasons that have just been outlined.

**Mr Arbuckle:** Page 15 of the spring budget revision deals with rural development and shows

that cash has come out of spending on the organic aid scheme and the farm business development scheme. Both those schemes were intended to make agriculture more diverse, so we seem to be travelling a little in reverse. I notice in particular that the 2004-05 organic aid budget is less than was spent in 2003-04. The policy is to develop organic schemes, but it does not seem to have been taken up.

**Richard Dennis:** That is just an estimate of the reduction in demand for those schemes.

**Jim Mather:** I return to the capital spending and net investment table. I understand that, in effect, PPP converts a capital commitment to a revenue cost. Does the inclusion of PPP in a table on capital give us a true and fair view? The asset value that is being acquired through the payments, which I presume are annual, could be considerably different. Do you have no plans to open that up and to give us a clearer view of the assets that payment of the material sum of £378 million puts at our disposal?

**Richard Dennis:** Mr Mather is right. As the footnotes say, the numbers that are given in the last column of table 1.8 are estimated payments under PPP contracts. They do not represent the direct capital equivalent, but we provide the capital equivalent in table 0.06 of the draft budget 2004-05, which the clerks might want to send to the member.

**Jim Mather:** The issue is presentational. As a revenue item, it does not belong in the table.

**The Convener:** We made a request about that.

**Professor Arthur Midwinter (Adviser):** The inclusion of PPP was the result of a request from the committee. The intention was to have a clear picture overall of how much was being spent on capital according to our definition of capital, which creates an asset, rather than the Treasury definition.

**The Convener:** We will have to blame Mr Ewing for that.

**Jim Mather:** So you are employing the absentee rule.

**Alasdair Morgan:** The request even predates Mr Ewing.

**The Convener:** As we are talking about Mr Ewing, perhaps I should ask Iain Leitch and Derek Croll what the Presiding Officer's letter means in cash terms.

**Derek Croll (Scottish Parliament Directorate of Resources and Governance):** It means absolutely nothing. The situation has no cash effect.

**The Convener:** Members have no more technical questions.

*Motion moved,*

That the Finance Committee recommends that the draft Budget (Scotland) Act 2004 Amendment Order 2005 be approved.—[*Mr Tom McCabe.*]

*Motion agreed to.*

**The Convener:** We are now required to report to Parliament. As such reports are usually very brief, I propose that we seek to agree the text of our report by e-mail correspondence. Are members content with that suggestion?

**Members indicated agreement.**

**The Convener:** I thank the minister and his officials for coming along.

12:00

*Meeting suspended.*

12:02

*On resuming—*

## **Water Services etc (Scotland) Bill: Supplementary Financial Memorandum**

**The Convener:** The final item on our agenda is consideration of a supplementary financial memorandum to the Water Services etc (Scotland) Bill. Members will recall that we agreed at our meeting on 25 January that when a supplementary financial memorandum is produced prior to stage 3 of a bill, we will try to take evidence from officials if possible and that if we have concerns, we will then nominate one committee member to raise them during the stage 3 debate. The stage 3 debate on the Water Services etc (Scotland) Bill is tomorrow, so this is our opportunity to quiz the witnesses.

I welcome to the committee Clare Morley, the bill team leader, and Andrew Scott, the head of the water division. David Wallace will not now be joining us and instead we shall have Duncan McNab from the air, climate and engineering division.

Members have a copy of the supplementary financial memorandum and revised explanatory notes. We also have copies of two letters from the Minister for Environment and Rural Development. I draw members' attention to the fact that the supplementary financial memorandum that was circulated to members is slightly different from the one that was published. The final version makes no reference to the scoping study and instead includes commentary on section 12A. Members have a copy of that paragraph in front of them; it was circulated at the start of the meeting.

I shall give the officials an opportunity to make an opening statement if they wish to do so, before we proceed to questions.

**Andrew Scott (Scottish Executive Environment and Rural Affairs Department):** We are happy to go straight to questions.

**Dr Murray:** There was a bit of concern among committee members about the difference between Scottish Water's consultants' estimates of the costs and the estimates of the water industry commissioner for Scotland. The explanation given concerns the simplicity of the model and suggests that the consultants may have been using a model that was more complex than was appropriate. Does the explanation that has been given also explain why Scottish Water's projected on-going costs were about £5 million to £8 million higher than those in the financial memorandum?



**Andrew Scott:** Very largely, yes. If an organisation has a larger and more complex information technology system and it lasts five years, it has to depreciate larger amounts of money over the period in each year.

**Dr Murray:** I noticed that one of the water industry commissioner's proposals was that if the IT system was not completely automated, that would result in a considerable saving. I was slightly surprised by that. I would have assumed that a completely automated system would, over a period of time, be rather less expensive than one that required input by human beings, who have to be paid.

**Andrew Scott:** It might be counterintuitive. I understand that the reason for that—which has been discussed between the commissioner, IBM and Scottish Water—is that even highly automated systems require substantial manual interventions, because records are often poorly kept. Having an elaborate computer system is not the saving that it would appear, especially in a small market of the type that we are licensing.

**The Convener:** One of the issues that were raised previously was staff consultation, or the lack of staff consultation, on some of the changes and particularly on the transfer of terms and conditions. The minister sent us a letter in October, but it did not deal with that specific point. Can you give us any further information about that?

**Clare Morley (Scottish Executive Environment and Rural Affairs Department):** One of the amendments that the minister has lodged for debate tomorrow includes provision for the transfer to be more flexible than in the bill as introduced, to allow a partial or staged transfer. That is all of a piece with his commitment to ensuring that the transfer is as smooth as possible. If Scottish Water proposed a minimal separation in the first instance, that would be entirely possible.

**The Convener:** Would you expect all those changes to be the subject of extensive consultation with the relevant trade unions and employees across the board?

**Andrew Scott:** In the first instance, that would be a matter for Scottish Water to handle, but it has extensive mechanisms for doing that through its company councils.

**The Convener:** I have a technical question about the supplementary financial memorandum's estimate of costs relating to sewerage nuisance. Would you say something further about the figure of £50,000 per annum that is identified, because it is not entirely clear to what it refers?

**Duncan McNab (Scottish Executive Environment and Rural Affairs Department):** Obviously, the burden on local authorities is based on estimates at the moment and the figures will be examined further in the regulatory impact assessment that will go out for consultation with the draft statutory code later on. The figure was arrived at in negotiations with Scottish Water and consultants working on the perceived costs. It was based on the total number of sewage works in Scotland, which according to Scottish Water is 1,857, of which 1,368 are for population equivalents below 250, being mainly septic tanks. One aspect of the statutory code is that local authorities, in checking compliance, will probably require an annual inspection of those sewage works and we felt that that would not be required for such small works, so we have based the figure only on the medium and large works, of which there are fewer than 500. Based on an estimate of £100 for two or three hours of officials' time, we came up with the initial estimate of £50,000 for all local authorities.

**The Convener:** How would that be distributed among different local authorities? Sewage works are obviously not distributed exactly in line with population.

**Duncan McNab:** That would be subject to the regulatory impact assessment included with the consultation, so no decisions have been made—or can be made—at this stage. We are looking at the very first estimates of the costs. However, we stress that the costs are relatively minimal rather than an additional burden on local authorities. In a sense, nothing will change from the existing regime under the Environmental Protection Act 1990 statutory nuisance provisions, which places a duty on local authorities to inspect waste water treatment works.

**The Convener:** Do you have a timescale for the finalisation of the code of practice?

**Duncan McNab:** Yes. We propose to have it ready for implementation by April 2006.

**Jim Mather:** To return to the automated central market systems, I am a bit concerned that we might fall between two stools: the system that IBM and Scottish Water advocate—which in itself may well have a Rolls-Royce version and a simpler version, given the disparity between the figures of £5.2 million and £10 million—and the simpler switch engine that the water industry commissioner advocates. Is there an example of a solid, proven system, perhaps not from an exactly parallel industry sector, but in which we could have a greater degree of confidence and which could be slotted in and implemented with a higher possibility that it would work well from the outset?

**Andrew Scott:** I do not think that a ready-made

analogue exists. We met Scottish Water, the commissioner and the consultants to establish the exact nature and size of the market. We considered carefully the analogues that IBM used, which generally came from large-scale market openings elsewhere. We have established a degree of agreement that the commissioner's original proposals will be broadly adequate for the time being. If more elaborate solutions are proposed, they will generally be proposed by new entrants into the market, after making a judgment about commercial risk. Costs are not being imposed on new entrants; if there are additional costs, it will be because a new entrant thinks that there is an advantage in bearing them.

**Jim Mather:** "Risk" is the key word. Clearly, the cost is material, but the implications of a malfunction are much more material—billing systems might be impeded, delayed or damaged. The extra money ought to be used to try to convince us that the system that is put in place is exceedingly robust, which is the key criterion.

**Andrew Scott:** Many of the systems are already in place because Scottish Water bills its non-domestic customers.

**Clare Morley:** The cost of the IBM proposal of £5.2 million to £10 million is based not on a simple and a more complex system but on a central figure of about £7 million with margins of risk set lower and higher. However, both figures are for an expensive automated system that involves complex requirements that we think are unnecessary, such as volume allocation and profiling. If we take the cost of those factors out of the top and bottom of the range, we can have confidence in the lower figures.

**Mr Brocklebank:** How many staff does the convener of the water customer consultation panels employ at present? According to the estimates, the convener will require three additional members of staff.

**Clare Morley:** At present, the convener has a budget for three staff but employs only two. We assume an increase to a complement of six.

**Mr Brocklebank:** So there will be six staff in total.

**Andrew Scott:** The convener has yet to submit a final corporate plan to ministers for approval. That is the working assumption, but it is yet to be finalised.

**Mr Brocklebank:** Is it correct that the total staff budget for the panels is £152,000? When divided by six, that does not seem like a lot.

**Clare Morley:** The estimate is based on six staff. If the number of staff changed, the figure would change. At present, there is £72,000 for three staff.

**Mr Brocklebank:** So you will spend another £80,000. What is the timescale for recruiting the three additional people?

**Andrew Scott:** Again, that is a matter for the convener. He will make a proposal in his corporate plan, but he has not yet come to a view on that. We will ensure that there is an orderly transfer of the complaints function from one body to the other. That is to the fore in our concerns.

12:15

**The Convener:** We have a slight difficulty this week because the minister is making a statement on Scottish Water's objectives on Thursday afternoon and we are debating the Water Services etc (Scotland) Bill tomorrow. The costs that are likely to arise in relation to sewage nuisance will be influenced by the minister's objectives in that regard. In so far as you can comment, and without necessarily anticipating the minister's statement, could you give us the background to thinking on sewage nuisance?

I suppose that the background in my area and those of Susan Deacon and other members who have large sewerage plants in their constituencies is that the standards that were originally set by the water industry regulator were for a minimum level of containment, or for a lower level of containment than that desired by the local population. Is it possible that there will be greater flexibility in relation to better smell containment in particular? How would that work in relation to this part of the bill?

**Andrew Scott:** I can answer that in general terms and Duncan McNab can deal with the specifics. If and when the statutory code comes along, it will place extensive additional obligations on Scottish Water. Those will have to be funded by means of the strategic review. It will then be for ministers to decide whether the obligations that are associated with sewerage nuisance are additional to all the other obligations that they have placed on Scottish Water or whether they want to substitute the sewage nuisance obligations for other obligations on Scottish Water such as those to do with other aspects of customer service, drinking water quality or capital maintenance. There will be a resource quantum associated with implementing the new statutory code and ministers will have to decide whether that is additional or in substitution for something else. There will be mechanisms in place around the strategic review to make sure that that happens.

That is the first part of the answer to your question. Duncan McNab can elaborate on what the specific standards might be.

**Duncan McNab:** As you say, convener, the timing is a little delicate because the statement is being made on Thursday. What is included in the quality and standards announcement will be subject to ministerial approval.

On standards, we put a draft voluntary code of practice out to consultation and that included definitions of best practicable means and best practice for local authorities. Responses to that consultation are being considered at the moment with a view to producing a finalised version and publishing it this spring. That will include some form of standards.

It is very difficult to quantify one standard that will be acceptable to the whole industry because of the different nature of different works. In our extensive work to produce the draft voluntary code, we have found that it is almost impossible to come up with one standard. We will probably advocate best practicable means based on locally specific standards rather than one national standard of odour minimisation. We will bring together the expertise and knowledge gained from preparing the voluntary code and from the consultations that are taking place in England and Wales to prepare the statutory code, which will be subject to public consultation later this year with a view to publication ready for implementation next April.

I am not able to talk about any specific standards, but we are looking to minimise odour at all the key sites to a standard that is acceptable to those who are living in the vicinity, and to use the best available technologies to minimise and eradicate odour. In the past, ministers have stated that it is impossible to eradicate odour completely, so we cannot make false or unrealistic claims, but the idea is to minimise odour as much as possible and that will benefit the general public.

**The Convener:** There are two dimensions to that. One is to do with the physical containment of odour using sheds or extracting mechanisms and the other is to do with working practices in sewerage works. It is an issue that comes to me fairly frequently and I suspect that there will be a number of other members in that position. Perhaps it is unfortunate that objectives are apparently being set after we have dealt with the bill, but we might be able to make representations about that elsewhere.

As there are no other questions, I thank our witnesses for coming. As the bill is entering its final stage this week, I ask members whether there are any particular representations that they want the committee to make or whether they are happy to note the evidence that we have received. Members seem to be content with that.

**Members indicated agreement.**

**The Convener:** On that note, I close the meeting and thank everyone for their attendance.

*Meeting closed at 12:21.*



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