



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 19 November 2014

Session 4

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**LOCAL GOVERNMENT AND REGENERATION COMMITTEE**  
**29<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Kevin Stewart (Aberdeen Central) (SNP)

**DEPUTY CONVENER**

\*John Wilson (Central Scotland) (Ind)

**COMMITTEE MEMBERS**

- \*Cameron Buchanan (Lothian) (Con)
- \*Mark McDonald (Aberdeen Donside) (SNP)
- \*Stuart McMillan (West Scotland) (SNP)
- \*Anne McTaggart (Glasgow) (Lab)
- \*Alex Rowley (Cowdenbeath) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

- John Batley (Gun Trade Association)
- Jack Cummins (Law Society of Scotland)
- Graham Ellis (Scottish Air Rifle and Pistol Association)
- David John Penn (British Shooting Sports Council)
- Dr Colin Shedden (British Association for Shooting and Conservation)
- Dr Niamh Shortt (University of Edinburgh)
- Calum Steele (Scottish Police Federation)
- Fiona Stewart (Society of Local Authority Lawyers and Administrators in Scotland)
- Sandra White (Glasgow Kelvin) (SNP)
- Dr Graham Wightman (Abertay University)

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Local Government and Regeneration Committee

*Wednesday 19 November 2014*

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

### Air Weapons and Licensing (Scotland) Bill: Stage 1

**The Convener (Kevin Stewart):** Good morning and welcome to the 29th meeting in 2014 of the Local Government and Regeneration Committee. I ask everyone present to switch off mobile phones and other electronic equipment because they affect the broadcasting system. Some committee members will use tablets during the meeting because we provide the meeting papers in digital form.

Our first item of business is our first oral evidence session in our stage 1 scrutiny of the Air Weapons and Licensing (Scotland) Bill. We are starting the process by holding a round-table session with key stakeholders to set the scene for that work.

We appreciate that some of the groups that are represented today may have an interest in only certain aspects of the bill, but the witnesses should feel free, please, to talk about the other parts of the bill as they come up during the discussion, because the discussion is intended to consider how licensing impacts on communities in general.

I invite the witnesses and members to introduce themselves; we will then discuss the bill.

I am the convener of the committee.

**John Wilson (Central Scotland) (Ind):** I am the deputy convener of the committee.

**Cameron Buchanan (Lothian) (Con):** I am an MSP for Lothian.

**Dr Graham Wightman (Abertay University):** I am from Abertay University.

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

**Jack Cummins (Law Society of Scotland):** I am representing the Law Society of Scotland's licensing law committee.

**Anne McTaggart (Glasgow) (Lab):** I am an MSP for Glasgow.

**Fiona Stewart (Society of Local Authority Lawyers and Administrators in Scotland):** I am

representing the Society of Local Authority Lawyers and Administrators in Scotland licensing working group.

**Stuart McMillan (West Scotland) (SNP):** I am a Scottish National Party MSP for West Scotland.

**Calum Steele (Scottish Police Federation):** I am the general secretary of the Scottish Police Federation.

**Mark McDonald (Aberdeen Donside) (SNP):** I am the MSP for the Aberdeen Donside constituency.

**Sandra White (Glasgow Kelvin) (SNP):** I am the MSP for Glasgow Kelvin.

**Dr Niamh Shortt (University of Edinburgh):** I am a senior lecturer in human geography at the University of Edinburgh.

**The Convener:** Thank you all very much.

I would like to start with Dr Wightman. I understand that your main interest is in air weapons, Dr Wightman. Can you give us an overview of how you think the bill is, as it stands?

**Dr Wightman:** I probably cannot make much of a contribution on the legal aspects of the bill, although I comment in my submission that the bill ought, in order to make them clear, state the current limits—12 foot pounds and 6 foot pounds—for air weapons, and state which weapons a certificate would cover and which would still need to be licensed.

My interest comes from work that we did with honours students on the damage that air weapons can cause. We fired air weapon pellets into ballistic gel, which is used as a simulant for flesh, and examined how far they penetrated. We embedded organs from animals from an abattoir in ballistic gel and saw that the pellets would penetrate them.

Obviously, things are much more complicated in real life; there is clothing, skin and bone. We have looked at the effects of clothing on the impact of pellets in ballistic gel, the impact of air rifle pellets on bone, and how the pellets can fragment. My interest is in the damage that can be caused.

As a consequence, I have taken an interest in the statistics for injuries from air weapons in the United Kingdom and other countries. Although the numbers are falling, there is still a significant number of injuries. One was reported in the news yesterday: an 11-year-old who had been at a football match in County Durham had an air rifle pellet embedded in his temple.

I am interested in the consequences that air weapons can have.

**Cameron Buchanan:** What are joules? I do not quite understand. Can you explain that to me, please?

**Dr Wightman:** Joules are the metric equivalent of foot pounds, as metres are for feet and inches.

**Anne McTaggart:** I ask the people around the table for their expertise on what is missing from the bill.

**Jack Cummins:** Thank you very much for the opportunity to discuss this important bill with the committee.

The Law Society's concern is that the bill does not address a number of non-policy-related matters in licensing law that are ripe for change. They are matters that affect the workability of the legislation and the ability of businesses to operate efficiently.

The key area is the transfer of licences. Ever since the Licensing (Scotland) Act 2005 came into force, there have been lots of unnecessary practical problems with the transfer of licences. There was a much simpler system under the previous legislation. The raw detail is set out in the society's full written submission, so I will not trouble you with that at the moment. Suffice it to say that the 2005 act makes the transfer of licensed businesses much more complicated than it needs to be. That is a purely technical matter that could be addressed without any policy implications.

There is also a problem—again, it sounds like a dry and dusty technical problem, but it is a serious one—with a lack of clarity in the 2005 act about licences ceasing to have effect in certain circumstances. Neither private practitioners nor their clerks know exactly what the act means in that situation.

There are problems with the surrender of licences by spiteful tenants who own them, and there is a continuing problem with the ability to make what we would call a site-only application for a licence, as was possible under the Licensing (Scotland) Act 1976.

That is all in the Law Society's written submission. It sounds arid and not terribly interesting but, nevertheless, the Scottish Government has long been aware of those matters and knows that the fix is pretty simple. It would certainly help lawyers, those whom they advise and—dare I say it?—those who advise licensing boards, if they could be addressed.

The committee will have noted that the Scottish Government has taken the trouble to make us sleep safer at night knowing that Angostura bitters will no longer be treated as alcohol. It strikes me that, if we can get down to that kind of technical

level, we can get down to the technical level that the Law Society would like.

**The Convener:** Pink gins and long vodkas, eh?

Dr Shortt, your expertise, too, is in alcohol licensing, I believe. Do you have any comments on the bill?

**Dr Shortt:** Yes, I do. My interest in the bill concerns overprovision. In particular, my interest is in objective 4 of the licensing objectives in the 2005 act, which states that

“protecting and improving public health”

is a licensing objective. In the documentation that was sent through, it was stated that it is difficult for licensing boards to use their powers on overprovision in any meaningful way. I am not sure that the bill helps that.

I will put the matter in perspective. I am interested in overprovision because Scotland has one of the highest alcohol-related harm rates in western Europe. It has the highest alcohol-related death rate in the UK, and recent research that we carried out shows that alcohol-related death rates in areas that have the most outlets are more than double those in areas that have the fewest outlets. I want the bill to contain more on overprovision, types of premises and capacity within them.

**The Convener:** Have you done any research on whether provision is greater in areas of deprivation than it is in other areas?

**Dr Shortt:** Yes. I have a paper that is currently under review that considers density by deprivation. However, the study that we carried out on death rates controlled for deprivation. Those of you who are aware of statistical models will understand what I mean when I say that we hold deprivation constant. Our research found that across all areas—not just the most deprived—death rates are higher in areas with the highest number of outlets regardless of the level of poverty.

**The Convener:** Does Fiona Stewart have any comments to make from the SOLAR perspective?

**Fiona Stewart:** We share many of the Law Society's concerns about transfers, variations and the lack of clarity in the 2005 act. The Government guidance that goes alongside the act is well out of date. We have had two further acts since that guidance was written—the Alcohol etc (Scotland) Act 2010 and the Criminal Justice and Licensing (Scotland) Act 2010—so the guidance needs to be brought up to date. We definitely share the Law Society's concerns about transfers, although we may differ slightly in some of our views on the solutions.

We welcome the fact that the Civic Government (Scotland) Act 1982 will be updated electronically, but we suggest that it is time to overhaul that act

completely. It consolidated several codices, but life has moved on considerably since 1982 and the act's provisions may no longer meet the requirements of today's society.

**The Convener:** I turn to Sandra White, whose interest is in sexual entertainment venue licences.

**Sandra White:** It is, convener. Before I touch on some of the issues that have been raised, I thank the committee for allowing me to be here. I must admit that it is much more daunting being a witness on this side of the table than it is asking the questions as a member. I have the greatest respect for all the witnesses who turn up at committee.

I agree that a look at the Civic Government (Scotland) Act 1982 is long overdue—it is a reason why I started my work on a sexual entertainment venue licensing member's bill. Under that act, councils would refuse an application for licence; invariably, that decision would be appealed. The matter would then go to the Court of Session here in Edinburgh, where the appeal would be lost. The process resulted in councils having to spend a lot of taxpayers' money, while having a number of constituents who were very unhappy not only about the sexual entertainment venue licences, but about overprovision of such licences.

I will touch on the transfer of licences—what I call grandfather rights—that Mr Cummins and Ms Stewart mentioned, and what happens when someone who has had premises licensed is refused a new licence. Proposed new section 45B(6)(e)(iii) of the Civic Government (Scotland) Act 1982 says:

“(6A) A local authority may refuse an application for the grant or renewal of a licence despite the fact that a premises licence under Part 3 of the Licensing (Scotland) Act 2005 is in effect in relation to the premises, vehicle, vessel or stall to which the application relates.”

That covers part of the grandfather rights issue.

Transfer of licences was also raised—not by the panellists, but by others—in regard to European legislation; EU legislation is also being satisfied in the bill. In addition, a precedent has been set in England and Wales, where local authorities have the choice whether to have zero tolerance to licensing sexual entertainment venues.

I am happy to take questions on sexual entertainment venue licences.

**The Convener:** I am sure that we will get a number of those. First, Calum Steele will give us the Scottish Police Federation's view on the bill.

**Calum Steele:** We have concentrated our comments largely on the air weapons licensing element of the bill. It is only right and proper that I advise the committee that I have been a

participant in field sports for more than 25 years and I hold shooting insurance with the British Association for Shooting and Conservation.

Our comments are heavily informed by our members' work experience, as well as by any personal experience that we may be able to bring to the table. We have some concerns that are not principally about the bill's provisions, but are more about the capacity of the police to deliver on the expectations that would be placed on us. That said, there are some apparent inconsistencies between the current licensing regime, particularly for firearms and shotguns and the conditions that may be particularly applied to firearms but not shotgun certificates, and the question of applying specific conditions to an air weapons certificate.

More likely than not there will be a significant number of licensing offences created as a consequence of the legislation. It is unclear whether there is any evidence to support the view that the legislation in its own right will reduce the criminal use of air weapons, which everyone recognises is a problem. That is, in a nutshell, the middle and both ends of it.

**The Convener:** Thank you very much. I should probably declare that, many moons ago and very much in the yesteryear, I managed to achieve various marksman badges in the air training corps.

Anne, do you want to come back in?

**Anne McTaggart:** No, I am okay for now.

**The Convener:** If any of the witnesses wants to contribute at any point, just indicate that. The meeting is informal in that respect.

09:45

**Sandra White:** When I started looking at the licensing of sexual entertainment venues I was overwhelmed by the submissions not just from organisations but from individuals, and not just from Scotland but from London and other areas of Britain. I am concerned that women are being accosted on their way home from work by men who frequent such clubs—there is proof of that. I was also surprised to find that a body of professional women feel that they are unable to get promotion because part of their job is to entertain clients, which means taking them out to clubs such as lap-dancing clubs—I will not give the name of the particular club in London, as I am sure that you will know which one it is—and they have refused to do that. It is not just that women are being accosted; some women are being denied promotion for not engaging with that aspect of society.

**Cameron Buchanan:** What do you think about the use of the word “appropriate” in relation to the

number of sexual entertainment clubs? They are going to exist, but how do you define “appropriate” in terms of areas or numbers?

**Sandra White:** We are allowing for zero tolerance rather than saying that we do not want any such clubs because we want to give the choice to local authorities. The bill will not make licensing of such clubs mandatory; it will be up to each local authority to fit into the legislation. On what is appropriate, if Glasgow City Council, for instance, thought that it would be appropriate to license no clubs, the bill will allow it to determine that. Personally, I would like none of these clubs to exist because they are demeaning to women. Women have contacted me after having been accosted on their way home from work going up the stairs in their close, which is next door to such a club. I see zero clubs as being the appropriate number.

**Cameron Buchanan:** I do not disagree with that, but I think that it is unrealistic to say that the number is going to be zero. Realistically, the choice must be left to local authorities, must it not?

**Sandra White:** That is why I decided not to make licensing mandatory. Under the bill, a local authority could choose to have two clubs if it wished, and it would be up to that local authority to explain to its electorate why it had chosen that number.

**The Convener:** I could play devil’s advocate and say that such clubs would be driven underground and would be unlicensed if there was a complete ban. What is SOLAR’s view on the issue?

**Fiona Stewart:** It is quite a difficult issue for SOLAR because we are the officers in local authorities and do not have any political clout. Our councillors would, ultimately, make the decision and, as officers, we would regulate any licensing scheme that came to us. The difficulty that we see in regulation is that the definitions in the provisions that are proposed for inclusion in the Civic Government (Scotland) Act 1982 are different from the provisions on adult entertainment in the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007. As officers, we would have to regulate and administer both systems, but who would be the regulator—the licensing board or the local authority? The different definitions would make it difficult for officers.

**The Convener:** Could you give us a flavour of those different definitions, please? That would be useful.

**Fiona Stewart:** The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 talk about “adult entertainment”—I cannot put my finger on the place where that phrase appears in the regulations—whereas “sexual entertainment”

is more strictly and widely defined. The ruling in the recent case of Brightcrew Ltd v City of Glasgow Licensing Board stipulated that a licensing board cannot regulate anything that does not relate to the sale of alcohol. Therefore, it might be better to remove “adult entertainment” from the 2007 regulations and leave it in the Civic Government (Scotland) Act 1982, or vice versa. From an officers’ perspective, something would have to be done about enforcement.

**John Wilson:** Good morning. I have a question for Ms Stewart, but Sandra White might also want to comment on it.

Sandra White has proposed that this type of entertainment be banned altogether by local government, or that we give each local authority the power to ban it from taking place in its area. Do you perceive a problem in that regard? If, for example, Glasgow took the decision to introduce a blanket ban while Edinburgh and Aberdeen decided to allow such clubs to exist, would that lead to legal action being taken against Glasgow for interpreting the legislation differently from other authorities in Scotland?

**Fiona Stewart:** I am not sure that I know the answer to that question.

**Sandra White:** John Wilson has raised an interesting point. Having looked through all the submissions with regard to that particular part of the legislation, I note that all the local authorities—Edinburgh and Glasgow in particular—are very keen to have it in place. I do not think that any legal concerns about the legislation would be raised.

In response to Ms Stewart’s comments about officers, I note that, in its submission, the Convention of Scottish Local Authorities welcomes the creation of a separate licensing regime for sexual entertainment venues and states that the legislation

“gives local authorities proper powers”.

COSLA, which is obviously the umbrella body for all local authorities, very much welcomes that particular part of the legislation as a way forward that will make it easier for councils to differentiate between sexual entertainment, adult entertainment and alcohol licensing. Looking at its submission, I do not think that there would be a problem, but I am not an officer, so—

**John Wilson:** I am just trying to get some clarification on whether the Scottish Government should be leaving it to local authorities to license sexual entertainment. My fear is that we could end up with the same companies operating in Glasgow, Edinburgh and Aberdeen and then challenging a local authority and taking it to court on the basis that if such activity is permissible in



Aberdeen and Edinburgh, it should be permissible in Glasgow. I just want to avoid lengthy legal wrangles in the courts, and the courts, rather than this Parliament, deciding on the appropriate use of the legislation.

**Sandra White:** Given that, as currently proposed, the legislation goes as far as zero tolerance, I would assume that if it became law, that would be the letter of the law. This is only my view, but I cannot see all those entertainment venues moving to one particular place.

As I have said, I have read the submission from the local authorities. They want some form of tightening up and, as COSLA has stated, they look forward to the legislation being implemented as they believe that it is the way forward. If the legislation is there and it goes as far as zero tolerance, each local authority will have the choice whether or not to implement it. I do not think that it would be possible to challenge a decision in court as it would be provided for in the legislation.

**Cameron Buchanan:** What about underage girls or boys? Is there any way that we can legislate with regard to under-18s or over-18s? Surely that is part of the problem, too.

**Sandra White:** I do not know whether Calum Steele wants to come in on that point. The police make regular visits to these sorts of clubs, and most of them have proof-of-age rules and that type of thing. I am talking only about entertainment licensing, but the same problems will exist in any pub or club. These places usually operate a system of tolerance that applies to the over-25 age group.

Given the concerns that were raised with me, I visited a number of these clubs in a purely professional role to see the situation for myself, and I certainly saw no underage girls or boys in there, either as customers or otherwise. The police and the licensing regulations would certainly look at the issue of underage people, and we would expect them to check anything in that regard. In any case, it is already against the law for underage people to go into licensed premises and consume a drink.

**Cameron Buchanan:** Can I raise another brief point, convener?

**The Convener:** Quickly, please.

**Cameron Buchanan:** In Austria, this kind of entertainment is licensed in some areas and not in others, and people can choose to go to those areas. The same could happen in Scotland. If Glasgow did not want such clubs but East Renfrewshire did, would people just go there?

**Sandra White:** I do not think that that would happen. People talk about the red light district in Amsterdam, for example, but it is closing down. It

is not part of the economy, and it is no longer seen as a good thing for Amsterdam. That system has fallen apart, and I certainly do not think that the same set-up would happen in Scotland.

**The Convener:** I wonder whether Calum Steele could tell us about his members' perspective on the policing of sexual entertainment licences. Does it cause a huge amount of difficulty?

**Calum Steele:** Thank you, convener. I am glad that you phrased the question in the way that you did, because I cannot speak for Police Scotland and would not presume to do so.

Sandra White's point about the age of those who frequent such premises is certainly in keeping with the experience of our members, or at least those who have made any comments on the issue. It is probably of large significance that the matter does not feature regularly in Scottish Police Federation discussions, as it suggests that the issue of age is not a problem for us.

**The Convener:** Would a complete ban cause difficulties for your members as it might mean their having to deal with an industry that has gone underground?

**Calum Steele:** Many things—prostitution, for example—are illegal, and we deal with them day and daily. The question is whether this is the right thing to do, and ultimately the legislators will take a particular view.

Police officers are very adept at finding out where illegal activity takes place, but that does not necessarily mean that it is equally easy to enforce the law in such circumstances. It would be almost unusual for local police officers not to know, for example, where prostitution—I appreciate that I am drifting off on to prostitution again—was taking place in domestic dwellings, or underground, to use the terminology that would apply.

Similarly, given our exposure to such knowledge, we could identify premises where illegal adult entertainment was taking place. It would not take long for that information to come to our attention. Of course, having the knowledge and intelligence does not necessarily translate into having the information to bring a case to court, but the intelligence systems that are available to the police service mean that, if the industry was to prevail in an illegal manner, we would almost certainly have the capability to identify where such activity was happening and ultimately to work on developing the resource to enforce the legislation.

**Jack Cummins:** With regard to Sandra White's comments about grandfather rights in relation to sexual entertainment venues, the Law Society notes a paradox in that respect. Some premises are licensed to sell alcohol under the Licensing (Scotland) Act 2005, and are authorised in their

operating plan to provide adult entertainment—which, as Ms Stewart has pointed out, is rather different from sexual entertainment.

**The Convener:** What is the difference in the definition?

**Fiona Stewart:** You will not be able to find a definition in the 2005 act.

**Jack Cummins:** Indeed. Strangely enough, there is no definition of “adult entertainment” in the 2005 act, but the term is defined in the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007. The definition of “sexual entertainment” proposed in the bill is very detailed, and I do not think that there is any room for doubt about what it means.

I think that adult entertainment is at, shall we say, a lesser level than sexual entertainment, if I can put it that generally. However, a situation—

**The Convener:** I am sorry to interrupt, Mr Cummins. Perhaps I am being a little naive, but I do not know what “a lesser level” means.

**Jack Cummins:** I am sure that you have looked at the definition of “sexual entertainment”. There is, if you like, more sexuality involved in sexual entertainment than in adult entertainment. In relation to the definition of “adult entertainment”, it is slightly frustrating that we cannot lay our hands on one of the 30 sets of regulations that have been published under the 2005 act. I am trying to think what it might amount to from a licensing board perspective.

**Fiona Stewart:** It would cover, say, Ann Summers parties, or a stag or hen night where a stripper is invited along, which could take place in any pub or hotel rather than in the sort of establishment in Glasgow, Edinburgh or Aberdeen that we have been discussing. It would be at that sort of level.

**Jack Cummins:** That is right; it might be, for example, a “Full Monty”-type event. The Law Society’s concern is that premises that have been granted a licence by the licensing board to sell alcohol and which are permitted to provide adult entertainment might end up being refused a licence to operate as a sexual entertainment venue by a separate licensing authority.

As it has said in its submission, the Law Society thinks it better for the licensing of sexual entertainment venues to be placed with the licensing board to ensure that the sale of alcohol and the regulation of sexual entertainment are dealt with by one body. After all, the licensing board will have experience and know the history of the premises in question, and will therefore know whether there have been problems with the premises and whether they have been well conducted.

10:00

**The Convener:** Or you hope the licensing board will have all of those things.

**Jack Cummins:** I beg your pardon?

**The Convener:** You hope that the licensing board will have all that knowledge.

**Jack Cummins:** I have always had every faith in licensing boards.

There is also the possibility that some premises that have not given the police or the licensing board any cause for concern will find themselves either out of business or having to reinvent themselves with some other form of entertainment that is not sexual entertainment.

**Mark McDonald:** Mr Cummins has suggested that a potential paradox is being set up, but I have to say that I do not see any problem. If we accept that a licence for sexual entertainment is for something that is a level beyond adult entertainment, it must follow that if a local authority takes the view that it is comfortable with the provision of adult entertainment as defined in the regulations but less comfortable with sexual entertainment as defined in the legislation, it is perfectly acceptable for it to refuse a licence for sexual entertainment, irrespective of whether the venue in question has an alcohol licence or the ability to provide adult entertainment. I am not sure that I would accept that that is either a paradox or, essentially, a bad thing.

**Jack Cummins:** This might be too simplistic an answer, but at the moment licensing boards are licensing premises that provide both adult and sexual entertainment because the lesser level is included in the greater level. The point that I was trying to make is that the licensing board will know about and have experience of these premises, because they will have been before the board on various occasions. The board will have a track record for premises that the licensing authority will not have. To put it crudely, I think that people who have not given the authorities any grief could go out of business as a result of what is being proposed. That is a policy matter and is therefore not for the Law Society, but it is certainly the paradox that I am referring to.

**Mark McDonald:** That is true, but by the same token, as Sandra White has pointed out, a number of venues have exploited a loophole in the 2005 act to offer entertainment of the type that the local authority does not wish to see being provided. Because the stipulations that will now be introduced have not existed before, venues have been able to circumvent the local authority’s wishes through legal challenges. Some premises might have been operating for some time, but they

have been doing so as a consequence of a loophole rather than through any policy intention.

**The Convener:** I will bring Ms Stewart and then Mr Cummins back in.

**Fiona Stewart:** I have been handed a note of the definition in the 2007 regulations of “adult entertainment”, which

“means any form of entertainment which—

(a) involves a person performing an act of an erotic or sexually explicit nature; and

(b) is provided wholly or mainly for the sexual gratification or titillation of the audience.”

**Jack Cummins:** An important issue is the presence of a so-called regulatory gap that means that licensing boards supposedly do not have power to regulate sexual entertainment. Ms Stewart adverted earlier to the Brightcrew case. The Law Society committee does not have a unanimous view on the import of that case, but one view—which is obviously the view that the Scottish Government has taken—is that licensing boards can regulate only the sale of alcohol and cannot regulate other matters. That is one interpretation of the Brightcrew case, but in my view that is a misreading.

That said, I perfectly understand Mark McDonald’s point, as it is the point on which this part of the bill is proceeding.

**The Convener:** In my experience, some parts of Scotland have licensing boards that deal with alcohol provision and licensing committees that deal with aspects of the various civic acts. Are you basically saying that the licensing board would deal with alcohol? If so, would the licensing committee deal with the sexual entertainment aspects?

**Jack Cummins:** That is how matters are going to be structured.

**The Convener:** I am talking about the current situation. I see Ms Stewart shaking her head.

**Fiona Stewart:** At the moment, unless a licensing authority has resolved that a public entertainment licence requirement should apply to such venues, there will be no civic government licensing of sexual entertainment premises. In many parts of the country, they will have only a liquor licence at the moment.

**The Convener:** That makes things a bit clearer. I will call Sandra White next, but I should make it clear that I want to move on to other things instead of just sticking to this subject.

**Sandra White:** Ms Stewart is right—and that is where the problem lies. Mark McDonald has explained the issue very well. I take it from the complaints and concerns that local authorities

have expressed in their submissions that they are powerless with regard to sexual entertainment licences. The bill’s provisions would give them the powers to deal with sexual entertainment, which would not necessarily have to be dealt with in conjunction with alcohol licences.

I take a bit of issue with regard to the point about Ann Summers parties. People would not apply to the local authority for a licence for an Ann Summers party, and I would take that out of the equation as far as this type of entertainment—if that is what people want to call it—is concerned.

I thank members for their comments. We will certainly look into the points that have been raised.

**The Convener:** I just want to get down to the nitty-gritty of some of these things. People can hold events in their own homes; after all, that is where most Ann Summers parties and that kind of thing take place—not that I have ever had one. However, there are also some quite big corporate events, are there not? I would imagine that they would have to be covered.

**Fiona Stewart:** It depends on the part of the country. In the rural authority area I come from, many of the licensed premises are community venues, and charity groups hold these kinds of functions in licensed premises rather than in people’s homes. I cited that particular example purely to highlight the difference between what could be classed as adult entertainment and what would be classed as sexual entertainment under the bill.

**The Convener:** So there is a lack of consistency across the country, which, hopefully, the bill will deal with. Is that right?

**Fiona Stewart:** I agree, but SOLAR still has concerns. Regulation is welcome, and it is possible to regulate the premises concerned, but who is regulating what? Adult entertainment is regulated by the licensing boards, and sexual entertainment is regulated by the local authority. Where do we draw the line? Enforcement officers would be going into premises under both regimes. What would they be looking for? Would venues be caught out under the liquor legislation or under the civic government legislation? That is where the different definitions give officers problems.

**Alex Rowley:** Are you saying that there needs to be further clarity?

**Fiona Stewart:** I would say so. Where does the role of the licensing board stop and the role of the local authority begin?

**The Convener:** That is useful—thank you.

I wish to move on. A lot of research has highlighted the fact that boards find the concepts

of overprovision and capacity difficult to define and measure. Like many others round the table, I come from a local authority background and I recall that licensing boards often decided not to grant a licence because of overprovision. Such decisions were almost immediately overturned by courts.

Will the provisions in the bill help in that regard? Will they give local authorities a bit more power such that, hopefully, the courts will not move in and overturn decisions that are made locally?

**Dr Shortt:** One of the most striking things in the documentation that you sent out was the very small number of applications that were refused. In 2011-12, only 21 licences were refused, whereas 347 were granted. In 2012-13, 12 were refused and 332 were granted. That shows the difficulties for local authorities in looking at the licensing objectives. The issue with overprovision is that nobody has defined what overprovision means, which is problematic for licensing boards and for local people.

Another problem in assessing overprovision is that local communities do not have the evidence available to them. For the study that we have just completed, it took us nine months to gather the data on the locations of alcohol outlets throughout Scotland. That information is not available in a central repository. If we look at the tobacco retailers register, we can easily get data on the location of tobacco retailers throughout Scotland. However, we do not have such a data set for alcohol outlets, so we had to contact each individual licensing board to gather that data and it took nine months of data gathering and data cleaning.

It is not made easy for local communities to go along to licensing boards and put across their side on overprovision because they simply do not have the data available. If anything could be done to make that data more readily available, it would help the licensing boards to meet that objective.

I would welcome the bill providing the ability to define an entire board area as an area of overprovision. That is because, in the health statistics that we work with to look at objective 4—the objective in section 1(4)(d) of the 2005 act—of “protecting and improving public health”,

the data is not available at very small local area level. Often, we are asked, “If this pub opens in this area, what will happen?” That data is not released because it is confidential data. In addition, there is a statistical error if we work with very small numbers. If we can look at the data at a whole board level, we might be able to break it down a little bit, but I would be very happy if the bill gave us the ability to look at whole area levels with regard to overprovision.

**The Convener:** Previously, if there were difficulties with the amount of social housing, local authorities could put in pressured area status and stop sales of social housing in that patch. Are you suggesting that there could be provision in the bill to have a blanket ban on any new licences in particular patches or even in entire local authority areas?

**Dr Shortt:** I am sorry—I am not sure what you meant when you referenced social housing.

**The Convener:** It was just an example of how authorities have managed to control policy issues by having blanket bans on something happening in particular places. Could there be an argument for an overprovision blanket ban in communities or in entire local authority areas?

**Dr Shortt:** Yes, because I think that the concept of overprovision is not being used at the moment. Even if licensing boards refuse licences based on overprovision, the decisions are being overturned.

I am very passionate about the idea that, as residents, it should be easy for us to access data on the number of licensed premises in our areas that we can use when we go along to licensing boards.

**Mark McDonald:** I have a couple of points. First, I am very interested to know when your research is likely to become available. In the research, there will obviously be an aggregation around licensed premises. There are off-licences, pubs, nightclubs and hotels. Is that disaggregation covered as well? I can think of a community in my constituency where there are a number of hotels, a couple of community pubs and some off-licences. To all intents and purposes, if you were to look simply at the number of licensed premises in that area without looking at what those licensed premises were, it might give a misleading impression of overprovision in that community, although there are undoubtedly communities—I am sure that the convener, as somebody who represents a city centre area, will understand this—where there are a significant number of licensed premises in concentrated areas.

**The Convener:** I will try not to start talking about my constituency. Dr Shortt?

**Dr Shortt:** The report is available now. I can send it to you after the meeting. We were able to disaggregate the data by on-sales and off-sales premises and we found that the greatest effect was from off-sales premises. We think that that is because there are cheaper products available, the products could be accessible to people who are under age and there is no control over who the final recipient of the off-sales product is. The strong effect from off-sales premises is not unique to Scotland. This is the first time that such work has been done in Scotland, and there is evidence

of such an effect elsewhere, particularly in North America and Australia.

What we were not able to do was look at capacity, which you mentioned, so we could not consider whether we were talking about village pubs or large, multifloor premises in the Grassmarket, for example. The data on that are simply not available, which is why I would like there to be a retailers register, much like the tobacco retailers register. If Scotland is to think about overprovision, we need the data so that we can ascertain what constitutes overprovision. That has been a problem for licensing boards, in that the information is often not available.

10:15

**Mark McDonald:** It would be useful to see the data that you collected and to have a look at your report. You made an interesting point, which I am sure that we can pick up at a later stage of our evidence gathering.

**Stuart McMillan:** Dr Shortt, you mentioned off-sales. Do you have information about the types of facility that sell alcohol? Is there a propensity for more alcohol to be sold by supermarkets as opposed to traditional off-sales premises?

**Dr Shortt:** Again, we need the data, so that we can find out whether we are talking about large supermarkets or small corner shops. We need to know the capacity of the off-sales retail units as well as the capacity of the on-sales retail units—we need to know how much floor space is given over to alcohol products. That is information that we will seek and build on in further work, but so far we have looked at on-sales and off-sales.

**Jack Cummins:** I think that the research to which Dr Shortt referred is the research that was presented to Alcohol Focus Scotland's national licensing conference on 7 October.

**Dr Shortt:** Yes.

**Jack Cummins:** That postdates the Law Society's submissions, so I am perhaps flying by the seat of my pants and expressing a personal view. As I understand it, the study was cross-sectional and further analysis is needed. I am not taking anything away from the report, which is interesting and highlights statistical anomalies. However, on page 10 you say that you cannot positively say that there is a correlation—a causal link, if you like—between the density of licensed premises and alcohol harm. You are no doubt aware that Cardiff University is involved in research that has £416,000-worth of funding from the National Institute for Health Research, which will—over three years, I think—look at the impact of changing alcohol outlet density on health-related harm.

You have done an important piece of work, Dr Shortt, but, with respect, a lot of things are happening in academia to seek answers on the link between health harms and outlet density, so it is important that a broad spectrum of academic research is examined.

**The Convener:** I assure you that we will be looking at a lot of things, Mr Cummins.

**Dr Shortt:** At the end of the report we noted our limitations, as is done in any good academic research. We noted that we had found correlation, not causation and that we need to look at the data through time if we are to identify causation. The statistics in the documentation show very little change in the granting of licences in Scotland, so we need to consider the data over a long period. A register would help us to do that.

I point you to an article that Campbell published in 2009 in the *American Journal of Preventive Medicine*, which was a systematic review of studies of alcohol licensing through time. The authors found nine time-series studies, seven of which found that increases in alcohol outlet density were linked causally, through time, with increases in alcohol consumption and related harms, particularly interpersonal violence. They also noted that their study—like ours—was cross-sectional, but of the 47 outcomes that were looked at by cross-sectional studies, positive associations were found in 41. It is important to say that, although we may find causation through time, in order to find causation we first need to find correlation, and that whenever there is correlation we may find causation.

**The Convener:** Stuart, do you want to come back in on that point?

**Stuart McMillan:** Yes, just briefly. As a consequence of the 2005 act, different regulations came in from 2007 onwards regarding the floor space available in facilities that sell alcohol. Do the research that you have undertaken and the information that you have gathered up to now show any change in the total amount of alcohol sold compared with pre-2005?

**Dr Shortt:** We do not have sales data.

**The Convener:** Mr Steele, do your members have a view on the overprovision of alcohol licences? I think that your members in my patch have a view, but is there a general view from the Scottish Police Federation?

**Calum Steele:** That is not something that we have considered in any great detail. However, the discussion is exposing the fact that the issue of overprovision is difficult to nail down. If you look at the capacity in many licensed venues between 10 o'clock at night and 3 o'clock in the morning, you will see that they are all full to the gunwales, and I

dare say that many people would argue that if there were more such venues, more space could be contained within them, so it would be difficult to say that there is overprovision in that sense. However, the self-same venues will be largely empty from 11 o'clock in the morning until 3 o'clock in the afternoon, so measuring provision and capacity for provision is not easy, although it is universally accepted that protecting licensed premises that have on-sale capacity results in considerable additional demand on police time and resource outwith the premises when they eventually spill out.

**John Wilson:** I know that Dr Shortt's study has been limited so far, but one of the big problems in many communities is not, as Mark McDonald indicated, the hotel or bar trade, but the off-licence trade and the small corner shops that sell the well-known tonic wine, particularly in areas such as the one that I live in—Lanarkshire—which have real problems.

How do you propose to measure that type of sale? Floor space does not come into the equation, given that I could take you to a small off-licence that will sell anything in excess of 200 bottles of that well-known tonic wine on a Friday night. How do we get to a position in which we can make an assessment of the situation in which, as well as a supermarket having an off-licence, a proliferation of small corner shops insist that they must have an off-licence in order to trade, although what they are trading in is a type of alcoholic beverage that is problematic in communities throughout Lanarkshire and central Scotland?

**Dr Shortt:** It is important that future research looks at types of outlets and at the products sold in different types of outlets. It is important to recognise that there are different pathways through which overprovision or a high density of outlets in an area can affect health and wellbeing. We often think only about the availability of those products or the ease of access to them and the fact that, because more of them are sold in our neighbourhoods, it is easier to get them, but there is also the idea that if premises are in close proximity to one another, there will be a reduction in prices because of competition and that the availability of such products can reinforce and shape our social norms and our attitudes towards alcohol. If we live in a society that is swimming with alcohol, that will shape the ideas and attitudes of teenagers in Scotland.

**Fiona Stewart:** Capacity is a vexed issue, not just for health and for the trade but for licensing boards. The total capacity cited for on-sale premises is virtually meaningless, because it changes from hour to hour, depending on the layout of a function room, how many tables and

chairs are in it, how big the dance floor is and so on.

Even in relation to off-sales, capacity is not straightforward: sometimes it is measured in cubic metres and sometimes it is measured in square metres; sometimes it is the floor space that has shelves on it and sometimes it is just the shelves. From the beginning, there has been no clear steer for licensing boards on what capacity means in either on-sales or off-sales.

Officers in SOLAR are concerned about the proposals in the bill to bring licensed hours into the equation, because not every premises trades to the full hours that they have on their licence. Sometimes they are open for shorter hours, perhaps because they close during quiet times, so what meaningful information would licensed hours bring to the table?

As licensing boards and licensing board clerks, we are as vexed as everybody else is about how to deal with overprovision, but some clarification is needed on how capacity is to be taken into account in determining whether there is overprovision. It is not as straightforward as you might think, because of all the technical issues that we have to deal with.

**John Wilson:** Ms Stewart said that capacity can be measured in cubic metres, in square metres and so on, and she mentioned the situation with floor space in off-sales. Is any account taken of the amount of storage space that premises have? The restriction is on what is in front of customers when they walk in. I gave the example of tonic wine. There might be only one shelf full of tonic wine on display, but there might be 20 cases sitting in a store room. The shelf might be replenished every time somebody buys two bottles.

**Fiona Stewart:** Generally speaking, storage is not taken into account at the current time. It is purely the alcohol displays within the store that are considered.

**Jack Cummins:** That point is often overlooked. The real capacity is not what is on the shelf. Under the legislation, capacity is the amount of space on the premises that is given over to the display of alcohol for sale on the premises, but the length and height is not the capacity. It is just a two-dimensional measurement. Again, this is not the Law Society's position, but my personal view has always been that the real capacity is what is in the back shop that can be used to refill the shelves whenever what is in the authorised space starts to run down.

I entirely agree with Ms Stewart about licensed hours being part of the assessment of whether there is overprovision, because they may or may not be used. I do not think that they contribute

anything—nor does the Law Society—to a better understanding of what would constitute overprovision, so we are agreed on that.

**Mark McDonald:** I have two points. First, I am interested in the issue of storage space. In the dim and distant past, I worked for a major supermarket chain, which shall go unnamed, and all the alcohol had to be stored in a locked cage at the back of the warehouse. I do not know whether that was the result of regulation or whether it was just a choice that was made—

**The Convener:** Warehouses were normally open in those circumstances, in my experience of working in the same kind of stores.

**Mark McDonald:** My second point follows on from an interesting point that Mr Steele made about the pressures that are caused by large numbers of venues in a concentrated area spilling out at the same time. When I was a local authority councillor, I floated a suggestion that local authority licensing boards should look at implementing what I would call cool-down periods, with differentiation between the time period for the sale of alcohol and the closing time of premises, or differentiation between the closing times of premises in a certain area.

Neither of those ideas is necessarily a perfect solution, but are they already available to licensing boards? Would there be legal implications if they were to implement such proposals? I would be interested to learn a bit more about those things, because I am by no means an expert.

**Jack Cummins:** The policies that licensing boards implement usually provide for different terminal hours depending on the type of premises. For example, in Glasgow city centre, the terminal hour for pubs is 12 o'clock, for restaurants that meet certain criteria it is 1 o'clock and for nightclubs it is 3 o'clock. The situation is different throughout the country.

Your point about a large burst of people going on to the streets at the same time and the stress that that causes is one of the reasons why capacity became a feature of licensing legislation for the first time in 2005. As you probably know, the Nicholson committee reviewed licensing law in the run-up to the 2005 act. It noted that a licence was a licence and that, although a superpub might have much more trading space than a small, traditional pub, it was still counted as one licence.

From the Nicholson point of view, overprovision was linked to stress levels caused by a large number of people coming on to the street in a concentrated area late at night, which of course has police resource implications. Nicholson differentiated between different types of premises. Closing times are staggered throughout Scotland.

10:30

**Mark McDonald:** Let us go slightly further than that. For example, Justice Mill Lane in Aberdeen has a large concentration of premises that empty at 3 o'clock in the morning. I floated the suggestion that licences could be differentiated across those venues by changing the closing time of the premises or the time at which alcohol ceases to be sold. Can such local variations be made by licensing boards or would there be legal difficulty for them in taking that step?

**The Convener:** Before I let you answer, Mr Cummins, I want to add to that. When that has happened in certain places, I understand that rival premises owners have made challenges in court about who should close earlier and who should open later.

**Jack Cummins:** Let us look at West Dunbartonshire licensing board as a model. It was the first board to declare almost all of its area as overprovided. It was split into data zones and I think that I am right in saying that 15 out of 17 of those data zones were overprovided. However, overprovision only exists in relation to what might be called vertical drinking establishments and off-sales, so hotels and restaurants would not be caught by the overprovision policy and would be looked at in the normal way. Importantly, that policy was revised a couple of years ago and it now allows the licensing board to look at the benefits from inward investment for the economy and the health improvements that might come about from putting people into work.

The short answer is that there can be differentiation. For example, an area can say that it is not having any more off-sales. Highland licensing board recently said that it was not having any more off-sales with a display capacity in excess of 40m<sup>2</sup>. That is quite an innovative step. All sorts of refinements are possible.

**The Convener:** Boards often face difficulties when owners challenge their decisions in court by saying, "The boy up the road is allowed to open until 1 o'clock in the morning, so why am I not allowed to do so?" That is where difficulties have arisen on my patch in the past. Does the bill help in that regard or are we still going to have sheriffs overruling licensing boards every day?

**Jack Cummins:** If the licensing board has a policy that certain premises should be able to be open until a certain time and the disgruntled licence holder that you describe tries to bring themselves within that policy, they will have to have a large chequebook and lots of money to challenge it, because litigating on licensing is phenomenally expensive.

I do not want to put her on the spot but, unless I misremember, I happen to know that Ms Stewart

has some experience of litigations from nightclubs, so she might be able to assist us.

**Fiona Stewart:** I think that you are misremembering.

The problem that licensing boards face is that the trade wants a level playing field and pubs and nightclubs want to operate the same hours across the board, whatever the licensing board has said those hours might be. For differentiation, it would be difficult to pick the establishments that would lose their hours. We would have to look at new premises coming in, but they would say that they ticked all the boxes and would ask why they were not getting to open for the same hours as the pub next door. Unless there was a specific problem with an individual premises that meant that the board could review whether its hours or capacity were causing a problem and take action if that was found to be the case, boards would be put into a difficult position, especially when the overwhelming evidence that has been coming before boards for a long time is that premises want to be treated the same and want a fair shot at the market.

That is why we see policies that say that pubs can open until 1 and nightclubs until 3. I know that some boards previously had curfews in place to try to control disorder, but Highland is the latest board to lift its curfew because the reasons for it are simply no longer there.

**Alex Rowley:** It would be useful to get the research that Dr Shortt talked about and to find out about any links to other research. It would also be useful to find out about experiences in other European countries, in some of which it is not possible to go to the corner shop to buy alcohol.

I want to switch subject and ask about air weapons. My question is for Calum Steele. In the financial memorandum to the bill, the Scottish Government states:

“The main costs falling to Police Scotland will arise from the initial certification of air weapons holders, and ongoing checks and renewals of certificates once the main regime is in place.”

However, it goes on to state:

“To a great extent all of the main elements of the regime are already in place”.

Therefore, the Government does not consider that there will be major costs involved. You seem to have a different position.

**The Convener:** Calum, can you answer that from a federation perspective?

**Calum Steele:** I can certainly give my view from a federation perspective. We find that, regardless of their hue, Governments traditionally underestimate the cost of any measure that they

introduce, with the result that it is not uncommon for the costs to end up being borne largely by the service that has responsibility for the relevant area, whether we are talking about the licensing service, which has responsibility for alcohol licensing, or the police service, which has responsibility for firearms licensing.

The difficulty that the federation has with the financial memorandum is that it contains many suggestions but no evidence for how those conclusions have been reached. For example, there is no indication of why the statement that 40,000 air weapons might be held by firearms or shotgun certificate holders, many of whom will own more than one such weapon, has been made or what evidence supports it.

Given our experience and the number of staff who undertake such activities on a day-to-day basis, we have real difficulty in understanding how that translates into a limited number of inquiries based on there being a small number of individuals, when no guidance has been prepared on what will be required by way of background checks and supporting evidence before an air weapon certificate is granted.

I suspect that others will express a similar view; just because statements are made, that does not mean that they are true. Some evidence should be provided to support them. At a time when everyone in the public sector is under considerable pressure and—whether people admit it or not—a conversation is undoubtedly taking place about whether there should be fewer police officers in Scotland, it seems to me that the proposals in the bill cannot be glibly dismissed as having little impact on the police service. Any police officer who is involved in day-to-day response policing—those who answer calls and attend incidents—will tell you that they are stretched. The impact of adding the burden of potentially having to deal with up to 500,000 air weapons—although it is questionable whether that number would ever fall under the licensing regime—needs to be properly understood, and my organisation’s view is that that has not happened. All that we have had are bland statements.

**The Convener:** Dr Wightman, do you want to come in on that point?

**Dr Wightman:** I cannot add much on licensing. I would be interested to know where the figure of 500,000 air weapons comes from.

**Alex Rowley:** Do we have any idea of how many air weapons are out there? Is there a best guess?

**Dr Wightman:** I am afraid that I do not know.

**Alex Rowley:** There is also an assumption that, were licensing for air weapons to be introduced,



people would surrender them. Are there many people who have air weapons that are just lying about and who, if they had to get them licensed, would just hand them back?

**The Convener:** You are talking about an amnesty.

**Calum Steele:** Every time there is an amnesty, a number of different weapons are surrendered. That would apply even now: if there was to be an amnesty tomorrow, unlicensed shotguns and unlicensed firearms would be handed in. It happens time and again: the same thing occurs as standard across most police services in the United Kingdom, and it would undoubtedly happen again. My experience, and I stress that this is just my own experience, suggests that there probably are instances of people who have weapons just lying around or sitting in a dusty garage. I suspect that there are as many people who hold and use air weapons properly and competently as there are people who bought them once upon a time and have forgotten that they still have them.

**The Convener:** I now have three members on my list—

**Alex Rowley:** Could I just finish, convener?

**The Convener:** Yes—if you are brief.

**Alex Rowley:** There is a stringent process in place, which includes background checks and so on, for people who hold or apply for shotgun licences. The financial memorandum seems to suggest that such extensive, detailed background checks will not be necessary for airgun licensing. What is your take on that?

**Calum Steele:** That is what the memorandum suggests. There is indeed a question about whether there needs to be additional consideration given to licensing in relation to people who currently hold firearm or shotgun certificates. It seems to the Scottish Police Federation, and it seems to me personally, that that would be an unusual step.

Levels of danger are difficult to quantify. If something is lethal, it is lethal regardless. It does not matter whether someone is bludgeoned to death or blitzed out of the air with a rocket-propelled grenade—they are still dead. The issue of how lethal or otherwise any particular weapon is needs to be properly understood.

Given that a very detailed approach is taken to the licensing system, particularly for shotguns and firearms, there would seem—if legislation proceeds in relation to this particular element—to be an easy win in providing the capacity for an existing firearm or shotgun certificate simply to cover an air weapon or air weapons.

However, your question particularly focuses on those people who do not fall into that category, and how much examination would be required in that regard. If the requirement was for something akin to the old-fashioned game licence—when people could go to the post office, pay for it, pick it up and walk out the door—that would be as meaningless as the game licence itself was. Other than that individual applications would be assessed in their own right, it is not clear what or who would or would not be subject to a detailed process of application and consideration.

**Mark McDonald:** The motivation behind licensing in this area is obviously related to both actual and perceived harm. I am interested in the study that you have done, Dr Wightman, and in what you have concluded from it with regard to the harm that can be caused by air weapon pellets. Can you give us a bit more detail on that?

**Dr Wightman:** Are you asking about the actual damage that air weapons can do, or the statistics?

**Mark McDonald:** Both, if you wish to offer that.

**Dr Wightman:** Initially, we looked at firing into ballistic gel, to simulate the damage to fleshy organs. We then looked at embedding animal organs from an abattoir into the gel and compared that with firing into the gel on its own. The ballistic gel is a reasonable model for the various soft tissues in the body. There is obviously a bit of variation between the organs—a lung is penetrated more readily than heart material—but the gel still provides a reasonable approximation. The fact that the pellet will go 10cm to 15cm in if there is no bone or anything else to prevent that means that there is a potential for serious injury within the body.

We have also looked at the effect of clothing, which can reduce penetration. Sometimes, clothing reduces penetration significantly; at other times, it does not seem to have so much effect. We have a project running this year that will examine why that is the case.

10:45

Although we have tried simulating skin, we have had difficulty in getting reproducible results. As I said in my introductory comments, we are talking about a complex system involving, for example, clothing, skin and fleshy organs, and perhaps bone behind all that. We have been trying to simplify the model but, from the work that we have done, it appears that pellets can penetrate quite a distance into the body.

Looking at the literature in medical journals, I would say that most of the work on the effect of air weapons has come from medical doctors examining the injuries and fatalities that have been

caused by such weapons. That complements what we have been doing. There have been cases of quite serious injuries and fatalities as a result of air weapons; the number might be declining in the UK—the same is true of other firearms—but it is still significant.

**John Wilson:** In your submission, Mr Steele, you suggest that the costs of implementing the licensing regime for air weapons might have been underestimated. What might it cost to enforce the legislation with regard to individuals who decide not to get an air weapons licence? Would the police have to put on a major exercise to get as many unlicensed weapons off the streets as possible? Is it the case that the only time the police really come into contact or interact with air weapons is when illegal activities or perceived illegal activities take place?

**Calum Steele:** The issue of compliance costs is detailed in paragraph 76 of the financial memorandum, and there is a suggestion that the Police Service of Scotland should not pursue air weapons as a significant priority but deal with issues as and when they occur.

Costs should be broken down into three areas: the financial cost; the human cost, in terms of the impact on communities and individuals; and, of course, the cost of the time that police officers spend dealing with such cases. It might help to spend a bit of time on each area. As the financial cost will be identified only once the process has been worked through to the end, it will be really difficult to answer that question. However, what will inevitably contribute to that cost will be the increase in the number of licensing offences identified and, undoubtedly, reported to the Crown Office and Procurator Fiscal Service. That will impact on the time that the service dedicates to dealing with such matters, which might, ultimately, translate into court time. The reporting time, the time that will be spent by the procurator fiscal and court time are all a considerable drain on police time, and I do not think that it will be acceptable either to the legislators or to our communities for the police to take an inconsistent approach where Joe Soap is deemed to be forgetful but someone else whose job people do not like the look of gets reported. That is problematic.

The human cost will, of course, be the impact on individuals. I suspect that many tens of hundreds or possibly thousands—which is obviously the same thing; I meant tens of thousands—of individuals out there might well find themselves falling foul of the criminal justice system because of licensing offences. That has not been a feature before, and, because consideration has not been given to the movement of air weapons across borders, the issue applies not just to individuals who are domiciled in Scotland but to individuals

who come to Scotland from elsewhere in the United Kingdom.

Although I consider that, in the early days, a potential prosecution, a recorded prosecution or a fixed-penalty disposal being brought against someone will be regarded as a relatively minor thing, the impact on individuals later in their lives could be great. A young person of, say, 18 or 19 years old could fall foul of the criminal justice system and, later in life, when they are going for employment or trying to get a job overseas—the global marketplace changes so quickly and competition for jobs is so vehement—they could find that that has a devastating impact on their future life chances. That needs to be properly understood.

It is suggested that there will be a long intervening period of non-active pursuance, if you like, when there may be enormous quantities of air weapons handed in for surrender. It is really difficult to make estimates about the transportation, physical seizure, recording and holding of those weapons until such time as they are taken away—if indeed they are to be taken away—by a scrap metal dealer.

As I said, the statements that have been made seem to be based on no evidence other than just a finger in the air and the feeling that this seems about right. Until such time as we have a reasonable grasp of what is out there—a reasonable gauge of how many current certificate holders would fall within the ambit of consideration—and how long it is going to take, it is going to be really difficult to accurately predict whether the cost on the service will be negligible. That is the case for time on its own, particularly in more rural areas and in the Highlands. There is a reference in our submission—

**John Wilson:** I have a supplementary question, convener.

**The Convener:** It has to be very brief, with a very brief answer.

**John Wilson:** It will be. Earlier, Mr Steele said that, when there is a weapons amnesty, a number of unregistered shotguns and firearms are submitted. Could he give the committee—perhaps not today—an indication of how many unregistered shotguns and firearms have been submitted in weapons amnesties in the past?

**The Convener:** I think that that would be difficult for Mr Steele to do, but we will get that information from Police Scotland.

**Calum Steele:** Yes.

**Anne McTaggart:** On the same note, Mr Steele, your submission mentions the information and communication technology system and its ability to absorb the additional data that may be

created by the introduction of the licensing system for air weapons. Can you explain what you meant by that?

**The Convener:** Mr Steele, can you be quite brief, please?

**Calum Steele:** I will try to be brief; I am not renowned for that, but I will give it a go.

As everybody knows, our IT systems are not the best and whether they can deal with the potential increase in database entries that will be required has not been tested. As a consequence, it would be difficult to predict accurately how much an IT provider—recognising that the service is a hostage to fortune—would charge the service to make sure that the system has the capacity to deal with the additional data that it would be required to hold.

**Stuart McMillan:** I have heard everything that has been said up to now, but I want to go back to some of the other evidence that we have received. In the submission from the Scottish Society for the Prevention of Cruelty to Animals Michael Flynn states that, in the UK,

“There are many activities that require to be licensed from driving to watching a television in your own home. UK citizens do not have a ‘right to bear arms’.”

In the UK at the moment, having a television without a TV licence is a criminal offence that can lead to a court appearance and a fine of up to £1,000.

This is day 1 of our consideration of the bill. Many people outside the Parliament might consider it quite strange that although they can be charged for not having a TV licence, there is no similar scheme in operation for air weapons.

**Calum Steele:** That goes back to the very essence of what this particular element of the bill is trying to deal with. Is it trying to create a licensing regime for air weapons, or is it trying to deal with the criminal use of air weapons?

If it is the former, the Parliament can by all means introduce a bill and create offences, so that people who breach the licensing provisions are regularly brought before the court—I suspect that that will happen regularly. However, if it is the latter and the intention is to deal with the criminal use of air weapons, I rather fear that people who are criminally inclined to use air weapons, much like those who are criminally inclined to use firearms and shotguns, will continue to be criminally inclined to use them, regardless of the licensing regime.

If the intention is to manage the availability of air weapons through a licensing system, we can introduce a licensing system, just as we have done in the context of driving a car or watching television. If the intention is to deal with criminality,

that is a different thing altogether. Let us not forget that although there is a licensing requirement in relation to watching television or driving a car, many people do not have licences, because they are criminally inclined not to get them.

**The Convener:** Ms Stewart, members get quite a lot of complaints about the taxi licensing regime. The proposals in the bill arose from the need to tighten regulations and reduce the opportunities for circumventing the licensing regime. Does the bill tackle companies such as Uber that pick folk up, or will we have to rethink that?

**Fiona Stewart:** I was in a meeting recently with Scottish Government representatives, at which we discussed Uber and similar applications. To some extent we might have to rethink. In some parts of the country, unlicensed operators are not prevalent, although there has always been tension between the taxi trade and the private hire trade.

The law makes it a criminal offence not to have a licence, and the majority of taxi firms are licensed. Uber opens up a whole different world, but it does not take away anything from the current legislation, whereby anyone who operates a taxi or private hire car needs a licence to do so. I am not sure that we have reached a stage at which we can resolve the problem that Uber and similar applications present.

**The Convener:** Is SOLAR’s licensing working group satisfied with the bill’s provisions on taxis and private hire cars? Do we need to do anything else?

**Fiona Stewart:** We are concerned about the proposed limits on private hire cars and the different approaches to restricting numbers. Currently there is provision to assess unmet demand for taxis, and the bill will allow local authorities to consider overprovision of private hire cars. We are concerned that that approach might lead to an issue of plate value, just as some taxi plates have a value, and might not achieve the desired result.

**Cameron Buchanan:** Do you think that Uber has been banned in some countries because taxi drivers are afraid of the competition? There is a temporary ban in Germany, for example.

**Fiona Stewart:** I do not know the reasons why Germany banned Uber, although I am aware of the concerns of London taxi cab drivers. At our meeting with Scottish Government officials we did not go into such detail. The issue is how we deal with operators who give quotations online for a car to pick someone up. It appears that such operators are self-employed and are not employed by Uber. The person who books the car does not know whether the vehicle is licensed, and no one is taking responsibility for the ones that do not have licences.

**Cameron Buchanan:** I presume that there is also a problem with third-party insurance.

**Fiona Stewart:** Yes, and there are implications if there is an incident.

**The Convener:** I have been told that the ban was only in Berlin and has been overturned by the court.

The difficulty that Fiona Stewart has identified is that many folks who use such services do not realise that they are unlicensed. There have been serious incidents in Scotland after folk entered cars thinking that they were taxis or private hire cars, only to find that they were not. We have to get this absolutely right.

Thank you all for your evidence. We have had a fairly lengthy session and your input is very much appreciated. The clerks might well get back to you to clarify various points and seek further information.

11:00

*Meeting suspended.*

11:09

*On resuming—*

**The Convener:** I welcome our second panel of witnesses: Dr Colin Shedden, who is the chair of the British Association for Shooting and Conservation; John Batley, who is director of the Gun Trade Association; David John Penn from the British Shooting Sports Council; and Graham Ellis, who is chair of the Scottish Air Rifle and Pistol Association. I invite them to make a brief opening statement.

**John Batley (Gun Trade Association):** We were all together on the firearms consultative panel, and the minutes of all those deliberations are on record. We have worked consistently with the Scottish Government over the past three years on the aspects of the bill and have all made submissions on its provisions.

**The Convener:** We already have a licensing regime for shotguns and other firearms. Why should air weapons be treated any differently?

**Dr Colin Shedden (British Association for Shooting and Conservation):** Over a considerable number of decades, we have built up a system of licensing for firearms and shotguns, as you rightly identified. We have not had licensing for airguns at all.

We are faced with the problem that there is an estimated minimum of 500,000 airguns in Scotland. The vast majority of them do not have a serial number, unlike the vast majority of shotguns and other firearms. Consequently, introducing a

licensing regime from scratch is unlikely to be successful because the only people who would submit themselves to it would be law-abiding people who wish to remain law-abiding.

Previous witnesses identified the existence of a criminal element who might not put themselves forward for licensing, so the question must be whether a licensing system will address criminal misuse of airguns or basically operate for its own sake.

**David John Penn (British Shooting Sports Council):** One must remember that there is widespread continuing use of air weapons in pony clubs, the boy scouts and cadet units as well as individual use. We never hear about that because nothing is going wrong. There is a huge use of air weapons and very little misuse in comparison.

Most other countries do not see the need to license air weapons. For instance, the European directive on weapons control excludes air weapons from its remit. We have to remember that weapons of the sort that we are talking about, which have a power threshold of less than 12 foot pounds and more than 1 joule, are designed for urban use—they are designed for use in the garden or in the home—because they are not powerful.

**Graham Ellis (Scottish Air Rifle and Pistol Association):** To reiterate what Colin Shedden said, there is little or no criminal element in our membership and the people who shoot airguns. The introduction of a licensing system will force people to go down that route and, probably, to migrate on to other sports. We are concerned that it does little or nothing to address the criminal element who would misuse airguns.

**John Batley:** Since 1969, when the rules setting the power of air weapons were introduced, England and Wales—leaving out Northern Ireland—and, up to this point, Scotland have had no licensing system for the presumed and, I believe, correct reason that there was no need for the licensing of low-powered air weapons.

**The Convener:** I will make a small admission—I should say that there was no criminality involved. When I was a young boy, I was in the air cadets and enjoyed shooting a fair bit. I had a friend whose father was also a shooter and had a variety of firearms, none of which we could ever have gained access to because he was always careful about that. However, there was also an air rifle in the house and we managed to get hold of that quite easily and go out and shoot a bit.

As I said, there was no criminality involved but there seems to be a difference in the level of responsibility. The man held a firearms licence and was very careful about the weaponry that he held under that, but he was less bothered about

the air rifle. Would a licensing regime ensure that people were more responsible about safeguarding such weapons?

I should say that we were 13 and 14 at the time. We were probably more responsible than many who were about then.

11:15

**Dr Shedden:** Licensing is unnecessary in the kind of context that you have just described because current legislation states that it is an offence to allow anyone under the age of 18 unauthorised access to an air weapon. Those who have an air weapon in their house have an obligation to secure it under lock and key or otherwise keep it out of reach of young people. Inevitably, that has had an impact on the number of offences committed by young people, because technically they should now not be able to access air weapons in the home.

**The Convener:** If nobody else wants to comment on that, we will move on to Mark McDonald.

**Mark McDonald:** The point has been made a couple of times that there will always be an element who will circumvent the legislation. Surely the point about introducing certain legislation is that it allows us to differentiate easily between the law-abiding and the lawbreaking; otherwise, there would be no point to the legislation. Saying that a tiny minority will always circumvent the legislation is not an argument for not legislating. Surely the point is that we allow ourselves to differentiate between the law-abiding and the lawbreaking by introducing legislation.

**John Batley:** I agree, but the bill is a new departure. It is the first time that a bill has been introduced in the UK to license air weapons. For the 4 million owners of the roughly 7 million air weapons in the UK, the bill is a new departure. We are in uncharted waters and the bill that you have prepared sets out to deal with that. I do not think that I need go any further than that.

**The Convener:** It is not a bill that we have prepared; it is a bill from the Government.

**John Batley:** I beg your pardon.

**Graham Ellis:** As far as criminality goes, a raft of legislation is used day in and day out to prosecute those who would use air weapons criminally. Those who currently use an air weapon for sport, as a pastime or for vermin control would not have a major issue with the bill, but they would have an issue with its proportionality and the potential criminalisation of what is currently a perfectly legitimate pastime.

**David John Penn:** I think that one has to remember the point made by the Scottish Police Federation that a licensing system per se will not be very likely immediately to flush out those who are criminally inclined, because they will just stay quiet and not be licensed. They will come across only when they commit a criminal act, and then they will be prosecuted. However, plenty of law exists now to prosecute effectively people who misuse air weapons. The licensing of air weapons would not help very much. It would provide another stick to beat people with, but a raft of sticks is already available.

**Dr Shedden:** In an ideal world the suggestion of licensing would be very sensible, but the proposal in front of us in the bill is that Police Scotland will provide the resource for administering a licensing scheme but will not prioritise resources for identifying those who illegally possess airguns. If resources and police numbers were not an issue, it would be ideal if we could have licensing and police investigation into those who were committing an offence by illegally possessing an air weapon. However, we are not in that position.

Another point is that the number of offences involving air weapons has declined considerably over the past six years. The strategy that has been in place, which is a joint strategy between the Scottish Government, Police Scotland and the shooting organisations, is one of education and enforcement of existing legislation. I noted that the Cabinet Secretary for Justice used those very words—education and enforcement of existing legislation—when he supported a new strategy on knife crime in the west of Scotland.

**The Convener:** Mark McDonald wants to respond.

**Mark McDonald:** I have looked through the written submissions, which refer to the range of uses for air weapons, from pastime to pest control. Where do you perceive the issues arising in terms of people being prevented from using air weapons as a result of a licensing scheme? In fact, is it your main concern that a licensing regime will prevent people from using air weapons as a pastime? That is not my interpretation of the bill's intention.

**Dr Shedden:** A number of good reasons are given for the granting of an air weapons certificate. They seem quite comprehensive, but the British Shooting Sports Council has identified that the vast majority of people who use air weapons in Scotland and the rest of the UK use them for informal target shooting in gardens, otherwise known as plinking. Although the bill does not prohibit plinking, the policy memorandum states that ministers would not normally accept shooting in domestic gardens as a good reason to grant a licence.

It concerns us enormously that a significant number of owners of air weapons could be prohibited from getting a licence because they cannot provide a good reason, they do not have access to a large area of ground or they are not members of clubs.

**The Convener:** Does anyone else want to comment on that?

**John Batley:** I think that we all support that view.

**Mark McDonald:** I want to check that I have understood the Gun Trade Association's submission correctly. It appears to suggest that, if somebody who is below the age for a licence comes to Scotland from elsewhere, an exemption should be made for them because they can have an air weapon in their country at that age but they cannot have one under the licensing regime here. Have I picked that up correctly?

**John Batley:** Yes—absolutely.

**Mark McDonald:** Okay. It strikes me that age differentiation occurs in a range of areas, one of the most obvious being the purchase of alcohol. The logical extension of that argument would be that, if a young person comes to Scotland from a country where the age at which people can purchase alcohol is lower than it is in Scotland, we should allow them to be served in pubs because they can be served there at home. The suggestion strikes me as inconsistent.

**John Batley:** I believe there is a slight difference here. Let us assume that a young person below the age of 18 who can purchase an air weapon at 16 in his country comes to Scotland. The bill says that he cannot receive that air weapon while he is in Scotland—it has to be sent to him in his home country. In other words, he cannot take possession of the air weapon while he is in Scotland.

If he is allowed to buy an air weapon in his country but he just happens to be in Scotland and he is not going to take possession of it—if it is going to be sent to his country, which it would be, under the bill—I see no reason why he should not be allowed to purchase it. If he was seeking to take it away and take possession of it, I agree with what the bill says, but I believe that he should be allowed to purchase it.

**Cameron Buchanan:** Sporting activities are affected, and we have received an interesting submission from Scottish tetrathlon, which states:

“The majority of our members are under 17 and as such the air weapons licensing systems would have a huge effect on them. If however we were allowed to become an approved air weapon club and therefore exempt from individual licences this would work for our organisation.”

I think that most of its members are between 14 and 17. Are you in favour of amending the bill to allow what it suggests?

**Graham Ellis:** There are a number of issues around youth shooting. You mentioned Scottish tetrathlon, but there is also the Pony Club, the air training corps and the scouts. A whole plethora of youth organisations use shooting as a pastime or a sport. The regulation of facilities is fine where a dedicated facility is used, but a lot of events—for example, the tetrathlon—take place over various places.

The licensing of clubs would bring in certain concerns. Would it apply to private clubs where membership is limited to licensed individuals? Are we trying to cater for the general public or for specific groups? The licensing of clubs might be beneficial, but there are a bunch of pitfalls around it.

**Cameron Buchanan:** Would it not be a compromise if air weapons clubs, Pony Club branches or whatever could be licensed for sporting activities? The licence and the weapons would be held by the club rather than individually.

**Graham Ellis:** Our concern was that the licences that the bill mentions are for facilities as opposed to clubs. The licensing of a club in itself is not a major problem, but the provision may impact on those who do not belong to a club but still compete in sports such as tetrathlon or Pony Club activities. They may hold air weapons and will still require a licence. There is a trade-off on benefits.

**David John Penn:** What we are asking for effectively mirrors the existing situation with regard to approved rifle clubs for cartridge firearms. A club can hold a club certificate and its members may shoot the rifles without having a firearms certificate themselves. That is already a well-established practice in club shooting and causes no problems.

**Cameron Buchanan:** But shooting would have to take place on licensed premises. People could not practise in their gardens, for example—they would have to practise on the premises of a particular group or Pony Club branch.

**David John Penn:** Not necessarily—the existing approved club system allows for a club to exist without having its own range, so its members use other people's premises or Ministry of Defence ranges.

**Cameron Buchanan:** That is understood. Obviously a club would not necessarily have its own premises, but if its members went on sporting events such as trap shooting for the Olympics, they could presumably use the premises of the society or club that they are at.

**David John Penn:** Indeed.

**Stuart McMillan:** Good morning, gentlemen. I had a question for Dr Shedden on his earlier comments, but it has gone from my mind. I will come back to that one in a moment.

My other question is on plinking taking place in Scotland and whether there is a clear divide between rural and urban areas in that respect. I grew up on a housing scheme and I was not aware of plinking taking place in my area.

**Dr Shedden:** Plinking does occur. It may not occur in areas where gardens are relatively small, but it is relatively common where gardens are large. What concerns me is that a sizeist element is creeping into the debate, and probably a financial element too. If someone lives in a large leafy suburb with a large garden, the police will inevitably think that that is a suitable place to use an air rifle for controlling rabbits, pigeons, squirrels or rats, or for informal target shooting. However, if someone has a relatively small garden, it may be deemed unsuitable. That is certainly what the policy memorandum states.

The advantage of air weapons, as we have already discussed, is that they are relatively low-powered and can be used in confined spaces for pest control and target shooting. In many situations, someone can safely set up a small range in a small garden and safely use an air rifle for their own informal target shooting. As I said, that is probably what the majority of people with air rifles in Scotland, and in the rest of the United Kingdom, actually do.

**The Convener:** I hope that you are referring to grey squirrels only.

**Dr Shedden:** Indeed.

**John Batley:** Under most circumstances, young people start their informal target shooting in the confines of their own premises, and most often they are supervised by a guardian or a parent.

We introduce people to shooting through airguns, which, as Colin Shedden said, are relatively low-powered items. Those people have good discipline and they are taught good safety. There does not seem to be a problem with the actual size of the place where someone is using the airgun, provided that there is a supervisor. That supervisor will have a certificate, as the young person probably would not have one at that point, if they have been proved to be a fit person and to have a good reason for having an airgun—shooting on their own premises is a good reason.

There is considerable legislation in place, such as the Antisocial Behaviour etc (Scotland) Act 2004, that does not allow one to shoot outside one's own premises or the boundaries of the premises. There is therefore a lot of legislation that protects the public therein. We are mainly

concerned with the fact that we will lose that introduction to airgun shooting if the legislation is too draconian.

**Stuart McMillan:** You say that you feel that you would lose that introduction. Are you suggesting that there will be an adverse effect on the sport of shooting if we are to go ahead with the legislation?

**John Batley:** Quite possibly—if we are not clear about where air weapons can be used.

If the bill is too restrictive, we will restrict people to joining clubs—as far as I understand it, there are not a great number of clubs in Scotland. Not everybody has access to private land, so they probably have to start their shooting and their airgun shooting within the confines of their own premises. There could well be a restriction and we could lose people to shooting.

11:30

**The Convener:** Is it possible that you would increase the number of people who came to shooting if there were more clubs in Scotland?

**John Batley:** Yes.

**Stuart McMillan:** Dr Shedden, you highlighted the current regulations about looking after weapons. Did your organisation support those regulations when they were introduced?

**Dr Shedden:** The legislation that I referred to was that which compelled the owners of air weapons to ensure that those under age could not access them. Our code of practice has always advocated that. Although there is no legal requirement for air weapons to be stored in a steel box, as there is with firearms and shotguns, we have always advised owners of air weapons to ensure that young people cannot access the air weapons without supervision.

**Stuart McMillan:** Did you support those regulations?

**Dr Shedden:** That was Westminster legislation; I tend to deal with Scottish legislation. However, I do not remember us opposing it. I am sure that David Penn will be able to confirm that.

**David John Penn:** I can confirm that the measures that we recommended were discussed at length with the Home Office and agreed by the shooting organisations.

**Anne McTaggart:** Mr Batley mentioned the sale of air weapons to people from abroad. Have you considered the financial impact of the bill on gun traders in that respect?

**John Batley:** Yes. It is difficult to calculate, but we believe that there will be an effect. However, that effect will be determined only when we know how many licences or certificates have been

issued and how many people have handed in weapons. We will then be able to recalculate what trade is left. At the moment, for us to say, "There will be this number of people with air weapon certificates and this is how it will affect trade," would be pure guesswork.

There will be complications because of the fact that there is no border. There will be complications with visitors permits, which we would like to be addressed. A particular complication that we deal with in Scotland relates to what we call remote sales or, in other words, those in which a registered firearms dealer in Scotland sells an air weapon to somebody who is a visitor to Scotland and who has neither a certificate nor a visitors permit. The bill as it is drafted says that the dealer in Scotland may send that air weapon "outwith Great Britain". The way in which that is written means that the dealer will not be able to send it to someone in England; they will have to send it elsewhere. The wording is "outwith Great Britain" and England is most certainly in Great Britain. We have picked up that anomaly in the bill.

**The Convener:** You talked about the possibility of an increase in the number of clubs if the legislation is passed. Does that mean, to use a well-known phrase, that the market may go up as well as down, in your trade?

**John Batley:** I wish that I knew the answer but I am afraid that I do not.

**The Convener:** Mr Penn, you wanted to comment.

**David John Penn:** John Batley covered the point that I was going to raise.

**Anne McTaggart:** Do the witnesses foresee any positive outcomes from the bill?

**Dr Shedden:** One of the unintended consequences, which could affect an organisation such as the BASC, is that people who have in the past had air weapons because they were unlicensed and who would now be exposed to a licensing regime may think to themselves, "I have a low-powered air weapon but if I need to get a licence I might as well get a licence for a more powerful rifle or a shotgun." A number of people may move from unlicensed air weapon shooting into licensed firearm and shotgun shooting. From my perspective, that would be quite rewarding because I monitor how influential we are by the number of people in Scotland who have firearm or shotgun certificates. We may see an increase in "serious" shooting in Scotland as a consequence of the legislation.

**David John Penn:** I concur with Colin Shedden. I am afraid that I cannot see any other benefits arising from the bill.

**Graham Ellis:** The feedback from our membership is that, should a heavy licensing system come in, they will migrate to what Colin Shedden called proper shooting and move away from low-powered air weapons.

**John Batley:** The cost of the certificate will be an important issue. We must take into account the fact that a considerable proportion of the air weapons that are held in Scotland are probably worth less than £100. If the certificate is enormously expensive and security requirements are more than described in the bill, there will perhaps be a temptation for some people not to register voluntarily at the start of the scheme. The cost will have an influence on how many people register.

**Anne McTaggart:** I am not sure whether that is a positive or not. My question has raised even greater concerns.

**John Wilson:** Good morning, gentlemen. By way of disclosure, I should say that I used to plink as a child. I received a visit from the police when I was plinking out in my back garden. Although the police were satisfied that what I was doing was safe and within the limits, they suggested that I cease carrying out the activity because of the alarm and distress that could be caused to the neighbours.

One problem is that alarm and distress are perceived to be caused by such activities but the bill is about public safety. Is there sufficient reason for the introduction of legislation in relation to public safety, particularly in terms of plinking? As you said, many young adults and children get into the sport through that activity, but they may be subject to a visit by the police—as I was 40 years ago—because neighbours are concerned, despite the fact that their activities are causing no harm or serious danger to anyone else.

**The Convener:** I never had a visit from the police.

**John Batley:** The succinct answer to John Wilson's question is that public safety forms the background of all firearms legislation and public safety is paramount for anything to do with firearms. Public safety has to be maintained and all the shooting organisations that I am aware of and am part of are very keen on public safety.

**Graham Ellis:** Licensing probably would not have done anything to resolve the situation that John Wilson describes. If someone were licensed to shoot in their backyard, the neighbours' concern would probably still have arisen and the police would probably still have turned up. That example highlights a lack of public education: members of the public do not understand what airgun shooting is or the obligations and responsibilities that it involves. It also highlights a lack of communication



between the shooting community and the general public.

**The Convener:** You mentioned that folk do not know their obligations. If they were licensed, would they have more idea of their obligations?

**John Batley:** It depends very much on the shooting organisations—Dr Shedden will be able to answer that question. Shooting organisations are very keen on codes of practice, on explaining and on training and education.

**David John Penn:** I can only come back to the large number of air weapons that are out there in the hands of private individuals in Great Britain and, relatively speaking, the very small number of incidents that occur and the low levels of complaint, so far as we are aware. There is an awful lot of shooting going on, which is not causing very much of a problem. I agree with Graham Ellis that it is a question of better education of the public at large.

**Dr Shedden:** Public safety is very important. We spend a considerable amount of time on education, whether with young people or adults. In addition, we have, on occasion, been able to get along to schools to provide information and practical advice on the use of airguns. That points out to me the fact that there are probably people out there who could, if they took their airgun into their garden, cause some public concern. It would be wonderful if publicly funded facilities could be made available in certain situations—in urban areas, for instance—that could help to educate people and to facilitate safe air-rifle shooting.

**The Convener:** It was suggested that you might be better placed to talk about obligations. Would a licensing regime not ensure that folk knew what their obligations were?

**Dr Shedden:** I think that those who come forward voluntarily to submit themselves for a licence probably understand what their obligations are and what the law actually states. Over the past 10 or 20 years, we have found that the law is complex—in Scotland, there are about 30 pieces of legislation that cover air weapons. It has been a challenge to put that into simple codes of practice so that parents, in particular, can understand it, but we have achieved that. It is important that we get a simple message across. The message from the Scottish Government and us has been that air weapons are not toys and should not be treated as toys, but they can be used safely and responsibly in many situations.

**John Wilson:** Despite what you have said, we have been provided with a report by the Association of Chief Police Officers south of the border that says that airsoft weapons now have a capacity that is greater than that of some of the air weapons that will be licensed in Scotland. Do you

think that weapons such as paintball weapons and airsoft weapons should be considered for inclusion in the bill? In following guidance and research from elsewhere and putting in limits regarding the air weapons that have to be licensed, should we go for a wider licensing regime that might include airsoft weapons and paintball weapons?

**Dr Shedden:** I defer to John Batley, who has much more knowledge of that.

**John Batley:** In introducing a lower limit of 1 joule, I think that the bill covers that quite adequately. There are many conflicting medical reports on the level of lethality. By utilising the term “air weapon”, the bill has neatly created a band of weapons that have a muzzle energy of between 1 joule and 6 or 12 foot pounds. We know that weapons above that level are licensable. For weapons that are below the 1 joule level that the bill introduces, the medical evidence that we have seen—we have looked into it in considerable depth—confirms that weapons such as the airsoft weapons to which you have referred are not lethal, provided that they are properly used.

**John Wilson:** But it could be said that air weapons are not lethal, if they are properly used.

**John Batley:** No—an air weapon as defined in section 1(3)(b) of the Firearms Act 1968 is always lethal; it is a lethal barrelled firearm. There is no question about that. A weapon that has a muzzle energy of less than 1 joule should not be lethal, so we do not consider it to be a firearm.

**John Wilson:** Right. I wanted to find out about the technical aspects of the lethality of air weapons, so it is useful to get that on the record.

Earlier, a question was asked about the number of clubs that exist. What is the average annual membership fee to be a member of an air weapons club in Scotland?

**Graham Ellis:** It varies marginally from club to club but, on average, an annual membership will cost from about £75 for an individual membership up to about £115 for a family membership. Above and beyond that, there are range fees for the use of facilities, competitions and so on. It is an entry-level sport, and it is relatively low cost.

**John Wilson:** But the annual membership fee can cost more than an air weapon.

**Graham Ellis:** Yes, but we find that once people enter a club shooting environment, they soon want to upgrade their equipment so that they can take part in whatever events, competitions and disciplines they choose to participate in. Therefore, although it might well cost less than £100 for an entry-level airgun such as a home plinker, a target shooter or a domestic shooter, it

could cost anything from £2,000 up to £7,000 for a competition air rifle.

11:45

**John Wilson:** Can you give us an indication of how many clubs exist in Scotland?

**Graham Ellis:** In Scotland, under our regime, there are 13 clubs. Their membership varies from about 40 members through to about 120 members, so on average there are about 80 to 90 members per club. We are struggling to set up additional clubs because securing facilities and getting planning approval is exceedingly time consuming and complex.

**John Wilson:** You said that there are 13 clubs under your regime.

**Graham Ellis:** Yes. Obviously, there are the National Small-bore Rifle Association clubs, which also support air weapon shooting. I think that someone already mentioned this morning that there are about 150 NSRA clubs.

**John Wilson:** In Scotland?

**Graham Ellis:** In Scotland. However, those are predominantly for full-bore and rimfire rifles rather than air rifles, and the air rifle representation within those clubs is very small.

**John Wilson:** Thank you very much.

**Alex Rowley:** On the question of plinking, from what I can see in the policy memorandum, the Scottish Government seems to be saying that if an individual applies to have a licence for an air weapon and the police judge that where the individual wants to use that weapon—in a built-up area or in an urban garden next to other gardens, with children running about, for example—could cause a difficult hazard for others, they would refuse the licence. Does that not seem reasonable enough? Someone mentioned earlier that it could come down to whether someone has a big garden or a small garden, but is it not about the police judging whether it is safe for someone to use an air weapon that could be a threat to others in a built-up area?

**Dr Shedden:** Yes, it is reasonable that the good reason is investigated. The unfortunate thing is that the paperwork indicates that the average amount of time spent on 98 per cent of applications would be 1.2 hours, which does not give enough time for consideration or even for a site visit. Based on Police Scotland's notification, I do not think that the police will have the ability to take each case on its merit. Basically, the police would look at someone in a suburban or urban area and decide that granting a licence would not be suitable.

Firearm and shotgun certificate applications usually require five hours of licensing officer time, so if each application were to be looked at in that way, that would significantly increase the cost. I think that that is what Calum Steele was trying to indicate. Some of the figures seem to have been plucked out of the air without real consideration of what happens on the ground. There would be a blanket ban against informal shooting in a garden. That is what concerns us.

**Graham Ellis:** We have competition shooters who shoot a pistol or a 10m rifle at the 6 foot pound level within their own houses. They do not need to go outside to the garden. That is happening within the safe bounds of their home, within concrete walls, but how would you differentiate between a built-up area and a controlled environment? The complexity of the issue is that it is not just about a zone, a house, or a garden; it is about the facilities that people have constructed.

**Alex Rowley:** To get to the crux of this, the Scottish Government seems to be saying in the policy memorandum that it is a question of whether somebody can have an air weapon and use that air weapon in a built-up area when it could be perceived to be a threat to others. It seems to be saying that it would come down to the judgment of the police in that regard. It seems to me—and you seem to agree—that it is not unreasonable to be able to introduce a law that would include that point.

It then comes back to the question of cost—that is another matter, which we tried to probe earlier. Do you have any views on the cost of the licence? Should the taxpayer bear any of that cost or should the licence applicant bear the cost? Should the cost of the licence resemble what the cost is of processing it?

**The Convener:** Who will go for that one?

**Dr Shedden:** Very briefly, the certificate holder obviously has to pay a proportion of the cost but we would also expect the taxpayer to pay a proportion of the cost because the whole process is designed to ensure public safety—it is not just about the certificate holder. As has been the case with firearm and shotgun certificates in the past, a proportion of the cost that the police face will be paid for by the applicant and the rest should be paid for by society because society benefits in relation to safety.

**The Convener:** I see from the nodding of heads that all the panel members agree with that statement from Dr Shedden, so the panel members believe that the taxpayer should pick up a proportion of the cost.

As there are no further questions from the committee, I thank you very much for your

evidence this morning, gentlemen. We move into private session.

11:50

*Meeting continued in private until 12:08.*



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