LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 27 September 2005

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE
25th Meeting 2005, Session 2

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Bruce Crawford (Mid Scotland and Fife) (SNP)

COMMITTEE MEMBERS

*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)
*Mr David Davidson (North East Scotland) (Con)
*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)
*Dr Sylvia Jackson (Stirling) (Lab)
*Paul Martin (Glasgow Springburn) (Lab)
*Michael McMahon (Hamilton North and Bellshill) (Lab)
*Tommy Sheridan (Glasgow) (SSP)

COMMITTEE SUBSTITUTES

Colin Fox (Lothians) (SSP)
Mr Bruce McFee (West of Scotland) (SNP)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Dr Elaine Murray (Dumfries) (Lab)
Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Ken Crawford (Scottish Executive Enterprise, Transport and Lifelong Learning Department)
George Lyon (Deputy Minister for Finance, Public Service Reform and Parliamentary Business)
Tavish Scott (Minister for Transport and Telecommunications)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 6

Scottish Parliament

Local Government and Transport Committee

Tuesday 27 September 2005

[THE CONVENER *opened the meeting at 14:02*]

Interests

The Convener (Bristow Muldoon): I welcome all members to the Local Government and Transport Committee's 25th meeting of 2005. The first agenda item is a declaration of interests by the new committee member. I invite Andrew Arbuckle to declare any relevant interests.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): I declare that I am also a Fife Council councillor.

The Convener: I welcome you to the committee. I am sure that you will find that it is one of the busiest and most interesting committees. I look forward to your contribution to our deliberations in the forthcoming years.

Bruce Crawford (Mid Scotland and Fife) (SNP): I hope that you stay longer than your pal did, Andrew.

Civil Aviation Bill

14:03

The Convener: Agenda item 2 is the Civil Aviation Bill, which is United Kingdom legislation. We will take evidence from the Minister for Transport and Telecommunications on a motion in Margaret Curran's name, which says:

"That the Parliament agrees that the provisions in the Civil Aviation Bill, so far as they confer functions on the Scottish Ministers, should be considered by the UK Parliament."

I intend to proceed as we have before with Sewel motions. I will first give the minister an opportunity to outline why the Executive recommends that approach. I will then allow questions and answers—I ask members to steer clear of debate at that point. After that, we will debate the motion formally. Any questions that we want to ask the officials who are here to support the minister must be asked during the question-and-answer session, as only the minister can speak during debate on the motion. I invite Tavish Scott to give an introduction to explain the background to the bill.

The Minister for Transport and Telecommunications (Tavish Scott): On the principle that the committee is busy—I know that it will deal later with the Licensing (Scotland) Bill, in which I had a passing interest in a former life—I will not delay the committee unduly. By the standards of Sewel motions that we and the committee consider, I hope that today's motion is relatively straightforward and therefore painless. Ministers currently have a limited role with regard to aviation in Scotland, the most visible aspect being the planning and development of airports.

The United Kingdom Civil Aviation Bill is predominantly concerned with matters outwith our legislative competence. The bill will, among other things, implement a number of commitments to sustainable aviation that were included in the 2003 air transport white paper, "The Future of Air Transport". I recall the committee having an interest in the white paper at the time that it was published. However, the bill proposes adjustments to the range of functions that were previously conferred on Scottish ministers, including those to do with noise at airports.

Through the bill, the Sewel provisions will clarify and strengthen the measures that are available to airports for dealing with aircraft noise and provide, for the first time, explicit powers for airports to set charges that reflect local emissions from aircraft where there are local air quality problems. Scottish ministers will have powers to direct specified

airports to levy such charges, as is currently the case with regard to noise.

The provisions are narrow and technical in nature. Aircraft noise can cause annoyance and emissions can adversely affect the quality of life of those who live around airports. It is, therefore, important that the legislation that is designed to tackle those issues is fit for purpose. We believe that the new and amended powers will ensure that. The provisions make a series of improvements that will allow progress to be made in the delivery of a more sustainable aviation sector, which is consistent with the partnership agreement's commitment to safe and sustainable transport systems. I would be happy to try to answer colleagues' questions.

The Convener: Thank you very much, minister. Fergus Ewing has a question or two.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Good afternoon, minister. At the risk of destroying my apparent new reputation as something of a dour figure, I begin by stating that the SNP is inclined to support the measures, which would mean a modest transfer of powers to the Scottish Parliament.

Is it the Executive's view that the noise levels at Scottish airports are such that any action would be required? That is the key question to which many people would like an answer.

Tavish Scott: I thank Mr Ewing for his question and I thank the SNP for its support. Those of us who have flown over the years would probably notice the contrast between the BAC 111 of yesteryear and the modern Boeing 737, which has the kind of engineering capability that now goes into modern aircraft. I do not think that there is any question but that aircraft design has moved on, especially in relation to noise and emissions.

Ken Crawford will keep me right on this, but I think that the standards that are now kept across Europe—there are international conventions on these matters as well—are more exacting than they have ever been in the past. Therefore, I do not envisage a different regime—I hope that that answers Mr Ewing's question. We need high and appropriate standards right across the UK. What we must not do is set up regimes that are too lax; rather, we should have regimes that are appropriate and which deal with any issues concerning air quality and noise levels that emerge at the local level around our main airports. It is fair to recognise that aircraft design has moved on hugely in the past 10 to 15 years.

Fergus Ewing: Does the minister think that it would be beneficial if the Executive had more powers over aviation? In particular, does he believe that the Executive should have more power—indeed, primary power—over public service obligations and their application to specific routes, not least in the Highlands and Islands?

Tavish Scott: The issue goes wider than the new powers and concerns a more general point. I would always be happy to engage in a mature debate about such matters. I will answer Mr Ewing's specific question on public service obligations. The Executive already levies public service obligations in relation to some routes out of Glasgow to west coast destinations, and several local authorities use public service obligations for air transport, especially in the islands. The mechanism is in place and is available to us to use if that is the route that we decide to go down with regard to the Highlands and Islands. I am sure that Mr Ewing and I share the same policy objective—very much a partnership agreement objective—which is to reduce the cost of flying in those parts of Scotland.

Fergus Ewing: Perhaps another policy objective could be to increase the frequency of routes to and from the islands in particular.

In paragraph 1.39 of "The Future Development of Air Transport in the United Kingdom: A National Consultation—A Report on Responses to the Government's Consultation: Scotland", Highlands and Islands Enterprise expresses the view that the Department for Transport's estimates of passenger numbers in relation to the Highlands and Islands seem to be entirely at odds with local estimates by Highlands and Islands Airports Ltd and HIE. HIAL forecast 1.8 million passengers a year in 2030 but the DFT forecast only 800,000. I know that it is difficult to forecast over such a long period, but could the minister advise us as to whether the DFT is receptive to the idea that that disparity shows that we have much greater ambition than it is prepared to recognise? Is the minister concerned that the DFT's approach might be a problem for us, in that it does not seem to recognise the potential in the Highlands and Islands for more routes, including direct routes that do not go to and from London?

Tavish Scott: I accept the concern and can assure Mr Ewing that the DFT is receptive to the points that he raises and that there have been discussions at official level about the figures. I hope that I can assure the committee that the more, shall we say, optimistic approach that we in Scotland are taking will be reflected by the DFT in future.

It is important to recognise that, as Fergus Ewing well knows, Highlands and Islands Airports Ltd is the delivery arm—if I can use that expression—of airports and airport expansion in the Highlands and Islands. It is wholly owned by the Scottish ministers, who are accountable to Parliament. I have no concerns about our ability to keep a positive agenda moving in relation to the

role that air will play as part of the overall transport mix that we use to enable people to move safely and affordably around the Highlands and Islands. I feel particularly strongly about that agenda.

Mr David Davidson (North East Scotland) (Con): Earlier, noise was mentioned. Those of us in north-east Scotland are delighted that Aberdeen airport is, as they say, open all hours. That is possible because of advances in flight technology.

Can the minister assure us that the Executive will not seek to levy charges that are different from those elsewhere in Europe and that would render Scottish airports at a competitive disadvantage in relation to attracting new custom?

Could the minister give us clarity in relation to the use of helicopters? In Aberdeen, an important oil and gas supply system is based on helicopters, which are noisier on take-off than standard, fixed-wing aircraft. Will he also give us some clarity on the role of the charging? Is the position to be one of tolerance combined with charge levying or is the charge destined to do something else? Will it be applied to any particular spending line in Scotland?

Tavish Scott: I will ask Ken Crawford to respond to the last point, as it relates to a matter of detail. I can give Mr Davidson the assurance that he and the committee would want in relation to the competitiveness of our airports. The measures that we are discussing have to be appropriate and consistent. I take the point that Mr Davidson makes; it is entirely fair and is exactly the one that I made about this measure. I do not believe that it is impossible to take sensible measures in relation to environmental requirements at the same time as retaining competitiveness.

On helicopters, their flight patterns will be relevant and the fact that by definition they are vertical landing, vertical take-off aircraft and fly straight out. I am familiar with Aberdeen airport, not least because I have flown out of Aberdeen on a helicopter to the Britannia oilfield. I understand the issues. My understanding, from talking to the pilot and having had informal discussions with air traffic control, is that there are not the same concerns about helicopters because of the flight patterns that they follow.

One of the measures that has been taken in relation to fixed-wing aircraft is about noise minimisation during landing and take-off procedures. The example that most of us will be familiar with is when an aircraft lands at Edinburgh when it has flown from east to west. The plane comes in over the Firth of Forth and lands on the runway from that direction rather than flying over most of the city of Edinburgh. I accept that that does not help people who live in Barnton, but such measures are in place. I think that we have got the balance right. I am happy to come back to Mr Davidson and the committee on helicopters, in particular, if I have missed something out. I undertake to examine the issue.

14:15

Ken Crawford (Scottish Executive Enterprise, Transport and Lifelong Learning Department): On charging, if airlines did not meet noise control standards at the airports a surcharge could be imposed by the airport authority. At a designated airport the minister could direct the airport authority to levy the surcharge on airlines that are penalised for failure to meet noise control standards.

The Convener: Mr Davidson's other question was how any such income would be used.

Ken Crawford: It would go back to the airport authority.

Mr Davidson: If the money goes back to the airport authority and it has a miscreant aeroplane that comes in regularly, if the aeroplane cannot be modified will there be a requirement for it no longer to be used on a particular service?

Tavish Scott: That would be a logical extension of the argument. I could compare the situation to that which pertains at some of our oil ports, notably Sullom Voe. If a tanker has a persistent record of infringements of marine safety and there is any question of pollution or anything like that, the port authority, whether it is at Milford Haven or Sullom Voe, can take action against the vessel. It is logical that the same principle would apply in the example that Mr Davidson has given.

Mr Davidson: The minister might care to write to confirm that point to the committee before the motion goes to the chamber.

Mr Arbuckle: I note that there is no intention to specify the maximum number of aircraft movements. Those who live near large commercial airports might know the flight patterns, the flight numbers and so on, but there has been a growth in the use of privately owned aircraft, and on smaller airfields there is more intermittent use and there is more use at the weekends and in the evenings. Is there not a case for putting controls on the number of aircraft movements?

Tavish Scott: Aircraft movements would on the whole be an issue for the airport authority or the airport owner—whether it be a local authority in Dundee's case, the British Airport Authority in the case of the three main Scottish airports or the Prestwick management organisation in the case of Prestwick airport. That is an operational matter for them.

The appropriate way to answer Mr Arbuckle's question is to say that we have not considered it necessary to take any further action in that area, but I am sure that if members have particular issues we can examine them.

Bruce Crawford: The committee was provided with a useful memorandum from the civil servants. I have given some thought to whether at some future date—given that the European Union is already examining airports, emissions, noise and so on—there might well be European directives on issues to do with noise, vibration, emissions, take-offs and landings and so on. Once this power is in the hands of Scottish ministers, would it be your responsibility to transpose any European directive into Scottish law or would the responsibility still lie with the UK Government? Although the Government might not have any immediate need or requirement to impose particular regulations or charges, it might be asked to do so by another authority. Would Scottish ministers or the UK Government do that?

Tavish Scott: My understanding is that the position that Mr Crawford has outlined is the position that would arise. We—that is, the transport minister of the day—would have the responsibility were the European Union to agree a particular set of regulations in this area.

Bruce Crawford: I have another quick question that is related to the memorandum but perhaps not specifically to the Sewel motion. The memorandum says that the proposed legislation would lead to various relaxations of

"constraints on local authority airport companies".

Some airports run by Highlands and Islands Airports—at small places such as Wick, or places in the minister's own constituency—have to comply with regulations that are probably more relevant to larger city airports. Are our small airports covered by local authority airport companies, or are they still required to comply with the same level of regulations as the city airports? If the latter is true, what are we going to do about that?

Tavish Scott: I asked my team pretty much the same question. As far as I can judge, there are no great implications for the Wick airports of this world. They do not have the same level of traffic nor do they regularly have the same size of aircraft as the main airports. Inverness has 737s landing every day, and it is demonstrably a good thing that Inverness has such connections to London.

We do not envisage any circumstances in which Mr Crawford's worry would become an issue. However, Highlands and Islands Airports is responsible for all the operational airports in the Highlands and Islands that I can think of. There are very few other airports across Scotland at which the measures will be a particular worry to operators.

Bruce Crawford: Yes, but some of the relaxing of constraints on local authority airport companies—which are usually small—might have been usefully applied to some of the smaller airports run by Highlands and Islands Airports. If that is not going to happen, is there a good reason? Or could we make the case that it should happen?

Tavish Scott: I do not think of this in negative terms. The standards that will be applied will not cause difficulties for our smaller airports. Highlands and Islands Airports has been asked about it and, as far as I know, it has no concerns. The only other local authority airport that I can think of in this context is the airport at Dundee, but again I do not think that any concerns have been expressed. Unless I am missing the point, Mr Crawford, I do not really see the problem.

Bruce Crawford: Perhaps I am not making the point very well. There are other regulations outwith the powers that are being transferred to you, which have relaxed some of the constraints—within the confines of the UK bill—which apply to local authority companies. I was hoping that the same relaxations could apply to smaller airports in Scotland, to make life a bit easier for them.

Tavish Scott: But they would make it easier only if they were going to apply a duty on them, and it is not going to be a—

Bruce Crawford: No. It is not application of the duties that are being transferred to you; it is relaxation of other issues in the bill that are applying to local authority companies.

Tavish Scott: Ken. I have lost it.

Ken Crawford: Well—

The Convener: I am not sure—

Bruce Crawford: It is not related to the Sewel motion.

The Convener: Absolutely. All of us who have concerns about these issues might want to pursue them with colleagues at Westminster.

Bruce Crawford: Ken has an answer; he has been dying to chip in.

The Convener: Do not worry, Bruce. I will allow him to come in. But I think that the answer lies at Westminster.

Ken Crawford: The public airport company provisions in the Civil Aviation Bill relate to local authority airports. The provisions give the airports additional freedoms to enter into trading activities, rather than any regulatory activities. For example, the provisions apply to the Manchester Airport

Group plc, which could take over another airport and enter into commercial negotiations. Those provisions in the Civil Aviation Bill do not apply to Scotland because the Scottish Parliament can legislate on those issues.

Bruce Crawford: That answers the question.

Tavish Scott: I apologise for not getting it first time.

Bruce Crawford: That is okay.

Dr Sylvia Jackson (Stirling) (Lab): I hope that my questions are a bit simpler. Ken Crawford mentioned a surcharge. Is that the same thing as the penalties scheme that is mentioned in the memorandum?

Ken Crawford: That is right, yes.

Dr Jackson: My other question is on the regulatory impact assessment. Who was consulted? Was that done on a UK basis or has some consultation also been done in Scotland?

Ken Crawford: There was wide consultation on both elements of the Sewel provisions—on noise and on emissions. A separate consultation document on noise was issued in 2001 and a commitment from that was included in the UK Government's air transport white paper; that paper proposed legislative provisions to bring forward the recommendations of that consultation. The same is true of emissions. There was also a commitment on that in the air transport white paper. There was extensive UK-wide consultation.

Dr Jackson: So that included some consultation in Scotland.

Ken Crawford: Yes. There was extensive consultation in Scotland.

Dr Jackson: Who was consulted?

Ken Crawford: Everybody had an opportunity to respond, including individuals, local authorities, airport companies and airlines. It was one of the most extensive consultations on record, I think.

Dr Jackson: Okay. Thank you.

The Convener: That brings us to the end of questions. The committee's discussion on a Sewel motion does not have any formal status in the Parliament's procedures, but the committee can decide whether it wishes to recommend to the Parliament that it should agree to the motion. We now move into that debate.

I think that members are broadly content with the motion. If that is the case, do members wish to expedite proceedings by dispensing with the debate and recording that we intend to recommend that the Parliament supports the motion?

Mr Davidson: I hate to disagree, but we should not recommend that the Parliament supports the motion until we have seen the responses that the minister agreed to provide. There are technical issues; I understand from my colleagues at Westminster that some areas of the bill are a bit of a dog's breakfast. That might have an effect on us. We seek some clarity on the questions that we have asked. In principle I am not against what is being done, but I would like to see the fine print.

The Convener: If the committee is to make a recommendation, we need to make it today. As you have indicated that there is no consensus, we will need to have the formal debate about whether we wish to recommend the motion. On that basis, I invite the minister formally to propose that we proceed in the direction of recommending the motion. I will then open up the debate for general discussion and we will move to a vote at the end.

Tavish Scott: Thank you, convener. It would obviously have been helpful if I was able to answer the quite specific and technical questions that Mr Davidson fairly posed. He is entitled—as is any member of the Parliament, of course—to scrutinise a proposed piece of legislation, but I hope that we will be able to answer his questions as quickly as possible. They are specific and technical in nature and I hope that he will accept that they do not alter the couple of basic points in the Sewel motion that we are putting to the committee today. We have discussed those points in questions and answers this afternoon and, on that basis, I hope that the committee will agree to recommend to the Parliament that the Sewel motion should be agreed to.

The Convener: Can I see an indication of those members who wish to contribute to the open debate?

Fergus Ewing: I indicated earlier that the SNP is inclined to support the Sewel motion in this case because there is a transfer of powers, albeit a modest transfer of powers that are largely technical in nature. As you know, convener, we are always anxious to be constructive and we will naturally apply that approach on this occasion. It would be useful if the Executive would initiate a plenary debate on the role of aviation in growing the economy and in the opportunities that exist in Scotland. Of course, the SNP believes that it would be better if there was a far wider transfer of powers in other areas, but those are matters for another day, another debate and possibly another—and a different—Executive, so I will not dwell on them for the time being.

The Convener: The question is, that the committee agrees to recommend to the Parliament that the Sewel motion, in the name of Margaret Curran, on the Civil Aviation Bill, be approved. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)

ABSTENTIONS

Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 8, Against 0, Abstentions 1.

The committee therefore agrees to report to the Parliament recommending that the motion be agreed to. A copy of the committee's questions and answers will be available for members when we debate the Sewel motion in due course. I thank the minister for his attendance and Caroline Lyon and Ken Crawford for supporting him.

Licensing (Scotland) Bill: Stage 2

14:30

The Convener: In our stage 2 consideration of the Licensing (Scotland) Bill today, we will go no further than section 114. I aim for a finish time of approximately 4.30 pm, but that will depend on exactly how much progress we make. Members should have with them a copy of the bill, the marshalled list and the grouping of amendments. I welcome the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, George Lyon, and the Scottish Executive officials who are supporting him. If the minister is ready, we will go straight to consideration of amendments.

Section 26 agreed to.

Section 27—Application to vary premises licence

The Convener: Amendment 163, in the name of David Davidson, is grouped with amendments 164, 165 and 168 to 170.

Mr Davidson: The amendments would remove the requirement that a change in the manager of a premises should be classed as a variation, given the associated cost, time and bureaucracy that would be involved. We believe that it would be adequate for someone to hold a personal licence, with all the requirements that that involves. The board should not have to reconsider the application as if it were a complete variation of a premises licence; it should be adequate for the board to be notified that a new premises manager had taken over the running of the premises and to amend their records accordingly.

We seek to cut down the amount of bureaucracy that the bill still seems to require—I suspect through an oversight—and to simplify the procedure, enabling boards to intervene should they require to, but without incurring the huge costs associated with the variation of a premises licence. Through the amendments that the minister has lodged, we know that he shares that ideal and spirit. We are trying to be constructive; we are not trying to weaken the bill. We want to make the procedure easier and more cost effective, while still granting the security that is required.

I move amendment 163.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): I share David Davidson's objective, but I hope that he will see that, as I will explain, we have already taken cognisance of it and provided for it in the bill.

The amendments seek to ensure that a change in the premises manager does not require a variation of the premises licence under section 27. Instead, David Davidson seeks to make such a change an issue that needs to be notified to the board within seven days under section 46. I am aware that one or two licensing board clerks have taken the view that the requirement that a change in premises manager should be treated as a variation is too onerous, as managers may change frequently.

However, I am also aware that the issue has been misunderstood. It might be helpful if I explained further the effects. The amendments would require a change in the premises manager to be notified to the board. That would require filling in a form with the notification details and sending it to the board accompanied by the premises licence. The board would then update the licence and send it back. That is essentially what David Davidson proposes.

The bill as it stands classifies a change in premises manager as a minor, not a major, variation. That is perhaps where there is some misunderstanding. It would require filling in a form with the details and sending it to the board accompanied by the premises licence. On receipt of the form, the board would automatically grant the application. It would then update the licence and send it back.

As I hope the committee and Mr Davidson will see, the minor variation procedure, by which the board would automatically grant the application, is essentially a notification procedure. His amendments, therefore, would produce no practical difference at all. I appreciate that he is concerned to reduce bureaucracy and I share that aim, but I hope that he will accept that that has already been more than adequately catered for. Therefore, I ask him to withdraw amendment 163 and not to move the others in the group.

Mr Davidson: The minister mentioned that one or two clerks, who are skilled in these matters, have taken a view that the wording of the bill is inadequate and open to varied interpretation. Some of the trade bodies that approached me expressed extreme concern about that and their legal advisers have suggested to them that the amendments needed to be made to the bill.

The question for the minister is why the trade, the lawyers and the licensing clerks have come to the view that the wording of the bill is inadequate for the purpose. If the wording were clear, none of them would have raised the issue. However, they saw fit to raise it with the civil servants and with the minister, so I wish to press the amendment.

The Convener: The question is, that amendment 163 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 163 disagreed to.

The Convener: Amendment 38, in the name of the minister, is grouped with amendment 39.

George Lyon: The bill provides for different procedures on the variations to a premises licence, depending on whether the variation is a minor variation, which I spoke about earlier, or a major variation. Minor variations are simply notified to the board and automatically approved. The bill defines what are to be minor variations; all other variations are, by default, major variations. However, Sheriff Principal Nicholson expressed concern that the definition of minor variation in the bill was not precise enough and could allow some alterations to be approved that were not in essence minor.

Our policy has always been to provide a simple procedure for licensees to make small changes to their premises layout—moving shelves or adding optics, for example—which could be approved with as little bureaucracy as possible. Such changes are of little interest to the public and have no effect on the licensing objectives. However, it is important that changes in business activities, which should, of course, be major variations, cannot be disguised or passed off as minor variations, thereby bypassing the full scrutiny of a licensing board.

Amendment 38 introduces a new definition of a minor variation on changes to the layout of a premises. It would allow changes to layout plans to be treated as minor if they do not result in inconsistency with the operating plan, which is central to the licence. That formulation would allow licensees sufficient flexibility while preventing abuse.

Amendment 39 adjusts the definition of a minor variation on access by children, allowing a proposed reduction—I stress that it is a reduction only—in the amount of access allowed to children to be classed as merely a minor variation. A proposed increase in access by children would still

require a full determination procedure by the board and would be treated as a major variation.

I move amendment 38.

Fergus Ewing: I can see the logic of replacing the definition in section 27(6)(a) by that in amendment 38—indeed, one could say that the logic is robust. However, might that lead to application of the law of unintended consequences? As I remarked last week, the practice might develop that the operating plan would be framed on as broad a basis as possible so that it would be difficult to say that any particular change would be inconsistent with it. If the minister accepts that that is a risk—as a former legal practitioner, I can certainly see that those who frame operating plans might be advised to take that approach—is he concerned that the outcome might not be what the Executive intends?

George Lyon: That point has been well taken. I assure Fergus Ewing that we are aware that there might be a temptation to go for as broad an operating plan as possible. We have lodged amendments to deal with that and I will deal with those when we come to them, if that is okay with the committee.

The Convener: I should not really have let you come in there, minister, because other members want to speak.

Mr Davidson: I came across a situation recently in which somebody had reconstructed a barn restaurant premises and realised afterwards that it would have been far more sensible to have switched the location of the food and bar areas—two open areas with a slight partition between them. Is the minister saying that that sort of thing would be dealt with as a minor variation or would that be a complete change? The original application would clearly have stated that one area was primarily a restaurant and the other was primarily a drinking area.

George Lyon: Cases will be dealt with individually, but I expect that a change of that magnitude would be deemed a major variation.

Amendment 38 agreed to.

Amendment 39 moved—[George Lyon]—and agreed to.

Amendment 164 not moved.

Section 27, as amended, agreed to.

Section 28—Determination of application for variation

Amendment 148 moved—[Mr David Davidson].

The Convener: The question is, that amendment 148 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 148 disagreed to.

Amendment 149 not moved.

Section 28 agreed to.

Section 29—Variation to substitute new premises manager

Amendment 165 not moved.

Section 29 agreed to.

Section 30 agreed to.

Section 31—Transfer on application of licence holder

Amendments 40 and 41 moved—[George Lyon]—and agreed to.

Section 31, as amended, agreed to.

Sections 32 and 33 agreed to.

Section 34—Application for review of premises licence

Amendment 150 not moved.

Section 34 agreed to.

Section 35—Review of premises licence on Licensing Board's initiative

Amendment 42 moved—[George Lyon]—and agreed to.

Section 35, as amended, agreed to.

Section 36—Review hearing

Amendment 151 not moved.

Section 36 agreed to.

Sections 37 to 40 agreed to.

Section 41—Licence holder's duty to notify Licensing Board of convictions

Amendment 43 moved—[George Lyon]—and agreed to.

14:45

The Convener: Amendment 166, in the name of the minister, is grouped with amendments 59 and 61.

George Lyon: The amendments in the group increase fine levels for the failure of a holder of a premises licence or a personal licence and an applicant for a personal licence to notify the licensing board of a conviction for a relevant offence. We consider that both sets of fine levels have been set too low with regard to the seriousness of a failure to notify a conviction.

At the time of an application for a personal or a premises licence, notification is, of course, given to the chief constable, who will inform the board at that time of any relevant offences. Once the application has been determined, the holder is under an obligation under section 41, in relation to a premises licence holder, or section 73, in relation to a personal licence holder, to notify the board of any relevant convictions.

Section 66 caters for the period in between for personal licence applicants and ensures that there are no gaps. There is currently no equivalent to section 66 for premises licence applications, so we intend to lodge an amendment at stage 3 to ensure consistency of approach.

Sections 41 and 73 relate to premises and personal licence holders, who currently attract a fine at level 3 on the standard scale. The amendments provide for the fine to be increased to level 4. An offence by a licence holder is considered to be more serious than one by an applicant, because the period for which the licence is held is either 10 years for a personal licence or in perpetuity for a premises licence, whereas the period of an application is only a few weeks. In practice, that means a fine under section 66 of £1,000 and under sections 41 and 73 of £2,500.

I move amendment 166.

Amendment 166 agreed to.

Section 41, as amended, agreed to.

Section 42—Procedure where Licensing Board receives notice of conviction

Amendment 44 moved—[George Lyon]—and agreed to.

Section 42, as amended, agreed to.

Section 43—Provisional premises licence

The Convener: Amendment 167, in the name of David Davidson, is in a group on its own.

Mr Davidson: When a provisional premises licence is granted, no mechanism exists for it to be transferred or for a major variation to be made without the whole process having to start again from scratch. The aim of amendment 167 is to save time, money and lawyers' fees where a development is started and subsequently changed in design or layout or when ownership has to be transferred because the company is bought out or sold on, for example.

A safeguard is that a provisional licence cannot come into force unless it is confirmed under section 44, but section 44(5) excludes any changes

"other than a minor variation".

No variation other than a minor variation will be able to be made, hence the need for amendment 167. The point is technical.

I move amendment 167.

George Lyon: Amendment 167 is unnecessary. A provisional premises licence is a type of premises licence. Accordingly, references in sections 27 to 33 to a premises licence already cover a provisional premises licence. That means that a provisional premises licence may be varied or transferred if required. With that clarification, I hope that David Davidson will withdraw his amendment, as the bill caters for the matter.

Mr Davidson: I am a little puzzled by the minister's comment. If he assures me that everybody out there believes that to be the position and that the Executive will apply that interpretation, I will be happy to withdraw the amendment and to reserve my right to do something at stage 3. That depends on the minister's assurance.

The Convener: I do not want to reopen the debate. The minister has made his contribution. It is up to you to decide whether to press or withdraw the amendment.

Mr Davidson: I reserve my right to lodge an amendment later and ask to withdraw amendment 167.

Amendment 167, by agreement, withdrawn.

Section 43 agreed to.

Sections 44 and 45 agreed to.

Section 46—Notification of change of name or address

The Convener: Do you wish to move amendment 168, David?

Mr Davidson: I do, given what I said earlier.

I move amendment 168.

The Convener: The question is, that amendment 168 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 168 disagreed to.

Amendments 169 and 170 not moved.

Section 46 agreed to.

Sections 47 and 48 agreed to.

After section 48

The Convener: Amendment 45, in the name of the minister, is grouped with amendments 172, 51 and 60.

George Lyon: The amendments will ensure that boards must give notice of all their key decisions to applicants and to the chief constable and—in relation to premises licence and occasional licence applications—to any person who objected or made representations. Furthermore, boards will be required to give a statement of reasons for their decisions, but only if asked to do so.

By requiring licensing boards to give notice of their key decisions and to provide a statement of reasons for such decisions if asked to do so, Executive amendments 45, 51, 60 and 172 will present applicants with a fair and open procedure.

The provisions cover decisions on the following types of applications: applications for a premises licence; applications for variations of a premises licence; transfer applications; reviews; applications for a temporary licence; applications for a provisional premises licence; applications for occasional licences; applications for personal licences; and personal licence renewals.

I move amendment 45.

Tommy Sheridan (Glasgow) (SSP): When a person who has objected wants to receive notice under the bill of the reason why a licence was granted, will that person have to ask in writing for reasons or will other forms of contact be acceptable? Is that prescribed? Moreover, when people complain about the granting of licences or licence extensions, they often complain that they have not been kept informed of developments. I know that amendment 45 seeks to overcome that, but how would people find out about boards' decisions?

Bruce Crawford: I seek clarification on section 48—the fact that the new section that amendment 45 seeks to insert will come after section 48 gives me a chance to do that. Section 48 says that a premises licence application must be accompanied by a planning certificate and a building standards certificate, but the people who are involved in the running of Caledonian MacBrayne could not possibly produce such certificates in order to get a premises licence. In other words, the bill would mean that Caledonian MacBrayne would not be able to get licences for its ships. I apologise for raising the issue, but now is probably the most relevant point at which to seek to have it addressed.

The Convener: I think that Bruce Crawford is aware that his point is a bit broader than the subject of amendment 45 but, if the minister is prepared to address it, I am prepared to allow him to do so.

George Lyon: Any objector can request a statement of reasons for a board's decision. That will be supplied in writing or by e-mail, depending on the request. As Bruce Crawford rightly pointed out, it would be difficult for a Caledonian MacBrayne vessel or, indeed, a party limousine to meet the requirement under section 48 to obtain a planning certificate and a building standards certificate. We will deal with that issue later in the bill's consideration.

Amendment 45 agreed to.

Sections 49 and 50 agreed to.

Section 51—Dismissal, resignation, death etc of premises manager

Amendment 46 moved—[George Lyon]—and agreed to.

Section 51, as amended, agreed to.

Section 52 agreed to.

Section 53—Occasional licence

The Convener: Amendment 171, in the name of the minister, is in a group on its own.

George Lyon: Amendment 171 is consequential to amendment 22, which was dealt with last week. It seeks to bring occasional licence applications into line with premises licence applications by

setting out the minimum information to be contained in the draft operating plan for occasional licence applications. It will ensure that applicants must specify their proposals on access by children. However, to avoid unnecessary bureaucracy for occasional licence applicants, who may be representatives of voluntary associations, we do not propose to require those applicants to provide the information on capacity that is required for premises licence applications. In practice, we would expect that information to be made available to a board if it requested it, which it might do for larger events, for example.

I move amendment 171.

Mr Davidson: I have a question for the minister. In the round, I accept what he has said, but will he confirm that amendment 171 will still allow for the holding of wedding receptions and so on? We do not want to make the system too complicated or too rigid because, when people respond to a wedding invitation, they often do not relate how many children they intend to bring with them or what age the children will be, for example. An element of discretion must be involved. The issue could apply not just to an application for an occasional licence by someone who wished to serve alcohol in a tent in a garden, but to an application for a premises that was used regularly as a ballroom facility.

Tommy Sheridan: For the record, I invite the minister to elaborate on what he meant when he said that providing information on capacity in an occasional licence application would involve excess bureaucracy. We do not want to be killjoys by preventing people from having wedding parties or other forms of celebration, but he will know that tragedies are more likely to happen at occasional, irregular events at which building regulations and other requirements have not been as strictly observed as normal. Is he confident that there will not be problems if occasional licences are sought for premises that are far too small or inadequate for a particular event? I know that he hopes that the boards will deal such eventualities, but, for the record, does he have any instruction on that?

15:00

George Lyon: The point about licensed premises when there is a wedding will be dealt with in subsequent amendments. In relation to Mr Sheridan's point, I say that the issue is about getting the balance right. As he well knows, many voluntary bodies rely on being able to hold one fundraising occasion a year. In my constituency, the local football team has one event a year to raise the bulk of the moneys to ensure that the kids can play football for the year and travel to away games.

We must get the balance right and not put onerous requirements on such bodies to supply the information on capacity. In some instances, those bodies would need to go to the councils and building control to find out the relevant information. Clearly, if boards have concerns, they can request the information before they grant a licence.

I hope that we have got the balance right so as to enable such occasional events to take place in support of good and worthy causes that we would all support. If there are concerns, the licensing board will have the right to step in and request further information. I hope that Mr Sheridan will accept my reassurances on that matter.

Amendment 171 agreed to.

Section 53, as amended, agreed to.

Section 54 agreed to.

Section 55—Objections and representations

Amendment 152 not moved.

Amendment 47 moved—[George Lyon]—and agreed to.

Section 55, as amended, agreed to.

Section 56—Determination of application

Amendments 48 to 50 and 172 moved—[George Lyon]—and agreed to.

Section 56, as amended, agreed to.

Section 57 agreed to.

Schedule 4

OCCASIONAL LICENCES: MANDATORY CONDITIONS

Amendment 153 not moved.

Amendments 52 to 58 moved—[George Lyon]—and agreed to.

Schedule 4, as amended, agreed to.

After section 57

Amendment 51 moved—[George Lyon]—and agreed to.

Section 58—Licensed hours

The Convener: Amendment 173, in the name of the minister, is grouped with amendments 174 and 175.

George Lyon: These amendments bring us back to an issue that was raised in the previous debate. There has been much discussion about occasional extensions of licensed hours under the new system. Occasional extensions are a feature of the Licensing (Scotland) Act 1976, which allows licensing boards to grant ad hoc additional

opening hours to individual licensees for unforeseen special events, such as wedding receptions. In addition, many boards currently offer general dispensations to licensees of an additional hour or two of opening time to cater for special events of wider interest, such as hogmanay, the tall ships race and Christmas.

In its stage 1 report, the committee asked us

"to provide for a system of occasional extensions in certain tightly-defined circumstances".

We are content to do so, but this is a difficult issue and I hope that the committee will appreciate that it is important to have a system that works in practice. We have lodged amendments to implement part of that policy and we intend to deliver the rest of them at stage 3.

Executive amendment 175 seeks to introduce a power for boards to make general dispensations on licensed hours in relation to special events of national or local significance, including Christmas and new year. The power is drafted to provide flexibility for boards in deciding how it should be applied.

We will lodge an additional amendment at stage 3 that will allow individual licensees to make applications for extensions of hours for specified occasions. Such applications would be dealt with by a simplified procedure involving notification to the chief constable, who may choose to object, and to the licensing standards officer, requesting any comments. The board would be given power to delegate the decision-making process and the decision would be appealable. Amendment 173 is consequential to amendment 175.

Amendment 174 would delete section 58(2), which provides that a licensee need not open during all of his licensed hours. That addresses an issue that was raised in the committee this afternoon, of which we were also made aware by the trade: that it is likely that some licensees will use a standard operating plan that has been drawn up by their advisers to apply for the widest range of activities possible and for the maximum hours available, whether or not the licensees have any intention of using them.

From the point of view of licence holders and their advisers, such an approach would presumably have two advantages. First, it would reduce the need for future licence variation applications. Secondly, it would block the market to competitors, particularly in areas that are considered by licensing boards to be overprovided for. To prevent that practice, we need to require, in general, that licensees must open for their licensed hours. That means removing the provision carried forward from the 1976 act that stated that that was not necessary.

Our understanding is that the provision in the 1976 act was intended to prevent a breach of a licence occurring when a licensee had to close premises for personal circumstances, such as holidays or illness. Paragraphs 2 and 3 of schedule 3 already require licensees to abide by their operating plans. The removal of section 58(2) would require licensees to operate in accordance with their operating plan with respect to abiding by their opening hours as well. The purpose of removing the provision is to prevent licensed premises from applying for licensed hours that they do not intend to use.

Let me clarify what I mean by "abiding by their opening hours". Operating plans have been introduced to provide a flexible licensing regime. They are intended to give boards as clear an idea as possible of how the premises are to be run. They should not, however, be read prescriptively like a conveyancing document, but rather as a business plan. In deciding whether there has been a breach, the board must ask whether the licensee is abiding by the business plan. The board has to take a commonsense approach. When, for example, it is asking whether the licensee is abiding by the opening hours, the board must make allowance for holidays, sickness, bereavements and other normal business factors before calling any breach of the operating plan.

I move amendment 173.

Amendment 173 agreed to.

Amendment 174 moved—[George Lyon]—and agreed to.

Section 58, as amended, agreed to.

Section 59 agreed to.

Section 60—24 hour licences to be granted only in exceptional circumstances

The Convener: Amendment 1, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford: Amendment 1 attempts to follow through a recommendation that the committee made on page 65 of its stage 1 report on the bill. The report states:

"The Committee is not yet convinced that 24 hour drinking is required in Scotland, even in exceptional circumstances … the Committee considers that 18 hours is a more appropriate cut-off point than the 24 hour limit set out in the Bill."

Why did we come to that conclusion? The exceptional circumstances test in section 60 would be triggered only at the 24-hour mark. As Sheriff Principal Gordon Nicholson said in his written submission, the test

"would not be triggered at all if an applicant were to stipulate an opening period of 23 hours and 59 minutes; but such a period would be likely to be seen as being just as

objectionable as a period of precisely 24 hours. Consequently, if this provision is to remain, I would respectfully suggest that the trigger point should be a number of hours just beyond what might normally be regarded as acceptable – say, 18 hours or something around that figure."

Alcohol Focus Scotland also expressed concern that the test is not robust enough. It stated:

"We can see no circumstances where 24 hour drinking is in the public interest",

even

"in the case of festivals or other special events".

Alcohol Focus Scotland is entitled to its view on that particular issue, but it also stated:

"We are also concerned the wording that such licences 'be granted only in exceptional circumstances' may not prove sufficient. One only has to look at the existing legislation to find examples of measures that were intended to be 'exceptional' but have in practice become routine."

So there are two arguments. The first is the important point that, for opening periods of 23 hours and 59 minutes, the exceptional circumstances rule would not kick in. Therefore, we need a bit of room. As the committee came to its conclusion for good reasons, I hope that members will support amendment 1.

I move amendment 1.

Tommy Sheridan: I, too, remember Sheriff Principal Nicholson's comments, as I was struck by the point that he made. However, I wonder whether the minister will accept the point or whether Sheriff Principal Nicholson has misinterpreted section 60.

All committee members expressed concern at the suggestion that an application to open for 23 hours and 59 minutes would not spark off the rule about exceptional circumstances. Amendment 1 allows us to state for the record that the changes we are making to licensing law are not about introducing 24-hour drinking. There has been a lot of publicity about the fact that that will happen, so it is important that the committee is on record as saying that that is not what we expect to happen. Amendment 1 would help to tighten the provision further and would, I hope, allow the rule about exceptional circumstances to be used in relation to applications for a much shorter timeframe. I strongly support the amendment.

Mr Davidson: My colleagues in Westminster certainly support a maximum of 18 hours. In the research that I have done—not physically, but from my desk—I have not come across any licensed establishments that are open for more than 17.5 hours, although some could be. The proposed change would not affect the marketplace, as hours could still be varied over a 24-hour period. I support amendment 1.

Michael McMahon (Hamilton North and Bellshill) (Lab): David Davidson touched on the issue on which I seek clarification from the minister. I agree with Bruce Crawford that 18 hours would be sufficient—all members agreed on that.

I would like to hear the minister confirm whether we are talking about the same thing, in that a 24-hour period for opening is not the same as an 18-hour provision for opening. The flexibility that he is talking about is for premises to be open for 18 hours within any 24-hour period. It is a matter of interpretation. If the minister interprets it that way, both sides are right.

We said in our report that we were concerned about a premises being open for 18 hours, but if the minister tells us that the bill allows for a 24-hour period in which a premises can be open for 18 hours, we are in different territory. I would like the minister to clarify that for me. If he can do that, amendment 1 is not necessary and we can still hold to what we said in our report about not wanting licensing boards to grant a specific premises permission to be open any more than 18 hours.

15:15

Fergus Ewing: Section 60 applies where, if the application were granted, the licensed hours for the premises would allow the sale of alcohol during a continuous period of 24 hours. Unless that provision is amended, it seems to me that the establishment could be open for a continuous block of 24 hours—and the wording of section 60 goes on to say "or more". I found that slightly puzzling, because as far as I know there are 24 hours in a day, not 25 or 26, but presumably that phrase refers to something else. Perhaps the minister can explain why the phrase "or more" is there and what it means.

The point that I really want to ask the minister about is this. Bruce Crawford referred to paragraph 306 of the stage 1 report, which expressed the concerns that we received from Alcohol Focus Scotland. I do not think that he alluded to the other part of Alcohol Focus Scotland's evidence referred to in our report, which said that it was concerned that "exceptional circumstances" might "in practice become routine". At the moment, the minister might say that the safeguard is that such licences would be granted only in "exceptional circumstances", but there is a widespread feeling that that phrase could be interpreted in such a way as to allow extensions to be granted routinely. Perhaps I have missed it, but I have not seen any definition of "exceptional circumstances".

That may be something the minister will need to look at if he is not prepared to accept amendment 1, but I certainly think that 18 hours out of 24 is enough. It is difficult to see why you would want premises open after 4 am or whether it would help anybody in the premises if they had been there for goodness knows how many hours until 4 am. I just cannot see the point of that, so I hope that the minister will accept amendment 1.

Paul Martin (Glasgow Springburn) (Lab): My question follows on from Fergus Ewing's comments. I would like the minister to ensure that we do not have 24-hour drinking and I seek assurances on that issue specifically. But this is also an issue for the board, because there are opportunities for individuals who want to involve themselves in 24-hour drinking to do that even if premises are prevented from remaining open continuously.

In Glasgow, for example, there are premises where, if you put your mind to it, you could find yourself involved in 48-hour drinking. I stress that I am not talking from personal experience. We must be clear about the need for the board to take specific decisions and to take local intelligence about how premises operate into account. I seek assurances not only that we can deal with 24-hour drinking but that local boards will have the opportunity to take decisions to ensure that individuals cannot continue drinking for many hours.

The Convener: As Bruce Crawford said, the committee raised this issue in its report and it is an issue of particular concern. There are two sides to the matter. The first is premises being open for more than 18 hours. It does not appear to me that there are many premises in Scotland, if any, that have a desire to open for longer. Except in exceptional circumstances, I do not know why we would want to open up the opportunity for longer opening hours.

The other side to the matter is the one Paul Martin raised. The minister's predecessor, Tavish Scott, travelled around Glasgow and saw some of the problems and disruption that can be caused in the centre of Glasgow. The problems are not unique to Glasgow and occur in many other towns and cities in Scotland. The issue that Paul Martin raised is that if people could move from one premises to another, thus being able to continue to drink into the early hours of the morning, that could lead to greater problems in our city centres—problems of antisocial behaviour, problems for the police to deal with and the problems that are debated in the media today, of people putting themselves at risk of harm from such behaviour.

I ask the minister to tell us how the bill, as it is currently worded, would deal with those issues. If he is not minded to support Mr Crawford's amendment, I ask him to explain clearly why.

George Lyon: Paul Martin made the point that current operating hours under the Licensing (Scotland) Act 1976 permit someone in Edinburgh or Glasgow to buy alcohol 24 hours a day. Among my visits to hostelries in Edinburgh, I have visited the Scotsman bar in the High Street. It opens at 6 o'clock in the morning to cater for shift workers who finish at that time. The bar is open from 6 o'clock in the morning until 11 o'clock at night. Under the existing provisions, it is possible to buy alcohol 24 hours a day, but that is a completely separate point from an establishment being open for 24 hours a day—we need to draw that distinction up front.

I also state from the start that the Executive is firmly against 24-hour drinking. We are wholly opposed to it. Misinterpretation of the proposed new system by the media and others has led to fears that the bill would promote 24-hour drinking. We believe that that is not the case. There is a presumption against 24-hour drinking in the bill, which should help to allay those fears. The bill ensures that 24-hour opening is granted only in exceptional circumstances, as committee members have said.

In response to the committee's concerns, I clarify that we intend exceptional circumstances to refer only to special events; the provision will not apply to applications from, for example, a supermarket or other shop that sells food 24 hours a day. In addition to ensuring that that is clearly spelled out, we intend to set that out in the statutory guidance to licensing boards. We stress that the boards must have regard to the guidance that we will issue on the presumption against 24-hour licensing.

On the basis of evidence that was given to the committee by Alcohol Focus Scotland, Mr Crawford considers that the provisions set out in the bill should apply to applications for premises to open for more than 18, rather than 24, hours. That view was also supported by Sheriff Principal Nicholson, although it was not a recommendation of the Nicholson committee. AFS's arguments are based on an assumption that supermarkets will want to sell alcohol for 24 hours a day and on an incomplete understanding of the differences between the position in Scotland and the position in England and Wales.

The policy in England and Wales is that 24-hour opening is acceptable. There is no presumption against 24-hour opening in the legislation for England and Wales. The guidance is explicit:

"With regard to shops, stores and supermarkets, the Government strongly recommends that statements of licensing policy should indicate that the norm will be for

such premises to be free to provide sales of alcohol … at any times when the retail outlet is open for shopping".

That is not and has never been the policy in Scotland. Our guidance will make it crystal clear that the approach that has been taken south of the border is not the one that we are taking up here and that we are firmly against 24-hour opening.

I ask the committee to consider the issues in the context of the bill's overall framework. The point of abolishing national opening hours is to allow longer or shorter opening hours to be agreed that favour local circumstances and local communities. The local licensing board will take the decision whether to have longer or shorter opening hours and whether to grant an application that, for example, seeks an opening time of 23 hours 59 minutes. I imagine that every board will turn down such applications.

Hours are agreed as part of the operating plan and are subject to national and local licence conditions. Boards might decide to allow longer opening hours only in conjunction with other measures such as closed circuit television or other appropriate restrictions. In response to concerns that Paul Martin and Michael McMahon expressed about antisocial behaviour linked to the opening hours and licensing conditions of premises, if the boards receive complaints from the local community, the boards will have the power, first, to issue a warning and then to vary conditions and shorten premises' hours. They also have the ultimate sanction of removing licences from premises that are causing problems.

In summary, I assure members that boards will be required not to grant applications for 24-hour opening and will receive guidance on that matter and that they will have powers to deal with specific problems with licensing hours. Communities will have the right to complain formally to boards if they believe that the hours that have been granted are causing problems and that premises are open too late. As I have pointed out, boards will then have the power to issue a warning and then to restrict hours in response to the community's needs. If that does not deal with the complaint, the boards can withdraw the licence completely.

New licensing standards officers will be able to monitor the premises and highlight any difficulties. If communities raise concerns about the opening hours that have been granted in the original licence, licensing standards officers will be able to take those concerns back to the board and ask it to review the licence.

Anyone, including the police, has the right to complain about the opening hours for a particular premises and any such complaints will result in a review of the licence. When boards review a licence, they can reduce the opening hours and, ultimately, withdraw the licence.

AFS and the committee are also understandably concerned about the health problems caused by alcohol. Although the bill goes a very long way towards meeting those health concerns, it is not the sole answer to Scotland's drinking disease and should not be treated as such.

Hours should be based on local circumstances, the needs of local communities and local decision making backed up by the very extensive range of powers and controls that we seek to give boards to deal with communities' complaints and concerns. As I have made clear, we believe that boards should have the power to decide on licence applications and the hours that have been requested and to address any problems that might arise by reducing opening hours or withdrawing licences.

I hope that my assurances that we will issue strong guidance to boards and that boards will have strong powers to deal with these matters go some way to meet the committee's concerns and that members agree that fixing a lower and arbitrary limit on the maximum trading day is not the answer. As I have pointed out, boards will have the ultimate responsibility of setting hours for individual premises and, if there is a problem, reducing those hours.

In light of those comments, I ask Mr Crawford to withdraw amendment 1.

The Convener: I invite Bruce Crawford to respond to the debate and to indicate whether he wishes to press amendment 1.

Bruce Crawford: I will certainly press amendment 1. Although the minister's lengthy answer covered a lot of ground, he moved off the main issue to other areas that, although important, just camouflaged the real argument.

For a start, how is the reference to 18 hours in my amendment any more arbitrary than the reference to 24 hours in the bill? It just happens to be a number. The minister could have chosen to make the length of a licence 30 hours or more.

The minister also said that he would issue other guidance on special events. I wish that that guidance had been issued earlier; after all, in our report, we requested the Executive to provide, ahead of stage 2, further evidence on why this cut-off point was selected. Now the minister has introduced a new category of "special events" for which we have no definition.

Paul Martin's point about 24-hour drinking is entirely right and the minister dealt with that appropriately: yes, one can have 24-hour drinking. However, that is totally different from 24-hour

drinking in a single establishment: one can move around to seek other opportunities if one wishes.

David Davidson is right to say that no one in the trade wants to be open for more than 17 hours. If one speaks to those in the trade they will say that 17 hours is the maximum they want to be open for. The market is not demanding an exceptional rule around the 24-hour mark.

15:30

The minister said that there is a presumption against 24-hour drinking, but that is not a presumption against 23 hours and 59 minutes drinking. We are drawing a heck of a fine line on where presumption falls. The minister has not gone as far as Sheriff Principal Gordon Nicholson. I accept that the Nicholson report said something different, but in his personal evidence to the committee the sheriff himself said something quite specific to us about 24-hour drinking.

Minister, you said that local boards might not want to accept licence applications for opening times of 23 hours and 59 minutes, but it is more of a hope than a conviction because we do not know what local boards will do. If you were so convinced that local boards would turn down such applications, why did you not tighten the hours down to 18, as then it would not matter?

If the minister had said that he might be prepared to lodge an amendment to grant a licence beyond 18 hours in exceptional circumstances, I think the committee would have come to a consensus, but he has not lodged such an amendment. He has not convinced me in any way, shape or form that the committee should change the opinion it formed on the basis of the evidence it heard. Therefore, I intend to press my amendment and hope that members will come to the same conclusion as I have.

Dr Jackson: May I ask a question?

The Convener: I do not want to reopen the debate.

Dr Jackson: We have heard new evidence.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 1 disagreed to.

Section 60 agreed to.

After section 60

The Convener: Amendment 5, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford: On this occasion, I cannot cite weighty tomes from the committee to back up my argument. However, judging from the voting, it would not have made any difference anyway.

We have received evidence on ensuring that off-licence premises—whether they are the local grocer or, more likely, the supermarket—could not sell alcohol between 11pm and 8am. As it stands, the bill could mean that alcohol could be sold at all hours of the day and night from off-sales stores and supermarkets.

All the statistics show that alcohol misuse is on the rise, not just among young adults but, more alarmingly, among young people and children. I do not want to repeat all the depressing statistics, but some of them are important enough to bear repeating. One in 30 deaths in Scotland is alcohol related; there has been a 13 per cent increase in the number of patients admitted to general hospitals; and there was an upward trend in the prevalence of underage drinking between 1998 and 2001, with the largest increase being among girls aged 15. The Executive's figures show that the cost of alcohol misuse has risen from £1.07 billion to about £1.13 billion in 2002-03. No one can dispute that Scotland has, unfortunately, a bevvy culture.

That is where we are, although I do not like it and I wish that we could move on. However, we are not ready to move to possible 24-hour alcohol sales, whether they take place in the premises of small individual operators or in supermarkets. I will cite three main reasons for that argument. First, we need to recognise that some off-licences—albeit not all, as we have some good operators—act as focal points for antisocial behaviour in many communities. To communities that are affected by that scourge, the bill must send out the message that they will have some respite because we will guarantee that local off-licences will not open between 11 o'clock at night and 8 o'clock in the morning. There is no reason why licensing boards could not be more restrictive than that—it is arguable that they should be more restrictive—but communities would have some respite that was guaranteed on the face of the bill.

The second reason concerns what might happen when people spill out from pubs and clubs into the streets of Scotland's cities and towns. When our pubs and clubs empty, the last thing that we need is for individuals to be able to access off-licence premises so that they can consume even more alcohol. Our police have a big enough job in trying to deal with the situation at the moment.

Thirdly, the evidence that we received from the Scottish Grocers Federation explains the real impact that the bill would have on the market. The federation's letter of 20 May states:

"The Scottish Grocers' Federation represents just under 2,600 licensed convenience stores throughout the length and breadth of Scotland … A lot of these stores form the hub of the local community and in most cases their very existence depends upon the fact that they possess an off-sales liquor license."

If we grant the opportunity for 24-hour opening—under the bill, a period of 23 hours and 59 minutes would not be deemed exceptional—local boards will grant that opportunity to supermarkets, which will then be able to sell these products for 23 hours and 59 minutes each day. What will that mean for the market? Either the market will grow, with more people drinking alcohol and alcohol abuse becoming more prevalent, or the market will move from the 2,600 grocers to the supermarkets, with the result that the supermarkets will be the gainers and Scotland's grocers will be the losers. Given that reality, we are in danger of requiring small off-licence holders to extend their opening hours to offset the trade that they have lost and which has been gobbled up by the supermarkets. That would be unsatisfactory and we should not allow it to happen.

There are good reasons for the bill not to be allowed to proceed as it is. Amendment 5 deals with an issue that is significant in Scotland. We ain't ready for the move that the bill suggests; I wish we were ready, but we just ain't. Given the potential impact on Scotland's health and on crime levels, and given the potential either for the market to move away from the small grocers or for an increase in consumption, with the inevitable consequences that that would have for health, the bill as it stands is not acceptable.

I move amendment 5.

Michael McMahon: Just as in our debate on amendment 1, the issue in this debate should not be whether we find it acceptable that certain premises should open at particular times of the day. We need to be as flexible as we can to take account of particular circumstances.

Having done shift work in a factory, I know that guys who have done a 12-hour night shift in a welding shop might want to pick up a couple of cans of beer on the way home. Bruce Crawford would not allow them to do that, because amendment 5 would mean that the off-licence could not open until 8 o'clock. If someone's shift finished at 6, he would not be able to have a couple of beers afterwards. We need that type of flexibility. Practical experience teaches that.

If we were to be as prescriptive as Bruce Crawford wants to be in restricting off-licence opening hours, we would be telling an awful lot of people, "You have no choice, as we have decided that you are not allowed to do this, despite your lifestyle and circumstances." We should not impinge on people's lifestyles in that way.

I agree that excessive drinking or drinking for long periods of time is a bad thing. I also agree that giving licences to premises that cause problems in communities is a bad thing. However, that is not the case in every circumstance. Some people are able to drink reasonably at different times of the day. Amendment 5 would tell people, "We know better than you, so we will take charge of the lifestyle that you may or may not have." That is a very dangerous road to go down. There must be a degree of flexibility in the system, and we must trust local licensing boards to take account of local communities' circumstances and to be aware that people have lifestyles that do not always match what we would consider to be acceptable.

Tommy Sheridan: An omelette has never been made without an egg being cracked. There is a difficulty with what we are discussing. People talk about the need to curb or discourage excess drinking in Scotland and to recognise the social costs of drinking, but whenever a measure is proposed that may restrict the availability of alcohol in any way, there is talk about personal freedom and more flexibility, which Michael McMahon has talked about. The idea that we will put restrictions on shift workers who want to have a wee drink after a long shift is nonsense. Shift workers will not be restricted before their shift, in the couple of days at the weekend or whenever, from buying alcohol to put in the fridge for drinking when they get home.

Bruce Crawford's timescales are, if anything, too flexible—perhaps I will return to that matter at stage 3. Refusing a licence to an off-licence to sell alcohol after 11 pm involves too long a timescale. Off-licences should be restricted even more, so that they can sell alcohol only until around 9 pm because, in many communities in housing estates throughout Scotland, they become congregation points for groups that are intent on buying as much bevvy as possible, particularly if cheap offers are on the table. People in such groups want to consume that bevvy as quickly as possible and to hang about the area. They can be difficult to deal with at that time of night, but if the bill

stated an earlier time after which alcohol could not be sold, that might make it easier for the groups to be moved on and for behaviour to be nipped in the bud before it gets out of control.

If the committee wants to discourage more general alcohol abuse, it must try, at least, to give some direction. If that is interpreted as nanny statism, so be it—actually, I have always thought that nannies are good. We should reject the idea that we should not try to restrict the sale of a dangerous drug—we should try to do so. I would prefer a shorter selling period at night, until 9 pm. However, I am prepared to vote for what is on offer at the moment and perhaps to lodge an amendment at stage 3.

Mr Davidson: A number of issues were raised last week by the minister, who appeared to refuse to curb promotions or to attempt to deal with them in off-sales. What Michael McMahon said was more about personal responsibility than freedom, but the two go hand in hand—freedom comes with responsibility. Most long-term health or public disorder problems seem to relate to the way in which underage people get hold of alcohol or to promotions with excessively reduced prices. Responsibility goes out of the window, and amendment 5 would do nothing to prevent that.

On my way back from Hungary the other morning, I drove past an all-night supermarket, which was wide open. I could not believe the number of people who were in it at almost 4 o'clock in the morning. Many of them were shift workers—there can be no argument about that, as there is no other reason for people to go out shopping with cars and vehicles at that time of the morning. I accept what Tommy Sheridan said. If people want to plan their week and do their shopping at the weekend, they can do so, but surely the amendment would not reduce the underage acquisition of alcohol—which is a major problem—in any way. People can stock up on alcohol and store it in a garage or in somebody's garden shed. If they are going to go out and misbehave, they will do so whether they get alcohol from an off-licence or already have stocks at hand. Underage drinkers have told me that they often manage to accumulate a stash, as they call it, and then go to a park or somewhere to demolish it. Amendment 5 does not capture the essence of what we were trying to say in the stage 1 report.

15:45

Dr Jackson: The thing that worries me most is that Bruce Crawford is using the same argument that he used for amendment 1. He seems to assume that 23 hours and 59 minutes will be the norm, and that people and boards will think that that is okay. As the minister said, a lot will depend on the statutory guidance that will be issued. In order to give reassurance, I ask that we be given the guidance as soon as possible. This question shows that I do not understand the process as well as I should, but will that guidance be mentioned in the bill, the policy memorandum and the explanatory note? Given that there are to be community representatives on forums and boards, they should have easy access to information on the statutory guidance.

Paul Martin: Tommy Sheridan and Bruce Crawford made the point that a start has to be made to the process of tackling alcohol abuse, but we must make the right start, not just start for the sake of it. On the face of it, Bruce Crawford's proposal seems like a good idea, because it aims to reduce the opportunities for people to access alcohol. However, there is no evidence to prove that, so it might not make a difference. His proposal also does not address Tommy Sheridan's point that people could stock up on alcohol to access it at other times. We need detailed evidence to show that reducing opening hours will make a difference. As Michael McMahon said, it is a balancing act. There are people who are entitled to alcohol at certain times who are responsible, but that has to be balanced against antisocial behaviour. I would go further than 9 o'clock in some housing schemes in Glasgow, because some licence holders clearly are not responsible.

Bruce Crawford's proposal is not backed by evidence to show that the hours that he specifies would make a difference. Our report mentioned the principle of reducing hours, but at no time did we specify the hours. Bruce Crawford is being disingenuous by saying that we are not supporting the stage 1 report.

Bruce Crawford: I did not say that.

Paul Martin: You did. You said in your last contribution that we are not supporting the stage 1 report. We support the principle of examining opening hours and not having 24-hour alcohol abuse. We need to look at ways in which we can go forward.

Mr Arbuckle: The heading of section 60 is:

"24 hour licences to be granted only in exceptional circumstances".

That puts it fairly. It is down to local licensing boards. As section 60(2) states, the board

"must refuse the application unless … there are exceptional circumstances".

Surely that gives the flexibility that is needed for people who shop at different times and so on. Members who speak in favour of amendment 5 are trying to deal with society's alcohol problem, but it will not be cured by fiddling about with the number of hours that premises are open.

The Convener: I have some sympathy with Bruce Crawford's amendment 5, because I have great fears that if we go down the road of making off-licences available into the early hours of the morning in many of our towns and cities, antisocial behaviour will be exacerbated. That is a different issue from the total amount of alcohol consumption in Scotland.

I am not necessarily suggesting that there would be a huge difference one way or the other in the total amount of alcohol consumed if we agree to Bruce Crawford's amendment; I think that amendment 5 raises the issue of antisocial behaviour in our towns and cities. It would concern me if people who have already consumed an amount of alcohol were to come out of a nightclub at 2 or 3 o'clock in the morning and have the opportunity to purchase more alcohol to consume in the streets. That might put greater pressure on our public services and communities.

My concern about the guidelines is, simply, that they are only guidelines; they give the boards the flexibility to make differing decisions. I am concerned by the fact that boards across Scotland have made decisions that have not been consistent and have not always been in the best interests of their communities. What reassurance can the minister give that some curb can be placed on the availability of off-licences so that our towns and cities do not become even greater havens of antisocial behaviour than they already are?

Tommy Sheridan: Convener—

The Convener: The minister has the opportunity to respond to the debate at this point.

Tommy Sheridan: I would just like to make a small point.

The Convener: Every member of the committee has had the opportunity to contribute to the debate; it is for the minister and Bruce Crawford, as the mover of the amendment, to respond to what has been said.

George Lyon: The committee is clearly concerned about this issue. The argument comes down to the same question that was raised in the previous discussion: should we trust local boards to respond to the needs of their communities or should we impose decisions from the centre?

Michael McMahon and Paul Martin raised the key issue, which is to do with concerns about antisocial behaviour versus the accessibility of off-licences to those who work unusual shifts. Clearly, neither you nor I are best placed to decide what the right operating hours are for a particular area; the local boards have the democratic right to do that and the knowledge of the local circumstances that enables them to come to the right decision on the operating hours for each establishment in their area. The right way forward is to allow the board to use its powers to make those decisions. As I said, they have tough powers to shut down premises.

Another suggestion that is made frequently—it was raised by a member during this debate—is that a lot of boards do what they feel like and ignore local communities. That is why we have given communities the right to object, no matter whether they are within or outwith the locus. They will be represented on the licensing forums, where they will be able to make known their views on the operating hours that are pursued in their areas by the boards. Even after the licence has been granted, if the community believes that antisocial behaviour problems have arisen as a result, they have the right to object again to the board and to demand that the board reconsider the licence. The police and the LSO have that right as well.

That provides a safeguard, which I hope will reassure those who think that the boards will not reflect local needs or respond to the needs of communities. We have given communities the power to come back at virtually any stage in the three months following the granting of the licence and say that, because their fears about the granting of the licence have come true, they want the licence to be reviewed and action to be taken. Further, if the board reviews the licence and decides to take no action, the communities have the right to appeal that decision. We have put in place a lot of safeguards that will ensure that, if there are problems in an area as a result of off-sales or on-sales, boards and communities have the power to deal with them.

The main questions are whether we trust local boards to make decisions and whether we have given powers to communities to ensure that their views are taken into account. I believe that the issue of antisocial behaviour versus accessibility for shift workers has been dealt with properly by the framework that we have drawn up. Even if the board makes the wrong decision in the first instance, we have given communities the right to make complaints and force a review of the licence.

Our approach means that Bruce Crawford's amendment 5 is unnecessary. We should not prescribe from the centre out; we should allow boards and communities to work together to decide what is appropriate for their area. Where there are problems, we have given them powers to take action to sort them out. I hope that the committee, having been given those assurances, will support the view that amendment 5 is not necessary and I ask Bruce Crawford to consider withdrawing it.

Bruce Crawford: All in all, this has been a good debate. The issues have been properly aired by all committee members. I ask Paul Martin to accept

that I was not being disingenuous—I was trying to put forward a genuinely held point of view. Apart from that point, the debate was reasonable.

I agree with Michael McMahon that there has to be flexibility and that we must help people to go about their normal lives. However, Tommy Sheridan dealt with the issue of someone who wants to have alcohol to drink when they come home from work. What do they do at the moment? They ensure that they have it in their fridge at home so that it is ready for them when they get in. The issue is a bit of a smokescreen. We have to make a decision as politicians. Do we allow flexibility to impact on the greater good? The core hours of closing that I suggest are for the greater good, even though people will be denied some flexibility. We must make the decision. We must come down on one side of the fence or the other.

Tommy Sheridan asked whether the amendment should have been more restrictive. I made the point that the local licensing board can, if it wishes, be more restrictive than I have suggested. I have suggested core closing hours, not core opening hours. Local boards could be more restrictive if they so wished, but the amendment would ensure that between the hours of 11 o'clock at night and 8 o'clock in the morning they could not allow an off-licence, whether it is a supermarket or a local grocer, to sell alcohol.

In response to Sylvia Jackson, I point out that I said clearly that the bill states that 24-hour licences will be granted only in exceptional circumstances. However, that does not apply to licences for 23 hours and 59 minutes. Nothing in the bill states that 23 hours and 59 minutes will not be normal. The minister might say that that will not be the case, but there is no such provision in the bill. The local licensing boards will interpret the regulations. I have not read in the bill any definition of what will be considered normal, so 12 hours will be as normal as 23 hours and 59 minutes. The guidance that will come from the minister might deal with that point, but it has not yet been issued. That is a weakness in the Executive's position.

Paul Martin is right that no evidence is available on either side. The only evidence is what we know from our backgrounds and the information that we get in our communities and constituencies as we go about our jobs as MSPs. I think that I know that what I am saying is what people want, but other members might have a different perspective. It comes down to members' judgment as politicians, because the Executive has not produced hard evidence. I do not like to be in that position, but in such circumstances we have to go with our knowledge and experience.

The minister says that local boards should have a say, and nobody disagrees with that. However, the convener's point is right—to give protection to communities that sometimes feel as if they are under attack from antisocial behaviour, we have no option in the circumstances but to go for the core hours that I propose.

I am astonished by David Davidson's position. In effect, he is saying that he is all for the supermarkets—they are the ones who will use the facility—being open for 24 hours a day. There may not be much antisocial behaviour around the supermarkets, but that would impact on the 2,600 grocers and other small traders who operate in Scotland. That could have only two effects: either the market would get bigger and the supermarkets would sell even more alcohol to the community, or the market would move from the small operators to the supermarkets, which would put the small operators under considerable pressure. Mark my words, under that pressure they will apply to extend their opening hours. That is inevitable.

Are we saying that the 2,600 small grocers that the Scottish Grocers Federation represents are wrong? The federation's evidence says:

"Finally, you should be aware that south of the border all superstores which currently trade 24 hours"—

superstores in Scotland will be unable to do that other than in exceptional circumstances, but they might be able to open for 23 hours and 59 minutes—

"are pushing the boundaries of licensing trading hours to the limits."

The federation has said from day one that it does not want the potential for 24-hour licensing. However, out-of-town superstores could be allowed to open for 23 hours and 59 minutes in non-exceptional circumstances. The system could at the same time inhibit local shops from opening beyond a time that is specified by a local licensing board. Issues relate not only to health and antisocial behaviour on our streets in cities and towns, but to the potential impact on small businesses. I urge the committee not to agree with the minister. I value the debate, which has been good, but my points outweigh the minister's.

16:00

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)

ABSTENTIONS

Davidson, Mr David (North East Scotland) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 2.

Amendment 5 agreed to.

Section 61 agreed to.

After section 61

Amendment 175 moved—[George Lyon]—and agreed to.

Sections 62 to 65 agreed to.

Section 66—Applicant's duty to notify Licensing Board of convictions

Amendment 59 moved—[George Lyon]—and agreed to.

Section 66, as amended, agreed to.

Sections 67 to 69 agreed to.

Section 70—Notification of determinations

Amendment 60 moved—[George Lyon]—and agreed to.

Section 70, as amended, agreed to.

Sections 71 and 72 agreed to.

Section 73—Licence holder's duty to notify Licensing Board of convictions

Amendment 61 moved—[George Lyon]—and agreed to.

Section 73, as amended, agreed to.

Sections 74 to 85 agreed to.

Section 86—Breach of exclusion order

The Convener: Amendment 176, in the minister's name, is in a group on its own.

George Lyon: Executive amendment 176 is technical. Given that an exclusion order under section 85 may be made by either a civil or criminal court, section 86(3) could allow a criminal court to vary an exclusion order that was granted by a civil court. Because criminal and civil jurisdictions are separate, that would be anomalous, so it is necessary to restrict the application of section 86(3) to exclusion orders that are made by a criminal court. Executive amendment 176 will achieve that.

I move amendment 176.

Amendment 176 agreed to.

The Convener: Amendment 62, in the name of the minister, is grouped with amendments 63 to 65, 76 and 77.

George Lyon: The amendments in this group seek to adjust sections 86 and 107 to allow certain persons physically to remove from premises persons who are there in breach of an exclusion order or who are being disorderly.

Section 86 deals with persons who enter premises in breach of an exclusion order. As drafted, the section provides that a premises licence holder who has applied for an exclusion order may use reasonable force to remove a person who has entered the premises in breach of that order. However, the premises licence holder will not always be present on the premises and we therefore consider it necessary to extend the power to the premises manager or to any other person authorised by either the premises licence holder or the premises manager.

I stress at this stage that I consider it absolutely essential that those who run premises where alcohol is sold have a clear and unequivocal statutory power and duty to evict disorderly and potentially violent persons to stop them becoming a menace both to other customers and to themselves. I remind the committee that, in the case of a section 85 exclusion order, the sheriff has already satisfied himself that if the person concerned is not made to stay away from the licensed premises, there is a substantial risk of a violent offence being committed. In those circumstances, the manager or authorised person must be allowed to act immediately because waiting for the police to come may not be an option. That is why amendments 62 to 65 are necessary.

Section 107 deals with disorderly persons and those who, on request, refuse to leave premises where alcohol is sold—that includes unlicensed premises such as trains. Our amendments 76 and 77 make it clear that, like persons who are subject to exclusion orders, disorderly persons can be physically removed by the management or authorised persons. That is, again, a necessary statutory right and it will protect the public. Of course, any force that is used must be reasonable, as at common law.

I move amendment 62.

Mr Davidson: Where will the guidance come from to help members of staff to decide whether to call the police? I have asked that question before but I still have some concerns and I would like the minister to address the point clearly. Police forces are a little concerned about the application—as opposed to the spirit—of the minister's proposal. I would like the minister to put the answer on the record.

The Convener: Minister, will you respond to that?

George Lyon: This is already the situation under the 1976 act. Licensees and their staff have been working closely with the police for many years on how to evict drunks and deal with such matters and it is not for us to be prescriptive in that area. Clearly, the staff concerned will have to decide whether they can handle the problem by escorting the individual from the premises. If they do not feel confident enough to do so because the person is violent or aggressive, staff will have to decide whether to call the police. Ultimately, it is for the individual member of staff to make that decision in each individual situation.

Mr Davidson: May I ask a further question, for clarification?

The Convener: I would prefer it if you did not, because I do not want to create a precedent for the reopening of debates. You made your point and the minister responded. You need to make your mind up on that basis.

Amendment 62 agreed to.

Amendments 63 to 65 moved—[George Lyon]—and agreed to.

Section 86, as amended, agreed to.

Sections 87 to 90 agreed to.

Section 91—Regulations as to closure orders

The Convener: Amendment 66, in the name of the minister, is grouped with amendment 67.

George Lyon: Amendments 66 and 67 are technical amendments that were suggested by the Subordinate Legislation Committee. They specify the sections to which section 91 is to apply.

I move amendment 66.

Amendment 66 agreed to.

Amendment 67 moved—[George Lyon]—and agreed to.

Section 91, as amended, agreed to.

Section 92—Interpretation of sections 88 to 91

The Convener: Amendment 68, in the name of the minister, is grouped with amendments 93, 112 and 122.

George Lyon: Again, these are technical amendments that address an inconsistency in the definitions applied to the term "senior police officer" in sections 92 and 119. Executive amendment 112 defines the term as a police officer

"of or above the rank of superintendent".

Executive amendments 68, 93 and 122 are consequential.

I move amendment 68.

Amendment 68 agreed to.

Section 92, as amended, agreed to.

Sections 93 and 94 agreed to.

Section 95—Sale of liqueur confectionery to a child

The Convener: Amendment 69, in the name of the minister, is grouped with amendments 70, 162 and 71 to 73. If amendment 162 is agreed to, amendment 71 will be pre-empted.

George Lyon: With these Executive amendments, we hope that we have addressed the concerns about the delivery of alcohol to children that were raised by the committee, in particular by Michael McMahon, in the stage 1 report. It is difficult to come up with a workable, practical solution to the problem of children making use of dial-a-drink services to obtain deliveries of alcohol. We have discussed the issues at length with the Association of Chief Police Officers in Scotland and we feel that we have found the right balance to ensure that, in cases where alcohol is delivered, children are adequately protected.

Executive amendment 73 removes the exemption to the offence of delivering alcohol to a child or young person that allows the delivery provided it is made to a home or work address. Therefore, it will be an offence to deliver alcohol or allow it to be delivered to a child or young person in all circumstances.

Executive amendment 72 introduces a new provision that establishes defences against offences committed under section 99(2) or section 99(3), which cover allowing deliveries to or by a child. Deliveries to a child and allowing deliveries by a child attract a defence based on the no-proof, no-sale policy, under which a person must take reasonable steps to ascertain age based on a request for the acceptable national types of proof.

Allowing a delivery to a child, for example, by an employee, attracts a defence based on taking reasonable precautions and exercising due diligence. This is necessary since an employer is unlikely to be present to request proof of age. Making the availability of a defence dependent on the actions or inactions, or belief, of a person over whom an employer may have no control might also have European convention on human rights implications. Executive amendments 69, 70 and 71 are consequential to the establishment of the new defences.

Michael McMahon's amendment 162 seeks to achieve the same policy as Executive amendment 72. Michael championed this issue throughout stage 1. However, there is a technical problem with amendment 162, because it does not make the necessary distinctions between the available defences. In addition, it attempts to impose a requirement that where alcohol is not delivered to a person because of that person's failure to show proof that he is aged 18 or over, the attempt to buy alcohol must be reported to a constable.

We took soundings from senior police officers on this matter and they have concerns about the practicalities of the proposed procedure. The fact that we are adopting a no-proof, no-sale policy in relation to the sale of alcohol throughout the bill is, we believe, sufficient.

With those assurances, I ask Michael McMahon to consider not moving amendment 162.

I move amendment 69.

Michael McMahon: As the minister said, amendment 162 addresses an issue that the police brought to my attention initially, although I was certainly aware of it in my community. I do not want to bang on about it, because members have heard me address it at length, but I am pleased that the minister has picked up on it. The Nicholson report did not address the issue. It is a new phenomenon, which is affecting communities in my constituency and beyond. My intention was to have the matter addressed and the minister has given me the assurances that I require that the Executive has heard what I said and has addressed the concerns that I hoped would be addressed. It has done so in a more technical manner than I suggested, so I am prepared to accept the minister's assurances and to not move amendment 162.

16:15

The Convener: Michael McMahon deserves to be commended for bringing the issue to the committee's attention, given that the ministerial team has been persuaded that there is a loophole in the law that should be closed. Well done, Michael—the issue might not otherwise have been addressed during the passage of the bill.

George Lyon: I concur and pay tribute to Michael McMahon for having raised the issue, which had initially been overlooked. We have now responded to the campaign that he has been running on the issue.

Amendment 69 agreed to.

Section 95, as amended, agreed to.

Section 96—Purchase of alcohol by or for a child or young person

The Convener: Amendment 2, in the name of Bruce Crawford, is in a group on its own.

Bruce Crawford: We have discussed the issue of test purchasing of alcohol by young people. If I recall correctly, we noted that the police find it difficult to find evidence of licensees illegally supplying alcohol to persons aged under 18. Test-purchasing pilots have been happening but, given the way in which the bill is drafted, they could bring the test purchaser into conflict with the law and might even bring the chief constable into conflict with the law. I lodged amendment 2 in an attempt to tease out the issue and to make test purchasing legal so that we can begin to catch out some of the rogues who are involved in selling alcohol knowingly to under-18s. I am sure that the minister will be able to tell me whether there are technical difficulties with the amendment. I recognise that I am no legal expert, but at least I may have opened up a channel and the minister could lodge his own amendment to ensure that test purchasing does not put the person involved in helping the police or the police themselves in any difficulty.

I move amendment 2.

Paul Martin: I support the principle of what Bruce Crawford is trying to deliver. There is an issue about people who provide alcohol to young people outside licensed premises, which the police might be able to find creative ways to tackle. I consider myself extreme in my views of the measures that I think we should take to deal with alcohol and antisocial behaviour and want to consider every creative solution, but I cannot stress enough the importance of ensuring that we protect children in the process of test purchasing of alcohol, because it is different from test purchasing of tobacco. Young people are put in situations where there could be antisocial behaviour and their safety could be at risk during the operations. We need to put in place strategies to ensure that the protection of youngsters is considered. Involving young people in the test purchasing of alcohol is serious, so the proviso must be that they will be protected.

Mr Davidson: Perhaps Mr Crawford should have differentiated between on-sales and off-sales. It seems that off-sales present a particular problem, which is not clear in amendment 2.

The Convener: Like Paul Martin, I agree with the aim of amendment 2. I suspect that the Lord Advocate might have concerns about Bruce Crawford's proposal, because there might be problems with how young people who are involved in test purchasing can be protected. However, the committee wants to see progress on Mr

Crawford's aim of detecting underage sales more effectively. Even if the minister is not supportive of Mr Crawford's amendment, I hope that he will reassure us that the Executive is trying to resolve the problem and to ensure that alcohol sales to underage people are more easily detected in future.

George Lyon: Since I took over my current portfolio, I have been keen to ensure that we introduce some form of test purchasing to underpin the no-proof, no-sale policy in the legislation, which is essential if we are to tackle underage drinking properly.

Quite rightly, the Lord Advocate has concerns about the welfare of any child involved in test purchasing, because they would be committing a criminal offence. There is also concern about children testifying in cases in which licensees might lose their licence as a result of actions taken. The Lord Advocate was concerned to ensure that the welfare of the child would not be compromised.

I am pleased to say that the Lord Advocate has indicated that he is now content, in principle, to allow the test purchasing of alcohol by children for the purpose of law enforcement. However, he considers that there are still some outstanding concerns about welfare that do not arise in relation to other goods. Bruce Crawford's amendment 2 requires further consideration to ensure that the welfare of children who are used in test-purchasing exercises is paramount. I invite him to withdraw his amendment on the basis that full proposals will be announced before stage 3 and the Executive will lodge an appropriate amendment at stage 3. The wider child welfare issues will be taken into account in drafting any such amendment.

I hope that Bruce Crawford and the rest of the committee accept my assurance that we now have the green light from the Lord Advocate to make progress on the matter. However, it is important that we get the balance right between ensuring that test purchasing goes ahead and properly looking after children's welfare in the process that we design.

Bruce Crawford: I will not press amendment 2. Paul Martin and the convener are absolutely on the money with their points about the welfare of children. I am greatly heartened that the Executive and the Lord Advocate have been working hard together to find a solution to the problem. I look forward to seeing that solution at stage 3.

I say to David Davidson that I do not know how many pubs he has been in recently, but perhaps he should visit the pub more often to see how many underage people are buying alcohol.

Amendment 2, by agreement, withdrawn.

Section 96 agreed to.

Sections 97 and 98 agreed to.

Section 99—Delivery of alcohol by or to a child or young person

Amendment 70 moved—[George Lyon]—and agreed to.

Amendment 162 not moved.

Amendments 71 to 73 moved—[George Lyon]—and agreed to.

Section 99, as amended, agreed to.

Section 100 agreed to.

Section 101—Duty to display notice

Amendments 74 and 75 moved—[George Lyon]—and agreed to.

Section 101, as amended, agreed to.

Sections 102 to 106 agreed to.

Section 107—Refusal to leave premises

Amendments 76 and 77 moved—[George Lyon]—and agreed to.

Section 107, as amended, agreed to.

Section 108—Offences relating to sale of alcohol by wholesale

Amendments 78 to 81 moved—[George Lyon]—and agreed to.

Section 108, as amended, agreed to.

Section 109—Prohibition of sale of alcohol on moving vehicles

The Convener: Amendment 177, in the name of the minister, is grouped with amendments 178 and 179.

George Lyon: Once again, the Executive's amendments recognise that new developments in the sale of alcohol are always taking place. They will ensure that businesses that operate from moving vehicles can be adequately licensed under the new regime by either a premises or occasional licence. In particular, Executive amendment 177 will allow licensing boards to license so-called party vehicles such as stretch limos and party fire engines—Michael McMahon and others on the committee have been pressing us to do that.

As we are dealing with vehicles, Executive amendment 179 will ensure that an appropriate licensing board can issue a licence according to the area in which the vehicle will operate. It also removes for vessels and party vehicles or moving premises the requirements that are more appropriate for buildings. That means that, in

applying for the licence for the party vehicle, the operators will not have to include certain notification requirements such as building warrants, for example, on receipt of a licence application. Moreover, there will no longer be a requirement to produce planning, building control and food hygiene certificates.

Given that further developments might take place in this area, it is also sensible for Scottish ministers to take a power to modify the provisions relating to vessels, vehicles and other moveable structures should that prove necessary in the future. The Executive has today lodged further amendments in relation to vessels, including ferries. Those amendments will be debated next week.

Amendment 178, in the name of Michael McMahon, attempts to do the same as the Executive amendments. It seeks to add vehicles to the definition of relevant premises for the intended purpose of making it an offence to allow the sale of alcohol to a child or young person from a vehicle or to allow a child or young person to consume alcohol from a vehicle. However, the amendment is not needed, because those offences apply automatically to vehicles that are subject to a premises licence. With that assurance, I hope that Michael McMahon will not move his amendment. We are both trying to tackle the same problem and I congratulate him on bringing the issue to our attention.

I move amendment 177.

Michael McMahon: I will repeat what I said about amendment 162: my intention in lodging amendment 178 was to ensure that an issue that I had brought to the committee was addressed. I am glad that the minister's amendments will achieve what I set out to achieve. Given the minister's assurances, I will be more than happy not to move amendment 178.

16:30

Bruce Crawford: I heard what the minister said about the amendments in relation to ferries that he will lodge for next week, but I would like to be sure about them. Under section 118, moveable structures that are to be used for the sale of alcohol will be required to go to a licensing board in the area. However, a ferry does not necessarily have one board area; it may go through a number of board areas as it does its work. I assume that the amendments that the minister will produce next week will deal with that issue so that ferries will not be encumbered in that respect. Obviously, some ferries depart from and arrive in numerous licensing board areas. I seek an assurance that the amendments next week will deal with that issue.

Mr Davidson: I remind Bruce Crawford that that is exactly the issue with which my amendment 158, which we will consider next week, seeks to deal. Earlier, I forgot to ask the minister about trains, planes and coaches. An issue has been raised by some rail companies that have vehicles that travel across the United Kingdom, through areas where different rules apply. Will the minister accept that companies that have moveable vehicles that sell alcohol to the public need a single point of contact that is responsible for dealing with them? The cross-border issue has been raised several times recently. Although the bill is separate from the UK legislation, we must ensure that it conforms to cross-border agreements. I hope that the minister will deal with that issue adequately.

The Convener: It is my understanding that the ability to sell alcohol on railway vehicles has in the past been covered by UK railways legislation. Perhaps that is not the case—I am sure that I will soon be enlightened. I ask the minister to clarify, either today or in advance of our further consideration of the bill, what the situation will be for railway vehicles, particularly those that cross the border between Scotland and England, but also for those that move between licensing board areas within Scotland.

George Lyon: Trains will be exempt from the need to have a premises licence. The reason why vessels are mentioned in amendment 179 is to remove certain notification requirements for them. The amendments that we produce next week will differentiate between the so-called party vessels—which are basically used for booze cruises—that ply up and down the Clyde and other areas, and regular ferry services. For the regular services, we will take the same approach that we have taken for trains: they will be exempt. However, we will reserve powers to ministers to take action if there is a problem on a particular route. The proposal is that ferries will be in the same category as trains, provided that they are regular ferry services that sail between two nominated points.

Amendment 177 agreed to.

Section 109, as amended, agreed to.

Section 110 agreed to.

The Convener: Given that we are very close to the target point that I set, I propose that we just carry on until we reach that point. It should take us only a few more minutes.

Section 111—Carriage of alcohol on public service vehicles

The Convener: Amendment 82, in the name of the minister, is grouped on its own.

George Lyon: The committee raised some concerns about section 111 in its stage 1 report. Section 111 limits the quantity of alcohol that can be carried on a public service vehicle such as a coach. The committee was concerned that, in many cases, the application of the section could be quite harsh, as it does not make a distinction between alcohol that is being carried in the passenger compartment of a bus and alcohol that is being carried in the boot of, for example, a tour bus that is visiting a distillery.

The original intention of the provision was to control the carriage of alcohol on football supporters' buses. However, since the 1976 act was passed, additional legislation has been introduced to deal with that problem. Under the Criminal Law (Consolidation) (Scotland) Act 1995, it is an offence for persons to be in possession of alcohol on PSVs or trains that are conveying passengers to and from designated sporting events. The Association of Chief Police Officers in Scotland has been consulted on the removal of the provision from the bill and is content with that. In the light of that, I would be grateful for the committee's agreement to the amendment.

I move amendment 82.

Amendment 82 agreed to.

Sections 112 and 113 agreed to.

Section 114—Interpretation of Part 8

Amendment 83 moved—[George Lyon]—and agreed to.

Amendment 178 not moved.

Amendments 84 and 85 moved—[George Lyon]—and agreed to.

Section 114, as amended, agreed to.

The Convener: We agreed to go no further than section 114 today. Stage 2 of the Licensing (Scotland) Bill will resume at our next meeting, which is on Monday 3 October at 2 pm. The meeting will take place on Monday because of the Carnegie events in the Parliament on Tuesday. The target point for the end of consideration at that meeting will be published in the *Business Bulletin* tomorrow, but it is likely to be the end of the bill. As a result, members will have to lodge any further amendments by Wednesday lunch time in order to allow for publication, so that other members can consider the amendments. The deadline for any further amendments will, therefore, be noon tomorrow. I thank all members, including the minister, for their attendance and contributions to today's proceedings.

Meeting closed at 16:38.

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