

# **EUROPEAN AND EXTERNAL RELATIONS COMMITTEE**

Tuesday 26 September 2006

Session 2

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# CONTENTS

Tuesday 26 September 2006

	Col.
ITEM IN PRIVATE.....	2057
SCOTTISH EXECUTIVE EUROPEAN UNION PRIORITIES 2006 .....	2058
LEGISLATIVE AND REGULATORY REFORM BILL .....	2068
EUROPEAN COMMISSION GROWTH AND JOBS STRATEGY INQUIRY .....	2081
CO-OPERATION WITH IRELAND INQUIRY .....	2089
EUROPEAN COMMISSION WORK PROGRAMME 2006 .....	2093
PRE AND POST-COUNCIL SCRUTINY .....	2094
SIFT .....	2095

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## EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

13<sup>th</sup> Meeting 2006, Session 2

### CONVENER

Linda Fabiani (Central Scotland) (SNP)

### DEPUTY CONVENER

\*Irene Oldfather (Cunninghame South) (Lab)

### COMMITTEE MEMBERS

\*Dennis Canavan (Falkirk West) (Ind)  
\*Bruce Crawford (Mid Scotland and Fife) (SNP)  
\*Phil Gallie (South of Scotland) (Con)  
\*Mr Charlie Gordon (Glasgow Cathcart) (Lab)  
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 (Moray) (SNP)  
Nora Radcliffe (Gordon) (LD)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Janet Brown (Scottish Enterprise)  
Daniel Kleinberg (Scottish Executive Finance and Central Services Department)  
George Lyon (Deputy Minister for Finance, Public Service Reform and Parliamentary Business)  
Tom McCabe (Minister for Finance and Public Service Reform)  
Murray Sinclair (Scottish Executive Legal and Parliamentary Services)  
Laurence Sullivan (Scottish Executive Legal and Parliamentary Services)  
Lynne Vallance (Scottish Executive Finance and Central Services Department)  
Charlie Woods (Scottish Enterprise)

### CLERK TO THE COMMITTEE

Jim Johnston

### ASSISTANT CLERKS

Emma Berry  
Gerry McNally

### LOCATION

Committee Room 5



## Scottish Parliament

### European and External Relations Committee

*Tuesday 26 September 2006*

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

### Item in Private

**The Deputy Convener (Irene Oldfather):** Good afternoon. Welcome to the 13<sup>th</sup> meeting of the European and External Relations Committee in 2006. I am convening this afternoon's committee because the convener is unable to attend. We have received apologies from John Home Robertson, who is attending a meeting of a Justice 2 Committee sub-committee.

Under our first agenda item, we must decide whether to move into private session to consider agenda item 9, which concerns consideration of issues for inclusion in our report on the legislative consent memorandum for the Legislative and Regulatory Reform Bill, and agenda item 10, which concerns our draft response to the energy green paper. Do we agree to do so?

**Members** *indicated agreement.*

## Scottish Executive European Union Priorities 2006

14:03

**The Deputy Convener:** Under our second item of business, we will take evidence from Tom McCabe MSP, Minister for Finance and Public Service Reform, on the Scottish Executive's European Union priorities. Those are the priorities that inform the Scottish Executive in the European aspects of its work.

Members will recall that the minister first presented the priorities at our meeting on 28 February. Since then, the priorities have been revised by Cabinet—members will note the new priorities in the paper that is before us. The minister has agreed to speak about the amended priorities this afternoon. He is accompanied by Lynne Vallance, the head of the Scottish Executive's EU strategy and co-ordination unit, and by David Thompson, the EU parliamentary liaison officer.

Minister, I understand that you would like to make some opening remarks. You have the floor.

**The Minister for Finance and Public Service Reform (Mr Tom McCabe):** I thank the committee for giving me the opportunity to say a few words about the dossiers.

As the deputy convener rightly said, I am here to talk about our mid-year review of the European Union dossiers that we think are most important to Scotland at this time. As the committee is well aware, the European Union continues to have a huge impact on Parliament's legislative programme and on the general economic welfare of Scotland. It is crucial that the Scottish Executive has an effective strategy for engaging with all the institutions of the European Union across all policy areas.

We have limited resources, though, so we need to prioritise our efforts so that we can secure the best possible outcomes for Scotland. As the deputy convener said, earlier this year the Executive identified a number of key European Union dossiers that we believed would have the most significant impacts on Scotland during 2006. We also presented the committee with summary papers on each dossier, outlining why we believed that they take such priority and what we intended to do about them. The papers have now been revised; I understand that they have been made available to the committee.

We have decided to withdraw a couple of dossiers and to introduce four new dossiers that were recently launched by the Commission. The export embargo on United Kingdom beef was lifted

on 2 May and about £1 million of Scotch beef was exported to continental Europe in the first six weeks of the ban's being lifted. Accordingly, the dossier that is associated with that issue is no longer as important as it was when we spoke six months ago. However, other issues have come to the fore that we believe are of significant importance to Scotland.

The European strategy for sustainable, competitive and secure energy touches on a number of devolved areas of responsibility, as this committee identified during its inquiry into the paper. The Commission's green paper on maritime strategy is also likely to have significant implications for Scotland. We are looking forward to debating those implications during the stakeholder event that the committee is holding in December.

My ministerial colleagues and I are committed to pursuing all 24 priority dossiers. The Deputy Minister for Enterprise and Lifelong Learning has only recently returned from Strasbourg, where he lobbied MEPs on the EU spirit drinks regulation that is currently being considered by the European Parliament. His visit was welcomed by Scottish and UK MEPs and industry representatives, and has helped to promote the UK line on a dossier that is of key importance to Scotland and the UK, given the major economic importance of the spirits industry.

I will be happy to answer any questions on our key dossiers.

**The Deputy Convener:** It is good that the committee and the Executive seem to be working in parallel on a number of dossiers—that will be helpful to both.

Do members have any questions?

**Bruce Crawford (Mid Scotland and Fife) (SNP):** Thank you for presenting us with useful papers, minister.

I would like to ask about how you think matters might develop in two areas in particular. It is evident from the paper on the dossier regarding the definition, description, presentation and labelling of spirit drinks that the Executive and the UK Government are doing a reasonable job of trying to protect the Scotch whisky industry in that regard, and that some progress seems to have been made. However, with regard to the Polish argument on vodka, I should say that vodka production is also quite important to Scotland, particularly to Fife and Leven, which I represent. Can you tell us how that argument might develop and what the timescale might be for any developments?

Another important dossier relates to the European working time directive. I think that

people at all levels of government were culpable in the failure to foresee the policy's impact on the national health service. I am not pointing at anyone or any party; I am simply saying that it took a long time for the original directive to come into being, which meant that no one expected the cost to be as grand as it turned out to be. I hope that you can reassure us that we will not find ourselves in the same position as a result of the directive this time.

I would also like to touch on some issues that are not listed as priorities at this stage. If the minister cannot help us with them today, perhaps we can get something in writing. There are 31 outstanding proceedings against the United Kingdom and Scottish Governments in respect of environmental infringements and failure to transpose environmental law from 31 different directives into Scottish or UK law. There might be reasons for that, but I am not in a position to have any knowledge of what those reasons might be. Are you able to talk to us about some of the areas? I can list some of them, if you wish. I know that the Executive has already commented on the environmental impact assessment directive. There are also the directives on shellfish waters, urban waste water, wildlife and habitats, the waste framework, hazardous waste, and waste electronic and electrical equipment—although that last one is primarily a reserved matter.

My problem is that I do not know which of the 31 directives are wholly reserved, which the Executive is involved with, what stage the proceedings have reached, and what the Executive proposes to do in order to overcome the difficulties. They are important issues in regard to which we cannot be seen to be infringing environmental law. The minister may want to talk to us about that later.

**The Deputy Convener:** Yes. You raised quite a few points.

**Bruce Crawford:** It is a big area. I just want to know where the Executive's priorities sit.

**The Deputy Convener:** To assist other members, I should explain that the first point that Bruce Crawford raised was on page 12 of committee paper EU/S2/06/13/1. The other point was on page 14 of that document, which relates to the working time directive. The minister has said that those are the Executive's priorities, which he is here to discuss. I am sure that he would be willing to put that in a general context, but on the detail that Bruce Crawford asked about, we can invite the minister to get the relevant department to respond later.

**Mr McCabe:** I am here primarily to speak about the 24 dossiers, which range over a fairly wide area. I do not want to undermine myself, but

adding another 31 to those 24 would make it an even more challenging task. It is difficult for me to comment on specific environmental dossiers, but I am happy to raise the issue with Mr Finnie and to write to the committee in due course, if that would be helpful.

**The Convener:** That is fine, thank you.

**Mr McCabe:** On the proposed spirit drinks regulation, we have said that we welcome the Commission's proposal. It will enhance consumer protection and prevent some of the deceptive practices that we are all concerned about. I know that the whisky industry has found the updated definition of whisky to be extremely helpful. I ask Lynne Vallance to deal with the issues around the other spirit that was mentioned.

**Lynne Vallance (Scottish Executive Finance and Central Services Department):** Bruce Crawford mentioned the problems that the Poles are having with the definition of vodka. It is fair to say that the UK Government—which we are giving strong input to—is working closely with the Finnish presidency to bring the matter to a head. As you will see in the key dossiers paper, Allan Wilson went to Strasbourg to lobby on behalf of Scotland's interests and the UK position on what we consider to be the definition of vodka. We will continue to pursue that. One of our ministers will meet the Finnish ambassador tomorrow, and the issue will be raised then. We realise that the definition of vodka is of key interest to Scotland.

**The Deputy Convener:** Are you happy with that, Bruce? The Finnish ambassador will be coming along to the committee and we can pursue the matter on Thursday.

**Bruce Crawford:** Yes, that is useful. I am glad that the Executive is going to take the matter up. I think that we should do the same when we get the opportunity.

**Mr McCabe:** With regard to the working time directive, the Executive supports the line that has been taken by UK ministers. We want to retain the individual opt-out and to secure a workable and sustainable solution to the SIMAP/Jaeger judgments. We also want to address the multiple contracts issue. It may be helpful for the committee to know that on Thursday afternoon I will meet the Finnish ambassador and will discuss the working time directive, among other things.

**The Deputy Convener:** Thanks. Are you happy with that, Bruce?

**Bruce Crawford:** Yes.

**Dennis Canavan (Falkirk West) (Ind):** My first question is also about the working time directive. The committee paper states:

"The regulation of Employment is a reserved matter and DTI takes the lead but"

**Executive**

"officials remain in close contact with the Whitehall leads".

The Department of Trade and Industry has recently issued a consultation document that relates, in some way, to the working time directive—particularly the stipulation on the minimum amount of annual leave for workers. In that consultation document, there is a suggestion that bank holidays should be in addition to the minimum 20 days annual leave. Has the Executive responded to that consultation, and can the minister give us an indication of the Executive's thinking on the matter?

14:15

**Mr McCabe:** The responsibility to respond to that consultation document would lie with the Deputy First Minister. I do not know whether he has responded; I imagine that he will respond in due course.

**Dennis Canavan:** Could you please find out and inform the committee?

**Mr McCabe:** I will certainly do that, yes.

**Dennis Canavan:** Thank you. My other question relates to the proposal to establish a European institute of technology.

**The Deputy Convener:** What page of the committee paper is that on?

**Dennis Canavan:** It is on page 8. The committee paper states that the headquarters of the European institute of technology is

"expected to be small in size, with most of the EIT existing as a network of researchers in their home institutions."

Nevertheless, the headquarters will be pretty prestigious, so I hope that the Executive will be proactive in either preparing a Scottish bid or in encouraging universities or other institutions of higher education to prepare bids. The paper states:

"Measures of research intensity in the university sector in Scotland are amongst the highest in Europe".

Will the Executive be active in preparing or encouraging the preparation of a bid to have the headquarters in Scotland?

**Mr McCabe:** I reassure Mr Canavan that we are in close contact with the universities and are working with them to maximise their involvement. If, through that discussion, the universities feel that they are in a position to bid for that headquarters, we will encourage that.

**Phil Gallie (South of Scotland) (Con):** My main questions are based on pages 31 and 33 of the

committee paper. However, I first want to pursue Bruce Crawford's question on the working time directive. I was interested in the minister's reply and I welcome the fact that the Executive seems to be backing the national Government, especially with respect to the opt-out for individuals who choose that. Is the minister aware of whether that is being given any support by Scottish MEPs? Has there been any communication on the issue?

**Mr McCabe:** We communicate with our MEPs as regularly as we can. As Mr Gallie well knows, as recently as Thursday evening we held the latest European members information and liaison exchange—EMILE—network meeting with our European Parliament colleagues. The issue that Phil Gallie raises was not discussed at that meeting, although I am happy to clarify the position of our colleagues in the European Parliament, both from Scotland and from the United Kingdom.

**Phil Gallie:** Thank you. Let us turn to another issue. You will be aware that the committee is considering the UK Government's energy review. For reasons to do with the devolved settlement, we have centred our attention on efficiency matters. The committee paper states:

"The review document initiated a consultation on the UK government's proposed policy framework for the development of nuclear power".

The closing date for that response is 31 October. Given that almost 50 per cent of Scotland's generating capacity comes from nuclear energy, what pressures has the Executive placed on the national Government, bearing in mind the proximity of the response date?

**Mr McCabe:** We are in close contact with the Department of Trade and Industry. I do not want to give details of the conversations that are going on between us at the moment, but we are ensuring that the Scottish point of view will help to shape the eventual UK position.

**Phil Gallie:** Can you enlarge on the Scottish point of view?

**Mr McCabe:** I do not want to do that at this time.

**Phil Gallie:** I am very disappointed, but never mind. I am not surprised by that.

Let us turn to another issue that I take very seriously: justice and home affairs priorities. In Europe, pressure has been applied to introduce qualified majority voting on common justice issues. I understand that that proposal may have been rejected by other Governments in Europe. Can the minister advise us what Scotland's stance has been to date and what information we have passed to the UK Government, given the independence of the Scottish judiciary and justice system?

**Mr McCabe:** Clearly, that would be a major aspect of our response to the UK Government and what we feed in. It is part of the review of the Hague programme. The move away from unanimity to qualified majority voting is significant and we would want to make known our views about it, because it could create a situation in which we were more vulnerable. We want to ensure that the Scottish legal position is protected to the maximum extent.

**Mr Jim Wallace (Orkney) (LD):** My question is about the review of the cod recovery plan. Paper EU/S2/06/13/1 points out fairly that the Scottish fleet has been significantly reduced in order to bring fishing capacity more in line with fishing opportunities. I know that the review has some way to go, but will the minister assure us that the full impact of the sacrifice that the Scottish fleet has already made will be given proper weight and that we will not be trying to heap additional pain on top of that which has already been experienced?

**Mr McCabe:** I can give an absolute assurance on that. We want to try to introduce measures that are better targeted and more effective and which reflect the historical situation. We want to ensure that the fact that the Scottish fleet has made sacrifices is taken into account fully, whatever the conclusion of the review.

**Mr Wallace:** It is a perennial problem that the negotiations with Norway, which have a material impact on the sharing-out of stocks in European waters and our own fleet, are conducted—and have been conducted for years—by Commission officials without any obvious direct political input. I know that the minister raised that point in last year's debate and that members have been expressing concern about it for some time. Are you confident that there will be any improvement in this year's bilateral negotiations with Norway and that there will be much more political input rather than just input from EU officials?

**Mr McCabe:** Commissioner Borg will visit Shetland later this year, when we will have an opportunity to put our points across and ensure that the Commission is well informed of the view that we in Scotland take. The negotiations with Norway are acquiring ever-increasing importance for Scottish interests, so ministerial engagement has increased over recent years and will remain at the appropriate level, given the importance of the negotiations.

**Mr Wallace:** I want to raise two issues that are not in the dossiers but which the minister would, I am sure, acknowledge are important. When the committee visited Brussels in March, one of the key issues that we identified was the importance of the seventh framework programme for research and development, which might provide more opportunity for Scotland in the coming years than



the revised structural funds programme. I think that that was discussed yesterday at a competitiveness council meeting. I would welcome the minister's comments on the Executive's approach to engagement in the seventh framework programme and how you hope to capitalise on it.

The other issue, which is highly topical, is the imminent accession of Bulgaria and Romania. I acknowledge that immigration and work permits are matters for the UK Government, but I am sure that there is, given the fresh talent initiative, a distinct Scottish Executive perspective on the matter, so I would be interested to hear what representations have been made to the UK Government on the consequences and implications of the accession of the two new states.

**Mr McCabe:** We are in discussion with the UK Government on the framework on research and development and are feeding into the line that it takes. It is important to stress that although we have identified 24 dossiers as being of importance, the position is fluid. The fact that the situation has changed since I visited the committee six months ago demonstrates that—two dossiers have been dropped and four have been added. I do not mean to suggest that the 24 dossiers are the sole extent of our focus on the activities of the EU, but they reflect the fact that we have limited resources. We try to prioritise. As you know, we have the office in Brussels, so we are well represented. There is a continual horizon-scanning and involvement process, which will also be the case with the framework directive on research and development.

As Jim Wallace rightly said, matters of immigration are reserved to the Westminster Parliament, so it would be remiss of me to try to predetermine the view that the United Kingdom Government will take on Bulgaria and Romania. However, it is fair to say that, not only on those countries but over a considerable time, we have made it clear to the UK Government that we wish Scotland to be a welcoming country. We are happy for our doors to be open, and we have actively promoted the fresh talent initiative, which is still in excess of any initiative that is in play in the UK. As the committee will know, a similar initiative is in play down south, but it operates for only one year rather than two after graduation and covers a narrower range of subjects. We have made clear to the UK Government what our approach has been in the past and what it will be in the future; we hope that it will be taken into account when the UK Government eventually takes a decision.

**The Deputy Convener:** You have partly answered one question that I wanted to ask, which

is how often you review the agenda and how things get on and off it. It is a little more evident how things get off the agenda. For example, with the conclusion of the beef ban, that is a rather obvious dossier to remove. How do you monitor which dossiers to include? For example, it would be remiss of me not to mention the fact that today is European modern languages day—I believe that there is a celebration in the chamber. That fits in with many of the Executive's key priorities in skills development and equipping young people with the abilities that allow them to compete in a modern European economy. How do you identify such issues?

**Mr McCabe:** As you know, we have a very active and well-regarded office in Brussels, and our officials are continually horizon scanning. They use the forward look to assess the Commission's work programme. The office makes its recommendations to policy leaders here in Scotland, which are then discussed. I consult my ministerial colleagues on emerging conclusions, and eventually I put a paper to Cabinet for approval. As happened with the current 24 dossiers, Cabinet then approves the content. That is a rolling programme, which we undertake twice a year to ensure that the content of the dossiers has continuing relevance.

**Phil Gallie:** I want to make a point about Romania and Bulgaria. I should declare an interest that I was involved through the Westminster Foundation for Democracy in helping Romania's application for European Union membership. I welcome Romania and Bulgaria's entry, but there is likely to be quite an influx of people from those countries. I asked the First Minister about that recently in the chamber, although he dismissed the basis of the question. Will social, health and education services be up to par if there is mass immigration from those countries following their entry to the EU?

**Mr McCabe:** I must say again that those matters are reserved to Westminster, so I do not want to be any more expansive than the First Minister was a few days ago. I have made the situation clear, and our approach to previous accession countries through the fresh talent initiative is well known. We have been welcoming, and we have said publicly on many occasions that immigration has made a contribution to our economy. That remains our position, and the UK Government is clear about it. Before the UK Government takes any final decisions on Romania and Bulgaria, I am sure that it will take all relevant matters into consideration, including those that Mr Gallie just mentioned.

**Mr Charlie Gordon (Glasgow Cathcart) (Lab):** The dossiers are comprehensive and helpful, but on page 13, on structural funds, reference is made to a proposed visit by Commissioner Hübner. Can

you tell us whether that visit has taken place? If it has, did it go well, and what implications, if any, has it had for finalising our approach to the funding period ahead?

14:30

**The Deputy Convener:** Before the minister answers that, I should mention that Linda Fabiani and I had a brief meeting with Commissioner Hübner, in which we reflected on issues relating to structural funds. That came in advance of her meeting with the First Minister. She did not reveal to us anything in particular, but we made some points about the Commission clawing back some of the proposed money. Interestingly, I had intended to ask the minister the same question. Has there been any progress following the commissioner's meeting with the First Minister on whether the Commission still intends to claw back the money. Will the Executive vigorously pursue the matter?

**Mr McCabe:** The first part of the question has been answered: clearly, the visit has taken place. It would be remiss of me to go into too much detail. However, I am quite happy to say that we regarded the visit as successful. I will full-stop it at that, however.

**Mr Wallace:** I understand the minister's position, and I do not want to push him on this, but can he confirm that the clawback was discussed? I do not necessarily expect the minister to say any more than whether or not it was.

**Mr McCabe:** I can certainly confirm that it was.

**The Deputy Convener:** We will no doubt hear more about the matter in due course.

I think, minister, that you are going to respond on the environmental points that were raised by Bruce Crawford, perhaps via your colleagues in the appropriate departments. Dennis Canavan also had one or two points on bank holidays, in which he has a particular interest. We would appreciate your writing back to the committee on that matter, too.

The information that is contained in the dossiers is very helpful. It shows the considerable progress that has been made since we started a year or two ago. I hope that we can continue to work in partnership in this area. Thank you for your attendance.

**Mr McCabe:** Thank you—I am glad to hear you say that. The information reflects the hard work that has been done by our officials, who I am sure will take heart from your comments.

14:32

*Meeting suspended.*

14:34

*On resuming—*

## Legislative and Regulatory Reform Bill

**The Deputy Convener:** The next item of business is further consideration of the legislative consent memorandum for the Legislative and Regulatory Reform Bill. I welcome to the meeting George Lyon MSP, the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, who will give evidence in a few moments. Mr Lyon is joined by Murray Sinclair, who is head of the constitution and parliamentary secretariat; Laurence Sullivan, who is from the office of the solicitor to the Scottish Executive; and Daniel Kleinberg, who is head of the Europe division of the European Union policy and organisations branch.

The committee—and I am sure the minister—will recall that we previously considered this item at our meeting on 14 March, when we expressed a number of concerns about the scope of the bill and the legislative consent memorandum. The minister agreed to respond to us on the Executive's views on those issues.

I gather that considerable progress has been made since March, minister, and I hope that you will be able to give us the reassurances that we are looking for. I invite you to make an opening statement.

**The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon):** I thank the committee for its patience and understanding on this matter. Since we last discussed the issue, a substantial amount of time has elapsed and there has been significant movement on the bill at Westminster. We always felt that, when we returned to the committee, we should be able to answer its questions fully, but to date the legislative process down south has been something of a moveable feast. With those remarks, I thank the committee for inviting me to give evidence this afternoon.

Yesterday, in light of discussions on the bill down south and our own discussions with the United Kingdom Government, an amendment was tabled to strengthen the preconditions applying to the making of regulatory reform orders to exclude provisions of constitutional significance.

I must apologise to the committee, but the tabling of that amendment has left us with insufficient time to prepare a detailed written briefing that would have addressed the committee's concern, which it expressed on 14 March, that the matter should be placed beyond all

doubt. However, because of the timescales, the option of postponing consideration of the legislative consent memorandum is not open to us. I remain of the view that the measures that the Scottish Executive considers to be the subject of the legislative consent memorandum increase Scottish ministers' flexibility in implementing their EU obligations. Not having those powers would mean that the process of drawing up Scottish statutory instruments might take longer, which would in turn impact on transposition timescales. I therefore hope that the committee will bear in mind the following points in considering whether it believes that the Scottish Executive is right to pursue the LCM.

Members will be aware that the bill has already been extensively revised by both the House of Commons and the House of Lords at Westminster. I believe that the changes that have already been made to the bill, and the more recent amendment on constitutional matters, should satisfy the concerns that were expressed by this committee and the Subordinate Legislation Committee.

I will outline the general changes that have been made to the bill and then highlight the changes that meet the committee's specific concerns. First, I should emphasise that clauses 1 and 2 now set out powers to make orders in very specific circumstances: first, to remove or reduce burdens from legislation; and, secondly, to promote regulatory principles. Those tightly focused powers replace the more general formulation of the power to reform legislation that was in the bill as introduced and which attracted such widespread comment.

The committee will also note that the power to implement by order recommendations by any of the UK law commissions has been removed from part 1 of the bill to maintain the narrow scope within which the powers set out in clauses 1 and 2 might be exercised.

That fundamental recasting of the bill to emphasise that the main purpose of the powers is to provide for regulatory reform orders for tightly drawn purposes should reassure the committee that the bill itself does not give the UK Government the wide-ranging powers that have been described.

Clause 8 also contains a specific exclusion that directly meets the committee's concern that the bill could be amended using its powers in order to remove safeguards in devolved areas. It is now clear that the powers under the bill cannot be used to amend the bill itself.

The most recent amendment, which was tabled yesterday at Westminster, will require ministers who exercise the power to satisfy themselves that the order is "not of constitutional significance". The

amendment is intended to protect the devolution settlement and is in response to questions that the committee and others raised. The test that must be met is added to other preconditions in clause 3. In our view, the amendment should protect the devolution settlement and the Scotland Act 1998 from being amended by these powers, particularly given the narrow focus of the powers that remain.

The committee was also concerned about three other detailed technical points: whether the tests in the bill give ministers wide subjective discretion; whether the provisions allowing ancillary changes to Scots law should be subject to an LCM; and whether the bill should contain a statutory requirement for Scottish ministers to be consulted if provisions are to be made in devolved areas. I am happy to answer those points today but, recognising their technical nature, I intend to write a full response that the committee will receive by tomorrow morning. We will try to answer the technical questions today, but it will clearly be to the committee's advantage to have a written submission as well.

In summary, the bill has changed considerably since the committee last considered it, partly in response to the committee's comments. I think that the changes meet the concerns that the committee expressed previously. Clearly, our legislative consent motion does not affect the issue. We should support the LCM as the bill will lead to better implementation in Scotland of EU legislation.

On a separate issue, both the Executive and the committee were concerned that the bill had wider implications for other legislation, including the Scotland Act 1998. I am pleased that the UK Government has tabled an amendment on that issue. We are confident that the amendment gives us what we need and will protect the position in that act. Unless we get any convincing arguments to the contrary or have any doubt whatsoever, we will proceed with a legislative consent motion in the near future.

Having made those few remarks, my officials and I will be pleased to answer any detailed technical questions. As the committee will be aware, the bill has changed substantially over the months. That has been part of the problem for us in trying to get a definitive position that would enable us to return and speak to the committee directly.

**The Deputy Convener:** From what the minister has told us, significant progress has been made, but it would have been helpful to have had a written submission. I recognise that the Executive is working to tight timescales and has had to wait for information from Westminster, but the committee is required to finalise its report on the memorandum today if we are to meet the deadline

for next week's debate in the chamber. Therefore, if we receive the information even tomorrow morning, we will be placed in a very difficult position. However, the committee is very blessed—or perhaps cursed—to have a number of members who were lawyers and can look at the legal minutiae. I am sure that they will have a number of questions.

**George Lyon:** I should explain that the Executive saw the amendment only on Thursday night. We have had two working days to consider the amendment and to seek advice on it. I can only apologise, but we are at the mercy of the Westminster timetable. The concerns that the committee raised were also raised in the House of Commons and House of Lords. There has been significant movement down south in response to the general concerns that have been expressed.

**The Deputy Convener:** Has the amendment that would limit the order-making power to provisions that are “not of constitutional significance” been agreed to?

**George Lyon:** The amendment has been tabled, but it is still subject to approval at report stage in the House of Lords, which is due to take place on 23 October. Although that means that there is a little bit of uncertainty about the matter, I felt that it was important to return to the committee because we also have a timetable to adhere to. It is up to the committee to take a view on the matter, but part 1 of the bill and the amendment are reserved matters. We cannot decide on such matters, but there are clearly concerns about the impact of that provision on the Scotland Act 1998.

**Mr Wallace:** I welcome the fact that clause 1 has been more tightly drawn to clarify what the purpose of an RRO is. I also welcome the provision that prohibits a minister from making an order under the bill to amend the bill itself. That is very helpful.

Our concern, to which the minister alluded, was that the bill could allow changes to be made to the Scotland Act 1998. I note that, when the minister referred to the amendment that will specify that a criterion for orders under the bill is that they are “not of constitutional significance”, he said that he was confident that that will essentially safeguard the 1998 act.

Mr Canavan and I will recall that the committee stage of the Scotland Bill took place on the floor of the house, which means that the House of Commons considered that it was of sufficient constitutional significance to be debated in committee by the whole house. On what do ministers base their confidence that the amendment will safeguard the 1998 act? If one of my learned and noble colleagues on the Liberal Democrat peers bench puts the same question to

a UK minister, will they be given the same answer?

14:45

**George Lyon:** Far be it from me to answer on behalf of a UK minister, but it is our view that the Scotland Act 1998 is a constitutional act and that any attempt to amend it would be of constitutional significance. For that reason, we believe that the amendment will protect the 1998 act.

**Mr Wallace:** I want to press you slightly further on that point. There is a canon of statutory interpretation that states that if one act is mentioned and another is not, the second act may not be covered. The bill mentions the Human Rights Act 1998, and clause 11 relates to the functions of the National Assembly for Wales. Given those references and the lack of a specific reference to the Scotland Act 1998, do you remain as confident as your earlier answer suggested you are—no doubt on the basis of advice that you have received—in relation to that act?

**George Lyon:** Yes. The Scottish Executive takes the view that the Scotland Act 1998 is a constitutional act and that any attempt to amend it would be of constitutional significance. For that reason, the amendment should protect the act from use of the powers for which the bill provides.

**Mr Wallace:** I may wish to return to the issue later. A number of points that the committee made have been addressed. However, on 14 March, it asked why the bill does not contain a qualification similar to that in paragraph 3 of schedule 4 to the Scotland Act 1998, to ensure that when an RRO is made it does not

“have a greater effect on reserved matters than is necessary to give effect to the purpose of the provision”?

Have ministers sought such a qualification, which does not seem to be asking much? Is it possible to obtain it, even at this stage?

**George Lyon:** I will ask Murray Sinclair to address that legal point.

**Murray Sinclair (Scottish Executive Legal and Parliamentary Services):** We take the view that the bill, like many other Westminster statutes, reflects the bit of Sewel policy that makes clear that the Sewel procedure will not be required for a provision that is incidental or consequential to a reserved provision. In our opinion, the current provisions in the bill on ancillary matters provide perfect protection and nothing further on the lines of paragraph 3 of schedule 4 to the Scotland Act 1998 is required. They are consistent with the Sewel guidance and with what we have done in other bills. We do not think that the inclusion of a provision of the type suggested would be of practical value.

**The Deputy Convener:** Mr Wallace made a point about the National Assembly for Wales. Why does the bill mention the National Assembly for Wales but not the Scottish Parliament?

**Murray Sinclair:** Special provision is made for the National Assembly for Wales because of the Assembly's nature. I pause to sound the caveat that because the bill deals with reserved provisions, we are not close to the policy. However, the bill reflects the fact that the Assembly exercises subordinate legislation-making functions under the Government of Wales Act 1998. The devolution settlement for Scotland is completely different. It provides for a legislative Parliament, as well as for ministerial functions. That is why it is important that the amendment is worded to exclude provisions of constitutional significance. That is helpful, because it requires consideration to be given to the substance of what is being done. As the minister said, we take the clear view that anything that would amend the Scotland Act 1998 would be of constitutional significance and would therefore be ultra vires.

**The Deputy Convener:** That is helpful.

**Dennis Canavan:** We have a list of six amendments to the bill that were tabled in the House of Lords by Lord Bassam. In all my years at Westminster, I never came across Lord Bassam. Can we assume that he is a United Kingdom Government minister?

**George Lyon:** I do not think that I can answer that question easily, but I believe that he is a UK Government minister.

**Dennis Canavan:** In the Home Office?

**Daniel Kleinberg (Scottish Executive Finance and Central Services Department):** Yes.

**Dennis Canavan:** Am I right in thinking that the key amendment tabled by Lord Bassam is number 3?

**George Lyon:** That is correct.

**Dennis Canavan:** The amendment does not specifically mention the Scotland Act 1998. My reading of the amendment is that the minister would not be able to make provisions under clauses 1(1) or 2(1) if those provisions were of "constitutional significance". Are you satisfied that the wording is tight enough to prevent a minister or future minister from interfering with the provisions of the 1998 act?

**George Lyon:** Our view is that the amendment protects the 1998 act. We believe that the 1998 act is a constitutional act and therefore that any attempt to use regulatory reform orders to amend it would be ultra vires.

**Murray Sinclair:** Because of the constitutional significance of the Scotland Act 1998—in effect, it

sets up a written constitution for devolved Scotland—any amendment to it would be of constitutional significance within the meaning of the new amendment.

**Dennis Canavan:** We will see about that in the fullness of time. The Scotland Act 1998 itself mentions constitutional matters that are reserved to the Westminster Parliament under the act. Are you saying that the whole of the act is now a constitutional matter?

**Murray Sinclair:** Yes. The provisions of the act are constitutional, so a minister could not use a regulatory reform order to amend any of them, including the provisions on reserved matters in schedule 5. Any such amendment would obviously be of constitutional significance because it would affect the devolution settlement. It would therefore be beyond the powers in the bill.

**Bruce Crawford:** I do not dispute for one moment that the minister and the Scottish Executive officials have an accurate understanding of the situation. However, I am concerned that it will not be Scottish Executive ministers and officials who will determine the meaning of the word "significance", either now or in the future. I am concerned that there is potential for the word to be interpreted in different ways.

If we want to bolt down the amendment so that we all have the degree of confidence that the minister and his officials expressed, it should specifically state that any provision made under the bill does not relate to the powers of the Scottish Parliament or anything in the Scotland Act 1998. I accept the views of the minister and his officials, but it seems to me that there is wriggle room for a future minister at Westminster who might want to interpret the word "significance" differently. For example, they could amend the Scotland Act 1998 in a small, detailed way that did not significantly amend the act. I am trying to tease out what the amendment means.

**The Deputy Convener:** Can you give us an example?

**Bruce Crawford:** Recently, the Scottish Parliament took powers over the railways in Scotland. That did not require a change to the Scotland Act 1998. The change was made through the Railways Act 2005. Would it be possible for a future Westminster Government to pull those powers back to Westminster? I might be wrong, but it is not just the 1998 act that we need to bear in mind. I am trying to get some specifics.

**Murray Sinclair:** On the specific example that you mention, the provision on railways was slightly unusual in that it involved the conferral on the Scottish ministers of functions that still relate to a reserved matter. That was done via a Sewel motion on a Westminster bill, so it did not involve

any amendment to the 1998 act. That takes me back to the point that I was making a minute ago, which is that, in some ways, there can be an advantage in a protection that is not expressed by reference to a specific act; instead, we can consider the constitutional significance of what is being done. So, to get us back into context, if an order under the bill gave the ScotRail franchise functions to Scottish ministers, that would obviously be of constitutional significance because it would greatly extend the powers of the Scottish ministers, whether or not it amended the Scotland Act 1998.

**The Deputy Convener:** So, in other words, there are advantages in leaving the protection just that little bit looser.

**George Lyon:** The test is the substance of the order. It is also useful to remember that any future Government could use a parliamentary vote to do whatever it wanted to the Scotland Act 1998, including abolishing the Scottish Parliament. We can never rule out any change coming through the use of Parliament down south. We are talking about the scope of the use of orders, which has been narrowed down dramatically by the amendments. There will now be a legal requirement on ministers to satisfy themselves that orders are not of constitutional significance. It is not down to the judgment of the minister. I take it that that can be tested.

**Murray Sinclair:** Yes.

**Gordon Jackson (Glasgow Govan) (Lab):** I take the minister's point that Westminster could simply abolish the Scotland Act 1998, but we do not like the idea that it could do that with a statutory instrument. If it was going to do it, we would like there to be a wee bit of trouble over it—we dinnae want it done on a wet Friday afternoon. That was our main point.

**George Lyon:** I understand that.

**Gordon Jackson:** I am now quite comfortable with the bill, not just because of the amendment on constitutional significance; in some ways, the other changes are more important because they have limited the purpose of the bill. Would it be asking too much of the minister to ask him to ask the Home Office minister who is dealing with the bill to answer the question that Jim Wallace's colleague in the House of Lords was going to ask? There would be nothing to stop our minister asking the Home Office minister to state in the House of Lords, when it deals with the bill, that there were concerns about the possible effect of the bill on the Scotland Act 1998 and that the United Kingdom Government is clear that the bill does not apply to that act. As I understand it, when courts are deciding on issues, they can look at *Hansard* and, if there is a grey area, use what the minister

said at the time as an interpretation tool, because it shows the intended purpose of the legislation. So it would be a little comfort to us—not that I need much comfort on the bill any more—if our minister would ask the Home Office minister to say that. Of course, that is assuming that he will say it; it would not be of much comfort if you ask him and he does not do it.

**George Lyon:** I would be pleased to ask UK ministers to make a *Pepper v Hart* statement when they are addressing this matter in the House of Lords, if that would assist the committee.

**The Deputy Convener:** It would be very helpful and committee members would be content with that.

**Bruce Crawford:** I have another point on which I seek clarification. However, first of all, I thank Murray Sinclair for his useful response to my question about the Railways Act 2005, which helped me to clarify my thoughts, although I am not sure that I can come to a view at this stage on whether to accept the wording of the amendment.

**George Lyon:** I would be pleased to take up any individual points from committee members as quickly as possible and get the committee's response before close of play tonight, if that is possible. I know how difficult it is for a committee to be asked to approve something when the amendment was lodged only yesterday. We will do everything we can to address any substantive points that the committee might have, if that would help with your deliberations. Members can contact my office; I will leave details with the clerks.

15:00

**Bruce Crawford:** I appreciate the offer. I just wish that Westminster would behave similarly and recognise more effectively the business pressures affecting us here.

**George Lyon:** I have no control over that.

**Bruce Crawford:** My specific point is in regard to some of the substantial changes that have taken place. Clause 1(2) says:

"That purpose is removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation"

if it has a financial cost or an administrative burden. I can understand the intent behind that, but almost all UK and Scottish legislation will involve some financial cost or administrative burden for someone. I seek absolute assurance that there is no wriggle room in the wording that would allow an act of the Scottish Parliament to be drawn into that definition.

Specifically, clause 1(3)(d) refers to a "sanction, criminal or otherwise". My understanding is that

most criminal law is devolved to the Scottish Parliament. There may be more to it than that, but perhaps the amendments that have been lodged to adjust the position should be more specific. Could the minister reassure me on that specific point?

**George Lyon:** It is useful to remember that the purpose of the bill is to simplify regulation and reduce administrative burden. I am sure that we would all support that. I will ask Murray Sinclair to address your specific point and try to give you some comfort.

**Murray Sinclair:** Protection is provided by what is now clause 9 of the Westminster bill, which makes it clear that, except for purposes ancillary to the reserved provisions of the bill, an order under part 1 of the bill cannot do anything that would be

“within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.”

**Bruce Crawford:** Would that also bear on the example of the Railways Act 2005?

**Murray Sinclair:** No, because railways remain reserved. Under the Scotland Act 1998, the provision and regulation of railway services are reserved. It is Westminster and not this Parliament that has the power to change that by primary legislation. The Railways Act 2005 did not change the powers to make primary legislation in respect of the railways; it transferred to the Scottish ministers most if not all the ministerial powers in relation to the franchise. It did not change the legislative competence of the Parliament; it changed the ministerial competence of ministers.

**Gordon Jackson:** Sometimes our criminal sanctions are in UK statute. For road traffic and drugs offences, the system is Scottish, but the sanctions might be UK sanctions.

Murray Sinclair referred to clause 9, which points out that Westminster cannot do anything that would normally be within the competence of the Scottish Parliament,

“except by virtue of section 1(8) or 2(7)”.

If the UK Parliament is doing things that are consequential and supplementary and so on, it may go into things that would otherwise be Scottish. Do you have any examples of when that might happen? Can you think of any regulatory change that the UK Parliament would make that would make those sections kick in?

**Murray Sinclair:** Criminal sanctions are probably not a bad example, but if a provision is being made that reduces a burden and in respect of which there is at present some criminal sanction, and the consequence of removing the burden is also to do away with the criminal

sanction, it might be argued that that is straying into devolved Scots law because Scots criminal law is devolved. The clause would, for that limited purpose, ensure that that could be done.

**Gordon Jackson:** If a criminal sanction were imposed for a road traffic or drugs offence, for example, Scots law would not be involved and the matter would not be devolved anyway. I am trying to think when the arrangement would kick in and when a regulatory reform order would be made to reduce a burden or whatever, under the tight principles that exist. Under clauses 1(8) and 2(7), ministers will be allowed to stray into Scotland if an amendment is consequential to what they are doing. Just for my own interest, does the Executive have examples of when that might happen? I see that somebody has one.

**Laurence Sullivan (Scottish Executive Legal and Parliamentary Services):** The issue was discussed in the House of Commons by Jim Murphy, who was the minister who was responsible for the bill. An example that he gave of when the ability to make such provision would be helpful was when an order restated a piece of Westminster legislation to simplify it and in doing so renumbered some provisions. If an act of the Scottish Parliament referred to the renumbered provisions, the ASP could be amended simply to change the references, so that the act would refer to the correct provisions. Jim Murphy said that the Scottish Executive would be consulted before such an order to make consequential and incidental amendments were made, even though the order would be for a reserved purpose.

**Gordon Jackson:** The order would be truly incidental and consequential.

**Laurence Sullivan:** Yes.

**Gordon Jackson:** I now understand when the provision would kick in.

**Phil Gallie:** My point is much lighter than the others—I give way to the legal expert on my right on legal issues, but certainly not on politics.

The minister said that the bill would improve regulation in Scotland and would speed up the transposition of European directives. I will put my question in political terms. Does being faster always mean being better? Is it not better sometimes to give much more thought to and take a lot more time over issues?

**George Lyon:** The bill will make transposing EU regulations simpler. That refers mostly to how we do that in the parliamentary process with affirmative and negative orders, which the bill will allow us to bulk up. However, it will not cut our time for considering orders.

**Phil Gallie:** Oh well—I am assured by that, but we will wait and see.

**The Deputy Convener:** Mr Gallie is forever the sceptic.

We have received much clarification this afternoon. The committee must sign off its report by tomorrow lunch time and we will discuss the direction that our report will take immediately after the public session today, so we ask you to send written comments to us as soon as possible. Could you leave a contact number with the clerks, so that if any queries arise in our discussion this afternoon, we can clarify them with you? We are working to a tight drafting timescale.

**George Lyon:** I fully understand and can only apologise. I will try to get the paper to you by close of play. If it would help, I will leave contact numbers at which you can speak to me or to officials about specifics for the rest of the afternoon or even first thing tomorrow. I can only apologise again for the timetable, which was not of my making—it was driven by Westminster.

**The Deputy Convener:** We understand that.

**Gordon Jackson:** I know that we could do what I will ask for ourselves, but it is work.

**George Lyon:** I know how keen you are on that.

**Gordon Jackson:** You have the bill as amended plus the amendments that have still to be tabled. Is it easy for you to give us a copy of the bill as introduced and as amended? My impression is that dramatic changes have already been made and it would be useful to see that. Would that be easy to provide?

**Murray Sinclair:** It is fairly easy to obtain both versions of the bill and to compare them—I did that this morning. However, we do not have to hand a version that shows where changes have been made, although we could find out whether we can obtain that.

**Gordon Jackson:** Sometimes, a version of a bill with lines printed down the side of the page is produced.

**Murray Sinclair:** I think that a Keeling schedule may be produced.

**Gordon Jackson:** Such a version makes it easier—for me at least—to follow the changes that have been made.

**George Lyon:** Shall we pass that information to the committee clerks?

**Gordon Jackson:** Yes, please. I am sure that the clerks could send the information to members.

**The Deputy Convener:** If you send the information to the committee clerks, we can circulate it to all committee members. I think that that would be helpful.

**Gordon Jackson:** If it is not too big a task.

**George Lyon:** No, it is important that we satisfy your concerns.

**Murray Sinclair:** We will do the best we can, but I am not sure that such a document exists at the moment.

**The Deputy Convener:** I thank the minister for coming along. We all look forward to debating the issue in the chamber next week.

We will take a short, two-minute break to allow us to change witnesses.

15:10

*Meeting suspended.*



15:12

*On resuming—*

## European Commission Growth and Jobs Strategy Inquiry

**The Deputy Convener:** This will be our first evidence session as part of our inquiry into the European Commission's strategy for growth and jobs. I know that Mr Gallie is particularly interested in and excited by the inquiry; I am sure that he is looking forward to it.

When we agreed the timetable for the inquiry, we agreed that we would use our first evidence session to hear from Scottish Enterprise because it has such a key role in the implementation of the Scottish Executive's policies that relate to the Lisbon strategy. This is an opportunity for us to get an overview of Scottish Enterprise's role and the various ways in which the Executive is working to meet the obligations set by the strategy.

I welcome from Scottish Enterprise someone who is a regular, if not frequent, visitor to the committee—Charlie Woods, who is chief economist and senior director for strategy. I also welcome Janet Brown, who is managing director for industries.

We have written evidence from Scottish Enterprise, so we can go straight to questions, if Charlie Woods is happy with that.

**Charlie Woods (Scottish Enterprise):** I am happy with that, if that would suit the committee better.

**The Deputy Convener:** We have a couple of reports to agree in private later this afternoon, so it would be helpful to go straight to questions. Mr Gallie, I am sure that you are desperate to get in on this one.

**Phil Gallie:** Fair enough, convener—I will jump right in.

Scottish Enterprise commented on global connections in its written evidence. How does Scottish Enterprise encourage companies to achieve global connections? What direction does Scottish Enterprise give on the areas of activity on which companies should concentrate? What financial support—or support that pushes towards that—can Scottish Enterprise give to help the achievement of the global connections that it has in mind?

15:15

**Charlie Woods:** I will start, although Janet Brown might want to supplement what I say. A key part of our work in pursuing the activities and

objectives in the Lisbon strategy is to help to internationalise the Scottish economy more. We do that partly by helping to attract investment into Scotland. Increasing focus is being put on activities with a higher research and development capacity to try to address the gap that exists between Scotland and other countries in the level of business research and development. Our international work to attract investment focuses increasingly on that.

On the point on which Phil Gallie focused, we also help Scottish companies to internationalise by getting them into new export markets and identifying joint venture partners or other forms of internationalisation that companies can develop. The primary way in which we do that is through our account-managed system, through which we work closely with companies in Scotland with the potential to grow and sell outside Scotland. We give such companies advice on the market opportunities that exist, particularly in the industries that are a priority for Scotland, and use our network of offices throughout the world to help companies to set up bases and win orders overseas. Through the global companies programme, we work directly with companies to help them to bring in specialist advice to address particular markets or product areas for which they are aiming.

We are involved in a wide range of activities. One important overriding factor is that, through schemes such as the account-managed programme, in which we get to know companies and understand better their needs and opportunities, we can bring to bear all our various activities, not just to help companies to develop in international markets, but to help them more generally.

**Janet Brown (Scottish Enterprise):** Phil Gallie highlighted the market opportunities that exist and the issue of how companies can understand those markets and tailor their activities to have a better impact in them. For the priority industries, we are pulling together networks of companies in particular market areas to make them aware of the opportunities and where they are and to give them the tools to access the markets, by helping them with new product development and R and D, when appropriate. We help them to link not only with companies outside Scotland, but with companies in Scotland that may be a lead for them into new markets. Many big companies work with smaller ones and take them along as they go out into the bigger marketplace. We are taking a variety of measures, at the market level as well as the individual company level, to raise awareness of opportunities and give companies the tools to take them.

**Charlie Woods:** One specific measure that I should have mentioned is the global Scot network, which is made up of Scots throughout the world who have an interest in developing Scotland and helping Scottish companies. Companies can use that network for advice and support. This week, there is a big gathering of the global Scots in Edinburgh, to bring the network together and to bring people who operate internationally to discuss with Scottish firms some of the issues that they face in doing business overseas.

**Phil Gallie:** That sounds encouraging—I am aware of the network.

You emphasised your account managers. One point that is certain about the global market is that the present rate of change is phenomenal. How do you keep your account managers abreast of that change?

**Charlie Woods:** That is part of the intelligence process. One reason for focusing on specific industries is so that we understand some of the trends and developments that take place in them. We do that through the global Scot network, which we use as an intelligence network, and through accessing specialist reports on particular markets. Our premier adviser training programme, which aims to give our business advisers the skills to provide advice, must be updated regularly, too.

We constantly try to make the most of the networks, the knowledge and the intelligence that exist in Scotland for updating people on where opportunities exist. As has rightly been pointed out, they are changing very rapidly.

**Bruce Crawford:** Thank you for coming to give evidence and for your useful paper.

I want to pick up on some issues around R and D, including business R and D. Your paper mentions Scotland's 2.5 per cent business R and D target for 2014. I am trying to relate that to the Lisbon agenda target of 3 per cent for all R and D by 2010 and to make sense of how those two targets can fit together. If we are to have a 2.5 per cent business R and D target by 2014, what is our overall target for 2014? Knowing that would give us some measure of how well we were doing compared with the European target for all R and D for 2010. It would be useful if you could give us some perspective on that.

What can you tell us now about the actual level of business R and D at this stage? The figures from the minister tell us that R and D accounts for 1.53 per cent of gross domestic product in Scotland overall. However, we do not know what the business R and D level is within that figure, and we do not know where we stand in comparison with the rest of the UK as far as business R and D is concerned. Have I explained that point well enough?

**Charlie Woods:** I think so, yes—let me have a go at answering it. The current level of business R and D in Scotland expressed as a percentage of GDP is 0.58 per cent. The overall figure for R and D in Scotland is 1.53 per cent, as you said. The UK figure for business R and D is 1.23 per cent, and the EU figure is 1.17 per cent. The level of business R and D in Scotland has gone up over the past 10 years or so as a proportion of the UK figure. However, as the figures suggest, there is still a significant gap to make up. That is partly to do with the nature of the sectors that are carrying out research and development and with the industrial structure of Scotland. Nevertheless, the issue has been identified. It is one of the reasons why, through programmes such as the intermediary technology institutes, we are putting things in place that will impact directly on the level of research and development.

I would make the wider point that, although the figure identified in the Lisbon strategy is an extremely important benchmark, it is also, in a way, a means to an end—the end being more innovative companies that do more business, win more orders and so on. Business R and D does not capture all the innovation that is going on—various surveys pick up on that. The point is often made that much of the innovation in financial services is not captured in business research and development figures because it does not fit the Organisation for Economic Co-operation and Development definitions that are used. I say that not to downplay the significance of the gap that we have to make up, but because I wanted to put it into context.

**Janet Brown:** The same conversation is going on for the UK as a whole. The UK views the 3 per cent Lisbon target as very stretching, especially for certain areas of industry. The south-east of the UK might be heavily R and D intensive, but the rest of the country faces significant challenges. The figure for Scotland looks terrible compared with the UK average, but the level is patchy across the rest of the UK.

The nature of the business base in Scotland is an issue. The vast majority of companies with the capacity to do R and D tend to be the bigger ones, and Scotland has a large number of very small companies. One of our challenges is to provide the support that allows small companies to take that step and do some R and D. Programmes such as the teaching company scheme and the knowledge transfer partnerships, as they are now known, help companies to understand the value of R and D, which is necessary. R and D is not valuable in itself; it is valuable only if it is going to provide a product that will make money for a company. That is a big challenge. The figures are not good for Scotland, but the companies that do R and D in Scotland are very effective at doing it.

**Charlie Woods:** The university research figures are good for Scotland, so it is not as though we have nothing to build on; in fact, we have a lot to build on. A lot of the work that we do in collaboration with partners in further and higher education is about trying to get the quality and extent of research in the university base into the commercial world through mechanisms such as the proof of concept programme and the ITIs.

**Bruce Crawford:** The figure is better for the universities but—if I am right—R and D accounts for only 1 per cent of GDP now, and we are trying to get to a figure of 3 per cent by 2010.

**Charlie Woods:** Overall, the figure is 1.88 per cent in the UK and 1.53 per cent in Scotland.

**Bruce Crawford:** That is overall.

**Charlie Woods:** Yes.

**Bruce Crawford:** Does the 1.53 per cent figure include business R and D?

**Charlie Woods:** Yes.

**Bruce Crawford:** The figure is 1.3 per cent for the university sector in Scotland, so the 2010 target is a very big ask.

**Janet Brown:** It is a very big challenge.

**Bruce Crawford:** Yes, but I am glad that we are challenged in that way.

**Mr Wallace:** Bruce Crawford has asked many of the questions that I was going to ask about business R and D. We seem to have been aware of the issue for a long time. Charlie Woods is right to say that the figure seems to have crept up. Do you agree that progress has not been dramatic despite the fact that a range of measures has been taken?

**Charlie Woods:** Yes.

**Mr Wallace:** You mentioned the ITIs. Part of their strength and attractiveness is that their budgets are fairly substantial. Can you assure us that the budgets that are in place are as originally agreed? I think that the figure was £150 million for each over a period of 10 years.

**Charlie Woods:** I will go back to the previous question and give some context. Since 1995, business R and D in Scotland has gone up from £269 million to £521 million and from 2.9 per cent of the UK's total business R and D to 3.8 per cent. As you say, the figure has improved a bit but there is still a significant gap to make up.

Janet Brown will comment on the ITI budgets.

**Janet Brown:** We always said that the ITIs would ramp. The £150 million is still on track. They have ramped faster than we thought that they would, which is very good news. A lot of inward

investment research jobs have come to Scotland, which is positive. Both small and large companies have worked with the ITIs to take on research programmes to develop new products. Those have started faster than we thought that they would, which has created an earlier bubble than we expected, but we anticipate putting in the level of funding that we agreed in the past.

**Mr Wallace:** That is encouraging.

Your submission mentions the new innovation intervention framework. I offer you the opportunity to comment on that and say how you think it will contribute to our Lisbon targets.

**Janet Brown:** That goes back to the account-managed and client-managed companies. As well as providing innovation support online and through business gateway services to all companies throughout Scotland, the framework is about trying to get companies to think creatively about how they take their businesses forward and to put associated tools alongside that. Depending on what stage a business is at in its ability to innovate, the aim is to give it the tools that it needs to be able to get to that next stage.

Some of the tools are about market interventions and some are about understanding how companies can undertake new product development and, as Charlie Woods said, get involved in joint ventures with other partners. They focus specifically on how to get support to a company in order to help it to innovate across the piece. Some of that work includes R and D; some of it does not.

**Charlie Woods:** The last point that Janet Brown made is an important one that emphasises something that we have said before. This is not about R and D for its own sake but about R and D as part of the process of innovation.

**Mr Wallace:** Both the Deputy First Minister's submission and Scottish Enterprise's submission refer to "A Smart, Successful Scotland" as part of the framework for trying to pursue our Lisbon objectives. "A Smart, Successful Scotland" refers to the importance of closing the opportunity gap and bringing into employment people who are currently not in employment. Given the reservoir of potential that exists, what is Scottish Enterprise's current thinking on how to address that issue?

15:30

**Charlie Woods:** Looking across the whole measurement framework and at the specific things that were focused on in Lisbon, one can see that one area in which Scotland scores relatively well, in comparison with how we score on business R and D, is employment. Employment rates are now getting on for 75 per cent, but within that figure, as

you have rightly identified, there are individuals in some areas who are not in employment. They represent not only a social cost but a wasted resource and a wasted opportunity for the country. As the population ages, making the most of that resource will be absolutely imperative, and that is obviously an area in which working with our other partners is particularly important. We have a role to play in helping people to realise their full potential—particularly those people who can make use of the right help and support to approach the labour market and to make the transition into work. We can play a specific role in that area, but that must be done alongside the important work that others are doing as well.

**The Deputy Convener:** Your paper refers to the fact that a low unemployment rate is a key identifier of a thriving economy. You also note that the employment rate for graduates in Scotland between 2001 and 2003 was 89 per cent, which is quite a high rate. When Commissioner Hübner visited the Parliament last week, she commented on the Lisbon agenda and said that she was impressed by some of the work that was being done in Scotland on employment rates. However, I note that your figures relate to the period from 2001 to 2003. Do you have any more up-to-date figures? Is the trend holding?

**Charlie Woods:** The latest employment rates are up at more than 70 per cent. Somewhere in the huge pile of paper before me I actually have the numbers, but I can tell you that the employment rate for all people is around 74.9 per cent, and the employment rate for women is around 70 per cent. The Lisbon agenda also focuses on older workers, and the employment rate for older workers in Scotland is around 68 per cent. That rate has gone up quite significantly over the past 10 years, which is important in the context of our aging population. All those figures are from the early part of 2006. I would need to get back to you on the specific graduate figure that you asked about; I do not have that to hand.

**The Deputy Convener:** I do not know whether we have the up-to-date figures, but it would be quite helpful if you could provide them to the committee, as they would help us in our deliberations.

**Dennis Canavan:** Annex 1 of your written submission contains a table of international comparisons using various indicators. As you have said, we seem to be doing better than many other countries in terms of the overall employment rate, but there seems to be a need for a huge improvement in reducing the proportion of 16 to 19-year-olds who are not in education, employment or training. What is Scottish Enterprise doing to tackle that problem? Are you constrained in any way by limitations on the

budget for training opportunities, particularly for young people?

**Charlie Woods:** You are right to identify that area, in which there is a gap that needs to be made up, although our overall employment rate is good. The sort of things that we would do include programmes such as modern apprenticeships, skillseekers and the get ready for work programme, which is aimed specifically at younger people. In the context of planning all our work, we have to look at the balance of our activities across all that we do, and we use the data on current performance to guide us in balancing our budgets.

However, we have to work within our budgets. We endeavour to do that and to achieve a balanced package of measures—from supporting business research and development to supporting companies to internationalise and helping the young people in Scotland who are not in employment, education or training to realise their potential. It is crucial to make the most of our resources, as well as the resources that others contribute.

**Dennis Canavan:** Despite the expenditure constraints, are you confident that we can reduce the proportion of 16 to 19-year-olds who are not in employment, education or training?

**Charlie Woods:** Because our work goes alongside work that is being done in the education sector and other sectors, we must be confident that we can do that.

**Janet Brown:** We are increasingly looking for opportunities in sectors that are growing, so that we can target modern apprenticeships in areas in which people will be able to get jobs at the end of their apprenticeships. We are increasingly working with industry to try to understand where we need to target our work, to ensure that the right people are being focused on.

**The Deputy Convener:** As members have no more questions, I thank the witnesses for coming to the committee. As I say, it would be helpful if they could submit more up-to-date information so that we can take it into account.

## Co-operation with Ireland Inquiry

15:36

**The Deputy Convener:** Item 5 on the agenda is our inquiry into co-operation between Scotland and Ireland. Of course, this is Dennis Canavan's inquiry, and members will note that the Conveners Group has approved our request for a chamber debate on the issue. The debate has been scheduled for 4 October.

We have also received a response from the Executive. Dennis, I am happy to hand over to you for your initial views.

**Dennis Canavan:** Before I deal with the Executive's response, I must draw the committee's attention to a serious discrepancy between the text of the report that was approved by the committee and the text that was printed out as a final version.

I have distributed copies of what was approved by the committee. From the Executive's response, members will see that the Executive picks up on a particular matter that shows that it has misinterpreted my report. The Executive responds to paragraph 39 of the report, quoting it as:

"The Scottish Executive should take immediate action to prepare for the introduction and provision of support for a programme of co-operation between Scotland and the Republic of Ireland."

However, in the version of the report that the committee approved, paragraph 39 does not refer to Scotland and the Republic of Ireland but to Scotland and Ireland. Similarly, paragraph 41 of the version that the committee approved refers to co-operation between Scotland and Ireland, whereas the version that went to the Scottish Executive refers to co-operation between Scotland and the Republic of Ireland. There is a difference. It may cause offence to some people in Northern Ireland if they feel that they are being excluded.

During the compilation of the report—especially its conclusions and recommendations—I was at pains to ensure that the terminology was accurate and that when we were referring to Northern Ireland we would call it "Northern Ireland", that when we were referring to the Republic of Ireland we would call it "the Republic of Ireland" and that when we were referring to all 32 counties of Ireland we would use the term "Ireland".

The Executive has criticised my report on the ground that it refers to a programme of co-operation between Scotland and the Republic of Ireland. However, my report specifically referred to co-operation "between Scotland and Ireland", meaning the whole of Ireland—Northern Ireland and the Republic of Ireland. That is not just a

pedantic point; it is a very important political point. I would like the clerk to examine how on earth that discrepancy arose, because that was certainly not what I drafted for the conclusions and recommendations and certainly not the draft approved by the committee.

**The Deputy Convener:** You have reasonable cause for concern, Dennis, and I would be happy to task the clerks with finding out and reporting back exactly what happened. Somewhere along the line, something has gone wrong. Are the clerks happy to do that?

**Jim Johnston (Clerk):** Yes.

**Dennis Canavan:** Turning to the Executive's response, I have no quibble with it, apart from the beginning of its response to paragraphs 39, 40 and 41, where it says:

"We have no plans to introduce a separate programme of co-operation between Scotland and the Republic of Ireland".

I never suggested that we should introduce such a separate programme. Whoever came up with that response has been misinformed about the contents of my report, and as such the response is more critical than it would otherwise have been. I made it clear that there should be tripartite co-operation among Scotland, Northern Ireland and the Republic of Ireland.

**Phil Gallie:** To a large extent, that devalues the Executive's response and perhaps changes the wording that it would like to use in response to Dennis Canavan's comments. We have a committee debate in the chamber next week, and rather than have the clerk find out about the mistake, we should point it out to the Scottish Executive. It might not be intentional, but it is significant. We should return the report on that point and, I hope, get it addressed before next week's debate.

**The Deputy Convener:** When I read the response, I could not remember our calling for a separate programme, and I thought that I would have to look again at the detail of the report. When I re-read the report, I still could not align the response to the paragraph that we had written.

I was confused by the Executive's response to one or two of the points, so I think that we should draft a committee letter in the convener's name to the Executive to seek further clarification on the points that we have raised. It would be helpful to ask for a response in advance of the committee debate next week, so that the Executive has the opportunity to strike the right tone and so that committee members do not raise spurious points that, had the report been read and understood properly, would not have been required. Are members content that we proceed in that way?

**Members indicated agreement.**

**Dennis Canavan:** By and large, the Executive is positive about the principle of co-operation between Scotland and Ireland, although it comes out with another slight criticism of the report. We said:

"The Scottish Executive should seek representation on the Special European Union Programmes Body".

The Executive replied:

"This would be inappropriate. SEUPB does not have a board as such."

However, if it has representation on or access to the programme monitoring committee, that is much the same thing and, in principle, is what I was proposing.

I met the chief executive of the SEUPB in Belfast, and he told me that the body had been set up by acts of the UK and Irish Parliaments specifically for co-operation between Northern Ireland and the Republic of Ireland. I was a bit concerned that both acts would have to be amended to secure Scottish participation, but he pointed out that that would not be necessary and that Scotland could participate in, be a member of or have input into the body—whichever way we want to put it—without amending the legislation. If the Executive got representation on the programme monitoring committee, that would meet the purpose.

**The Deputy Convener:** You could legitimately raise that point in the debate in the hope of getting a response from the minister on it.

15:45

**Dennis Canavan:** On the other point, about extending the designated areas to include North and East Ayrshire and the Western Isles, we should ask to be kept informed of what is happening. Through my informal discussions with officials, I got the impression that there was—and possibly still is—a good chance of the whole of Ayrshire being included, rather than just South Ayrshire. As I pointed out in the interim report, the Western Isles are, in many respects, at the forefront of Scottish-Irish co-operation, especially in terms of Scottish Gaelic and Irish Gaelic culture. I hope that we can persuade the Executive to pursue the extension of the designated areas. Although the Executive points out that non-eligible adjacent areas may qualify for some funding, that would be limited to a maximum of 20 per cent.

**The Deputy Convener:** I thought that we were right to include that point in our report. I am encouraged that the Executive seems to be saying that, although those areas do not, strictly speaking, meet the qualifying criteria, they will be able to participate on the ground of adjacency to

the designated areas. I think that that is good news, especially as my constituency is in North Ayrshire. Again, however, it is a matter on which we should seek confirmation from the Executive during the debate.

Do members have any other points to make?

**Dennis Canavan:** Once the clerks get back to us on how the misprint or whatever it is occurred, it might be worth while to inform the people to whom the report has been sent, especially those in Northern Ireland who might feel offended if they think that they are being excluded.

**The Deputy Convener:** In summary, we want a letter from the committee to the Executive, asking it to take careful note of the points that have been raised, especially in relation to how Ireland is described, and for a response to that. The letter should also address the issue of the separate programme, as that was not what we were asking for at all. I hope that we will get a positive response on those points. We will ask the Executive to respond as soon as possible and, as soon as we receive that response, we will circulate it to committee members. It would be reasonable also to circulate that response among those to whom the report was sent. I do not know whether the Executive's response has been sent to anyone other than the committee.

**Jim Johnston:** Not that I am aware of, although it has been published with the committee's papers. We can make any further response that we get from the Executive public as well.

**The Deputy Convener:** That seems reasonable. Are members content with that?

**Members indicated agreement.**

## European Commission Work Programme 2006

15:48

**The Deputy Convener:** Item 6 is our European Commission work programme tracker—our regular paper that tracks the items on the Commission's work programme that the committee has identified as important and relevant to Scotland.

Members will note that the paper sets out some additional information relating to the new early warning system that was agreed by the European Council in June. That system involves the Commission providing national parliaments with draft legislative proposals and consultations for their comment. The clerks are discussing with clerks at Westminster how the committee can engage in that process. The paper asks us to agree to direct the clerks to pursue the matter and report back to the committee in due course. Members will recall that I raised the issue at the previous committee meeting. Do members have any comments to make on that?

**Bruce Crawford:** Given the fact that a lot of this was covered by the minister in the papers that we got on the different portfolios that are being looked at, I am happy with your recommendation, convener.

**The Deputy Convener:** Are members happy just to note the paper and for the clerks to continue their dialogue with the clerks at Westminster?

**Members indicated agreement.**

## Pre and Post-council Scrutiny

15:49

**The Deputy Convener:** Agenda item 7 is our regular scrutiny of the agendas and reports of meetings of the European Council. I note that a number of papers are late this time. Do members have any comments?

Mr Gallie usually likes to jump in at this point and I often jump in as well. However, as I am in the chair, I will leave it to other members to do that.

**Phil Gallie:** I will not delay the committee on this occasion. I have already raised issues with the minister about some of the justice and home affairs matters on which I feel strongly. Some of those are mentioned in the papers that we have been given. However, I would prefer for the committee just to move on at this point.

**The Deputy Convener:** We are all aware of the heavy burden that lies ahead of us with the two reports that we need to consider in private, so I am happy with that too, Mr Gallie. Are we all happy with that?

**Members indicated agreement.**

## Sift

15:50

**The Deputy Convener:** Agenda item 8, which is the final item to be considered in public this afternoon, is our usual sift of European documents. Do members have any comments, or are they happy to refer the documents to the appropriate committees?

**Phil Gallie:** I will disappoint the committee on this occasion, but I will be brief.

I had some constructive dialogue with the clerk when I made this point. Every week, we sift through the European documents that should be referred to other committees. We feel that we have done our job in analysing European documentation simply by passing it on, but we never receive any feedback and we do not know what happens to the papers that we forward. To be honest, some of those can be fairly important, but other committees do not have the time to consider them. I suggest that the clerk should follow up such papers when members highlight specific important issues. Perhaps the clerk could say whether another committee is taking the issue forward.

**The Deputy Convener:** I have a view on that, but I will let Bruce Crawford respond first.

**Bruce Crawford:** I will defer to you, convener.

**The Deputy Convener:** Over the past six or seven years, we have looked at how we can get other committees involved and engaged in European matters. However, that is difficult for other committees because they deal with primary legislation and it would be difficult for us to tell them how to prioritise their workload. We prioritise matters that we think are relevant and should be forwarded to them, but it is difficult for us to tell them that certain items should be a priority on their agenda. However, I am open to other views.

**Gordon Jackson:** I understand Phil Gallie's point, but his suggestion would clearly involve a lot of work for the clerks and I am not sure what we would do with the results. If we sent five directives to the Health Committee and the clerk told us that the Health Committee had not considered any of them, we might get upset but what could we do apart from that? Would we write a stiff letter of rebuke? It is an interesting idea, but I wonder how much work it would involve for the clerks given that we could not do anything with the results. In a sense, once we have passed the information to the relevant people, our responsibility is over.

**The Deputy Convener:** The clerk had some discussions with Mr Gallie and carried out an

exploratory exercise with other clerks. Perhaps he will comment on the matter.

**Jim Johnston:** The committee has already discussed the need for a more strategic approach to its priorities in its consideration of the issues that have been identified by the Commission. As Phil Gallie said, I have had some discussions with him on this issue. I have suggested that we produce an approach paper for the committee in December that will take forward members' views and consider how we might improve the system as it stands.

**Gordon Jackson:** That is fair.

**Phil Gallie:** I should say that I was very happy with the clerk's reaction to my suggestion.

In response to Gordon Jackson, let me say that I recognise that other committees cannot always take on board the issues that we highlight. However, we occasionally deal with important papers on European legislation that could affect people in Scotland quite considerably. If our committee was informed that no other committee was considering a particular matter, we might be able to take it up as part of our work programme—although I recognise that our time is also limited.

**Mr Gordon:** I will reserve judgment until the clerk produces his paper in December, but it sounds to me like the clerk might neatly avoid extra work for himself by suggesting that extra work be imposed on the members of this committee. I have my doubts about that because we need to have strategic priorities. However, human beings being what they are, I suspect that members of other committees think that our committee is supposed to do all the work on issues relating to European and external affairs. That is not the real world either.

**Bruce Crawford:** I welcome the clerk's good suggestion. I also understand the need for Phil Gallie and the rest of us to understand what the outputs are before we can judge whether we have been successful. However, given that we will need to produce a legacy paper before the end of this parliamentary session and the election, it might be more appropriate for our legacy paper to suggest that an early part of the work of the European and External Relations Committee of the new Parliament should be to understand those strategic perspectives. The reality is that our suggestions will not have much impact before the election, so the issue is more appropriate to the longer term.

**Gordon Jackson:** On the matter of a legacy paper, I have always had a bee in my bonnet—as people who have been with me a while will know—about the need for a dedicated minister for European and external relations. Tom McCabe has too big a job to have responsibilities for those



matters as well. That has always been my position. We are told that a designated minister is not necessary because all the departments deal with European issues, but I think that we might discover that no department ever looks at any of them. I have a theory that, if everybody is responsible, nobody is responsible. If we had information about what happens to European issues, that might be another string to my bow. Now I am interested in the proposal. If there was a minister dedicated to European issues that would help to monitor what happens in all the departments. I am curious about that.

**The Deputy Convener:** The committee has certainly identified that as an issue over a long period of time. In that respect, Gordon Jackson is right.

To sum up, the proposal is that the clerks produce a paper on the issue in December and consider how that might dovetail with our legacy paper. It will be difficult for us to take the matter any further forward until we see the suggestions and discussions in the clerk's paper. However, if the committees were all as enthusiastic about Europe as Mr Gallie is, the problem would resolve itself.

**Phil Gallie:** We would eliminate 90 per cent of the proposals that come through.

**The Deputy Convener:** With that, colleagues, I will close the public part of the meeting. We have agreed to take the next two items in private. I thank members of the public for their attendance this afternoon.

15:57

*Meeting continued in private until 16:21.*



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