



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### **FINANCE COMMITTEE**

Wednesday 4 February 2015

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**Wednesday 4 February 2015**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>SUBORDINATE LEGISLATION.....</b>	<b>2</b>
Land and Buildings Transaction Tax (Addition and Modification of Reliefs) (Scotland) Order 2014 [Draft].....	2
Land and Buildings Transaction Tax (Administration) (Scotland) Regulations 2014 (SSI 2014/375).....	4
Land and Buildings Transaction Tax (Ancillary Provision) (Scotland) Order 2014 (SSI 2014/376) .....	4
Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014 (SSI 2014/377) .....	4
Scottish Landfill Tax (Administration) Regulations 2015 (SSI 2015/3).....	4
<b>COMMUNITY CHARGE DEBT (SCOTLAND) BILL: STAGE 2.....</b>	<b>10</b>
<b>BRITISH SIGN LANGUAGE (SCOTLAND) BILL: FINANCIAL MEMORANDUM.....</b>	<b>12</b>
<b>AIR WEAPONS AND LICENSING (SCOTLAND) BILL: FINANCIAL MEMORANDUM .....</b>	<b>23</b>

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**FINANCE COMMITTEE**

**5<sup>th</sup> Meeting 2015, Session 4**

**CONVENER**

\*Kenneth Gibson (Cunninghame North) (SNP)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Richard Baker (North East Scotland) (Lab)

Gavin Brown (Lothian) (Con)

\*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

\*Mark McDonald (Aberdeen Donside) (SNP)

\*Jean Urquhart (Highlands and Islands) (Ind)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Marco Biagi (Minister for Local Government and Community Empowerment)

Walter Drummond-Murray (Scottish Government)

Quentin Fisher (Scottish Government)

Mark Griffin (Central Scotland) (Lab)

Joanna Hardy (Scottish Parliament)

Keith Main (Scottish Government)

Peter Reid (Scottish Government)

John Swinney (Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Finance Committee

*Wednesday 4 February 2015*

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

### Decision on Taking Business in Private

**The Convener (Kenneth Gibson):** Good morning and welcome to the fifth meeting in 2015 of the Scottish Parliament's Finance Committee.

I am pleased to say that the meeting is being translated for users of British Sign Language, and I welcome our BSL interpreters, Shaurna Dickson and Paul Belmonte. Before we start our formal proceedings, I remind everyone to help our BSL interpreters by speaking clearly and not too quickly—which should apply to me too, I suppose—and by keeping questions short and concise and allowing a short pause after the previous speaker has finished.

I remind everyone present to turn off any mobile phones, tablets and other electronic devices.

We have received apologies from Gavin Brown, who is unwell.

Our first item of business is to decide whether to take item 9 in private. Are members agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

### Land and Buildings Transaction Tax (Addition and Modification of Reliefs) (Scotland) Order 2014 [Draft]

09:31

**The Convener:** Our next item of business is to take evidence from the Cabinet Secretary for Finance, Constitution and Economy on a piece of subordinate legislation. The cabinet secretary is joined for this item by David Kerrouchi, Neil Ferguson and John St Clair from the Scottish Government.

I invite the cabinet secretary to make an opening statement explaining the draft order, and remind him not to move the motion at this point.

**The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney):** Thank you, convener.

United Kingdom stamp duty land tax legislation includes a number of miscellaneous reliefs that apply only in relation to specific organisations or types of property. The purpose of the draft order is to include in our land and buildings transaction tax legislation similar miscellaneous reliefs, using the power in section 27(3)(a) of the Land and Buildings Transaction Tax (Scotland) Act 2013.

There are five reliefs. The first is friendly societies relief, which provides relief from LBTT where two or more registered friendly societies amalgamate. The second is building societies relief, which provides relief where two or more building societies amalgamate. The third is visiting forces and international military headquarters relief, which provides relief for land transactions involving the building or enlarging of barracks or camps for a visiting force, to facilitate the training of a visiting force or to promote the health or efficiency of a visiting force.

The fourth is relief for property that is accepted in satisfaction of tax. Under section 11A of the National Heritage Act 1980, which extends to England, Scotland, Wales and Northern Ireland, a land transaction that is entered into by any museum, art gallery, library or other similar institution is relieved from SDLT where property is offered to HM Revenue and Customs by a taxpayer in respect of tax. The property may be transferred to one of a range of heritage bodies. Some Government-sponsored cultural and heritage bodies in Scotland have powers to acquire land or buildings. That includes acquiring as acceptances in lieu, and usually requires the specific agreement of ministers.

If LBTT was to be incurred by cultural and heritage bodies in such cases, any acceptance of land or buildings in lieu would result in a liability on the part of the accepting body to pay LBTT on the acquisition. That would, in effect, be a charge on the public purse. The relief from LBTT, which is an equivalent provision to that which is currently in place for SDLT, has therefore been added to avoid that outcome.

The fifth relief is lighthouses relief. Under section 221 of the Merchant Shipping Act 1995, which extends to England, Scotland, Wales and Northern Ireland, a land transaction is relieved from SDLT if it is entered into by, or under the direction of, the general lighthouse authorities—including the commissioners of northern lighthouses, who oversee the lighthouse infrastructure in Scotland—for the purpose of carrying on services that are funded through the general lighthouse fund.

The Northern Lighthouse Board has confirmed that, given the widely distributed network of lighthouses and the need for regular changes to reflect changes in shipping traffic to ensure the continued safety of navigation, it has a regular number of land transactions and that the position will continue in the future. On rare occasions, the board may be directed by the secretary of state to undertake activity that may require such transactions. The relief from LBTT has therefore been included to deal with such circumstances.

Finally, the draft order also makes two amendments to existing reliefs under the 2013 act. First, to support crofting in Scotland, it provides for full relief from LBTT for transactions involving the crofting community right to buy under which two or more crofts are bought, rather than the partial effect that is available under SDLT. Secondly, the draft order also makes a minor but crucial amendment to the relief for certain acquisitions by registered social landlords to ensure that if any one of the conditions is satisfied, the relief is available.

**The Convener:** Thank you very much for that opening statement. I have no questions. Do colleagues have any?

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** I seek clarification on the crofting community right to buy. Is the cabinet secretary saying that a person would get only partial relief for one property but full relief for more than one property? Is that different from the position under SDLT? If that is the case, why has it been decided to give full relief for multiple purchases?

**John Swinney:** It is full relief, and the justification for that is essentially to remove an obstacle that may influence people's judgment as

to whether to exercise the right to buy; it will also assist that process.

**Malcolm Chisholm:** Okay.

**Jean Urquhart (Highlands and Islands) (Ind):** I just want clarification on the relief for visiting forces and international military headquarters. Can you give an example of circumstances in which a European Union member state's army might buy land in Scotland?

**John Swinney:** The only circumstance that I can conceive of that might arise is where a military exercise was planned to be taken forward over a sustained period of time.

**Jean Urquhart:** Thanks.

**The Convener:** There are no further questions from members, so we move to the debate on the motion. I invite the cabinet secretary to move motion S4M-12186.

*Motion moved,*

That the Finance Committee recommends that the Land and Buildings Transaction Tax (Addition and Modification of Reliefs) (Scotland) Order 2014 [draft] be approved.—[*John Swinney.*]

*Motion agreed to.*

**The Convener:** The committee will now publish a short report for the Parliament setting out our decision on the draft order.

### **Land and Buildings Transaction Tax (Administration) (Scotland) Regulations 2014 (SSI 2014/375)**

### **Land and Buildings Transaction Tax (Ancillary Provision) (Scotland) Order 2014 (SSI 2014/376)**

### **Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014 (SSI 2014/377)**

### **Scottish Landfill Tax (Administration) Regulations 2015 (SSI 2015/3)**

**The Convener:** Our next item of business is to take evidence from the cabinet secretary on three pieces of subordinate legislation relating to land and buildings transaction tax and one concerning landfill tax. I invite the cabinet secretary to make an opening statement.

**John Swinney:** Thank you, convener. I will explain in turn the purpose of each of the three instruments on land and buildings transaction tax, which are subject to the negative procedure.

The main purpose of the Land and Buildings Transaction Tax (Administration) (Scotland)

Regulations 2014 is to allow taxpayers who are unable to quantify their LBTT liability when the price that they are paying is either uncertain or dependent on a contingency to apply to defer the payment of tax in the same situations in which they would currently apply for deferment from United Kingdom stamp duty land tax.

The regulations set out the framework for such applications and include the decision-making process that Revenue Scotland must adhere to; the grounds for refusing an application to defer a tax payment; and the arrangements for making tax returns and payments. The regulations also prescribe the evidence that must be provided to Revenue Scotland for the purposes of relief for alternative finance investment bonds.

On the Land and Buildings Transaction Tax (Ancillary Provision) (Scotland) Order 2014, to ensure prompt payment and deliver administrative efficiencies, the Land and Buildings Transaction Tax (Scotland) Act 2013 requires agents to make a return and pay any tax due before any application to the Registers of Scotland in respect of the land register or books of council and session can be accepted.

Section 43 of the 2013 act creates a link between land registration and payment of LBTT by providing that documents effecting or evidencing a land transaction may not be registered unless a land transaction return has been made and any LBTT due has been paid. That rule has relevance in relation to registers managed and controlled by the keeper of the registers of Scotland, including the books of council and session, which is a court register.

The ancillary provision order introduces a mandatory requirement to submit the appropriate application form when applying to register in the books of council and session any deed that implements a notifiable transaction. That will enable the keeper to fulfil the duty in section 43(1) of the 2013 act not to accept an application to register documents in the books of council and session until a tax return and payment have been made.

As for the Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014, when LBTT becomes chargeable, the commencement date will be set in a commencement order made by Scottish ministers under section 70(2) of the 2013 act. SDLT will be disapplied in Scotland on a date to be appointed by the Treasury under section 29(4) of the Scotland Act 2012. The order defines the commencement date for LBTT as the day after the date appointed by Treasury order under section 29(4) of the 2012 act.

Section 29(5) of the 2012 act makes provision for certain land transactions to which SDLT will continue to apply, namely a land transaction for which the contract was entered into or was substantially performed prior to the Scotland Act 2012 receiving royal assent on 1 May 2012. Section 29(6) of the 2012 act makes provision for certain land transactions to which SDLT will no longer apply—for instance, where there has been an assignation or sub-sale in a contract that was entered into prior to 1 May 2012. The purpose of the order is to make provision for certain transactions that began under SDLT but which have an effective date on or after the commencement of LBTT. The intention is to ensure, first, that during the transitional period in which SDLT is disapplied in Scotland and LBTT is introduced, such transactions are not taxed twice under SDLT and LBTT but are subject to one of them; and, secondly, that if the outcome of the provisions in the 2012 act is that no tax would be payable, tax is payable under LBTT if it would have been payable under SDLT. The order makes provision to achieve those intentions for 13 different types of land transactions or arrangements involving land transactions.

**The Convener:** Thank you very much, cabinet secretary. Do colleagues have any questions?

**Malcolm Chisholm:** In the consultation, three respondents asked whether guidance would be issued to address a perceived lack of detail regarding the information to be provided in a deferment application, and the policy note confirms that Revenue Scotland will publish such guidance in due course. How long will it be until that is made publicly available?

**John Swinney:** It will be made available on 16 February.

**Malcolm Chisholm:** Thank you.

**The Convener:** As that has exhausted members' questions, I thank our witnesses and call a one-minute suspension to allow them to leave.

**John Swinney:** I think that we still have to do the landfill tax regulations, convener.

**The Convener:** You are absolutely right. I am afraid that there is a mistake in my briefing, which says that you leave at this point and that we consider the matter after you have done so. My assumption was that you were going to leave now.

My apologies, cabinet secretary. Could you speak to the landfill tax regulations?

**John Swinney:** Thank you, convener.

The Scottish Landfill Tax (Administration) Regulations 2014, which use powers from the Landfill Tax (Scotland) Act 2014 and the Revenue

Scotland and Tax Powers Act 2014 in respect of a number of provisions relating to registration, accounting, credits, the Scottish landfill communities fund and rules for the weighing of waste, formed a significant part of the Scottish Government's consultation paper on secondary legislation for the Scottish landfill tax, which was published in May 2014. We also received feedback on the proposals from a number of consultation events that were held over the course of the year.

Landfill operators will be able to register with Revenue Scotland from 16 February 2015, and must do so within 30 days of their intention to carry out landfill activities. The regulations also make provision to allow a landfill operator to correct any inaccuracy or make changes to their details. A landfill operator's first accounting period begins on the day they become registered, and tax returns should be submitted along with any payment of tax no later than 44 days after the end of each accounting period. We have increased that period from 30 days in recognition of points that were raised in the consultation process and the fact that aligning the tax accounting period with environmental reporting period returns could result in transitional cash flow issues for some operators.

The regulations also provide for a tax credit system, in so far as a person who has paid or is liable to pay tax may be entitled to credit, providing that prescribed conditions are fulfilled. The credit provisions cover three areas: bad debts; removing material for reuse and recycling; and the Scottish landfill communities fund, which is the area that I will focus on.

09:45

The Scottish landfill communities fund provides funding for community or environmental projects in recognition of the disamenity experienced in the vicinity of landfill sites. I have already made Parliament aware of my intention to introduce a proposed enhancement of the tax credit arrangements under which the fund will operate. As we landfill less, it is inevitable that less money will be available to the fund in the coming years, and increases in the credit cap will not offset the expected decline in tax revenues caused by the decline in the amount of material going to landfill. I have therefore ensured that the regulatory approach is appropriate, while capping administration costs at a maximum of 10 per cent to ensure that as large a proportion of the contributions as possible goes to project expenditure.

A matter of much debate is the 10-mile radius rule that is applied to the UK fund. I believe that the communities that are most affected by landfill should benefit most from the fund, but I also

recognise that under current arrangements those suffering from the effects of transportation and transfer of waste going to landfill are ineligible unless they live near a landfill site. As a result, the regulations provide that projects near a transfer station will be eligible to apply to the fund.

The fund's objectives are set out in the regulations. During the consultation, a significant number of stakeholders observed that waste prevention was a logical addition to the community reuse and recycling objective, and there was also support for including sites of archaeological interest in the objective to allow funds to be spent on historic buildings, provided that the sites were accessible to the public and were within the vicinity of a landfill site. Those proposals have been incorporated into the list of objectives for the fund. A contribution made by a landfill operator and any income that is derived must be spent on an approved objective of the fund within two years of the original contribution being made, and work is continuing with stakeholders, the Scottish Environment Protection Agency and Entrust, which is the other regulator of the United Kingdom fund, to ensure that processes are in place to establish the Scottish landfill communities fund.

Finally, in the consultation, we proposed changing the way in which waste is weighed when entering a landfill site, for the purposes of determining tax. Under the existing UK system, a landfill operator can apply to discount the water content of waste in certain circumstances, such as where water has been used to damp down waste to reduce dust. The proposal in our consultation was to exclude such water discount provisions in the Scottish landfill tax. The main reason for that proposal was that the arrangements can be quite complex and can allow for tax evasion; moreover, liquid wastes are banned from landfill. Stakeholders expressed concerns about health and safety and waste tourism, and said that the measure would put Scottish business at a competitive disadvantage. In light of those arguments, I have introduced provisions to discount the tax due on non-naturally occurring water from waste deposits, along the lines of the UK discount.

**The Convener:** Thank you very much, cabinet secretary. Do colleagues have any questions?

**Mark McDonald (Aberdeen Donside) (SNP):** Just one, convener. The cabinet secretary mentioned the discussions that are going on about the establishment of the Scottish landfill communities fund, which, at present, is administered on a UK-wide basis by Entrust. When does the cabinet secretary expect the Scottish fund to take effect? Obviously, a number of organisations that derive funding through the fund are waiting to see the successor



arrangements that the Scottish Government envisages.

**John Swinney:** I would want it to be in place for 1 April.

**The Convener:** Thank you very much, cabinet secretary. We will have a one-minute break to allow our witnesses to leave, after which we will consider the negative instruments.

09:48

*Meeting suspended.*

09:51

*On resuming—*

**The Convener:** Our next item of business is to consider the negative instruments on which we have just heard evidence. Do members have any comments on them? It seems that members have no comments.

## Community Charge Debt (Scotland) Bill: Stage 2

09:51

**The Convener:** I will move swiftly on. The next item is stage 2 of the Community Charge Debt (Scotland) Bill. We are joined by Marco Biagi, the Minister for Local Government and Community Empowerment, who is accompanied by Lauren Glen, Catriona Graham, Laura Barrie and Colin Brown of the Scottish Government. Welcome to the committee, minister. This is your first time at the committee but, I hope, not your last. I invite you to make an opening statement, if you so wish.

### **The Minister for Local Government and Community Empowerment (Marco Biagi):**

Thank you for that slight air of threat in your welcome, convener. This is not just my first time in front of the Finance Committee in my capacity as a minister; it is my first time in front of any committee, setting aside the Scottish Youth Parliament, which once grilled me very effectively on education policy. I hope that this experience will be a little smoother.

I welcome the Finance Committee's report on the bill, which was helpful and raised a number of points to which the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy has responded by letter. Today, we are focusing more on the content of the bill, so in my opening statement I will reiterate the Government's thinking on why the bill is drafted as it is.

Our overriding concern was that local authorities might use the information that was gathered from voter registration to pursue outstanding poll tax debt. We wanted to make it crystal clear that local authorities will be absolved of their obligations to collect poll tax debt, and we wanted to ensure that the legislation is simple, straightforward and unambiguous. We have therefore decided to extinguish the liability for the debt. Had the legislation been phrased differently, for example, by making it illegal for local authorities to collect poll tax debt, that might have caused difficulties for authorities, had payment arrangements not been cancelled by debtors.

We wanted to ensure that local authorities have sufficient warning of the extinguishing of the liabilities so that existing payment arrangements can be closed down. As section 2, which is the interpretation section, shows, the associated liabilities that will also be extinguished by the bill are many and various. They include interest charges and fines, all of which were imposed as part of the process for collecting poll tax. If Parliament passes the bill, all those liabilities will

be extinguished with effect from Sunday past. That will lift a burden not only from the debtor but from the local authorities, by letting them concentrate on breaking the cycle of debt, as some of them have told the committee. Getting rid of this historical debt will help to do that.

**The Convener:** There are no questions and no amendments have been lodged, but we are obliged to consider and formally agree to each section and the long title. The standing orders allow me to put a single question when groups of sections are considered consecutively, which is what I propose to do.

*Sections 1 to 4 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2. Parliament has agreed that stage 3 will take place on Thursday 19 February. Because of the recess week, the deadline for lodging stage 3 amendments is 4.30 pm on Friday 6 February. Amendments can be lodged with the clerks in the legislation team.

I thank the minister. We will have a five-minute break to allow him and his officials to leave, and to allow the next witnesses to come in.

09:55

*Meeting suspended.*

10:00

*On resuming—*

## **British Sign Language (Scotland) Bill: Financial Memorandum**

**The Convener:** Our next item of business is evidence on the financial memorandum to the British Sign Language (Scotland) Bill from Mark Griffin MSP and Joanna Hardy of the Parliament's non-Government bills unit. I welcome our witnesses to the meeting and invite Mr Griffin to make an opening statement.

**Mark Griffin (Central Scotland) (Lab):** Thank you, convener. It is good to be at the Finance Committee.

The bill will impose on the Government the responsibility to produce a national plan on British Sign Language and to promote use of British Sign Language in public life in Scotland. There has been a gap in provision in Scotland when it comes to people who use BSL; it is their main language and they do not have the opportunity to learn any other language. The bill should start to make improvements in recognition of BSL, in the culture of the language and in access to services.

I will be happy to take questions on the financial memorandum.

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

I know that you have not been to the Finance Committee before, so I will tell you what will happen. I will ask you some opening questions, then I will open up the session to colleagues around the table and we will take it from there.

My first question is about the overall cost estimates. Paragraph 11 of the financial memorandum seeks to explain why the cost estimates that it provides

“involve such large margins of uncertainty.”

There are cost variances of several million pounds and there are significant annualised variances. I take it that your view is that what the bill proposes should be funded fully by the Scottish Government.

**Mark Griffin:** Yes. At first glance, the estimate of £6 million, which lies at the top of the range, seems to be a large amount of money, but it should be borne in mind that that expenditure will be across 117 public bodies and will be spread over five years. Indeed, under the amendments that the Government has suggested, that would be spread over seven years. I think that the Scottish Government has already committed to providing £2 million of funding, which leaves a gap of £4 million that would need to be made up.

In response to the committee's call for evidence, some public bodies have said that they would be able to absorb the costs of the bill within their budgets, but it will ultimately be for the Government and ministers to choose whether to provide funding in addition to the £2 million to which they have already committed.

**The Convener:** An issue would arise if the Scottish Government was not able or willing fully to fund the bill's costs. East Lothian Council has said that

"there is a risk of plans having no substance, because local authorities are not in a position to allocate new monies to new activity and do not themselves see that BSL should be championed over other inclusive means of communication."

How do you respond to those concerns?

**Mark Griffin:** That goes to the heart of the reason for the bill. There is postcode-based provision of services across Scotland, so the bill's aim is for the Government to set out its priorities for BSL through a national plan and for public authorities to draft their own plans and report to Parliament on their progress. That would allow BSL users in all of our constituencies to scrutinise what public bodies are doing.

As I said earlier, for many people, British Sign Language is the only language that they will ever know. It is not like any other minority language, whose speakers have the opportunity to learn English, Gaelic or another language. For most BSL users, it is the only language that they will ever know or learn. There is a responsibility on public bodies to recognise that and to provide the level of service that you or I would expect in English.

**The Convener:** Midlothian Council says that the financial memorandum

"assumes a planning process very specifically for BSL rather than incorporating BSL issues into other strategic planning streams associated with inclusion, disability and equality, in particular work associated with the implementation of See Hear."

A number of other organisations have similar concerns. I understand what you are saying about BSL being unique relative to spoken languages, but what about Midlothian Council's implied concern that the proposed measures will detract from some of the things that it is already doing—for example, implementation of the see hear strategic framework, which it mentions?

**Mark Griffin:** That is that council's view; I take a different view. I do not see British Sign Language as a disability issue. British Sign Language is a language and a culture in its own right. I do not think that, if people consider it as their language and their culture, we should ask them to define themselves as disabled. You would have a big fight on your hands if you tried to tell a lot of the

people who use BSL who I have met over the course of developing the bill that they are disabled, just because they use a different language from most of us around the table. It does not take away from their ability to do anything that we can. I have an issue with British Sign Language being classed as a disability or equalities issue.

I have been clear from the start that the bill is about a language. The language and culture of British Sign Language are unique, in that people cannot learn another language. There are obviously differences with Gaelic, Scots and English. As I said, this is about culture and language, rather than about disability.

**The Convener:** Surely there must be some equalities considerations. You are, in effect, looking to give people who use BSL equality of access with other people in Scotland.

**Mark Griffin:** I am looking for BSL users to have the same access that you or I would have if we were contacting our local authority about, for example, education services; if a BSL-using parent was wanting to inquire about a service for their child, I would expect them to get the same level of access to information. The equality-of-access issue pops up just because of the unique nature of the language, in that people cannot learn any other language.

You are straying into issues of equality, but I have been trying to keep the focus purely on language and culture, and the added complication that, most of the time, the BSL user has no opportunity to learn any other language.

**The Convener:** I have one further area to discuss before I open up the questioning to colleagues around the table. The Scottish Association of Sign Language Interpreters has suggested that no costs are provided for

"ancillary organisations which may be requested to provide information, expertise and advice to meet the objectives."

I understand that there are only about 80 interpreters in Scotland, so one could suggest that there is a real shortage of people. How confident are you—assuming that the cost issues are addressed by the Scottish Government and local authorities—that there will be no consequences that could impact on other organisations, and that there will be the resource, by way of people, to deliver the proposed provisions?

**Mark Griffin:** The lack of interpreters is one of the big motivations behind the bill. There is a chicken-and-egg situation; if we never address the situation, we will never increase the number of available interpreters. If we do nothing, we could carry on for ever with 80 interpreters or a falling number of them.

We consulted on the bill and SASLI said that it did not expect financial implications to result from it. I will go away and speak to it about its submission, because there is a slight conflict. Although it might be expected to contribute to local authorities or public bodies, consultation on that could well have a resource implication for it. However, there will be increased demand for interpreter services, and there will be an opportunity for organisations that provide interpreter services or that represent BSL users to contract for interpreting and translation work. Therefore, there may well also be an increase in the incomes of such bodies.

The Government has suggested streamlining some of the work around public bodies' plans. Whether it can be streamlined so that there is a more locality-based consultation or a simpler BSL statement, I have said that I am happy to accept the Government's amendments to streamline some of the costs. That should reduce some of the burdens, if there will be any, on the other organisations.

**The Convener:** Thank you for that. I now open up the session.

**John Mason (Glasgow Shettleston) (SNP):** I have to confess that I am not hugely familiar with the subject, so some of my questions may be on the simple side of things.

To follow on from what the convener said, if there is a shortage of interpreter services or of people who are able to interpret, would that have a financial impact? If there are not enough people, we will not be able to spend the money, even if it is available. Is there a danger of inflation—that costs could go up if everybody is looking for the services?

**Mark Griffin:** The costs for interpreters could go up if there was demand. However, the Government has already started work on a national online translation process. It has that in place for NHS 24; BSL users can dial in to the online translation service. Things are being developed that will reduce some of the translation costs through reducing travelling times, for example.

I go back to my answer to the convener. If we do not do anything, we will be in a chicken-and-egg situation. There are 750 interpreters in Finland, which has a population that is similar to ours. Scotland has 80 interpreters, which is why there is such a big demand for their services. I hope that, if the bill is passed, the promotion of BSL in public life would increase the number of interpreters coming through the system, because the interpreters are already overstretched.

**John Mason:** There are 80 interpreters in Scotland. What population do they serve? How many people use only BSL as a language?

**Mark Griffin:** It is difficult to say exactly—there is no exact figure. The last census estimated that there were around 13,000 BSL users, but many of the BSL organisations would question that figure simply because the census is carried out in English, which is not the language of some BSL users and so they cannot respond to the census. The figure for people with any level of hearing loss—ranging from mild, to severe, to profound—in Scotland has been put at about 1 million. As I said, our population is similar to that of Finland, which has 750 interpreters.

**John Mason:** Does the figure of around 13,000 refer to all people whose only language is BSL, or do they have another language? Could they read English, for example?

**Mark Griffin:** The census figures are neither sophisticated nor detailed enough to enable me to answer that accurately. I will go back to the organisations and, if that level of detail is available, I will come back to the committee.

10:15

**John Mason:** Thank you. The point was made that the bill does not require that the plans that are to be drawn up are translated into BSL. Are you looking at or taking on board that point?

**Mark Griffin:** That was purely to keep the costs of the bill down. In its memorandum, the Government has suggested an amendment to translate the plans into BSL. I am delighted to accept that amendment.

**John Mason:** Do we have a cost for that?

**Mark Griffin:** The Government has suggested that the cost will range from £1,250 to £3,150 for each authority to translate its plan into BSL. The Government has taken that into account in the headline figure of £6 million.

**John Mason:** It is not a huge amount. That is fair enough.

You also mentioned the Government's suggestion that things could be done locally. Does that mean several local authorities working together?

**Mark Griffin:** As I have said, when I met Dr Alasdair Allan, he used the example of how Orkney Council, Orkney NHS Board and other Orkney authorities each respond separately to different consultations and we discussed whether it would be possible to streamline that into a locality-based response. For example, public bodies in the Strathclyde region—or it could be done by health board area—could come together

to respond collectively to reduce the burden. I am open to any amendments on that basis.

**John Mason:** That is great.

The other question that came up was in relation to the cycle and how often or quickly people need to get the plans and then report on them. The cycle in your legislation is linked to the parliamentary session, but the Government is suggesting a seven-year cycle. I assume that that would reduce the costs slightly. Is that too long a period?

**Mark Griffin:** I linked the review to the parliamentary cycle not for any consideration of language planning; that relates purely to the political process, as I considered that it would be beneficial for the Government of the day to introduce its national plan at the start of a parliamentary session and then report on the progress at the end of the session, rather than to have an incoming Government report on the performance of a previous Government's policy priorities.

I have spoken to the Government. With its experience of the Gaelic Language (Scotland) Act 2005, it has suggested that a four of five-year timetable is a bit tight and that it would be more practical to extend that to seven years. There is a balance between scrutinising a Government on its performance and having an appropriate timetable. However, if the Government advisers have had issues with the Gaelic language act, then I am happy to accept that, as I am other amendments suggested by the Government.

**John Mason:** You have suggested that when subsequent plans are produced they will cost 30 per cent less. Presumably that is because bodies will be revising something that is there, which makes some sense. However, the counterargument is that, because expectations will rise and the plans will become more complex, there will be no saving. How do you respond to that argument?

**Mark Griffin:** We expect that the first plan to be produced will require the most work. For the most part, any subsequent plans will build on the initial plan and incorporate whatever comes out of the performance review. Therefore, the expectation is that a large amount of the work that will feed into the second, third and fourth plans and so on will have been done in the performance review. That is the basis for the reduction in costs.

**Mark McDonald:** Most of the ground has been covered, but I will query a couple of things. Is all of the costing based on the production of the plan?

**Mark Griffin:** Yes.

**Mark McDonald:** Colleges Scotland's submission states that the committee

"will want to note that whilst the requirement is to produce a plan only, the publication of such a plan will almost certainly increase public expectation that would require additional funds in future years."

It is obviously talking about implementation, because if a plan is going to be produced, the expectation out there will be that it will then be implemented. Why did you not factor in implementation of the plan to either the bill or the costings?

**Mark Griffin:** I see the bill as enabling and providing a platform for the Government to set out its policy priorities. I could tell you what I think the policy priorities of the BSL community will be. I think that they will include support for a curriculum in BSL in secondary schools and a minimum requirement for BSL teachers with a specific level of qualification. There are a whole range of policy priorities that will improve BSL users' lives.

However, the bill gives Government a platform to set out its policy priorities and it will be for the Government of the day to decide which areas it chooses to focus on. With that in mind, it is difficult for me to choose a particular area, as that would tie the Government's hands. If the bill focused on the provision of classes, I think that the price tag associated with that would mean that it would need to be a Government bill rather than a member's bill, to be honest.

**Mark McDonald:** So your expectation is that the cost is associated with the production of the plan, and it will then be for the assorted public bodies to determine the costs of implementation and produce their plans accordingly.

**Mark Griffin:** Yes.

**Jean Urquhart:** Good morning, Mark. Rather than having a question on the financial memorandum, which I should have, I just want to make an observation. The Scottish Government has an ambition for a one-plus-two approach to languages in primary schools, and experiments are happening on that. A primary school that I was in recently has selected BSL as the first additional language for primary 1, and the pupils will start their second additional language in primary 5. Are you aware of that happening in the landscape in Scotland? The Government might already be looking at the financial implications of introducing that one-plus-two approach.

**Mark Griffin:** Yes. There are pockets of good work going on. Art galleries and museums in Glasgow have translated massive amounts of information into BSL, and one of the prisons—I think that it is HMP Grampian—has started training all its staff in BSL. There are excellent education facilities such as Dingwall academy, which is a centre for BSL. There are pockets of excellent practice right across the country.

Dingwall academy has made representations on the issue of education. Pupils are given the opportunity to learn BSL as a subject in first and second year. When they go on to the national exams, there is no curriculum or qualification in BSL available to secondary pupils. Because of the pressure for pupils to get qualifications so that they can get a job or go to college or university, most of them end up dropping BSL. That is an issue for the training of the next generation of interpreters and teachers of BSL.

There are pockets of excellent work and I hope that local authority plans will flag that up and give the BSL community in their constituencies reason to ask why, if a service is being provided in Dingwall, they cannot access it in their area in North Lanarkshire, for example.

**Jean Urquhart:** How long does it take to learn BSL?

**Mark Griffin:** There are different levels of qualification from levels 1, 2 and 3 right up. Classes are available at Heriot-Watt University that you could look into, but I do not know exactly how long it would take to reach a particular level.

**Malcolm Chisholm:** The costs mainly come from developing and publishing the plan. Is the assumption that one member of staff will be doing that for a year? How were the figures for the costs arrived at?

**Mark Griffin:** They are for middle management staff working over a period of months. Joanna Hardy might be able to comment on that.

**Joanna Hardy (Scottish Parliament):** We based the estimate on a member of middle management staff working full time for six months over the period of the plan. Some of that work would come in at the production of the plan and more would come in at the end at the performance review.

**Malcolm Chisholm:** I am sorry; I have not looked at the precise wording in the bill. Are there requirements for what should be in the plan, or is it left fairly general?

**Mark Griffin:** The national plan will give direction to public bodies such as local authorities and say what is expected to be in their plan. The direction will come from national Government.

**Malcolm Chisholm:** Mark McDonald touched on the costs of implementation. You are saying that that is not pertinent to the financial memorandum. Are you saying that the implementation of the plan will lead to extra costs but that it is not pertinent to the bill? What is behind your assertion that costs are not pertinent to the memorandum?

**Mark Griffin:** The memorandum is purely focused on the requirement in the bill that Government should produce a national plan, public bodies should produce their own plan and then, at the end of the cycle, they should report on the progress that they have made on implementing their plans. No policy direction or particular initiative is set out in the bill that we can put a price on. It will be up to national Government and public bodies to decide on the priorities for their individual constituencies. They have to choose what to put in their plan while having a mind to how they would fund it.

**Malcolm Chisholm:** I totally support the bill, but it is quite an interesting position from the point of view of the Finance Committee and the financial memorandum. Presumably your expectation is that, following the making of all the plans, there will be more expenditure, or the plans will just be paper plans that do not change anything. Is that a fair assumption?

**Mark Griffin:** Certainly. The Government will report to Parliament on the performance review of public bodies that draft a plan but make no effort to implement it, and constituents will be given the opportunity through their MSP to name and shame public bodies that do not live up to their plan's aspirations.

As I have said, there are pockets of excellent work and there is no reason why that should be restricted to individual areas. Getting a picture of what is going on nationally will help BSL users to challenge their local authorities on why they are not getting a service that is being provided elsewhere.

10:30

**The Convener:** Thank you. That concludes the questions from committee members, but I have one or two more to ask before we wind up the evidence session.

The submission that we have received from North Lanarkshire Council points out:

"The Bill does not describe any minimum level of activity beyond the production of a Local Authority Plan."

However, it goes on to say,

"There will be potential additional costs for implementation", which we have just touched on, and it suggests that

"There has been no recognition of this in the FM."

The council then says:

"In relation to education the training costs for training of teaching staff and teaching resources has not been calculated ... as the impact of the Bill has not been fully explored within the educational context."

Are you not concerned that, because we have not gone beyond the development of plans, hard-pressed local authorities might say that, with the best will in the world, they can produce a wonderful plan but simply cannot implement its roll-out so that it really means something for people?

**Mark Griffin:** That will be the responsibility of local authorities. I cannot see a local authority producing a wonderful plan with a range of outcomes if it has no intention of financially supporting any of those outcomes. That would be bad faith in the extreme on the part of local authorities. When it came to reporting on performance, if an authority had a fantastic national plan but had done nothing to implement it, the new minister for BSL would rightly raise the matter with that authority and would inform Parliament of it.

**The Convener:** I understand what you are saying about naming and shaming, but North Lanarkshire Council takes the view that, even with the best will in the world, the resources are not there. It points out that the financial memorandum states that

“figures cannot be put on any additional costs arising in this way because it is not possible to estimate how much additional activity will be generated”

from the local plans. It also says that it is unable to quantify those additional costs, as they are unknown, and that

“to provide 24 hours cover 7 days a week for interpreter service would cost the Council over £250,000 per year”.

There is concern that expectations of the bill could be high but the local authorities’ ability to deliver on the ground might be much less than we would like.

**Mark Griffin:** I understand local authorities’ concern that they are not able to put a figure on the activities that they might be expected to carry out, but that is because there is not yet any national plan. There is no detail of what would be in the national plan or what authorities would be expected to have in their own plans—that would be at the direction of the Government. For example, if the Government decided that there should be 24-hour access to all local authorities’ interpreter services and set that out in the national plan, I would expect the Government to set out how it intended to fund those services or how it expected local authorities to meet the cost. It would be up to the Government of the day to fund its policy priorities.

**The Convener:** Thank you. Are there any further points that you want to raise with the committee, which we have not touched on?

**Mark Griffin:** I do not think so. I thank the committee for its time this morning.

**The Convener:** Thank you for answering all our questions.

Does the committee agree to consider its submission to the lead committee in private at our next meeting?

**Members indicated agreement.**

**The Convener:** We will have a five-minute suspension to allow a changeover of witnesses.

10:34

*Meeting suspended.*

10:37

*On resuming—*

## **Air Weapons and Licensing (Scotland) Bill: Financial Memorandum**

**The Convener:** Our next item of business is evidence from the Scottish Government's bill team on the financial memorandum to the Air Weapons and Licensing (Scotland) Bill. I welcome Quentin Fisher, Ewan Bruce, Keith Main, Walter Drummond-Murray and Peter Reid. Good morning to you all. Members have copies of the financial memorandum and all written evidence received. Before we move to questions from me and from the committee, I invite one of our witnesses to make an opening statement. Who has drawn the short straw?

**Quentin Fisher (Scottish Government):** I have. Thank you for inviting us to offer evidence to the committee today. I will make a couple of brief and broad observations.

The bill makes provision in respect of a number of new and existing licensing regimes. Any additional costs associated with the bill should be read against the wider cost to society of the activities that are regulated or, indeed, the risks associated with the regulated behaviour.

The bill has a number of purposes. It aims to protect public safety by creating a new licensing regime for air weapons. It aims to improve aspects of locally led alcohol and civic government licensing, such as the licensing of scrap metal dealers, taxis and private hire cars, in order to preserve public order and safety, to reduce crime and to advance public health. It also gives local authorities the power to regulate sexual entertainment venues in their areas, so that performers and customers benefit from a safe and regulated environment.

The breadth of the licensing regimes that are covered means that there is not insignificant variation in the specific legislative detail and therefore in the financial impact in respect of each regime. That variation is, I hope, reflected accurately in the financial memorandum. In keeping with current licensing practice, the bulk of the costs associated with licensing regimes is ultimately borne by the individuals and organisations who seek to carry out the licensed activity.

It is worth noting that many of the costs that are identified, particularly in respect of part 3, "Civic Licensing", depend on future decisions that will be taken at local authority level. Local authority discretion is an important principle in all of this. In

such instances we have sought, where possible, to offer some indication of what the costs might be.

We will do our best to ensure that the answers that we provide today are helpful to the committee in informing your consideration of the bill.

**The Convener:** Thank you for your brief opening statement. When a question is asked, the witnesses can decide among themselves who is the most appropriate person to respond to it and to any follow-up question.

It is logical to go through the bill part by part, so let us start with part 1, "Air Weapons". The bill will make it illegal to possess air weapons without good reason, but I note that people who hand in unlicensed air weapons will not be entitled to compensation. Surely the absence of compensation will make it less likely that weapons will be handed in. A lot of folk will just think, "Well, it's at the back of the garage and I'm not going to the bother of digging it out and taking it to the local police station." What is the thinking behind not compensating people who hand in weapons, even with a token £20 or so?

**Keith Main (Scottish Government):** That issue has been discussed quite a lot over the three or four years in which we have been working with stakeholders and considering provisions. I understand that it is of concern to some people.

There have been occasions in the past when changes in firearms law led to the outright prohibition or banning of certain types of gun. For example, in 1997 handguns were in effect prohibited and the Government of the day offered compensation. In the bill, the Government does not intend to ban airguns as such. We are seeking to ensure that the people who have airguns are appropriate and can have them safely and so on, but we are not banning the guns.

Our view is that there are an awful lot of airguns at the back of people's garages, as you said. In the course of the past few years, lots of people have said to me, "We had one of those when I was a kid. It's in the loft or somewhere and I haven't seen it for years." We think that there will be a lot of low-value, old air weapons that have never been used or are perhaps broken or no longer fit for use, and it will be open to people to hand them in to the police—we will put in place arrangements for that—sell them through private sales or registered firearms dealers or make other arrangements. For example, owners might pass them on to other users.

Ministers' policy has always been that, because there will be no ban and we are talking about quite a high number of low-value weapons, compensation will not be part of the arrangements.



**The Convener:** I thought that compensation might be an incentive for people who no longer have an interest in or use for airguns to get them out of circulation. We might get more guns out of circulation than we otherwise would.

Quentin Fisher said that the new system will not be unduly burdensome, but that is hotly contested. The financial memorandum suggests that the cost of processing applications for air weapons under the new arrangements will be about £85.55. That is a remarkably precise figure, and it has been contested by people who submitted evidence to the committee. For example, the British Association for Shooting and Conservation—I will try not to use acronyms—said:

“the cost that will be associated with the introduction of an air weapon licensing scheme will be very high”,

and

“hugely disruptive to the already overstretched Firearms Licensing administrations in Scotland”.

You have said that 98 per cent of people will be dealt with without the need for further inquiry, but the Scottish Air Rifle and Pistol Association says that that is incredibly misleading, because half the folk who use these weapons use them for informal target shooting in their own gardens; we do not want to see that, because of the safety impact. The association completely refutes the financial assumptions that have been made about the bill and suggests that the average cost will be significantly higher; it mentions a figure of almost £120.

Can you talk us through how you came to the 98 per cent figure for the proportion of applications that would not require visits, and how you reached the figure of £85.55?

10:45

**Keith Main:** We arrived at the 98 per cent figure in discussion with Police Scotland, which will be the licensing authority. The air weapons provisions and the whole process of applying for licences for air weapons are based around the existing firearms regime for high-powered rifles, shotguns and so on. The aim has been to provide a fairly light-touch approach to licensing air weapons, recognising that they are not generally as dangerous as more high-powered guns.

In talking to Police Scotland, we discussed how that would be done. We accept the police’s view, which we share, that there are some 60,000 to 65,000 existing certificate holders for other types of firearms, and that many of them will also have air weapons and will be brought into the new regime. Many of the security issues have been looked at in licensing those holders and providing them with certificates, so a large number of people

would already be taken out of the system. For those who are new applicants, it is a relatively light touch, and Police Scotland has told us that a disclosure-style arrangement, under which they will check an applicant’s basic criminal history, should suffice for the majority of applicants.

That has been the view of Police Scotland throughout. The police therefore believe that 2 per cent is the right level for a full home visit and security check. Obviously, as the new system comes in that may vary a little, but that is the view that we have taken over the piece, and we worked up the figures on that basis.

In the past couple of weeks, I have looked again at the £85.55 figure. The figure is very accurate. We used figures that have been used by colleagues down south in the Home Office and the Association of Chief Police Officers; they have done a lot of work over the past couple of years in looking at the costs of processing existing firearms applications. With their agreement, we have adopted a lot of the figures for work that has been done by our working group in that context. The figure takes account of processing times and the type of staff who are doing different bits of work, and the calculations behind the £85.55 pretty much reflect the work that is done.

That has led the Home Office to consult recently on an increase in firearms fees more generally, so we have continued to adopt that figure. BASC and SARPA are aware of that work. In fact, BASC was part of the working group down south that agreed those figures. There are always differences in how we treat the figures, and I understand BASC’s concerns about the impact on its members, but we think that there is a generally accepted basis for the background workings behind the figures, which we will review later in the year as we start to look at fee levels.

**The Convener:** I imagine that more than 2 per cent of the population will have a criminal record, so it seems a bit odd that the figure is so low. It is quite burdensome, even if the cost is £85. Okay, a law-abiding citizen will grudgingly apply for that, but the folk whom you are most worried about will just not bother paying £85 to get a gun licensed, will they? Surely all that you will do is impact adversely on shooting clubs and their members.

**Keith Main:** There will be an impact on shooting clubs and members—absolutely. That is part and parcel of the licensing system, but, then again, existing firearms and shotgun owners pay for a certificate, which currently costs £50 for five years. We have not set a fee level yet for air weapons. The fee reflects the work that has to be done by Police Scotland to ensure that the right people have air weapons and that the police can therefore help to protect public safety. If the figure is £50, £60 or £70 over five years, that is a relatively small

price compared with the cost of membership of a club or with the amount that somebody pays for some other interest.

I accept that there will be a core of people who will just say, "We'll hide our guns. We're not going to get involved in this licensing system." As part and parcel of the implementation, we have to ensure that we are getting the message out. There is provision in the financial memorandum for a media campaign. We have had the verbal agreement of the shooting organisations to help us get that message out. We need to get it out to the wider community to make sure that people know that there will be a requirement to license their guns. If people choose not to license those weapons, they will be committing an offence and the police will deal with that appropriately. Over time, it will help the police to identify air weapons that are in circulation with people who should not have them. There are provisions elsewhere in the bill that will allow for the courts to order the forfeiture of those weapons or deal with them appropriately.

**The Convener:** If there are half a million weapons in circulation and you are talking about between 10,000 and 30,000 applications, to me, that means that between 94 and 98 per cent of people will not bother getting their weapons licensed. SARPA has said:

"a more realistic total licence number would be between 100,000 and 150,000".

Even then that would be a maximum of 30 per cent of people applying—most people would still blank the legislation.

The cost of this measure will be millions of pounds. How will the bill deliver on what it proposes in terms of enhanced and improved safety, when we are talking about only small minorities of people—according to your own figures—getting these guns licensed?

**Keith Main:** I cannot remember the paragraph numbers in the memorandum, but the estimate of 500,000 air weapons is generally accepted around the working group table as the potential number of air weapons out there in Scotland. In fact, we expect that a lot of them will simply be handed in because they are old, broken or unwanted. A lot of them will be sold on. Many people who own guns of any sort—air weapons included—will have a number of different guns, possibly because they have upgraded over the years and possibly because they do different types of shooting. Working down through those assumptions, we get to the figure in the financial memorandum of potentially 40,000 existing firearm certificate holders also having air weapon certificates in future. The 20,000 estimate is brand-new applicants to the system, who do not have more

powerful firearms but who will come in and seek a certificate for the air weapon or multiple air weapons that they hold. It will be one certificate. A person can hold one, two or any number of air weapons on that certificate.

**The Convener:** I will just ask one more question on this area, because colleagues want to ask about other parts of the bill.

The financial memorandum states that the estimated maximum additional enforcement, testing and reporting costs to be incurred by Police Scotland would amount to £90,000 per annum, based on an estimated 500 cases per year at £180 a case. The BASC questioned whether that figure implied that the police expected to seize 500 weapons as a result of non-compliance and asked how the figure compared with the estimate of 50 to 100 summary prosecutions that the FM quotes. That appears to be a wee bit of an anomaly.

**Keith Main:** We are looking at the line between the existing regime and the new regime. The 500 tests that sit against Police Scotland's costs are an estimate that is based on the number of actual weapons that might have to be tested—they would be brand-new tests.

In the course of investigating other crimes or complaints, Police Scotland may find air weapons in a property and, under the current regime, the police cannot take those weapons. However, one of the benefits of the provisions in the bill is that, from the point at which they come into force, the police will be able to seize weapons and test them as part and parcel of another investigation. For example, if the police go into a property because of a complaint about domestic abuse or antisocial behaviour, a prosecution will already be going on because of that complaint, alongside which there will be tests if air weapons are seized.

The figure of 500 tests relates to the number of air weapons that could be taken in such investigations but there might be only 50 to 100 brand-new prosecutions simply for an air weapons licensing offence.

The existing firearms legislation already contains offences relating to air weapons. For example, it is already an offence for somebody to fire an air weapon beyond the boundaries of their own premises or carry an air weapon in the street. Under the bill, there will be a number of new licensing-related offences that will sit alongside existing offences that can be investigated and prosecuted.

**The Convener:** I said that that was my last question, but I want to ask about one other thing. How many appeals do you expect from people who have been refused licences, and what would be the cost of those appeals?

**Keith Main:** I looked at the written evidence on appeals. We do not have a specific provision for appeals in the financial memorandum at the moment.

**The Convener:** Indeed. I know that.

**Keith Main:** I apologise for that. I will look at it again. On the basis of criminal prosecutions, we expect a relatively small number of brand-new appeals. The thinking was that the bill would lead to a very low number of potential criminal appeals.

I understand that the British Association for Shooting and Conservation is saying that there is potential for a number of appeals against refusal or revocation of a certificate. However, the people who apply under the existing firearms regime are generally known in the system—they are known to the police and are existing firearms owners—so the number of refusals is very small. Each year, around 1 per cent of applications are refused, according to the most recent statistics that we have. As our system rolls out, we will look to the police to provide advice on that.

It is difficult to estimate the number of appeals, but we will have to be aware of the issue and, perhaps, revisit it. I am also conscious that there is a new sheriff appeal court system coming into play under the Courts Reform (Scotland) Act 2014, so we will have to consider how appeals will work through that system. Ministers and officials hope that there will not be a lot of appeals; because it will be a light-touch system, we do not expect there to be a lot.

**The Convener:** We will move on to alcohol licensing. I will spend less time on the next two sections, not least because I have taken 20 minutes and I want committee colleagues to come in.

On the alcohol licensing provisions, West Dunbartonshire Council says:

“The legislation sets a maximum fee which licensing boards can charge and, even though ours is charging the maximum fee, we incur an annual deficit of almost £89,000”.

Glasgow City Council says:

“it should be noted that it is difficult, if not impossible, for the bodies to preemptively raise fees ... to take into account the Scottish Government’s proposals”.

South Lanarkshire Council says:

“the Council does not currently have the funding in place to meet”

potential future costs. Surely the regime will add significant burdens to local authorities.

**Peter Reid (Scottish Government):** The proposals in the bill are a broad mix. They were derived from suggestions that were floating about among stakeholders and from the consultation

exercise. The idea was to finesse and improve the existing legislation, not to impose substantial additional burdens on licensing boards. On that basis, we felt that it was reasonable to say that the costs would be broadly neutral.

We would be sympathetic to the idea of amending the existing limits on the licensing fees, but we carried out detailed work in reviewing them and got scant response from the local authorities. Therefore, we felt that we did not have enough information on which to base an increase in the fee levels.

Inserting a statutory duty on local authorities to report on their income and expenditure will give us a basis on which to understand all the local authorities’ costs—in relation to both expenditure and time—in order to allow the fees to be increased, if that is felt to be appropriate. One of the main findings of the fees review was that the current occasional licence fee of £10 is felt to be insufficient. We feel that we can increase the occasional licence fee without extensive further work, and fairly soon.

11:00

**The Convener:** Thank you. The written submission from the Convention of Scottish Local Authorities states:

“There are some concerns that the introduction of a duty for Boards to publish a financial report may be administratively difficult for local authorities depending on current accounting procedures. COSLA does recognise that this increases transparency and would provide evidence for any future fee increases.”

Nevertheless, COSLA adds that South Ayrshire Council

“expressed ‘particular concerns’ that the fee for occasional licences had not been reviewed, stating that the current fee was insufficient to cover the cost of work involved in processing a licence application.”

**Peter Reid:** Yes. The current £10 fee is set in secondary legislation, so we could increase it outwith the bill.

**The Convener:** Okay. I have one final question on civic licensing—I am skimming through the submissions because I want to allow colleagues to ask questions.

The financial memorandum states that the bill

“will give local authorities the power to refuse to grant private hire car licences on grounds of overprovision.”

However, the Scottish Taxi Federation states that the financial memorandum has “got things badly wrong”, and it questions how the financial memorandum’s estimate was reached, stating that no suitable methodology or measuring tool exists at present. Indeed, it goes on to say that it would

be “difficult if not impossible” to devise such a tool. How did you reach your estimates?

**Peter Reid:** At the moment, there is no equivalent test for private hire cars. There is a similar test for taxis that relates to unmet demand, but that is a different test. We took the figure from Napier University, which quoted £15,000 to £20,000—the figure is in the financial memorandum—as the indicative level for the unmet demand test. That figure was given as an example; in practice, it is a completely new test and we have not yet devised a procedure to determine what the appropriate amount would be.

The point that the Scottish Taxi Federation and others raise—that £15,000 might be on the low side—is possibly true for a large authority such as the City of Edinburgh Council or Glasgow City Council, but those are exceptional cases. A lot of local licensing authorities have very small numbers of private hires and, were they to carry out an unmet demand test, the amount would probably be a lot lower. We would be happy to work with local licensing authorities and relevant stakeholders to develop an appropriate methodology for testing that.

**The Convener:** Thank you. I said that I was going to open up the evidence session, but none of my colleagues has yet indicated that they want to ask any questions. I hope that they will. I will ask another question while they all get themselves psyched up for that.

The financial memorandum notes that some local authorities might receive no fee income from sexual entertainment venues—that is, where none exists in a local authority area—but could incur

“tens of thousands of pounds”

in legal fees should an operator challenge a decision not to grant a licence. What is your comment on that?

**Walter Drummond-Murray (Scottish Government):** We recognise that risk in the financial memorandum, but the precise amount that such a challenge could cost is very hard to pin down. Glasgow City Council estimated that a low-level challenge in relation to a civic licence—for example, a private hire car driver licence going before the sheriff court—could cost between £2,500 and £3,000. However, if a case went all the way to the inner house of the Court of Session, the cost would be very substantial—there is no getting away from that—although it is hard to be precise.

The Civic Government (Scotland) Act 1982 confers a responsibility on local authorities to ensure that the total cost of licensing is covered by the licensing fees. Ultimately, however, when a case is likely to be very expensive, it is for the local authority to judge whether it is worth pursuing

and whether the public benefit that it is trying to achieve would warrant pursuit of the case all the way through the courts and the incurring of that expenditure.

**The Convener:** My colleagues now wish to ask questions. The first one will be from Mark McDonald.

**Mark McDonald:** In relation to several areas that are dealt with in the financial memorandum, various organisations have highlighted concerns about the cost of appeals. The British Association of Shooting and Conservation has concerns in relation to air rifles; the Scottish Taxi Federation has concerns in relation to taxis; and various licensing boards are concerned about some of the new changes, particularly the fit-and-proper-person test. There are concerns that the cost of appeals in those areas has not been properly factored in. Would you like to respond to those concerns?

**Quentin Fisher:** That question covers all the licensing regimes, so I will deal with it in a broad fashion if I may.

I take it that you are talking about appeals in respect of decisions that have been made by the local authorities or the police to grant or revoke licences. The way to eliminate the possibility of an appeal would be to have no appeals system, but I do not think that anyone is suggesting that. At the moment, we have an appeals system and the possibility of appeal arises. The likelihood of an appeal being successful depends on, among other things, the quality of the decision that has been taken. It also depends on the mindset and the positioning of the potential appellant.

The moment that we have an appeals system in place—we have one for all licensing decisions—the possibility of an appeal exists. However, the likelihood of an appeal being successful is a different matter and can be ascertained only on a case-by-case basis, as can the costs of the appeal.

I do not know whether any of my colleagues wants to say anything about the specific regimes.

**Walter Drummond-Murray:** I would just add to the point that the convener made. There are only about 17 to 20 sexual entertainment venues in Scotland, which of itself limits the scope for appeals being taken through the courts.

**Mark McDonald:** You say that in relation to sexual entertainment venues, but the submissions that we have received raise the issue that there may be appeals against refusals to grant licences. Although there are only a small number of such venues in existence, there may be applications that, prior to the implementation of the legislation, would have gone through the alcohol licensing

system or another route. The bill will create a new licensing regime, which will, potentially, lead to refusals under that new regime and thus to appeals against those refusals. Basing your projection on the small number of venues that exist does not reflect what may happen, and that is the point that the licensing boards are attempting to get across.

I realise that it is difficult to put an exact figure on it, but a financial memorandum is supposed to deal in best estimates. Did you consider the scenario of licence applications being refused rather than simply the number of licences that have already been granted?

**Walter Drummond-Murray:** You are correct in saying that there would be applications on top of that figure. However, the point remains that lap-dancing clubs have been in existence in Scotland for perhaps 15 years and, even after that time, there are still only about 20. It is therefore reasonable to infer that the demand for licences is limited. There will be applications, but there will not be an enormous number of them.

The cost of any appeals will depend on how far they are pursued through the courts. Going to the inner house of the Court of Session would be expensive. We have never had a better estimate of what exactly an appeal would cost than the figure of tens of thousands of pounds.

**Mark McDonald:** On the introduction of the fit-and-proper-person criteria for the granting of personal licences, there is a feeling that the definition is vague and could lead to a number of challenges. The Glasgow City Council licensing board states:

“the current drafting of the bill creates uncertainty as to the scope of the test and, unless corrected, will expose Boards to increased litigation costs until case law provides necessary judicial clarity.”

Has that issue been raised with you directly, in connection with the fit-and-proper-person test, and does the Government intend to look at the matter as the bill moves forward?

**Peter Reid:** The fit-and-proper-person test has been carefully drafted. There are existing fit-and-proper-person tests in other pieces of legislation that the local authorities will be quite familiar with so it is not a completely new concept.

The test has also been framed with reference to the overarching licensing objectives for the Licensing (Scotland) Act 2005. Those objectives are broadly framed and put certain constraints on decisions that the local authority can make. Were local authorities to ignore those constraints, they would still be bound by the overall scope of the bill.

The Brightcrew decision that is frequently referenced related to a board making decisions that went beyond the scope of the bill. Referencing the fit-and-proper-person test to the overarching licensing objectives ensures that decisions that the board makes are constrained within the scope of the 2005 act.

**Mark McDonald:** On public entertainment venues, the financial memorandum states that the abolition of theatre licences would represent

“a decrease in regulatory burden overall”

but in evidence to the committee Dumfries and Galloway Council says that those authorities not currently licensing places of public entertainment would need to undertake a “substantial and detailed process” to assess whether there is a need to license theatres as places of public entertainment. It further stated that those that already do would incur

“significant press publication fees for statutory notices if the authority’s resolution is to be widened to include theatres.”

Glasgow City Council urges the Government to introduce

“provisions to allow the necessary amendment to the resolution to be expedited”

which, it suggested, would

“reduce the costs to theatre owners etc.”

On the one hand we are being told that there is a reduction in the burden, but on the other hand we are given evidence that suggests that there will be an increase in costs in some places. Could somebody reconcile that?

**Walter Drummond-Murray:** The point about a decreased regulatory burden was about the burden on theatres themselves. Some theatres might have to have a theatre licence and a public entertainment licence at the moment whereas the proposed system will be more streamlined and will allow a theatre, for example, to apply for just one licence. In the longer term, we also expect that operating a single regime rather than two will benefit local authorities.

On expediting the nine-month period between a local authority passing a resolution and it coming into force, it is reasonable for there to be some time between an authority announcing that something needs to be licensed and it coming into force so that people have time to apply for licences to get ready for it. The current period for that is nine months. We are not especially wedded to that period but it is hard to see how it could be less than several months. It should also be pointed out that a public entertainment licence is very wide and flexible so the local authority could decide to license billiard halls or snooker clubs, for example, and there needs to be some months between the

time that that decision is made and the licence coming into force.

The requirements of the 1982 act are that an authority should publish the resolution, invite comments, and then consider those representations. There is some work to be done to reach the point at which a draft resolution can be published, but the amount of work should be proportionate to what is being proposed.

In the case of theatres, we expect there to be a strong assumption that they should fall under public entertainment licensing. They are already licensed and they have largely the same characteristics as many of the other forms of entertainment that are licensed as public entertainment. In those circumstances, we would not expect a substantial and detailed process to be required.

On fees, we recognise that publishing the sort of classified advert that is required under the 1982 act to notify people of a change in resolution has a cost. Glasgow estimated that the cost of an advert ranges between £300 and £550, its previous two having been £340 and £522. It is therefore a cost of a few hundred pounds, but it is not an on-going cost and it would have to be incurred only twice during the process of changing a public entertainment resolution.

**Mark McDonald:** I was just going to ask about that. I am by no means an expert so this is going to be very much the daft laddie question. I presume that an advert does not need to be posted for each individual licence; adverts can be applied collectively. For example, if a number of venues are going through the licensing process, they could all be captured within the one advert, which would reduce the cost burden.

**Walter Drummond-Murray:** Yes. The cost that is being referred to relates to the fact that, when a local authority determines the change through a public entertainment resolution and says what it is going to license, it has to advertise that fact and invite comments. It has to put in another advert at the end of the process showing what the final resolution looks like. It is not about individual applications; it is about the totality of what is changing within a local authority area.

11:15

**Richard Baker (North East Scotland) (Lab):** I want to return to the submission from the Scottish Taxi Federation. It said that the bill will impact on its members because of the Government's comments that additional costs should be charged to licence fees. Paragraph 170 of the financial memorandum gives an indicative value of the cost to drivers, vehicles and booking offices, with examples of fees in five licensing authorities. Do

those examples include any additional costs for the implementation of the bill, or do the comments from the Scottish Taxi Federation reflect the fact that those costs are likely to increase in the future because of additional costs through appeals and other impacts of the legislation?

**Peter Reid:** The financial memorandum reports licence fees that were being charged at the time we asked. Those are existing costs.

**Richard Baker:** What assessment have you made of the impact that the legislation might have through additional or increased costs for licence fees for taxi drivers?

**Peter Reid:** It is difficult to gauge because overprovision in relation to private hire is a discretionary power. It is up to local authorities whether they wish to introduce it. When we consulted, there seemed to be broad support for it and the evidence that came in response to the call for evidence does not seem to indicate that local authorities are keen to use the additional power. If local authorities decide not to use it, no additional cost will be incurred.

**Richard Baker:** The Scottish Taxi Federation wishes to be clear whether, if a local authority applies for that power, the cost of the overprovision section and the possible court challenges will only be charged back to licensees for private hire care operators, or whether they will be charged back to the regime in general.

**Peter Reid:** I have had a look at the bill, but I am not a lawyer so I cannot really offer a legal view. It does not seem to me to be prescriptive about how the local authority would allocate that cost and whether it would be to just the private hire element or the whole taxi element. At the moment, there is an unmet demand test in relation to taxis. I am not sure whether local authorities restrict the cost of that to the existing taxis or whether they spread it across the private hire regime. I suspect that it is really an issue for the local authority to decide on.

**The Convener:** There appear to be no further questions from the committee. Do you have any other points to make to the committee before we wind up the meeting?

**Quentin Fisher:** We thank you for asking us to give evidence today. If we can help with anything further, please let us know and we will happily provide further comment.

**The Convener:** Thank you very much for that. That being the end of the public part of today's deliberations, we will move into private. Before we do, I would like the committee to agree that we will look at the report of the evidence in private at our next meeting.

**Members indicated agreement.**

**The Convener:** Thank you.

11:18

*Meeting continued in private until 11:33.*





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