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Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 20 May 2015

Session 4

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
15th 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:

Michael Matheson (Cabinet Secretary for Justice)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 20 May 2015

[The Convener opened the meeting at 10:01]

Air Weapons and Licensing (Scotland) Bill: Stage 2

The Convener (Kevin Stewart): Good morning and welcome to the 15th meeting in 2015 of the Local Government and Regeneration Committee. If you wish to use tablet devices or mobile phones during the meeting, please switch them to flight mode as they may otherwise affect the broadcasting system. Some committee members may consult tablet devices during the meeting because we provide meeting papers in digital format.

Apologies have been received from Cara Hilton.

Our only item of business today is our second day of stage 2 consideration of the Air Weapons and Licensing (Scotland) Bill. I welcome back Michael Matheson MSP, the Cabinet Secretary for Justice. I also welcome Dr Richard Simpson MSP, who is attending to speak to amendments in his name. Today we will consider sections 41 to 59 and all amendments to those sections; the sections form part 2 of the bill and amend the alcohol licensing system in Scotland.

I remind members that, as the office of the clerk is closed on Friday 22 and Monday 25 May, the deadline for lodging amendments to parts 3 and 4 is 12 noon today.

Before we move on to consideration of amendments, it would be helpful if I set out the stage 2 procedure. Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments that was published on Monday, and the groupings of amendments, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in each group to speak to and move their amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate by catching my attention in the usual way.

If he has not already spoken on the group, I will invite the cabinet secretary to contribute to the debate before I move to the winding-up speech.

As with a debate in the chamber, the member who is winding up on a group may take interventions from other members if they wish. The debate on each group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press their amendment to a vote or withdraw it. If they wish to press ahead, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, the committee must immediately move to the vote on the amendment.

If any member does not want to move their amendment when I call it, they should say, "Not moved." Please remember that any other MSP may move such an amendment. If no member moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote at stage 2. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed each section of the bill, and so I will put the question on each section at the appropriate point.

Today we will go no further than the end of part 2 of the bill.

Sections 41 and 42 agreed to.

After section 42

The Convener: Amendment 85, in the name of Dr Richard Simpson, is in a group on its own.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I apologise to you, convener, to the committee and to the cabinet secretary and his team for the fact that amendment 85 was lodged too late to allow evidence to be taken at stage 1 or to allow for a prolonged period of consideration. The committee will be aware that I have introduced a fairly comprehensive member's bill on alcohol issues and it has been allocated to the Health and Sport Committee. The issues that my member's bill deals with were arrived at after the usual consultation process. However, after a helpful meeting with the Cabinet Secretary for Health, Wellbeing and Sport and, at her suggestion, I have lodged a number of the sections of my bill as amendments to the Air Weapons and Licensing (Scotland) Bill.

Amendment 85, which is the first of those amendments, aims to enhance local people's

ability to influence alcohol licensing decisions. In particular, it would strengthen the arrangements for consultations on applications for a premises licence or a variation to such a licence, except for minor variations.

The proposal arose from two sources. The first was communications with constituents who wish to have greater involvement in the licensing process, particularly with respect to variations and extensions of licences. Secondly, there was the experience in New Zealand of consulting communities in which the residents who might be affected more than the general public are given the opportunity to object.

At present, under the Licensing (Scotland) Act 2005, which I will come back to in due course, a licensing board must consult people who occupy land immediately adjacent to the premises in question—that is, within 4m of the premises that are under consideration. Separately, the board must consult any community council whose area includes the premises. Amendment 85 would require boards to consult local residents within a much larger area where there is no community council in the relevant area or where the relevant community council is inactive. A 2013 Scottish Government survey showed that 84 per cent of the 1,370 community councils in Scotland are deemed to be active but those that are deemed to be inactive are much more likely to be located in areas of deprivation.

Although the core of the amendment is to give greater rights to citizens, especially those in deprived areas, it would also extend the consultation period from 21 days to 42 days for active community councils and for the wider consultation that is proposed in the earlier part of the amendment. Community councils are unlikely to meet more than once a month, and they can sometimes meet less often at certain times of the year. The amendment would allow more time for consultation.

In considering my member's bill, I considered a more stringent set of measures that would follow more closely the New Zealand model whereby new licences would have to be reapplied for after one year and then every three years thereafter. However, given the current economic situation for the on-licence trade, and despite the fact that constraints on alcohol consumption are best achieved through reducing availability along with taking pricing measures, I have limited the amendment to the modest proposals to empower communities that are not empowered by a community council and to strengthen the ability of community councils by increasing their time to respond.

Half of the respondents to my proposal were in general agreement. The industry does not favour

the increases in consultation, as it believes that alcohol licensing forums and the existing law provide for sufficient consultation. However, alcohol licensing forums have limited representation and might not have representation from the area that is under consideration.

I reiterate that we need to empower communities who feel that they are disempowered by the current arrangements. Amendment 85 is a proportionate approach and is backed by the British Medical Association and Alcohol Focus Scotland.

I move amendment 85.

The Convener: Obviously, the committee has not taken evidence on any part of the amendment.

The Cabinet Secretary for Justice (Michael Matheson): I am grateful to Richard Simpson for lodging amendment 85, which relates to expanding the notification requirement in relation to premises and major variation applications by amendment to the Licensing (Procedure) (Scotland) Regulations 2007, which is a piece of secondary legislation.

The procedure regulations have not been updated since they first came into effect back in 2008. During that time, there has been considerable change to society and practices. It is therefore appropriate to look at the current regulations to ensure that the procedures and deadlines that they set out achieve what they are intended to achieve. We intend to review and, if necessary, update the licensing forms that are provided for in the procedure regulations. We also intend to update the regulations with the addition of a process of tacit authorisation within the alcohol licensing regime.

I am aware of recent work on community engagement that was commissioned by the Glasgow Centre for Population Health, and I would like it to be taken into account when we review the procedure regulations. Some of the amendments will require consultation to ensure that they will work effectively. Other amendments are required to support the operation of the bill when it comes into force. We are therefore already committed to acting quickly to consult on and update the procedure regulations.

I appreciate that Richard Simpson wants to ensure that the procedure regulations work as effectively as possible. However, I am concerned that amending the primary legislation and then updating the secondary legislation for the other issues that I have raised would create confusion and possibly introduce delays that could be avoided by dealing with everything at the same time as a comprehensive package.

I do not want any amendments to the procedure regulations to generate unduly large additional burdens on licensing boards, nor do I want to increase bureaucracy to needlessly delay the processing of licence applications. In order to achieve that balance, it is preferable to deal with all the changes in the round so that appropriate consideration can be given to the impact on businesses and communities.

On that basis, I encourage Richard Simpson to withdraw amendment 85, with the assurance that the Scottish Government will consult on updating the procedure regulations following royal assent, and I will be happy to keep members informed about the progress that we make on the matter.

The Convener: I invite Dr Simpson to wind up and to press or withdraw his amendment.

Dr Simpson: I thank the cabinet secretary for his considered and helpful reply. It is timely that we should review the regulations governing the whole process. Availability clearly needs to be addressed, and engaging communities effectively with that process is a paramount consideration. However, having listened to the cabinet secretary, I am happy to withdraw my amendment.

Amendment 85, by agreement, withdrawn.

Section 43—Premises licence application: ground for refusal

The Convener: Amendment 38, in the name of the cabinet secretary, is grouped with amendments 39 to 42 and 44 to 48.

Michael Matheson: The amendments in this group relate to the fit-and-proper-person test. Many stakeholders have criticised the Licensing (Scotland) Act 2005 for not including a fit-and-proper-person test. The bill addresses that by introducing such a test to the 2005 act.

Introducing a new test to an established licensing regime is not straightforward. The bill already includes six sections relating to the fit-and-proper-person test. We have engaged with stakeholders and carefully studied the large volume of useful material that was submitted in response to the committee's call for evidence, as well as following the discussions that took place in the committee and reading the committee's stage 1 report. That material has raised a small number of concerns about the fit-and-proper-person test that could mean that it would not work as well as we had intended. I have therefore lodged amendments to address those concerns.

There were three areas of concern. The first was about the board's ability to consider unsuitable associations as part of the fit-and-proper-person test. Secondly, there were concerns that requiring the automatic revocation of a

premises licence in relation to the fit-and-proper-person test might discourage boards from taking action. Thirdly, concerns were raised about the ability of boards to consider conviction notices and reports by the chief constable as part of the fit-and-proper-person test for a new premises licence.

10:15

Amendment 38 seeks to amend the 2005 act on objections to and representations on premises licence applications. It is already open to any person to object to or make representations on a premises licence application. Amendment 38 clarifies that an objection to or representation concerning a premises licence application may include any information that the person who is making the objection or representation considers to be relevant to any of the grounds for refusal, including information about the applicant when they are neither an individual nor a council, a connected person in relation to the applicant, or any person who would be an interested party in relation to the premises if the application were to be granted. That will allow information to be provided that might be relevant to the board's consideration of the fit-and-proper-person test. In particular, it will allow information to be provided about those who are associated with the applicant, not just the applicant.

Amendment 39 is a technical drafting amendment. Amendment 40 seeks to amend the 2005 act on the determination of premises licence applications by clarifying that, in its consideration of the fit-and-proper-person test, the board can take into account any conviction notice and antisocial behaviour report supplied to the board by the chief constable.

Amendment 41 is a technical drafting amendment supporting amendment 42, which seeks to amend the 2005 act on the transfer of a premises licence. The bill provides that, when considering a transfer application, the chief constable can provide the board with any information about the transferee and, when the transferee is neither an individual nor a council, about a connected person. Amendment 42 provides that the chief constable may also provide any information about anyone who would be an interested party to the transferee if the application for the transfer were to be granted. That would cover those who are already an interested party and who would continue to be an interested party if the transfer application were to be granted.

Amendment 44 seeks to amend the 2005 act on the application for a review of a premises licence, to provide that any person who makes a premises licence review application may include any information that they consider to be relevant,

including information about the licence holder, connected persons to the licence holder or interested parties to the licensed premises.

Amendment 45 is a technical drafting amendment. Amendment 46 seeks to insert a new subsection into the 2005 act on a review of a premises licence on a licensing board's initiative. The 2005 act enables licensing boards to initiate a review of a premises licence, and amendment 46 clarifies that the review proposal may include information about the licence holder, connected persons to the licence holder or interested parties to the licensed premises.

Amendment 47 seeks to amend the 2005 act on a licensing board's powers to review a premises licence. The bill provides for immediate revocation of a premises licence on the grounds that, having regard to the licensing objectives, the licence holder is not a fit-and-proper person to be the holder of a premises licence. However, concerns have been raised that without alternative disposals available to it, the board might be reluctant to find that a person is not fit and proper to hold a premises licence. I remain of the view that revocation is the correct option when a person is deemed not to be fit and proper to hold a premises licence. However, amendments 47 and 48 seek to address the concerns.

Amendment 47 provides that a revocation under the licensing board's powers of review takes effect at the end of a period of 28 days beginning on the day on which the board makes the decision. That provides a short period of grace in which the licence holder may take action to address the problems that led to the board making the findings.

Amendment 48 inserts a new section into the 2005 act, which provides that when a licensing board has taken steps to revoke a premises licence on the ground that the licence holder is not a fit-and-proper person, the board must recall the revocation if the relevant application is made within that 28-day period and the board ultimately grants the relevant application.

Amendments 47 and 48 provide that when the licence has been revoked on the ground that the licence holder is not a fit-and-proper person, the licence holder has 28 days in which to arrange a transfer of the licence to another person or to propose a variation that would address the board's concerns.

The amendments ensure that boards can take robust action when a licence holder is found not to be a fit-and-proper person and they offer reasonable traders the opportunity to take prompt action to address the board's concerns and retain their licence. The changes will encourage boards to take appropriate action against those who are

not fit and proper to hold a premises licence. I invite members to support the amendments.

I move amendment 38.

Amendment 38 agreed to.

Amendments 39 and 40 moved—[Michael Matheson]—and agreed to.

Section 43, as amended, agreed to.

Section 44—Application to transfer premises licence: ground for refusal

Amendments 41 and 42 moved—[Michael Matheson]—and agreed to.

The Convener: Amendment 43, in the name of the cabinet secretary, is grouped with amendments 49, 57, 75, 77 and 78.

Michael Matheson: These amendments amend the arrangements for the transfer of a premises licence in the alcohol licensing regime.

Stakeholders have criticised the current procedure for the transfer of a premises licence, in which it is the original holder of the premises licence who must apply for the transfer. Often the original holder of the premises licence may have moved on or may be unwilling to engage with the process, but there is someone keen to take on the business. In contrast, under the Gambling Act 2005, it is the person who wishes to take on the business who must apply for the transfer.

The Scottish Government is keen to improve procedure where it can, to reduce needless red tape and cumbersome procedures. As such, I have lodged these amendments to change the procedure for the transfer of a premises licence.

Amendment 49 is the main amendment, which sets out the proposed changes to the transfer procedures in the Licensing (Scotland) Act 2005. The changes provide that it is the person seeking to take on the premises licence who must apply for the transfer of the licence. When they do that, they should specify a date on which the transfer should take effect, provide the original premises licence, or a statement of reason as to why that is not practical, and a written statement signed by the holder of the premises licence consenting to the transfer, or a statement as to why that is not practical.

In addition, the board must take all reasonable steps to give notice of the transfer application to the original premises licence holder. That is a necessary protection against applicants submitting fraudulent consent letters or seeking to make a transfer without engaging with the original licence holder.

The board may decide to dispense with the requirement for the written consent of the original

premises licence holder if it is satisfied that the applicant has taken all reasonable steps to contact the original premises licence holder in order to obtain consent but has received no response. Where the board decides to dispense with the requirement for consent, it must hold a hearing to determine the application.

Amendments 43, 57, 75, 77 and 78 are consequential; they remove references to section 34 of the Licensing (Scotland) Act 2005 that are no longer needed as a result of the changes in amendment 49.

The amendments offer a transfer procedure that is more suited to the reality of business today but which has appropriate checks and balances to protect the interests of existing trade without imposing undue burdens on boards and clerking services.

I move amendment 43.

Amendment 43 agreed to.

Section 44, as amended, agreed to.

Section 45—Ground for review of premises licence

Amendments 44 to 48 moved—[Michael Matheson]—and agreed to.

Section 45, as amended, agreed to.

Sections 46 to 48 agreed to.

After section 48

Amendment 49 moved—[Michael Matheson]—and agreed to.

Sections 49 to 52 agreed to.

After section 52

The Convener: Amendment 86, in the name of Dr Richard Simpson, is in a group on its own.

Dr Simpson: Amendment 86 deals in essence with the question of advertising of alcohol. It does so mainly through inserting new sections 122A, 122C and 122D, which deal with, respectively, a ban on advertising near schools and matters affecting children; advertising within licensed premises; and advertising at sporting and cultural events.

The Nicholson review on licensing was established when I was justice minister, and it led to the Licensing (Scotland) Act 2005. It may be coincidence only, but the consumption of alcohol has been on a largely downward path since 2005. That may be due partly to the restriction on the display of alcohol to those areas that are licensed. Some members may remember when managers'

special offers were stacked high at the entrance to stores and in the aisles.

Around the same time, Nicola Sturgeon, who was then a member of the Health and Community Care Committee, was endeavouring to curtail the advertising of tobacco. As she found, our powers in Scotland are limited in that respect, but I believe that we should seek to reduce the normalisation of alcohol in a similar manner to the way in which we did so for tobacco. Recent surveys have shown how successful that approach has been, with teenagers often unable to name tobacco brands that are familiar to all of us—even taking into account the various age groups of members, I think that we would all be aware of the brands.

This lengthy section seeks the further denormalisation of alcohol. It is underpinned by the World Health Organization strategy on alcohol, which they have termed as being no ordinary product. The WHO believes that children and teenagers

“who choose not to drink alcohol beverages have the right to be supported in their non-drinking behaviour and protected from pressures to drink.”

The WHO strategy says that one of the 10 target areas for action should be the “marketing of alcoholic beverages”. The report recognises the need to reduce the impact of what are

“sophisticated advertising and promotion techniques”,

at least in respect of young people.

I appreciate that advertising restrictions in the United Kingdom aim to avoid direct impact on young people, but alcohol advertising is so prevalent that brand identity is established at a very early age. The restrictions that the amendment proposes are aimed at reducing young people’s exposure. It would ban alcohol advertising in the vicinity of schools, nurseries, crèches and play areas; within retail premises other than in areas that are licensed; and at sporting and cultural events that mainly involve, or are principally aimed at, under-18s.

10:30

The so-called loi Evin in France sets out clear definitions for alcoholic drinks and clear guidance on how the law is to be applied. It bans any advertising that is aimed at children and any advertising on television, in cinemas or at any sporting or cultural event, and it applies across the board. It is interesting that the predicted demise of sports that have been deprived of alcohol advertising in France has simply not occurred. It is also interesting that France, which had a severe alcohol problem in the 1980s and 1990s, as severe as ours was in 2005, has now moved back to the European Union average for alcohol

problems. That is an extremely significant improvement.

The restrictions that I propose will complement the voluntary arrangements of self-policing by the industry-funded Portman Group. The Portman Group has a code, but that does not apply to wholesalers or to retail-led promotional activities. The advertising standards are tested, I believe, on an almost daily basis by radical new promotion methods.

Specifically, amendment 186 would ban advertising within 200m of certain premises that are used by children—schools, nurseries, crèches and children’s play areas. The restrictions will apply to billboards, hoardings, bus shelters and advertisements in or on licensed premises, excepting displays that are primarily to be seen from inside the premises. Displays on A-boards, displays of cans and bottles in shop windows and offers outside shops, pubs and restaurants would all be banned. There would be an exemption for factual information displayed at pubs.

Premises that are used for other purposes, such as community halls where a nursery or crèche may be hosted on an occasional basis and open spaces that are not specifically intended for children but which may be used by children and families, would be exempt.

Currently, although the display of alcoholic products in licensed premises is limited, advertising is not. The amendment would restrict advertising to the licensed area.

As I have said, the loi Evin is a blanket ban on alcohol advertising at sporting and cultural events. Although that might be desirable from a public health standpoint, much of our sport is very reliant on alcohol advertising. A blanket ban may happen in time—and, putting on my hat as the psychiatrist in addictions that I was before becoming a politician, I hope that it will—but for now I have attempted the more modest but difficult task of restricting bans to venues where under-18s are the primary group to be involved in, or the audience to, sporting and cultural events. The restrictions will not apply to open-air or on-street activities. Cultural events were also difficult to define, but I believe that the balance is correct in the amendment.

The responses to my consultation ranged—as you might expect—from support for the full loi Evin approach to a preference for the status quo. The only response that surprised me was the one from the Advertising Standards Authority; it felt that there was no need for additional restrictions. The proposals in my bill were supported by 81 per cent of respondents. The BMA and Alcohol Focus Scotland are backing the amendment and the Law

Society of Scotland was very positive in its consultation response.

I move amendment 86.

The Convener: No other members wish to enter the debate. I say once again that we took no evidence on this issue at stage 1. I call the cabinet secretary.

Michael Matheson: I am grateful to Dr Simpson for taking us through amendment 86 which, among other things, seeks to restrict the advertising of alcohol near premises that are used by children, to restrict advertising within licensed premises and to restrict alcohol licensing at certain sporting and cultural events.

I know that my colleague the Cabinet Secretary for Health and Wellbeing recently met Dr Simpson to discuss this matter, among other things. She agrees with me that there is a requirement to understand the evidence base and consult properly in relation to such important changes.

We know that young people are particularly vulnerable to the effects of alcohol, whether they are drinking themselves or are being affected by the drinking of other people in their lives. Over the past few years, the Scottish Government has taken action to make it harder for underage drinkers to gain access to alcohol. As the committee is aware, the bill also takes forward our commitment to make it an offence to supply alcohol to under-18s in a public place, which will give the police more powers to deal with the problem of underage drinking dens.

The provisions in amendment 86 are already a significant part of Dr Simpson’s recently introduced member’s bill, the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill. I understand that the Health and Sport Committee launched the call for evidence on that bill just last week.

The proposed restrictions on alcohol advertising would include making it an offence to display an alcohol advertisement

“within 200 metres ... of a school, ... premises used principally as a nursery or crèche, ... outdoor premises designed or adapted ... as a children’s play area”;

in retail premises containing an area that is licensed to sell alcohol for consumption off the premises, except inside that area; and within premises being used as the venue for a cultural event—other than a film—or sporting event where

“the majority of participants ... are under 18, or ... the intended audience for the event consists principally of persons under that age.”

Although I recognise the sentiment behind Richard Simpson’s amendment, I am concerned at the inclusion of these matters in the bill at stage 2.

These are important issues and the proposals are very significant changes to undertake at this stage. It is essential that they receive detailed scrutiny and consideration—including from stakeholders—to ensure, for example, that there are no unintended consequences.

The best place to consider Richard Simpson's proposals in the detail that they deserve is as part of his member's bill, which is presently before the Health and Sport Committee. For example, scrutiny could ensure that the scope of the offences is appropriately drawn. We may risk criminalising those entirely outwith the alcohol licensing regime for an advertisement or piece of branding that they might have been barely aware of. It may be challenging for individuals and businesses to ensure that they do not commit the offences and it may be challenging for enforcement bodies to prosecute them. A one-off event would require the owner of premises to remove or cover up any branding and advertising or find themselves potentially liable for a criminal offence with a fine of up to £5,000.

Although I, too, would like to see further restrictions on the advertising of alcohol, I believe that such provisions should be subject to fuller and more detailed scrutiny than their consideration as part of this bill would allow. The proposed offences are already contained in Richard Simpson's member's bill. I strongly believe that it is only right that they should benefit from the full scrutiny of the bill process, which will be the case for the member's bill, which is presently before the Health and Sport Committee. I therefore ask the committee to reject amendment 86.

Dr Simpson: I again thank the cabinet secretary for what must be his initial views, as the amendment was submitted only very recently. I concur with him that the proposals require fuller consultation. There are clearly concerns about criminalising individuals who may not be fully aware of the situation.

It is appropriate that we should reach a point at which alcohol advertising is covered up when children are present. It will not be easy, but no one ever said that this area of law would be easy.

It is essential that Parliament moves on the issue as soon as possible. There is now a call for evidence on my bill. I hope that, as this committee has considered licensing issues, it may wish to further consider my amendment and make representations to the Health and Sport Committee.

On that basis, and on the basis of the advice of the cabinet secretary, I would like to withdraw the amendment.

Amendment 86, by agreement, withdrawn.

Section 53 agreed to.

Section 54—Overprovision

The Convener: Amendment 82, in the name of Cameron Buchanan, is grouped with amendments 50 to 52.

Cameron Buchanan (Lothian) (Con): Amendment 82 seeks to remove section 54(2)(a), which would amend section 7(2) of the 2005 act to say that a licensing board

"may determine that the whole of the Board's area is a locality".

That is far too restrictive, because it would allow one locality to be Edinburgh, for example, rather than Leith, where there is a problem.

Each licence application should be considered on its merits and should take into account, for example, social, economic and health-related factors. As it stands, section 54(2)(a) will allow licensing boards to operate a presumption against granting licences over a wide area, particularly in cities. That would be anti-competitive and unfair to new retailers. There is no evidence that, if there is another supermarket in a city, people drink more. Section 54(2)(a) would have a detrimental impact on economic investment.

I move amendment 82.

Michael Matheson: I am grateful for Mr Buchanan's comments on his amendment. Overprovision is a valuable tool by which a licensing board can prevent new licensed premises from opening in areas where it considers that that would cause an overcapacity of licensed premises. That can be useful from a public order perspective, in that disorderly behaviour, noise and other nuisances can be linked to areas where there is a high density of outlets selling alcohol. One example of that is disturbances at pub closing time. The tool is also useful from a public health perspective, in that easy access to alcohol can be associated with increased levels of alcohol-related harm.

Amendment 82 would remove the provision that clarifies that a licensing board is entitled to treat as a locality the board's whole area when considering whether there is overprovision. That provision was supported by the committee in its stage 1 report.

It is important that the overprovision assessment is an effective and robust tool for licensing boards. Public health data may well be available only on a whole board basis, so it is important that boards can determine that there is overprovision across the board area. If we accepted amendment 82 and removed the provision that clarifies that licensing boards can class their entire board area as a single locality, we would risk undermining the work of licensing boards in assessing overprovision.

They might be unable to rely on important population health data that is not available for small areas. I therefore ask the committee not to agree to amendment 82.

10:45

On Government amendments 50 to 52, the bill as introduced clarified that, in assessing overprovision, increased capacity may be considered separately from an increase in the number of licensed premises, and opening hours can also be considered. The rationale for that was that, even if there were no increase in the total number of alcohol outlets, the overprovision assessment would be relevant if existing premises attempted to increase their capacity and/or opening hours.

However, following the bill's publication, various stakeholders, including licensing board clerks and Alcohol Focus Scotland, expressed concerns about the drafting. Stakeholders were particularly concerned about the substitution of what was formerly a "must" consider with a "may" consider. Stakeholders have emphasised that the level of alcohol availability in terms of the number and capacity of licensed premises in a given locality is such important evidence for a licensing board when it considers overprovision that it needs to be retained as a mandatory consideration for a board.

After consideration of the feedback received, we agree that it is more appropriate to retain the 2005 act's original wording, to the effect that a licensing board

"must ... have regard to the number and capacity of licensed premises in the locality"

and, as amendment 50 states, that a licensing board

"may have regard to such other matters as the Board thinks fit including, in particular, the licensed hours of licensed premises in the locality".

Amendment 50 will therefore reinstate the mandatory consideration by licensing boards, when they consider overprovision, of the number and capacity of licensed premises in a locality, while making optional the consideration of such matters as the board considers appropriate, including the licensed hours of licensed premises in the locality.

Amendments 51 and 52 will remove references in the 2005 act to what should be considered regarding overprovision as a ground of refusal when a licensing board is determining a premises licence application or an application for variation. The removal of those references will mean that licensing boards could refuse an application if they regarded that there would be overprovision were the application to be granted. I emphasise to the committee that we are not suggesting that

numbers, capacity and licensed hours—among other things—are no longer relevant; rather, we merely suggest taking a slightly different approach to ensure consistency across the legislation.

I hope that the committee will support my amendments, which will ensure consistency in the definition of overprovision. I ask the committee to reject amendment 82 and invite members to support amendments 50 to 52.

Cameron Buchanan: I am disappointed that the cabinet secretary does not think that the restriction is too much. It will have a detrimental effect on economic development. It is important that we do not treat big cities as one area but that we treat them as areas made up of small localities. That would also give wider consumer choice. If expansion of the overprovision definition is allowed to restrict competition in detail, consumers will face less choice when shopping for goods and, therefore, higher prices.

I press amendment 82.

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Buchanan, Cameron (Lothian) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (Ind)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 82 disagreed to.

Amendments 50 to 52 moved—[Michael Matheson]—and agreed to.

Section 54, as amended, agreed to.

Section 55—Duty of Licensing Boards to produce annual financial report

The Convener: Amendment 87, in the name of John Wilson, is grouped with amendments 88 to 90.

John Wilson (Central Scotland) (Ind): I put on record my appreciation to Alcohol Focus Scotland for its suggestions on amendment 87. The amendment would insert a proposed new section 9B in the 2005 act, on licensing boards' annual reporting on the exercise of functions.

If we want increased accountability of and transparency from boards, some form of annual reporting mechanism should be put in place, so

that not only the licensed trade and elected members of health boards and the Scottish Government but the public are aware of licensing boards' actions in the preceding year from seeing in annual reports what work licensing boards have undertaken. Amendment 87 suggests a number of issues that should be in the annual report, but they are not exclusive. The amendment would leave it open for the Scottish Government to state what further information it might deem relevant for boards to include in the reports.

The amendments in the group would ensure that we got the mix right in terms of the public's look at what is happening in licensing. We have heard in the debates that have taken place in the committee that the public often feel excluded, that boards' decisions are made in mysterious rooms and that the public are not fully consulted on, or aware of, the changes that are taking place or the decisions that are made.

Including in the bill a provision on an annual report would provide an opportunity to ensure that the public have more confidence in boards' decision-making processes and that licensing boards' data is placed in one document. It is suggested that that document or report be produced three months after the end of the financial year. However, amendment 87 also says that the Scottish Government could amend that timeframe so that boards could report later if they had particular issues.

What is crucial is getting an annual report prepared, produced and placed in the public domain that the public can understand and relate to. The other amendments in the group are consequential to amendment 87.

I move amendment 87.

Michael Matheson: I am grateful to Mr Wilson for lodging the amendments and I am certainly sympathetic to the views that he expressed on an annual report; I am also mindful of the views that the committee expressed in its stage 1 report. However, I am sure that committee members recognise that licensing boards are already under a substantial requirement to report on a range of areas, which places a significant burden on them. For example, they are obliged to prepare a licensing policy statement, an overprovision assessment and an annual report on key statistics to the Scottish Government, and to maintain a public register of key information. The public register must contain information in relation to premises, personal and occasional licences, and the decisions that have been taken about applications.

I believe that there is merit in moving towards licensing boards producing an annual report, and the Government intends to oversee the

introduction of such an annual report. Before we do that, I wish to engage with stakeholders—particularly local authorities and those responsible for licensing boards—on the existing reporting requirements in order to consider what areas of reporting can be reduced or included in the annual report.

I therefore ask Mr Wilson to withdraw amendment 87 with a view to—

The Convener: Will you take an intervention, please? Will you indicate the timescale for the consultation and reporting back? The committee has a great interest in this area.

Michael Matheson: As I was just about to say, I ask Mr Wilson to withdraw his amendment with a view to a suitable stage 3 amendment being drafted that will be informed by engagement with stakeholders.

Alex Rowley (Cowdenbeath) (Lab): Does the minister accept that there needs to be more openness and transparency in engaging with the public in the licensing process so that they get a better understanding and perhaps more involvement in that process?

Michael Matheson: There is great merit in that. We need to manage that against the burden that is placed on licensing boards in undertaking reporting. That is why I want to consider with them the appropriate measures to put in place as part of annual reporting so that there is greater transparency and local licensing boards can manage that in a reasonable way.

I would be happy to work with Mr Wilson with a view to drafting a suitable stage 3 amendment that is informed by the discussion that we have with stakeholders before the stage 3 process.

John Wilson: I am grateful for the cabinet secretary's comments on the issues that amendment 87 has raised, and I look forward to working with him and his officials to lodge a suitable stage 3 amendment. If the Scottish Government does not lodge a suitable amendment at stage 3, I reserve the right to press similar amendments. I will withdraw amendment 87 on the proviso that suitable amendments will be lodged at stage 3.

Amendment 87, by agreement, withdrawn.

Amendments 88 to 90 not moved.

Section 55 agreed to.

After section 55

The Convener: Amendment 53, in the name of the cabinet secretary, is grouped with amendment 54.

Michael Matheson: Amendments 53 and 54 provide licensing standards officers with the power to report the conduct of both applicants and personal licence holders to a licensing board.

Licensing standards officers are considered to be one of the successes of the 2005 act. Amendment 53 creates a new general function for licensing standards officers of being able to provide information to licensing boards about any conduct of personal licence holders or applicants for a personal licence that they consider to be inconsistent with the licensing objectives.

Section 46 already requires a board to provide a copy of a new personal licence application to the licensing standards officer and enables him or her to provide information that he or she considers to be appropriate for the board. Amendment 53 strengthens that by making it clear that such information may include details of inconsistent conduct. In our opinion, the creation of that new general function can only improve the effectiveness of licensing standards officers.

Amendment 54 provides licensing standards officers with a new power to report to a licensing board conduct of any personal licence holder that they consider to be inconsistent with the licensing objectives. Currently, if a licensing standards officer finds a holder of a personal licence to be acting or to have acted in a manner that is inconsistent with the licensing objectives, the only route to make the appropriate licensing board aware is through a premises licence review application under the Licensing (Scotland) Act 2005. The feedback that we have received from stakeholders is that that requirement to seek a premises licence review is overly cumbersome. Therefore, providing licensing standards officers with the power to report conduct directly to the licensing board will ease the process and improve the effectiveness of the system.

I invite members to support amendments 53 and 54.

I move amendment 53.

Amendment 53 agreed to.

Amendment 54 moved—[Michael Matheson]—and agreed to.

Section 56 agreed to.

Section 57—Personal licences: grant, duration and renewal

The Convener: Amendment 83, in the name of Cameron Buchanan, is grouped with amendments 84, 55, 56, 80 and 81.

11:00

Cameron Buchanan: Amendment 83 is technical, and relates to amendment 84, which seeks to reduce the time for which someone who has had their licence revoked for any reason has to wait to reapply, from five years to three years. The amendment relates in many ways to amendments 53 and 54. I welcome the provision that will exclude revocations under section 87(3) of the 2005 act from the five-year rule, which is a sensible recognition of how disproportionate the rule is when directed at licence holders who have not met all the training requirements.

I believe that the amendment of the 2005 act in that respect should go further. Five years is a very long time to be automatically considered unfit to be licensed without the opportunity to demonstrate otherwise. Whether people who have had their licence revoked remain unfit to hold a new licence should be for the licensing board to determine, rather than for the Scottish Government.

I move amendment 83.

Michael Matheson: I am grateful for amendments 83 and 84, which were lodged by Cameron Buchanan. They relate to the personal licence, which is a key feature of the alcohol licensing regime. A personal licence is required to supervise or authorise the sale of alcohol. It is therefore important that only appropriate people hold a personal licence.

Currently, in cases where a personal licence is revoked, the person is barred for five years from applying for a new personal licence. We have already agreed that that five-year ban is not appropriate where a personal licence is revoked simply for failure to render a certificate of refresher training. However, the remaining grounds for revocation are serious, and boards do not lightly undertake the revocation of a personal licence. Accordingly, I do not believe that it would be appropriate to reduce the ban to three years, and I therefore ask Mr Buchanan not to press amendments 83 and 84.

I turn to Government amendments 55, 56, 80 and 81. Amendments 55 and 56 will remove an apparent anomaly in the Licensing (Scotland) Act 2005 that would have rendered the process for the renewal of a personal licence after 10 years problematic. The matter was highlighted recently by licensing stakeholders, who raised concerns about the current procedures for the renewal of a personal licence prior to its expiry 10 years after being issued. The renewal process allows the licensing board to ensure that the holder of a personal licence is an appropriate person to hold that licence, and it applies the same requirements in relation to notification and determination as for the original personal licence application.

One requirement in relation to the granting of an initial personal licence application is that the applicant must not already hold a personal licence. That serves a useful purpose: it stops people from holding a back-up licence just in case one is revoked. However, that requirement is clearly not appropriate when it comes to the renewal of a personal licence, when someone will, quite rightly, already hold a personal licence. Amendment 56 removes the requirement that an applicant for the renewal of a personal licence must not already hold a personal licence. That will ensure that the renewal process starting in 2019 operates smoothly. Amendment 55 simply allows for the renumbering of subsections of the bill to accommodate amendment 56.

Amendments 80 and 81 will bring into force on the day following royal assent the provisions of the bill that remove the current five-year restriction on reapplying for a personal licence that has been revoked due to the failure of the applicant to supply the appropriate evidence of having undergone refresher training. As committee members know, the 2005 act requires that personal licence holders should undertake refresher training every five years. That is why updated personal licence refresher training courses were made available from the middle of 2013, to ensure that licence holders had sufficient time to sit the refresher course and submit proof to the relevant licensing board. Nearly 30,000 personal licence holders undertook the training.

However, it is also known that, unfortunately, a number of personal licence holders failed to complete training or to submit the relevant certificates by the deadline when they were due. As I mentioned when I discussed Mr Buchanan's amendments 83 and 84, the 2005 act is clear that, in such circumstances, the personal licence should be revoked. Under current legislation such a revocation would mean that an individual could not reapply for another personal licence for five years. We share the concerns that revoking a personal licence for five years for what might be an oversight or an administrative failing may be considered excessive. That is why the bill already looks to amend the relevant provisions.

I am sure that we will all agree that it is important that the new provisions are commenced as quickly as possible once the bill has completed its process through Parliament. Amendments 80 and 81 will do exactly that. I envisage that, once the provisions are commenced, anyone who has had their licence revoked for failure to timeously submit evidence of their refresher training would be eligible immediately to apply for a new personal licence, provided that they meet the other requirements.

This change has been much called for, and I trust that the committee will support the amendments. I therefore ask Mr Buchanan not to press amendment 83, not to move amendment 84 and to support amendments 55, 56, 80 and 81.

Cameron Buchanan: In view of what Mr Matheson has said, which I believe is very opportune, I seek to withdraw amendment 83.

Amendment 83, by agreement, withdrawn.

Amendment 84 not moved.

Amendments 55 and 56 moved—[Michael Matheson]—and agreed to.

Section 57, as amended, agreed to.

Section 58—Processing and deemed grant of applications

Amendment 57 moved—[Michael Matheson]—and agreed to.

Section 58, as amended, agreed to.

Section 59 agreed to.

The Convener: That ends consideration of amendments for today. Members still have 52 minutes to lodge amendments for consideration next week.

I thank everyone for their participation. Our next meeting is on Wednesday 27 May, when we will consider part 3 of the bill on civic licensing provisions and possibly the general provisions in part 4.

Meeting closed at 11:08.

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