

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Tuesday 14 March 2006

Session 2

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CONTENTS

Tuesday 14 March 2006

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| | |
|--|------|
| LEGISLATIVE AND REGULATORY REFORM BILL | 1685 |
| BUILDING A BRIDGE BETWEEN EUROPE AND ITS CITIZENS | 1701 |
| CO-OPERATION WITH IRELAND INQUIRY AND TRANSPOSITION AND IMPLEMENTATION OF EUROPEAN DIRECTIVES INQUIRY | 1715 |
| WORK PROGRAMME | 1720 |
| EUROPEAN COMMISSION WORK PROGRAMME 2006 | 1721 |
| PETITION | 1722 |
| Fishing Industry (PE804) | 1722 |
| PRE AND POST-COUNCIL SCRUTINY | 1727 |
| SIFT | 1728 |
| CONVENER'S REPORT | 1729 |

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

4th Meeting 2006, Session 2

CONVENER

*Linda Fabiani (Central Scotland) (SNP)

DEPUTY CONVENER

*Irene Oldfather (Cunninghame South) (Lab)

COMMITTEE MEMBERS

*Dennis Canavan (Falkirk West) (Ind)
Mrs Margaret Ewing (Moray) (SNP)
*Phil Gallie (South of Scotland) (Con)
*Mr Charlie Gordon (Glasgow Cathcart) (Lab)
*Mr John Home Robertson (East Lothian) (Lab)
*Gordon Jackson (Glasgow Govan) (Lab)
*Mr Jim Wallace (Orkney) (LD)

COMMITTEE SUBSTITUTES

Ms Wendy Alexander (Paisley North) (Lab)
Derek Brownlee (South of Scotland) (Con)
*Richard Lochhead (North East Scotland) (SNP)
Nora Radcliffe (Gordon) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Nikki Brown (Scottish Executive Finance and Central Services Department)
Daniel Kleinberg (Scottish Executive Finance and Central Services Department)
George Lyon (Deputy Minister for Finance, Public Service Reform and Parliamentary Business)
Laurence Sullivan (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERKS

Emma Berry
Nick Hawthorne

LOCATION

Committee Room 2

Scottish Parliament

European and External Relations Committee

Tuesday 14 March 2006

[THE CONVENER *opened the meeting at 14:08*]

Legislative and Regulatory Reform Bill

The Convener (Linda Fabiani): Good afternoon and welcome to the fourth meeting in 2006 of the European and External Relations Committee. I have received apologies from Margaret Ewing.

Item 1 on the agenda is the legislative consent memorandum to the Legislative and Regulatory Reform Bill, which is currently passing through the Westminster Parliament. I welcome George Lyon, the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, who is accompanied by Daniel Kleinberg from the Executive's Europe division and Laurence Sullivan from the office of the solicitor to the Scottish Executive.

Members will be aware from our briefing note that the committee has to report to the Parliament on the memorandum, and the timetable for the bill indicates that today's meeting will be our only opportunity to consider it—perhaps we can probe that point. The memorandum is necessary because the bill affects the powers of Scottish ministers to make subordinate legislation implementing European Union obligations. The details are in paragraph 5 of the memorandum and paragraph 2 of the supplementary memorandum. In the view of the Scottish Executive, the effect will be to widen ministers' powers to implement EU obligations and to give greater flexibility. Members will have seen that the Subordinate Legislation Committee reports to us that it is content with those provisions.

However, the Subordinate Legislation Committee discussed an issue that is not covered by the Executive memorandum, relating to clauses 2(4) and 8 of the bill. That committee considered that the issue was outside its remit, but it agreed to send us a copy of the *Official Report* of its discussion, which has been included in members' papers. The committee might therefore want to consider whether consent for clause 2(4) should be included in the motion that goes before the Parliament.

I invite the minister to address the committee, and then we shall ask questions.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): The Legislative and Regulatory Reform Bill was introduced in the House of Commons on 11 January 2006. It runs to 33 clauses and is predominantly concerned with matters outwith the legislative competence of the Scottish Parliament. Parts 1 and 2 of the bill deal with the operation of regulatory reform orders and with inspection and enforcement regimes that do not operate in devolved areas in Scotland.

However, there are four provisions in the bill that are subject to the consent of the Scottish Parliament by virtue of the Sewel convention, because they apply to Scotland and are for devolved purposes. Those clauses are found in part 3 of the bill and are aimed at streamlining the way in which European Community law is implemented in domestic legislation. Those matters are technical in nature and, I would expect, uncontroversial in themselves. The committee will have seen the report in which the Subordinate Legislation Committee states that it was content with the proposals.

The effect of the clauses is to confer a new power on Scottish ministers to make a wider range of secondary legislation under section 2(2) of the European Communities Act 1972. It is currently possible to make orders in council or regulations under section 2(2), but not any other form of secondary legislation. That has meant that multiple Scottish statutory instruments have previously been required where policies required the use of powers extended by other acts. Clause 26 allows ministers to make orders, schemes or rules under section 2(2) of the 1972 act in addition to orders in council and regulations, so it will be possible to implement an EU obligation by the use of a single Scottish statutory instrument. An amendment—the subject of the supplementary memorandum—allows for the combination of instruments requiring different parliamentary procedures, on the condition that the more onerous course of parliamentary scrutiny is taken.

The clauses will also confer a new power on Scottish ministers to allow for references in domestic legislation to EC instruments to be ambulatory. Ambulatory references would allow references to EC instruments in SSIs to be taken as a reference to an amended version of the EC instrument, so domestic implementing legislation will be able to pick up future amendments to the EC instrument without further subordinate legislation being required. That provision is aimed at situations in which an EC instrument is the subject of subsequent technical amendments. The clauses provide that references in domestic legislation to "Community instruments" will be taken as referring to the EC instrument as so amended, extended or applied. That applies only

in relation to legislation made after the coming into force of the Legislative and Regulatory Reform Bill. The current situation is that, when domestic legislation refers to a Community instrument that has been amended or applied by other Community instruments, it is necessary to specify all the instruments that have amended or applied it, which can produce very long references. The new provision is designed to make the drafting of SSIs simpler and therefore more transparent and accessible.

I am, of course, aware of the views that have been expressed about parts 1 and 2 of the bill, as recorded in the committee's briefing paper for today's meeting. Although the Executive does not generally comment on reserved matters, it is worth clarifying that it is a matter for the United Kingdom Parliament to determine what legislative powers it wishes to delegate to UK ministers and the nature of the procedures and level of scrutiny associated with the exercise of such powers.

Because there are circumstances in which the bill could have impacts in Scotland, we have considered the proposals. In principle, it is already the case that regulatory reform orders could amend the Scotland Act 1998—and any other reserved legislation—if prescribed conditions and tests were met. The same will be true for the new orders. Although the conditions and tests for those orders will be more flexible than before, there will be no blank cheque. However, the details of such procedures and scrutiny are not related to the parts of the bill that are the subject of the legislative consent motion and, as reserved matters, they are therefore rightly a matter for the UK Parliament.

I am happy to answer any questions from members, and my officials are here to assist on technical and legal issues.

The Convener: I note what you said about clause 2(4) in part 1 of the bill, but there is an argument that that clause applies in Scotland and that consent for it should therefore be included in the Executive's motion on the legislative consent memorandum. Can you justify to us the Executive's view on why consent for that provision is not included in the motion?

14:15

George Lyon: The ability to make such provision at the margins is well precedented. It ensures that the operation of the law on reserved matters is not unworkable simply because devolved Scots law has not caught up with the changes. It does not open the door to anything more substantial. It mirrors the arrangements under the Sewel convention, and we believe that it restates the status quo; I hope that the committee

will be reassured that the provisions only restate the current arrangements under the Sewel convention.

Gordon Jackson (Glasgow Govan) (Lab): I am struck by the phrase in clause 2(4)

"as the Minister making it considers appropriate."

That sounds like something that, if it is not actually a blank cheque, is not too far away from being one. Where, under the existing arrangements, do we have phrases such as "as the Minister considers appropriate"? You are saying that that is just what we have now. I agree that the words "incidental" and "supplementary" suggest no more than tweaking at the margins, but the decision whether a provision is just supplementary is based on whether the minister considers that appropriate. That seems to create quite a wide power—there is, of course, an exemption under clause 8.

George Lyon: The Sewel convention refers to consequential and incidental provisions, although I will leave it to the lawyer accompanying me to explain his interpretation of your concerns on the width of the arrangement and the use of the words that you quoted.

Laurence Sullivan (Scottish Executive Legal and Parliamentary Services): Clause 2(4) indeed says:

"as the Minister making it considers appropriate."

However, that will be read along with the general prohibition in clause 8, which is on regulatory reform orders not making

"provision which would be within the legislative competence of the Scottish Parliament".

Clause 2(4), combined with clause 8, replicates the current position under the Sewel convention, as specified in devolution guidance note 10. That note makes it clear that, when Westminster is legislating in reserved areas, it can also legislate to

"make incidental or consequential changes to Scots law on non-reserved matters".

George Lyon: I should add that, in evidence to a Westminster committee, the relevant Cabinet minister—I think that it was Jim Murphy—confirmed that, if regulatory reform orders make minor, consequential changes to devolved Scots law, the Scottish ministers will be consulted beforehand. There will be engagement between the Scottish ministers and UK ministers before such orders are made.

Gordon Jackson: I appreciate that the Scotland Act 1998 can simply be amended, done away with or revoked by the Westminster Parliament. There is now a perception that it is getting easier to do that—not that that is about to happen, but other

Governments that turn up from time to time might do so. Would this be an opportunity to consider at least asking Westminster to exempt the Scotland Act 1998 from the sort of powers that ministers are taking? Does the Executive have any view on that? In other words, it would not just be a matter of having clause 8 and saying that devolved matters will not come into it, but of taking the Scotland Act 1998 out of the frame.

George Lyon: In general, we do not go into the detail of our discussions with the UK Government. However, I can say that there has been close dialogue on the bill, especially around some of the issues that the Scottish Parliament's Subordinate Legislation Committee has raised. Specifically, we have drawn the Government's attention to the view of the Subordinate Legislation Committee. We have been clear on the need for confidence in the security of the devolution settlement. There must be no scope for doubt about that. The UK Government understands that, and there are continuing discussions and correspondence in that regard. I can give the committee the assurance that we are engaged at the highest level to ensure that some of the concerns that have been raised can be addressed.

Irene Oldfather (Cunninghame South) (Lab): I appreciate what you are saying. I have a supplementary to Gordon Jackson's question. Obviously, ministers change and personalities change. Devolution will be equally valid 50 or 100 years from now, which is why we must have built-in safeguards in the legislation. While I appreciate what you are saying about good faith, good will and discussion, 50 years down the road there will be entirely different personalities—there might even be entirely different political parties. We have to be clear that what we are doing will serve us all well for all time. I want to know what safeguards exist.

George Lyon: I take your point. I was trying to make it clear that we are trying to engage with our counterparts at the UK level to ensure greater certainty. That is the purpose of such engagement. We are exploring that issue with UK ministers.

Mr John Home Robertson (East Lothian) (Lab): I know that Jim Murphy can be persuasive and charming, but hang on a minute—although the bill's long title is clear enough, in addition to the narrower points that come later, the bill starts off with a catch-all that says that it can reform legislation. Clause 1(1) says:

"A Minister of the Crown may by order make provision for either or both of the following purposes—

(a) reforming legislation".

Clause 1(3) says:

"In this Part 'legislation' means a provision of—

(a) any public general Act or local Act".

Clause 2(4) says:

"An order under section 1 may make such consequential, supplementary, incidental or transitional provision (including provision amending, repealing or replacing any legislation or other provision) as the Minister making it considers appropriate."

I spent 23 years campaigning for a Scottish Parliament and I thought that we held a referendum that entrenched its powers. For a wee bill like this to go through, creating brand new powers whereby any minister of the Crown at Westminster can, whenever they see fit, amend anything and everything—well, I don't think so. We need to express quite strong concerns about this.

George Lyon: On the introduction of the new regulatory reform orders at Westminster, it is for the UK Parliament to discuss how widely those powers should be drawn and the concerns about parliamentary scrutiny. I cannot comment on that. The issue that has been raised at this committee and at the Subordinate Legislation Committee relates to the Scotland Act 1998. We are aware of those concerns, which is why we are engaging with UK counterparts to get greater certainty on that matter.

Laurence Sullivan: A secretary of state at Westminster will not have an untrammelled power to make a regulatory reform order. The power will have to be exercised in line with the preconditions in clause 3 of the bill. There are all kinds of circumstances in which a secretary of state would not be able to get over the barriers in clause 3 to make a regulatory reform order.

Mr Home Robertson: Clause 3(1) says:

"A Minister may not make an order under section 1 ... unless he considers that the conditions in subsection (2), where relevant, are satisfied in relation to that provision."

That is pretty weak stuff. I am sure that none of us would have any hang-ups if the legislation were drafted to match the apparent intention behind it, which is that it is a mechanism that tidies up legislation and avoids wasting time on detailed scrutiny of little cross-references. However, all of us can see that the bill could go much, much further than that. We probably have a duty to stand up and insist that our colleagues at Westminster think about it again.

The Convener: I seem to remember reading in the transcript of Standing Committee A that Jim Murphy said that the Executive in Scotland had not expressed any concern about the bill. What representations were made to Westminster by Scottish ministers?

George Lyon: Executive ministers have written to UK ministers with regard to the concerns that have been expressed about these matters. Our

discussions are on-going, and we will have further discussions on how we might make progress. I hear what members of the committee are saying, which adds weight to the representations that we will be making.

The Convener: What were the concerns that ministers put in writing?

George Lyon: The concerns were the same as those that have been raised by members today. We have made representations on the issue of regulatory reform orders.

The Convener: It appears that the Executive is as worried as the committee.

Mr Jim Wallace (Orkney) (LD): That is indeed a conclusion that we might draw.

When Jim Murphy was being quizzed by Standing Committee A, he cited the renumbering of provisions as one example of an incidental change. Can the minister give us any other examples of where this apparently limited form of modification might be used?

George Lyon: I ask Laurence Sullivan to respond to that question.

Laurence Sullivan: The power covers consequential, incidental, supplementary and transitional provisions. Although I could provide a brief description of each of those terms, members will be aware that such provisions deal with minor amendments rather than substantive policy matters. The changes would be consequential on or incidental to provisions made for a reserved purpose, such as—to use Jim Murphy's example—the renumbering in acts of the Scottish Parliament of references to provisions of UK acts that have been amended by a regulatory reform order. The power covers things of that nature rather than substantive policy matters.

Mr Wallace: Let us consider what happens when such changes happen in reverse. Under paragraph 3 of schedule 4 to the Scotland Act 1998, the Scottish Parliament has power to make modifications that

“(a) are incidental to, or consequential on, provision made ... which does not relate to reserved matters”.

However, that is provided that such modifications

“(b) do not have a greater effect on reserved matters than is necessary to give effect to the purpose of the provision.”

Can the committee be enlightened as to why a similar qualification does not appear in the bill? Would the Scottish Executive like to see such a qualification?

Laurence Sullivan: There is not an exact converse between what we can do in reserved areas and what Westminster can do in devolved areas. Westminster is a sovereign Parliament,

whereas this Parliament is not. Westminster can legislate on any matter. Under the Sewel convention, we have an agreement that Westminster will not legislate in devolved areas. The exception is that a Westminster provision on reserved matters that has minor, incidental or consequential effects on devolved Scots law can be included in Westminster legislation. The situation is not really converse in the way that Mr Wallace suggested. That is why the wording in clauses 2(4) and 8 does not replicate that in paragraph 3 of schedule 4 to the Scotland Act 1998. The two situations are not opposites in that way.

Mr Wallace: However, the bill could replicate that wording. We know that, in theory, Westminster can legislate on whatever it likes, despite the convention. However, if the purpose of clause 2(4) is to allow the relevant Westminster minister to make such provisions as he “considers appropriate”—the wording is pretty wide and loose—should not such provisions be required to be subject to both a Sewel motion and, when the situation is the obverse, a qualification similar to that which is provided in the Scotland Act 1998? Is it unreasonable to ask that such a qualification be incorporated in the bill if its purpose is simply to deal with the renumbering of references to provisions?

Laurence Sullivan: Under clause 3(2), there are some quite onerous preconditions for regulatory reform orders. Given the obstacles that must be overcome, a secretary of state will not be able to do what he likes through a regulatory reform order but will be required to stay within the specific conditions that are set out in clause 3(2).

The phrasing of clauses 2(4) and 8 replicates the position between the two Administrations that is set out in devolution guidance note 10, which concerns Westminster acts on reserved matters that make incidental and consequential changes to the law on devolved matters. If you are asking why the exact wording of schedule 4 to the Scotland Act 1998 is not reproduced in clauses 2(4) and 8, the answer is that the clauses are phrased in the way that the Westminster department instructed them to be phrased and in the way that parliamentary counsel in Whitehall drafted them. I doubt whether they used schedule 4 to the 1998 act for their drafting style. We do not have input into the exact wording of a Westminster act. However, clauses 2(4) and 8 restate the status quo; they do nothing novel.

14:30

Gordon Jackson: Laurence Sullivan has said a couple of times that the words

“consequential, supplementary, incidental or transitional”

just repeat what is in the Sewel convention as laid out in the convention memorandum, with which he is much more familiar than I am. Does the existing provision contain the words

“as the Minister making it considers appropriate”?

Laurence Sullivan: Do you mean devolution guidance note 10?

Gordon Jackson: Yes.

Laurence Sullivan: The note does not contain those words exactly—it talks about consequential and incidental changes. The bill includes transitional and supplementary provision, which is not significantly different from consequential and incidental provision.

Gordon Jackson: I have no problem with adding the words “supplementary” and “transitional”. If we leave aside the additional two words, you have repeatedly told us that the provision in the bill is the same as what appears in existing guidance, but my difficulty is that the guidance does not contain the words

“as the Minister making it considers appropriate.”

I do not doubt Jim Murphy’s good faith. When he says that the provision will be used for what it is meant to be used for, I am content. However, like Irene Oldfather, I envisage that 50, or even 10, years down the line, a stand-off between Westminster and Holyrood could take place. The people might not like one another, even—I was going to say something else, but perhaps I should not. In a situation of bad faith, in which Westminster and Holyrood are at odds politically, a stand-off has occurred and people are looking for ways not to implement legislation in good faith but to use it to put the boot in, the words

“as the Minister making it considers appropriate”

would worry me—and, I suspect, other members. The minister can say, “That gives me *carte blanche*. Okay, clause 3 contains a precondition, but I have a policy objective.” Clause 2(4) has the potential to be used in bad faith to do something that it was never intended to do. Is that impossible?

Laurence Sullivan: That is not impossible, but I must repeat some of what I have said. The preconditions in clause 3 are fairly onerous and, in all sorts of circumstances, the secretary of state will be unable to meet them. Under clause 2(4), the secretary of state will also have to exercise his powers reasonably.

Gordon Jackson: Is it onerous to say that a policy objective cannot be met without legislation and that a measure is proportionate?

Mr Wallace: That is all subjective.

Gordon Jackson: I do not see how it can be described as onerous for a minister to say that the preconditions are fulfilled.

Laurence Sullivan: The precondition in clause 3(2)(e) is that

“the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.”

It would be very difficult to use a regulatory reform order to take a function away from someone, because paragraph (e) would operate to prevent that.

Gordon Jackson: I agree that that would be very difficult, but I am trying to prevent anyone from trying.

Laurence Sullivan: It would be difficult. If the question is whether it is impossible, the answer is that it is not impossible, but that the preconditions facing a secretary of state under clause 3 are onerous.

George Lyon: I take the point that is being made. We wish to pursue that point with UK ministers.

Dennis Canavan (Falkirk West) (Ind): Did I hear the deputy minister say earlier that Jim Murphy gave an assurance to a Westminster committee that there will be consultation with Scottish ministers before certain provisions in the bill are used?

George Lyon: Jim Murphy gave the assurance to that committee that consultation will take place with the Scottish ministers before a regulatory reform order is made, if the order will have an impact on devolved matters.

Dennis Canavan: We seem to be setting great store by what Jim Murphy said to a Westminster committee. I used to play football with Jim Murphy, so I know that he can be a tricky character at times. Has the Executive made representations to Jim Murphy or anyone else in the UK Government to ensure that such consultation is made statutory so that UK ministers will have a legal obligation to consult the Scottish ministers?

George Lyon: As I said, we do not usually reveal the contents of current discussions with UK ministers. However, I have given an assurance to the committee that we are making representations on some of the matters that the Subordinate Legislation Committee and this committee have raised.

Dennis Canavan: Do you accept that there are many precedents for having statutory consultation before ministers lay an order? Indeed, clause 3 almost lends itself to an amendment in that regard, because it introduces preconditions that must be

satisfied before a minister can make a regulatory reform order.

George Lyon: I accept that point. We are in discussions on the matter with UK ministers. I take the points that members have made.

Dennis Canavan: I urge you to seek an appropriate amendment to clause 3.

The Convener: Minister, do you expect to have answers to members' questions before next week, when the Parliament is expected to decide on the motion?

George Lyon: We hope to be able to report at some stage, although I cannot say whether that will be by next week. We clearly have to wait for responses from the ministers down south.

Irene Oldfather: I, too, have a question about the timetable. The minister has told the committee that he has made representations on the concerns and issues that members have raised. I believe that the Parliament will consider the motion on the bill next week. It will be difficult for us to adhere to that timetable, given that we all have questions that remain unanswered.

George Lyon: I understand that the bill is to be debated further at Westminster on 10 May. I return to the fact that the concerns are being raised at Westminster, which is the body that will ultimately legislate on the matter. Concerns have been raised here and it is up to the committee how it expresses those concerns in its response or report. However, ultimately, action will be needed down south in the UK Parliament if those concerns are to be addressed.

Irene Oldfather: Several of us are saying that we understand the principles and intention and accept the good faith behind the bill. We would like to say that in the debate in the Parliament, but we need clarification on several issues. Laurence Sullivan's point about clause 3(2)(e) was helpful and gave me a little reassurance. However, I return to Gordon Jackson's point that the use of the provisions in bad faith would not be impossible, although it might be unlikely, and to my point that personalities, ministers and Governments change.

George Lyon: That applies to the Scotland Act 1998 as things stand. If a Government that was hostile to the devolution settlement got elected down south and differences of opinion emerged between the parties at Holyrood and the parties at Westminster, it is perfectly possible that it could pass legislation that would dramatically change the Scotland Act 1998.

Irene Oldfather: But such changes would have to be made in primary legislation, which would be open to parliamentary scrutiny. We are talking

about changes that, technically, could be made using statutory instruments.

George Lyon: I understand that the debate that is taking place at Westminster on parts 1 and 2 is about the scope of the provisions and the amount of power that it is proposed will be given to ministers. However, those are not matters for me to comment on. The UK Parliament must take decisions on whether what the bill proposes is appropriate.

The Convener: I invite questions from Phil Gallie and then Jim Wallace.

Phil Gallie (South of Scotland) (Con): I will let Jim Wallace go first. Although my question is on the same theme, it is on a slightly different area.

The Convener: The lawyers are all lining up, so you could be waiting for some time.

Phil Gallie: That is all right. It is better to see the point out before I raise another one.

Mr Wallace: It has been helpful to tease out some of the issues. Is it right that if the bill were enacted it would be possible to use it to remove clause 8, which would mean that the UK Parliament could amend Scottish Parliament legislation by statutory instrument?

George Lyon: I think that that is correct.

The Convener: It gets worse and worse. Carry on, Mr Wallace.

Mr Wallace: Before the committee produces its report, it would be useful to have a supplementary memorandum that addresses the points that we have raised.

George Lyon: I will certainly consider that suggestion.

Gordon Jackson: For the avoidance of doubt, let me say that I fully understand Laurence Sullivan's point. It is obvious that no one wants separate Sewel motions to be required for every wee legislative tweak when genuinely incidental or trivial matters are being dealt with. We would never be done, and no one wants that. However, I would like you to apply your mind to how we could encourage the Government to strike the right balance—perhaps you are doing that already. Although we do not want to make it impossible for minor changes to be made without considering separate motions, we want some protection to be built in. It might be going too far to ask Westminster not to touch the Scotland Act 1998. I do not know whether you would be able to make efforts in that direction, but it would give us some comfort if better protection were built in for our own legislation.

George Lyon: I understand exactly where the committee is coming from. I will take away and try

to make progress on the points that have been made, and I will report to Parliament when the debate on the legislative consent motion is held—if there is to be such a debate.

Phil Gallie: I come from a totally different angle, although I go along with everything that my wiser legal colleagues have said. One of the bill's objectives is to ease the implementation of EU regulation. I sometimes have problems with the implementation of EU regulation as things stand. The Executive claims that the bill will widen the powers that are available to the Scottish ministers and will give them greater flexibility. That is all very well, but where does Parliament come into it? How will Parliament know what Scottish Executive ministers nod through with their wider powers?

George Lyon: As you well know, every SSI goes to a parliamentary committee. The supplementary legislative consent memorandum makes it clear that when we propose to amalgamate instruments that are subject to different procedures, the amalgamated instrument will be subject to the more onerous procedure—in other words, it will be considered under the affirmative rather than the negative procedure.

We plan to use the bill to simplify the implementation of some EU legislation by statutory instrument, but when we amalgamate negative and affirmative instruments the resulting instrument will be considered under the affirmative procedure, which means that a committee will have to scrutinise it and consent to it. In that way, Parliament will have the opportunity to scrutinise such instruments.

Phil Gallie: Thank you; that was an easy one.

The Convener: I want to draw this part of the discussion to a close. You have obviously picked up that committee members have huge concerns about the bill, and we have picked up from you that the Executive has similar concerns. Irene Oldfather elicited the information that the bill will not be considered further at Westminster until 10 May, so there is no great rush for the legislative consent memorandum to go through the Scottish Parliament next week. Rather than the committee reporting to the Parliament after this meeting to allow the legislative consent motion to be lodged, could you come back to us with further information and perhaps a revised motion that we could consider with the greater knowledge that we will all have as a result of Westminster responding to the Executive's worries?

14:45

George Lyon: I will need to double-check what flexibility there is in the Scottish Parliament's timetable to move a possible debate or decision. However, if the committee agrees, officials and I

will be happy to provide a supplementary memorandum on issues that have been raised.

The Convener: We will have a chat about that and decide on our course of action.

I thank the minister for attending the meeting.

What are members' views on what we have heard and on how the committee should proceed? We must produce a committee report.

Dennis Canavan: I want to follow up the point that I made when I cross-examined the minister. Rather than there being gentlemen's agreements, the committee should urge the Executive to seek an amendment that makes consultation with the Scottish ministers statutory.

Mr Wallace: The minister indicated his willingness to come back to the committee on the matter. Coming back to us after a parliamentary debate on it would be pointless. We should consider the spirit in which he made his offer. Perhaps we could say to the Parliamentary Bureau—or whatever the appropriate body is—that before the Parliament is invited to reach a decision, it would be in the interests of the Parliament and the committee to receive the Executive's response, which should include any feedback that the Executive receives following the representations that it has clearly made to Westminster.

Irene Oldfather: I support Jim Wallace. That is the best way forward. We should have a debate in the Parliament when what we are debating is much clearer, otherwise we will go to the chamber next week with many unanswered questions. It would be better if the minister came back to the committee. As Jim Wallace said, he indicated his willingness to do so if the bureau could timetable matters appropriately.

Gordon Jackson: I cannot see why clause 2(4) could not be included in the Sewel motion. For the sake of argument, let us say that the lawyer who gave evidence is right, and clause 2(4) is totally harmless and what will be done in Scottish legislation will simply be what is being done under the existing convention. I am sure that that is true. Nevertheless, there would be a provision in an act of Parliament that would affect Scottish legislation. Whether or not clause 2(4) would affect Scottish legislation in a trivial or non-consequential way, it would affect it and it should, therefore, logically be included in the Sewel motion. To say that the substance of the proposal is what is already done informally seems to be a red herring.

Mr Home Robertson: I think that we agree that the stated objective of the bill is fine, and that the stated intentions of the Minister of State at the Cabinet Office, Jim Murphy, are commendable, but the trouble is that the bill goes much further

than those and it would create powers that are contrary to the basic principles of devolution and the Parliament. We have a strong case for going back to the Executive and our colleagues at Westminster and asking them to think again and to legislate for what they intend to do, rather than for something that could be the basis for something much bigger but which no one intends will happen.

The Convener: I am picking up that the committee is not happy to issue a report that will allow the legislative consent motion to go to the Parliament next week. Instead, it wants the minister or the Executive to come back with further information about its discussions with Westminster and to address the points that were made today, particularly the additional point that Dennis Canavan made a moment ago about looking for safeguards to be put in legislation. I think that I am right in saying that that is a separate issue from those that are raised by the legislative consent memorandum.

Mr Wallace: Gordon Jackson also made the point that the motion should address the implications of clause 2(4).

Gordon Jackson: I do not see why not.

The Convener: Should it also address clause 8?

Mr Wallace: Yes.

The Convener: Is it agreed that the terms of the discussion that we have had since the minister left the meeting will apply?

Members *indicated agreement.*

The Convener: That means that the debate will not take place in the Parliament next week.

Mr Home Robertson: We have no chamber and no debate. What are we going to do?

The Convener: We will just all go home.

Mr Wallace: It solves a problem.

The Convener: There is lots of panicky talk going on here. Do the clerks need us to clarify anything?

Alasdair Rankin (Clerk): No, it is reasonably clear.

The Convener: The clerks are clear, so we will draft an appropriate letter to the Executive to reiterate the committee's points. Does the committee also want to write to Westminster or the chair of the standing committee that is dealing with the bill, or are members happy for the Executive to come back with its response?

Gordon Jackson: I am sure that the Executive will do that anyway.

The Convener: Okay.

That was a long session. Daniel Kleinberg is still waiting for the next item.

Building a Bridge between Europe and its Citizens

14:53

The Convener: Our second item is to take evidence from the Scottish Executive. I welcome Nikki Brown and Daniel Kleinberg, who are officials from the Europe division. They are here to talk about the Executive's project on building a bridge between Europe and its citizens.

Mr Home Robertson: And Westminster.

The Convener: And the Forth and the Tay.

Members will recall that the project was launched by the First Minister and a vice-president of the European Commission, Margot Wallström, in October 2005. The committee considered the project outline at its meeting on 25 October last year, when members requested this briefing so that we could find out a bit more about the objectives and methodology, and about how it is intended that the project will contribute to the EU debate on communication. For the information of members of the public, the committee's paper from our previous meeting that sets out the context of this communication is included in committee members' briefing papers. I understand that Nikki Brown will make a short opening statement, after which the committee will ask questions.

Nikki Brown (Scottish Executive Finance and Central Services Department): We are happy to have the chance to speak to the committee today. If it would be helpful, I will start by giving a brief outline of the project. We have also included more detail in the note that we have sent to the clerks; I understand that it was circulated to members today.

Building a bridge between Europe and its citizens is a communications project to explore how examples of best practice in Scottish consultation and legislation can help the EU to connect with its citizens. The project was launched on 13 October 2005, on the same day that the European Commission published its plan D for democracy, dialogue and debate, which invited all EU member states to organise national debates on the future of the European Union. The project is not, however, a response to plan D, but is to consider broader issues than the future of Europe. It is a contribution to the European Commission's wider objective of determining how better to communicate and engage with European citizens. The project was mentioned recently in the Commission's white paper on a European communications policy.

As we indicated in our note to the committee, the project will incorporate a number of events, including a joint event with the Scottish Parliament to celebrate Europe day. The event will be called our voice on Europe and it will be held on 7 and 8 May. It will be a youth forum event that will focus on European issues that are of concern to young people and explore how they wish to engage with those issues. Parliament's external liaison unit is making arrangements for the event.

In addition, the Scottish Executive will hold a policy forum in Brussels on 9 June, which is aimed at giving a platform to Scottish organisations that are affected by European decisions, but which normally have little opportunity to influence them. We shall explore how, and indeed whether, those organisations wish to engage with Europe and Europe-related policies, and what institutions such as the Scottish Executive and the European Commission can do to help them.

We hope that Margot Wallström, who is a vice-president of the European Commission, will be able to visit Scotland in the summer. If a visit can be arranged, ministers have it in mind to invite her to take part in an ask-Jack-and-Margot event, which would enable them to speak directly to Scottish citizens.

The ideas and concerns that will be raised in those events will be highlighted in the project report that the Executive will publish in the autumn. The intention is that that report will include a number of elements: a survey of engagement and participation in Scotland since devolution, along with studies of public understanding; case studies that will illustrate practical ways in which Scotland has sought to enable citizens to participate in European decision making; and consideration of how the Scottish Executive, the European Parliament, the Commission offices in Scotland and the Scottish Parliament work together to contribute to public awareness and understanding of the EU. It will also include an exploration of how European stories are presented in newspapers and on the radio. It will draw some conclusions about what has worked well in Scotland and what might be replicated at European level, how citizens want to engage with Europe and what they want us to do to assist them to do so.

Ministers are clear that the project is not about the promotion of any particular political view on Europe or the European constitution, but is instead aimed at helping European institutions to engage better with people.

I hope that that outline was helpful to the committee. We are happy to answer any questions.

The Convener: Thank you. Before I open the meeting up to questions, will you tell me when the policy paper was put together? The committee has waited for some time since its first request for information about the project.

Daniel Kleinberg (Scottish Executive Finance and Central Services Department): The paper brings together a number of projects that have been worked on for some time but which have not previously been publicly announced. Tom McCabe wrote to the committee with an undertaking to come back to you with information on the project.

Dennis Canavan: I am pleased to see the emphasis on participation by young people, but I do not see any mention of the Scottish Youth Parliament. Will it be involved? The Scottish Executive briefing note mentions that a

"Youth Forum in the Scottish Parliament will bring together young people from schools across Scotland".

How will the participants be chosen? The members of the Scottish Youth Parliament have something of a democratic mandate in that they have been elected by their peers. It is important that such a youth forum be as socially inclusive as possible.

Why is the policy forum on 9 June being held in Brussels? I would have thought that there would be an advantage in having not just participants from a wide spectrum of Scottish society but people who want to come and listen to the debates. It would be far easier if the venue for the policy forum was in Scotland rather than Brussels.

I have a suggestion for what the project might involve. I agree with the four bullet points that are listed in the paper, but I suggest that there should also be an exploration of how the European Union has improved the quality of life of its citizens.

The biggest challenge that the European Union and its institutions face is that people do not understand how decisions that are taken in Brussels and elsewhere affect them. If we could show people, whether young people or not-so-young people, that their quality of life has improved because of European Union decisions on funding or whatever else, they would be more likely to connect with them.

15:00

Daniel Kleinberg: Parliament's external liaison unit is co-ordinating the details of the our voice on Europe event and has made it clear that it intends to involve the Scottish Youth Parliament in the run up to it. Therefore, the Scottish Youth Parliament should be at the event, although your question would properly be addressed to the ELU.

The schools that will participate have already been selected. Schools from different regions in

Scotland were asked to apply and the successful applicants were selected by ballot, because the event was oversubscribed. The Scottish Parliament has announced the eight successful schools—at least, the successful schools have certainly been informed. The unsuccessful ones have also been written to and will be given details of how they might engage with Europe, and of other avenues for pursuing their interests.

The idea of holding the policy forum in Brussels is to take people who are affected by European decisions, but find it difficult to engage with them or feel that they cannot have much influence on them, to Brussels as part of a process of familiarisation with the processes of the EU. We hope to work with Scotland Europa on that. There would be nothing to stop us providing some way for people back in Scotland to engage with the process through information technology. We also intend to produce and publish a report of the views of those who are involved and for that to feed into the final report. We do not want to ignore the domestic market; we want to offer a complementary approach.

I hand over to Nikki Brown to address the final point.

Nikki Brown: I emphasise that ministers think of the project as a communications project. The emphasis is on what methods of communication work and why, rather than on the content of the communication.

Dennis Canavan: I know, but it would be better if you had specific examples of how communication was made and what it achieved. It would make more sense to people if they could see concrete examples of how good communications can result in improvements in their quality of life.

Nikki Brown: Indeed—the case studies are meant to pick up concrete examples. However, because the project examines how communication has happened in Scotland and what good practice—and, if we find it, not-so-good practice—can teach us from the Scottish experience, it makes sense to us to choose a number of examples from Scottish policy making, some of which will have a European angle and some of which will not.

Phil Gallie: I identify with Dennis Canavan's comments, particularly on outcomes and quality of life.

On communication and plan D, we seem to be obsessed by the fact that people are not picking up the right messages from Europe—people in France and Holland simply did not understand. Perhaps they would understand a bit better if we could show them what real advantages there are to being part of the European Union. Instead of the

woolly project subjects that you identified, perhaps it would be advantageous to study what benefits or otherwise European regulation and legislation have brought to Scotland. Perhaps you should also study the implementation of regulation to find out whether we implement it far too quickly and outstrip other countries that take more time. Perhaps there would be value in undertaking such studies.

On budgets, people in Scotland have the impression—perhaps wrongly—that the EU simply soaks up money while we see little in return, although we do see some signs to do with roads. Accurate information on budget implications and on inputs and outputs would help the public to engage with Europe.

Nikki Brown: Clearly, the better regulation agenda is extremely important; ministers do not want to forget it completely. Ministers expect part of the communications project to be about the Lisbon agenda and economic development. Scotland's experience of implementing European policies that benefit business and economic growth has been reflected in better communications.

Phil Gallie: That is interesting, especially when we consider current levels of economic growth—although I am told that the news is a bit better this week. We will wait and see.

Irene Oldfather: It is good to see Mr Gallie looking for ways to promote Europe.

Phil Gallie: I am looking for facts, not fictions.

Irene Oldfather: Absolutely—I agree with you.

I was going to ask the witnesses about the Lisbon agenda. You mentioned that you were going to examine how better communication and engagement could help jobs and growth. Will you put a little more flesh on the bones of that idea? What projects will you consider?

Daniel Kleinberg: Because it is a communications project, we will not be considering the overall success or otherwise of the Lisbon agenda. We will consider the issues in a Scottish context—within the framework of economic development in Scotland and the smart, successful Scotland policy—and we will examine specifically how the devolved Administration can communicate better and, in so doing, better pursue Europe-level policies and objectives. It is likely that we will look at a small business users group and at how we can go about communicating policies in a Scottish context. This may come back to Mr Canavan's point: we intend to discuss with the European Commission the things that work when communicating with people every day. We will discuss the salient points about the successes or otherwise of Europe-level policies.

Irene Oldfather: That is important. Too often, people think that Europe is about foreign affairs. If we can make people understand the relevance of Europe to their everyday lives, it will be a step forward.

The committee has discussed the Brussels policy forum and how we can contribute to communications policies and the plan D agenda. We have grappled with how we can reach people other than the usual suspects. What are your plans in relation to the policy forum? Your initial press release mentioned contact with stakeholders, but it also mentioned engaging with citizens generally. How will you structure that? How will you engage with people who are already involved in Europe or who could be involved, and with people who are not involved in Europe at all?

Nikki Brown: The policy forum is where we hope to engage with stakeholders. As you rightly suggest, it is not easy to catch the people who do not always show interest, and it is unlikely that the Executive will catch them directly, so we plan to ask for nominations from representative organisations such as the Scottish Council for Development and Industry, so that we can be in touch with organisations at one remove.

As for talking directly to the public, we think that that will be better tackled in the ask-Jack-and-Margot event.

The Convener: Cannot you think of a better name?

Dennis Canavan: Margo MacDonald will think that it refers to her.

Irene Oldfather: We took evidence from Liz Holt on the plan D agenda, but the boundaries between the different groups are not sharp. It is all about dialogue and debate and about how we can communicate European issues better. Liz Holt was clear that Parliament and the committee have roles to play. Is there anything we can contribute to your project? Could our ideas ride piggyback on your ideas?

Nikki Brown: Yes. The project recognises that the Scottish Parliament has a clear role to play, given that it provides so much of the consultation machinery in Scottish policy making. We will work jointly with Parliament on the youth forum event. We are also hoping that Parliament officials will contribute to the final report a chapter that will set out how consultation works in Parliament.

Daniel Kleinberg: We have spoken to Elizabeth Watson and the committee clerks about an official-level contribution that could showcase some of the efforts that Parliament makes—as a corporate body rather than politically—to encourage participation and engagement. We hope to be able

to work with them to produce a chapter on that for the report.

Irene Oldfather: The committee has written to other committees to discuss how they engage with and involve citizens. I presume that we could feed in the results of that information-gathering exercise.

Nikki Brown: That would be extremely helpful.

The Convener: It is interesting that your paper mentions many of the things that the committee discussed when we thought that we would respond to plan D. You will have seen from the *Official Report* of our previous meeting that we now realise that we will be responding to the communication strategy, so there will be no duplication of work. We are pleased that the Executive took on board all our suggestions.

I welcome to the committee Richard Lochhead, who has asked to contribute.

Richard Lochhead (North East Scotland) (SNP): Thank you very much. I apologise for my being late. I found out only a short time ago that my services as a substitute were required.

The Convener: I am sorry—I welcome Richard Lochhead, who is substituting for Margaret Ewing.

Richard Lochhead: I would have enjoyed the first agenda item, had I got here in time, but the committee seems to be making good progress.

On the subject of building bridges between the citizens of Europe and Scotland, I suspect that the reason why so many Scots feel disengaged is that they feel that they cannot influence decisions that are made in Europe, and that they need to be empowered. Given that the European Union does not have officially to consult Parliament on European legislation that affects Scotland—it happens only as a result of good will—there is a debate to be had about how Parliament has itself engaged on behalf of the people of Scotland.

Given that, at the most recent European elections, in some new member states there was only a 17 per cent turnout and that in Scotland the turnout was also derisory, there is a lot of work to be done. My concern is that a lot of the work to which the paper refers, which has taken place previously, is with the same old people in the same old settings in Scotland. We have somehow to move the debate away from the chattering classes—there is a community in Scotland that takes a close interest in these issues and turns up to all the conferences, policy forums and this committee.

The big challenge that Parliament and the EU face is in reaching out to and engaging ordinary Scots, but I am not sure that I can see anything in the paper that would do that. It mentions policy

forums and events that will be held in Brussels that people can access through the website. A few score people throughout Scotland might do that, but five million Scots will be largely unaffected.

What is being done to canvass the views of ordinary Scots on Europe, so that we can find out what the man and woman in the street think of, and want to see done in relation to, EU membership? There are many benefits of EU membership of which people might be unaware, but there are other things that people do not see as benefits.

Nikki Brown: Today we are talking specifically about the communications project, which aims to draw out good practice of consultation from policies that have previously been implemented in Scotland. There is broad recognition in Brussels that innovative methods have been used for consulting on domestic policies, such as the anti-smoking legislation and antisocial behaviour orders. Through the project, we are aiming to draw out lessons from those consultation exercises, which have engaged with ordinary Scots.

15:15

Dennis Canavan: Yes, but the briefing note from the Executive states that 53,000 people responded to the Scottish Executive's consultation on smoking in public places. I presume that there was such a large response because the Scottish Executive produced a consultation document, put it on the website and so on and people could send in their comments by post, e-mail and the like. Will a similar mass communication exercise be conducted as part of this project?

Daniel Kleinberg: No. We have previously run consultation exercises in which we have sought people's views on Europe. The Eurobarometer surveys show the results of some research. A lot of work has been done to poll Scots on their views on Europe, but such an exercise is not envisaged as part of this project, which will focus on communications. However, there will be public events at which young people, for example, can air their views.

Dennis Canavan: You will not get anything like 53,000 responses, which the anti-smoking legislation attracted because people were strongly pro or anti that legislation. However, although some people feel strongly anti-Europe and others feel strongly pro-Europe, for a huge mass of people there is a big question mark over the European Union and they are not enthusiastic one way or the other. Those people must be encouraged to express a view and to engage in the debate.

Daniel Kleinberg: One part of the project that will begin to address those questions—although

those are obviously bigger, Europe-wide issues—is the policy forum. It will attempt to canvass the views of people who are affected by the EU's decisions but who are not necessarily engaged with the policy process. They will be asked about how European institutions could, perhaps alongside devolved Administrations, at least communicate more effectively what is going on and try to involve people. However, by definition harder-to-reach people are harder to reach.

Mr Charlie Gordon (Glasgow Cathcart) (Lab): Ms Brown put great emphasis on the mechanics of engagement. I draw from that the inference that the Scottish Executive thinks that, by and large, the traditional means of engagement with the public are in some way deficient.

Nikki Brown: The experience in Scotland in the early years of the Scottish Executive and the Scottish Parliament has been that it is possible to use a wide range of methods of engagement. Some of those are traditional methods, but others are not. The point of the project is to consider the methods that have been used and to establish what has worked in what circumstances.

Mr Gordon: What are your criteria for determining whether one method of engagement is more successful than another? The briefing note refers to the fact that 53,000 people responded to the anti-smoking legislation consultation. Is the criterion numerical? Is it the case that because more people respond to an exercise it is judged to be better engagement than if fewer people had responded?

Nikki Brown: The measure of success will depend on the policy—it will depend on whether it was a policy of broad or specific interest. If it is a policy of specific interest, the measure of success might be what changes were made to the policy as a result of points that came from particular quarters.

Mr Gordon: I do not want to single out the consultation on the smoking ban, but if a consultation attracts 53,000 responses but there are only half a dozen important issues in the responses, it might well be that there is a lot of repetition. Thousands of people might sign petitions and make the same point over and over again. Is that a more significant form of engagement than when there are only 100 responses but they are of exceptional quality?

Daniel Kleinberg: Not necessarily. We want to consider a range of different ways of trying to get people involved and engaging with them. We will consider case studies that involve public meetings, focus groups, citizens juries or citizens panels, stakeholder workshops, web responses and written responses. We do not intend to say that 53,000 responses is good and that 100 responses

is bad: we want to know what examples—depending on the policy—of how to get people involved and engaged the Commission or other European institutions might look to Scotland to provide.

Mr Gordon: That is interesting. Indeed, you seemed almost to imply that the Scottish form of engagement—or the more recent innovations in different types of engagement in Scotland—is somehow more valid than or superior to what is done elsewhere and that the rest of the European Union can therefore draw lessons from what is happening in Scotland. However, the project is still a work in progress. It involves a number of events that may or may not be successful. If some of the events are not very successful in terms of engagement, will the Executive tell the European Union about them, too?

Nikki Brown: If some of the events are not successful, we can look at why that was the case and see what lessons can be drawn.

Mr Gordon: The underlying assumption seems to be that there is a holy grail of how to do public engagement and that, here in 21st century Scotland, we have nearly attained it. Dennis Canavan hinted at this. We know that 53,000 people were fiercely interested in the debate on the ban on smoking in public places but, when it comes to the future of the European Union, many ordinary people find the issues too abstract. That might have nothing to do with the validity of the mechanics of the engagement.

The private sector always seems to default to what may be called the more scientific forms of engagement, such as market research and opinion polls. However, we have to think about civic Scotland out there—the community councils and other bodies that we are required to consult. I worry that your political masters might be inculcating in you the working assumption that the way in which we have consulted in the past is flawed and that there is a new way that we must use—a holy grail of how to do public engagement.

Daniel Kleinberg: Ministers have said that the fact that the European Commission has identified Scotland as an area of interest is not a sign that we have all the answers or that what we are doing across the piece is somehow more successful in league-table or any other terms. They have not used that sort of language. The intention is to find the areas where we see best practice and use it to help the European institutions to work with the devolved Administrations in future. The intention is to provide a toolkit and not a league table.

Mr Gordon: But will best practice be measured by the numbers involved?

Daniel Kleinberg: No, not necessarily. You gave the example of 53,000 people participating in

the consultation on the ban on smoking in public places, but there are many other ways of looking at whether a consultation was successful. The intention is to take a range of different approaches and say what worked and what did not.

The Convener: Thank you. Before I draw the session to an end, I have some concerns to raise. We keep talking about the launch of the project by Margot Wallström and Jack McConnell and about the ask-Jack-and-Margot event and all the rest of it.

Phil Gallie: How about the waffle breakfast?

The Convener: Oh, Phil.

It seems that the Executive considers that the project and the things that it wants to do should have a high profile. However, the project was launched five months ago and we are nearly halfway through the time period on which you are supposed to report, yet the paper that we have before us contains only ideas of what will be done; it contains no background methodology on how it will be done. Members also raised that concern.

What is the timetable for the project? When will it finish? Has it started? Is the work under way to make all those things happen? Given that we are almost at the halfway point, what progress has been made to date? What is the budget? If the project is as high profile as the Executive is putting across, surely the budget should reflect that.

Daniel Kleinberg: I will start with the timescales. Work is under way. We have been working with analytical colleagues in the Executive to look across the piece at theories of engagement and civic participation. We are doing that as part of planning the events that will inform the final report. The work on building a bridge will conclude when the report is produced in the autumn—probably around October.

I will hand over to Nikki Brown to answer the questions on the budget.

Nikki Brown: The Executive is currently running its budgeting exercise for the coming financial year. Colleagues are aware of the importance of the project and of the sort of scale of money that is needed to deliver the outcomes that we are looking for.

The Convener: You said that the Executive would work jointly with the Parliament, which does a lot of work on Europe. The our voice on Europe event is the kind of event that the Parliament runs around Europe day. Will the Executive rather than the Parliament fund the our voice on Europe event, given that the Executive is taking credit for it as part of the building a bridge project?

Daniel Kleinberg: We are funding the event jointly with the Scottish Parliament, on an equal basis. There will be matched funding.

The Convener: I thought that matched funding had stopped.

Mr Wallace: I want to pursue the question about the budget because, with respect, I do not think that the officials answered it. Given that the project was launched six months ago and a series of events is planned, an indicative, ball-park figure must have been calculated. It would be interesting for us to know what that figure is. The officials must be able to tell us whether Margot and Jack are going to hire Murrayfield or a village hall in Auchtermuchty.

Daniel Kleinberg: The ask-Jack-and-Margot event will build on the events around the country in which the First Minister already participates.

Mr Wallace: That event was just one example. You are planning events, so you must have a rough idea of your budget.

Irene Oldfather: Will people who attend the policy forum have to pay for their accommodation and travel, or will the Executive provide funding to cover such expenses?

Nikki Brown: We are looking at the possibility of offering support in cases in which support is needed to allow people to attend.

Irene Oldfather: When will you be able to tell us what your budget is? The voluntary sector could make an important contribution to the policy forum but I suspect that the sector does not have the money to send five people to Brussels. If the event is to take place on 9 June, people need to know soon how they can get involved and what financial support they can expect to receive.

Nikki Brown: We acknowledge the importance of financial support. We will be happy to give the committee details of the budget, when the budget has been set.

Mr Home Robertson: Will the budget be set in time to be able to use it?

Nikki Brown: Yes.

The Convener: That concludes our questions. I thank Nikki Brown and Daniel Kleinberg for their time. I remind members that at the meeting on 28 February the committee agreed to respond to the European Commission's white paper on a communications policy—the theme is broadly similar to the theme of the building a bridge project. We will consider a draft response in June.

Phil Gallie: The European Council called for “a period of reflection” and plan D is supposed to address the problems that have arisen because the Dutch and the French rejected the proposed constitution for Europe. People are kidding themselves if they think that communication is the answer—that is kidology. We have lost sight of the real problem, which is that the people of Europe

appear to be disaffected with Europe. How do we get to the bottom of that? The issue is results, not communication.

I refer members to the recommendation in paragraph 22 of the briefing paper and I suggest that the committee produce a report for the Commission. Our report should be based on the report that Ian Duncan produced. Ian Duncan is an employee of the Parliament. He went to the conference on plan D and his report revealed the farce that is going on in that regard. We should have the guts to comment on that. What was the point of sending Ian Duncan to a conference if we are going to ignore his report? We have a chance to point out the problems that Europe faces.

The Deputy Convener (Irene Oldfather): While the convener is out of the room, I will respond and then let other members in if they wish to speak. I understand Mr Gallie's point, but my understanding of my discussion with Mr Duncan was that he felt that not enough time was assigned to the event in Brussels but that it was part of a process and was not a one-off. Further events and discussions are planned. I think that we should listen to all that, after which I would be happy for the committee, if members are agreeable, to send a report to the Commission. However, I do not think that we should send a report based on one afternoon event at which an officer felt there was insufficient time in which to discuss the issues.

15:30

Phil Gallie: That is my point. The whole thing was a farce. That was a key conference, but what happened was that three working-party groups were set up and given half an hour each to discuss the key issues. Four hundred representatives from across Europe attended at God knows what cost, but they had a debate of only one and a half hours. It was a major conference, which was associated with the assessment of plan D, but it started from the baseline that the French and the Dutch were totally wrong and just did not understand Europe. The arguments went on from there. The whole thing is a shambles and a farce. I think that we should have the guts to stand up and say that that is the committee's opinion.

The Deputy Convener: That is not my opinion, I must say. You will recall that I suggested at the beginning of discussions on this matter that we produce a wide-ranging paper. As there was not full support in the committee for doing that, we decided to go down the lines of the communications strategy.

From a more general perspective, plan D is much wider than the one-day conference. To update Mr Gallie, the Committee of the Regions,

the European Parliament and the Commission are all considering how we take the project forward and consult and engage with citizens.

Alasdair Rankin, the clerk, suggests that if members have complaints about the conference, they would be of more relevance to the conference organisers who arranged the timescale.

Phil Gallie: Did the Commission organise it?

The Deputy Convener: I think that it was the Committee of the Regions.

The Convener: It was and I accept the responsibility for making the suggestion that was attributed to the clerk.

Phil Gallie: I would be happy if the committee could write and report our—

Irene Oldfather: The alternative is that we have something like a three-day conference, but people would find it difficult to attend that. Realistically, it is difficult to know how to organise these things. Either one tries to do it in a day or a day and a half, or one does it over three days, but it is difficult to get people to commit for that length of time. It is not all about being in one place at one time. I think that there are other opportunities, such as using the internet and sending reports to the Commission. Not everything has to be done in an afternoon in Brussels.

Phil Gallie: I can imagine 5 million people in Scotland all looking at the internet and making their comments. What we are about is identifying with people in Scotland rather than identifying with the people who are involved in the Committee of the Regions and that kind of thing.

On the communications programme, Jim Wallace picked up a point regarding the budget. We are halfway through the communications exercise and there is no budget.

The Convener: I want to draw this to a close because that is to do with the Executive's building a bridge project; the meeting in Brussels was about plan D. What we are responding to is the communications white paper. I bring this spat to a close now. I am not going out to the toilet again, if this is what is going to happen.

Irene Oldfather: It would not be a European and External Relations Committee meeting if Phil Gallie and I did not get a chance to have a little debate on the merits or otherwise of Europe.

Co-operation with Ireland Inquiry and Transposition and Implementation of European Directives Inquiry

15:34

The Convener: We move on to item 3, which is to enable our two reporters to provide a brief update to the committee on the inquiries that they are carrying out. Briefing papers were circulated to members, but I invite both reporters to say a few words in addition. I should use the European term “rapporteur” to refer to them. Dennis Canavan is first, acting as reporter on the inquiry into possible co-operation between Scotland and Ireland. Dennis, could you speak to the section of the briefing paper that relates to your inquiry?

Dennis Canavan: An interim report has been circulated to members but I will add a few details. On the Dublin visit, I met Éamon Ó Cuív, who is Minister for Community, Rural and Gaeltacht Affairs and an influential member of the Irish Cabinet. He seemed very enthusiastic about the prospects for co-operation between Scotland and Ireland. He has made a ministerial visit to Scotland and he hopes to make another one fairly soon. I notified the First Minister and other relevant ministers in the Scottish Executive of that possibility.

During my meeting with Éamon Ó Cuív, Bertie Ahern—the Taoiseach—came in. He stayed with us for about 10 minutes and took part in the discussion. He seemed very positive about co-operation between Ireland and Scotland and said that he would discuss the matter with his Cabinet colleagues. I also met Dan Mulhall, who is director general of the European Union division of the Department of Foreign Affairs in Dublin. He was the first Irish consul in Scotland—he was based here in Edinburgh—so he has a lot of background knowledge about Scotland and Ireland and co-operation between the two countries.

Cecilia Keaveney TD is a leading member of the Irish Parliament and she was very helpful in organising the programme. She represents Donegal North East and is convener of the Irish Parliament's Joint Committee on Arts, Sport, Tourism, Community, Rural and Gaeltacht Affairs. We also met the senior officials from the Department of Finance who have responsibility for European Union funding. The main message that I took from that meeting is that if Scotland is to be included in the existing co-operation programme between the Republic of Ireland and Northern Ireland, a decision will be required soon about structures. I have alerted the First Minister to that. If Scotland is to be included in the co-operation

programme, the Scottish Executive should ensure that it does not miss the boat.

We also met representatives of various business and enterprise bodies including the Irish Cross Border Area Network, Inishowen Rural Development Ltd, Chambers Ireland and the Irish Business and Employers Confederation.

Before I went to Ireland, I attended a meeting in Glasgow that was organised by the Scottish Council for Development and Industry. The guest speaker was Enterprise Ireland's representative in Scotland and I was invited to give a short presentation about the committee's inquiry. I got a positive response from the people at that meeting and the SCDI and some individual members hope to make submissions. Strictly speaking, the closing date has passed, but there is a degree of flexibility on that, as I explained to them.

Last Friday, Nick Hawthorne and I attended a seminar-cum-workshop in Glasgow that was organised by the Scottish Executive's Europe division. It was about territorial co-operation and European Union funding of the co-operation objective, which is to replace Interreg funding at the end of the year. Again, we got the message that decisions will have to be made fairly soon on the principle of Scottish participation in the programmes and the structures for taking that forward.

I intend to visit the Western Isles on Friday next week. That area is at the forefront of Scottish-Irish co-operation in many respects, including the work of Iomairt Cholm Cille—formerly the Columba initiative—on the promotion of Gaelic culture. Also, Comhairle nan Eilean Siar, the local authority, has a partnership with local authorities in Northern Ireland and the Republic of Ireland. Alasdair Morrison, who is a former member of the European and External Relations Committee, is being helpful in trying to arrange a programme for the day. I hope to visit Northern Ireland and Donegal next month—probably during the Easter recess—and I will report back to the committee in due course.

The Convener: Thank you. As members who have looked will know, the written evidence that has been posted on the website has been very positive about the objectives. You also said that decisions must be made soon if we are to take advantage of this funding and that you have written to the First Minister in that regard.

Dennis Canavan: That is right.

The Convener: Can we record that that was done with the committee's full support?

Dennis Canavan: I should say that I am getting the letter off to the First Minister for the purpose of speed. Last week, I had a personal word with him

and thought that I should put down my thoughts in writing. Obviously, it would help if I was able to say that the committee backed me.

Irene Oldfather: I have just come back from being outside, so I do not really know what I am supposed to be agreeing to.

The Convener: Dennis, will you quickly explain the issue to Irene?

Dennis Canavan: As you will know, there are already participation programmes between the Republic of Ireland and Northern Ireland. When we were in Dublin, we met senior officials from the Department of Finance of the Irish Government, who explained that if Scotland wanted to get involved in the existing participation programmes, decisions would have to be made very soon on the principle of Scottish involvement and the structures for developing such involvement. I have already explained that to the First Minister in an informal conversation, but I simply thought that I would get on record the fact that I was following it up in writing.

Irene Oldfather: That sounds like a very good idea. Further to that, we discussed the matter at the structural funds forum, and identified the issues on which the Northern Irish are working. I asked whether it would be possible to piggyback quickly on some of those initiatives. There is certainly a will to move forward on the matter.

The Convener: I thank Emma Berry and Nick Hawthorne for helping to expedite this inquiry.

Jim Wallace will now report on his inquiry on the transposition and implementation of European directives in Scotland.

Mr Wallace: Most of the detail is contained in paper EU/S2/06/4/3, which has been submitted to the committee. There has been a reasonable response to our call for written evidence.

One challenge that we faced with this inquiry, which is indeed as open-ended as members would think it might be, was to identify three regulations that we could use as case studies. We eventually agreed on the Waste Incineration (Scotland) Regulations 2003, which cover a wide range of activities; the Registration of Fish Sellers and Buyers and Designation of Auction Sites (Scotland) Regulations 2005; and the very recent Public Contracts (Scotland) Regulations 2006, which relate to the procurement of goods and services in the public sector, on which concerns have been expressed.

With the assistance of Professor Alan Page of the University of Dundee, our legal advisers are carrying out an analysis of those regulations and comparable implementing directives in other parts of the United Kingdom and at least one other comparable jurisdiction.

We have met representatives of a company that operates north and south of the border that has highlighted various implementation issues and has been able to give us an insight into certain differences between Scotland and England in enforcing legislation. After all, enforcing the implementation of directives is as relevant to this matter as the directives' actual wording. Last week, we also visited the Scottish Environment Protection Agency to get its perspective, and I have further meetings lined up this week.

Our starting point for the inquiry was a desire to find out whether we are gold-plating or overegging things by comparing the implementation of directives. However, other issues are beginning to emerge, such as the value of regulatory impact assessments and how they are put together and the level and nature of consultation with key stakeholders, including enforcement authorities, in implementing regulations. If we want to make the inquiry worth while, the challenge is to keep it strictly focused, as it could easily blossom out.

15:45

Mr Home Robertson: I look forward to reading more about the subject, and I might seek the opportunity to listen in on some of the forthcoming discussions that Jim Wallace mentioned.

There is a perception that the regulatory authorities in Scotland—SEPA being an example—take some sort of delight in announcing and enforcing new regulations that, although they might have been imposed with the best possible intentions, do not offer any practical advice on implementation. Businesses might experience all sorts of difficulties as a result. It ought to be incumbent on authorities not just to tell people that they may not do certain things but to offer some sort of solution, explaining, "You can't do it that way any more, but we suggest you do it a different way in future." That is not how a number of authorities are currently implementing regulations. It would be useful to develop some sort of culture change in that respect. Perhaps I can talk to Jim Wallace about that directly.

Mr Wallace: That is an emerging issue. Timing is an issue. I am not picking on SEPA specifically, but what notice does the Executive give it of regulations, for example? The National Audit Office has done some worthwhile work, although not in exactly the same way as we are doing our work. Last year, or certainly within the past 18 months, it conducted an inquiry into the implementation of seven sets of regulations by the Department for Environment, Food and Rural Affairs in England and Wales. I found it useful to read the report on that, if only to help to identify some of the questions that we could ask and to ascertain what parallels we can draw with practice in Scotland.

Irene Oldfather: I appreciate what Jim Wallace is saying about being focused. Such inquiries have a habit of growing arms and legs. Does Mr Wallace expect to have the opportunity to consider whether we are at a comparative disadvantage in relation to not just the rest of the UK but other regions or member states?

Mr Wallace: That is the intention. If the committee wants me to go off and visit all the other 24 member states, I will be delighted to do so. In making our selection, we will consider member states of comparable size and perhaps a Spanish autonomous region. We will try to make reasonably good comparisons with Scotland. For example, if we are going to examine the registration of fish sellers and buyers, we will not readily go to Austria. We will try to choose somewhere that seems a comparable place.

Irene Oldfather: One suggestion might be to consider complaints to the European Commission in respect of infringement proceedings.

Mr Wallace: That is a useful suggestion, which might help to identify a suitable place.

Phil Gallie: I compliment Jim Wallace on what he is doing. We would certainly not want the inquiry to blossom out. Jim mentioned the registration of fish sellers and buyers. I acknowledge the difficulties that various port authorities have experienced with auction sites. Indeed, the Scottish Fishermen's Federation and other bodies are involved in such issues. Is it the intention to involve such organisations in the inquiry, or would that mean things blossoming out too far?

Mr Wallace: It is important to discuss specific regulations with the key stakeholders.

The Convener: Thank you very much for that, Jim. We will all look forward to seeing the draft report in due course. I thank Alasdair Rankin and the committee's legal advisers for their help.

Work Programme

15:48

The Convener: Item 4 is consideration of the committee's work programme. Following the evidence given at our previous meeting by the Minister for Finance and Public Service Reform on the Executive's EU priorities, it seems appropriate that the committee should agree its work programme for the final 14 months of the session. The clerks have prepared paper EU/S2/06/4/4, which has been circulated, setting out the committee's discussions on the issue so far, ahead of the visit to Brussels next Monday and Tuesday, during which we will receive briefings on a number of important matters on the European agenda.

I intend to revisit this at our next meeting, on 28 March, following the Brussels visit. The clerks will prepare an options paper for that meeting, taking into account not only the discussions that take place in Brussels but the views that we have previously expressed on potential areas of further work. In addition, the clerks will draft a paper for a future meeting on the wider issue of how we integrate our scrutiny of the Executive's priorities into our future work programme.

The discussion is not about suggesting areas of further work. Members have previously suggested a large number of items of extra work, many of which are still relevant. Rather, its purpose is to generate ideas about how the committee wants to organise its work programme for the remainder of the session, so that that can be taken into account in the clerk's paper for 28 March.

Do members have any comments to make on the outline that is set out in annex A?

Irene Oldfather: It seems sensible, although we have not yet had a discussion this week on petition PE804, so I remain open minded on that issue. I presume that we will programme in updates from Jim Wallace and Dennis Canavan and continue to keep a watching eye on issues that have been highlighted in the Commission's work programme.

The Convener: The paper for this item incorporates the committee's priorities, the Executive's priorities and scrutiny of the Commission. Are members content to note the paper?

Members indicated agreement.

European Commission Work Programme 2006

15:51

The Convener: Item 5 is our regular agenda item that enables us to track the areas of the European Commission's work programme that the committee has previously expressed an interest in.

Updated paper EU/S2/06/4/5 provides information on the proposed European institute of technology, on which there has been some progress. Members will recall that, at the last meeting, the minister also identified this issue in the key dossier that was presented to us. Do members have any comments to make on the paper?

Irene Oldfather: I am happy to note it. It seems like good progress is being made.

The Convener: Are members happy to agree the recommendation in the paper and for the item to be included in the committee's general work programme at the next meeting?

Members indicated agreement.

Petition

Fishing Industry (PE804)

15:52

The Convener: Item 6 relates to our continued consideration of PE804. At the last meeting, it was agreed that the clerks would provide us with a scoping paper on how to take forward our consideration of the petition. Members now have that before them. We also have some additional information from the petitioners.

Phil Gallie: I thank the clerks for the scoping paper. I would be more than happy to proceed along the lines that have been suggested. However, I would like to see the paper from our legal adviser before any evidence is taken.

Irene Oldfather: As I have said before, the issue of withdrawal from the common fisheries policy is reserved to the United Kingdom Government. That is not to say anything about the merits of the petitioners' case, but they have been heard by the Scottish Parliament before and I think that their comments would best be addressed to Westminster if what they seek is withdrawal from the CFP. At the beginning of this process, at a previous meeting, Gordon Jackson asked what could be achieved by our agreeing to the terms of the petition. There are two or three possible outcomes. If the entire committee agreed that we should withdraw from the CFP—which is not going to happen—what would we achieve? If the committee did not agree with that proposal and there was a majority view that we should remain in the CFP, again, what difference would that make to the petitioners? I think that we would be raising expectations that we could not satisfy.

The Convener: The committee's decision at the previous meeting was not about pulling out of the common fisheries policy but about considering the constitutional issue of whether the UK could legally withdraw from the CFP while remaining within the EU and the potential ramifications of that for the UK and Scotland. That relates to the paper from our legal adviser that Phil Gallie thinks we should scrutinise before we invite evidence.

Gordon Jackson: In a sense, we have moved on, which is good. We are no longer about to consider whether the CFP is a good thing, a bad thing, a great thing or a rotten thing. The committee may have agreed this, but it now appears that we are discussing whether it would be legal for us to withdraw from the CFP. As a lawyer, I am hugely interested in that; as a member of the Scottish Parliament, I have no interest in the subject whatever. Legally, I find it fascinating—it is a nice wee topic and I am sure

that I would enjoy reading the legal paper. However, we are really busy and we have a lot to do. If I am about to spend hours looking into a question, I always ask myself what I will do with the answer. If the committee decides that the UK Government could legally, if it wanted, withdraw from the CFP and stay within the EU, big deal. On the other hand, we might discover that we could not legally withdraw and stay within the EU. I do not see the point of the exercise.

The Convener: That was an argument for the committee meeting at which the decision was taken to go ahead.

Gordon Jackson: If that is a binding decision, fine—have the paper; but it is a total waste of time.

Mr Home Robertson: Surprise, surprise: I am with Gordon Jackson on this. It is a ridiculously esoteric debate, which might generate a lot of paper and no doubt some fees for somebody, but would not—

Gordon Jackson: Perhaps it is a better idea than I thought.

Mr Home Robertson: It would achieve absolutely nothing. What is the point? We have better things to do.

The Convener: I repeat that the petition was on the agenda at the previous meeting; members who came to that meeting considered it and a decision was made. What we now have is a paper saying how we can translate that into what the committee requires.

Irene Oldfather: My understanding is that we are being asked to take a decision on the recommendations in a scoping paper. That is a bit different.

Phil Gallie: The committee considers many issues, including the European constitution, on which it can only form an opinion. The committee can relay that opinion to the UK Government, which can take action or take note. I do not see any difference between this issue and other issues that we have considered along those lines.

With respect to Gordon Jackson, perhaps there are few fishermen left in Govan. This is an on-going argument throughout Scotland, which matters to a lot of people. The fact that issues such as this get ignored is one reason why Europe has become unpopular. We are on a fact-finding mission and nothing more. Addressing the issue might ease arguments in other places. I accept that, at the end of the day, we may not achieve what I would like, but addressing the issue will remove a valid, long-standing argument that remains an issue of contention for a lot of people in Scotland.

The Convener: The committee also considered at the previous meeting the fact that this was a fairly quick way of going forward and taking further decisions.

Mr Gordon: I was party to the decision at the previous meeting to ask for a scoping paper. I would be happy to go along with recommendation a) that we ask for a paper on the legal position. Phil Gallie has made the point that we had better have that paper before we consider taking evidence. That is as far as I am prepared to go at this stage. I would be happy to support recommendation a), if that is the consensus. It would be premature to consider recommendations b) and c).

The Convener: That is fair.

16:00

Richard Lochhead: Members will not be surprised to know that over the past year—or however long it is since the petition was submitted to the Parliament—I have paid close attention to it. Phil Gallie is right to say that the matter continues to be a major issue in many of our fishing communities around Scotland's coasts.

The difficulty with the petition—which has been on the Parliament's agenda for the past year, since it was signed by a quarter of a million Scots—is that Europe is a reserved matter. However, the Parliament has a European and External Relations Committee. Because the petition is essentially about a European matter, other committees have referred it to this committee. When the Environment and Rural Development Committee, of which I am a member, considered the petition, it felt that this was the appropriate committee.

When I read the recommendations before coming to the meeting, I thought that they were sensible and represented a good way forward. They would help to bring matters to a head and allow things to move on.

I agree with the views of others around the table that the recommendations can be looked at in two ways. We could simply ask the committee's legal adviser to write up an opinion and then discuss our course of action once we receive that advice. Alternatively, we could decide both to ask for that legal advice and to hear from the petitioners, who may agree or disagree with the committee's legal advice.

I agree that we should hear from a representative of the UK Government. There are many precedents for taking evidence from UK Government ministers on reserved issues. Given that a UK minister negotiates on behalf of the UK on fishing matters, it is appropriate that we hear

his views on the legalities and on the general issue.

The issue is clearly not popular with all political parties but, in responding to an issue of public concern, the committee must act on behalf of the wider Parliament. I hope that the committee will decide to adopt some, or preferably all, of the recommendations.

Mr Wallace: As one who was present at the previous meeting at which we discussed the petition, I think that Charlie Gordon has accurately summed up both our intention behind asking for the paper and my feelings about the recommendations.

Gordon Jackson: For the record, I still think that we should not be going down this path. However, if the legal adviser is to give us her view on the matter, I wish her well.

Irene Oldfather: I absolutely agree with Gordon Jackson. The recommendation in paragraph 7 a) involves

"Asking the ... Legal Adviser to produce a paper outlining the legal position of the UK withdrawing from the CFP and what consequences would result."

I do not know that a legal adviser will be able to tell us what the consequences would be.

Phil Gallie: The clerks will have checked that out before including it in the recommendation.

Gordon Jackson: If I was a legal adviser, I would take the question to mean what legal consequences, rather than political consequences, would result from withdrawal from the CFP. That should be made clear. I confess that, out of curiosity, I would want to see what any legal adviser would make of it. All I can say is that I am glad that I am not the committee's legal adviser.

The Convener: She is sitting and watching the meeting on her monitor right now.

I think that the general view of those who attended the previous meeting at which the decision was taken is that we should have the legal opinion. Would it be appropriate to request the paper for the next meeting or would that be too soon?

Alasdair Rankin: My understanding is that the legal adviser has already done some initial work on the matter.

Mr Home Robertson: How many pages will it take?

Alasdair Rankin: I am told that it will not be very long.

Gordon Jackson: It could probably be summed up with the words "Maybe's aye, maybe's naw."

The Convener: Do we agree to the suggestion in paragraph 7 a)?

Irene Oldfather: We should clarify the wording by stating that the legal adviser's paper should outline what legal consequences might result from the proposal.

The Convener: The clerk has confirmed to me that that is Elspeth MacDonald's reading of the matter.

Irene Oldfather: I cannot agree to recommendations b) and c). I am going along with recommendation a) only because colleagues feel strongly about it and, in a democracy, it is important to listen to colleagues. I share Gordon Jackson's view that the suggestion is a complete waste of the committee's time because the matter is reserved to Westminster. I put on record that I do not really agree with the recommendation.

The Convener: But you will go along with it.

Mr Home Robertson: Thus far and no further.

Irene Oldfather: Exactly.

The Convener: Thank you.

Pre and Post-council Scrutiny

16:04

The Convener: The paper on pre and post-council scrutiny is quite short this week. Annex A of paper EU/S2/06/4/7 has only four items; we also have general papers. Are members content to agree to the recommendations in annex A? Do members have comments on the information that the Executive has provided?

Gordon Jackson: Convener, I am sorry, but I must go. Is there a wee pack for the Brussels visit?

The Convener: You cannot go without your wee pack.

Before Gordon Jackson interrupted, Phil Gallie was about to comment.

Phil Gallie: The information on the transport, telecommunications and energy council mentions discussions on the single European sky air traffic management research, which is massively important to Scotland. It could have a considerable effect on Scotland and particularly on Ayrshire, given that we control from there skyways across the Atlantic and flights across the United Kingdom. We must keep an eye on that.

The EU and the USA are continuing negotiations that I presume are on fifth-freedom rights, which could also have a major impact on Scottish airports. We should ask ministers to keep us informed of what happens at that council meeting.

On the agriculture and fisheries council, I congratulate the Minister for Environment and Rural Development on producing an early paper. Given that his department has not received an agenda, perhaps the blame for previous late delivery of agriculture and fisheries council information lies with the council.

The Convener: That is very gracious of you.

Phil Gallie: No problem.

The Convener: Members have no other comments.

Sift

16:07

The Convener: Item 8 is the regular sift of EC/EU documents and draft legislation. Just one item is highlighted in the documents of special importance section, which is the communication from the Commission on the EU strategy for biofuels. That will be discussed during the Brussels trip next week, when we consider energy.

Are members content with the referrals in the sift paper?

Members indicated agreement.

Convener's Report

16:07

The Convener: The final agenda item is the convener's report, which is short. The first item in the report is to inform everyone that they will receive their briefing packs for the Brussels visit after the meeting.

The second item is correspondence from the Finance Committee's convener, who has written to invite all committees to respond to that committee's inquiry into accountability and governance. Given that our committee has no remit in relation to any of the bodies that are listed in the letter, are members content for me to decline the invitation to submit evidence?

Members indicated agreement.

The Convener: The third and final item in the report is the response from the Scottish Executive to points that members made when they considered the pre and post-EU council scrutiny documents at our meeting two weeks ago. I thank Executive officials for responding so quickly. Do members have comments?

Phil Gallie: Could we have a copy of Mr McCabe's letter? Annex B says that it was given to the committee on 28 February, but I do not remember seeing it.

The Convener: The letter has not been received.

Phil Gallie: The convener's report says:

"Mr McCabe has written directly to the Committee with responses to the Committee on these two issues."

The Convener: We have not received the letter yet, but I have no doubt that it will arrive this week.

Phil Gallie: Should the report say, "Mr McCabe will write"?

The Convener: The letter is in the post.

Meeting closed at 16:09.

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