



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 17 December 2014

Session 4

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
34th Meeting 2014, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*Cameron Buchanan (Lothian) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Anne McTaggart (Glasgow) (Lab)

*Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jake Adam (John R Adam & Sons Ltd)

Ian Hetherington (British Metals Recycling Association)

Joe McCann (Stephen Dalton Scrap Metal Merchants)

Dr Sonya Scott (NHS Ayrshire and Arran)

Dr Deborah Shipton (Alcohol Focus Scotland)

Janice Thomson (East Renfrewshire Alcohol and Drug Partnership)

Audrey Watson (West Lothian Licensing Board)

Ivor Williamson (Rosefield Salvage Ltd)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 17 December 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 Local Government and Regeneration Committee's 34th meeting in 2014. I ask everyone present to switch off mobile phones and other electronic devices, as they affect the broadcasting system. Some committee members may refer to tablets because we provide meeting papers in a digital format.

The first item of business is our fourth oral evidence session on the Air Weapons and Licensing (Scotland) Bill. Two panels of witnesses will discuss the alcohol licensing and scrap metal dealership provisions.

I welcome the first panel: Dr Deborah Shipton, programme lead, Alcohol Focus Scotland; Dr Sonya Scott, consultant in public health medicine, NHS Ayrshire and Arran; Janice Thomson, alcohol and drug partnership co-ordinator, East Renfrewshire alcohol and drug partnership; and Audrey Watson, managing solicitor, West Lothian licensing board. Good morning to you all. Would you like to make any opening statements?

Dr Deborah Shipton (Alcohol Focus Scotland): I thank you for the opportunity to give evidence. Alcohol Focus Scotland is a national charity that works to reduce the harm that is experienced by individuals, families and communities. We know that alcohol causes significant harm in Scotland to those who consume it and to those around them. One in two people in Scotland each year will be affected by alcohol through its effect on family, friends and co-workers, and one in three will have a drinker in their lives. In total, alcohol harm costs Scotland £3.6 billion per year in areas such as health and criminal justice.

The evidence from around the world suggests that tackling the availability of alcohol is the most effective means of addressing alcohol harm, and licensing is one of the key levers that enable us to do that locally. The bill strengthens previous legislation and has the potential to create a robust licensing system. There are issues with how that translates in practice, as was identified in the evaluation of the Licensing (Scotland) Act 2005,

and there remains an issue with the accountability and transparency of the current licensing regime, which limits how the system can function. I hope that we will have the opportunity to discuss those points this morning.

Janice Thomson (East Renfrewshire Alcohol and Drug Partnership): Alcohol and drug partnerships are responsible for planning and delivering effective local strategies to prevent and reduce harm from drugs and alcohol on the basis of evidence and need. The alcohol licensing system is an important means through which the Scottish Government's priorities, as set out in "Changing Scotland's Relationship with Alcohol: A Framework for Action", can be achieved. The licensing system makes a key contribution, through the implementation of the licensing policy statement and the overprovision assessment, to supporting the achievement of community planning and alcohol and drug partnership priorities in preventing and reducing harm.

East Renfrewshire ADP welcomes the inclusion of provisions in the bill to criminalise the supply of alcohol to children and young people; to introduce a fit-and-proper-person test for applicants; and to redefine overprovision. We raised issues in our submission regarding the accountability and transparency of boards and how they exercise their function in relation to the licensing policy statement. We recommended that the guidance should be reviewed and amended to assist the proper interpretation and use of the evidence to support effective licensing practice and that boards should provide a summary of how they reached a decision on overprovision. Finally, we recommended that boards should provide an annual report on how they discharge their duties in relation to the licensing policy statement and the five licensing objectives.

The Convener: Would Dr Scott or Ms Watson like to add anything?

Dr Sonya Scott (NHS Ayrshire and Arran): I thank the committee for the opportunity to speak. Like my colleagues, I emphasise that there is good evidence to show an association between availability and harm. In particular, I advocate the retention of the requirement that boards must consider the capacity and number of outlets when thinking about overprovision assessments.

The Convener: We will look at overprovision first. What is your experience of how licensing authorities deal with their duty to assess overprovision?

Dr Shipton: We have information on that. AFS reviewed policy statements and found that they tended to lack evidence on how the outcome of the overprovision assessment was derived. More evidence is needed to back up the decisions that

licensing boards make in that respect. My colleagues will talk about the difficulties that licensing boards have in trying to take evidence in order to make such decisions.

Dr Scott: Licensing boards have difficulty understanding what the concept of overprovision means. Initially, our national health service board gave a lot of evidence on levels of harm, mainly at local authority level. There are issues around data on harm and the appropriate geographical level at which we are able to provide it. The data is most robust for us at higher geographical levels.

Another difficulty is transferring from an individual perspective to a population perspective. As a public health doctor, I am interested in the population perspective, which involves aggregate levels of data.

On one level, given that alcohol-related harm is entirely avoidable, one could say that any harm equals overprovision. Overprovision could also be considered in terms of outlet density weighted for capacity, which would be a reasonable measure of availability.

As I said, boards struggle with overprovision, and there is no guidance or criteria on it for them. Many boards have said in their policy statements that their areas are not overprovided for, but there is no justification for why they have reached that decision or any evidence on the process of reaching it.

Janice Thomson: I agree with my colleagues that boards struggle with overprovision. There should be clear guidance on how overprovision should be interpreted.

We have discussed with our local board the data that is required and we have provided comprehensive and robust information. We have looked at the issue from an intermediate data zone level, and we have made clear recommendations that are with the board.

It is evident from looking at the AFS report that there is no clarity about how some boards have made their decisions, about the evidence that was used to underpin what was said about the five licensing objectives in policy statements and about how licensing boards decide on overprovision. Boards struggle, and our role is not only to support them but to be much clearer in guidance about what the process should involve.

Audrey Watson (West Lothian Licensing Board): When our board looked at overprovision last year, we had difficulty in getting evidence from the people whom we contacted. We sent out information to all the parties that are laid out in the guidance on section 142 of the 2005 act, but we got very little back, apart from a response from Police Scotland that identified hotspot areas,

which allowed us to identify the localities. We had no response from NHS Lothian and very few up-to-date responses from any other parties.

The Convener: West Lothian licensing board's submission said that health issues were not taken into account. Is that correct?

Audrey Watson: We have had no evidence, and the guidance makes it very clear that boards must make decisions based on evidence.

The Convener: So NHS Lothian has never given any evidence at all to West Lothian licensing board.

Audrey Watson: It has never given any evidence, nor does it respond to any applications that are sent to it. It has never had a presence at the board.

The Convener: Are you aware of any licensing boards in Lothian to which NHS Lothian has responded?

Audrey Watson: I am not. I can speak only for the past couple of years. At the beginning of 2009, there might have been a presence but, in the two years that I have been managing the team, no one from NHS Lothian has written to us or engaged with us in any way.

The Convener: Are any other witnesses aware of any health authorities contacting boards about overprovision?

Dr Shipton: Scotland has 40 licensing boards, and there is a good opportunity to identify best practice. Some licensing boards have worked very closely with their ADPs and their health boards to develop the evidence, and it is probably worth learning from that. Some licensing boards have developed quite nuanced overprovision statements—for example, the Western Isles board refers to vertical drinking establishments and off-sales-only establishments in an area, so it is responding to the needs in that area.

I understand that engagement with partners varies across the country, but it is worth identifying that there has been progress. The overprovision statement is more than five years old but is fairly new for such policy development. It is worth understanding that there is a lot to be learned but that there is good practice across Scotland.

Dr Scott: Our NHS board has provided significant evidence to the three licensing boards of our partner local authorities. We rely on alcohol and drug ring-fenced moneys, just as other areas of the national health service do to provide alcohol and drugs services. That can become an issue as budgets become tighter.

As Dr Shipton indicated, our work relies on strong relationships, particularly with ADPs. From a public health perspective, we see our work on

alcohol and drugs as being carried out very much through our alcohol and drug partners. I am sure that Ms Thomson can speak about her experience of ADP evidence in East Renfrewshire.

The Convener: When we talk about licensing boards, we all make the mistake of talking about local authorities, and we must remember that licensing boards are quasi-judicial bodies. A local authority might well have in its single outcome agreement various things relating to alcohol, but the licensing board is somewhat different. Will you tell us how you deal with licensing boards, rather than with local authorities?

Dr Scott: Absolutely. That was my error and I accept the correction. In our area, the licensing boards are coterminous with the local authorities, which are not subdivided, so I think of them in terms of north, south and east Ayrshire.

The Convener: Thank you.

Cameron Buchanan (Lothian) (Con): Does Audrey Watson think that her board did not get a response to its inquiries because NHS Lothian was reluctant to commit itself? What was the reason why no one replied?

Audrey Watson: I think that it was a lack of understanding as to what was required. The guidance should be updated and made clearer.

West Lothian is alone in having an increasing population. The assumption is that there is overprovision everywhere, but I do not know that that is correct. Our licensing board is very concerned about overconsumption, rather than overprovision, and I think that the committee should look at addressing the problem of overconsumption.

Cameron Buchanan: Do the two aspects go together?

Audrey Watson: Not necessarily. In Armadale in West Lothian, there is a new Asda supermarket. A supermarket was necessary, given the number of new houses that had been built in that area. I do not think that Asda would have opened there if it had not got an alcohol licence. However, there is overconsumption, and boards see that all the time when Police Scotland does review applications. The reality is that it has become socially acceptable for people to fall about drunk every weekend. We see that on closed-circuit television evidence, yet no one is ever prosecuted for it.

The Convener: You said in your submission that health is not being taken into account, so how do we deal with overconsumption versus overprovision? You say that there is a problem of overconsumption but that your board is not considering the health aspects.

Audrey Watson: We could not consider the health aspects because we had no evidence on them. That is not to say that we would not consider them if that evidence were available. We will be consulting our key stakeholders again on whether we should look at overprovision and whether there is evidence. That door was meant to have closed, but we were asked to keep it open until the end of 2014. We will look again at overprovision in West Lothian, subject to any evidence coming forward. If that evidence comes forward, we will carry out a full consultation exercise with all stakeholders.

The Convener: How proactive are you in seeking that evidence? You said that you have talked to stakeholders. If I were on a board—although I was a local authority councillor, I never sat on a licensing board—I would do everything possible to gather the evidence and be proactive in my relationships with the local alcohol and drug partnership and the NHS board to get it. What efforts have you made?

Audrey Watson: We have certainly written to all those stakeholders. We have also attended a number of licensing forum meetings that the stakeholders have been asked to attend to discuss overprovision. We followed that up with more correspondence and did a number of online surveys.

09:45

Cameron Buchanan: I think that we heard from the Scottish Retail Consortium that a supermarket company would not open a supermarket unless it could get an alcohol licence, because alcohol was where it made the biggest profit. Will you comment on that?

Audrey Watson: I cannot comment on that from a commercial or legal perspective, but it appears to me that a supermarket would not come unless it got an alcohol licence.

John Wilson (Central Scotland) (Ind): I put it on record that I served on a licensing board. It is about 32 years since I did that, so my experience is a bit dated.

I note that the panel includes two witnesses from smaller local authority areas. How do the witnesses feel that we should use the overprovision criteria not only in local authorities such as West Lothian Council and East Renfrewshire Council but in Scottish Borders Council, Dumfries and Galloway Council and Highland Council? How do we determine overprovision if some outlying villages are not served by an off-licence or other licensed premises? How do we deal with that in the criteria that we set for overprovision without denying

communities the opportunity to participate in social drinking?

Janice Thomson: When we define overprovision, we consider the totality of the area, break it down into intermediate zones and align them with the licensing board regional areas. That exercise considers the number and capacity of licensed on-sales and off-sales premises in the area.

In East Renfrewshire, we included in that consideration the range of health harms and alcohol-related crime and violence. We also undertook an extensive consultation with the public and licensees on overprovision. There was a triangulation of quantitative and qualitative evidence.

Depending on the level of health harm and alcohol-related crime, boards might decide on the basis of the evidence in their overprovision assessment that the whole area is overprovided. However, that does not preclude existing premises from trading. The overprovision assessment might also state that only certain designated areas are overprovided. That does not preclude areas, including rural areas, from having access to alcohol.

When we did our assessment, we factored in people's mobility. We asked how long it took them to access on-sales or off-sales in their area and by what means they travelled to get there. We found that all areas in our area were well served with alcohol, but we have not recommended that the whole area be treated as overprovided.

Audrey Watson: We have had evidence of a number of licensed premises surrendering their licences because operating was no longer commercially viable for them. Against that background, it is difficult to see where there is overprovision.

We have some areas that are high in social deprivation, which will perhaps increase the NHS figures. Not an awful lot of alcohol is available in those areas, but one of the biggest Asda stores in the country is a short taxi ride away.

The Convener: Is a lot of the surrendering of licences down to the fact that big chains have moved in? Is it mainly off-sales premises rather than on-sales premises that have surrendered licences?

Audrey Watson: It is on-sales and off-sales premises.

Dr Shipton: I agree with Ms Thomson on responding to local needs. That is the advantage of the overprovision statement.

The research by Dr Shortt from the University of Edinburgh that was presented to the committee at

a previous meeting identified the outlet density throughout Scotland. That showed that some large areas in some licensing board areas have high levels of provision but, in other licensing board areas, that happens in pockets.

Overprovision statements can respond to that, as I have demonstrated. The Western Isles and other boards have responded with nuanced overprovision statements. Boards can protect rural areas and respond to high levels of provision in, for example, urban areas.

Dr Scott: I agree with what Dr Shipton just said. To answer the question directly, I think that density is a good way of considering availability. I argue that there is strong evidence of an association between availability, as it relates to overprovision, and consumption and harm. Provision, in terms of availability, and consumption levels are interrelated. That can be considered comparatively. Outlets per capita, weighted for the capacity of outlets, would be a more robust measure than just the number of outlets, but levels of harm also need to be considered. In Scotland, our levels of harm are twice those in England and Wales. About 72 per cent of that is accounted for by off-sales. There are issues about types of premises but, in general, I suggest that we are overprovided for across Scotland.

John Wilson: In her response to the question about the surrender of licences, Ms Watson seemed to equate that with the opening of a large supermarket. Dr Scott said that the level of off-sales consumption is potentially greater than the level of on-sales consumption. Surely that suggests that we should look more carefully at the selling of alcohol by large supermarkets rather than by some of the smaller premises. Ms Watson seemed to suggest that licensees were surrendering their licences because of the opening of a large supermarket that is selling alcohol. Surely licensing boards should be seriously asking major retailers—such as the one that you alluded to in Bathgate or Livingston—about those off-sales, rather than just restricting the on-sales trade.

Audrey Watson: Perhaps I confused members. There are two Asda stores in West Lothian. The biggest one is in Livingston, and there is a smaller one in a new development in Armadale.

I struggle with this issue, because there is no fixed licensing objective that says that boards must reduce the consumption of alcohol. We would all agree that that would be a good thing, but I do not think that it is for boards to tackle that problem on their own. A multi-agency task force must be set up. If Scotland wants to reduce alcohol consumption, it needs to do something about it. We have made drink-driving unacceptable, and we should make public

drunkenness unacceptable, too. People learn behaviour, and they see from the time that they go to their prom that being drunk is acceptable. That certainly was not the case when I was growing up. I do not know how we have got here.

John Wilson: On that issue, are you saying that the bill that is before us does not go far enough?

Audrey Watson: The 2005 act was meant to regulate the sale of alcohol, not restrict the sale of alcohol. I think that some people in the alcohol-focus organisations would wish that that was not the case. However, when cases go before the courts, they are subject to the interpretation of what is in the legislation and, as I said, there is nothing in the legislation that says that boards have to take measures to reduce the consumption of alcohol.

Dr Scott: The five licensing objectives all have a health and wellbeing component. Obviously, there is an explicit objective of

“protecting and improving public health”.

From a population perspective, with regard to the issue that we are discussing, the best way of achieving that objective is to reduce the availability of alcohol. I think that there is a discrepancy between the individual perspective and the population perspective.

Dr Shipton: I agree. The licensing regime has a public interest purpose. We must acknowledge that the level of harm that is caused through alcohol, and the level of alcohol consumption, in Scotland are high in comparison with the levels in the United Kingdom and western Europe. The public interest purpose is to reduce those levels, and two of the main levers to do that are availability and price.

In order to serve the public interest purpose, I agree that it is important to reduce availability and thereby consumption and harm. If that was not the case, a different requirement from the licensing regime would possibly be needed.

The Convener: I return to Ms Watson’s point about boards having no remit to reduce consumption and the point that I made to Dr Scott about the separation of boards, as quasi-judicial bodies, from local authorities. Ms Watson also talked about a multi-agency approach. However, at this time, because it is not up to boards to reduce consumption, how can a multi-agency approach be taken and progressed by the boards?

Audrey Watson: There are a number of licensing offences, including being drunk on licensed premises and serving a drunk person. However, because of the difficulties in interpreting what “drunk” means legally, those offences are prosecuted infrequently. In the past five years, we have seen only two cases of licence holders being

prosecuted for licensing offences. However, when you consider the CCTV evidence that boards have seen of drunk people staggering out of night clubs at 2 and 3 in the morning, the two do not add up.

I have personal knowledge of cases in which the procurator fiscal has decided that it is not in the public interest to prosecute a licensing offence. Attitudes need to be changed. Although boards can play their part, it is not for them to reduce consumption.

The Convener: Does the West Lothian board go out with the police and visit premises?

Audrey Watson: Yes, we have done that on occasion.

The Convener: How often?

Audrey Watson: In every board cycle.

The Convener: So once every four or five years.

Audrey Watson: Yes. However, there are inherent difficulties in that approach. For example, if there are difficulties at a particular premises that then come before the board in a review and a member takes into account something that they have seen on a night when they were out with the police rather than on a night that we are talking about in the review, that is legally challengeable.

The Convener: I will play devil’s advocate. I am sorry that we keep coming back to you, Ms Watson. One of the licensing objectives under the 2005 act, at section 4(1)(d), is

“protecting and improving public health”.

Does overconsumption not fall under that objective? Should boards not have an interest in overconsumption?

Audrey Watson: Yes, boards should have an interest in that. Under the legislation, boards should be notified if licence holders have been prosecuted for selling drink to drunk people and should then be able to take appropriate action. However, we have found a number of reviews for late-night premises in which there is CCTV evidence of a lot of drunk people milling around, but when the lawyers representing the licence holder ask the police whether anyone was prosecuted, the answer is no.

The Convener: In that case, surely the board should be more proactive and go out with the police to see what is going on. Would that not change attitudes?

Audrey Watson: Yes, but that behaviour is going on everywhere—on every street where there is a licensed premises, when the sun goes down. We all know that; it has become socially acceptable.

Dr Scott: It is important to remember that environments influence behaviour. We need to make healthy choices easy choices. From a population health perspective, that is often the best way in which to not only achieve good population averages, but narrow inequalities.

We know that our most deprived citizens are particularly affected by alcohol-related harm—there is certainly a deprivation gradient. From an inequalities perspective, the levers that boards have at their discretion to reduce availability are the best way of not only narrowing inequalities, but reducing overall harm.

On the idea of creating healthy environments, boards have powers there, but perhaps they are not being used as effectively as they could be. It is coming out strongly in Ms Watson's evidence that availability is not just about physical availability and price competition—it also has an impact on social norms.

John Wilson: Ms Watson, I want to tease out an answer on a point that you raised: the issue of boards and the evidence that is presented to boards. One question that has come up in connection with the bill concerns police intelligence being presented to boards. Tying in to your comment about the number of convictions that take place in licensed premises, a national newspaper reported yesterday that at a premises in a west of Scotland local authority area there have been 94 visits by the police, and the board has finally decided to take action.

Can you give any examples in which the police have tried to take action against a licensee and the courts have been reluctant to prosecute?

10:00

Audrey Watson: I am afraid I cannot, because I do not know what cases are referred for prosecution.

John Wilson: Are there none in West Lothian?

Audrey Watson: I would not know what was referred for prosecution. All I can talk to you about is what happens when there is a review of a licence in West Lothian. We have had a number of reviews recently of late-night premises and, out of those cases, very few have been referred for prosecution. Of those that have been referred, not all have resulted in a prosecution.

John Wilson: In terms of police notifying the board of a potential prosecution or court action, is there no co-ordinated approach between the police and the board? Do the police notify the board that a licensee or premises has been reported to the procurator fiscal for court action?

Audrey Watson: Yes. The legislation allows for the police to ask for a review. In a review application, there will often be reference to the matters, or at least some of the matters, that are under review being referred for prosecution.

There is the difficulty that the board then has to liaise with the Procurator Fiscal Service on whether a hearing can be held, given that the matter could be sub judice and we cannot ask people to come and force them to speak about matters that they have pled not guilty to in a criminal court.

Clare Adamson (Central Scotland) (SNP): Given the commercial viability of premises, the difficulties that are caused in terms of what has been said about the licensing boards, and the effect that a large supermarket can have on an area, has any consideration been given to how minimum unit pricing of alcohol might change the situation? Have the licensing boards given any consideration to that?

Will minimum unit pricing of alcohol reduce consumption?

The Convener: Shall we start with Dr Shipton?

Dr Shipton: I cannot answer on how the licensing boards have reacted to the possibility of minimum unit pricing.

We find that there is overwhelming evidence that minimum unit pricing would reduce consumption. A high density of licensing availability results in price competition locally, which drives down price. Minimum unit pricing would help to prevent that from happening at the local level, so we would welcome it.

Dr Scott: I cannot comment on the specific impact of minimum unit pricing on supermarkets. However, in the most recent "Monitoring and Evaluating Scotland's Alcohol Strategy" report, available sales data shows a difference between England and Wales and Scotland that is driven by about 72 per cent off-sales, and cheaper spirits make up the bulk of those sales. There is fantastic evidence that price is a good lever for reducing population levels of consumption and therefore harm, and minimum unit pricing is likely to have an impact on that area of sales.

Janice Thomson: From an alcohol and drug perspective, we wholly support minimum unit pricing for the reasons that were just cited. There is very strong evidence that its impacts on both price and availability support reductions in population-level consumption and reduce harm.

Audrey Watson: In our discussions on the policy statement we touched on minimum unit pricing, which the board was very much in favour of.

Our board is concerned about how some of the trade has found a way round the legislation that was supposed to prevent happy hours. The legislation, which is quite complex, has a condition on price variations but not on price reductions. Some premises in our area have brought in cheaper alcohol that they do not usually sell, so they are not varying the price. For example, they are selling Glen's vodka at £1 a shot rather than Smirnoff at £2.20. That definitely needs to be tightened up.

Alex Rowley (Cowdenbeath) (Lab): I want to pick up on a number of points, the first of which is about on-licences and off-licences. Last week we heard from the licensing trade, and I know that a number of pubs would point to figures that I saw the other week, which show that although the number of pints that are being consumed in Scotland has fallen massively, the amount of alcohol that is being consumed has not, and a lot of pubs are closing. Is there a difference to be looked at in terms of off-sales versus the local pub?

Janice Thomson: In the overprovision assessment, we looked at on-sales and off-sales and at capacity. We looked at the period from 2010 to 2013 to see where the growth had been, and we found that it was not in on-sales but in off-sales. Again, it is important to consider the evidence so that when we are reviewing what is happening, or is required to happen, in a local area we have that vital information to hand.

Audrey Watson: Our board has had evidence that a number of late-night premises have been struggling recently as a result of people preloading—that is, drinking at home before going out very late. The alcohol for that is freely available from the big supermarkets and online sources.

Dr Shipton: On-sales and off-sales obviously have different requirements or issues, so I agree with Ms Thomson in that regard. The difference in price between on-sales and off-sales has widened; that has driven the general increase of 60 per cent in the availability of alcohol in Scotland since the 1960s. Alcohol has become a lot more affordable, which is driven by off-sales, so that is something local that needs to be looked at.

There is evidence around on-sales for local areas. A more generic comment is that on-sales contribute to the social norm, so a high provision of on-sales dictates what is available for people to do in an area. That is a local issue that might also need to be looked at.

Dr Scott: I agree that both on-sales and off-sales contribute to the availability of alcohol. Good data for both would help us to have a more nuanced assessment. Returning to the initial point

in my written submission, I think that we need to retain looking at the number and the capacity of outlets. It would be good to have data for capacity-weighted outlets and to look at that in terms of population density. We could then subdivide that by the numbers of off-sales and on-sales.

Alex Rowley: Licensing boards seem to be taking into consideration a real mix of data out there. Perhaps we could ask about best practice, convener. There is a suggestion that there is good practice, so we could ask the witnesses to make that information available.

The Convener: Certainly.

Alex Rowley: Someone mentioned the role of ADPs in community planning partnerships. Could that role improve the situation?

Dr Shipton: Notwithstanding the comments about the separation between the licensing board and the local authority, I think that for the process to work appropriately and effectively there needs to be some working with the other planning structures, whether for community planning or land planning. That works very well in some areas. Some policy statements make reference to single outcome agreements and so on, which I think is appropriate to allow more joined-up working within the regime.

Dr Scott: There is synergy between the licensing board objectives and what community planning partners are trying to achieve. Both would be strengthened by greater consideration of each other's objectives. It would be good for boards to have stronger links with ADPs and with the wider community planning infrastructure.

Janice Thomson: The ADP reports directly into community planning on the delivery of seven national outcomes. As Dr Scott highlighted, there is synergy between the licensing policy statement and overprovision assessment. We have that embedded within our delivery plan and therefore report annually to the community planning partnership on how we are progressing with supporting evidence on the overprovision assessment and so on.

Audrey Watson: I do not have any knowledge of community planning partnerships.

Alex Rowley: We might need to explore that area, given that we are looking at the Community Empowerment (Scotland) Bill and the role of community planning partnerships. From the licensing community point of view, there do not seem to be a lot of links. We would expect the ADPs to have the kind of information that would be useful when licensing boards are looking at overprovision. I just flag that area up for us for the future.

The other week, the Scottish Government was talking about a social responsibility tax. I asked the finance secretary whether the Government had any intentions of bringing anything forward because I wonder about the funding. The idea is that a local authority would be able to put a penny on a bottle of wine, for example, as a social responsibility tax to raise money that could be reinvested. A lot of the work on supporting people with alcohol and drugs problems is done by ADPs and the third sector. Is there a gap in funding? Problems with alcohol seem to be getting worse, so is funding available to those organisations so that they can support people?

The Convener: We are starting to stray out of scope but I will allow the question because it is necessary to get the answers.

Janice Thomson: Funding is available and is provided directly by the Government so that alcohol and drugs problems in an area can be addressed. This always comes back to the evidence. There is a great need for support for individuals with alcohol problems—a recent study shows that probably about 25 per cent of people are accessing alcohol treatment services and need support. However, within the economic constraints that we are all working under, generally there is never enough money to support the true unmet need.

Within the ADP, there is funding from all the partners. There is direct mainstream funding and funding directly from the council as well as funding from other budgets for prevention and early intervention. We clearly define what the budgets are and how they are spent on prevention and early intervention, treatment and supporting people into recovery. We have a financial framework in place that details that spend.

Dr Scott: From the preventative medicine point of view, there is a perennial tension between meeting the need to tackle raging fires, or immediate problems, and carving out a little bit of money for primary prevention, to stop coals that are not yet lit becoming raging fires—if you will excuse the analogy. I can see the attraction of a social responsibility levy. As we have already indicated, price is a very good way of reducing availability, as happened with tobacco. Increasing prices will have an impact on sales, consumption and harm. If that money could be ring fenced for preventative medicine, that would be all the better.

Dr Shipton: There is also the possibility of fees to recoup some of the costs. England has a late-night levy. We have heard of cases of the police taking lots of calls to certain premises. Several other countries have explored the idea of the licensing fee being directly related to the harms that might be caused by the sale of the product from that premises, so that could be explored.

There is a large public sector bill to pay as a result of overconsumption; whether the cost could be recouped in some way would be worth exploring.

10:15

Audrey Watson: Again, that is outwith my area of expertise.

Alex Rowley: I have a comment to make on Audrey Watson's earlier point. Last week, people from the licensed trade made it clear to us that a conflict exists when a large supermarket chain wants to set up a supermarket in an area. There might well be overprovision, but given that the members of a licensing board will want to get re-elected, which of them will refuse an application from a supermarket that will provide hundreds of jobs? That tension has been brought to our attention and needs to be looked at in the context of overprovision.

I know that the witnesses broadly welcome the proposals in the bill but, from a policy maker's point of view, what is missing? What would be top of your agenda?

Dr Shipton: Accountability and transparency would be top of our agenda. Currently, there is no independent oversight of the performance of the licensing boards and how they carry out their functions. We have no outcomes, no monitoring data is reported and no review of licensing boards' performance is carried out internally or externally. We know that licensing boards are required to produce a policy, an overprovision statement and a public register of licensing data. Six months after the deadline, 11 of the 40 licensing boards still had not published statements and 17 had not published overprovision statements. More recently, using standard online searching mechanisms, we found 13 public registers of licensing data out of a possible 40. Given that it is a policy-driven process, not having a policy has huge implications for how a licensing board can function.

Information is absolutely key to monitoring performance locally and nationally. Without it, we have an information deficit and an accountability deficit. The committee heard from the University of Edinburgh researchers, and we know that NHS Health Scotland had to put in a freedom of information request to get the data that it required for its evaluation. We think it unlikely that stakeholders would be able to put in regular freedom of information requests to get such information.

Along with others, we ask for two main outcomes. First, we want outcomes data to be reported. We are not asking for any extra data but we feel that the data that the licensing boards obtain through the application process needs to be

collated and made publicly available. We also think that they should have a duty to report annually on their performance against outcome measures and, more important, against their policy statements. At the moment, we have no way of identifying that. Those are the two things that we would push for.

Dr Scott: I am in complete agreement with Dr Shipton. We need much better data on the decisions that are being made, the number of licences, the capacity of premises and their opening hours. That should all be freely available to members of the public, to whom the boards are ultimately accountable. An annual report would be very useful, as would public consideration of whether decisions have achieved the boards' objectives.

On the tension between economic regeneration and public health in licensing boards' objectives, it is important to remember that what is good for health is not simply work but good work. Some consideration must be given to the types of jobs that are being brought into the economy. There is no evidence that increasing the number of licences, whether through off-sales, large supermarkets or other premises, has a net benefit. In fact, when we hear that the economy incurs costs of between £3 billion and £5 billion, I might suggest that, overall, such increases are an economic drain.

Janice Thomson: I agree with Dr Shipton and Dr Scott on the need to improve the accountability and transparency of licensing boards, particularly in relation to what evidence is considered and how, and who is consulted. Published policy statements that are underpinned by evidence and which promote the licensing objectives provide a clear guide to licensing practice and support consistent and well-reasoned decision making, which makes the licensing process more transparent.

It is important that licensing boards publish annual reports, which could be considered at the joint meeting of the licensing forum. It is there to keep under review the ways in which licensing boards exercise their functions and that meeting is a key opportunity to show how the boards exercise their functions under the 2005 act and promote the licensing objectives.

Audrey Watson: I would like the guidance to be looked at and to be much clearer, and I would also like a board's powers to refuse applications to be much clearer to take account of the issues that members have discussed.

The Convener: Section 55 is on the annual financial report. Proposed new section 9A(4) of the 2005 act states:

"A report under this section may also include such other information about the exercise of the Licensing Board's functions as they consider appropriate."

Should the issues we are discussing be brought up under that section?

Dr Shipton: Yes. It is probably worth being quite explicit about that. As I said, under the 2005 act, licensing boards are required to produce a public register of licensing data. That has not been—and is not—efficient. Not all licensing boards have an accessible register and the data that is in registers is not appropriate for monitoring. It is great that that provision is in the bill, but there will need to be more guidance—

The Convener: It needs to be teased out.

Dr Shipton: Exactly.

The Convener: Okay—thank you. I have another question before we move away from the issues that Mr Rowley has raised. It would be helpful if the witnesses could provide us with examples of good and bad practice. I understand that licensing boards get together every year at a conference, shindig or whatever it may be. Is good practice shared at those events?

Audrey Watson: Do you mean the Alcohol Focus Scotland conference?

The Convener: Is that what it is called? I have no idea.

Audrey Watson: I have never been to one.

The Convener: Dr Shipton, do you want to comment?

Dr Shipton: There are quite a few licensing conferences.

The Convener: I do not think that it is one run by Alcohol Focus Scotland.

Dr Shipton: I do not think so. I think it is a different one.

The Convener: Okay. We will leave that, then.

Finally on the issues that Mr Rowley raised, is it a problem that licensing boards are quasi-judicial bodies that seem to be apart from other things such as community planning partnerships? A yes or no answer will suffice, and if you do not have any comment, that is also fine.

Dr Shipton: I cannot speak to the legal side of the separation; I would struggle to speak to the details of that. There needs to be some working together to address how that would happen while accommodating the legal side, but I am afraid that I cannot comment.

The Convener: The legal side may cause barriers. Ms Watson, you are probably the expert on the quasi-judicial aspect.

Audrey Watson: Except that I do not really know how anything else works. [*Laughter.*]

The Convener: Okay—that is very honest.

Audrey Watson: All I can say is that if a decision that a licensing board takes is not open to scrutiny by Alcohol Focus and others, it is open to scrutiny by the courts. When the courts deal with a licensing matter, they do not know how it works; they just look at the law and at the words used, and the words need to be tightened up.

The Convener: Okay. Before we move away from accountability and transparency, I note that licensing boards are supposed to take all their decisions in public, but there are often backroom discussions on certain points. Should that stop?

Audrey Watson: No. It is essential that there is a forum in which discussions can take place and legal advice can be given in private, as long as that is then reiterated in public and parties have an opportunity to comment.

The Convener: Is it only legal advice that is given in private to boards?

Audrey Watson: It is on my watch.

The Convener: Does anybody else have a comment on that?

Dr Scott: I would prefer it to be done in public, but I can see that there could be justification for doing that. If we had annual reports that detailed decision making, the rationale and how that contributes to meeting the objectives, that would provide us with a level of comfort with regard to accountability.

The Convener: Grand. Thank you.

Anne McTaggart (Glasgow) (Lab): I go back to the point that one of you made way back at the beginning about the proposal to create a criminal offence of supplying alcohol to someone under 18 in a public place. Does that go far enough?

The Convener: Let us start with Ms Thomson, please.

Janice Thomson: Whether it goes far enough will come down to enforcement. The proposal is very welcome—I know from conversations that we have had that it has been welcomed by Police Scotland.

Dr Scott: I am not sure how it could go further. I probably welcome it, too. Things like that send a strong message about what is and is not acceptable. I would be interested to hear what further steps there might be, but it is a starting point.

Dr Shipton: I agree. I would probably want to know what the other steps were before discussing it further. I welcome the proposal, though.

Anne McTaggart: Do you think that what is proposed now is fine and will do the job?

Dr Shipton: My understanding is that it was a response to difficulties that the police were having—you can take away alcohol, but it can be supplied again.

Audrey Watson: I wonder how it will be enforced and whether Police Scotland has sufficient numbers to enforce all the various licensing offences which, as I have said before, are not being enforced.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning. Picking up on issues of accountability and transparency mentioned by all members of the panel, I want to talk about overprovision, and whether it should be defined and who should define it. We heard in response to Mr Wilson's questions that there is quite a variation throughout Scotland. Wherever you go, the situation is different. Dr Shipton mentioned that the Western Isles has a clear definition of overprovision, which applies locally.

Who should define overprovision in a locality? Should it be defined in the bill or should the bill say that it should be defined and that the board should define it? Who is best placed to define what we mean by overprovision?

Dr Shipton: It is right that it is part of the licensing board's policy statement to define overprovision for its area. However, it would be quite good to have a national steer—and support and greater guidance—on how overprovision should be defined. The current guidance, which relates to the 2005 act, is ambiguous about the level of evidence of overprovision that is required. That has made it quite challenging for some licensing boards to evidence the overprovision in their area. There is a need for all stakeholders to support the licensing board to develop a definition. Alcohol Focus Scotland has a toolkit for that, which is helpful, but there needs to be a national steer, too.

Dr Scott: I agree. Some national guidance is probably needed. Overprovision is a tricky concept. As I have said, it can be considered from the point of view of availability, weighted for capacity, number of outlets and the density of those outlets, or from the point of view of harm.

From a community empowerment perspective, we must engage and fully inform the community. We want communities to understand the evidence, to think about what harm it considers acceptable and what cost it is willing to pay for that harm, and to relate that to availability.

Further to that are the difficulties relating to geographical boundaries. The geographical area that one board serves is clearly boundaried. You

could have an area that is fantastic in its overprovision assessment and regulation and another that is not, but you cannot control what happens at the boundary. A national perspective is needed, too.

The Convener: I am a bit confused about the guidance that you are talking about. At the end of the day, courts will make decisions if they think that licensing boards are in the wrong. How likely is it that courts will overrule guidance that is not, as Mr Coffey indicated, included in legislation? Ms Watson, you are probably best placed to answer that.

10:30

Audrey Watson: The 2005 act says that the licensing board must follow the guidance in doing its job and taking decisions, so I think that the courts would welcome more detailed guidance.

The Convener: Would the boards take cognisance of that guidance in their decision making?

Audrey Watson: I think so. The members of the board are local authority elected representatives; they are not specialists in any of the matters that my colleagues are specialists in. Neither am I—I am a lawyer and I advise them, but I can only look at what the guidance says. Certainly in West Lothian, the people we have asked for evidence have struggled to know what sort of evidence we are looking for. It needs to come from the Government.

The Convener: Ms Thomson, I am sorry about leaping in there.

Janice Thomson: It is fine.

I concur that the guidance in relation to overprovision, particularly on the data that can be used in making an assessment of the evidence, should be strengthened. That would help boards to make the decision. Across Scotland, the extent to which public health data is used in practice varies, and there are varying interpretations of the evidence by licensing boards. The licensing policy outcome does not always reflect the health evidence that has been presented.

We actively engage with the licensing board on the data that we will provide. We also consult our local communities about overprovision. That is vital, because we can have the statistics at hand, but we also need the community's views. The engagement and discussion have been very good.

Willie Coffey: If we do not get clear or rigorous national guidance along the lines that you hope for or expect, should the bill make a requirement that the criteria must be defined locally? Janice Thomson said that she would like boards to report

and summarise how they come to their decisions. If the licensees and the public do not know what criteria are applied in making the decision, is there an issue with that? Should people be able to see that part of the process and what the criteria are? They could be different across Scotland.

Janice Thomson: The issue will always be about how areas assess overprovision and about the evidence that is considered in relation to alcohol-related harm, as well as the capacity and availability of licensed premises across the area. It will be down to licensing boards to make the final decision. We can provide the evidence and make recommendations that are based on the health indicators, the alcohol-related crime indicators and what the public say. We make our recommendation to the board and then it is down to the board to consider that. Because we have provided evidence, if the board does not accept that recommendation, we expect it to justify that. It is a transparent two-way process.

Willie Coffey: Should local licensees and the public be able to see in advance what overprovision means in their locality?

Janice Thomson: Yes. Well—

Willie Coffey: Should there be a clear statement of what is meant by that?

Janice Thomson: There is a clear statement. The board must provide or circulate for comment and consultation a draft overprovision assessment so that people have the opportunity to see it. We have engaged the public in wider discussions about alcohol availability in their area, as a precursor to the evidence.

Willie Coffey: Dr Scott, in your opening remarks, you said that you are here to argue for the retention of the numbers and capacity elements in the assessment. Do you foresee any circumstances in which a board would not include issues about numbers and capacity when assessing overprovision? Are you worried that boards might exclude that?

Dr Scott: Yes, I am worried, given the variation in practice that already exists. It is not an insubstantial piece of work to gather and collate that information—we currently do not have a database, which is the second step and which would be useful—so I am concerned that boards might not do it. As Dr Shipton has said, a number of policy statements that say that areas are overprovided for have no back-up on how that conclusion was reached or what was considered. It is essential that that remains a must rather than a may.

The Convener: There are a number of other questions. I hope that our witnesses are okay with

that. I want to extend this questioning a little if I can, to get everything in.

Clare Adamson: At our evidence session last week, representation was made about changes in the way in which private members' clubs are operating. Because such premises are subject to a less vigorous regime than an on-trade pub or club, occasional licences may have an impact. It has been said that such situations are not being taken into account when overprovision is being considered by the licensing boards. I would like to get your comments and your view on that.

Audrey Watson: As we do not have an overprovision policy—because we never got the evidence—it is difficult for me to talk about that. However, I can say that there are a number of members' clubs in West Lothian that cater for the needs of a number of people in the more rural areas.

Janice Thomson: The East Renfrewshire alcohol and drug partnership has concerns regarding the rules and use of occasional licences. The current rules create a loophole enabling the legal requirements for fully licensed premises to be bypassed. That allows commercial premises to be run under a series of occasional licences, which is inequitable to premises with a permanent licence. Furthermore, that can increase the availability of alcohol in an area where that is not presently taken into account for overprovision assessment purposes.

We would advocate that both members' clubs and occasional licences need to be included in the overprovision assessment, as they both increase the availability of alcohol.

Dr Scott: I agree: it is the aggregate level of availability that you want to consider. You want the assessment to be as robust as possible, so every contributor to that availability should be considered. I understand that the number of occasional licences is not insubstantial. Anecdotally, I am aware that they are potentially having an impact on young people in our area.

Dr Shipton: I agree that both need to be included in the overprovision assessment.

Clare Adamson: You cannot comment on overprovision, Ms Watson, but could you give us an indication of whether you have seen an increase in the number of occasional licences for members' clubs?

Audrey Watson: Yes, I have. That has been the case over the past year, and it is largely due to Police Scotland taking an interest in members' clubs and how they are run. It would appear, anecdotally, that a number of clubs have effectively been running as if they were not members' clubs. The police have been telling

them that they need to get occasional licences when they are opening their doors to everyone, which they do at this time of year in particular. On the one hand, that allows them to operate legally but, on the other hand, I can see that that might be a problem from an overprovision perspective.

The other problem that I have involves the large number of occasional licences, which are very difficult to deal with over a short timescale. We cannot get people to tell us soon enough that they are arranging an event, even if they have been arranging it for months. They might come to us only at the very end of the process, and they pay a fee of only £10.

We had one occasional licence recently for a school that was running an event. The organisers wanted to sell drink at half-time. If that is equated with having 250 people in a large venue, I do not see how we can count those events up and say that they are the same.

Dr Shipton: It comes back to the data. If we have an issue with capacity, there is something that could be done. We do not know how the number of occasional licences has changed over time. If we could obtain good outcomes data, it would be publicly available at the click of a button, and we could identify how the number of occasional licences has changed over time. We need to get better at identifying capacity for all types of licences.

The Convener: Surely the definition of "occasional" might need to be considered, too. Events where a school sells alcohol at half-time, for example, are probably very occasional. Judging by what we have been hearing, however, such licensing is regular, rather than occasional, when it comes to the licences for some places. Would that be fair to say? I see that everyone is nodding.

John Wilson: I have a quick comment on that: the problem is that a lot of members' clubs have changed their operational structures to allow them to open up to the public because of the trading pressures on their sustainability.

I want to tackle an issue raised in the West Lothian licensing board's submission in relation to "minor variation". Ms Watson can maybe address this point. The submission states that extending the area of licensed premises can be considered to be a minor variation—I assume that that would include, for example, a beer garden. How would that relate to the issue of the supply of alcohol in public places? For example, a local bar could decide to stick a beer garden on to the front of the premises that would be next to shops.

In terms of the supply of alcohol in public places, in Glasgow in the summer every bar in Buchanan Street, Sauchiehall Street, Gordon

Street and Ingram Street seems to want to open up for the consumption of alcohol in what would be to my mind a public place. How does that equate with responsible drinking and its promotion, particularly for those under the age of 18? One of the issues that we should be trying to address is the responsible consumption of alcohol. Total abolition or promoting temperance might be a worthy cause, but surely we should be promoting responsible alcohol consumption, particularly to those under the age of 18.

Audrey Watson: There is an example in my submission of a recent variation that crossed my desk that people in the local area might have objected to if they had been notified of it as a major variation, because it was about the extension of outside drinking. However, because of the way which the legislation is written and because the premises concerned already had a small outside drinking area, the variation was not regarded as the premises seeking to increase its capacity; in effect, it wanted everyone outside on a good day rather than inside, so the variation fell under the description of a minor variation and not a major variation.

That contrasts with an off-sales premises such as a convenience store that wants to open earlier than licensed hours, which is regarded as a major variation that must be advertised. When we have advertised such variations recently, people have written in and said that they are objecting to the sale of alcohol. However, it is not the sale of alcohol that is changing but only the opening hours of the convenience store. There is an issue that should be looked at.

The Convener: Does anyone else wish to comment on that?

Dr Scott: That example is about a potential increase in capacity. The contribution in terms of additional capacity of such an application to the capacity of the aggregate amount of licences could be considered from an objective and public health perspective. In terms of social norms, the more availability we have, the greater the social norm. I therefore agree that there is a concern from a young person perspective.

The Convener: Okay.

John Wilson: Sorry, convener, but Ms Watson just said that the minor variation in her example was for accommodating the premises' existing clientele rather than for increasing the clientele. Do we not therefore have a contradiction in what a minor variation of a licence is?

As I said, in city centres during the summer a lot of pedestrianised areas are opened up for the consumption of alcohol. It is a matter of how we get the message over in terms of what is regarded as a minor variation. I am not sure how city centre

premises apply for the outside areas for the consumption of alcohol, but I would argue that those areas are in a public place in a city centre that people walk through. The issue is the consumption of alcohol in public places versus that in licensed premises and what message the former sends out to young people in particular, given Dr Scott's comment about social norms.

The Convener: Who wants to comment on that? I know that it is difficult because different rules apply in different areas in terms of scenarios for the licensing of outside areas. Am I right?

10:45

Audrey Watson: Our policy is that such areas should operate only until 9 pm. Of course, it is only a policy, and people can apply to open later than that.

A lot of the discussion has focused on applications coming before the board, but the difficulty is that because licences last for ever some premises simply do not come to the board's attention unless there is a review. The way things are meant to happen is that we hear about premises only if they have a problem; otherwise, we have to assume that the outside areas are being run properly and that licence holders are taking appropriate steps to ensure, through monitoring by either closed-circuit television or staff positioned in the areas, that neither underage drinking nor overconsumption is taking place.

Dr Shipton: It all underlines the need for the policy and, indeed, for the policy to be adhered to. This kind of issue can be detailed for a particular local area.

The Convener: What are your views, if any, on plans to reintroduce the fit-and-proper-person test?

Dr Shipton: Licensing boards should be able to determine an applicant's suitability, but we are concerned that the factors in question have not been specified. We therefore recommend that, in order to provide some clarity and transparency, boards identify the relevant factors, perhaps in a non-exhaustive list in their policy statement.

Dr Scott: I agree that reintroducing the test is a reasonable step, and I also think that boards should be required to specify the factors that they will consider. As for spent convictions, they are more of an issue for police and criminal justice colleagues to comment on.

Janice Thomson: From an alcohol and drug partnership perspective, we wholly agree with the reintroduction of the fit-and-proper-person test, and we believe that there should be clarity about the considerations that would be made in that respect. We, too, feel that spent convictions

should be a matter for Police Scotland or criminal justice colleagues.

Audrey Watson: West Lothian licensing board wholly supports the proposal, but we are concerned about the suggestion that Police Scotland bring forward information that might have come to it from different sources about something that amounts to less than a conviction. After all, a decision of the board can be appealed if the board has proceeded on the basis of an incorrect material fact. Things can become difficult if the police tell us, “Well, we think he’s done this” or “We think he’s involved in organised crime,” because all the individual has to say is, “I’m not—prove it.”

The Convener: What about situations in which the licence is held by someone other than the owner of the premises?

Audrey Watson: Again, that is a difficulty that we have experienced locally.

Ironically, the licence owner is the only person in the system who does not need to be trained; the designated premises manager must be trained, but sometimes there is no correlation between the two individuals. We have had a lot of issues with people who are de facto managers but who are not the designated premises manager. I therefore think that the definition of “designated premises manager”—or “premises manager”, as they are termed in the legislation—needs to be looked at to ensure that we are talking about the person who is in control of the premises.

The Convener: Thank you very much for your evidence. It would be useful if you could supply us with examples of best practice and, indeed, bad practice. We have run a fair bit over time, so I thank you for your forbearance.

I suspend the meeting. We will recommence at 11 am.

10:49

Meeting suspended.

11:00

On resuming—

The Convener: I welcome our second panel of witnesses. Jake Adam is director of John R Adam & Sons Ltd, Ivor Williamson is managing director of Rosefield Salvage Ltd, Ian Hetherington is director general of the British Metals Recycling Association and Joe McCann is a site manager for Stephen Dalton Scrap Metal Merchants.

Does anyone have any opening remarks?

Ian Hetherington (British Metals Recycling Association): Thank you for listening to our evidence today. We appreciate that we will be discussing a rather different topic from the one that the committee was dealing with earlier. We recognise that, as a group, you will probably not be familiar with the scrap metal industry, so I will say a few words about the industry.

The recovery and processing of metals from consumer goods, demolished buildings, industrial processes and, more recently—this is particularly important in Scotland—the oil industry are a critical part of Scotland’s infrastructure. Every tonne of metal that is collected and processed has one destination: it goes into a steelworks or a metalworks and is reprocessed to become what it was in the first place. It is a perpetual and continuous process.

Metal recyclers and scrap metal dealers are interchangeable terms—we are not proud or worried about either name. Metal recyclers process about 1.3 million tonnes of metal every year in Scotland. The industry’s net turnover contributes about £500 million to the Scottish economy. In the current climate, with the demise of the steel industry in Scotland, about £300 million in foreign exchange is generated every year from the sale of recycled metal to metalworks overseas.

The industry has an unusual shape—a fact that is important and relevant to licensing of the industry. There are about 200,000 Scottish individuals, small businesses and large businesses who sell and supply scrap to our members, but our members sell to only about 200 to 350 customers. It is an upside-down industry, in that we have multiple suppliers and a very small number of end customers. The bill sets out to regulate the way in which we conduct our business with that large number of suppliers. It is unusual for a licence to dictate buying practices—licences typically dictate how products or services are sold.

Our members actively support the intentions and principles in the Air Weapons and Licensing (Scotland) Bill that relate to metal dealers. All the comments that we have submitted and the evidence that we provide today are aimed at supporting the intentions and strengthening the bill, as well as at making it more practical to implement and enforce.

However, we believe that the bill could be a great deal clearer. As it stands, enforcement of the provisions would be extremely difficult for the police and licensing authorities. Crucially, from our point of view, that will potentially disadvantage law-abiding metal recyclers in favour of those who work on the margins of the law.

Ivor Williamson (Rosefield Salvage Ltd): I would like to talk about our business. My business, Rosefield Salvage, is part of the Williamson Group, which is a family-owned metal recycling company that was founded in 1923. We are a fourth-generation firm and operate on five sites throughout Scotland, from Peterhead and Fraserburgh in the north to Uddingston and Dumfries in the south. We bought Rosefield Salvage in January 1995 and moved from its existing Dumfries town centre site to a fully concreted recycling facility on the edge of town. When we took over the business it had two employees. It now has 10 employees, and we have increased the tonnage from 5,000 tonnes to 25,000 tonnes. In monetary terms, that is an increase in turnover from about £200,000 to £19 million, and we have been in the top 20 companies in *Scottish Business Insider* magazine for the past three years.

At present, we have a wide variety of customers, ranging from the small householder who comes in with poles from his garden shed to people recycling aluminium cans to large multinational companies disposing of hundreds of tonnes of metal a week. The majority of our business is not cash based but is paid on account, but we also have a number of smaller profitable trades that we call door trades, with about 20 to 40 customers per day coming in and getting cash, ranging from householders disposing of aluminium cans to plumbers disposing of a redundant heating system. Those trades are generally paid in cash for convenience and customer ease. Most customers do not carry identification as such, and we see them only once or twice a year, depending on the nature of their business.

We currently service the Dumfries and Galloway area by buying ferrous and non-ferrous metals, and we have large machines that chop and bale the ferrous metal, which is then transported to larger ferrous metal merchants, who generally export it abroad. The higher value non-ferrous metals we bale, sort and export abroad ourselves in containers. We hope that the new proposals will bring tight regulation and strong enforcement, without which there would be a reduction in business. For the legislation to work, we want it to cut metal theft, but we also want it to incorporate companies such as car breakers, waste companies and demolition contractors that also deal with the metal industry but are not regulated in the same way.

Jake Adam (John R Adam & Sons Ltd): Thank you, Mr Convener, for the opportunity to be here today.

The Convener: I do not want to be a pedant, but you just need to call me “convener”. It is a

good Scottish term that can apply to a man or a woman.

Jake Adam: Very true. Thank you, convener.

I am a director of J R Adam & Sons Ltd. We are a family business that is based in Glasgow, with two facilities in Glasgow and one in Ayrshire. We employ more than 70 people and are one of the five exporters in Scotland, and we export scrap metal all over the world. We export steel scrap mainly to Europe, to sell on to steel mills, which then remelt it into reinforcing bar for the construction industry. Over the past four years, our turnover has been more than £70 million, and in 2009 we won a Queen’s award for enterprise for international trade.

The Convener: Mr McCann, do you want to add anything?

Joe McCann (Stephen Dalton Scrap Metal Merchants): I agree in many respects with what the other gentlemen have said. I have been in the industry for 60 years and I have seen a lot of changes—some for the good and some for the not so good. In my opinion, the current licensing regime is such that, as Mr Williamson said, there are a lot of operators out there who do not work under the same conditions that we work under. We have to look at how we can stop it and where we can get co-operation, but we will not get co-operation if we are not on a level playing field.

The Convener: Let us start with a question about police investigation of metal theft. What is your experience of that, Mr Williamson?

Ivor Williamson: Generally, if something has been stolen, the police appear at your premises three or four days later, or sometimes a week later. We have even had them in six months after something has been reported stolen, which obviously makes it hard to identify whether it has been in our yard. I find that we do not have too big a problem with metal theft. Obviously we do not encourage particularly dodgy people to come into our yard. We want to get on with the police—we show them our records and we generally do not have a problem. The biggest problem is the length of time it takes from when something is reported stolen for the police to visit the yard.

The Convener: Let us look at some of the thefts that have taken place of late in my neck of the woods, which is the north-east of Scotland. We have seen thefts from railway lines, which put the Aberdeen to Inverness line out of action for a fair while, and quite a lot of thefts from electricity substations. If anybody comes to your yard with anything that you think is a bit suspect, do you contact the police?

Ivor Williamson: Yes. Lately the police have been in and given us a number to contact them on

locally if anything suspect comes in. We have a text message system to contact them quickly. We are working with the police.

You mentioned the railway line thefts. People think that the cable went abroad and that the thefts were a result of organised crime, which is a major problem. Organised crime could come into the metal business and the waste business. If you ban the use of cash, organised crime might provide an avenue through which dealers can have cash to pay people, if you get what I mean. That is why we want to get everybody under one bill.

Jake Adam: I back up what Ivor Williamson said. We fully support and co-operate with the police on thefts of materials.

Sometimes the police come in quite quickly after a theft—a matter of days. At other times they come weeks after the theft has taken place. On a busy day we buy from other merchants, industry, the demolition industry and councils, all the way down to householders, and 800 tonnes of material can go through our yards. If stolen material comes in—either directly from the person who stole it or from another merchant—it can often have passed through the system by the time the police come, if they come a couple of weeks after the theft. However, as Mr Williamson said, if we suspect that anything is stolen we reject it and contact the police.

Joe McCann: I can speak only about Edinburgh. In Edinburgh we have the metal broker's licence system, which contains rules and conditions that we adhere to. They say what time we can open, what time we shut, what we can buy and what we cannot buy. There is a limit on weights. We have had the system for many years and we have had no problems. The police can come in every day, if they want. They do not have to get a warrant and they can come in at any time of the day. Most members of the scrap industry do the same thing: they let the police come in at any time. We are quite happy with that and we co-operate with the police.

Ian Hetherington: It is worth saying that the industry runs an online metal theft alert system; when people notify us of a theft we notify all our members. The issue comes down to speed: if we do not know about it because people do not tell us, material gets lost within hours.

BT is one of the largest suppliers of high-value copper cable to the industry; its network renewal programme is in large part being funded through the sale of surplus cable. We are seeing a flow of that material. Electricity companies such as Scottish Power and SSE sell a large quantity of cable to the industry, so differentiating between cable that is legitimately sold as part of renewal

work and that which is stolen is sometimes difficult.

BT has really sorted it. Our members know that unless they have a contract with BT, they do not handle BT cable. However, lots of the other materials are not easy to identify as stolen. Just because it is cable does not mean that it is stolen. Very often it is legitimate.

We work very closely with the network companies and the other provisioning companies. If they were to tighten up their disposal routes that would make it a lot easier for our members to identify material that is actually stolen.

The Convener: You say that BT has contracts and that you deal with BT only through contracts. Surely before that system was in place and in your dealings with other companies you would deal with company representatives.

Ian Hetherington: I will use Network Rail as an example, rather than BT, because BT has tightened up so much recently.

Network Rail's small works contracts—which are not small by my standards—are let through main contractors to something like 400 subcontractors across the UK. That means that some very small subcontractors handle the material—it is not just Network Rail or main contractors. There is therefore a problem with planned disposal. However, the situation is getting better, and those companies have become more aware of the issue.

11:15

The Convener: Do you think that the cash ban, which is part of the bill, will be successful in removing incentives for metal theft?

Ivor Williamson: The cash ban would take away a portion of the incentive. There is always the corner of the trade that works outside the legal system. If you take away the cash, people who have historically been used to being paid in cash will still want to be paid in cash and will look for another avenue through which to get cash. Obviously, we want to clamp down on that. We do not want other companies, such as waste companies, dealing with metal. Demolition companies get involved in dealing with metal, and you get people running around buying catalytic converters from garages and so on. There are many different avenues people can go down to get cash. Because the public have been used to getting cash for metal, if you suddenly say, "Right, you are only getting a cheque or money paid into your account," they may well go to a garage that will give them cash. That means that the properly licensed scrapyards will be hurt, but people will still be being paid cash.

I have heard rumours that people who are involved in organised crime are getting into the trade in England, because they have access to amounts of cash. Obviously, we do not want that to happen up here.

Jake Adam: The bill will help, but it has to be tightened up dramatically. As Mr Williamson suggested, the definition of metal has to be tightened up to include catalytic converters, waste electrical equipment and end-of-life vehicles. The definition of a metal dealer also has to be tightened up. At the moment, metal dealers will have to adhere to the bill but, as was touched on by Mr Williamson, companies that are on the periphery of the industry—demolition companies, waste contractors, vehicle dismantlers—will not have to, which would mean that there would still be an opportunity for scrap metal to be purchased for cash.

Joe McCann: Basically, the bill means that people will be paid by cheque. However, as you are probably well aware, you cannot put your car into a garage and pay by cheque. That is not allowed and they will not accept it.

Cash is everybody's right. Employees can ask to be paid in cash rather than by cheque. That is their right. It is the same in the scrap industry. If someone comes in and says, "I'm sorry but I don't want to take your cheque; I'd like cash, please," what are you going to do? Do you turn them away? No. You pay them in cash. To criminalise that would be totally out of order, because it would mean that we would get into a situation where Tesco would say that it will not take cash, and that people must pay by card. What if they do not have a card? You will get into the realms of banking and other things that you do not want to get into. Cash is cash. People are entitled to be paid in cash, if they wish.

Should we tighten up the rules? Yes. All the gentlemen here and everyone else in the scrap trade are quite happy for things to be tightened up. We look forward to that. However, we must be on a level playing field. As has been said, there are elements out there who will pay cash. People who would be paid by us with a cheque will go elsewhere, perhaps to the criminal element. Do you want that? No. You are looking for everyone to be back on a level playing field.

Ian Hetherington: The industry in Scotland is clear that it wants a range of provisions in the bill and that it fully accepts that the restrictions on payment are part of a suite of provisions that it would support. I differ from Joe McCann on this one. The industry is generally supportive of the changes, with all the provisos that you have heard from my colleagues.

The Convener: Will stopping cash payments help to catch those folks on the periphery who might be up to some criminal activity?

Ian Hetherington: Unless changing the law serves to embrace all the players that you have heard about, it will not do the job. If the bill is amended to cover all the loopholes that we are talking about, it will serve to help with that. We regard the identity provisions in the bill as critical to the process; they will reduce the industry's provision of any outlet for stolen material, which is what we all want. The ID provisions have driven down crime and levels of metal theft in certain parts of England.

As part of a suite of measures, the provisions will, we hope, bear down on criminal activity generally.

Cameron Buchanan: As one of the few members who have actually been to a scrapyards, I have gained some superficial knowledge. The problem with cheques is that people who have been paid by cheque can go next door and cash the cheque immediately. It can be very difficult to stop cheques. However, cash is a problem, too. You keep talking about a level playing field. Could we have a maximum amount—£100, for example—that people could be paid in cash? Would that be an idea? There are two questions there really. The point about cheques is quite interesting because cheques are out of fashion now.

I also wonder whether the requirement for photographic ID would put off some of the less-hardened criminals, because they do not like having their picture taken.

Ivor Williamson: We all have CCTV. If the bill comes in and we have to identify customers using their photographic ID, we will have a copy of their ID and they will be on CCTV, too.

However, someone in a rural area—in the Highlands, for example—who has a couple of washing machines that are worth £5 and which they will not get money for will just throw them away at the side of the road. The requirement might therefore cause a problem in rural areas, although perhaps not in populated areas around the central belt.

I made a suggestion, but my suggestion got voted down at our meeting because people wanted to talk about the complete cash ban. They are worried about people coming in 10 times in one day and so on.

Cash is going the same way as cheque cashing, given that somebody who gets a cheque can go to the high street and cash it. Personally, I will not cash cheques in future. There will be a lot of different legislation on cheque cashing, but that

will probably work only in the big cities such as Glasgow and Edinburgh anyway; I do not think that there will be a lot of uptake in rural areas.

I go back to the fact that you do not want anybody to pay cash. A car breaker might tell you that a scrap car is worth £100, but if it has five bags of copper in the back, it could be worth £500. It is all those little loopholes that we want to get rid of.

Jake Adam: Having photographic ID will help dramatically with the cheque-cashing issue. If my business issues a cheque and the customer is able to go to a cheque-cashing facility in Glasgow, that facility will require full identification so there will be a paper trail and full traceability. The big issue is that the material can be traced from the yard that it was sold to: there will be information on the name of the person who the material was bought from and the cheque-cashing facility will be able to identify the person who cashed the cheque. That is a slightly different issue, but, like Mr Williamson, we will not be looking to put cheque-cashing facilities on our premises.

For us, cash is a hassle. It is an expense and, more than anything, it is a security risk. When it goes, it will make our day-to-day business easier to run.

Joe McCann: I agree that cash is a hassle but, at the same time, we have to look at people's rights. When people come in, their registration, name, address and the time that they arrived are taken down. They are on CCTV on three different occasions: as they come into the yard, as they go down to the store and when they come back to be paid. They sign for their cash and they are on CCTV. Running the tape back is very simple. We do it, but the question is whether everyone else is doing it—and the answer is no. The small man does not have to put in all this equipment, and we do.

Ian Hetherington: The issue of cheques has been dealt with, but I note that the de minimis payment arrangement was trialled in France, although the trial was abandoned after six months and a full cash ban was brought in. People were getting round the system with multiple transactions and it was impossible to trace things. If we had a £100 limit, we would see a lot of people suddenly doing four or five £100 transactions in a day. Incidentally, in France, it was not only the police but the industry that deemed the arrangement to be completely unworkable, and the industry sought to have it transferred to a full ban.

Cameron Buchanan: I do not necessarily agree. Surely if photographic ID was required you would be able to spot the guy coming in every now and again.

Ian Hetherington: Yes, but the problem is that, unless you outlaw multiple transactions, you will need a very complex set of rules. Like all these things, unless the law is very clear, it will be difficult for industry people, local authorities and, more important, the police to enforce and understand it. Things can get very complex.

Cameron Buchanan: But what if, as in Mr Williamson's washing machine example, someone who comes to dump a washing machine cannot get cash and just says, "Sod it—I'll dump it in the river"? Should there not be a cash limit for those situations? Should we not apply a bit of common sense?

Ivor Williamson: The only problem is that that person could come to my yard and get £100, go to Jake Adam's yard and get another £100 and so on. He could split one load into four or five and go to four or five different yards.

Cameron Buchanan: Does that matter?

Ivor Williamson: It means that cash is still getting out there. If people want to steal material, they might think, "I can steal only £500-worth, but I can split it up and sell it to five different yards." I do not want to encourage that practice; I am just playing devil's advocate. In rural areas in the north of Scotland, where there are fewer scrapyards, people get money for the metal that they bring into yards. If we say, "We can take it, but by the time I check your ID and everything, it'll be worth nothing," they will tell us, "You're making a fortune out of this," and just dump whatever it is on the way home. In fact, that is what happens when the price of metal goes down: people think that you are making a fortune. This is also about people's perception.

John Wilson: Everybody around the table picked up on the convener's example of BT and Network Rail losing materials, but the main concern for many of the public is the brass plaque, the miners' memorial statue or whatever that is stolen and sold for scrap. How is the scrap metal industry challenging the perception that it is supporting that kind of crime?

Ian Hetherington: We share the distress caused by such actions. Many of our members subscribe to some of those monuments; in fact, in many cases where such thefts have occurred, our members have actually raised the money to replace them—not, I should add, out of guilt, but out of a sense of association. Such thefts are relatively rare but they are deeply distressing. It is perfectly clear that if a plaque with a name on it or a memorial were to be presented at a responsible scrap metal yard, it would be rejected and, I presume, the incident would be reported quickly.

As it happens, the most notable outbreak of such incidents was in London—it reached the

national press—and it came down to one particular London yard that set out, in a deeply immoral way, to collect these things. The distress that is caused by those thefts is enormous, as is the impact, but the volumes of metal involved are so small that no responsible dealer wants them.

11:30

The theft of lead from church roofs is a classic example of something that causes immense community distress. We have done a lot with the lead industry to try to control high-grade heavy lead and make our members aware of the sorts of grades that might have come from historic buildings. We have done a great deal to counter the problem. I do not say that that addresses all the perception issues—that is a longer journey, but the bill is part of that journey.

Joe McCann: When people talk about scrap metal being stolen, the story is often elaborated—as if by a storyteller—and things get out of hand. You would be lucky if one half of half a per cent of stolen metal goes into the panel members' yards, because they have got too much to lose. That is where I am coming from. If you have too much to lose, you do not take the metal. It is as simple as that.

Here in Edinburgh, we have a system where the police come in and tell us what has gone missing and then ask to look around the yard. The yard is open to them and we are happy with that. There is a similar system in Glasgow, although they do not have the same rules.

We therefore get a wee bit upset when people turn around and say, "Ah, the scrappies—they're a bunch of crooks and ne'er do wells." I hold my head up. I am very proud of the scrap industry. I can go back to when we were called junkmen. Everyone thinks that the scrap metal trade is run by crooks, but it is not.

These gentlemen here have families who have been in the scrap trade for years and years. I have 60-odd years' experience in the scrap trade. That is how we were brought up: you had to learn from the bottom and work your way up. If someone comes in with stolen material, you show them the door or phone the police, and when the police come in, they are quite happy.

The committee will find that the police have no problems with the majority of scrap merchants, particularly the big ones. How many of the big scrap merchants have been seen in court? None—apart from me, way back; I was in court about 40-odd years ago.

If the Parliament wants to stop illegal scrap, you need to sit and listen to these chaps—go around and do it slowly, bit by bit, to pull out where things

have gone wrong. We know where the system has gone wrong, but do you listen? No.

The Convener: You are here today so that we can listen. Where has the system gone wrong, Mr McCann?

Joe McCann: The system has gone wrong because organisations such as the Scottish Environment Protection Agency and the Department for Environment, Food and Rural Affairs created the waste industry. To me—the other gentlemen may not agree—scrap is not waste, but is a product that we have to process. We spend a lot of money on equipment. Even in the waste industry—I am also in that industry—we take the material in and what we recover goes in skips and back into the system. If we did not do that, it would cost the country a lot of money.

At one time, the scrap merchants were seen as the blue-eyed boys because we saved the country money by recycling—although I do not like that word. We brought in material that went to the steelworks, the brass foundries and so forth. We recycled and we saved the country a lot of money. Now, certain elements are causing us problems and that reflects on us all.

I get very passionate about this and when I read some of the legislation that goes through, I get upset. I would rather sit and talk to you. The police stop the illegal ones, but they say, "Oh, I've got a waste carrier's licence," so the police say, "Okay, on you go," because they are licensed. We are the ones who have to take all the flak, although we abide by the law and make sure that everything goes well.

The Convener: It is up to us to try to safeguard legitimate traders. However, the problem that we have—the reason why the bill is in front of us—is that there are folk out there who are obviously not trading legitimately and we must ensure that the miners' memorials, the railway infrastructure, the drain covers and so on do not disappear, causing lots of problems. We are trying to close down non-legitimate, criminal traders.

We are here to hear your views, and you can feed in anything that you like. We are not playing about with the scrutiny of the bill—it is up to us to ensure that it is as right as it possibly can be. The last thing that we want is to have to revisit it at a later date after having found that the problems have not been resolved.

Jake Adam: The industry fully supports the bill. I go back to the point about the brass plaques. In my opinion, if the bill is passed as currently drafted, theft will still occur because the industries that I have mentioned, which are on the periphery of the scrap trade and the metal recycling trade, will fall outwith the scope of the bill. There has been a lot in the press recently, particularly in

Scotland from SEPA, about organised crime in the waste industry. The waste industry will fall outwith the scope of the bill as drafted, and if it is passed as drafted, it will not eradicate metal theft.

Ivor Williamson: I fully agree with Mr Adam. As Mr McCann set out, the bigger scrapyards are fixed entities and the police can check their CCTV records and everything. It is the smaller, maybe itinerant, traders who are possibly causing problems, and it is harder to police the ones who are on the outskirts of the law and who mostly do not want to abide by the law. Those are the ones that we are worried about. As Mr Adam says, we have to include businesses and companies that deal in metal but which do not fall within the scope of the bill.

The Convener: It would be useful for the committee if you were to list those dealers for us—all the associated trades that deal in metal—so that we could look at the matter in some depth. It would be extremely useful if you could do that, whether via Mr Hetherington's organisation or individually.

Ivor Williamson: That is not a problem.

John Wilson: Thank you for your responses. As the convener has outlined, the committee is here to listen to your concerns about the legislation, because we need to ensure that we get the legislation right and relay your message to the Scottish Government. Part of the purpose of today's evidence session is to allow us to hear what the industry thinks so that we can challenge the Government on what it puts forward.

Mr McCann, in your written submission you raise a concern over the separation of the waste management licence and the scrap metal broker's licence. Can you expand on that so that we fully understand what you mean and what impact that separation might have on tackling the underlying problem of scrap metal theft?

Joe McCann: The waste licensing that is done through SEPA or DEFRA is entirely different from the broker's licence. Anybody can apply for SEPA's licence, as there are no hard and fast rules. That is for the likes of the car breakers, who can open 24/7, whereas we are curtailed to work between 7 in the morning and 5 at night, and between 7 in the morning and 12 noon on Saturdays. We cannot buy anything outside those hours—that is when we shut down. We adhere to that and are quite happy with it, but the ones on the periphery can work 24/7. They can walk into a pub and buy scrap. They will not pay with cash; they will pay with a cheque. Then they sell it elsewhere. Because they have a licence from SEPA, they are legal—they have a licence for recycling—but SEPA can also come into our yards and say that it is not happy with this or that and we

have to spend money whereas the others do not. We are being penalised for what is going on with material that is being stolen and handled, and we are asking for a level playing field.

As I keep saying to you, I am happy with the system that we have for the broker's licence. We have too much to lose. If scrap is worth £100 a tonne and you buy it at £50 a tonne over the door, and the scrap is stolen, you are charged with reset. You lose your cash and your scrap, and you can even lose your licence. That applies just to us, though; it does not apply to those who have licences from SEPA. There should be a level playing field. That is all that I am asking. If we can get the people who set out the laws to look closely, they will see that there is an unbelievable number of anomalies.

John Wilson: Mr McCann said that a broker could lose their licence. Mr Williamson's submission suggests that somebody found breaking the licensing conditions should be struck off after three misdemeanours. That gives the impression that the current penalties—including the possibility of losing your licence—are not strong enough. Do you think that the prosecution system and the licensing system are strong enough to deal with these issues?

I take on board what all the witnesses have said. You are all legitimate businesspeople who are running legitimate businesses. The issue is how we tackle the illegitimate businesses that are causing most of the problems. As the convener said, we hear reports about theft from British Telecom and Network Rail. We have seen the footage on the television. The scrap is loaded into a container, the container is shipped off to a port and it is in China or India within a couple of weeks. It does not go through any system in Scotland or the rest of the UK. How do we tackle that? Can you assure us that you are fully behind consideration of the penalties and other opportunities that we have to curtail this type of trade?

Ivor Williamson: I think that what Mr McCann was getting at was that you need a waste carrier's licence for carrying what is classed as waste, whether it is rubbish from a building site or scrap metal. That licence is about £140 from SEPA, for three years. If you are a plumber or you deal in metal, you need a waste carrier's licence. A lot of itinerant and smaller dealers have those. However, it is only recently that the police have realised that a broker's licence is also needed for dealing in metal. The police were not up to speed on a lot of the legislation.

SEPA gives out a licence to waste carriers, whereas local authorities give out what they call a metal dealer's licence—which most of us have—or an exemption to a metal dealer's licence. The

smaller ones have a broker's licence. If we have a metal dealer's licence, we have opening times and times we are shut and so on. Those things are fixed, whereas the itinerants, who have a broker's licence, are travelling around and are harder to police. The policing of that is a big problem.

SEPA has problems with other things. SEPA visits us only three or four times a year. It has a league that sets out how good our yards are. I suppose that the number of people that SEPA has available to check these things is all down to finances.

The three-stage idea was my suggestion—if somebody is dealing at the fringes and they get caught three times, they get their licence taken away. It was just a personal opinion. I thought that it might work.

Jake Adam: I believe that in England, if an individual or a company is charged with metal theft, they lose their licence. That should be the same for Scotland. A bill went through in England two years ago. It had a number of errors, which have since been changed. I believe that the legislation has been tightened up. However, Mr Hetherington is probably best placed to comment on the situation in England.

The Convener: Let us hear from Mr Hetherington, then, please.

11:45

Ian Hetherington: We heard about fit-and-proper-person tests in the previous evidence session this morning. We, too, would like a fit-and-proper-person test to be put in place under the Air Weapons and Licensing (Scotland) Bill. We would also like some clear definition of what criteria a licensing authority could use—a non-exclusive list of offences, for example, which the authority could or should take into account.

We think that the sentencing levels that have been set out in the Civic Government (Scotland) Act 1982, as amended, are inadequate. The rewards for people acting illegally on the margins of the business are high—potentially very high—and we believe that a level 3 fine is not an adequate disincentive. In fact, it is at a level at which certain groups of people may well decide to take the hit occasionally, as the rewards are worth it. The levels of fine for certain offences are not adequate. Acting without a licence should be the number 1 offence and should attract the maximum fine.

On the whole, we believe that the levels are not adequate as they are currently defined. A licensing authority should have the ability to refuse a licence on the basis of a fit-and-proper-person test or, importantly, to revoke a licence if a certain range of offences need to be taken into account.

We would also ask that those who have been found guilty of serious environmental offences, not just criminal offences, should have those taken into account, so that we do not have a proliferation of people moving from waste crime into metal theft and back again, which is one of the dangers.

Joe McCann: It comes back to the need to examine these things very closely. I could show you paperwork going back to the waste directives. There are hundreds of waste-related provisions. Because scrap is classified as waste, anybody can apply for a waste transfer licence and a waste carrier's licence. That is wrong. There must be proper definitions.

This is just my opinion about the other aspect of waste. This is nothing to do with scrap metal being stolen; it comes down to HM Revenue and Customs looking for ways to collect revenue for itself. It is so obvious it is unbelievable, but HMRC passes the buck. I would love to see the trade in stolen metals stopped, but that is only possible if the rules are tightened up.

The Convener: I point out that, at this time, the Parliament has no powers over HMRC.

Joe McCann: I understand that.

The Convener: I wish it were different. We are considering this matter entirely because of the difficulties that many organisations and people in general are having to suffer on a daily basis because of metal thefts. Ones that the committee has highlighted involve rail infrastructure, drains and memorial statues. That has nothing to do with HMRC; it is about the inconvenience that is being caused to people across the country.

Alex Rowley: I welcome the witnesses. Thank you for coming.

There is talk about the need for a national register of scrap metal dealers. Could you say a bit about that?

Ian Hetherington: We recognise that licensing will be a local process. However, unlike a lot of activities that are licensed by local authorities, this activity is not really localised. It is highly mobile. The sites of the gentlemen concerned are static. They are in the locations that they are in, and they can therefore be looked at and inspected. However, they may well be buying from businesses or suppliers from all over Scotland. By definition, they will be selling all over Scotland and beyond.

Itinerant collectors—I hate the word "itinerant", which I think is pejorative; I would prefer to refer to them as mobile collectors, if we could have that amended at some point—are highly mobile and will work in multiple authority areas, so it is essential that there is a central and easily accessible place where the public, the police and

site operators who are buying from those people can identify who is a legitimate, licensed operator in the industry. That would require local authorities to be under an obligation to provide the data, which could be collated in a single place and provided online.

Let us bear in mind that a lot of the public sell or give metal to collectors, sometimes on their own doorstep, and it is right that they should know that the people who are working in their communities doing door-to-door collecting are legitimate. That way, we might also be able to deal a death blow to the unfortunate occurrence of multiple local collectors going round housing estates in some of our conurbations.

It is an essential part of enforcement to have a national register, because if the police pull over a mobile collector somewhere west of Edinburgh, they will have no means of knowing whether he is legitimately licensed, or which authority to apply to to determine that. Having somebody present their licence within five days is not adequate. A licence should be displayed on premises or on a vehicle, and should be visible to the public, so that people can see immediately whether someone is licensed or not, and the police can then take action immediately, because anybody who has not displayed a licence will be committing an offence and the police can at least take the load away from them. The sort of sanction that we need is quick, effective policing.

SEPA is prepared, in principle, to undertake that work and to provide the register, which could sit alongside its existing registers, so it could be done. There is a cost issue, but that is probably open to discussion.

The Convener: Does anyone else have comments on the national register?

Ivor Williamson: At the moment, anybody can sell any metal to any person. If 98 per cent of the country wants to abide by the law, could you make a law that makes it illegal to sell metal to somebody who is not a properly registered dealer or scrap merchant? The majority of the public will want to deal with somebody who is properly registered. I do not know whether that could be fitted into the bill; it is just an idea.

The Convener: I do not know whether that is practical, but we have noted the suggestion.

Willie Coffey: Mr Hetherington, you mentioned the metal theft alert system in your opening remarks. Could you tell us more about that? Does it operate in Scotland or only in England, and do all dealers participate in it? Is it a visual system or a text system?

Ian Hetherington: It is an online alert system. Virtually all our members work with smartphones,

which are de rigueur, so they all get a message identifying the theft, preferably including a photograph of the item or material that has been stolen. That message goes out within an hour of us being alerted to the theft.

Willie Coffey: Has it been effective so far in tracing items that have been stolen?

Ian Hetherington: Yes, it has, but it is a function of speed. If we get a really good description and get the message out within hours, we often get a response from a member saying that they have rejected the load or that they have seen a vehicle that looks familiar.

Willie Coffey: Who gets that information? Do the police get it?

Ian Hetherington: No, the police do not get it. It is aimed at the trade, because that is where we assume the stolen material is destined. As the convener has said, we are now beginning to see some direct exports from Scotland, but that is a different issue.

Willie Coffey: In terms of numbers, it cannot be the case that all traders, dealers and individuals are participating in the scheme. It would be great if they were, but how do we widen it to bring in more participants?

Ian Hetherington: We have just formed an industry partnership with a group that has a similar but smaller system that is technically much better than ours. We have raised some money to spread it out. The system will be linked to the police and will provide a police notification service.

The problem is speed and the time that it takes the notification to get to the police. I am not criticising the police; it is a resource issue. The information is not getting out quickly enough. As colleagues have said, if we are not notified within the day, it is difficult to track things.

We have done a lot with BT, and there is more that we can do with SSE and with Scottish Power, which has not been up to speed.

We are envisaging rolling the system out far more widely, beyond our own membership, which is also important.

Jake Adam: It is a case of closing down the avenues for the unscrupulous side of the trade. If someone offers you some lovely copper cable, you are not going to buy it, you are not going to give them cash for it and you do not want it, because it is not what you do. If the bill goes through as it is and the metal-recycling industry gets a full identification scheme and no longer deals in cash, but other industries on the periphery are still able to operate outwith the laws, there will still be a market for the unscrupulously procured material. If all those other industries are pulled into

the bill, we hope that there will not be much of a market left for that material, if there is one at all. That should shut it down. People are not going to steal material if they cannot get money for it.

Willie Coffey: That was very helpful.

Clare Adamson: I will push a wee bit on one issue. You have all given examples of how your legitimate businesses operate and comply with all the regulations. I am not an expert on the industry, but my understanding from what has been said is that, in the pyramid of recycling, it is the ones at the bottom who do not have to comply with the same regulations that you have to.

Mr Hetherington mentioned smartphones; obviously technology is becoming much cheaper. In your opinion, are there regulations that you as larger operating businesses have to comply with that could be pushed down easily to the broker level?

Ian Hetherington: Yes, we believe that all of the regulations are quite manageable right the way through the trade, from the larger sites to the mobile collector. We have tested this idea across the border, mainly in Wales, where mobile collectors have been encouraged to use smartphones to photograph the material that they buy or collect. In our view, they should take some identification of where they have collected material, photograph addresses, and photograph payment methods if they are paying for material. All of that can be recorded on a phone and transferred very simply—this is not Superman stuff—and at no additional cost for equipment. It does take a bit of time, but it is time well spent.

All the provisions that we see here on identification and on payment restrictions should be applied at all levels of the industry and on the fringes of the industry, in our view. We do not see any barriers to small businesses gaining access to the technology. In fact, the proportionate cost is higher for larger businesses, because their installations will be more complex and have to be networked, and that will be at higher cost. All that technology exists at the moment.

Clare Adamson: Mr McCann, when you talked about a level playing field, did you mean the smaller businesses in the pyramid that was described or the ones that are external to the metal industry?

Joe McCann: We agree to the rules and we do our job, but the regulations do not apply to smaller unlicensed businesses. That is an anomaly that we must try to address. If we can address it, that will be great, but the other gentlemen on the panel do not want to go down a road that will end up with them in court and losing their businesses, because their names—believe it or not—are important to them. We guard our names jealously, and we get

upset when what other people do could lead to our being criminalised, because of the way in which the bill has been written. As the joke goes, “In God we trust. Everyone else pays cash.” That is a fact of life. I am not trying to be flippant. It is something that the committee must look at and decide whether we are going the right way or the wrong way. Once you start the process and the bill goes through, you could have problems.

12:00

Cameron Buchanan: Having visited a scrapyards, I have seen the problems of storing material for 48 hours. It just does not seem to be practical. However, I see that Mr McCann of Dalton’s stores his metal for longer than 48 hours. What do the witnesses think about the storage rule? It seems to me to be onerous, because the police obviously do not come within 48 hours.

The Convener: Let us start with Mr McCann, who manages to cope with that at the moment.

Joe McCann: In Edinburgh, we have smaller materials from householders and we hold that stuff for 14 days. The stuff that we buy from engineering works we do not hold for that length of time, because we know exactly where it has come from and there is a paper trail, so it moves on. The smaller merchants hold the small materials for 14 days, so that part is clear, and if that material goes down to Mr Williamson’s yard he knows that it has sat with the person he has bought it from for 14 days and that the police have had a more than ample chance to visit. It may then sit in his yard for another 14 days, because the markets go up and down. That is how it is played, but unfortunately the rules are not always as we would like them to be. We all abide by the rules, but nobody else does, so we are the ones left holding the baby.

Ivor Williamson: I do not agree with that. If you have an acre of a yard and a weighbridge, a skip lorry may come in carrying council material in a 20-foot container. You could probably tip two or three such containers in a room this size, and that would take up 10 or 15 per cent of the yard space. By the end of a day, you would have run out of yard space if you had to keep that material and not move it for 48 hours.

There is another thing in the bill about notifying a date and time when you process material. The bigger the yard, the worse it is, because when material comes in we put it into machines, chop it up, squash it and bale it for moving on to larger steelworks or abroad—we are dealing with a large volume of light loose material that we have to process. The notification requirements would probably also cause a problem for SEPA, because there are tonnage limits and space confinements, and we are allowed certain materials in certain

areas only for certain lengths of time. Some materials could come in and be chopped up and put in stock until the market goes up, but that would generally not work for scrap. I would have to shut my yard down within a week.

Jake Adam: I agree with Mr Williamson. Mr Buchanan saw the scrapyards in Edinburgh, so he knows that it would be impossible to fulfil the storage requirements. We would be able to operate on a Monday and a Thursday and that would be it. SEPA would have huge issues, as would the Health and Safety Executive, and the industry is under increased pressure from the Health and Safety Executive. Our insurance companies would also have huge issues with that requirement. It is just not workable.

Ian Hetherington: The definition of a mobile collector or itinerant collector is that they do not operate a site, so I am not sure how a mobile collector could hold material for 48 hours, apart from by piling it up on the road outside his house.

Ivor Williamson: If the cash ban comes in, which we all expect would stop 95 per cent of thefts, the 48-hour rule would not be needed.

Cameron Buchanan: That rule would be redundant.

Ivor Williamson: Yes, because dealers would want to keep the material for the police to see it. If you ban cash payments and think that you have stopped the crime, you do not need to keep the material.

John Wilson: Mr Hetherington's submission to the committee refers to the fact that the bill wants to ban cash payments for scrap metal. You go on to talk about the Scrap Metal Dealers Act 2013 from England and Wales and you say that the bill contains significant weaknesses in comparison with the legislation down south. Will you expand on what those weaknesses are? Although we are not trying to mirror the English and Welsh legislation, we are certainly trying to achieve a level playing field and, if possible, to get better regulation in Scotland than currently applies.

Ian Hetherington: We dealt with quite a number of the weaknesses, as we see them. I will go through them quickly. We believe that the definition of scrap metal is inadequate. Also, the Civic Government (Scotland) Act 1982 defines a scrap metal dealer as "buying and selling" scrap metal; our strongly held view is that the definition of a scrap metal dealer should refer to their buying "or" selling scrap metal.

I know that the Scottish Government was keen to avoid getting into detail about payment methods, but that is an area in which there has to be detail and prescription, because it is complex. I give the example of cash cards that do not require

the individual to hold any identification. In our view, that is the direct equivalent of cash. There might be an argument that the bill is non-prescriptive but, in essence, by not spelling things out, it lends itself to misinterpretation and poor enforcement.

I dealt with local authority licensing in relation to a register. On inconsistent licensing conditions, if mobile collectors are to be licensed only in one local authority, they will license themselves in the cheapest local authority, or the one that has the least stringent conditions. I have termed that "licence tourism". It will be rampant. These are very bright people. That issue has to be dealt with. It is probably best dealt with through strong guidance and placing a strong duty of consistency on licensing authorities.

I have dealt with display of licences. We have not talked too much about establishing a seller's identity. I know that the Scottish Government sought to avoid having too much detail on that in the bill, but it has to set out, either on the face of the bill or in definitive guidance, what forms of identity and what processes are required. In other words, do you need to verify the name and address by reference to a publicly available means of ID that contains a photograph and an address, for example? That would be our recommendation. The bill should also set out some alternatives.

We have referred to tag and hold. We believe that the lack of a suitable applicant test, or fit-and-proper-person test, is an omission. We also believe that there should be consultation with SEPA on applications for a new licence or for renewal of a licence. Joe McCann has highlighted the fact that, like it or not, the correlation between waste licensing and scrap metal dealer licensing is very close indeed. Frankly, if somebody is in breach of conditions on one side, that should be taken into account.

Some work needs to be done on who is being licensed. These are not all individuals; a large number of the licensees in Scotland are corporate entities of one sort or another. Some thought has to be given as to whether we should license the site manager—that goes back to the discussion that you had with the first panel—the owner or the controlling mind. The owner and the controlling mind might not be the same person, nor might either be the site manager.

Our assertion is that in a lot of these areas the bill needs more detail, I am afraid. I also comment—because I have been asked to—that trying to mesh this in with the Civic Government (Scotland) Act 1982 adds a level of complexity and interweaving that makes the bill very difficult to read and understand, even for those of us whose job it is to read and understand these things.

We have been impertinent enough to produce a draft suggested rewording of some sections, which might bring it all together in one place, and which the Scottish Government and your clerks have received. We would be very happy, as the bill moves on, to work with the committee and with Scottish Government officials to try to make better legislation. We would like to see the best legislation in Scotland.

John Wilson: Thank you very much.

The Convener: No one has anything to add, so I thank you very much for your evidence. We now move into private session.

12:11

Meeting continued in private until 12:33.

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