



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 25 February 2015

Session 4

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**LOCAL GOVERNMENT AND REGENERATION COMMITTEE**  
**7<sup>th</sup> 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:**

Walter Drummond-Murray (Scottish Government)

Keith Main (Scottish Government)

Michael Matheson (Cabinet Secretary for Justice)

Peter Reid (Scottish Government)

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



**Scottish Parliament**  
**Local Government and  
 Regeneration Committee**

*Wednesday 25 February 2015*

*[The Convener opened the meeting at 10:00]*

**Subordinate Legislation**

**Non-Domestic Rate (Scotland) Order 2015  
 (SSI 2015/47)**

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

We have received apologies from Alex Rowley.

Agenda item 1 is consideration of the Non-Domestic Rate (Scotland) Order 2015, which is a negative Scottish statutory instrument. Members have a cover note from the clerk, which explains the order. The Delegated Powers and Law Reform Committee had no comments to make on the order. Do members have any comments on it?

**Members:** No.

**The Convener:** Do we agree not to make any recommendation to the Parliament on the order?

**Members** *indicated agreement.*

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

10:01

**The Convener:** Agenda item 2 is our ninth and final oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We will take evidence from the Cabinet Secretary for Justice, who is accompanied by officials from the Scottish Government's bill team.

I plan to take questions on each part of the bill in turn. We will start with air weapons and move through the bill in order. I hope that we can conclude the session by about 12.30 at the latest.

I welcome the Cabinet Secretary for Justice, Michael Matheson MSP; Quentin Fisher, bill team leader; Peter Reid, senior policy officer; Walter Drummond-Murray, policy officer; and Keith Main, policy manager.

Would you like to make an opening statement, cabinet secretary?

**The Cabinet Secretary for Justice (Michael Matheson):** No, convener. I am happy to move straight to questions.

**The Convener:** That is grand.

It has been suggested that the introduction of a licensing regime for air weapons will do nothing to reduce criminality or increase public safety, because those who choose to misuse such weapons would not apply for a licence. What is your response to that suggestion?

**Michael Matheson:** I do not necessarily agree with that because, as a result of creating the licensing provision, we require individuals who wish to have, or have, an air weapon to have a licence for it. It is worth keeping in mind that air weapons are lethal weapons that can kill or seriously maim individuals. Therefore, it is important that we have a regime in place that allows us to deal with some of the risks that are associated with them.

It is clear that there will be people who will choose not to have a licence. If they choose not to have a licence, they will be committing an offence. We are providing the police with the necessary powers so that, if they deem it appropriate, an individual will not be given a licence to hold an air weapon. Equally, the police will have powers to take action if an individual holds a licence and uses the air weapon inappropriately or in an unsuitable way. That is an appropriate mechanism that can assist us in preventing some of the criminality that is associated with air weapons.

**The Convener:** Thank you.

**Clare Adamson (Central Scotland) (SNP):** Inevitably, comparisons have been made between the licensing of shotguns and what has been proposed, and there is certainly a great expectation among people such as those in the League Against Cruel Sports that the bill will make a significant difference. The licensing of shotguns compelled behavioural change in respect of where weapons are stored, but with the licence in question as it stands, the individual airgun will not be identified and there will be no limit on the number of airguns that can be applied to a licence.

Do you have any concerns that the bill does not go far enough and that the police will still have problems in identifying who owns a particular airgun if it has been used in a criminal situation?

**Michael Matheson:** There are slightly different provisions for shotguns and for firearms. All firearms have to have a registration number on them, but not all shotguns do, and as things stand, air weapons do not have registration numbers on them either. The approach that we have taken is to license the individual and assess whether it is appropriate for them to have an air weapon. We have also tried to ensure that the licensing regime that we are introducing for air weapons is broadly similar to that for firearms and shotguns.

We are trying to do it in a proportionate way, and the bill tries to strike that balance. I believe that it has got the balance right by focusing on the individual and associating the licence with them. If we were to get into a situation where each individual air weapon was licensed, all air weapons that were manufactured and produced would have to have a serial number on them. That is simply not how they are produced at present. The system that we are introducing reflects the situation that we have. If that changes in the future, the matter could be revisited at that point.

**John Wilson (Central Scotland) (Ind):** Good morning, cabinet secretary. Will you clarify the position with shotgun licensing? My understanding is that it is not the individual shotgun that is licensed. The individual shotgun is registered with the licence holder. A person does not apply for an individual licence for a shotgun. They apply for a licence to be a shotgun holder, and then the individual weapons are registered with the police. Is that correct?

**Michael Matheson:** Yes. That is my understanding. As I mentioned, the serial numbering of shotguns is different from that of firearms.

**John Wilson:** The committee has discussed how we could get individual markings on air weapons. We hope that the Scottish Government will look at some way of having individual air weapons marked so that, given that people

register for an air weapons licence, weapons can be identified and traced to an individual owner.

Most of the production of air weapons takes place outwith the United Kingdom and most manufacturers do not put individual identifiers on weapons as they are manufactured. However, it would be useful if we could get some consideration of the marking of the individual air weapons that registered holders register with the police so that, if there are any incidents involving them, the police can easily identify the owner.

**Michael Matheson:** I fully understand where Mr Wilson is coming from on the issue. The challenge is to create a system that does not lend itself to being misused. The benefit of the serial number process for firearms is that there is numbering at the point of manufacture, and it is a system that is much more difficult to tamper with. It would be a much wider issue for us to try to deal with air weapons by having serial numbers embedded into them. That would go well beyond Scotland and would probably have to be taken forward on a Europe-wide basis, because there are also European regulations on firearms.

I appreciate the purpose and intent of what you would like to achieve, but it is outwith the scope of what we are doing at present. That is why we have taken what we believe is the pragmatic approach of licensing the individual in order to try to improve the way in which air weapons are held within the community.

**John Wilson:** I move on to the cost of applying for a licence. We know that the Scottish Government is keen to go for full cost recovery, and that the UK Government is considering the cost of registering firearms and shotguns.

The figures that have been presented include a UK figure of £88, but last night I read Association of Chief Police Officers in Scotland figures that indicate that the follow-through cost to the police of registering a firearm or shotgun will be in the region of £196. That equates to a subsidy of £146 for every licence that is applied for. If, as ACPOS says, shotgun licences cost £196 to process, and the UK Government controls the fees for licensing shotguns, if we go for full cost recovery of air weapons licensing, will it not, in effect, cost double to license an air weapon what it would cost to license a rifle or a shotgun?

**Michael Matheson:** Not necessarily. To be clear, we do not control the setting of the fees that are charged for firearms and shotguns, both of which are £50. The Home Office is looking at the possibility of increasing that figure; I do not think that it has been increased for some time and there is a general view that it should have been. Whether it will go to full cost recovery is a matter for the Home Office to determine, although I

understand that it is looking at two types of costs: one for shotguns and one for firearms.

The checks that will be undertaken for the purposes of licensing an air weapon will not be of the same degree as those for the licensing of a firearm. The work that the police will do will not be as onerous as it is when someone applies for a firearms certificate. A large part of it will be consideration of the application and the police may do a quick check—almost a disclosure check—of whether anything in the person's background suggests that they should not be allowed to have an air weapon, and a check on where the person stays and the purpose for which the air weapon is intended. The process is unlikely to involve to any great extent home visits, inspection of the device's location and so on. The nature of the regime for air weapons licensing will not be as onerous as the nature of the regime for firearms. Therefore, it is reasonable to expect that the cost will be significantly less as a result.

We must wait for the outcome of the Home Office's decision on what the rate for firearms and shotguns should be. Once it has determined that level, we will be able to consider what level the fee should be set at for an air weapon licence here in Scotland. That will be taken forward through secondary legislation.

**John Wilson:** Are you, or is anyone in your department, involved in negotiations with the Home Office regarding the setting of fees for firearms and shotguns? You said that you would await the outcome of the Home Office's deliberations on licence fees for firearms and shotguns, which may impact on the fees that will be charged for an air weapon. Is the intention to go for full cost recovery for the licensing of an air weapon, rather than just to base the fee on a comparison with the licence fee for a shotgun or other weapons? Are we looking to have some kind of comparator for the fees that are charged for shotguns and other weapons and the fees that are charged for air weapons?

**Michael Matheson:** We have indicated to the Home Office that we believe there should be an increase in the fees for firearms and shotguns. Ultimately, it is for the Home Office to determine what the fees will be.

On air weapon licensing, we would like to get as close to full cost recovery as we can, but we have to wait to see how far we can pursue that, as it will be dependent on the approach that the Home Office takes to setting fees for firearms and shotguns. As I am sure members will appreciate, it would be difficult to put in place a fee for an air weapon that was significantly higher than the fee for firearms or a shotgun. We should try to get as close to full cost recovery as we can; we will have to wait for the Home Office's determination on this

matter, but we have indicated to it that we want the fees for firearms and shotguns to be increased.

10:15

**Cameron Buchanan (Lothian) (Con):** Good morning, cabinet secretary. We are concerned about group licences for triathlon clubs and so on that use airguns off premises. It is not very clear, but is it your intention that the whole group be licensed or that one person in the group be the licence holder? After all, it is often younger people who have these guns at home or in other places for use in triathlons, tetrathlons or whatever it is. Are we going to license the club, the manager of the club or the person who has the gun?

**Michael Matheson:** I will try to clarify that and then ask officials to give some more detail on specific aspects of the bill.

The general approach is for not only the club to have a licence as a shooting club but individuals who hold an air weapon to have an individual licence. In other words, anyone who wishes to purchase an air weapon will be required to have a licence for that purpose. As you will be aware, the bill contains a number of provisions under which under-18s from the age of 14 upwards can have a licence, but there are specific conditions on the circumstances in which the air weapon can be used, such as in shooting clubs or on private land. Those under 14 can use a weapon on private land as long as they are with an adult, by which we mean someone who is 21 or older.

That broadly mirrors the approach in firearms legislation, but it might help if I get my officials to give you a bit more detail about how the group provisions will work in practice.

**Keith Main (Scottish Government):** The bill contains a reference to the approval of clubs. Next month, we will meet the Scottish Target Shooting Federation and the Scottish Air Rifle and Pistol Association, and we are having discussions with them about how clubs will work in practice. The bill outlines an approval process that mirrors that for existing rifle clubs. A club can apply for a licence for set premises, and the police will look at the premises and approve the application if they consider that public safety will not be compromised.

Schedule 1 to the bill contains a series of exemptions, and there are also provisions governing permits for events. For example, you mentioned tetrathlons. If there is a Pony Club event or a Highland games at which air weapons are being used, the event organiser can apply for a permit, and individuals will be able to shoot within the conditions of the event without requiring their own licence.

As the cabinet secretary has said, it is a decision for individuals. Anyone who wants their own air weapon can apply for an individual licence, but there is an exemption for those who are shooting at an approved event or in an approved club.

**Cameron Buchanan:** My question was actually about a situation in which someone shoots for a shooting club at a match, tetrathlon or whatever in premises in, say, Carlisle or somewhere in the south that are not particularly licensed. However, you have made it clear that you are speaking to the organisations about that.

**Keith Main:** We are talking to the clubs about how exactly that would work, and our thinking is that, as we work through the issue with the federation and other organisations, we will set out the exact processes in secondary legislation and/or guidance.

**Cameron Buchanan:** Thank you very much.

**Michael Matheson:** It might be helpful if I explain that part of the reason for putting some of these things in secondary legislation is to allow us to tweak the system in response to any unintended consequences or difficulties that might arise. It just gives us a bit of flexibility to make some changes.

**The Convener:** That was useful, cabinet secretary. Thank you.

**Cara Hilton (Dunfermline) (Lab):** Let us return to the resourcing of the bill. It has been suggested that the introduction of the licensing scheme will have a significant impact on the resources of Police Scotland. Can you reassure the committee that Police Scotland will have the necessary resources at its disposal to administer the scheme? That is particularly a concern given that it could be dealing with tens of thousands of applications.

**Michael Matheson:** We have discussed with Police Scotland the best way in which we can manage what will be a significant increase in the number of licences that will have to be issued as a result of the bill. I found it interesting that there are significant peaks and troughs in firearms and shotgun registrations. There are periods when the police are busy with them and there are periods, over a couple of years, when it is quiet. They happen to be going into a busy period at the moment, as the 2015 to 2017 period is when there is a peak in the re-registration of firearms.

We have discussed with the police how we can shift much of the air weapons stuff to the periods when they are quieter, and part of the work that we are doing with them is looking at how we will commence implementation of the bill, including the lead-in time for people needing a certificate. We

want to move the registrations to a quieter period for the police in order to level out their workload. We are working with the police to achieve that, and some of the commencement provisions in the bill also seek to achieve that in order to reduce the burden that the police may face over the next two years as the licensing of air weapons is added to their workload. We are keen to work with the police, and we are already engaged with them in looking at how we can achieve that most effectively.

**Cara Hilton:** I have a wee supplementary question. The cabinet secretary has hinted at an answer in his response.

Police Scotland has suggested a number of steps that would smooth the application process and avoid peak pressure points. You have already talked a bit about that, cabinet secretary. Would you be amenable to lodging appropriate amendments at stage 2 to give effect to the smoothing proposals that Police Scotland has suggested?

**Michael Matheson:** If there is a reasonable way in which we can achieve that. Some of the provisions on the commencement of different aspects of the bill can assist us in achieving that as well, through setting a lead-in time. I am open to working with the police on that.

The database system that the police use for the registration of such things is called Shogun, and they have said that it is more than capable. It is a recently developed piece of software. The legacy forces operated different systems, but we are now down to a single system for the whole of Scotland for the registration of firearms and Police Scotland has confirmed that the system is fit for purpose to deal with the registration.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Good morning, cabinet secretary. Let us turn briefly to the issue of people who fail to get a licence and who perhaps go on to commit further offences with airguns. The expectation is that prosecutions for licensing offences are likely to be picked up in the investigation of other crimes. Do you have in mind a penalty for a person who fails to register an airgun and who is apprehended or investigated for some other crime?

**Michael Matheson:** Prosecution would be a matter for the Crown Office and Procurator Fiscal Service, and the sanction that was applied would be a matter for the courts. I am reluctant to say what any penalty would be, as that would be for the courts to determine independently of Government.

One of the things that we are looking at, in the context of the commencement of the bill, is what would be a reasonable period of time for someone who has an air weapon to get it registered in. A



public information campaign will ensure that those who currently own an air weapon are aware that they need to get a licence for it. There is also an element for the procurators fiscal and the Crown Office in working with us to take that forward.

The determination of the sanction would be a matter for the courts, and prosecution would be for the COPFS. It is important that we have a good information campaign to ensure that the owners of the potentially half a million air weapons that are out there are aware that they have a responsibility to have their weapons licensed—and, if they do not, that they could be committing an offence and could find themselves prosecuted. It would then be for the courts to determine the most appropriate sanction, depending on the individual circumstances.

**Willie Coffey:** I suspect that you will say the same thing, but I will take the question further. Should a person, as you indicated in your opening remarks, commit an offence with an air weapon—which can be particularly serious and can lead to death—would a different outcome be imposed on the person who commits such an offence and does not have a licensed weapon, or is that something that you would rather not speculate on?

**Michael Matheson:** If they do not have a licence, there is the offence that they have committed in which they have injured someone with an air weapon and there is also the offence of not having a licence for the weapon. I would expect the courts to take that into account when any case is brought before them. There would be the potential for more than one offence to have been committed in such a case. It would not just be a case of their not having a licence; if they have injured or killed someone, there would be another offence for which they could be prosecuted. If they do not have a licence, that could be one of the factors that they could find themselves being prosecuted for.

**Clare Adamson:** I have a very brief supplementary. My original question, and that of Mr Coffey, concerns what the criminal element of this will be. The police said in evidence that a misuse of plinking can be dealt with under current legislation, and any animal cruelty elements are also seen as criminal activities at the moment. However, there is the issue of how ownership of a weapon is determined in the situation in which there is no link between the licence holder and a particular air weapon. What would be the criminality of someone not having a licence, and how would that be identified? If there is no compulsion for a licence holder to store a weapon at a particular address, could someone not just say that they had borrowed it?

**Michael Matheson:** It will be an offence to have an air weapon that does not have a licence. If a

person does not have a licence for the weapon, they will be committing an offence from the outset. For example, the police might turn up at a property because of a domestic dispute and, while they are there, they might see an air rifle sitting in the hall. At present, they are powerless to do anything about that, and they have no knowledge of what the weapon might be used for. Under the bill, the police will be able to ask whether the person has a licence for the weapon. If the person does not have a licence, they will be committing an offence.

When someone applies for a licence for an air weapon, they will have to explain to the police the purpose for which they want the licence—how they intend to use the weapon. For example, is it for vermin control? Is it for sporting purposes? Is it for plinking? If it is for plinking, the police would consider the circumstances, finding out where the person lives and where the plinking might take place. The purpose for which the air weapon is held will be part of the check when someone applies for a licence. For example, if someone is applying for an air weapon to do plinking and they stay in a tenement with a back garden that is shared with the rest of the folk in the tenement, the police will be allowed to say that they do not think that it is appropriate for that person to have an air weapon to undertake that plinking in the shared back garden of their tenement. That is the approach that the police will be able to take under the bill.

Linking a particular incident to a particular weapon will always be a challenge. It can be a challenge for firearms and for shotguns, too. Earlier this week, the British Transport Police put out another call for evidence on a railway worker who had been shot with an airgun in High Bonnybridge, in my constituency. That is the type of thing that people continue to experience.

We are providing the powers for the police, when they see an air weapon, to check that it has a licence. If it does not have a licence, a person has committed an offence and the weapon can be seized.

**The Convener:** We move on to alcohol licensing. We have heard quite a lot about the Brightcrew Ltd v City of Glasgow Licensing Board court decision. What effect has that decision had on licensing decision making generally? What steps, if any, does the Government plan to take to address the matter?

10:30

**Michael Matheson:** Our general view about the Brightcrew decision was that it confirmed the purpose of an alcohol licence for premises. There was clearly an issue about the way in which the case was conducted and about how the licensing

board of Glasgow City Council sought to use the licence for other entertainment that was taking place within the establishment.

The Brightcrew case probably provides a reason why we have chosen to take a position on licensing provision for other types of entertainment that can take place in such premises; we have made additional provision within the proposed legislation for a further licensing measure to be taken by a local authority, for example for sexual entertainment that is offered within a premises. Licensing authorities will now be able to have a stated policy in that respect.

**The Convener:** We will come to the sexual entertainment aspects later. You are obviously making provision to close loopholes. We have taken a fair bit of evidence in correspondence from the police about members' clubs. We know that members' clubs are not included in an assessment of overprovision and cannot be refused a premises licence or a variation on those grounds. They are under no requirement to have a designated premises manager—DPM—or to have sale and supply of alcohol authorised by a personal licence holder. Furthermore, we have heard that there is a fair amount of use of occasional licences in members' clubs.

Do you think that those legislative loopholes should be closed and that the same rules should apply to members' clubs as apply to other licensed premises?

**Michael Matheson:** I am aware that there are some issues. When the Licensing (Scotland) Bill—the eventual Licensing (Scotland) Act 2005—was being scrutinised, Parliament decided that members' clubs should have some extra provisions. That was largely reflective of the nature of such clubs in some of our communities: they could be associated with particular companies or businesses, including factories that used to be based the community; they could be social clubs; or they could be sports clubs that have a members' club attached. Parliament took the view that members' clubs have particular value within communities and so the licensing regime should reflect that. It was considered that such clubs should be given some exemptions under provisions in the 2005 act.

I am still of the view that such clubs have an important part to play. Any changes would have to be very carefully considered, bearing in mind the potential negative consequences on members' clubs, many of which do not operate commercially—they are not full profit-making businesses, as others are. I am open to hearing and considering the committee's views on the matter, if there are particular aspects that you believe could or should be addressed, but I would want to be very careful about introducing any

changes that could have unintended consequences.

There are more points to make about occasional licences. First, occasional licences should not be abused; it is important that local licensing boards ensure that that is the case. Where there is evidence that they are being misused, whether by members' clubs or others, I would expect the local licensing board to take appropriate action to ensure that that does not happen. There is absolutely no reason why local licensing boards cannot take action if they believe that occasional licences are being misused by particular members' clubs or any other party.

**The Convener:** It has been suggested by a number of witnesses that occasional licences become almost permanent licences, because it is the norm for a club or another body to apply for the same thing again and again. Do you feel that that is an abuse of the occasional licence system? How do we ensure that licensing boards do not continue to sign off occasional licences that have become the norm?

**Michael Matheson:** The purpose of the occasional licence was to provide flexibility for local licensing boards. There are provisions in the existing legislation for voluntary organisations, for instance. In any period of 12 months, the total number of days for which an occasional licence is issued may not exceed 56.

If there is clear evidence in a particular local authority area of misuse of the provisions of the 2005 act in how occasional licences are being granted, we can consider that in our engagement with the clerks of licensing boards. If necessary, we can consider whether any further guidance needs to be issued to them on how such licences should be used and when they should not be used. If there is clear evidence of misuse, I am more than happy for our officials to consider that.

**The Convener:** Does the Government currently analyse the number of occasional licences that are issued by each board?

**Michael Matheson:** I am not aware of that. Peter Reid is probably better placed to advise you.

**Peter Reid (Scottish Government):** We collect figures on premises licences and personal licences. Unfortunately, we do not currently collect figures on the number of occasional licences. We believe that a considerable number are applied for.

There is an existing order-making power that would allow us to impose a limit on the number of occasional licences that can be applied for related to a premises licence or personal licence. That power has not been used yet, but the limit is

something like the 56 days relating to voluntary clubs. It could be applied, if necessary.

**The Convener:** It seems from the evidence that we have taken that granting of occasional licences is a major problem for some areas. It might be wise to collect and analyse figures so that you can see whether there is a real problem in certain places. It may be that some folk are overegging the pudding, but that does not seem to be the case.

**Michael Matheson:** Let us take that issue away. We can consider what further work can be done to get a better handle on the figures in various licensing board areas, and what further measures could assist in addressing some of the concerns that the committee has heard.

**Cameron Buchanan:** I notice that the term “voluntary organisation” has not really been defined. Do you intend to define it a bit more clearly in relation to occasional licences?

**Michael Matheson:** I am not sure where that is within the existing legislation, but I presume that it is tied in with the statutory provision for voluntary organisations.

**Peter Reid:** It is correct that voluntary organisation is not currently defined. My understanding is that that expression has been in the existing legislation since it was introduced. I was looking at a paralegal handbook the other day, whose author says that he is not aware of any particular abuse of the lack of a definition, which you have pointed to. If we become aware of such concerns, we can certainly look into the matter.

**Cameron Buchanan:** Some people have said that the term “voluntary organisation” should be more closely defined—I think that that was in the submission from Police Scotland.

**Michael Matheson:** As Peter Reid said, if there is an identifiable problem, we can consider addressing it. The most obvious way to do that is to tie the matter into registrations of voluntary organisations. Voluntary organisations have a legal responsibility to register. We can address the issue if necessary, but I would be keen first to see evidence of a problem.

**John Wilson:** We have heard from health and other organisations that we should be trying with the bill to address overprovision and the effects of alcohol on many communities throughout Scotland. The suggestion is that licensing boards should be more proactive—that it should be ensured that a clear statement is made by the local authority or licensing board about overprovision and that that is monitored very carefully. However, some licensing clerks have said that the legislation that is in place does not

allow them to be as proactive as those organisations would like them to be. Do you see the bill and the advice or guidance that is given to licensing boards and clerks leading to a sea change in overprovision of licensed premises?

**Michael Matheson:** I am always interested, when someone says that legislation does not go far enough, in giving them guidance. I have found that one licensing board can take a very proactive approach on overprovision while a neighbouring licensing board takes a less proactive approach. I am not entirely convinced that the ability to address overprovision is to do with legislation itself.

We must ensure that public health is one of the five key principles on which licensing policy is founded and should be taken forward. A big part of this is to make sure that local licensing policy is properly reflective of that, and that there is good engagement among stakeholders, particularly in terms of colleagues in public health commenting. The legislation already makes some provision for that.

One thing that we are doing with this bill is giving licensing boards more scope to consider overprovision in their wider areas and not just within small localities, including scope to look at issues such as hours for licensed premises within their area. Greater scope will give them more flexibility to consider a wider range of issues related to overprovision.

As a former Minister for Public Health, I say that this is an area where we can make more progress, and I would like to see more progress being made. Some licensing boards have been enlightened and much more proactive than others; I would like to see more of them being proactive. It is important to make sure that local licensing policies are more reflective of public health.

I am keen for us to look at any further measures that we can take forward at national level, whether through guidance or through work with licensing board members themselves, to make sure that the whole issue of overprovision and how it ties in to public health is seen as an important part of their responsibility and how they take forward their policy.

**John Wilson:** I welcome that statement. The difficulty is, as you just outlined, the discrepancy that seems to exist in terms of interpretation of the powers that licensing boards have under the current legislation. Given the discrepancies in interpretation among boards, what assurances can you give us that there will be greater clarity in the application of this new legislation? As you mentioned, in your previous role as Minister for Public Health, you saw for yourself examples of overprovision—particularly of off-licence sales—

having a dramatic effect on the health and wellbeing of many communities. What assurances can we have that the health impact on communities will be addressed through the bill?

**Michael Matheson:** We are giving licensing boards additional scope in terms of the range of things that they can consider when it comes to overprovision. As I mentioned, that scope is around establishments' hours of operation and around boards' ability to look at the wider area and not just a locality. The bill will allow wider scope to take in those factors.

The other part is about some aspects of the alignment of the local licensing policies and how boards arrive at that. There has been some difficulty, for example, with the way in which the policies have been taken forward and how they align with local government elections. We are taking forward some measures to assist in achieving that.

One thing that struck me in my previous role is that good practice is not always as widely disseminated as it should be. There are things that we do at national level involving different stakeholder groups, and there are events that are aimed at trying to spread and embed some of that good practice.

I accept that there is still a significant way to go. I do not think that it is just about legislation; some of it is about the policy approach, and some of it is about making sure that overprovision is seen as a much higher priority by the boards that do not prioritise it as highly as they should. Part of that is about the guidance and direction and what we do with licensing boards and other stakeholders to ensure that the matter is seen as a priority.

10:45

The other issue is to ensure that local territorial health boards are proactive in the local licensing forum and in responding to the new applications or major variations that they must be consulted on. They should make their positions very clear and respond appropriately in order to inform licensing boards.

Trying to get everybody to move in the same direction at the same time is never easy. There is a range of things in the bill to ensure that the issue is seen as a major priority that people need to be more proactive on, and we are doing work that can assist us in helping to achieve that.

**John Wilson:** Thank you.

**Clare Adamson:** I have a couple of questions about personal licence holders. The bill seeks to remove the automatic five-year ban for people who have not retrained for personal licences, but quite a number of people will be caught up before

the eventual act's introduction. Obviously, that ban would have a detrimental effect on their employment prospects. Can the Scottish Government do anything to alleviate that situation before the bill becomes law?

**Michael Matheson:** We would require primary legislation to alter that. There is no quick fix by which we can deal with the issue. The provisions in the bill that will address it will help to restate it.

A tremendous amount of work has been taken forward to ensure that refresher courses are available in the trade and through the licensing boards, but it is clear that some people have missed out on them, for whatever reason.

The five-year period for which people are prevented from having a personal licence is too long. Once the bill is through Parliament, we can look at how quickly we can commence the provision in the bill to try to address the matter as quickly as possible. I have asked officials to look at that. Once the bill is through the parliamentary process and has the consent of Parliament, we will try to commence the provision as early as we can to address the issue. MSPs have written to me with various options that they think may be available to try to address it. We have looked at the legal issues, and we cannot use those options: primary legislation is required. I have outlined the quickest way for us to deal with the matter.

**Clare Adamson:** Obviously, when personal licence holders were introduced, there were definite intentions with regard to selling alcohol. We took evidence from a council legal representative who was concerned about the lack of prosecutions of licence holders who sell alcohol to people who are drunk. Obviously, the antisocial behaviour aspect of people being drunk in the community is the big consideration for many people. Police Scotland said in evidence when I asked that that is very difficult to establish, so it does not use that part of the legislation. Does it concern you that there is maybe a gap where there was an intention that it would be more difficult to sell to people who were already drunk, and that licence holders would need to be more responsible. The intention is not currently being enforced.

**Michael Matheson:** Was there an issue about a lack of prosecutions or a lack of reporting?

**Clare Adamson:** I am pretty sure that the representative from Midlothian Council—I think—said that the problem is the lack of prosecutions. Basically, the police said that it is very difficult to establish what "drunk" means and who was responsible for selling alcohol to a person who was involved in antisocial behaviour or a public display of drunkenness afterwards.

**Michael Matheson:** Obviously, there are two aspects. There is reporting a matter for the police to investigate, and there is reporting to the procurator fiscal. Decisions on prosecution are for the Crown Office and Procurator Fiscal Service. We cannot direct that.

I would be interested to know whether it is being said that cases are being reported to the Procurator Fiscal Service but not being prosecuted, or whether the police are saying that in such circumstances there is not sufficient evidence to put a report to the procurator fiscal.

It is important that the power exists, although I think that it is more appropriate in relation to a regular pattern emerging in a particular establishment. I am sure that members have at various times had representations from communities about particular local issues. There will be better scope to look at taking that forward.

However, there is a distinction to be made between cases that the police think are difficult to prove or demonstrate and therefore to report to the procurator fiscal, and cases that are reported to the procurator fiscal, who chooses not to prosecute them. We need to clarify that.

I am more than happy for us to discuss with the Crown Office what particular issues are arising and what could assist it in deciding which cases should be prosecuted. We can take that away and discuss it with the Crown Office.

**Clare Adamson:** That would be very helpful.

**Cameron Buchanan:** At one of our meetings we discussed the plight of personal licence holders who had lost their licence and for whom it would take a long time to get it back. I understood that that would be dealt with in secondary legislation.

**The Convener:** I think that the cabinet secretary has just said that that could be done only in primary legislation.

**Cameron Buchanan:** Yes—he said that, but we had been told that it could be done in secondary legislation. What is the issue?

**The Convener:** Cabinet secretary, perhaps you could just reiterate what you have just said to Miss Adamson.

**Michael Matheson:** There have been representations suggesting that the issue could be tackled in secondary legislation; those are being considered. The legal advice from our officials is that we need to amend primary legislation to deal with the issue. The provisions in the bill will do that. We are looking at trying to commence the relevant provision as early as we reasonably can in order to deal with the issue.

**Cameron Buchanan:** Thank you.

**The Convener:** At the moment, 11 out of 40 licensing boards have not published licensing policy statements and 17 have not published overprovision statements. What action can the Government take to address that situation and ensure that the system works properly for the people of Scotland?

**Michael Matheson:** By their very nature, licensing boards are quasi-judicial bodies, which, to a large extent, sit to the side of the local authority, given that local councillors sit on them. It is important that we provide them with the right support and assistance.

Peter Reid can perhaps explain some of the work that has been undertaken to try to ensure that the licensing boards are taking forward the licensing policies and updating them, as well as the measures that we have taken to encourage them to produce overprovision statements.

**Peter Reid:** The licensing policy statement is a relatively recent innovation in licensing. The intention is to provide a shift to a more policy-based regime that can be adopted by licensing boards. The regime would be more akin to something like planning regimes, in which there is an overall strategy within which decisions are delivered. The licensing policy statement is intended to be a tool to assist boards in deciding how they want to deliver the overarching strategy. Within that, the overprovision assessment gives them a strong ground to refuse a licence or major variation should they choose to do so. I see it as a tool to support boards in decision making. It is unfortunate that some licensing boards have failed to be proactive, or as proactive as they should be, and have not grasped the opportunity to use the licensing regime in that strategic way.

**The Convener:** You said that some boards “have failed to be proactive”,

and the cabinet secretary talked about “enlightened” boards. Is it fair to say that by not having plans in place to ensure that they are able to have a say in what is going on, boards are not carrying out their duty to serve the public in their area? Does the fact that boards do not have policy statements or overprovision statements in place mean that it is much easier for them to be defeated in court?

**Peter Reid:** In part, yes, but we accept that licensing boards face a wide variety of circumstances. The sort of issues that we might discuss in relation to overprovision and some of the other material that would be included in the licensing policy statement might be more germane to and faster moving in some areas.

I am not seeking to tar all areas with the same brush. There are major issues in some areas while

others are at more of a steady state and there is less change from year to year. It is absolutely appropriate that some licensing boards are not so proactive in updating the documents because they have probably not much need to.

**The Convener:** Are they not proactive or are they damned useless?

**Peter Reid:** That is not for me to say.

**Michael Matheson:** The convener made a fair point about the fact that some licensing boards have been less proactive. Clearly, the committee is concerned about the issue, so I would be more than happy to consider the committee's views on how that could be more readily addressed and on particular measures that the committee believes would achieve that. We could consider whether there is further work that we could take forward to deal with boards that are not being as proactive as either the committee or I would like.

**The Convener:** Thank you, cabinet secretary. We move on to taxi and private hire car licensing.

One of the things that we have found while taking evidence is that this is an ever-moving feast in terms of new technologies. We are keen to hear about how we can future proof or come back to the issue in the future if need be. There are app-based company models in place in many parts of the world, and only today we see reported in *The Scotsman* that a company hopes to establish a presence in Edinburgh and Glasgow. How do we ensure that we continue with the regime that we have here, which means that the car is licensed and the individual is licensed to deal with the public?

I always look at this issue by asking whether I would be happy for one of my nieces to step into a car. The current regime, which means that there are licences for vehicles and licences for drivers, pacifies me. How do we ensure that that continues and that any of the new companies that enter the market do not get away with not having both their transport and drivers licensed?

**Michael Matheson:** Someone who is operating a taxi needs a taxi licence and someone who is operating a private hire car needs a private hire licence. We have in place a legal framework that covers when someone orders a taxi using an app, which some taxi companies and private hire companies use and which I have no doubt we will see more of in the years to come.

Anyone who operates a private hire car without a private hire licence is committing an offence. The regulatory regime that is in place says that no matter how someone orders their taxi or private hire car, it has to comply with the licensing regime. If a company uses an app that allows private hire cars to operate without a private hire licence, that

company is committing an offence. There is also licensing of booking offices.

We have a fairly robust system in place and we can alter it in the future through secondary legislation as necessary. It is important to ensure that the legislation is appropriately enforced.

**The Convener:** Does a booking office have to be in the local authority area in which the company is operating, or is it possible to have a booking office for the whole of Scotland? There seemed to be some debate about that with regard to the provisions of the Civic Government (Scotland) Act 1982. Also, what is the definition of a booking office? Could a booking office be established in somebody's front room or the cupboard under the stairs?

11:00

**Michael Matheson:** That would be an interesting place to have a booking office. Peter Reid is probably better placed to tell you where the booking office has to be based for the purpose of the licence.

We have in place a robust legislative framework and, even if new technology is being used, that still has to be complied with. It is important that we enforce that and make that clear.

**Peter Reid:** We were interested in the conversations that were had at the evidence-gathering sessions and the various views that were expressed. The booking office regime is entirely in secondary legislation. It has been created under secondary legislation and we could also amend it in secondary legislation. Therefore, it is not something that we would be compelled to amend within the scope of the bill.

From looking at it quickly, our view was that the premises would have to be licensed where the order was taken. However, if genuine difficulty and confusion in relation to licensing is being experienced by licensing authorities, it is possible for us to amend the relevant order to clarify that.

**The Convener:** But now that there are apps and so on, how can you define where the order is taken? It is not as though I am phoning up and talking to someone in an office. It is a different world now.

**Peter Reid:** Yes, you make a good point. Clearly, when it was drafted, the original secondary legislation envisaged somebody sitting somewhere receiving a phone call and taking the order. That notion does not translate quite so well to a smartphone app existing in the ether. We would be happy to consider that further.

**The Convener:** And will you do so? You suggested at the beginning that you might do it,

but I think that it is something that has to be considered further.

**Michael Matheson:** What we are confident about is the licensing regime that we have. We can adapt to developments in new technology if particular circumstances arise that need to be addressed. That is why we deal with these issues through secondary legislation. As and when issues are presented to us that indicate that there is a need for us to alter the secondary legislation, we can respond to that at that point.

**The Convener:** Thank you.

**Willie Coffey:** During our discussions about this matter, a case arose in the media about a taxi driver who had had a series of complaints made against him and did not make that information known to a neighbouring authority when he applied for a taxi driver's licence there. How can we help to protect the public from those types of risks, and is it possible to share that level of information between licensing boards if it has not already made it on to, for example, the Police Scotland database system?

**Michael Matheson:** It is possible for the information to be shared between licensing boards if they consider that appropriate. For example, if someone is applying for a licence to a particular local authority for a taxi and private hire licence and that authority knew that the person had been operating somewhere else, it would be reasonable for that authority to contact the other authority to see whether there was any information that should be brought to its attention. There is also the possibility to get further information from the police and to have a case checked to see whether there is something on their system.

Local authorities can undertake quite a significant level of checking, as they see fit, in particular circumstances.

**Willie Coffey:** Is it a discretionary matter for the local authority that is being applied to? It is not always going to be certain where the person has operated previously. It might be the local authority area in which they live, but it might not be. Is there any central way of accessing that information, much in the way that Police Scotland has national access to that kind of information?

**Michael Matheson:** Certain information will have to be disclosed at the time of application for a licence, but the undertaking of any wider checks would be at the discretion of the local authority and its individual application of the law. Some information will have to be provided and local authorities will have the discretion to carry out further checks on an individual, but there is no mandatory requirement for that.

**Willie Coffey:** Thank you.

**John Wilson:** During the evidence sessions, the issue has been raised of the discrepancy in the licensing of taxis and private hire cars. The representative of one local authority said that it applies a cap on the number of taxis that can operate in the area but not on the number of private hire licences that it issues. They claimed that the authority is using the 1982 act to impose a cap on the number of taxis but that that act does not give it the power to impose a cap on the number of private hire cars. The issue is whether it is fair practice to have a cap on the number of taxis that are operating in an area without having a similar cap on the number of private hire cars. Given the differences in how taxis and private hire cars operate, should some parity be introduced to ensure that local authorities can review the issuing of taxi licences? Some of the caps have been in place for over 20 years.

**Michael Matheson:** These are difficult things to measure. Because of the way in which a taxi operates—it can be hailed or ranked—demand can be measured more readily. It is more difficult to measure the demand for private hire cars, which are not ranked and cannot be hailed. We have taken two different approaches in how licensing authorities can measure demand in order to give them the scope to address that.

I am not entirely sure whether there is provision in the 1982 act for what you describe.

**Peter Reid:** At present, there is an unmet demand test for taxi vehicle licences. The Air Weapons and Licensing (Scotland) Bill proposes an overprovision test for private hire car vehicle licences. As the cabinet secretary points out, the tests are slightly different because the two types of vehicle operate in slightly different ways.

**Michael Matheson:** The bill will provide a mechanism for local authorities to measure overprovision of private hire cars, and we will undertake some work with local authorities on how they can do that and what that process might look like. It is more difficult to measure demand for private hire cars given that they operate in a different way from taxis, which can be ranked and hailed and, therefore, measured more readily.

**The Convener:** It has been suggested that a cap on the number of private hire cars already exists in certain parts of the country, including in my city of Aberdeen. Is that allowed under the 1982 act?

**Peter Reid:** I had a word with somebody in Aberdeen City Council. It does not apply a cap on the number of private hire cars, but I recall that there are very few private hire cars in Aberdeen. The regimes are different throughout the country and look quite different.

**The Convener:** Do you think that there are fewer private hire cars in Aberdeen because there is an unofficial cap?

**Peter Reid:** My understanding is that there is no cap. Maybe people prefer to operate as taxis rather than private hires. If the licence fees are about the same, it makes sense to apply for a taxi licence.

**The Convener:** Could you better monitor the different ways in which local authorities handle and interpret the legislation? Do you think that you will be able to apply the new legislation better than you are able to apply the current legislation in terms of monitoring?

**Michael Matheson:** The idea behind the new legislation is to give local authorities more flexibility in how they can measure such things, and we will do some additional work to assist them in that. What we have not tried to do is create a one-size-fits-all approach. The approach taken in Aberdeen is not necessarily the approach that should be taken in Inverness, so we try to allow a level of flexibility for local licensing authorities to determine how many taxis they should have to serve their purposes—and the issues around that—and what mechanisms they have in place to deal with private hires. We are trying to get a balance between allowing local flexibility and having in place a regime that people can have confidence in and which helps them assess the issues at the local level.

**The Convener:** Apologies, John, but I had to get the Aberdeen issue in.

**John Wilson:** No problem, convener.

Cabinet secretary, I raised the issue of taxis versus private hire cars because, in many taxi ranks in Scottish towns and cities, you will find taxis sitting there, not getting any business, whereas outside major supermarkets you will see private hire cars regularly picking up shoppers, because they have direct lines to some of the private hire companies.

My question is whether we are getting the balance right between unmet demand and overprovision. Should we have more taxis operating or should we allow the ever-increasing growth of private hire cars that seems to be happening in many areas in Scotland? As you are well aware, private hire cars do not have the same restrictions on them as taxis have, in terms of the knowledge, the licensing of the car and the other issues that apply to a taxi operator. Would it not be fair to bring some of the private hire car operators into line with some of the restrictions that we apply to taxis?

**Michael Matheson:** It is not for the Government to set what the percentage should be of taxis and

private hire cars in a local authority area; it is local licensing authorities' responsibility to reflect local need. We are providing a mechanism for the consideration of the issue of overprovision. Some of the work that we will do off the back of the bill will assist in how that can be applied locally. It will then be for local authorities to determine how they want to take that forward at the local policy level.

I recognise the point that John Wilson makes, but we would get into very dangerous territory if the Government started to try to set some of the limits around these matters. We are providing a mechanism and the scope for local licensing authorities to determine things at local level, depending on local circumstances, and we will do support work to help them to achieve that as effectively as possible.

**John Wilson:** Will you assure me that the Government will work closely with local authorities on identifying overprovision? Earlier, when you spoke about overprovision and unmet need, you raised the issue that there are clear difficulties in measuring that in the private hire car sector rather than the taxi sector, given how the private hire car sector operates and how it records journeys.

**Michael Matheson:** We are providing a legal framework for local authorities to assess those matters, and we are giving them the support that they need to interpret that at the local level. We are not going to get into the situation where we start to set limits nationally on how things should be applied locally, because rural areas have different needs to urban areas.

I can assure you that we are going to do some work on the overprovision assessment with local authorities, regarding how they can apply that and interpret it locally, in order to determine policy.

**The Convener:** It has been suggested that a number of rural authorities may be concerned about the impact of removing the contract exemption. Would you consider making the power to do so discretionary?

**Michael Matheson:** Before we remove the contract exemption, we are going to work with local authorities to understand how that would apply to their circumstances. We can address some of the concerns through secondary legislation. Before we go ahead with the removal, we will take forward some aspects that will allow local authorities to provide exemptions as they see fit. We will deal with that through secondary legislation.

11:15

**The Convener:** Thank you.

We move on to metal dealer licensing. During the evidence taking, there was quite some



discussion about the definition of a metal dealer. We heard from some of the folk from the industry that waste dealers can deal in metal as well. How can we ensure that the bill works properly and prevents people who might not currently be defined as metal dealers from dealing in stolen metal?

**Michael Matheson:** We are trying to achieve an approach that does not mean that a plumber who deals with a bit of discarded metal, such as copper, is classified as a metal dealer. The provisions that we have set out in the bill try to achieve that balance as best we can. The licensing regime that has been put in place for metal dealers assists us in achieving that. It is not our intention for a plumber who might have some scrap copper from his work to find that he needs to register as a metal dealer. The bill's provisions should guard against that happening.

**The Convener:** I understand that. It is the commonsense approach. However, we heard from folks in the industry about waste dealers who are licensed by the Scottish Environment Protection Agency and often deal in metal. In many cases, they were referred to as itinerant dealers. How do we ensure that they are covered by the regime?

**Michael Matheson:** If those people deal in waste, they obviously have to be registered with SEPA, but was the view that they should also be required to register as scrap metal dealers?

**The Convener:** The scrap metal dealers felt that waste dealers were given much freer rein than they were, although the waste dealers often deal with substantial amounts of metal.

**Michael Matheson:** I am more than happy to take that issue away and consider whether we can do something further on it. I do not know whether there is any further scope to do anything in the bill, but we were generally of the view that the current definition of metal dealers and the registration scheme for them were sufficient. Walter Drummond-Murray might be able to say a bit more about that.

**Walter Drummond-Murray (Scottish Government):** The bill does not amend the definition in the 1982 act. That definition has been in operation for 33 years and, on that basis, cannot be miles away from being right. However, we are aware of the concerns that the dealers raised in their evidence. We have had discussions with them and are happy to consider whether amendment of the definition is required at stage 2.

As the cabinet secretary mentioned, it is a question of balance. We want to catch some of the people who are on the margins, such as the itinerant dealers who only collect door to door but do not make a payment for the metal and, in effect, only sell. They would not be caught at the

moment, so there is a suggestion that we should change the definition of a dealer from somebody who buys and sells to somebody who buys or sells. We are happy to consider that while trying to maintain the balance of not capturing people who are very peripheral, a plumber being the classic example.

**The Convener:** Just because something has been in place for 33 years does not necessarily mean that it is right, Mr Drummond-Murray. The matter certainly seems to worry the scrap metal dealers, who obviously want to co-operate. They feel that others are in the same business but not facing the same regulatory regime.

During the evidence that the police gave on the licensing of metal dealers, it came to light that they deal with the licensing of pedlars on a nationwide basis. Instead of licensing scrap metal dealers at a local level, would it be wiser to license them at a national level and bring the itinerant dealers into that regime too?

**Michael Matheson:** It is possible to do that. I am not entirely sure how extensive an issue it is or how much of a problem it is. The important point is that we are trying to take a proportionate approach. We do not want to inadvertently draw people into the registration process whom we had not intended to draw in through the provision. I recognise your concern, but I am not entirely sure how extensive the issue is and whether it would require further registration to deal with it.

**The Convener:** Okay.

**Willie Coffey:** Cabinet secretary, we heard in evidence that some of the greatest gains that were made down south were due to the removal of the cash payment system. One of the proposals in this bill is to remove the requirement to store metal for 48 hours before processing and we also heard in evidence that some people felt that it was unlikely that the police would be able to respond and inspect premises within 48 hours. If we remove the 48-hour requirement but the police have difficulty in inspecting premises within that timeframe in any case, how effective might that be in aiding the detection of metal theft?

**Michael Matheson:** Again, that is an example of trying to take a proportionate approach. Once a metal dealer holds certain types of metal for a particular period of time, they have to get into registration from SEPA and so on, which can add a significant burden to the process. There are particular time thresholds for certain metal types. Once people pass those thresholds and they have to have that certification from SEPA, how the metal is stocked has to change as regards individual piles and so on. Many of the scrap metal dealers just do not have the space to be able to accommodate that.

Again, we have tried to take a balanced approach. We need to recognise the possibility that we could push the burden so far that, for many metal dealers, it would become unsustainable and they would not be able to operate their businesses because of the additional regulation that they would face for holding certain metals and because of how those metals would have to be stored.

We need to balance that possibility against trying to ensure that we have a reasonable enforcement regime that is able to deal with metal theft, which is—and has been—a big problem. It is about trying to balance those factors as appropriately as we can. The timeframe is a reflection of that.

**Willie Coffey:** Will the greatest gain for us be in the removal of the cash element? That seemed to have a significant effect down south, according to those who gave evidence from the relevant jurisdictions.

**Michael Matheson:** That has now been in place for a year or two down south and it appears to have made a significant impact. I think that it will work here too because it creates an auditable trail that can be pursued. The removal of the cash element will also challenge those who may have got metals illegally—it will place them in much greater difficulty as regards being able to dispose of those metals because of how payment will have to be carried out. I think that it will act as a deterrent and that it will assist us in being able to investigate cases and pursue cases in which metal has been gained illegally.

**Cameron Buchanan:** I think that you may have already answered my question—I wanted to ask about the advantage of a national licence system. I am not sure whether you think that it is a good idea to have a national licence system.

**Michael Matheson:** It is about trying to take a proportionate approach at a local level. I am keen for local authorities to be able to take things forward in a way that best fits their areas. I think that the regime that we have set out can best help achieve that, rather than a move to a national registration scheme.

**John Wilson:** Cabinet secretary, in one evidence session, we heard from some of the power companies regarding the cost of scrap metal. In effect, they were arguing that the pieces of metal or wiring or cabling that are stolen have fairly insignificant value but the cost of the damage that is done in stealing it could run into thousands or even hundreds of thousands of pounds and could endanger life in the affected area.

How would you like to see us incorporate not just the value of the metal stolen but the overall cost of the damage that has been caused to the

energy companies, households and others when individuals are before the courts for the theft of cabling or metal?

**Michael Matheson:** It is really for the courts to determine that. It would not really be appropriate for the Government to set down what it would expect the court to do in dealing with the costs. I am sure that members are aware that when it comes to determining a sentence, courts will look at the full range of circumstances, including the associated costs, the relative damage and the danger that someone committing metal theft may have caused. The final determination would be a matter for the courts.

I have heard of cases of metal theft in which those carrying out the theft not only have caused others to be put in danger but have put themselves in significant danger in order to get the metal, as well as causing a lot of other people significant inconvenience, including by causing power cuts. I suffered a power cut a number of months back as a result of a metal theft—or attempted metal theft—that was taking place in what I think was a Scottish Power facility.

It is a serious issue, and some of the additional measures that we are taking recognise that, in order to deal with it much more effectively. I have no doubt that courts will take these things extremely seriously, but it is not for me to start determining what the courts should do. I would be very reluctant to go down that route, given courts' independence.

**John Wilson:** I am well aware of the independence of the judicial system in Scotland and the UK, but I am keen to ensure that when the police and the Procurator Fiscal Service take forward cases, they look at the total cost of the damage that has been done to a community by the theft of cabling or other metals, so that when someone appears before the courts, not just do they answer for the theft of £200 or £1,000 of cabling, but the other factors, including the cost of repairing the damage, are taken into consideration, so that the courts can fully understand not just the final cost of the metal stolen but the other issues caused.

**Michael Matheson:** I would expect that when a case is being prosecuted in the courts the overall cost would form part of the case. I would expect that the prosecution would make sure that it was brought to the attention of the courts and that it would be part of the facts presented. How much weight an individual sheriff or judge gave that would obviously be for them to determine, but I would certainly expect it to be part of the information that is put before the court when a case is being prosecuted.

**Cara Hilton:** We heard evidence that changing the law in itself does not reduce crime; in England and Wales it seemed to be specific enforcement action that made the difference. I would be keen to hear more about what plans the Scottish Government has to encourage and resource enforcement action to support the new licensing regime when it comes in.

**Michael Matheson:** A major part of the enforcement is for Police Scotland to take forward. I am confident that it has the resources to be able to do that effectively. The other measures that we are putting in place assist Police Scotland to investigate these matters more thoroughly. The provision that one is not able to pay cash for metal and the requirement to take down details will create an auditable trail, which will allow anyone in the police who is investigating something to be able to trace things much more effectively and to see who was involved in procuring the metal in the first place. The measures will assist us in tackling some of that, but I am confident that Police Scotland has the resource to be able to take forward appropriate enforcement measures as it sees fit.

**The Convener:** I return to Mr Wilson's comment about the offence. The bill states:

"a person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale."

My understanding is that a level 5 fine is not that high.

**Michael Matheson:** We can give you some details on that.

**Walter Drummond-Murray:** You are right that in our view the penalties are probably inadequate. That is something that we may seek to address at stage 2.

**The Convener:** Okay. Thanks very much. I suggest that we take a very short comfort break before we move on to the final couple of furlongs. I suspend the meeting for five minutes.

11:30

*Meeting suspended.*

11:35

*On resuming—*

**The Convener:** We move on to the provisions that deal with sexual entertainment licensing. In taking evidence, we found frustration among members of the public about the different bodies that deal with the various aspects of such licensing. The Brightcrew case highlighted the alcohol aspects. Some elements are dealt with by licensing committees rather than boards. We have

also found that planning authorities are responsible for advertising outwith premises, which seems to be a major problem. We realise that certain aspects are being brought together, but would it not be better to bring together all the aspects of sexual entertainment licensing and advertising under the remit of one body so that the public know where to go if they have a complaint about a venue?

**Michael Matheson:** I can see the attraction of that, although licensing boards have a specific statutory function to undertake, which is somewhat different from but similar to that of local authority licensing committees. I would be reluctant to go down the route of having a single committee or board that was responsible for all the licensing provisions. There might be a practical challenge with taking forward some of that work at local level for the licensing body members who would deal with all that.

There are particular specialities. One benefit that we get from licensing boards is that we have a group of elected members who have had additional specialist training and have developed expertise in and understanding of alcohol licensing. We should value that.

I am inclined to retain the current approach, although that is not to say that there is no scope for improving how the system operates. When an individual wants to complain to a local authority—whether about alcohol or some form of entertainment—they should be put through to the relevant officer, who will pursue that for them. That applies to any matter in a local authority. I do not think that having one committee or board to deal with all the issues would necessarily improve that process.

**The Convener:** I agree that people should be able to go to one individual in a local authority and get the service that is required, but that is not happening. The other week, we heard from licensing officers, who suggested that the reason why some of the regimes are split is more to do with tradition than anything else. That is why some places have a licensing board and a licensing committee. My experience of the local authorities that I know about is that the licensing teams of solicitors and officers are the same for the licensing board and the licensing committee, and many of the members who serve on the licensing board also serve on the licensing committee.

It is difficult for the public to get their heads round what the difference is. In fact, it has been difficult for this committee and some of the folks who support us to get our heads round the different terminologies. I wonder whether we do the things that we do more out of tradition than logic.

**Michael Matheson:** There are situations where that is the case, but I am not persuaded that moving to a single body to do all the work at local level is the best approach. You were a councillor in Aberdeen, so you have first-hand experience of some of the challenges but, given the licensing purposes that the different bodies have, there is benefit in having two separate bodies. If the view in the future is that—for whatever reason—the licensing regime could be delivered more effectively by one body, that could be considered, but at this stage I am not persuaded that there is sufficient reason for us to move to a single body.

**The Convener:** Could sexual entertainment licences be dealt with by one body rather than the gamut that exists, which seems to be leading to frustration?

**Michael Matheson:** A venue needs a licence for the entertainment that it provides and a licence for selling alcohol on the premises, if that is what it intends to do, so that is one issue. I recognise that some individuals feel that there are unnecessary complications in the process, but my general view is that the system operates fairly well. There are always areas in which it could be improved, but it serves us pretty well.

The additional measures in the bill will improve the licensing regime for sexual entertainment venues and will provide local authorities with additional powers to deal with the issues more effectively. We are improving the existing legislation, but I am not persuaded that moving to a single committee or board would improve things further.

**The Convener:** It was clear in the evidence that we took that those who are pretty pro sexual entertainment and those who are very anti sexual entertainment share the view that it would be more logical for all the elements to be brought under one regime.

**Michael Matheson:** I appreciate the view that it is worth moving to a single committee that deals with all the aspects, but the system largely serves us well. I am reluctant to change it without sufficient evidence to suggest that the arrangements are not operating effectively, which I do not think is the case.

**The Convener:** In the Brightcrew case, one regime tried to deal with an aspect that was controlled by another regime, and all of that fell foul of the law. Am I right in saying that, if all the elements had been dealt with together appropriately, that situation might not have arisen?

**Michael Matheson:** No—I am not entirely sure that that is correct. The Brightcrew case was about an attempt to use a provision in the 2005 act for a slightly wider purpose than that for which it provides. As a result of that decision, the bill

provides for civic licensing of sexual entertainment venues.

Having one board or committee dealing with matters would not necessarily have changed the outcome in that case. The Brightcrew decision reflected the fact that the 2005 act was not sufficient for the purpose for which those involved tried to use it, which is why we are creating a new licensing regime. That case was about the interpretation of the legislation rather than the structure, which is why we are making additional provisions in the bill.

**The Convener:** Would taking a commonsense approach to structure by bringing everything together and creating the required legislative framework not be the way to proceed? It would be easy for one body to deal with all the aspects of that one legislative framework to ensure that venues were up to scratch in every regard: alcohol, advertising and the entertainment.

**Michael Matheson:** If we moved to a single licensing regime for civic and alcohol matters, we would have to go back to the beginning. It is worth keeping it in mind that the Civic Government (Scotland) Act 1982 was reviewed just 10 years ago. It was considered in great detail and found to be fit for purpose. The 1982 act is flexible enough to allow us to add to and amend it as circumstances change, which has happened over the years. The Nicholson committee also considered the whole issue of licensing, which led to the 2005 act.

11:45

We would have to go right back and redo licensing for alcohol and for civic purposes if the idea was that we should move to a single unified piece of legislation for both aspects. That would be a significant piece of work and a significant undertaking, and it would be well outwith the scope of the bill that we are considering. There is a debate to be had, but I highlight the work that has been undertaken on licensing for alcohol and on civic licensing in the past 10 years.

We have new licensing legislation for alcohol, and the 1982 act has been found to be fit for purpose. I would be reluctant to change the system, given that the legislation seems to be operating effectively and is flexible enough for us to add to it and change it as necessary.

**Cameron Buchanan:** There is a certain logic to having the same licensing regime. Apparently—I emphasise the word “apparently”; it is what we were told—sexual entertainment or strip clubs make real money only when they sell alcohol, which suggests that the licensing regime should be the same.

**Michael Matheson:** I confess that I am not entirely au fait with the business model of such venues.

**Cameron Buchanan:** Nor am I.

**Michael Matheson:** I do not recall whether the money is made just through alcohol, but the point brings us back to the Brightcrew case, in which trying to use the alcohol licensing regime to manage other aspects created difficulties. That is why we have brought in a requirement for further licences for such venues. We want to give local authorities the scope to regulate venues in a meaningful way that allows them to engage with other stakeholders and consider a range of factors before they decide on their local policy for such venues.

**Clare Adamson:** It is proposed that a venue that has been used for such entertainment on no more than four occasions would be exempt from the requirement for a licence. What is the justification for that? Given that there is quite a lot of opposition to the provision, could an alternative, like the occasional licence for alcohol, be considered? Are you considering tightening up that aspect following the evidence on the bill?

**Michael Matheson:** The provision was considered in quite a bit of detail before the bill was drafted. We were trying to strike a balance. In our approach to licensing sexual entertainment venues, we recognise that such facilities operate in only a handful of local authority areas—about four or five. We want to take an approach that will allow them to develop policy in a way that best reflects their local circumstances. That is why we have made the provision discretionary rather than mandatory. It does not demand, for example, that local authorities that have no such venues in their areas have to implement a particular policy.

We recognise that some form of sexual entertainment might be provided on occasion at a particular event in a particular venue. It is difficult to regulate that because of issues with knowing where those venues are and when events are happening and with assessing the full extent of the activity.

In England, the approach is that venues can hold 12 events a year—or one a month—for which, technically, they would need a sexual entertainment licence if such events were happening daily. We thought that 12 events a year would be too many, and we arrived at the figure of four a year. Of course, I am open to hearing the committee's views on whether the right balance has been struck.

The exemption was included largely to reflect the fact that there could be unintended occasions on which a venue finds that it might have required an additional licence. It would be difficult for us to

regulate such situations or to understand the full extent of that activity, and the exemption provision is an attempt to strike a balance.

**Clare Adamson:** My only concern is about ambiguity. Under alcohol licensing, someone cannot sell alcohol unless they have an occasional licence or a full licence. If premises knew that they had to have a sexual entertainment licence, that would provide more clarity, but I would be happy to hear your thoughts on that as the bill progresses.

**Michael Matheson:** I am more than happy to listen to the committee's views. If members feel that the balance that we have struck is not quite right, I will be happy to consider that at stage 2.

**The Convener:** Would the Government consider issuing guidance on how existing sexual entertainment venues should be treated if a local authority sets a lower limit on the appropriate number of venues in the area?

**Michael Matheson:** We will provide guidance to assist local authorities. They must go through a number of stages before they set a limit and they must consider a range of factors. We will take forward work to provide them with guidance on interpretation in that area.

**The Convener:** That is grand.

**John Wilson:** The committee heard evidence from theatre group representatives who were concerned that their artistic expression might be impacted on by vexatious complaints or by individuals who used the bill to shut down theatrical productions. Can you give any assurances to theatre companies whose productions might contain nudity, for example, that they could be exempted from the relevant provisions of the bill?

**Michael Matheson:** That is a fair point to raise. It is reasonable for some establishments to have such concerns. That is why we will produce guidance to give specific direction about the premises and productions that would be exempt in such circumstances. An example would be a performance or a series of performances by a theatre company that involved some nudity. We will address that through the guidance and through secondary provisions that we will put in place to ensure that situations of the kind that you describe do not come about.

**John Wilson:** Another issue, which the convener has raised, is about a local authority wanting to reduce the number of premises that provide sexual entertainment in an area. You said that guidance will be issued to local authorities. Some authorities might decide to go for a zero-tolerance policy, which would involve a blanket ban on sexual entertainment venues in their areas.

What would happen if, say, the City of Edinburgh Council or Glasgow City Council adopted a zero-tolerance approach? How would that fit in with what some in the industry argue are grandfather rights in relation to the continuing provision of such premises?

**Michael Matheson:** In setting the number of sexual entertainment premises that are desirable in an area, local authorities will have to go through a rational decision-making process that involves consultation and engagement. They will not have an unfettered power—they will have to show that they took a rational approach in coming to a final determination.

When local authorities set the number of sexual entertainment premises that are desirable in their area—that number can be zero—it will be important that they go through that process. The guidance that we will issue will give them some direction on and understanding of what that process should involve. If they do not go through the proper process, they will find themselves the subject of a legal challenge for applying a measure for no rational reason or for not considering the issue proportionately.

**Willie Coffey:** One of the issues that came up during discussion was the employment of under-18s in these establishments, albeit in ancillary roles such as cleaner. The evidence that we heard was very much against permitting that to continue. Do you have a view on that, or is it outwith the scope of consideration for us as an employment rights issue?

**Michael Matheson:** It can be dealt with through the licensing provision because, as it stands, under-18s are not allowed in premises where sexual entertainment is taking place. It would be possible, though, for an under-18 to be in the premises at other times. An example would be the case of a cleaner who was in the premises in the morning. They would be able to be in the venue for the purposes of undertaking the cleaning of it when sexual entertainment was not taking place, but they would not be allowed to be in the premises at any time when sexual entertainment was taking place.

**Willie Coffey:** Thank you for clarifying that. That was the nature of the discussion—whether it was appropriate, even in those circumstances, for youngsters or young adults of that age to be working in those premises, even outwith the times of the licensed activity. The only evidence that I can recall hearing was very much opposed to continuing to allow that. What is your view?

**Michael Matheson:** That would be banning under-18s from being cleaners in venues that are used for sexual entertainment. I think that the challenge would be to achieve that within the

terms of this bill. Given the nature and intended purpose of such a provision, we would have to consult more widely on what the implications would be. First of all, it would be interesting to know how many venues employ under-18s as cleaners. My suspicion is that it would be very few, if any at all. I understand the point and where it comes from, but I do not think that it is something that we can address within the scope of this bill.

**Cara Hilton:** Looking at the wider issue, given the Scottish Government's recognition of the harm that is caused by commercial sexual exploitation to the position of women and girls right across society, why is it that the Scottish Government has not decided to ban those types of venue, instead of licensing them?

**Michael Matheson:** What we are doing is giving local authorities the power to license the venues and to determine what the number of them should be. If a local authority believes that the desirable number is zero, there is a process that it can go through in order to achieve that. Rather than the Government determining those matters, we are allowing local authorities to determine them. I think that that is the most appropriate way for something of this nature to be taken forward.

**The Convener:** We now move to the civic licensing aspects of the bill. After our call for evidence and in some of the oral evidence that we have had in committee, licensing officials from Edinburgh and Glasgow gave a detailed critique of the legislation. In fact, they ripped into certain parts of the 1982 act, including the fact that it gives no powers to review or to revoke a licence. There was also a major discussion about the lack of notification. Does the Scottish Government have any plans to review the 1982 act or to address the specific concerns about the way that it operates?

**Michael Matheson:** We have no plans to fundamentally review the Civic Government (Scotland) Act 1982. As I mentioned, it was reviewed only some 10 years ago and found fit for purpose. What we are always willing to do is to listen to concerns and issues that are raised by local authority colleagues about where they feel that there is a deficiency in the legislation that we can assist in addressing if there is a need to do so.

For example, you mentioned the issue of being unable to revoke a licence under the 1982 act. That is something that we are considering. It is worth keeping in mind that, although a local authority cannot revoke someone's licence, it can suspend it, which can have the same effect. We are considering where further measures can be taken in relation to revoking licences, and if we can improve the way in which the system is operating for local authorities we are more than happy to consider that.

12:00

**The Convener:** Another issue that was discussed related to notifications. The example that was given by officers related to a burger van and the fact that they could only notify folk who were within 4m of the stance for the van. Do you think that that is giving the public a fair deal in being able to find out what is going on in their patch and to engage with licensing authorities about any objections that they may have?

**Michael Matheson:** I do not know about the technical aspect of a 4m notification radius for a burger van. I would be concerned if communities felt that they were limited in terms of making representations when a burger van was establishing itself. We could consider modernising the notification process.

I think that that could be dealt with through secondary legislation. Would it require primary legislation?

**Walter Drummond-Murray:** It would have to be done at stage 2 of the bill. There are requirements in the schedule of the 1982 act that local authorities have to publish applications for licences. It is quite archaic and the requirement is currently met by publishing a notice in the local library or something like that. It is not terribly fit for purpose in the modern world. We could certainly look at that.

**Michael Matheson:** We can look to improve that, but there is nothing to prevent local authorities from being more proactive in the way in which they engage with local communities that are affected by such things.

**The Convener:** Can I stop you there, cabinet secretary? We have covered that in a huge amount of depth, and we know that many local authorities are risk averse and that—I will be controversial here—if you put two solicitors in a room you will get six different opinions. When it comes to risk aversion, it seems that this is one of the worst aspects.

We specifically asked the witnesses about informing people beyond the levels specified, and there was huge reticence. We have knowledge round the table of this: as a local councillor I used to inform entire neighbourhoods about things, but it would send the solicitors at the council into a huge panic; Mr Coffey has had similar experiences. The legislation is not fit for purpose.

The committee is currently looking at the Air Weapons and Licensing (Scotland) Bill, but we are also considering aspects of the Community Empowerment (Scotland) Bill. The reality is that what we have here is not empowering communities but actually impeding some of the

good work that the Government wants to see done in other areas.

**Michael Matheson:** I do not accept that it is not fit for purpose, because it can be changed. There are aspects that relate to local policy and the approach that local authorities take.

You have referred to the fact that, when you were a local elected member, certain things happened in your ward and you took the opportunity to inform the whole area. That happens in other areas, too. Local authorities can be more proactive. I recognise that they can be risk averse, but just because local authorities are risk averse it does not mean that the legislation is deficient. However, if there are ways in which we can improve it, in order to help to engage and push greater engagement with local authorities, we will look at trying to achieve that.

Local members—as you will be well aware in Aberdeen, convener—are the ones who should be setting the course of direction for officials in how they take forward local policy, rather than officials at local level always determining what the policy should be.

**The Convener:** I understand that all too well, but the evidence that we have heard shows clearly that many local authorities feel that they are restricted in what they can do.

One thing that the licensing officials said was that they want a link to licensing objectives, as is the case in the 2005 act. Is that possible?

**Michael Matheson:** The purpose of the 2005 act is very different and the five objectives within the 2005 act were set after considerable consideration. I am conscious that officials want to have objectives set within the Civic Government (Scotland) Act 1982. What will that lead to them doing differently?

**The Convener:** I cannot answer that question; that is a matter for the licensing officials.

**Michael Matheson:** But that is the point. I often hear that it would be better if we put something in the legislation but sometimes the issue is not a deficiency in the legislation; sometimes it is about proactive policy at a local level.

**The Convener:** They felt that dealing with public nuisance aspects would be easier if there were some changes. Beyond that, they argue that some of what is currently in legislation seems to be nonsensical, including, for example, those 4m notifications. All that a burger van would need to do would be to park well over 4m away from something and be all right.

**Willie Coffey:** I just want to take this opportunity to say something about the notification process. I have had some experience in the past in which the

authority did not and would not notify anyone outside the radius of the particular application, despite there being a clear view that there it would impact on the public beyond that. The fear was that local authorities might be challenged for seeking objections beyond the limits of the notification distance that was in place. They were fearful of such legal challenges thereafter.

The feeling among members was that we needed to think more about the impact on the community rather than the distance from an application. That would be much more in tune with public perception and would receive public support.

**Michael Matheson:** Clearly, part of the issue is down to interpretation within a given local authority area and to officials deciding to interpret a law in a particular way. If the legislation can be improved to address some of those concerns, I am open to looking at that. However, I do not think that a good way to go about doing things is to put something in legislation because some council officials do not like or do not want to do something. There is a balance to be struck.

When a reasonable case is made that improving the legislation could help to improve engagement with local communities and that can be justified, I am open to looking at that. I have experienced such difficulties in my own constituency. I must confess that I can be a bit sceptical about some of the excuses that council officials give about why they do not do things when it would be reasonable for them to do so because of their particular interpretation of a particular piece of legislation when those in another local authority area have chosen to interpret it much more liberally.

We should be careful that we are not just legislating for those local authorities that tend to be less reluctant to take forward proactive policies to engage with communities.

**The Convener:** Thank you for that, cabinet secretary. Could your officials have a look at the *Official Report* of the evidence from the licensing officials? I share your frustration about the interpretation in certain local authorities being different from that in others, but the key issue for the committee is that we have to make sure that the public is served and feels empowered about certain of these decisions. It seems to me that certain things in the 1982 act fly in the face of common sense, so I urge your officials to go back and have an in-depth look at what licensing officials said at the committee meeting because it seemed to be entirely logical to me.

**Michael Matheson:** I give you the commitment that we will do that, convener. We will also consider the concerns that the committee has raised, notwithstanding my frustration at the

approach that some local authorities take on these matters.

**The Convener:** I thank you for your time today, cabinet secretary.

12:09

*Meeting continued in private until 12:40.*



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