



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 28 January 2015

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CONTENTS

AIR WEAPONS AND LICENSING (SCOTLAND) BILL: STAGE 1	Col. 1
DECISION ON TAKING BUSINESS IN PRIVATE	38

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

4th Meeting 2015, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*Cameron Buchanan (Lothian) (Con)

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

*Cara Hilton (Dunfermline) (Lab)

*Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Superintendent Alison Evans (British Transport Police)

Chief Superintendent John McBride (British Transport Police)

Chief Inspector Morag Stewart (Police Scotland)

Assistant Chief Constable Nelson Telfer (Police Scotland)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 28 January 2015

[The Convener opened the meeting at 10:00]

Air Weapons and Licensing (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the fourth meeting in 2015 of the Local Government and Regeneration Committee. I ask everyone present to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Because we provide papers in digital format, some committee members might consult tablets during the meeting.

Agenda item 1 is our seventh oral evidence session on the Air Weapons and Licensing (Scotland) Bill. Today we will take evidence from the British Transport Police and Police Scotland on the provisions on scrap metal dealing, alcohol licensing, taxi and private hire car licensing and sexual entertainment venue licensing. Before we start, I should point out to the witnesses that they do not need to press the buttons on their microphones as they will be operated by the sound engineer.

We will start the session with questions on scrap metal dealing. As the British Transport Police witnesses will take the lead on that, we should direct our questions to them. Once we have exhausted those questions, they will step down from the table and we will continue the rest of the session with Police Scotland.

I welcome from the British Transport Police Chief Superintendent John McBride, divisional commander for Scotland, and Superintendent Alison Evans, national metal theft task force; and from Police Scotland Assistant Chief Constable Nelson Telfer, head of policing, west of Scotland, and Chief Inspector Morag Stewart, liquor and civic licensing policy. Chief Superintendent McBride and Superintendent Evans, do you wish to make any opening remarks on the scrap metal provisions in the bill?

Superintendent Alison Evans (British Transport Police): Yes, convener. I will provide evidence on the activity that has been undertaken in England and Wales.

The Scrap Metal Dealers Act 2013 came into force in December 2013 as part of a suite of measures that we have undertaken on metal theft,

the aim of which is to make metal harder to steal. That involves putting protections in place and trying to work with industries to ensure that we make metal as safe as possible, either by marking it or by increasing and enhancing the protection around it. Our other aim is to make it easier to catch offenders, so we have taken enforcement measures as part of the task force, and we are ensuring that activity is joined up between the Home Office forces, the BTP and, importantly, other agencies such as the Environment Agency and local authorities, which have a huge part to play.

It is important to put the Scrap Metal Dealers Act 2013 in that context and to see it in the round as part of that activity. The legislation was hugely important, and it has been very necessary and very helpful, but it forms only part of the activity that has been undertaken.

The results speak for themselves. In 2012-13, England and Wales saw an overall 43 per cent reduction in metal theft. That figure is for all types of metal theft including theft of power cables, media cables, lead from church roofs and catalytic converters. We need to talk about the metal that is stolen in the round and ensure that we do not think about metal theft just in terms of the cable with which it is usually associated.

That reduction was matched in the BTP figures; in 2013-14, the BTP saw a further reduction of 36 per cent. We do not have the overall figures for England and Wales for 2013-14. Although they are due to be published imminently, unfortunately I have not had foresight of them, but we have been told anecdotally by the forces that we are working with that, over the year, they have seen a similar reduction. Therefore, in the round—and certainly for the BTP—we are looking at an 80 per cent reduction.

Although one might expect that there is no way that such decreases can continue, we have seen in the period since April 2014 another reduction of 48 per cent in both live and non-live crimes. By live crimes, I mean the theft of cable that affects the running of the railway. For example, the theft of the cable that is part of the signalling equipment can stop trains running.

There are also thefts from depots and from line side that do not necessarily affect the running of the railway but which still have a huge impact on and financial cost to Network Rail. Although I cannot say that the figures that I have mentioned are completely reflected in England and Wales as a whole, the effects of the Scrap Metal Dealers Act 2013, particularly the cash ban and the licensing requirements, are indicative of its success.

We have worked closely with the Local Government Association and individual local

authorities, and nobody there has indicated to us any increase in fly-tipping or any correlation between the act coming into force and an increase in the financial requirements on them to act on such problems. Although the British Metals Recycling Association indicated that its members had seen a downturn in income since the 2013 act came in, Her Majesty's Revenue and Customs carried out some testing on tax returns and found no links to suggest that there had been any such downturn. Even the BMRA will say that scrap metal dealers have been careful about managing their tax returns, so you may not think that that is particularly indicative. However, we have tried to do as much testing as we can around tax returns, and we have not found any particular links between the cash ban and a downturn in resources.

I believe that you also want to know about cash-checking facilities.

The Convener: I think that we will probably ask questions about some of those things. I shall ask Chief Superintendent McBride to comment on those points.

Chief Superintendent John McBride (British Transport Police): A lot of what Alison Evans has described took place, and still takes place, under the national metal theft task force, and Scotland has played into that and has replicated much of what has been done in England and Wales. Operations have been co-ordinated between ourselves and Police Scotland—and before that, the constituent forces—along with the Scottish Environment Protection Agency and other agencies that have some locus in that type of criminal activity. Many co-ordinated policing operations are targeting different angles and are working with utilities, both transportation and telecommunications, and power generators and suppliers on housekeeping, disposal and preventative measures to help tighten things down on metal theft. We are also working with local authorities.

Alison Evans has described the falling crime rates in England and Wales that the BTP and the Home Office forces have seen. However, despite the fact that much the same action has been taken, the reduction in crime on the railways has been more modest than the reductions that the rest of the force has seen. Across the board, there has been a slight increase in Scotland's crime figures. The bit that is different in what is a complicated arena is the change in legislation in England and Wales. I welcome the committee's work on the bill, and I hope that the changes to the registration and licensing of scrap metal dealing businesses, which are primarily the market makers, will reduce crime in Scotland even more.

The Convener: Does Police Scotland have anything to add?

Assistant Chief Constable Nelson Telfer (Police Scotland): Not at this point, convener.

The Convener: We will move on to questions. The committee has heard a fair amount of evidence about the impact of metal thefts. I am looking at a press report from the *Hamilton Advertiser* about thefts from Aitkenhead farm, Tannochside, of 200m of cable carrying 11,000 volts. It is quite unbelievable to think that folks would risk life and limb for that, but that sort of thing seems to be quite commonplace. Incidents galore have been listed, and we know that there have been major impacts on the railways over the piece.

The police submissions suggest that a national register of metal dealers be created. Why do you think that there should be such a register?

Chief Superintendent McBride: A national register would be really helpful from a number of points of view. For a start, it would certainly help members of the public who are looking to dispose of household waste metal if they were able to identify recognised, bona fide scrap metal dealers. From an enforcement point of view, there are good opportunities for sharing information and intelligence among a number of law enforcement agencies that have jurisdiction over this issue. It would be really useful if we, SEPA and local authorities—which have some locus in this—could share information on a business-by-business basis when we visit scrap metal dealers, and it would also be very useful to have clarity and visibility around who has registration and licensing in which local authority areas, not just for scrap metal dealers but for itinerant mobile collectors.

The Convener: Does Police Scotland have a view on the national register?

Assistant Chief Constable Telfer: We support Chief Superintendent McBride's comments about regulation and the sharing of information and intelligence. We would welcome that, and we support our colleague's position on it.

The Convener: You mentioned itinerant dealers, Chief Superintendent McBride. The committee has heard about waste dealers who deal in smaller amounts of metal. How do we deal with those folks and ensure that they stay within the law? We have heard from others that that might be much more difficult to police.

Chief Superintendent McBride: Something that would strengthen regulation would be a definition of dealers, which should include those who buy or sell. Such a mechanism would allow us to catch a number of itinerant or mobile collectors within the legislation. From operations

that have been carried out in Scotland—the experience will be very similar in England and Wales—we have found that, although itinerant and mobile collectors do a social good in uplifting scrap metal, there is considerable evidence that an element of them steal metal. Of course, that gets into the chain of being sold to unscrupulous dealers and, as a result, harm is done to local communities. There is, for example, evidence of garden furniture and trampolines being taken out of gardens.

There has been a proliferation of metal collectors, because the value of metal has been such that stealing it has become a good, low-risk, high-reward crime to get involved in. If the legislation as the committee scrutinises it could be strengthened to include itinerant and mobile collectors, that would be really valuable, because it would prevent a fairly significant section of this industry from sitting outwith the legislation.

The Convener: How have itinerant dealers been dealt with in England and Wales?

Superintendent Evans: Each mobile collector is required to have a licence for the local authority area in which they collect, and there has been some discussion about the display of those licences. Mobile collectors have said, “If we collect in several areas, how are we meant to display the licences? We would have licences all over our window and it wouldn’t be safe.” That is a slightly ridiculous argument, because they are required to display the licence only for the area in which they are collecting at that time.

Some local authorities have gone down the photographic route. That has been really helpful, as it means that people cannot swap their licences with other people. It also gives the public great reassurance. If the licence is on display, the public can check whether the person who comes to their door asking for metal is genuine and legitimate.

Displaying licences also makes our life easier when we do road-side stops, because we can see immediately that the person has one. We can check their records, and if they are keeping the appropriate records, they can go on their way. We make sure that we focus our activity on the people who are totally contravening the law or who might also be contravening environmental legislation. We are working with partners on the road-side operations that Mr McBride has described to ensure that we have all the parties at the table and that if someone is not keeping appropriate records we can seize loads or whatever as necessary.

10:15

Cameron Buchanan (Lothian) (Con): Good morning. Your submissions say that you are interested in a national register, a requirement to

display identification and the banning of cash payments. Will those things help a lot? Some witnesses have highlighted the problem that someone could just get a cheque instead and then go next door to cash it.

Chief Superintendent McBride: There is no doubt that the availability of cash in the industry leads—if I can put it this way—to poor business practice. Given the good evidence that we have of industry scams that are probably driven by the availability of cash, I support the prohibition suggested in the bill, as it will take away some of that temptation.

A more important point is that the availability of cash in some ways greases the wheels of criminality. It does not allow for any traceability in transactions, and where record keeping is poor or is designed to wrong-foot investigations, it provides anonymity. Those two things ease criminality, and it would be useful if we could prohibit the use of cash by introducing a mechanism that allowed some traceability, either through non-transferable cheques or electronic payments.

Cameron Buchanan’s point is very well made: people might very well go to a cheque-cashing outlet to cash a cheque. However, that takes us into the area of money service bureaux and businesses, and that brings with it a considerable amount of regulation from HMRC and the know your customer checks, in which identification is required to create that kind of relationship. In some ways, the know your customer regulations and requirements are much more stringent than anything we have ever seen for registration and record keeping in the scrap metal dealing industry. I fully support a prohibition on the use of cash to buy or sell scrap metal.

Assistant Chief Constable Telfer: I emphasise our full support for our BTP colleagues and their position. I have nothing further to add.

Cameron Buchanan: You are keen on photographic ID, which I would have thought should be essential. As far as the display of licences is concerned, I believe that you said that only the licence for a particular area requires to be displayed.

Chief Superintendent McBride: That is right.

Superintendent Evans: Yes.

Clare Adamson (Central Scotland) (SNP): Chief Superintendent McBride, you talked about tightening up the definition. The phrase you used was someone who “buys or sells”. Should that become “buys and sells”? I am conscious that there might be a point at which an ordinary householder would be required to have a licence if they were just selling.

Chief Superintendent McBride: I worded that carefully, because it is intended to capture everyone who is involved. We talked about itinerants and mobile collectors, who do not always buy on the doorstep; they may be given things. It is important that it is not “buy and sell”, because such people do not always buy; it could create a loophole in the legislation for people who are of a mind to step around it.

Clare Adamson: At what point would a householder who is selling trampolines or used garden furniture require a licence? Would it be based on the sales at a particular time, the value of the sales or what?

Chief Superintendent McBride: I see what you mean: your question is just about householders. There are provisions in England and Wales that cater for that and I do not think that anything suggested in the bill would make us any different in that regard.

The Convener: Ms Adamson is trying to make the point that sometimes in our lives we might get rid of excess, whatever it might be. Do the England and Wales provisions have something about the regularity of the buying and selling being the thing that requires a licence, or if we sold a bit of garden furniture or whatever as a one-off, would we suddenly find ourselves in breach of the law?

Superintendent Evans: The England and Wales 2013 act talks about someone

“carrying on business as a scrap metal dealer”

who, in their role in that business, buys or sells. Therefore, it would exclude me or you selling something as a one-off or irregularly. There is a business proposition, if you like. We would like the bill to say “buy or sell” so that it includes the mobile collectors who do not buy but definitely sell.

Chief Inspector Morag Stewart (Police Scotland): If the records are kept better and we are allowed the power of entry and inspection, we will be able to ascertain whether somebody who does not have a licence is going quite frequently to a scrap dealer and we will be able to address that. That would deal with that element as well.

The Convener: As it stands, the bill says:

“This section applies where a metal dealer or an itinerant metal dealer (‘the dealer’), in the course of the dealer’s business—

- (a) acquires any metal (whether or not for value), or
- (b) processes or disposes of any metal (by any means).”

Is that similar to the English and Welsh legislation?

Superintendent Evans: Yes.

John Wilson (Central Scotland) (Ind): Good morning. My first question is for you,

Superintendent Evans. Earlier you said that, in England and Wales, mobile itinerant collectors are registered in every local authority in which they operate. Is that correct?

Superintendent Evans: That is right, yes.

John Wilson: As I understand it, under the current legislation in Scotland, they need to be registered in only one local authority area but can collect in other parts of Scotland. Do Police Scotland or the British Transport Police have any comments on whether it would be appropriate to introduce a national licensing regime to ensure that any itinerant mobile collector is covered? That ties into the convener’s question about a national licensing regime. As has been asked previously, if someone who is licensed in Glasgow is stopped in the Highlands, how would their licence be checked out?

Superintendent Evans: If you had a national or Scottish register, anybody who stopped somebody with a licence from Glasgow in the Highlands would be able to check the register to ensure that the licence was legitimate.

Chief Inspector Stewart: The situation is similar to the way in which the pedlar’s certificate operates. Although the police issue that certificate, pedlars are allowed to operate throughout Scotland. In England, they are licensed on a local authority basis, which might keep tighter control of them.

John Wilson: I ask for clarification, Chief Inspector Stewart. At present, the police in Scotland issue pedlars’ licences. Is that correct?

Chief Inspector Stewart: Yes.

John Wilson: Have there been any discussions with Police Scotland about issuing the itinerant mobile collectors licence?

Chief Inspector Stewart: No, the local authority would issue that licence.

John Wilson: I am just trying to work out why the police would issue pedlars’ licences and not the other ones.

Chief Inspector Stewart: A pedlar’s licence is given for the sale of goods and wares whereas a metal dealers licence is specific to a dealer in metal as opposed to other ancillary items.

John Wilson: So you already have a national register for pedlars in Scotland.

Chief Inspector Stewart: We have records of those who have been issued with licences.

John Wilson: Thank you.

Scrap metal dealers have told us that if we cut out the ability to pay cash for scrap, there might be an increase in fly-tipping. However,

Superintendent Evans said that the BTP had not seen any relationship between the introduction of the new legislation in England and Wales and levels of fly-tipping.

Superintendent Evans: When we worked with local authorities and the Home Office to draft the 2013 act, we did not even think that that might be an issue, as far as I am aware.

It is good that the issue has been raised here and that you are considering it—it is something that we need to take back. However, in talking to individual local authorities and national bodies—the Local Government Association and the Environment Agency—nothing has been raised at all to suggest that that has occurred. However, I am happy to take the issue back and to ask those questions, and I will perhaps submit written evidence to the committee if that would be helpful.

The Convener: That would be extremely useful, if possible.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I want to ask about how well the cash ban has been working in England and Wales. I presume that cash transactions are now criminalised in England and Wales. Is there any evidence from data gathering on criminal activity to show how that is proceeding? It might be a wee bit naive to think that no cash transactions are taking place because of the legislation down there. How has that panned out? Have there been any prosecutions in relation to cash transactions?

Superintendent Evans: Yes, there have been prosecutions in various parts of the country for dealing in cash, not keeping appropriate records and not checking people's identification. Therefore, all parts of the legislation have been enforced. Part of our work has involved educating the judiciary on how important the cash ban is, so that those who have contravened it have had more serious fines, although we have not had any imprisonment sentences. The fines for contravention have ranged up to £1,000.

Willie Coffey: Has that made the biggest contribution to the impressive reduction in the number of metal thefts?

Superintendent Evans: It has removed the ability of low-level offenders to process metal with no risk and to get an immediate reward. That was what was so easy for them previously. Metal is relatively untraceable and is prevalent in our communities, so it is difficult to make it much harder to steal. Therefore, we had to think of another approach. Our approach has been to look at the middleman and to get the co-operation of the scrap metal dealers to make those enhanced checks. Through the identification checks, the dealers are almost policing the issue themselves. We had to get the legitimate industry on board,

and to do that we had to show it that we will take enforcement activity against those who contravene the law.

Our thinking is that, as legislation has been introduced, we really have to show the legitimate industry that we are doing something and taking out the bad guys, because otherwise the legitimate industry will not have any faith in us and will not keep giving us intelligence. We do not have that many resources, so we have to focus them on the people who are taking stolen metal through the dealers. The cash ban is hugely important, therefore, because it takes out that immediate realisation and puts another step in the way. It also gives us another way of identifying people who hand in stolen metal. It creates another hoop that people have to jump through before they have cash in their hand for metal.

Chief Superintendent McBride: It might be helpful to share the fact that when a cash ban was introduced in France, the evidence was that the level playing field between those who operate legitimately and within the law and those who operate outwith it meant that reporting from within the industry in France increased, which allowed the police to target those who were operating outwith the law. The experience has been similar in England and Wales, where competitors, through their intelligence networks in the industry, have been reporting instances of people not operating within the law. We expect a similar experience here if the bill becomes law.

Willie Coffey: I have a question for the British Transport Police and Police Scotland on the requirement to keep metal on site for 48 hours. Both organisations have said that they would prefer to retain the requirement, but we have heard in previous evidence sessions that the police are perhaps not always able to investigate metal theft within 48 hours. Will you give us your advice on that?

10:30

Chief Superintendent McBride: Our minimum standards of investigation have been written up by BTP and shared in England and Wales and with our colleagues in Police Scotland. When there is a metal theft attack on the railway, part of our minimum standard is to visit the three closest scrap metal dealers, to look for the stolen metal. The 48-hour requirement would be very helpful to us in such cases.

In reality, the BTP understand the pressures on the industry. It is heavily regulated by SEPA—and rightly so, to prevent environmental pollution—and there is no doubt that the longer that metals are left on the ground, the greater the danger of soil pollution, so I understand that pressure. I also

understand the pressure on throughput and that keeping stacks of metal for 48 hours might be problematic for the industry. From an investigative point of view, the retention period would be helpful, but I understand the business considerations and environmental impacts that it might have.

Assistant Chief Constable Telfer: I would echo those comments. I understand that in lesser cases, in which scrap metal is going through dealers, we do not get there in 48 hours, but such is the gravity of some theft cases now and the volume of metal involved that we take those cases seriously and expedite their investigation. We are suggesting that we keep the 48-hour retention period, which provides a good balance between our approach to investigating the more serious metal thefts and the business concerns that John McBride has just highlighted. We support keeping the 48-hour requirement.

Willie Coffey: The bill proposes a requirement to improve record keeping. Would that be any compensation if we were to lose the 48-hour requirement? Would you prefer to keep the 48-hour requirement?

Assistant Chief Constable Telfer: In the most grave cases of metal theft, it is beneficial for us to retain the best evidence, and the 48-hour window of opportunity is particularly beneficial in getting that evidence. To do away with it would be to do away with our opportunity to gain the best evidence and to recover stolen property.

Chief Superintendent McBride: There is a balance to be struck. If the bill becomes an act, there will be new provisions requiring better record keeping and identification, which will help to reduce anonymity. If the ban on cash transactions is enacted, it would improve the traceability of suspects.

I agree with Mr Telfer about the best evidence. If you have been in a scrap metal dealer's, especially one of the bigger ones, you will know that the reality is that there is metal all over the place. We would need some fairly good processes that the dealers signed up to to keep the 48-hour stock—which they obviously want to keep moving—in such a way that when we go in looking for any stolen metals after a crime has occurred, it is fairly clear to us where it will be.

I am trying to say that there are several ways in which they could get round the issue by not having the 48-hour stock in the 48-hour pile where we might expect to see it. It is all a balance.

Alex Rowley (Cowdenbeath) (Lab): It is about trying to strike that balance. I appreciate what you say about best evidence, but how often do the police use the power? The scrap dealers who came to give evidence, particularly the larger

ones, were saying that it was very difficult for them to keep metal for 48 hours. As you say, their processes involve moving stuff on. Will the other provisions that are being put in place, around cash, record keeping, photo ID and so on, not compensate for losing the 48-hour requirement? Where is the balance? Do you feel strongly about the matter or, although you might not get the best evidence, can you agree to it if all the other procedures are put in place?

Chief Superintendent McBride: It is difficult, because there is the business need, which we have talked about, the environmental need, which SEPA would certainly and rightly be concerned about, and the need for best evidence in investigations. If the metal is there and we can find and identify it, given some of the challenges that Alison Evans outlined, that would definitely be the best evidence, which would help us. Some of the safeguards that might come into being as the bill progresses might help us as well, and they might offer a compromise.

The Convener: Superintendent Evans, there is no 48-hour requirement in England and Wales. How does that work there? Is the fact that you do not have it in place an impediment?

Superintendent Evans: In an ideal world, we as enforcement agencies would have everything in place that we possibly could. The 48-hour rule would help considerably. We do not know how much our not having it impedes us, because we do not have it. The BTP's minimum standard is to get to the closest three scrap metal dealers within 24 hours. Each provision that is put in place is a step towards improving the traceability of stolen metal. The requirement for 48-hour retention is another step that would assist us. However, we have consideration for BMRA colleagues, so we recognise that it could prove very onerous for some of the smaller operators to have to comply with that as well as with the Environment Agency requirements that are placed upon them. We understand the business objections. However, in our world, we would prefer to have as much assistance as possible to trace the metal.

The Convener: What is Police Scotland's view?

Chief Inspector Stewart: Given the gravity of some of the incidents of metal theft, the time when it is reported, the multiple locations involved, and the need to identify what dealers the metal has been taken to—they can cover the whole of Scotland—I suggest that 48 hours is a minimum to allow enforcement agencies to make any positive inquiry. If we did not have that, it would certainly impede any investigation. People will not necessarily go to the nearest scrap metal dealer to process the metal. The thefts could come from multiple locations—we do not know. The

investigations take time. The removal of the 48-hour provision could be significant.

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

Alex Rowley: The trade is quite concerned about the 48 hours, particularly the larger dealers. Their view is that there is no practical benefit and that record keeping can be just as effective. Would you dispute that?

Chief Inspector Stewart: I can understand where they are coming from, but it would be effective only if the record keeping is up to standard and the dealers are checking identification. As I have said, there are difficulties for any police inquiry, from when the incidents occur to locating the stolen items. Having 48 hours to identify where the metal is is not a long time for the police. Beyond that, the metal is gone and it is easily disposed of. If the records have not been kept and there is no closed-circuit television, that makes it even more difficult for us to trace it. In my opinion, the requirement provides a compromise between allowing the enforcement agency time at least to try to make inquiries and start an investigation and considering how long dealers can keep the metal and comply with SEPA's requirements.

Clare Adamson: Like my colleague Willie Coffey, I was impressed by the figures that you quoted on the reductions in England and Wales. As well as the licensing legislation there, there is also a considerable amount of work with different industries. Have you seen similar reductions in heritage thefts? Is the work that you do with the industry paralleled in Scotland at the moment?

Superintendent Evans: We work very closely with English Heritage and Ecclesiastical Insurance, which is the main insurer for churches and which looks at the theft of lead from church roofs. We get evidence from a variety of sources about the increase or decrease in thefts.

English Heritage will tell us that it has seen an incremental decrease in such thefts, and the number of claims that Ecclesiastical Insurance has had from churches for the theft of lead from their roofs has decreased between 2011 and 2014—the period of the task force—by around £2 million to £3 million. We can definitely say that we are seeing the decrease not only in the rail networks and the power networks, and in stories in the media; we see it across the piece. The only gap is around the theft of catalytic converters, which is probably a side issue in relation to what we are discussing today.

Cameron Buchanan: On the issue of the 48-hour period, a scrap metal dealer we visited said that it would be quite easy to hide some of the stolen metal and just give up a bit of it. However,

they were not keen on storing metal, because it takes up valuable space. Would anyone like to comment on that?

Chief Superintendent McBride: Those points are true. I have been in a number of scrap metal dealerships and I understand the challenges that they face in relation to the storage of material.

I imagine that, as the industry's representative body, the BMRA might have raised the other point. The BMRA would suggest that the proportion of processed materials that are stolen is incredibly small when you consider all the recycling that is done in the industry. It would make a perfectly valid argument that 99 per cent of its processed material is legitimate and is not stolen and that having to store it would impose disproportionate burdens on its members. It is hard to argue against that.

With regard to some of the evidence that the committee has received on some of the more major or more impactful metal thefts—when hospitals have had their power cut, tens of thousands of houses have had their electricity supply affected and so on—those are the cases in relation to which it is critical that we are able to get into the yards around the locus of the crime and further afield to find the metal and take the inquiry forward. That is when the pressure is on us.

The Convener: Does Police Scotland have anything to add to that?

Chief Inspector Stewart: As previously articulated, the only other way around the concern about the 48-hour period would be to further tighten the bureaucracy involved. However, I would be concerned about the removal of the time period, given the time required to undertake a police inquiry, particularly in significant situations in which the metal will be moved on quickly.

The Convener: I thank the representatives of the British Transport Police for giving evidence today. We will continue to take evidence from Police Scotland in relation to other aspects of the bill after a short suspension.

10:43

Meeting suspended.

10:46

On resuming—

The Convener: We continue the session with Police Scotland, focusing on alcohol licensing, taxi and private hire licensing and sexual entertainment venue licensing. I intend to deal with this section by section, beginning with alcohol licensing.

Assistant Chief Constable Telfer: Thank you for the opportunity to present evidence to the committee today. I will deal with alcohol licensing first. As the committee is aware, the purpose of licensing and regulation is to maintain standards and control activities that have the potential to be harmful. An effective licensing regime provides safeguards, promotes public safety and reduces the risk of criminality. It also reduces the risk of those who are linked with serious and organised crime being able to exploit legitimate enterprises. That is an important aspect of licensing.

The cost to society from poorly managed licensed activity, ranging from the sale and supply of alcohol through to the theft of metal as we have been discussing, should not be underestimated. It can place undue burdens on both the public and private sectors.

Recent case law, such as *Brightcrew Ltd v City of Glasgow Licensing Board*, which I am sure that we will cover, has frustrated the ability of both the police and local authorities to tackle issues that are not directly linked to the sale and supply of alcohol in licensed premises. The regulation and management of licensing is a key priority for Police Scotland. It is pivotal to our prevention and intervention strategy. We welcome the proposals in the bill that seek to enhance the Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982, which will enable us to tackle the impact of licensing within our communities and to keep people safe.

There are key elements in relation to part 2 of the bill, which seeks to improve regulation pertaining to the sale and supply of alcohol, but I will skip over those just now.

It is estimated that the excessive consumption of alcohol costs the Scottish economy about £3.6 billion per annum. That figure includes costs incurred by the police, the Scottish Ambulance Service, the national health service and social work services, to name just a few. In times of budgetary constraints, it is of real concern that the public purse and the Scottish economy suffer such detriment as a result of the misuse of alcohol. Many factors, such as availability, accessibility and cultural attitudes, underpin our poor relationship with alcohol. I am sure that we will discuss those.

The bill outlines proposals to assist licensing boards in identifying areas of overprovision. It includes a provision to include a whole board area as a single locality and for terminal hours to be considered as part of a board's determination. However, one of the main aspects for Police Scotland is the irresponsible sale and supply of alcohol being a contributory factor to other crime. Daily, my officers encounter incidents of violence, disorder, antisocial behaviour and domestic abuse that are often linked to the overconsumption and

sale of alcohol. From a national perspective, 23.2 per cent of young people who engaged in rowdy and disorderly conduct had consumed alcohol. I have some stark additional figures on that, which we could discuss later if members wish.

There is a particular problem regarding children and young people. As the committee is aware, alcohol is an age-restricted product. It is often supplied to children and young people through agent or proxy purchase by unscrupulous adults. Drinking dens and alcohol-related youth disorder remain a big concern for local communities. Alcohol consumption by children and young people has an exponential impact on their health, educational attainment and future employability. It is imperative that we have the ability to address youth drinking and its results.

Under current provisions, the licensing objectives refer only to keeping children safe. We welcome the extension to include young persons. That will provide clarity to licensing boards and enforcement agencies around the sale of alcohol to young persons in relation to reporting and the preparation of reviews.

As members are aware, there is a new offence of supply of alcohol to children and young persons. Currently, it is not illegal to supply alcohol to a child or young person. The new offence will allow us to take more robust measures to tackle the supply of alcohol to underage drinkers and will create a new offence of supplying alcohol to a young person or a child in a public place.

I move on to the fit-and-proper-person criteria and spent convictions. Briefly, provisions relating to those areas were removed from the Licensing (Scotland) Act 1976. The bill proposes to reintroduce a fit-and-proper-person test in respect of licensing applications, transfers, renewals, reviews and revocation of licences. It also outlines a proposal to repeal section 129 of the 2005 act on spent convictions and foreign offences. That is a positive move, which will allow the police to supply details of spent convictions and foreign offences, thus providing greater information regarding individual conduct for consideration by licensing boards. We welcome those proposals, but it remains to be seen how they will operate in practice and how the proposed fit-and-proper-person test will correlate to the licensing objectives.

On part 2 of the bill, section 40A of the 2005 act provides that

"a person is an interested party in relation to licensed premises if the person is not the holder of the premises licence nor the premises manager in respect of the premises but—

(a) has an interest in the premises as an owner or tenant,
or

(b) has management and control over the premises or the business carried on on the premises.”

Although section 40A has never been commenced and the bill sets out measures for its repeal, our position, having considered the matter, is that it would be advantageous to maintain and enact the legislation, which would afford greater opportunities for the police to identify and disrupt serious and organised crime’s involvement in the licensed trade.

The Convener: That was pretty comprehensive. I move on to an area that has not yet been mentioned. The committee has heard concerns relating to club licences and occasional licences. Do you have any concerns about the current regime on such matters? Does that area need tightening in any way?

Chief Inspector Stewart: I am aware that occasional licences are often used to circumvent the need to obtain a personal entertainment licence for larger events. An occasional licence is relatively cheap—about £10—and can be used to operate music events and so on. Local authorities have expressed concern about the frequent use of occasional licences.

Occasional licences have also come to the fore in the context of serious and organised crime and terrorism, where an individual can obtain an occasional licence in order to fundraise for the particular faction that they support. However, that is based on intelligence and it is on-going work. Nevertheless, I appreciate that the main concern that may have been raised by the Society of Local Authority Lawyers and Administrators in Scotland was the abuse of the occasional licences and some anomalies with the clubs.

The Convener: Occasional licences are interesting for us, and we have not heard that before. Are you saying that they can be used by terrorist organisations to raise funds for what they are trying to do?

Chief Inspector Stewart: Yes. I would not say that such use is widespread and I do not want to raise any fear or alarm, but there have been occasions on which people with known links to organised crime have obtained an occasional licence under the pretext of a charity or fundraising event. Obviously, there is concern about that.

Assistant Chief Constable Telfer: To clarify, the terrorism that Morag Stewart mentioned is mainly domestic and relates to the terrorist groups that are normally affiliated with the Northern Ireland situation; as you are aware, they sometimes infiltrate the west of Scotland for fundraising events.

The Convener: That brings something new into the equation. It would be extremely useful for the

committee to get some written examples of that—without compromising any on-going operations, obviously. More detail about that would be very useful for us.

We have heard from those in the licensed trade that they feel that the clubs’ uses of their licences and occasional licences allow them to get round the law that others have to comply with. Does Police Scotland agree with that and does it cause you difficulties?

Chief Inspector Stewart: That has not come to the fore with me.

Assistant Chief Constable Telfer: I am not aware of that, but I am happy to take it away and see whether I can provide further information.

Alex Rowley: I would like to come in on the question of overprovision. How could that be used for benefit? Some of the evidence that we have heard has suggested that a large supermarket could come along and locate in a certain area, and that the attraction of jobs means that it will not have any real problem in locating there and providing a massive alcohol outlet. Do the police have a view on overprovision in relation to off-licences, pubs and other outlets? How could the proposals on overprovision help?

Assistant Chief Constable Telfer: There is a balance to be struck. You mentioned the attraction of job opportunities, but that has to be balanced with current businesses that are in place. The example of a supermarket is a good one. At the planning stage, local authorities scrutinise thoroughly the additionality of a big supermarket and how it will impact on local businesses. Recently, I saw an example of a supermarket planning application being knocked back because of overprovision, in relation not only to alcohol but to other aspects of life.

It is important that overprovision is looked at in each local authority area, and I am glad that the whole local authority area will be taken into consideration in those terms, because the availability of alcohol needs to be regulated. The knock-on effect of alcohol being overly available is there for all to see; I could certainly substantiate that with some figures for offending behaviour and public health issues.

An important aspect for us is that premises where alcohol is available, whether they are off-licences or on-sales premises, should be regulated by each local authority. We are involved in those discussions.

11:00

Alex Rowley: Is there a trend? If we take underage drinking, for example, are supermarkets better regulated? Are corner shops the problem?

Are there other things that can be done, regardless of the legislation?

I remember a test purchasing operation in Fife. Young people went round visiting shops and if they were able to buy alcohol, the police were right there. Will legislation contribute to reducing the numbers of young people who are accessing alcohol, or are there other things that the police need to be doing?

Assistant Chief Constable Telfer: The legislation will certainly contribute. Any further safeguards that we can put in place are very welcome. We still carry out test purchasing operations, throughout local authority areas. I have tended to find that our off-sales are very compliant, and that there are few cases in which they have failed and have had to be reported to a licensing board.

Availability of or access to alcohol is a big issue for children and young persons. Access happens mainly through agent purchase or by proxy. The additional offence of supplying alcohol to children and young persons in public places is very welcome, because there has been a gap with regard to 16 and 17-year-olds. There has also been a gap when it comes to how we can address public space drinking dens and antisocial behaviour, because until now we have been able to seize alcohol only where an 18-year-old is supplying to younger people. The additional offence will assist us in addressing the public space aspect of the problem.

Unfortunately, accessibility to alcohol occurs in private spaces and dwellings, too. That will continue to be a problem for us with regard to children and young people being able to access alcohol within the home. Carers or parents have responsibility there. As things stand, if we come across something like that, we have to deal with it under the Children and Young People (Scotland) Act 2014, under provisions relating to neglect and so on.

The new legislation in relation to public space is very welcome, but there will still be issues in relation to private space.

Cara Hilton (Dunfermline) (Lab): I want to link into Alex Rowley's question about overprovision. In your submission, you raise specific concerns about home delivery services. Can you outline your concerns about services that supply alcohol outside licensing hours? Is that a big or growing problem? Do you have any suggestions on how the law could be altered to better regulate such sales?

Chief Inspector Stewart: At present, alcohol that is purchased for home delivery must be purchased during normal off-sale hours. However, the alcohol can be delivered up to 12 o'clock at

night and as early as 6 o'clock in the morning. In effect, that extends the period of time in which people have access to alcohol. It would be better if the sale, supply and purchase of alcohol in home deliveries were coterminous with current off-sales provision. That would mean that it would not be possible to have home deliveries after 10 o'clock at night or at 6 o'clock in the morning.

In addition, we are looking at the issue of home deliveries, particularly for those that are not licensed. There is scope and provision to tighten up the situation and make it coterminous with off-sale hours.

The Convener: Do you have anything to add, Mr Telfer?

Assistant Chief Constable Telfer: I would say only that dial-a-booze—as it is commonly known—is becoming a significant problem. I have just come from an operational environment, and in the division that I was covering there were a few instances involving such deliveries. Tightening the legislation around that would be very welcome.

The Convener: It is a new one on me.

Cara Hilton: It was a new one on me, too; that is why I asked the question.

John Wilson: To follow up Cara Hilton's question, who is the supplier of alcohol after 10 o'clock at night and from 6 in the morning? I am aware of the issues that ACC Telfer raises to do with certain sales of alcohol. An issue that was raised in my local area is that, when you buy your curry carry-out, you can also order up a couple of bottles of the local brew that is consumed in Lanarkshire. Who is supplying alcohol from 10 o'clock at night to 12 o'clock and from 6 in the morning?

Chief Inspector Stewart: The legislation permits the delivery of alcohol at those times by those who have a licence. I anticipate that it would be supermarkets delivering weekly shopping along with whatever alcohol has been purchased, with the checks and balances in place to check identification. The situation in Lanarkshire that you referred to, of fast food accompanied by alcohol, would tend to involve premises that were not licensed to sell alcohol, which is what Mr Telfer was referring to. They are unlicensed, so they fall out of the scope of the legislation.

John Wilson: I was just asking for clarification. It is interesting that, if you go into a supermarket, you can buy alcohol only between 10 am and 10 pm, but you are saying that if someone makes an order and asks for it to be delivered after 10 pm, they can include alcohol in that order. It is useful to get that on the record.

Chief Inspector Stewart: The purchase has to be made within—

John Wilson: —within those hours, but you can pre-empt that by thinking when you might consume alcohol on a Friday or Saturday night and getting the supermarket to deliver it after 10 o'clock at night.

The issue of occasional licences came up earlier. I will not go into that discussion, but it raised the question of Police Scotland's relationship with licensing boards in Scotland. Chief Inspector Stewart, you mentioned the intelligence that the police have on applications that are being made, and ACC Telfer referred to premises for which people apply for a licence but which belong to someone else or some other organisation. What is the feeling regarding the current relationship between licensing boards and the police? Are licensing boards taking full account of the information being provided by the police before they grant licences?

The Convener: Who will take a crack at that one first?

Assistant Chief Constable Telfer: I will certainly speak on that. I respectfully suggest that the relationship between Police Scotland and licensing boards has never been stronger. I say that having just come from a police division in Scotland. Licensing boards take full account of our observations and we are represented at each of their sittings.

I will bring my answer to a quick conclusion by saying that I am very heartened by the way in which things are moving on licensing. Aspects of the bill will add to that, but in my opinion relationships have never been stronger. I am sure that Morag Stewart can speak from a central perspective.

Chief Inspector Stewart: I concur with Mr Telfer. The relationship that Police Scotland has built with licensing boards continues to develop and grow. However, we must remember that licensing boards are a distinct legal entity.

John Wilson: In previous evidence sessions, the issue was raised of whether police intelligence could be presented to licensing boards and whether licensing boards would take account of it. We heard that some boards would demand evidence-based decisions rather than intelligence-based decisions. What are your views on those issues? You gave the example of occasional licences, but most decisions on occasional licences would be intelligence based, rather than evidence based.

Chief Inspector Stewart: It does not come down to poor relationships; it comes down to uncertainty in licensing boards about whether to use intelligence and risk legal action or a challenge to their decision. Discussions are taking place about what kind of intelligence can be used

and the format and form of words, so that information rather than intelligence as such is presented. Some licensing boards are looking to establish the provenance of intelligence, such as whether it has come from a covert human intelligence source. A short-life working group has been set up, which includes the crime division, licensing clerks and solicitors and the Convention of Scottish Local Authorities. We hope to work through the issue and, together, come to an agreement about what intelligence can be used in submissions to licensing boards.

Clare Adamson: You mentioned that you welcome the additional crime of supplying alcohol to young people. However, we have heard evidence about the lack of enforcement of current legislation and the few prosecutions that have been made for selling alcohol to an intoxicated person. You mentioned all the social and crime problems relating to alcohol, of which we are all aware. Will you comment on how the legislation is used?

Chief Inspector Stewart: To clarify, are you talking about the selling of alcohol to intoxicated patrons within licensed premises?

Clare Adamson: Yes.

Chief Inspector Stewart: That is difficult to prove, and there is no definition of intoxication. It is difficult to ascertain who provided the alcohol and what stage the person was at when they came in. However, from a policing perspective, it comes down to further informing and training our officers on what their powers are, what they should look out for when they go into licensed premises, how to conduct an inspection and how to work with the trade. It is about awareness raising. However, there are difficulties to do with the definition of intoxication.

Assistant Chief Constable Telfer: To expand on Morag Stewart's comments, another aspect is training and awareness raising in the licensing trade, on which we work quite furiously. That is the proactive aspect. However, the point that the member raises is an issue. The reactive aspect is that, if an incident that occurs in licensed premises appears to be the result of alcohol being sold to an intoxicated person, we will take the necessary executive action and bring that to the attention of the licensing board. Once we have established what has happened, we will take the necessary action. There is a proactive stage, which is about training our officers and those in the licensing trade, and there is the reactive stage, when unfortunate incidents occur.

Willie Coffey: What are your views on the fit-and-proper-person test? In your submission, you welcome it, but would you like it to be further defined and should there be guidelines? Who

should determine what information is used in a fit-and-proper-person assessment?

Chief Inspector Stewart: I absolutely welcome the reintroduction of the fit-and-proper-person test, which will mirror provisions in the Civic Government (Scotland) Act 1982. In the 1982 act, the test is not defined or prescriptive, and that is the best approach. It is best left to whatever regulatory committee deals with the issue, whether that is liquor licensing or in the civic world, to determine what is fit and proper, based on previous convictions. That will be further enhanced, in that spent convictions will be able to be considered.

The only issue that I have is that the test will still be linked to the licensing objectives on the sale and supply of alcohol. It remains to be seen how that will work out.

11:15

The Convener: Mr Telfer, do you want to add to that?

Assistant Chief Constable Telfer: Although I agree with Morag Stewart's point about difficulties that might occur because of the correlation with the licensing objectives, I think that the five licensing objectives probably cover all aspects of anything that might happen in licensed premises.

I reiterate that the reintroduction of the fit-and-proper-person test is very welcome and will assist us on a number of fronts, in relation to not only what actually happens in licensed premises but who has management and control of premises. There might well be links to serious and organised crime. That has been proven to be the case in the past. The approach in the bill will enable us to have an impact on that front.

Willie Coffey: Thank you.

The Convener: It says in my briefing:

"Police Scotland has called for the provisions requiring notification of 'interested parties' (those with a general commercial or other interest in the licence) to be retained. Witnesses could be asked to outline their concerns if this requirement is removed from the 2005 Act".

Do you want to comment on that?

Chief Inspector Stewart: Section 40A of the 2005 act relates to interested parties, but the provision has never been commenced and would be repealed by the bill. We think that it would be advantageous to retain the provision. Quite often, an interested party is a tenant. When we look at issues on licensed premises, we are able to take action against the licence holder and designated premises manager—we know who they are—but if there is no provision that covers who the tenant is and the tenant's involvement, there is not much

that we can do to hold the tenant to account or check that they are a fit and proper individual. In the context of organised crime involvement in licensed premises, in particular, the repeal of the provision could impede our ability to tackle issues.

The Convener: What about the vicarious liability aspect, which might muddy the waters?

Chief Inspector Stewart: I appreciate that the definition of "interested party" is being amended, so that in the context of vicarious liability the interested party becomes the designated premises manager. Currently a designated premises manager has to have a personal licence, and it is the police who do the background checks and report back to licensing boards. I am quite content with the vicarious liability aspect.

Let me give an example of why we would want a tenant to be an interested party. A building's owner might lease the building to a business, which would be the licence holder. The licence holder then leases the building to another person, the tenant, and puts in a designated premises manager—I know, it gets a bit confusing.

The Convener: You are explaining it very well.

Chief Inspector Stewart: The police are able to take action if the designated premises manager does not have control of his premises and there have been numerous incidents, and if the licence holder is culpable, they could be taken to a review. However, the tenant remains out of the scope of the action, because the section 40A provision has never been commenced. Quite often, the tenant could be linked to criminality, including serious and organised crime, or they might simply be involved in the poor management of the premises, but we cannot take further action in that regard. If section 40A is not enacted and is repealed, that could hinder progress in the area.

The Convener: Some folk have argued that there are difficulties in making a person liable for offences committed by their employees. What do you think about that?

Chief Inspector Stewart: A DPM does not have to be on the premises, so I understand the issue from a certain perspective, given that they will have vicarious responsibility, as an interested party, under the amended legislation. However, it is a DPM's duty to make sure that everyone is fully trained. I do not have further comment to make on that.

The Convener: Do you want to add anything, ACC Telfer?

Assistant Chief Constable Telfer: I have nothing to add.

Cameron Buchanan: When the holder of a licence for a public house, for example, has his

licence taken away, can he get it back reasonably quickly? What happens to the premises if the licence is not in anybody's name? At the moment, a licence has to be in somebody's name, does it not?

Chief Inspector Stewart: They would not hold a licence. Under the 2005 act, the premises have a licence.

Cameron Buchanan: It is not the person?

Chief Inspector Stewart: The person applies for the licence, but the licence would remain in perpetuity. It could be transferred over.

Cameron Buchanan: It could be transferred to another person without penalty.

Chief Inspector Stewart: Yes.

Assistant Chief Constable Telfer: There have been issues with transferring premises, as they may well fall into the hands of someone who is involved in serious and organised crime. There were practical examples of that in a major city, in which four pubs were closed after we cottoned on to that. There is a long, unwieldy process for transferring premises and it is a loophole that we are looking to close.

The Convener: We will move on to taxi and private car hire licensing. Do you have any opening remarks on that, Mr Telfer?

Assistant Chief Constable Telfer: You will be pleased to know that these remarks are very brief compared with my previous ones.

We welcome the proposals to improve training in respect of private hire car licences, which will undoubtedly improve standards and public safety and facilitate greater consistency. Police Scotland also welcomes proposals to remove exemptions that currently apply to vehicles that are being used for the carriage of passengers under a contract for exclusive hire for a period of not less than 24 hours. In our opinion, that will facilitate greater consistency in this business area and allow the police to provide comment and present information to the regulatory body, to ensure that the applicant is a fit and proper person, to further promote public safety and to act as a deterrent for those involved in serious crime.

The Convener: There are supposed to be quite big differences between the licensing of taxis and the licensing of private hire cars, but from the evidence that we heard it seems that some local authorities, including Aberdeen City Council, which covers my constituency, treat taxi and private hire car licensing in exactly the same manner, which does not follow what is written in the Civic Government (Scotland) Act 1982. Do the different regimes and different interpretations of the legislation cause Police Scotland any difficulties in

policing licensing across the country? It must be difficult for your officers, who are now working across local authority borders, to deal with different aspects in different places. Does that cause you trouble?

Chief Inspector Stewart: No. When a licence—whether for a taxi or a private hire car—is applied for, as consultee to the regulatory committee we will receive the application. We will scrutinise applications in the same way and report back. Are you referring to operational issues, out on the streets?

The Convener: I am talking about application and operation. In some places, private hire car licensing and its policing, by you or by the local authority, seem to be exactly same as taxi licensing and its policing, rather than there being the two regimes that most definitely exist in other places such as Edinburgh or Glasgow.

Chief Inspector Stewart: It does not present us with any difficulties. The same scrutiny is applied to any application, whether it be for a taxi or a private hire car. On operational matters, the difference between a taxi and private hire car is that a taxi can uplift somebody from the street.

Assistant Chief Constable Telfer: From a national perspective, greater consistency on the application of the regulations on both taxis and private hire cars would be welcome. I take your point, convener, and I understand the difficulties that there may be if licensing regulations are being applied differently in different parts of the country. We would welcome greater consistency across the country.

Willie Coffey: My question is related to yours, convener. At last week's committee meeting, I raised a case that had received some media coverage. A taxi driver moved from one authority to another and although the first authority received a string of complaints against him, those complaints were not made known to the second authority. What are your views on that, and how can we close down that problem?

Chief Inspector Stewart: I can understand how that has been a problem—it is perhaps down to communication between each policing or local authority area. However, we are developing a national information and communication technology licensing system called Inn Keeper, on which will be every licence, whether it is a premises licence for alcohol or a licence for a taxi or private hire car. The system will be available to every police officer in Scotland. When an application comes through, any details, such as those to which you refer, will be on the system, and the system will flag up those matters and inform the response to the relevant local authority.

Willie Coffey: Will the details include, for example, complaints against a person that might not have gone right through the process and therefore might not have been determined?

Chief Inspector Stewart: Yes, if the complaints have been received by the police. However, if a complaint has gone to a local authority, it is the authority that will hold the information. Therefore, it is down to the authority to communicate that to the police to investigate.

Assistant Chief Constable Telfer: On Inn Keeper, we are in dialogue with every local authority to establish whether they want to embrace that approach.

Willie Coffey made a point about complaints being made to local authorities. That is a big sales point for me: we need to share and record information that is disclosed to various agencies.

Willie Coffey: How soon do you expect the new software to be in place?

Chief Inspector Stewart: We hope that it will be in place between May and June.

Willie Coffey: Will every authority be able to feed into that?

Chief Inspector Stewart: Local authorities will send us applications, which we will check. We will keep that information. It is a police database. However, I am aware that a working group is looking at a single system for local authority licensing. It would be ideal if that could interface with our system, so that any request from a local authority could be sent directly to the system electronically. That would be a more comprehensive approach and would improve communications between the police and local authorities.

Willie Coffey: Good.

The Convener: Will Inn Keeper interact in any way with the police's i6 software system, or is that beyond your ken?

Chief Inspector Stewart: I am not a technical person, but I believe that Inn Keeper can be bolted on to i6, which will be of considerable benefit. That will make us much more efficient when doing background checks and responding to local authorities.

The Convener: On the interaction between local authorities and the police, have you come across any data protection issues that have stopped the required level of communication and may even have led to criminality?

Chief Inspector Stewart: No, not that I am aware of. There are information-sharing protocols between the police and local authorities. In addition, the police are a statutory consultee for

civic and liquor licensing. That exchange of information happens only when it is pertinent and applicable; we would not provide information on anything if it would be wrong to do so.

Assistant Chief Constable Telfer: I am certainly not aware of any instances where that has occurred.

Alex Rowley: In evidence, there have been mixed views about the number of unlicensed operators—those who just operate on the streets. One of the taxi operators said that, in our major cities and particularly at the weekends, a lot of such activity goes on. What is your view, and how do you police that activity?

Chief Inspector Stewart: Information is provided by legitimate taxi and private hire car operators. On a number of occasions, I have had dialogue with Glasgow TOA Taxi, a hackney taxi provider, in which it has raised that issue. It is about getting that intelligence and information so that we can proactively target that area for enforcement.

That would be in addition to the intelligence that police officers and our partners obtain, and I know that there have been a number of operations in conjunction with road policing to target individuals who purport to have private hire cars and who pick up individuals in the night-time economy, which is an area of particular risk.

11:30

Assistant Chief Constable Telfer: Alex Rowley is right that the issue of unlicensed operators, who operate mainly in the big cities at the weekends, has been on-going for a while. Targeting the area is built into every city centre policing plan for the weekend night-time economy. Our cops are well briefed on what to look out for and they make the necessary interventions when they suspect that an unlicensed operator is picking somebody up off the street.

Alex Rowley: My other question is about the proposal to give licensing authorities the ability to limit the number of private hire car licences in their area. We had a mixed response to that proposal. West Lothian licensing board said that it basically leaves the matter to supply and demand. It suggested that, at the end of the day, supply and demand would govern any decision. Is there a need for the proposed provision?

Assistant Chief Constable Telfer: In my opinion, taxis or private hire vehicles serve a purpose in keeping people safe at the weekend: they get the patrons of licensed premises and people who have gone out socialising home safely. The way that we operate taxi ranks and safe zones has been very beneficial and has

reduced the number of victims of crime in the city centre. The question is difficult for me to answer, because I welcome the presence of taxis and private hire cars on our streets as they get people home safely, but I understand the balance: people have to make a living and the supply-and-demand issue must also come into play. I have probably not answered your question, other than to say that taxis and private hire vehicles are a good resource for us as they help to keep people safe at the weekend.

Chief Inspector Stewart: I agree. However, it is entirely up to the local authority. It would be quite hard to determine a limit, although limits can be imposed on taxi licences.

Clare Adamson: I return to your point about information sharing and the local authority working group. I want to get an idea of the scope of that work. Obviously, given that, with Police Scotland, there is now one policing body, it is easy for you to cover the whole of Scotland. Would COSLA be involved in the working group? To be 100 per cent effective, the 32 local authorities would need to sign up. Is there any indication of the buy-in to the process?

Chief Inspector Stewart: The short-life working group is still very much in its infancy. There was one meeting last year—the next is its first since then. We want to try to get a bit more momentum behind it. We appreciate that others will need to become involved, such as the BTP. I envisage that we would have to go out to get agreement on the working group's work. COSLA would cover most of the local authorities, and we would get input from the licensing clerks through SOLAR. We would also invite the Society of Local Authority Chief Executives and Senior Managers. We are doing things incrementally. We need to get agreement, although we will not always get agreement with every board area. Where we can get agreement, that will give us an opportunity.

Clare Adamson: Thank you.

The Convener: I always worry when I hear the words "short-life working group".

John Wilson: I want to follow up Alex Rowley's question about private hire cars. There is an issue with unlicensed operators, particularly app-based operators such as Uber, coming into the market. Does Police Scotland have any views about unlicensed drivers and unlicensed cars operating in the streets of Scotland?

Chief Inspector Stewart: I think that this follows on from what Mr Telfer previously articulated. Anybody who is unlicensed and unregulated is a concern, because we do not know who they are and whether the vehicle that they are driving is safe. Whether an operator is app based or is quite simply not licensed, that is a

concern. We will take robust action, based on whatever information and intelligence is to hand.

John Wilson: What robust action can you take? I know that in other countries there have been challenges to the operation of Uber-type organisations. At present, what robust action can you take against someone who uses an app to get an unlicensed car or driver to pick them up? What legal enforcement action is available to you to take against such operations?

Chief Inspector Stewart: I have become aware of Uber in a licensing context. I know that it operates in London and that it has recently been banned from operating in France, Germany and India. There will be a variety of reasons for that. One reason might be that it presents a threat to other taxi and private hire car operators in the sector. Another reason might be its operating plan and business model, where it engages drivers to pick people up and car share. Effectively, Uber acts as a broker, which means that it can avoid having an operator's licence or a booking-office licence. We are looking into that.

The example of Uber has been highlighted to the national policy group for licensing, on which I sit. We have had discussions with the licensing department in St Andrew's house, because of the concerns about unregulated drivers picking people up, the condition of the vehicles and the question of what checks Uber has made of the drivers whom it has engaged. Those drivers are classed as self-employed because they have not been hired by Uber.

There are a number of issues. I would be happy to come back to the committee with more information, once we have pulled it all together.

John Wilson: As part of our examination of the bill, we are trying to ensure that it is as future proofed as it can be. Do you have any recommendations about how we ensure that we have in place legislation that can stand the test of time—even if that is a short time—rather than legislation that could become unworkable within weeks of being enacted?

The Convener: Mr Wilson is putting you on the spot there. You can write back to the committee if anything comes up that you feel could help us.

John Wilson: I am sure that Chief Inspector Stewart can answer the question.

Chief Inspector Stewart: I understand where you are coming from. At the moment, we have a similar situation, to a more diluted degree, of a booking office that takes online bookings from people who stay outwith the area. The difference is that we can challenge that, because a company is allowed to operate only in the area for which the

local authority has granted its booking office a licence.

It seems to me that Uber is bypassing that because all it has is one office although it will have taxis operating across Scotland via the app. We are looking into the potential ramifications of that across Scotland. I would be happy to report back to the committee on that in due course.

The Convener: You have said something that contradicts evidence that we heard last week, when we were told that a booking office did not have to be in the area in which its taxis operate. We were given an example of a booking office that was on the border between local authority areas, with the company operating in another local authority area. Is that not allowed under current legislation?

Chief Inspector Stewart: My understanding is that a company has to have a booking office licence in the local authority area where it has been licensed to operate. I would have to check that and get back to you. I believe that there is relevant case law.

The Convener: I think that we need clarification, because some of the licensing authorities said that what I described was possible.

Chief Inspector Stewart: I can include that in the report on Uber.

John Wilson: Given the evidence that we have heard, what is Police Scotland's definition of a booking office? At a previous meeting, I put to the witnesses a scenario of a booking office that was one person sitting in a room in their house with a computer and a smartphone. As far as Police Scotland is concerned, could that be defined as a booking office?

Chief Inspector Stewart: According to the legislation, a booking office is defined as a place from which you operate more than three cars and organise the hire of vehicles and so on, regardless of where it is.

John Wilson: So I could sit at night in my house with a smartphone and, as long as I was operating more than three cars, I could register that as a booking office.

Chief Inspector Stewart: You would have to apply for a licence, and the licensing authority would determine whether that was a booking office. A booking office does not tend to be someone in their house with a smartphone. However, it is up to the local authority to license booking offices.

John Wilson: Thank you very much.

The Convener: I will ask about the licensing of cars and drivers. It is obviously of concern to the

committee if operators are unlicensed and perhaps have unsafe cars with dubious people behind the wheel. As the situation stands, before any of these new operators enter the market, how much criminality has arisen from unlicensed cars and drivers, and what kind of criminality are we talking about?

Chief Inspector Stewart: I do not have any figures with me, but I can provide them to the committee. Mr Telfer will no doubt be able to add more from his experience in Glasgow city centre, but the intelligence that we hold shows that the crimes that you are talking about are often committed by sexual predators or opportunists—it goes from one extreme to the other. However, if operators are not regulated, we do not know whether an individual driver is a fit and proper person to carry passengers. Further, any passengers might be vulnerable due to the effects of alcohol, given that such operators tend to target the night-time economy because that is when most money can be made. That is a concern.

The Convener: It would be useful if we could get the figures, because I believe that some extremely serious crimes have taken place after folk have gone into unlicensed cars thinking that that is an easy way to get home.

We move on to sexual entertainment venue licensing. Does Mr Telfer have some opening remarks?

Assistant Chief Constable Telfer: I do, convener. Thanks very much.

Sexual entertainment venues such as lap-dancing venues are currently licensed under the Licensing (Scotland) Act 2005. The subsequent case law that I referred to previously, *Brightcrew Ltd v City of Glasgow Licensing Board*, which dates from circa July 2011, has significantly impacted on the ability of Police Scotland and the licensing boards to address on-going issues with such establishments and, indeed, other premises licensed under the 2005 act, unless the issue is directly related to the sale and supply of alcohol.

The bill seeks in part to remedy the situation in respect of the licensing of sexual entertainment venues. The bill advocates a dual licensing system, whereby the premises will require a liquor licence and a civic licence in order to operate. That will provide the police and the local authority with greater scope to ensure compliance in this business area and will remove some of the barriers that have resulted from the *Brightcrew* judgment. That will better enable the police and partners to ensure the safety and wellbeing of those who work in such premises and to pursue enforcement activity where it is required.

In principle, Police Scotland is supportive of the measures outlined in the bill. However, there

remains uncertainty about how dual licensing will operate in practice. Licensing boards and regulatory committees have separate and distinct responsibilities for liquor and civic licences, so a situation may arise in which a liquor licence is revoked and the sexual entertainment licence remains in effect. It would be beneficial if a mechanism existed whereby each regulatory body communicated and agreed matters such as terminal hours.

Two different inspection regimes will also be in place, which may impact on local authority licensing standard officers or the proposed civic licensing standards officers. It would be advantageous if their respective powers were cross-transferable.

The regulation of sexual entertainment venues should also be mandatory rather than subject to a resolution, as it is in the bill. It should not be left to the discretion of each local authority. Such a situation would encourage regime shopping, whereby there might be a disproportionate presence of sexual entertainment venues in an area where they are not a licensed activity.

We also believe that consensus needs to be reached on the definition of adult sexual entertainment, which would subsequently inform conditions of licence to improve standards in the industry and enable robust mandatory conditions that outline what is and is not acceptable and promote a consistent approach across Scotland.

11:45

The Convener: Thank you. Let us discuss the point that you made about communication between, say, a licensing board that may revoke an alcohol licence and a licensing committee or other regulatory committee that may deal with the sexual entertainment aspects. You say that there would be difficulty if one part was revoked but not the other. Another thing that we have heard in evidence is that advertising outside the venues comes under another regime, usually planning. That seems to be a real problem. Should there be holistic regulation of sexual entertainment venues under one regime rather than regulation being split all over the place?

Chief Inspector Stewart: Advertising directly outside premises could be taken into consideration in the dual licensing regime. The problem that we have thereafter is flyposting and other communications elsewhere. We need to consider more fully who would take responsibility for that.

The Convener: In terms of flyposting and leaflets, I suppose you are saying—

Chief Inspector Stewart: There may be advertising directly outside the venue—posters, for

instance. We need to consider the content of that, and there might then be flyposting in the surrounding area.

The Convener: Surely there are other pieces of legislation that can stop flyposting—

Chief Inspector Stewart: Yes, but it is the content.

The Convener: —and if leaflets are offensive, surely similar actions can be taken in that regard.

Chief Inspector Stewart: That is what I am saying. There are two distinct things—the advertising directly outside the premises and the advertising elsewhere.

The Convener: We are looking at advertising round about the premises. Any other illegal activity in that regard does not come within the scope of the bill. However, I get where you are coming from on those behaviours.

Would it be good to bring all the regulatory regimes for these venues into one?

Assistant Chief Constable Telfer: I certainly take your point, convener. Things need to be joined up, and the best way to do that is to have one regime. Whether that is achievable is another matter, but that would be utopian, as far as we are concerned. It would join things up and enable one body to have an overview.

Alex Rowley: What would be the problem with licensing boards having that responsibility?

Chief Inspector Stewart: Sexual entertainment venues are currently licensed under the Licensing (Scotland) Act 2005. There have been difficulties and frustrations because of the Brightcrew decision, which means that licensing boards cannot tackle ancillary conduct that is not linked to the sale and supply of alcohol. Licensing boards are allowed to deal only with the sale and supply of alcohol. That is where the issue has arisen. I imagine that they are looking for the bill to be enacted so that they can tackle issues with sexual entertainment venues outwith the sale and supply of alcohol.

The Convener: Cameron, is your question on the same point?

Cameron Buchanan: No.

The Convener: Let us continue on the same theme, then. Chief Inspector Stewart, you mentioned that licensing boards can deal with alcohol licensing only. What would the situation be if a licensing board had a difficulty with a casino, for example? The board might be worried about the operation of a casino that provides something else, and the board's concerns might not involve the alcohol aspects. Does that create a dilemma

under the current legislation about what a licensing board could and could not do?

Chief Inspector Stewart: In a recent example in Glasgow, it basically came down to the alcohol side of things, and that is why it was dealt with. The Gambling Commission would be able to consider incidents in premises such as casinos. That might cause some difficulty.

The Convener: That was a bit of a left-field question anyway—sorry about that.

John Wilson: You have introduced a fourth element of the licensing regime, potentially. There is a casino in Glasgow that is a large venue, and it is hired out to various organisations for parties and other things. What would stop the casino being hired out or used as a venue for adult entertainment on a Friday or Saturday night, allied to the other activities that take place there?

The Convener: That takes us to my next line of questioning anyway, so you can respond to all these points in a oner. This concerns premises that hold sexual entertainment on no more than four occasions per year. That might involve the casino that Mr Wilson has just mentioned, where the venue has no need, in some regards, to follow the normal licensing regime. Do you have enforcement concerns about that? What are Police Scotland's views about occasional licences for one-off sexual entertainment events—or four-off events, as the case may be?

Assistant Chief Constable Telfer: That certainly throws up some concern and is a potential loophole. Morag Stewart has previously commented on the potential for roadshowing and for a particular group that provides adult entertainment to travel the length and breadth of the country but only to have events in venues once or twice, thus exploiting a loophole. I would have concerns about the definition, which allows three or fewer events in any particular premises.

Mr Wilson's point about the potential for a casino to host adult entertainment, with all the various regulatory bodies having oversight of their particular areas, suggests to me that it might all become quite messy. That goes back to the original point about one body overseeing sexual entertainment venues and adult entertainment. We do have concerns about the point that you raise.

The Convener: You described a round-Scotland tour, which could be organised using occasional licences. It would be much more difficult for you folks to police what happens on such a tour. Have there been difficulties in the past around such scenarios, as far as you are aware?

Chief Inspector Stewart: Not that I am aware of, but it was one of the considerations when we were examining the proposals in the bill. As Mr

Telfer articulated earlier, licensing is about keeping people safe. That includes the people who work at the venues and those who attend the premises as customers.

If there was an exclusion because of a restriction to three or four occasions, whether or not that was in the operating plan for the licence—as I anticipate it would be—the issue comes back to the Brightcrew decision, which means that we would not be able to regulate or challenge the arrangements effectively, unless the matter concerned the sale and supply of alcohol. It would be better if that provision was not there, so that we were able to tackle such situations—as long as what happens is catered for in a licence.

The Convener: Will your Inn Keeper system be able to keep track of occasional licences for alcohol as well, or will that fall out of the remit because you might not be aware of the occasional licences that are granted?

Chief Inspector Stewart: The occasional licences would be contained on the Inn Keeper system and would be linked to the premises. However, I would rather that there was not an exemption and that, if the premises wanted to undertake that activity, it had to get a licence for it so that we would know that it was happening and that it was also outlined in the operating plan for the liquor licence. That means that the information would be joined up.

Cameron Buchanan: This seems to be a bit of a minefield. There is an anomaly with places of sexual entertainment on an occasional basis, for example if someone phones up and books a stripogram or something like that. Have you got concerns about that? If that were happening regularly in a premises—weekly or monthly—privately but for financial gain, would you be concerned?

Assistant Chief Constable Telfer: That goes back to the final point in my opening remarks about the definition of adult sexual entertainment. That definition needs to be quite concise. If stripograms are being booked every weekend for stag and hen parties, so be it, but we need to have some dialogue about what falls within the definition.

Cameron Buchanan: There is no simple answer to it, realistically. You have concerns but there is no answer that you can enunciate.

Assistant Chief Constable Telfer: There is no particular answer to the question at this moment in time. We have concerns about it although there have been no particular examples of the type of stag and hen parties situation that you spoke about throwing up any significant issues. There is no evidence for including that type of situation, but

it can be quite contextual; it depends on the situation. As you say, it is really quite a grey area.

Cameron Buchanan: Are you saying that action would be discretionary as far as you are concerned?

Assistant Chief Constable Telfer: There needs to be an element of discretion but, as I say, we need a concise definition of adult sexual entertainment because that will help us in policing. Most issues that arise from lap dancing are about the vulnerability and exploitation of some of the employees. That flies in the face of the Scottish Government's approach to the victimisation of women. That is what we have been most concerned about in the past.

The Convener: There have been lots of allegations that adult sexual entertainment venues attract a criminal element. Does Police Scotland agree with that? Is the level of criminal activity in those venues that much different from that in nightclubs?

Assistant Chief Constable Telfer: It is certainly an area that attracts certain elements of criminality because of its nature and its potential for generating income for organised crime. It could happen in various licensed establishments. It is just another opportunity for organised crime and it has been shown in the past that some establishments are linked to a particular crime group that is exploiting the venue for illegitimate purposes such as laundering money.

The Convener: It might be useful for the committee to get an idea of the police figures for some of those places so that we have an indication and can make a comparison with others.

Assistant Chief Constable Telfer: There are certainly difficulties with the administration of such venues and, as we have highlighted previously in relation to other issues, different areas take different approaches. We will do our best to provide those figures.

The Convener: Grand. I thank you for your evidence this morning. I ask the witnesses to keep their seats for a few seconds.

Decision on Taking Business in Private

11:59

The Convener: Under agenda item 2, the committee has to decide whether to take consideration of the following items in private at future meetings: our work programme, European Union priorities for 2015 and our approach to budget scrutiny for 2015. Are we agreed?

Members indicated agreement.

12:00

Meeting continued in private until 12:25.

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e-format first available
ISBN 978-1-78534-808-2

Revised e-format available
ISBN 978-1-78534-822-8