

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Tuesday 5 December 2006

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2006.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Tuesday 5 December 2006

Col.

EUROPEAN COMMISSION GROWTH AND JOBS STRATEGY INQUIRY	2241
TRANSPOSITION AND IMPLEMENTATION OF EUROPEAN DIRECTIVES INQUIRY	2253
LEGISLATIVE AND REGULATORY REFORM ACT 2006	2266
EUROPEAN COMMISSION WORK PROGRAMME 2006	2274
PRE AND POST-COUNCIL SCRUTINY	2275
SIFT	2276

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

17th 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 ALSO ATTENDED:

Professor Alan Page (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Jasbir Jhas (Local Government International Bureau)
Professor Drew Scott (University of Edinburgh)

CLERK TO THE COMMITTEE

Jim Johnston

ASSISTANT CLERK

Emma Berry

LOCATION

Committee Room 4

Scottish Parliament

European and External Relations Committee

Tuesday 5 December 2006

[THE CONVENER *opened the meeting at 14:00*]

European Commission Growth and Jobs Strategy Inquiry

The Convener (Linda Fabiani): Good afternoon, everyone. Welcome to the 17th meeting of the European and External Relations Committee this year. I welcome Alun Davidson to the committee. He will be on secondment from the National Assembly for Wales to the committee's clerking team until the dissolution of the Parliament at the end of March. Apologies have been received from Phil Gallie, who is unwell, I am afraid. Derek Brownlee will attend as his substitute at some point during the meeting. Apologies have also been received from Bruce Crawford for his late arrival. He should arrive fairly soon.

Item 1 is our inquiry into the European Commission's strategy for growth and jobs. This is our fifth evidence session for the inquiry, and we will take evidence on the regional dimension. We have one panel of witnesses. I welcome Professor Drew Scott, who is professor of European studies and director of the Europa institute at the University of Edinburgh. Our other guest is Jasbir Jhas, who is the policy and public affairs officer for the Local Government Association and the Local Government International Bureau. Jasbir has agreed to give us a quick outline of what the two organisations do and her relationship to them before we move to questions from members.

Jasbir Jhas (Local Government International Bureau): The Local Government Association represents the interests of local authorities in England and Wales and the LGIB is the European and international unit. It is funny for me to introduce it like that because, in January, the LGIB will no longer exist as an organisation but will become a distinct unit of the Local Government Association. The work of the LGIB as a European and international unit will continue. Our role is to represent in Europe, and to lobby on behalf of, the rights of local authorities. We also represent elected members such as Irene Oldfather on the Committee of the Regions and on the Congress of Local and Regional Authorities of the Council of Europe.

The Convener: Thank you. That was succinct.

Dennis Canavan (Falkirk West) (Ind): Each member state must submit a national reform programme, which sets out its delivery plan for meeting the targets. I wonder whether either of the witnesses can comment on the input of the various regional authorities in the United Kingdom and on the role of the Scottish Executive. How successful or unsuccessful have they been in having their views regarding the national reform programme taken on board?

Professor Drew Scott (University of Edinburgh): I cannot comment on the input of the Executive; that would be for the Executive itself. The Executive was consulted, and the document makes clear the programme that the Government submitted under the revised Lisbon process last year. The question is to what extent that document energises further delivery of the Lisbon objectives in the UK in general, and in Scotland in particular, as it was intended to do.

Jasbir Jhas: The LGA and the LGIB have been engaged in the Lisbon process since the strategy was revised last year and we have been involved more generally since 2000, when it was first developed. We have been putting the local dimension into the employment and social inclusion national action plans, which preceded the Lisbon national reform programme.

Our role has been to ensure that the local dimension—the policies and good practice in local councils—is realised in the programme. On the value of that role, it could be argued that local authorities already have Lisbon-type objectives, such as ensuring that labour markets are inclusive and help socially excluded people in communities. We wanted to be involved in the national reform programme because we felt that, increasingly, sub-national strategies, such as the regional economic strategy that has been developed for the English regions, and the cohesion policy, which relates to structural funds, would be aligned to the Lisbon objectives.

The success of the Lisbon partnership, which the Commission developed in 2005, depends on whether the national Government can make progress with it and how it wants to bring a partnership together. A parallel partnership has been developed for the social inclusion national action plan in the United Kingdom, which is run by the Department for Work and Pensions. That has worked well in bringing together the devolved Administrations, the LGA and antipoverty groups. We would like that approach to be mirrored in the Lisbon partnership.

The way to get partnership is not to talk all the time about the process of pulling together the national reform programme, but to talk more about the policy content, such as the recent Commission document on flexicurity, which is about ensuring

that we balance flexible labour markets with an adequate benefits system. We would like the Lisbon partnership in the UK to address such issues, because that is where the real value in the partnership could be.

Dennis Canavan: Have you heard any comments from local authorities or others south of the border that they were at a disadvantage regarding input to the national reform programme compared with authorities in Scotland, because of the existence of the Scottish Executive and the Scottish Parliament?

Jasbir Jhas: If I understand your question correctly, the answer is that local authorities in England and Wales have no reason not to want to be involved. From our point of view, the fact that we can showcase through the national reform programme some of the work that local councils are doing enhances their work. It is a window to allow other member states to see how local authorities in England and Wales are delivering the Lisbon agenda. There have been no negative comments from local councils in England and Wales. The Convention of Scottish Local Authorities was invited to input into the national reform programme through the Scottish Executive, but I am not sure how that worked.

Dennis Canavan: Were individual local authorities in England and Wales given the opportunity to input, or was it all done through your association?

Jasbir Jhas: It was done through the association. Our first job was to raise awareness among local councils about the existence of the Lisbon strategy, because many councils did not know about it. We have done two types of awareness raising: we worked with local authorities to let them know about the Lisbon strategy and to point out that local authorities are already doing what the Lisbon strategy aims to achieve, which is to create jobs and prosperity, but we also had to raise awareness of our role among other stakeholders.

Irene Oldfather (Cunninghame South) (Lab): One reason why we invited you along was to pick your brains a little, because of the experience the LGA and the LGIB have in the matter. Before I ask my question, I want to say that I am personally disappointed that the LGIB will not exist after January, because it has done an extremely good job. I have said that on the record and have written to ministers to ask them to reconsider their decision.

Will you talk us through how you approach the matter practically? The LGA has a liaison group. How do you decide the membership of that group? How do you involve people? How often do you meet? How do you set the agenda? Could you talk

us through the practicalities, so that we can learn from your experience? How do you input the information that you get into the system?

Jasbir Jhas: The LGIB tries to track European policy, but our real aim is to ensure that it is mainstreamed into subjects that are already being dealt with by the LGA. Our role is to influence the agenda. Without member ownership or buy-in by the locally elected members who sit on the LGA boards, it is difficult to get European issues on to the agenda.

Because the Lisbon agenda is so cross cutting—it addresses lifelong learning, social inclusion, regeneration and so on—we wanted to take the issues to the LGA boards. We suggested setting up the member liaison group: it would be an LGA/LGIB group, co-ordinated by us in the LGIB. Our role was to explain what the Lisbon strategy is and to unpick it for people. We would explain, for example, the social inclusion national action plan and objectives, which relate to the LGA's work on social inclusion. We try to make Lisbon relevant to people who work in such areas.

There are seven people on the member liaison group. It covers many of the boards in the LGA. We have tried to do more than just discuss the Lisbon strategy, which might seem remote to a lot of people. If people are looking at a domestic agenda, they do not always have time to look outside that and to consider European issues. We try to examine regional policy, too, including how the policy aims—that is, the Lisbon strategy—are met through structural funding. We try to bring those things together—they are strongly linked.

The member liaison group has been quite effective recently. It was set up in the summer of 2005, and we have had meetings with Margaret Hodge, minister of state at the Department of Trade and Industry, to push the role of local government in the delivery of structural funding in England and Wales—something that will hit us all in 2007. The aim of the group was to get some exposure. The appointment of a Lisbon co-ordinator for the UK never really happened, which was a disappointment, but our aim was to make a link between our elected members and other politicians.

Irene Oldfather: How often does the liaison group meet?

Jasbir Jhas: Twice a year. It last met in October, with Margaret Hodge.

Irene Oldfather: Do you feel that, since you set up the group, local authorities have been sensing that they can have an influence and change things a little bit, and that they are becoming better informed?

Jasbir Jhas: I would hope so. The group is something we set up, so we want to make it a success. We also have a parallel officer network, called the Lisbon European officer network. It tries to steer the policy and create the ideas, which the members can develop. Other people have been able to contribute and to feed into discussions through our attempts to connect with the boards and update members on what is going on.

Irene Oldfather: For the benefit of other members, could you say how you input that work into the Committee of the Regions, through briefing papers and so on? Presumably, you pick up issues and feed them into the UK delegation and UK members on the various commissions of the Committee of the Regions.

Jasbir Jhas: The first time the member liaison group met, we coincided that with the COR bureau meeting, in Birmingham, on jobs and growth. It was a two-way process. The members of the liaison group were able to find out a bit more about the Committee of the Regions, which was a fact-finding mission in itself, and they could relate things to what happens in the COR.

The LGIB also co-ordinates briefings for the whole UK delegation, to keep everyone in the loop about what our association is doing and what is going on from a UK perspective in general.

14:15

Mr Jim Wallace (Orkney) (LD): What relationship do you have with the Convention of Scottish Local Authorities?

Jasbir Jhas: We work quite closely with COSLA. It is part of the Committee of the Regions officer support group, and we often have contact at officer level about our COR members. We also share a lot of policy information. COSLA has its own offices to deal with its specific policy issues, and we ensure that we make connections with it.

Mr Wallace: So that you are all singing from the same hymn-sheet.

Jasbir Jhas: Yes.

Mr Wallace: Are your COSLA colleagues as proactive as you evidently are in promoting the Lisbon agenda among Scottish local authorities?

Jasbir Jhas: Obviously, I cannot speak for COSLA—

Mr Wallace: The question is a bit unfair and I will understand if you cannot answer it.

Jasbir Jhas: COSLA colleagues are in the Lisbon European officer network, so they are kept in the loop about everything. I also know that Scottish local authorities have been involved in the social inclusion national action plans and, to some

extent, in the Lisbon national reform programme. Some of the UK documentation that has been issued has shown evidence of good practice.

Mr Wallace: Of course, that is from a Scottish perspective. However, from your involvement with the Committee of the Regions and so on, have you found that local authorities in other parts of the European Union have been able to introduce a local and regional dimension to the Lisbon agenda?

Jasbir Jhas: That is an interesting question. Last year, following the publication of the national reform programmes for the whole EU, the Committee of the Regions undertook a stock-taking exercise. The responses to its questionnaire showed that there was a general lack of involvement by local and regional authorities and, indeed, that any involvement had been bilateral. Of course, that probably reflects the fact that it was the first year of the renewed Lisbon partnership. However, there is certainly room for improvement in that respect.

Mr Wallace: I would also like to ask Professor Scott some questions.

The Convener: I will ask Professor Scott a number of introductory questions, then I will open it up to members.

Jasbir Jhas has told us a lot about relationships with local authorities. Professor Scott, with regard to the paper that you published in September 2005, will you outline how you reached your conclusions on the missing regional dimension? Do you feel that things have improved? Indeed, how can they be improved?

Professor Scott: The background to that paper was Wim Kok's high-level report that concluded that the Lisbon strategy was failing, partly because it had not been mainstreamed enough in domestic governance. Its valid point was that the whole Lisbon process should be taken out of the national capitals in order to broaden the stakeholder base.

In the paper, I argued, first, that national Governments cannot deliver the Lisbon strategy alone because many of the competences on which it touches reside at local or sub-state level, so the partnership with organisations at such levels must be much more active.

Secondly, I argued that, in the member states, the Lisbon process was becoming very introspective and that, because the overlapping issues in the strategy were quite narrow, Governments had little incentive to co-ordinate with each other. After all, Governments co-ordinate and co-operate on their shared interests. It is hard to find such issues in the strategy, which concentrates on domestic employment, domestic

growth and domestic innovation. On such matters, Governments stick to their own agendas.

However, it struck me that regions have an incentive to co-ordinate matters with each other. What is missing from the Lisbon strategy is a forum or a serious way of encouraging regions in which there is best practice to get together with other regions outside national frameworks to discuss shared interests, resolutions to common problems and how to reach common targets.

It seems to me that regions have a lot of information that is simply not being spread to similar regions, although I should mention the Lisbon regions network, of which there are six or seven members—I think the west midlands region is involved in it. That network has grown up to cross-pollinate best practice at the regional level rather than through national capitals, but a lot of work still has to be done to package and deliver the Lisbon agenda at the regional level and to ensure that best practice does not have to be exchanged through national Government processes, in which there are great black holes; information simply does not get out.

The Convener: How can the process be improved? Should regional networks be set up?

Professor Scott: Yes. Historically, it has been shown that co-ordination at the regional level can take place in a number of guises. For example, there was the Association of European Regions of Industrial Technology—RETI—which was founded back in the 1980s. The group of regions with legislative power—Regleg—tried to campaign for reforms to the putative convention on the future of Europe. The Lisbon regions network, which has been developing for the past 12 to 18 months, is an example of a co-operation, co-ordination and best practice network that could be used much more fully. We tend to ask whether the Lisbon strategy sits with the smart, successful Scotland strategy and the UK's broader economic strategy, but we tend not to look systematically enough beyond these shores and ask how regions are dealing with particular problems. Recent research has highlighted the fact that Scotland may not be dealing with particular problems as well as other regions in the European Union are.

Mr Wallace: In the paper to which the convener referred, you said of opportunities to play a greater role in the Lisbon strategy:

"The extent to which the regions can and will avail themselves of these opportunities depend not only on the readiness of national governments to 'admit' them ... but equally upon the extent to which regional authorities are willing to take advantage of the opportunities".

Do you have any observations to make to the committee on the British-Scottish context? From your studies, to what extent are national

Governments in countries such as Spain and Germany prepared to admit sub-state Governments or Parliaments into Lisbon strategy policy processes and to what extent are bodies such as Länder willing to participate in them?

Professor Scott: Different types of opportunities arise from different national traditions. I have not detected any obstacle in the UK to conversations taking place. The strategy has been mainlined in national politics, but it has not been sufficiently mainlined in sub-national politics. It is not a matter of doors being closed; rather, it is a matter of where shared interests lie. Where national Governments retain competence over labour systems and social welfare systems, the proper conversation must be between the national and the sub-national Government to try to develop common objectives and responses, but there are other areas in which policy competence resides at the sub-national or sub-state level. In those areas, sub-states must energise cross-country comparisons and look for cross-country opportunities. There is no reason why national Governments should necessarily be involved or interested in such matters.

Things may have changed since I wrote the paper from which you have quoted—I have not carried out an empirical review since I wrote it—but the Lisbon regions network is active and interesting. In the paper, I ask why regions are not talking to one another about similar problems. They could learn from one another and find alternative reactions to problems.

Mr Wallace: You mentioned recent research that shows that Scotland is possibly missing a trick or two. Will you point us in the direction of that research and give us an illustration of what you mean?

Professor Scott: We are not taking the opportunities that the existing structures in the European Union present, for example by not plugging into the Lisbon regions network. We could consider a number of potential areas, but the Lisbon regions network, with which I have been most closely involved, and in which, as I have said, the west midlands is involved, jumps out at me. We must ask what lessons can be learned from the arrangements and conversations between the regions that are involved in it.

Another example, which came out of a paper by Andy Cumbers, is that Scotland's traditional industrial regions—the old declining regions—are not responding at the same rate as similar regions in other parts of the European Union. He does not suggest reasons for that—I guess that that would be the next stage of the research. Old industrial regions in some parts of the EU are clawing themselves into higher growth and better employment prospects than comparable regions in

Scotland. He noted the south-west of Scotland as a particular example.

Such cross-country comparisons are crying out for explanation. We should not be considering why we are doing less well than the south-east of England on some of the Lisbon targets such as innovation and new firm start-ups, but why some comparable regions are doing better than us. We could ask the question the opposite way round: why is Scotland doing quite well on the employment target while other regions are not doing so well? We need to look beyond the shores of this jurisdiction to find out what is happening.

Mr Wallace: The example of the south-west of Scotland is interesting. Do you get the feeling that we too often consider Scotland as a whole rather than consider what could be done within Scotland at a sub-regional level?

Professor Scott: That is an extremely good point, with which I agree entirely. Scotland is not a unified economy in that sense; different parts of the country have different economic forces and different labour markets. We talk about Scotland and local authorities and development authorities in England. We should have a smaller aggregation unit in Scotland. I guess that the Scottish Enterprise network does that, but given the targets that we are talking about, we have to break the area down further.

The Convener: I call Bruce Crawford.

Bruce Crawford (Mid Scotland and Fife) (SNP): My question is on a slightly different subject, so I will let other members in first.

Irene Oldfather: Do the witnesses feel that the European Commission is moving towards a regional agenda? You probably share my views on that. What regions are involved in the network? The fact that the west midlands is involved will be of great interest to the committee. We tend to think that we in the Scottish Parliament are ahead of the game in a lot of these things, so it is interesting to see regions in England taking the agenda forward. I suspect that that is to do with Birmingham.

Professor Scott: I did not print out a list of all the regions involved. Brussels, Stockholm, Emilia-Romagna, a German region, Valencia and the west midlands are involved. Seven or eight regions are involved. It is an active group. Of course there are big differences between them, but they have lots of conversations about the best strategy in relation to Lisbon issues.

I do not have any real views about the Commission's approach, other than to say that it has always been quite open to regional discussions and has always welcomed the regional representatives in Brussels. I have never heard any suggestion that the Commission is

anything other than supportive of contact with regions. The difficulty with Lisbon vis-à-vis the Commission is that it touches on competencies that are entirely national.

In a sense, the interesting thing about Lisbon is that it represents a new form of governance; it is a move away from acquiring competencies at Europe level and towards engineering collective responses and saying, "These are matters that are best left to national and sub-national Governments, but we feel that there is sufficient common interest that we should be learning." The learning part of the so-called open method is failing. It is about the extent to which countries are prepared to adjust domestic strategies—which is not costless—or sub-national Governments are prepared to adjust sub-national policies in the context of best practice. There will always be losers from a policy change.

The difficulty is that, somehow, the circle has to be squared. We have to see the gains as being trade-offable against the losses. There is no doubt that that is difficult, but the Commission is entirely supportive. The reaction to the Kok report was that we should get the Lisbon agenda out and involve not only national capitals and civil services, but open it up to more stakeholders as part of a broader attempt to reinvigorate Europe's economy and address the challenges, which are extremely serious.

14:30

The Convener: Do we have the relevant data at regional level to allow such comparisons or should we try to pull them together?

Professor Scott: The data in Scotland are extremely rich, although they can always be improved. The economic data are very rich, which reflects the many years over which the Scottish Office and the Scottish Executive have addressed Scotland as a specific economic jurisdiction. The data in England are far less rich, so it is much more difficult to make comparisons across the English regions. We have good data on most things, which can be used usefully for the Lisbon strategy targets on which competences arise. We know a lot about the indicators and it would be helpful to make the targets harder and give them more indicative power.

Jasbir Jhas: Something that might be of interest to Drew Scott and to the committee is the Lisbon monitoring platform that the Committee of the Regions has newly developed. It builds on the questionnaire that the COR distributed last year to national associations to ask how they were involved in formulating the reform programmes.

The new phase of the COR's work, which is purely voluntary and takes place through its

members, is intended to engage local and regional authorities and to find out how they are working and what their data are. It is a data-rich network, in which 65 local and regional authorities throughout the European Union have been involved so far. The Committee of the Regions hopes to make it a test-bed so that regions can compare their performance against each other and build an argument that certain regions in different countries perform better in certain areas because they have different competences. That will enable them to lobby their own Governments and the European Union to make things slightly easier for local and regional authorities to act on the Lisbon strategy.

Many of the local authorities that were involved in the LGA-LGIB submission to the Lisbon national reform programme are involved in that. I think that there is some Scottish involvement; I can check that and get back to you on who is involved.

Bruce Crawford: We are being encouraged to consider issues on a much more regional or sub-national basis. What is your perspective on how other parts of Europe deal with matters on which different levels—the Government of Catalunya and the Government in Madrid, for example—have different views on the way forward? How can we ensure that member states note such different approaches, recognise them and find ways to reconcile the differences? If we are going to achieve some of the things that the Lisbon strategy requires us to achieve, there will need to be much more acceptance of the fact that particular areas within a member state may have different views about the solutions.

Professor Scott: That is a big question. The straightforward answer is that the different views can be reconciled by assigning competences, which follow when the points of difference are found. That is the principle of subsidiarity. Many sub-state authorities have different levels of competence. The reason for giving competences down to lower levels in the governance hierarchy is to take advantage of different opportunities and respond to different challenges. There is no glide path to a straightforward solution. The process happens by disagreement as different problems emerge and are resolved. I do not think that there is any particular recipe for the perfect configuration of powers that will result in a devolved parliament or executive that meets the aspirations and needs of particular sub-state areas. There is no one answer to that question; it comes through the competence issues.

Bruce Crawford: Are there examples of places in Europe that are approaching the situation differently, accepting that differences exist and reconciling everything in a more open way than we are doing?

Jasbir Jhas: From an employment perspective, there is a lot that we can learn about how various regions and cities are working to make employment policies that reflect the needs of their areas. We are doing that through the Committee of the Regions, and the Council of European Municipalities and Regions, which is another pan-European association of local government organisations. That is a useful tool that we can use for the exchange of best practice.

The LGA is doing a lot of work on sub-regional partnerships and how local authorities are working together to deliver their regional economic strategies. We are trying to learn from that. The Lisbon COR platform provides another way in which we can learn from what is going on elsewhere.

The Convener: We have covered a lot of ground. You have both given us food for thought in the complementary evidence that you have given us.

At our next meeting, we will take evidence from the European Commission and the Deputy First Minister.

Transposition and Implementation of European Directives Inquiry

14:37

The Convener: Our second agenda item concerns Jim Wallace's report on his inquiry into the transposition and implementation of European directives, which he has circulated—I am sure that we all took it home over the weekend and read it closely. The report is an excellent piece of work and I congratulate all those who were involved in its production. Members have also been sent a letter from the Deputy Minister for Environment and Rural Development, which was written in response to my letter. The letter is included in annex C of Jim Wallace's report.

Professor Alan Page, the committee's adviser on this matter, has joined us.

Mr Wallace: I thank those who assisted me in the writing of this report, including the previous clerking team, the clerks who are at the table with us, Iain McIver from the Scottish Parliament information centre and Professor Page.

Colleagues will recall that we examined one or two directives that had received press publicity or, in the case of the waste incineration directive, constituency complaints, to see whether there was evidence of gold plating. Annex A contains Professor Page's analyses of the directives.

Sometimes it is difficult to know whether there is gold plating. The waste incineration directive is a good example of that, as it is clear that the transposition is identical north and south of the border. However, a decision that was made by the Department for Environment, Food and Rural Affairs south of the border to exclude small waste burners on the basis that they are not "technical units", in the terms of the directive, gave rise to the concerns that constituents raised with MSPs—and which Alex Fergusson and I raised in the chamber—around the fact that Scottish operators had to pay more than their English counterparts. Members will note from the correspondence with the Deputy Minister for Environment and Rural Development that there is some question whether DEFRA has got the definition right. However, that example shows that allegations of gold plating or differential application can often arise at the follow-on stage of enforcement.

The committee last considered the drinking water directive at our meeting of 12 September, when I gave one of my interim reports. We noted a number of points that the Parliament's legal advisers raised. Indeed, I record my considerable thanks to the advisers for their work on our behalf.

At the time, the convener wrote to the Minister for Parliamentary Business, but we have now received a reply from the Deputy Minister for Environment and Rural Development. To put it politely, one would need a PhD to understand it—and a PhD is not even a chemical that is found in water.

At one point in the letter, the minister accepts that there has been overimplementation and gives the reason for it. Again, the example illustrates our point about the need for transparency. If the Executive is going to overimplement, it should have to give its reasons for so doing. As we heard in the evidence that we gathered and from talking to Lord Davidson, who produced his report last week, the right decision in terms of some policy decisions may be to overimplement. However, it is important that such a decision is flagged up, that a rationale is given for the decision, and that people are given a proper opportunity in which to consider the impact.

As I said, although we started with specific directives, it soon became clear that we could go on for ever, as Lord Davidson did. [*Laughter.*] That is not quite what I meant to say. I should have said that, given that Lord Davidson took one set of examples and the Federation of Small Businesses took another, we could go on for ever taking small sets of examples. It is difficult to know what conclusions might be reached in those differing circumstances.

The issue that emerged clearly was not gold plating as such, but the fundamental issue of the way in which the Scottish Parliament goes about its scrutiny of European legislation. As I tried to set out in my report, the Parliament's scrutiny falls into three parts. First, we get an intimation from the Commission of pending legislation and we make our pre-legislative scrutiny. [*Interruption.*] I have checked my phone, but it is not causing the interference.

At that point, we decide whether our treatment of the instrument will involve consideration and consultation. The report sets out the interesting comparisons that the committee made with Ireland and Denmark, the latter of which can be described as the Rolls-Royce model. Considerable consultation and parliamentary involvement takes place in Denmark prior to the appropriate meeting of the EU Council of Ministers. We also made a comparison with the UK Parliament, where the House of Lords and the House of Commons have their own scrutiny mechanisms, both of which kick in very early; that happens when the draft legislation emanates from Brussels.

Secondly, there is the transposition period, during which the directive is transposed into national legislation. Issues arise at this stage, including whether to have the greater

transparency that a transposition guide would allow. As the report sets out, correlation tables would allow people to cross-refer the elements of a statutory instrument and the EU directive that it is transposing and vice versa. Obviously, if the tables showed that the Executive had overtransposed a directive, it would have to flag that up clearly and give a rationale for its decision.

Thirdly, there is the stage at which enforcement and implementation take place. I gave the example of the waste incineration directive in which, although transposition north and south of the border was the same, the respective enforcement authorities have expressed different views and made different applications and interpretations. As a result, different pressures and burdens have been brought to bear on businesses north and south of the border. There is also a role for the Parliament in the implementation stage.

I will not go over everything, as all the issues are set out in the report. However, given that the Parliament moves into a new session after the May elections, the committee must decide whether to produce a report as part of our legacy papers. We need to identify the ways in which our scrutiny of EU legislation could be considerably enhanced. However, we should be under no illusions. Given the resources that are available to the Parliament and the Executive, we cannot take on every piece of legislation.

The sift paper that we will consider today contains obscure proposals that will probably affect very few people. Nevertheless, important pieces of legislation are coming through. The Parliament's European officer has an important role, given that it is often possible to identify and flag up important proposals well before they appear as draft legislation.

14:45

The fact that the identification of such proposals is now part of our work programme is important. When we have identified emerging legislation that is of particular importance, we should at an early stage ask the Executive to indicate its view of the proposal. If necessary, this committee or a subject committee should take evidence on the matter, but we should at least feed in our view to the Scottish ministers before they agree with UK ministers the common line that will be put forward at a meeting of the Council of the European Union.

As I said, there is a role to be played in examining the subordinate—and sometimes primary—legislation that will implement a European directive and in considering how the implementation works in practice. To that end, I hope that the committee will make recommendations on how we might improve

parliamentary scrutiny of European legislation and, in so doing, do a service to the many stakeholders who have an interest in how the legislation will affect them.

The Convener: Thank you. The legacy paper that we leave for our successor committee in the next session of the Parliament is a thread that has run through many of our meetings. The clerks are working on the content of the legacy paper, which seems to be getting larger and larger—we might leave a legacy book that will be split into chapters.

John Home Robertson (East Lothian) (Lab): As long as there is just one volume.

I thank Jim Wallace and everyone who contributed to the report and I congratulate them on their valuable work. They have focused on a matter that affects businesses and communities throughout Scotland and needs to be understood and addressed. Jim Wallace was quite right when he talked about obscure pieces of legislation. I never thought that I would hear from a small company in my constituency that is based in a tiny, remote village in the Lammermuir hills and builds church organs, but the company contacted me when it discovered that it was in terrible trouble because components that it was using were classified as electronic waste. The company thought that it would be impossible to continue to use welded lead organ pipes. I think that a solution was found, but the anecdote provides an example of how issues can jump out of the system and cause terrible difficulties for industries that we might not even have heard about.

During yesterday's event in the Parliament on maritime policy, I was struck when someone said that gold plating is not necessarily bad. There are circumstances in which gold plating can lead to better quality and create a competitive advantage for industries in Scotland. However, for goodness' sake let us be careful before we start gold plating directives. I am sure that everyone has anecdotes: this one comes not from my constituency but from where I live, which is close to the English border. Neighbours drew my attention to the fact that when the Berwick bypass was being resurfaced, the planings that were taken off the surface of the road were made available to local farmers, who used them to resurface farmyards and farm roads and gateways. Farmers south of the border had no problem doing that. However, farmers north of the border had to get special licences for the disposal of the material as waste, as a result of the interpretation of European legislation by the Scottish enforcement agencies, such as the Scottish Environment Protection Agency. The approach seemed barmy, because the material would have gone to a landfill site if the farmers had not used it. That is an example of the kind of situation that can arise and I hope that we can

learn from the recommendations that emerge from Jim Wallace's report.

In paragraph 96 of his report, Jim Wallace says:

"there is scope for greater co-operation with the European scrutiny committees at Westminster"—

and, I presume, at the National Assembly for Wales and the Northern Ireland Assembly. I thought that that was meant to be happening. Ages ago, when I was deputy convener of the European Committee in the first session of the Parliament, I recall attending meetings in other Parliaments, the objective of which was to identify matters that the Westminster Parliament or one of the devolved Parliaments would focus on and specialise in. I do not know whether that happens, but it was a good idea.

The Convener: I have been trying to interrupt you to tell you about that. You are talking about the UK European chairs forum, which fell away for various reasons. We are trying hard to resurrect the forum, because we recognise its importance. I understand that we have a meeting on the matter in January. The committee agreed that the point about the importance of such things would be made forcefully in the committee's legacy paper.

I apologise to Professor Page, because I meant to ask him to make some comments.

John Home Robertson: Sorry.

The Convener: It was my fault—you do not have to jump in and take the blame from me.

I should have asked Professor Page to speak at the beginning, but now that I have started wrong I will continue wrong. I will take a few comments from members before I ask Professor Page to do a sweep up at the end.

Irene Oldfather: I wanted to make some of the points that John Home Robertson made.

First, I congratulate Jim Wallace. The report is very helpful. I agree with most of the preliminary recommendations on increasing scrutiny, having more influence upstream, trying to engage Scottish ministers early on and having an input to UK discussions. I, too, draw attention to paragraph 96, because I think that the suggestion that it makes is very good.

Following his visits, Jim Wallace has a feel for how scrutiny is being conducted at Westminster, including in the House of Lords. We spoke earlier about conducting comparisons not only with other member states, such as Denmark and Ireland, but perhaps with comparable regions. An issue that interests me is how other regions exercise the scrutiny duty in relation to their member states. Could we learn anything about the good practice that exists elsewhere? I do not know whether you have yet to look at that or whether the question is

too big because of the nature of the beast that we are considering. Jim Wallace pointed out, rightly, that resources are a difficulty, but timescales are also an issue. How do regions in other member states go about such engagement?

Mr Wallace: That is a good question. When we considered the issue, there was a feeling among the team that a visit to Barcelona to investigate the Catalan system would have been welcome. Such a visit would have been worth while, but within the timescale it did not prove possible. However, if the committee wants to send me to Barcelona before we complete the final report, that would be fine.

Perhaps we could find out about the system in correspondence or by getting a briefing. Our colleagues from Denmark helpfully gave us a study that outlined the process in a number of EU countries. I read the part on Spain, but it is not clear what happens in the autonomous provinces.

John Home Robertson: I think that we should go to Barcelona.

Mr Wallace: Mr Home Robertson thinks that we should go there.

The Convener: All of us?

Mr Wallace: The whole committee should go.

Irene Oldfather: What about Tuscany, Jim?

Mr Wallace: Perhaps we could get briefings from Barcelona on how the matter is handled.

Bruce Crawford: I thank Jim Wallace for the report. He obviously put in a heck of a lot of work, together with the team that put it together.

This comment is probably obvious. You would have expected us to be closer to one another in the UK in the way in which we implement legislation than other countries might be, but I guess that time and resources have not allowed greater examination of what other countries do by way of implementing EC directives. It might be useful for us to examine that matter somewhere along the line; I acknowledge that it was not possible for you to do so, given the timescale and the resources that were available.

I do not know how much evidence you took on the matter, so forgive me for throwing in this question. I was intrigued by something that the Danish ambassador told me when I met him recently. We discussed the workings of the European and External Relations Committee and I sought the Danish perspective on how they do things. One of the interesting points that he made about Danish practice is that, prior to council meetings that are of significance to the Danish national interest, the parliamentary committee responsible for the area takes evidence from the minister. If there is not national consensus, at least

a generally shared view is reached on how the negotiations should go.

I know that the minister could end up being hamstrung before he goes to the negotiations, but I wondered whether there was anything beyond the Danish experience that might be a model to help keep us in the loop more effectively. The relationship would be different from the one that Westminster has with its ministers because the United Kingdom is the member state, but perhaps we could be involved at sub-national level in discussions with whichever UK minister was going to the council meeting.

Mr Wallace: Paragraph 29 of the report highlights that. In my opening remarks, I referred to the system in Denmark as the Rolls-Royce model, but that is not just because of the engagement of the Parliament. It sits at great length on the Friday before every council meeting, which means that it sits virtually every Friday; it considers the issues that will come up at the following week's council meeting; and it gives the minister a mandate. Obviously, those meetings take place in private session because the bottom line must not be shown.

The model also reflects Denmark's slightly different culture. I know that we have a coalition Government, but I think that Denmark has more coalitions of coalitions. The Danish model is the end of a process that has had considerable stakeholder involvement from the outset. It would be difficult for us to have the minister appear at the committee before every council meeting; I do not think that anyone would expect us to do that.

Perhaps our role is to try and ensure that Scottish interests are being highlighted and there might well be occasions on which we ask the Scottish minister to come and discuss matters with us before the UK line is agreed. The one example in which that happens, as we will see next week, is fisheries, on which we have a debate in Parliament before the council meeting takes place. The same thing happens at Westminster, so a model exists. Members can indicate to the minister the key issues that he or she should deal with at the fisheries council meeting.

It is unlikely that we would follow the full Danish model, but an issue might on occasion be of sufficient importance that we would want to ensure that the Scottish minister was well aware of the range of views—or even the single view—of the Parliament.

Bruce Crawford: Thank you. I wondered whether there were any experiences of countries doing something similar or beyond that which is mentioned in paragraph 29. Perhaps, with our relationship with the UK in mind, it would be good to know whether Catalunya or any other states do the same thing as us.

You mentioned fisheries, and I had forgotten that that is debated in Parliament before the council meeting. However, there might be other areas in which significant directives—the waste electrical and electronic equipment directive could have been one such example—would have particular impact on Scotland. We might need to consider encouraging debates on such subjects in the committee or in the chamber, although I accept what Jim Wallace says about that.

John Home Robertson: I have a word of caution about the Parliament agreeing a position with the minister before he goes to the council. Having been involved in fisheries issues, I know that it might be helpful to the minister if he can say that the issue has been discussed in his Parliament and that it is very important to the country and all the rest of it. At the end of the day, however, at the negotiations on whatever the subject is, ministers need to be flexible and they cannot be mandated to take a particular line. It is in the nature of negotiations that horse-trading goes on and we can end up with some things that we want and some that we do not want. That is the way that the European Union works, I am afraid.

Bruce Crawford: I accept that wriggle room will always be important for the minister.

John Home Robertson: He needs more than that.

Bruce Crawford: You know what I mean. There might also be occasions when the minister says that he cannot possibly take what is offered back to his Parliament because of its view, and that might strengthen his negotiating position.

Derek Brownlee (South of Scotland) (Con): The report is very useful and a lot of work has gone into it. I have one minor query and a broader point to make. The minor query is in relation to the mention in paragraph 56 of correlation tables, which is an interesting idea. Correlation tables always start out in directives but they are always taken out by member states. Does that mean that they are taken out at the insistence of all member states or just particular ones? Is there anything in that of more general import?

Consultation earlier and often on European legislation is a sensible objective, but I have a concern about that broader issue. When this inquiry was discussed, there was almost complete unanimity that gold plating is one of the top European issues that we hear about from business. If the suggestion of an inquiry into gold plating can attract only 10 responses, I wonder how much feedback we would get on the issue of early consultation for European proposals. That is the difficulty. It is a good concept, but in practice would we be able to engage people in such a way

that we would get something meaningful out of the process?

15:00

Mr Wallace: The issue of correlation tables was one that I raised. It is not our Government in particular—our impression was that member states in general tend to shy away from the issue. I would not attribute it to any particular member state, but there is perhaps a perception that if a member state was too up front with its correlation tables it might make it easier for the Commission to identify possibilities for infraction proceedings. I think I am right in saying that transposition tables—I have never been entirely sure what the distinction is—are now required in most UK statutory instruments. That will be helpful.

Derek Brownlee's point about the fact that gold plating attracted only 10 responses is interesting. Those 10 responses were valuable, but Lord Davidson says in his report that

"a number of factors indicate that ... over-implementation may not be as big a problem in the UK ... as is alleged by some commentators."

When we visited Ireland and Denmark, the same things were said by the business representatives whom we met. Lord Davidson points out that, in the World Bank's "Doing Business 2007", the UK is found to be

"one of the most favourable regulatory environments for doing business in the EU."

That does not get away from the fact that there will be occasions when there is overimplementation. Part of the difficulty is that if we consider gold plating more generally, we might not attract much attention, but if we were to consider a chemicals directive, we might find that a number of companies that have a particular interest in that would be willing to engage in a consultation. Even if only five or six companies took part, if they were key stakeholders it would be worth while.

The Convener: I am amusing myself with the thought of Mr Gallie sitting here listening to you say that the regulatory regime in the UK is one of the most favourable in Europe.

Mr Wallace: It was not me; it was the Organisation for Economic Co-operation and Development and the World Bank.

The Convener: Well, then it must be true.

Gordon Jackson (Glasgow Govan) (Lab): Could subject committees do more, or are they too overloaded? Until recently, when I got parole, I had another hat as a member of the Subordinate Legislation Committee. Thousands of statutory instruments come through, lots of which have to

do with subject committees. We formed a view that the subject committees hardly ever looked at them, because they could not, as they were dealing with day-to-day politics. Is there a way round that?

Mr Wallace: That is a fundamental question. The recommendation to the committee is that we should send the report to the Subordinate Legislation Committee and the subject committees for their comment. In many cases, it makes sense for the subject committees to deal with European legislation. Fundamentally, the whole Parliament needs to re-examine how it deals with European legislation.

From the outset, we have not had a culture of going into European legislation in great detail. I am not suggesting that we should try to examine every directive, because that would be impossible and would induce a collective breakdown. Basically, we need to identify the handful of directives each year that will have a significant impact and flag them up to other committees, because in many cases it will be more appropriate for the subject committee to conduct the scrutiny.

Gordon Jackson: Do we know what systems are employed by the subject committees? We do the sift and allocate various items to various committees. Do the clerks who operate the subject committees' systems have a particular way of handling what we refer to them or is it simply a case of, "Oh, more of these"?

The Convener: I think that it is a bit of both. Would you agree, Jim?

Jim Johnston (Clerk): I have had initial discussions with other committees' clerking teams and, as the convener said, the approach that is taken varies. It is clear that some subject committees take a bigger interest in such matters. For example, the Environment and Rural Development Committee has well-developed procedures for handling European legislation.

I think that Jim Wallace is suggesting that we should send the report to the relevant subject committees and the Subordinate Legislation Committee to ask for their views on it. That will allow them to have a formal input into the process.

Gordon Jackson: It would at least make them think about the issue.

Irene Oldfather: It has been interesting to listen to the discussion. It is clear that gaining early intelligence is vital, and in that respect we are further forward than we were in 1999, because we now have a European officer who can do that. Jim Wallace is right—it would be impossible to examine every piece of European legislation. There would have to be a committee working on that full time.

I am taken back to the consultative steering group and the discussions on what a European committee of the Scottish Parliament might look like. Several models were considered, one of which was that the committee would be much bigger and would have on it representatives from each of the subject committees. It would conduct its scrutiny role as a whole, pulling in expertise from the subject committees. It was decided that that model would not be chosen and that the present model, whereby we allocate matters to the subject committees for them to scrutinise, would be adopted. We can consider such issues in the legacy paper, so it is opportune that Jim Wallace has produced his report towards the end of a parliamentary session, when we have the opportunity to re-examine how we do things.

John Home Robertson: It is fun to listen to fellow politicians passing the buck on who should take up a difficult responsibility. Given that I will be leaving the Parliament shortly, I feel free to express a view on where the buck should stop.

I have been on the committee for nearly eight years, and during that time it has not considered a single bill. I cannot think of many other committees that could say that. The other committee of which I am a member is the Communities Committee, which has been dealing with legislation ever since I have been on it. It has had to meet weekly to cope with the workload. Frankly, the European and External Relations Committee is the committee that should be picking up the responsibility for scrutinising European legislation, because its workload is not that big. Indeed, there have been occasions on which we have been looking for things to do. If there is an issue to be addressed, this committee might be the one that should address it. We are the European and External Relations Committee, so we should be examining European regulations.

The Convener: That is not within the committee's remit.

John Home Robertson: We could suggest that it should be.

Irene Oldfather: That goes back to the alternative models that could have been adopted.

The Convener: I ask members to make their comments brief, because poor Professor Page—

Irene Oldfather: We will not resolve the issue today.

The Convener: No, we will not.

Bruce Crawford: I understand where John Home Robertson is coming from, but there is an element of truth to the suggestion that if the job was being done properly, this committee would not need to exist. If European issues were mainstreamed in the work of the other committees,

there would be no need for a European committee. I acknowledge that that would have resource implications and would be difficult, given the legislative timetable and all the extra work that would be involved for other committees, but it would be possible to do away with this committee and with the Equal Opportunities Committee if we ensured that the issues with which they deal were mainstreamed properly.

We are not in such a world, nor are we in a world in which this committee should take on chunks of work on proposals emanating from Europe that other committees might take on. However, we could make suggestions in a louder voice when we think a particular piece of scrutiny is required. The committee should have a power for that—or perhaps not a power, but a bit more dynamism in how it gets involved with other committees in trying to persuade them that they should be more materially involved in examining particular issues. However, I do not know how we can achieve that.

Gordon Jackson: This is strange, but you have to be bossier, convener.

Bruce Crawford: That is the word that I was looking for.

The Convener: I was about to say that I think that you are all very dynamic.

Bruce Crawford: My point is more to do with structures than with individual members.

The Convener: From the philosophical thoughts that have been roaming around the ether, I will move on to Professor Page, who will bring us all back to reality. Professor Page, will you comment on what you have heard?

Professor Alan Page (Adviser): Certainly. There is a slight irony in turning to a professor to go from the philosophical to the practical, but I will let that pass.

I have three brief comments on what has been an interesting discussion. First, part of the answer to the question about resources is that there is a need to be highly selective. Somebody has to say which directives are the ones that matter to Scotland and we must then concentrate our resources on them, by whatever mechanism is most appropriate, whether that is this committee, a subject committee or some combination of the two. That is part of the answer.

My second point, which has come out in the discussion, is about the importance of getting in early and making views known at as early a stage in the process as possible. The inquiry started by considering the way in which various obligations had been transposed or implemented in Scotland. One issue that emerged is that, by that time, it is often too late, because there is no room to take

account of distinctive Scottish interests or considerations. We therefore should ensure that they are built into the obligations when that is appropriate, because there are distinctive Scottish interests.

The third point arises from the fact that Scotland does not have a seat at the European table—the UK is the member state. To rewind slightly to the question about how other regions do it, the answer depends on their constitutional arrangements. Under the UK arrangements, as you all know, the final say in negotiations with Brussels is reserved to the UK Government, but it welcomes input from the devolved Administrations. Therefore, people here will in part concentrate their attention on the discussions between the Scottish Executive and the UK Government. Of course, the difficulty is that those discussions are veiled behind a cloak of secrecy and confidentiality. The key to some of the matters is ensuring that the Scottish voice is heard not just in Brussels but in London.

The Convener: I do not want any more great philosophical ideas, but do members have any comments or questions for Professor Page about the report?

Bruce Crawford: You have curtailed us, convener.

The Convener: I have not curtailed you. I would not dare even to think about that.

Mr Wallace: In addition to the recommendation in paragraph 4 of the clerk's note, I suggest that the convener's correspondence with the Executive on the drinking water directive be sent to the Environment and Rural Development Committee for its consideration.

John Home Robertson: D'accord.

The Convener: Do members agree to the recommendation, which is to invite the views of the Subordinate Legislation Committee and relevant subject committees, and to Jim Wallace's suggestion that we send the correspondence on the drinking water directive to the Environment and Rural Development Committee?

Members indicated agreement.

The Convener: Jim Wallace's report will inform the committee's oral evidence taking at its meetings on 16 and 23 January and 13 February and our final report on the matter. I thank Professor Page. His work is much appreciated.

Legislative and Regulatory Reform Act 2006

15:15

The Convener: Agenda item 3 is on the Legislative and Regulatory Reform Act 2006. We need to consider correspondence from the Scottish Executive on the committee's consideration of the legislative consent memorandum on the Legislative and Regulatory Reform Bill, before it received royal assent at Westminster.

As you all know, I wrote to the Deputy Minister for Finance, Public Service Reform and Parliamentary Business further to the bill being considered in the House of Commons on 7 November, seeking his view on the fact that the UK Government's position seemed to have fallen short of what the committee expected, given his assurances at our meeting of 26 September. The minister's response is attached to members' papers. I invite comments.

Gordon Jackson: We are entitled to feel a little disappointed and let down, although I would not overstate it. We all found ourselves at the cutting edge of the argument, and the matter became a huge cause for us. To a degree, the issue is semantic. The minister referred to the comments made at Westminster

"that the Scotland Act is not formally exempt from the Bill".

That is, of course, true, and is not actually inconsistent with what we were saying. The minister said that, although the Scotland Act 1998 "is not formally exempt", it is, as a matter of practice or law, constitutional, therefore it could not come under the practical scope of the Legislative and Regulatory Reform Act 2006. I thought that the Westminster people would say both bits of that. In other words, they would say not just the bit that they said but that, as a Government, they take the view that the Legislative and Regulatory Reform Act 2006 could not be used to amend the Scotland Act 1998. I expected them to say that in terms. Their failure to do so is a little disappointing.

It is impossible to identify where the blame for that lies. There might not be any blame. It might be a case of that well-known political theory that, when in doubt, it is more likely to be a cock-up than a conspiracy. I suspect that that is the case here. I suspect that there is no conspiracy, but a breakdown somewhere. I reiterate that I am disappointed.

Derek Brownlee: George Lyon spoke to the Parliament before the vote on the legislative consent motion and was clear about the Executive

view, and I understand his position. He said that the reason for seeking assurance from UK ministers was

“for ensuring that the matter was put beyond doubt”.—
[*Official Report*, 5 October 2006; c 28336.]

Given that the UK minister has not used the same form of words and that the interpretation of the Scotland Act 1998 is very much within Westminster's remit, I would have thought that the position is, at the very least, left in some doubt. Arguably, the situation is rather worse than that. It raises a serious issue about the information that is given to members of this Parliament before we vote on legislative consent motions. I do not doubt that the Executive sought to get on the record at Westminster the statement that it said it would. However, there is no mechanism for its ensuring that such a statement can be put on the record there before we vote here. That raises a broader issue than the point that is raised in this instance. It leaves me uneasy as to what the actual position is with the legislation.

Bruce Crawford: We could easily jump up and down and make an awful lot of noise about this. We are dealing with something that was said in the House of Commons, during what was, from what I read, a reasonably heated debate on the very point that we are discussing now. Whether the UK minister was being as accurate as he should have been in that atmosphere is difficult for us to tell. I would hate to think that the Deputy Minister for Finance, Public Service Reform and Parliamentary Business has had the wool pulled over his eyes. I do not think that that is what has happened. I think that the Executive has acted in good faith, to be fair.

This might not be about semantics, but there is an issue around the tone with which things have been put across at the UK level. That is different from the tone that was set here, where the matter was beyond doubt, taking into account what happened in the chamber, as Derek Brownlee identified. I no longer think that the issue is beyond doubt, and that concerns me. Having said that, I do not know whether, in practice, the UK Government could or would wish to use the framework to introduce legislation to amend the Scotland Act 1998.

That is where we are today, but in 10 or 15 years' time there might be a different background to all this—a different set of parties might be in place and the UK Government might take an entirely different tone. The danger will not emerge today, but I am worried that it might emerge later on. That said, there is not much that we can do at this stage. Indeed, if we shouted it from the rooftops, I doubt that anyone would hear us. It might be more to our advantage to find a

constructive way of making our voice heard. I hope that I have explained that clearly enough.

It will be difficult to find a way of taking this issue forward, although I see that, in his letter, the minister says:

“I also undertook to write to the UK Government laying out our view and asking that a UK Government Minister make a similar statement in Westminster proceedings.”

I do not consider a tetchy exchange in a House of Commons debate to be that statement. We have to go back to the minister and get that view in writing.

Gordon Jackson: Hearing that you will still be worrying about this problem in 15 years' time has cheered me up no end, Bruce. Some of us will find that greatly encouraging.

I take Derek Brownlee's point, but I simply do not think that this matter is in any doubt. The amendments that were tabled to exclude constitutional provisions from the scope of the Legislative and Regulatory Reform Bill killed the concern. I have little doubt that, in that respect, the Scotland Act 1998 is a constitutional matter.

However, although I am not worried about it, I find it extremely disappointing that no one at Westminster has made a clear statement on the matter. We should do a little more on this. There is no reason why we cannot go back to our minister and say, “You said that you were going to get a minister at Westminster to make this statement, but no one has done so. Perhaps a mistake has been made or there has been a breakdown in communication. Could you get confirmation in writing from Westminster that, although no one has said as much, they are sorry that this has been missed out?” I still want written confirmation. Indeed, we are due that, almost on principle.

Bruce Crawford: I agree.

John Home Robertson: Members of the House of Commons, no matter whether they are Opposition members or Government ministers, can say what they like. Their comments are recorded in *Hansard*, but they might still not mean very much. Moreover, a ministerial statement on the record in the House of Commons is usually binding on the Administration of which the minister is a member, but it certainly does not bind successor ministers or Governments. What really matters is not what it says in *Hansard* but what it says in the statute book. This is the difficulty in which we find ourselves.

There can be no doubt anywhere that the Scotland Act 1998 is constitutional. If there is a clear understanding by all concerned that secondary legislation cannot amend it, I think that that is fair enough. However, I agree with Bruce

Crawford and Gordon Jackson that any statement must be cast more firmly than it is at the moment.

Frankly, I find it weird that what started life as an apparently well intentioned measure that sought to make it easier to update, clarify and simplify regulations and legislation should come with baggage that includes the scope to amend by ministerial diktat quite significant legislation. I am astonished that any party at Westminster agreed to the legislation in that format, and I find it inconceivable that it was supposed to apply to constitutional matters. I agree with everyone that we should have one more go at this, certainly to nail down the Executive and, if possible, to secure a rather more bankable assurance and undertaking from our Westminster counterparts.

The Convener: I will take Gordon Jackson and Jim Wallace before I bring in Derek Brownlee again, because our legal eagles have kept us right through the whole process.

Gordon Jackson: John Home Robertson is right to say that what is in *Hansard* does not bind a future Administration and that the statute book is what matters. However, the issue is not so simple. If the matter goes to court, the court's scrutiny of the statute might well involve examining the intention behind it. At that point, a lawyer will place before the court a copy of *Hansard*. If the matter is black, it is black; if it is white, it is white. However, if any area is open to interpretation, the court will look at what was said in *Hansard*. Is that not right, Jim?

Mr Wallace: Yes, that arises from *Pepper v Hart*.

Gordon Jackson: That is a matter of law, so the fact that something is in *Hansard* is not unimportant to the future interpretation of a doubtful matter—not that I think the point is doubtful. We cannot say that the fact that something is in *Hansard* does not matter, because it has legal significance.

The Convener: Jim, did you want to make a point of clarification or a recommendation?

Mr Wallace: I simply wanted to agree with what has been said, and to add the point that we got a better interpretation from the minister because of the way in which we approached the matter. Ultimately, everyone was trying to be terribly constructive and matter of fact about it, which probably contrasted with the House of Commons. I can imagine the atmosphere there. There may have been an element of clever point scoring, which we did not engage in when we came to our final deliberations, because we sought to make things as clear as possible.

I will not dissent from the suggestion of getting the minister to write again to try to get a statement

from the United Kingdom minister in a calmer manner. The only question that I have about that follows on from Gordon Jackson's point: what is in *Hansard* would carry weight with a court if there was a question of interpretation, but I am not sure what, if any, status a letter would have. It could be passed on to the committee and we could ensure that it was published. However, I take the view that our main achievement was the amendments that introduced the reference to measures of constitutional significance and narrowed the scope for the use of any orders under the Legislative and Regulatory Reform Act 2006. That is a more bankable assurance than an exchange of words.

Irene Oldfather: When we questioned the minister, we were clear as to exactly what the provisions meant and we asked about minor amendments and constitutional issues. The minister was clear that we were talking about the sequencing and renumbering of provisions. I do not know how that can be compared to some sort of constitutional change to the Scotland Act 1998. Realistically speaking, I cannot see it.

Gordon Jackson: I agree, but it would be nice to get a promise.

Irene Oldfather: Gordon Jackson helpfully made a suggestion about how *Hansard* would be read in court. I wonder whether the Scottish Executive minister's responses and assurances to the committee in the *Official Report* would have the same weight and could form part of any evidence at some point in the future.

The Convener: I have jotted down a couple of things. I think that there is general agreement that we should write to the minister and ask him to clarify paragraphs 3 and 4 of his letter. Have I picked that up properly?

Members indicated agreement.

The Convener: Derek Brownlee raised another point at the beginning, which I had noted also. The issue with any legislative consent motion is whether all the amendments at Westminster should be concluded before we are asked to make a recommendation to the Parliament. There might be occasions when that would not be possible, but is it a general principle that we think should be the normal practice?

Irene Oldfather: What are you suggesting, Linda? One of our difficulties was that, at one point, when the minister came to us, we did not know what the amendments were going to be.

The Convener: That is what I mean.

Irene Oldfather: If we knew what all the amendments were, we would be in a clearer position. However, that would mean that we would be unable to influence the process. With the Legislative and Regulatory Reform Act 2006, we

were able to tell the minister that we did not think that something was acceptable and ask him to go back and clarify it. There are arguments on both sides but, if it is a *fait accompli*, we lose any ability to influence the final outcome.

Mr Wallace: I would be wary of getting into any position in which we give approval after the event.

The Convener: Can I just interject? I think that I perhaps said it wrongly. If that is what you are picking up, perhaps I used the wrong words. Bear in mind that I was not here when we last discussed the matter, because I was off sick. What Irene Oldfather said has just triggered a question in me: did we know the wording of the amendment that was being tabled?

Members: Yes.

Mr Wallace: But it had not been agreed.

The Convener: Right. Thank you for clarifying that.

Gordon Jackson: As Jim suggests, the amendment was more important. The amendment was the crucial thing.

15:30

Bruce Crawford: A point arises from all this. When ministers raise issues to do with Sewel resolutions, we should perhaps suggest to them—it will be up to colleagues to think about this—that there is no reason why there cannot be a conditional resolution. We could say, “As long as X, Y and Z transpire, this Parliament can support the resolution.” That would give us all a safety net. I do not know whether that would be technically possible.

Gordon Jackson: I can understand that from a political point of view. In this particular case, it did not matter, because it was clear that the Government had given in to Opposition pressure to table the amendment, so there was never any doubt that the amendment would be passed. However, situations could arise in which we would not know whether an amendment would be passed. I do not know whether Bruce Crawford's suggestion would be technically possible.

Bruce Crawford: It is perhaps worth teasing the issue out a little further. Could we ask the clerks to speak to the legal eagles?

Mr Wallace: The Procedures Committee conducted quite a lengthy investigation into legislative consent motions, and I am sure that this issue came up. If we apply strict constitutional theory, under the terms of the Scotland Act 1998, the Westminster Parliament can legislate on whatever it likes. We are talking about a convention, but conventions matter in our constitution. You should never ask a question

when you are not entirely sure what answer you will get. You could apply a condition, but if the condition was not met, what then?

What we are doing is consenting to Westminster legislating. I might have misunderstood you earlier, convener, but I was going to say that, although giving that consent is just a courtesy—albeit part of an important convention that has grown up—it is too late to change things afterwards, and once something has been done, you cannot really consent to its being done, because it has already been done.

It might be worth while checking what happened when the Procedures Committee looked into this. Parliament might consent to legislation along particular lines—particular amendments or a particular bill—but a significant change could take place. Now, who would decide what constitutes a significant change? In some circumstances, there would be an obligation on the Executive to come back to Parliament if a material change occurred after the passing of the legislative consent motion.

Gordon Jackson: We might consent to black, but it might turn out to be white.

Mr Wallace: In such a case, there would be an obligation on the Executive to come back to Parliament.

Gordon Jackson: But how could we deal with that? How could we reverse it? If we consented to a Sewel motion on the basis that something would be black, but it turned out to be white, what could we do?

Mr Wallace: It is political. The case that we have been discussing was political. We brought pressure to bear and changes were made.

The Convener: Much as I am enjoying this discussion, Irene Oldfather is probably quite right to suggest that we are going off track a bit. We are being philosophical. I am going to ask Jim Johnston to clarify where we are with this case, and what precipitated events. I will then invite quick comments from members. We should bear in mind that, when the minister responds to us, everything that we have said today, which is being recorded, will be considered. Our points will be responded to and we will hear the Executive's view.

Jim Johnston: Members will recall that part of the difficulty was that the bill was near the end of its progress at Westminster. We were therefore right up against it as we tried to consider the LCM, which caused difficulties for both the Executive and the committee.

Bruce Crawford: If there were material and significant changes, Jim Wallace is right—we would be in a political situation. There would probably be very little we could do about it.

However, as they might say in Fife, the spoon would have to be longer before we supped with them again. That is realpolitik. We will have to put the point to the minister, and try to—

Gordon Jackson: Nail it.

Bruce Crawford: Nail it—that is the expression.

The Convener: I am sure that we will get a detailed response to all of the comments that we have put on record today.

Irene Oldfather: I look forward to it.

The Convener: Do you, Irene? We will set aside time to discuss it at the next meeting.

European Commission Work Programme 2006

15:35

The Convener: Item 4 is consideration of the European Commission's work programme for 2006, and tracking the issues that the committee has identified. Would members like to comment on the information that has been provided?

Members: No.

The Convener: What about mini-Gallie, who is sitting at the end of the table?

John Home Robertson: You may regret saying that.

Mr Wallace: If he were here, Mr Gallie would say that we are now getting down to the real business of the committee.

Derek Brownlee: I often find that the *Official Report* makes me sound more eloquent after the event. I wonder whether that may be the case here, too.

Pre and Post-council Scrutiny

15:35

The Convener: Item 5 is our regular scrutiny of the agendas and reports of Council meetings.

Mr Wallace: I refer members to page 8 of paper EU/S2/06/17/5. I welcome the fact that the Executive is pursuing the issue of the term for public service obligations for air routes, which I have raised before. We should get a response automatically, but we may want to flag up the issue.

Sift

15:37

The Convener: Item 6 is our regular scrutiny of European Community and EU documents and draft legislation. Do members have any comments on the sift document?

Gordon Jackson: I see that Mr Crawford is voting with his coat.

The Convener: Do members agree to refer the papers that the document highlights to the committees indicated?

Members *indicated agreement.*

Meeting closed at 15:37.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Thursday 14 December 2006

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Blackwell's Scottish Parliament Documentation

Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries

**0131 622 8283 or
0131 622 8258**

Fax orders

0131 557 8149

E-mail orders

business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders

business.edinburgh@blackwell.co.uk

Scottish Parliament

**RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152**

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents

(see Yellow Pages)

and through good booksellers