

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Tuesday 13 February 2007

Session 2

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE 3rd Meeting 2007, 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

Derek Brownlee (South of Scotland) (Con)
Marilyn Livingstone (Kirkcaldy) (Lab)
Richard Lochhead (Moray) (SNP)
Nora Radcliffe (Gordon) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

George Lyon (Deputy Minister for Finance, Public Service Reform and Parliamentary Business)
Malcolm McMillan (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Jim Johnston

ASSISTANT CLERK

Emma Berry
Alun Davidson

LOCATION

Committee Room 4

Scottish Parliament

European and External Relations Committee

Tuesday 13 February 2007

[THE CONVENER opened the meeting at 15:00]

Decision on Taking Business in Private

The Convener (Linda Fabiani): Good afternoon, everyone, and welcome to the third meeting of the European and External Relations Committee in 2007. I have received apologies from Irene Oldfather and Gordon Jackson, who are unwell—separately unwell rather than together unwell.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): The mind boggles.

Linda Fabiani: Item 1 on the agenda is to decide whether to take item 4 in private. Under item 4, the committee will discuss its priorities for the European Commission's legislative and work programme for 2007. Do members agree that we should discuss those issues in private?

Phil Gallie (South of Scotland) (Con): No, convener. As you are well aware, I am happy to have discussions in private when the committee is considering its reports, but consideration of the Commission's work programme is a different issue altogether. An excellent paper has been prepared by our European officer, which lays out the key issues that Europe will be addressing in the coming year, and our views on those issues should be made public. I cannot see any excuse whatsoever for the committee wanting to hide behind an internal discussion.

The Convener: We will not be discussing anything that has already been agreed by this committee; we will be discussing information that has been provided to the committee by officers and deciding whether we agree with it.

I understand what you are saying, Mr Gallie, but if we do not take item 4 in private we may set a precedent of making public the information with which officers provide us. We may disagree with that information.

John Home Robertson (East Lothian) (Lab): It is a very good paper and I can see nothing wrong with discussing it in public. Has the paper been published along with the other committee papers?

The Convener: It will be published once it has been agreed by the committee. The only reason for not publishing it would be if the committee fundamentally disagreed with it.

John Home Robertson: Does the author have a problem with its being published?

The Convener: It is not up to the author whether the paper is published or not; it is up to the committee.

Bruce Crawford (Mid Scotland and Fife) (SNP): In the longer term, it would be completely legitimate to publish the paper. However, in effect, we will be negotiating on someone's job description. We will be talking about a particular piece of work that an individual will be asked to do. When we get to the end of that negotiation—after having considered what influence we can have and what constraints will be on us—that might be the time to publish information on the workload of the particular officer. However, we should not do that when we are still trying to agree what that workload might be.

Mr Jim Wallace (Orkney) (LD): I was reasonably relaxed about holding a discussion on our priorities in public. However, taking into account both the nature of the paper and Bruce Crawford's point, I would not go to the stake over it.

The Convener: I do not want to prolong this discussion, as the minister is waiting. Do we have a consensus on what to do?

Phil Gallie: No, we do not have a consensus. Bruce Crawford's comment about this being consideration of a work schedule for the European officer is nonsense. The paper is a list of priorities that have been set down for the European officer to address. He already has his job description and is fully aware of it. I originally opposed the creation of the post, but I regret that now. It is obvious that he is doing a good job across there and that it is necessary to have him there.

The paper has nothing to do with job descriptions; it is simply a programme of the Commission's intentions for 2007. As such, it should be in the public domain. If the committee wishes not to discuss items in public, the public should be aware of why that is so. The reasons would no doubt be explained during the committee's public deliberations.

The Convener: Rather than talking any more about this we should move to a vote. Mr Gallie, are you proposing that we do not take item 4 in private and that we take it in public?

Phil Gallie: Yes.

The Convener: The question is, that we take item 4 in public. Is that agreed?

Members: No.

The Convener: There will be a division.

For

Gallie, Phil (South of Scotland) (Con)

AGAINST

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

Fabiani, Linda (Central Scotland) (SNP)

ABSTENTIONS

Gordon, Mr Charlie (Glasgow Cathcart) (Lab)

Home Robertson, John (East Lothian) (Lab)

Wallace, Mr Jim (Orkney) (LD)

Linda Fabiani: The result of the division is: For 1, Against 2, Abstentions 3.

We will take item 4 in private.

Transposition and Implementation of European Directives Inquiry

15:04

The Convener: Item 2 is our inquiry into the transposition and implementation of European directives in Scotland. This will be our third evidence-taking session. I will shortly welcome the Deputy Minister for Finance, Public Service Reform and Parliamentary Business and his officials, but first, John Home Robertson has indicated to me that he wishes to make a point relating to evidence that has already been taken on this subject.

John Home Robertson: I just want to make a point for the record—I have discussed it with Jim Wallace—that is relevant to what we are about to discuss, namely, the transposition and implementation of European directives in Scotland.

At the evidence session on 16 January, a witness speaking on behalf of the Scottish Environment Protection Agency, Colin Bayes, said in response to Jim Wallace that legislation had been brought in to control and regulate the recycling of road planings on tracks and so on in the countryside. He also said:

“A petition was submitted to Parliament on the matter”—
[*Official Report, European and External Relations Committee*, 16 January 2007; c 2332.]

and that the legislation had been introduced in response to that petition and to recommendations that had been made by the Parliament.

It took me a long time to get to the bottom of the matter, but it transpires that the petition concerned was in fact about sewage sludge, which is rather a different type of material. It looks to me as if that evidence from SEPA might have been misleading. I have written to the chairman of SEPA to seek clarification. I thought that it would be worth getting that on the record.

The Convener: Thank you. I am happy to recommend that the committee write to SEPA to ask for clarification of its officer's comments. Does the committee agree?

Members indicated agreement.

The Convener: I now welcome the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, George Lyon, who is joined by Nikki Brown, head of the Europe division of the Scottish Executive Finance and Central Services Department, and Malcolm McMillan, head of the solicitors division for the Environment and Rural Affairs Department.

I understand that the minister wishes to make a brief introduction. Minister, I invite you to proceed, after which I will invite questions from committee members.

George Lyon: I thank you, convener, and the rest of the European and External Relations Committee for allowing me to participate in your discussions this afternoon. I note from the *Official Report* that some of the discussions on various aspects of this subject have been quite heated. It will be interesting to find out whether that turns out to be the case today. I am especially grateful that the committee was able to change the timing of today's meeting so that I can participate, given that I was with the Local Government and Transport Committee between 2 o'clock and 3 o'clock.

I take this opportunity to congratulate my colleague Jim Wallace on his report on the transposition and implementation of European Union directives. It is a good, thorough piece of work, which highlights a number of useful recommendations that are of interest not only to the committee but to the Parliament as a whole, to the Executive and to stakeholders throughout Scotland.

The Executive takes the transposition of EU directives seriously. We are keen to implement our EU obligations in devolved areas in the Scottish Parliament, and we work hard to ensure that we get the transposition process right.

As the committee knows, the Executive strives to build strong, constructive relationships with its stakeholders. One way in which we build those relations is through continual dialogue. Transposition is no different, and as widely and thoroughly as possible we consult stakeholders who will be affected by a specific piece of EU legislation. That is important not only as part of our continuing stakeholder engagement, but in helping the Executive to identify key Scottish interests that may be impacted upon by proposed European legislation.

We use a number of different channels within the United Kingdom and Europe to ensure that Scotland's interests are heard at the highest level. Our relationship with the UK Government is a strong one, and our dialogue is constant. The negotiation of European policy is reserved, but that does not mean that the Executive does not have a strong role to play in European negotiations. It was the Executive's close involvement in the common agricultural policy negotiations that secured the flexibility for us to take a completely different approach here in Scotland in implementing the final CAP agreement. We should also consider the rules that the EU has now put in place to prevent the dumping of Norwegian salmon in Scottish

markets. Such good results would not have been achieved without forceful Executive intervention.

We are widely recognised as being one of the leading legislative regions in Europe, and we have led the way in having our ministers at the table during meetings of the Council of the European Union and, on occasion, leading on behalf of the UK. No other legislative region in Europe has such close involvement in Council discussions. We have achieved such a strong reputation by making ourselves known on the European stage, through our strong links with the three EU institutions as well as with other member states and regions.

Last year alone, seven EU commissioners visited Scotland, which shows an unprecedented focus on a country that is described as a region in EU terms and illustrates just how well the Executive is representing Scotland on the European stage—so much so that commissioners who are responsible for policies such as fisheries, structural funds, the internal market, energy and agriculture are coming to Scotland to hear about our specific interests and experiences in those policy areas.

Representing Scotland's interests before and during negotiations is important, but ensuring that the resulting legislation is transposed effectively into our own legal system is just as important. As supporters of the EU's better regulation agenda—which, incidentally, was one of our key EU issues for 2006 and will, I think, be one of our key EU issues for 2007—we make a concerted effort to minimise regulatory burdens on Scottish business.

Not only do we consult widely, but we seriously consider the impact that proposed legislation will have on our stakeholders before and during the transposition stage. The Executive is aware of the accusations of tartan plating that have been made, but I assure members that we do not go beyond the minimum requirements of legislation unless we have a strong, beneficial and justifiable reason for doing so.

I am happy to take questions, although members will appreciate that I may not be able to go into the full details of specific EU directives.

The Convener: Why not?

George Lyon: However, my colleagues will be happy to provide members with any detailed information that they require. If necessary, we can ask the relevant ministers to provide responses if members want us to pursue any technical issues on which we are unable to give answers.

The Convener: Thank you, minister. Your comments are much appreciated. Jim Wallace, who was our reporter in the inquiry, will open the questioning.

Mr Wallace: It has emerged from the work that I have done as the reporter and the work that the committee has done that there are three stages in the process: the pre-legislative stage at the European level, the stage at which a European directive is transposed, and the monitoring and enforcement stage once a directive has been passed into Scots law.

I want to consider first the pre-legislative stage, before there is a European Commission proposal or communication. Does the Executive seek to identify in a systematic way issues that are emerging from the Commission that will be important to Scotland? Once the Executive has identified such issues, how does it engage with the United Kingdom Government and relevant stakeholders in Scotland, our members of the European Parliament and—perhaps significantly—the Scottish Parliament?

George Lyon: That is a nice easy question.

The starting point is our Brussels office in Scotland House, which clearly has an intelligence-gathering role and reports back to the Scottish Executive on developments in EU legislation. It tries to identify at an early stage what will have an impact on Scotland. First and foremost, its role is to identify relevant issues and report back to the Executive.

The second line of our approach is Scottish Executive officials' regular engagement with Europe, for example on environmental, agricultural and fishing issues. Indeed, across the piece, Scottish Executive officials regularly engage with Europe. They also try to identify at an early stage EU legislation that might impact on Scotland.

Ministers have a political role in their discussions with commissioners and representatives of other EU countries in trying to ensure that Scotland's views are put forward before legislation is proposed by the Commission and considered by the European Parliament and the Council of Ministers. That is the overall framework within which we try to gain intelligence and ensure that it is reported back to Scotland.

It is important not to underestimate the role of stakeholders' representative bodies in the process. In a previous life, I was aware that the National Farmers Union office in Brussels was an important representative office that spent a lot of time engaging with the Commission on Scottish as well as United Kingdom interests. Most trade bodies are represented on European trade representative bodies. The collective objective is to detect as early as possible potential legislation or proposals from the Commission or the European Parliament that could have an impact on Scotland, and to ensure that we identify what the

Scottish interest is and pursue that interest with the relevant Commission officials in Brussels.

15:15

In my experience, the Commission is a very open institution with which to engage. Officials are usually very keen to meet representatives of member states, those at sub-member state level and representative bodies as well. That is the first stage.

Underpinning that is a requirement for engagement between the Scottish Executive department and the relevant UK department to formulate the UK response to the developing proposal, and to ensure that there is a good relationship between them, so that the Scottish interest can be taken into account when formulating positions that the UK might deploy in making representations to Brussels.

As always, in an EU with 27 member states, compromise will be needed when we are trying to reach agreement on our positions. At that level, there is clearly a need to ensure that when we are engaging with the relevant UK department—and, indeed, at a minister-to-minister level—the Scottish agenda and Scottish issues are raised. On many issues we will take a similar position, as our interests coincide with those of the UK, so we also need to signal that we do not have a difference of opinion.

I think that that deals with the first issue, which is about ensuring that we are involved at the pre-legislative, policy development stage at a European level, and about how we engage. I hope that I have given the committee some comfort that a lot of work goes on to ensure that we get the Scottish message across. There has to be prioritisation because, as anyone who has been in Brussels will know, a huge range of work comes out of there and it is vital that we identify and prioritise the issues that are important to Scotland and then pursue them. In some ways, our prioritisation of the dossiers is one attempt to ensure that our efforts are directed to the right area.

Mr Wallace: On your final point, the committee has found the minister's presentation of the dossiers at the start of each presidency to be very helpful. What happens to those dossiers after they have been presented to the committee? Are the issues continually monitored? Does it vary from department to department?

George Lyon: Each dossier is monitored in the department that is responsible for it. Progress is also reported to the Minister for Finance and Public Service Reform, and Mr McCabe comes before this committee with progress updates. Ultimate responsibility for engagement lies with

the responsible department. Indeed, the Scottish Executive Environment and Rural Affairs Department carries the bulk of the work in this area, given that many of the EU directives that directly affect Scotland are in the areas of environment, agriculture, and fishing.

Mr Wallace: Would it surprise or disappoint you to hear that some of the stakeholder bodies that have given evidence to the committee believe that there is not as much engagement with the Executive at the pre-legislative stage as they would like? Is there scope for doing better?

George Lyon: There is always scope for doing better. Devolution is roughly eight years of age. I was on the outside when there was no devolved Parliament in Scotland and I experienced how difficult it was to engage with the UK Government to ensure that stakeholders' views were listened to and acted upon. If stakeholders believe that we can improve, we will respond positively, but a wide range of work is going on throughout the Executive to ensure that Scottish interests are represented in the EU when policy is being developed, because that is when we can influence the final legislation or the policy proposal that is made to the Commission and Parliament.

Mr Wallace: I have one final question on the pre-legislative stage. The United Kingdom Government produces explanatory memoranda to give to the European Scrutiny Committee in the House of Commons and the European Union Select Committee in the House of Lords. In a previous incarnation, I was aware of some co-signing of those memoranda on justice issues when there was clearly a devolved dimension. Is it still practice for the Scottish ministers to co-sign explanatory memoranda to the Westminster Parliament on appropriate occasions? Otherwise, how does the Executive go about making a Scottish input when the Whitehall departments are formulating explanatory memoranda?

George Lyon: Officials in the appropriate departments liaise when a memorandum is being formulated for submission to the committees and it is up to them to ensure that the Scottish interest is taken into account. If there was concern that we were not being listened to, we would always have the option of taking the matter up to ministerial level and making political representations, if that was felt to be appropriate.

I understand that you were one of the last ministers to co-sign an explanatory memorandum. I am not sure that it is relevant whether co-signing continues. The most important issue is to ensure that the Scottish voice is heard and listened to in formulating the memoranda.

Mr Wallace: Is there any reason why, when an explanatory memorandum is submitted to the UK

Parliament, it could not also be made available to the relevant Scottish Parliament subject committee, if there is a Scottish interest? Justice is an obvious subject in which there might be a Scottish interest because of the different jurisdictions.

George Lyon: I can think of no reason why memoranda could not be made available, if that was the committee's wish. It would be interesting to find out whether the committee thinks it has a role to play similar to that of the House of Commons European Scrutiny Committee or whether it believes that consideration of memoranda should be left to individual subject committees. I suspect that there is a debate to be had about those roles.

Mr Wallace: I did not mean this committee but, for example, the Justice 1 Committee or the Justice 2 Committee.

George Lyon: I think that it would be perfectly possible to make explanatory memoranda available. We would be willing to consider the idea. I was not sure whether you were asking for them to come to this committee exclusively, but I guess that it is for the committee to decide what its role is in scrutinising our transposition of EU directives.

The Convener: How often does the Executive engage directly with the European Commission at the point of policy formulation to try to influence the account that it takes of the Scottish agenda?

George Lyon: Discussions with the Commission are on-going and regular. For example, the Minister for Environment and Rural Development attends the majority of environment, agriculture and fisheries councils. He meets his fellow ministers at the Department for Environment, Food and Rural Affairs on every occasion before the councils begin and, when in Brussels, he takes the opportunity to engage across the piece. The Scotland Office also has a role in Brussels in ensuring that we engage and that, when the United Kingdom permanent representation to the European Union—UKRep—engages, it takes account of the Scottish interest too, as UKRep is the formal body that makes representations on behalf of the member state.

It is for officials to ensure that they continue to engage across the piece. On some occasions, such as on the water framework directive, a Scottish Executive official is the lead official in formulating the UK response. Fisheries officials sit on technical committees in Brussels, which provides another opportunity to influence policy. They argue the UK line, but they are also there to contribute the Scottish view. It is safe to say that Scotland is considered to be an integral part of the UK team on environment, agriculture and

fisheries, because of the amount of engagement that there is on those issues and the number of directives and regulations on those policy areas that come to us from Europe. There have also been examples of other Scottish Executive ministers leading on council meetings. When they are in Brussels, they take the opportunity to engage with the Commission and other relevant EU institutions.

The Convener: Can you think of any occasions on which the Scottish Executive has made a separate submission to the Commission on the same matter as the UK right at the beginning of policy development because you thought that the policy might have a big impact on us in Scotland?

George Lyon: The UK is the member state, therefore submissions are made, by and large, on a UK basis. The arguments about what the UK position will be occur within the UK. That is our constitutional position. Others would argue that we would be better out with that arrangement; my view is that we would not.

The Convener: It is just that I understand that the Commission is more than happy to accept submissions directly from the Executive, as it does from the committee. Perhaps you could look into that situation later.

Phil Gallie: Minister, you spoke earlier about the huge range of work that comes out of Europe. You also said that you could not possibly be in touch with all the directives that come from Europe. However, those directives can have massive implications for Scots law. I am sure that you agree that the financial services industry is all important to the Scottish economy. On that basis, I invite you to have a look at our excellent sift paper, which you might not have received, and in particular at EU references 5185 to 5197 inclusive.

John Home Robertson: Answer, minister!

Phil Gallie: I refer to a range of 13 or 14 directives that could have a massive impact on our financial services industry. What involvement has the Scottish Executive had in formulating those directives? What account have you taken of them and what concerns do you have about them?

George Lyon: Thank you for that, Mr Gallie. I think that you misunderstood slightly my view, but I will repeat what I said earlier. A wide range of directives and regulations come out of Europe. In deciding where to deploy our resources, it is important to prioritise the ones that could have a significant impact on Scotland. It is not that we ignore the rest; we concentrate on the key issues that need to be prosecuted.

I expect that officials in the Enterprise, Transport and Lifelong Learning Department have input into the directives to which you referred. I will be happy

to reply to you in writing about what that involvement has been. Clearly, I am not in a position today to offer you chapter and verse on—

Phil Gallie: I think that I can accept that, minister. My question underlines the huge amount of stuff that comes out of Europe that influences our businesses and people's daily lives. Every one of those directives refers to important financial issues, from credit to auditing and a range of investments and insurance. Although it is important that the Scottish Executive stays on top of those directives, I recognise your huge task in so doing.

George Lyon: The directives to which you referred will be implemented by the Financial Services Authority, so it is a reserved matter. We will have input into the work if particular Scottish issues are raised by representatives of the financial services industry in Scotland. It is important to point out that directives and regulations in the areas to which Phil Gallie referred are all about making the single market work properly to ensure that we have equal access to markets throughout Europe. Therefore, it is important that they are implemented properly throughout Europe, so that Scottish businesses get the chance to do business in other countries as part of the single market.

Phil Gallie: I point out that the items to which I referred were directives rather than regulations, which have a different emphasis.

On the subject of regulation, we received an excellent report from the Local Government and Transport Committee in response to Jim Wallace's paper. It gives instances in which the Scottish Executive has added regulations to the regulations that came out of Europe. Is that always necessary? Should we always supplement the regulations or should we just accept them and get on with implementing them, as we have to, without adding to the burdens that are imposed on industry and on people? The NFUS has expressed deep concerns about regulation being added on top of regulation.

15:30

George Lyon: We seek to minimise the impact of regulations or directives that we implement in Scotland. There are two issues: the implementation of directives; and enforcement, which is another possible form of overregulation.

Our approach is similar to the approach at a UK level. We have a better regulation group under the Enterprise, Transport and Lifelong Learning Department, which scrutinises the impact of the regulations and directives. It works closely with the similar organisation that has been set up by the Cabinet Office at UK level. Of course, our

commitment is to ensure that we do not overregulate. It would only be where there is a clear and justifiable argument for doing so that we would add to the requirements of a directive when we transposed it into Scottish legislation.

I say to those who are concerned about overregulation and gold plating that the Executive has always made it clear that we are committed to better regulation. If you give us concrete examples of overregulation and gold plating, we will examine those cases and take action. If there are specific cases that can be fed into the process, we—I am sure that I speak for all ministers in the Executive in saying this—will be willing to consider how they might be dealt with. However, we need specific examples. It is easy to make a sweeping statement that there is too much regulation, but we must be clear about whether there needs to be change in the way that a directive has been transposed or whether it is an example of overenforcement that is hampering business.

The Executive is willing to examine any clear examples of cases in which it is believed that there is no justifiable reason for the implementation being taken further than the basic requirement of the directive, and we will consider the matter closely if it is believed that the monitoring and enforcement are over the top.

Phil Gallie: Thank you for those comments. The words are right when you talk about minimisation of the impact of regulations, but I am not sure that the implementation backs them up. When new regulations are introduced in other parts of the EU, a one-liner from the national Government advises various bodies of the regulation, without any additions. It would be a great step forward if you could consider that approach.

On the information that you have requested, I draw your attention to the NFUS's submission to the committee. I ask the clerks to forward that to you, as it provides the examples that you have requested.

George Lyon: I read with interest Andy Robertson's comments about double banking. I am willing to examine the issues and pass them on to colleagues to discuss where there are examples that might be tackled. I do not think that that is the wrong approach.

You state that in other countries lip service is paid to regulation. It is important to note that, as I said earlier, in many cases the regulation is to open up the market to make it possible for small countries such as Scotland, which are reliant on trading with the rest of Europe, to get into markets elsewhere. We must therefore be careful about where we are arguing the balance of opinion lies. If we all took the attitude that none of the regulations should be properly transposed or

properly enforced, we would end up with the single market being undone. I do not think that that is in Scotland's national interest.

Phil Gallie: I agree with that, and I would hate to think that other European countries had not taken the regulations seriously. That is different from my point about putting regulation on top of regulation, but God forbid that other countries in Europe are not observing regulations.

The Convener: Thank you, Mr Gallie—I managed to get in when you drew breath.

Bruce Crawford: I would like to explore a couple of areas: policy formulation and transposition.

The minister is right that, in the discussions that the Scottish Executive has at a UK level, views generally coincide. However, there must be occasions when they do not. What happens in those circumstances?

George Lyon: Clearly, cases and arguments are made with the relevant ministers. In my experience, it is always helpful when Welsh and Northern Irish colleagues have a similar view—it makes it easier to win the argument. Ultimately, once the UK negotiating position is decided, by and large it has to be accepted. That is similar to the position of other small countries, which in negotiations have to get alongside one of the big three in deciding how they are going to vote on various matters. That is the name of the game—with 27 countries, compromise is always on the table when we set out our stall and decide how to deploy arguments in our national self-interest.

Bruce Crawford: Thank you for that; it is useful. Can you tell us how often that happens and give us a perspective on instances that you are aware of as a minister when the Scottish interest has been different from that of the rest of the UK?

George Lyon: Clearly, there are a number of issues on which we have our own national self-interest. The reform of CAP was a classic example. Our national self-interest determined that we wanted the flexibility to take a different approach in Scotland from that taken in the rest of the UK. That was agreed as the UK negotiating policy, and the position was successfully concluded in the outcome of the CAP reform, which was to our benefit. That was to do with the overarching framework of how the CAP operates, and we now have basically four different implementation systems throughout the UK. On that, we successfully prosecuted the Scottish interest.

We successfully prosecuted our own position on the concerns about the dumping of salmon into the European market and the damage that it was doing to Scottish salmon producers. The UK

Government backed us firmly, as we persuaded it that what we wanted was in the UK interest. It negotiated anti-dumping measures, which have successfully lifted the price in Europe and helped the salmon farming industry.

Those are two examples of where we have made a successful fist of arguing for a particular Scottish interest.

Bruce Crawford: You rightly said that the UK Government has agreed with you in those examples and that you came to a position and successfully prosecuted it at a European level. However, I was asking specifically about occasions on which the interests have differed: how often has that happened and what issues have they involved?

George Lyon: I am not aware of any occasion when there has been a big difference of opinion. I am willing to examine that and give you a further detailed response, if you would like.

Let me take you back to the original point. By and large, across a swathe of issues, there is a genuine UK interest, and we have common cause with it. Many would argue that, when we go to the table to begin the negotiations, we start in a much stronger position as one of the three most powerful countries in Europe in number of votes and influence.

Bruce Crawford: We would obviously disagree on that last point, although I accept and respect your position.

I ask those questions because a number of witnesses have asked that the process be more transparent and up front when there are differing opinions about how we should work. There may be questions about the veracity of a recent report on Scotland's position in the European Union from a senior official, which said that the Scottish interest is not always taken into account and, indeed, is occasionally even ignored. The Executive claimed that that was a draft, but it was nevertheless a view from a senior official. Therefore, it will be good to receive written information from the minister about the issues on which our interests have not always coincided with those of the UK. That will assist transparency and help people to understand more successfully what transpires in the negotiations. I am glad that we have that commitment from the minister.

Moving on to transposition, we heard arguments from a number of witnesses about the need for differential implementation of EU legislation where that is achievable. The minister has mentioned the anti-dumping measures on salmon and the reform of the CAP as examples of that. Can he provide further written information—I do not expect this today—on other examples of differential implementation? There was a fair bit of argument

from a number of witnesses that differential implementation might be necessary to ensure that, where possible, Scottish interests are protected through a slightly different format in the implementation and transposition process.

George Lyon: Clearly, there is the flexibility to implement directives differently in Scotland and England. Indeed, in a court case down south on the regulations flowing from the CAP reform directive, DEFRA is arguing that very point. That confirms what we have always believed to be the case.

One example of differential implementation—this is referred to in Mr Wallace's report—is the public contracts directive, for which a separate Scottish transposition was introduced. There are two significant differences between the Scottish regulations and the regulations for the rest of the UK that implement the public contracts directive. First, the Scottish regulations allow cases to be brought before the sheriff court rather than, as is the case elsewhere in the UK, the High Court. Secondly, the Scottish regulations make specific reference to the requirement that contracts that are not subject to publication in the *Official Journal of the European Union* should nevertheless be awarded after adequate advertising and publicity.

Given that ability to take a different approach, the key question that we always need to ask ourselves is whether we would be justified in doing so. We need to ask whether there is a desired outcome that should drive us to take a different approach. In many cases, there is no specific Scottish need for differential implementation. In considering the implementation of EU directives, we also need to bear in mind the fact that many companies trade throughout the UK and that they like to have consistency and certainty wherever they operate. Therefore, there must be a specific Scottish issue of importance before we take such a decision. We have the ability to take a differential approach, but it is arguable that we need to take a view on whether to do so on a case-by-case basis.

Regarding the leaked EU report, we are only eight years into devolution, so we are still creating precedents for how we engage with the UK and Europe. Therefore, it would be surprising if criticisms could not be made and if there were no areas in which we could improve. Anyone who reads the report will know that it points out that we are doing very well in many areas.

At the most recent Regleg meeting, which took place in Wales, a colleague from Catalonia said that he admired greatly how Scottish ministers can sit beside the UK minister at meetings of the European Council. Catalonia has been fighting tooth and nail for such a position for the past 20 to 30 years. Only recently has the Spanish federal

Government conceded that Catalonia should be allowed to feed into the negotiating position, never mind sit at the table and take part in the discussions. In some areas, we are ahead of the game.

Clearly, there are also areas in which we need to improve. Some of that is about relationships. As anyone who has been involved in lobbying and trying to influence things will know, much of the good work is about personal relationships. It is about being across in Brussels and it is about having good personal relationships with our counterparts south of the border. That is an important area in which we need to ensure that things work. We can formalise that in some sort of structures but, ultimately, it is personalities and the ability to engage that ensure that we can influence people and persuade them of our point of view.

15:45

Bruce Crawford: Thank you; that is useful. I have two final points and they are both small. It would help the committee if we could have a list of those areas in which there has been differential implementation, because that has been one of the key points that witnesses have raised with us. You gave some good examples, but I am sure that there are others.

As regards the leaked report, even though there is a difference of opinion on the way in which matters should be progressed, I am surprised that you have not mentioned the memorandum of understanding, which provides a mechanism for dealing with that. On how many occasions have the memorandum of understanding and the mechanism for resolving differences of opinion been implemented?

George Lyon: It is clear that the memorandum of understanding provides the framework and that protocols between individual departments sit below that. The memorandum of understanding is there to remind officials north and south of the border what to do when there are disputes or when it is felt that one party's position is not being listened to. Thankfully, the fact that political discussions at the right level have managed to iron out any difficulties has meant that there has been no need for formal processes to be put in place. The issue comes back to relationships and being able to convince people of the need to take action in a particular area.

Bruce Crawford: So no submissions have been made to the joint ministerial committee on Europe in an effort to resolve any such difficulties.

George Lyon: No.

Bruce Crawford: Thank you; that is useful.

The Convener: I thank the minister for being so open about the leaked report; such openness has

not been a feature of other experiences that we have had. The report, which we have all read, contains a significant amount of criticism that mirrors what has been said by people who have responded to our inquiry. Do you intend to make any recommendations that relate to that criticism prior to the end of the parliamentary session?

George Lyon: Clearly, the Executive and the First Minister did not commission a report without recognising that whatever it contained would need to be addressed. The First Minister and Cabinet ministers are to be congratulated on asking for a review of how our engagement with Europe is working seven and a half or eight years down the track of devolution. Action will need to be taken to address the areas about which concerns have been expressed. In the areas in which we are doing well, it is vital that we learn why that is the case and implement those lessons in the areas in which we are not doing so well. I think that the Executive deserves a pat on the back for examining how the system was working with a view to improving it. We would have been criticised if there had been no scrutiny of how we were engaging with the rest of Europe. The report is a good piece of work and once it has been completed, we will be able to respond to any recommendations that it makes.

John Home Robertson: The minister is tempting me to go down that line. I recall that early on—back in 1999, when I was the fisheries minister—there was a lot of enthusiasm because people in Whitehall and in the Commission were excited about the prospect of a new dimension of decentralised government. The set-up seemed to work well then, but given all that has gone wrong since, it is fair enough for there to be a discussion about it.

I want to return to the implementation and transposition of European directives, which are what the report that Jim Wallace has drafted is about. So often, the devil is in the detail. In general, European policies start as the legislative equivalent of motherhood and apple pie. The trouble arises when someone in Pentland House or Victoria Quay starts to specify the recipe and details such as what temperature the pie should be cooked at and what kind of apples should be used. We have loads of examples of that. From his constituency work, the minister will be just as familiar as I am with cases to do with, for example, the water framework directive, nitrates or—dare I say it—the recycling of planings from roads, which I mentioned earlier.

Surely there is a need for the Executive to take a grip—and not just because there are Phil Gallies in every member state of the European Union who think that their country is unique in being badly overregulated. We are all aware of examples in

which regulation has been overdone. It would be helpful if ministers adopted a firm policy of implementing legislation when it is absolutely necessary to do so, but with a presumption against regulation when it is not necessary. We should have a presumption in favour of implementing only what needs to be done under the European legislation. Can you make a statement of that nature?

George Lyon: I take it that you are inviting me to do so.

John Home Robertson: Yes—go on.

George Lyon: The presumption is that we should introduce good regulation. The objective should be to get the best possible regulation. In many areas, that is about ensuring that, when we implement directives, we do so properly, as simply as possible and with the minimum impact on businesses and individuals. The better regulation unit and the ETLLD clearly have a role in that, as does the better regulation executive that has been set up in the Cabinet Office at UK level.

We can examine whether there is a tendency to overregulate or overenforce, but an issue also arises to do with the Parliament's role in scrutinising properly the regulations and holding to account SEPA and other enforcing agencies. Executive ministers, through the better regulation unit, are determined to try to minimise the impact on businesses and individuals. However, we must also ask about the role of the Parliament, which must ensure that it examines thoroughly the impact on individuals of the regulation that comes before it.

John Home Robertson: I have a vision of a buck being passed from one end of the table to the other.

In response to an earlier question, you asked us to give you examples of overregulation or overimplementation but, with respect, it is too late when we have got to that stage. Once regulations have been passed, it is the devil's own job to unscramble them and often the damage has been done to the businesses or citizens who are affected. We need a device or gate to ensure that unnecessary regulations are not imposed in the first place. What can the Executive do to get a filter in its system? It is not good enough to say that it is up to parliamentary committees to do the scrutiny. Surely the Executive should be able to justify every jot and tittle of regulations before they are presented to committees.

George Lyon: Executive ministers believe that they justify the regulations that are brought before committees. The point that I made was that, as we hear a lot of claims about overregulation, it would be useful to see the detail of what is meant and where changes could be made, if that is the case.

That may provide lessons on how to ensure that overregulation does not happen in future.

John Home Robertson: You may get a lot of replies to that request.

The Convener: I see that Phil Gallie and Bruce Crawford have further questions, but we will now go to Dennis Canavan, then Charlie Gordon and then Jim Wallace to sweep up. If Mr Wallace is more gentlemanly than I am, he may let Phil Gallie and Bruce Crawford make a tiny wee comment.

Dennis Canavan (Falkirk West) (Ind): My question relates to the points that John Home Robertson and Phil Gallie raised. We sometimes hear complaints from businesspeople and others that the legislation to transpose or implement European Union legislation in this country is much stricter and much more comprehensive than that in other member states. The Scottish Executive might argue that we have higher standards of legislation and enforcement, but others argue that the situation puts British business, and in particular Scottish business, at a disadvantage to competitors in other member states. Are those complaints justified?

George Lyon: I have heard a lot of anecdotal evidence that other countries do not implement or enforce directives in the way in which the UK does. Interestingly, in my previous job as an NFUS representative, I heard the same complaint from virtually every representative from every other country. It is difficult to get any empirical evidence as to whether the accusation, which I have heard made on many occasions, is true or not. It is a matter of finding examples of where a different approach is being taken to give us a view of whether the assertion is correct. I am not aware of any piece of work that has been done that gives examples of where the differences are.

Dennis Canavan: Do you or your advisers study closely what is happening in other member states and any lessons that can be learned from those member states?

George Lyon: Clearly, we seek to learn lessons from other member states. The scrutiny role is carried out by the European Commission, which would take infraction proceedings and fine other countries if they did not implement the directives properly. It has been suggested that Scotland is somehow never willing to take risks or stand up but, given the reports and the public knowledge that there have been threats of infraction proceedings against the Executive in the past, I do not think that that suggestion stands up to scrutiny.

It is for the Commission to oversee what is happening and ensure that the regulations and directives that it passes are properly implemented and enforced throughout Europe. Indeed, I

understand that the Commission is giving some thought to setting out a framework of penalties relating to enforcement, which may give comfort to those who believe that the regulations and directives are not being properly implemented. The worry, though, is that there will be no flexibility to have specific Scottish solutions to problems.

The balance of opinion is between those who want the maximum flexibility to allow us to do our own thing and others who see that flexibility as conferring a competitive advantage, who ask why fines are not the same here and why the actions that another country is taking to enforce the legislation are not the same as those taken here. It is a matter of getting the right balance. We must have the flexibility to implement and enforce the legislation in the way in which we think it is appropriate for our circumstances, without the heavy hand of the Commission telling us how to do that, which would be a retrograde step.

Dennis Canavan: The Commission supports the production of correlation tables that enable a comparison to be drawn between the different member states. Does the Executive support that, too?

George Lyon: I understand that many of the tables that are on the back of most directives seem to disappear in the discussions at the Council of Ministers. They might be a useful addition, but I am not sure exactly what they would prove. That may be a subject that we need to look at closely.

Mr Charlie Gordon (Glasgow Cathcart) (Lab): Let us return to Jim Wallace's point about Scottish stakeholders perceiving a lack of involvement on their behalf in discussions around proposed European legislation. I want to press you to acknowledge that perception—indeed, it might be more than just a perception—and to realise that, before you establish where Scottish interests lie, there may be more than one view in Scotland. There may be tensions between the urban and the rural, the commercial and the social, and so on. You and I have both been involved in trade networks in the EU, and I take your point about relationships. I have not seen the famous leaked report, but on the committee's visit to Brussels a year ago—has a year really passed?—I was impressed with our set-up there.

It seems to me that we should take advantage of the additional weight of punch that the various networks that we have in Scotland, which operate in Europe, can give us. If, once we have resolved where Scotland's interests lie, there is a better relationship at the stage when legislation is proposed, those networks could significantly bolster the efforts of government at UK and devolved levels in pursuing our interests.

16:00

George Lyon: I would have to agree. My experience has been that the trade networks work closely with officials and ministers to identify the Scottish interest and pursue it once agreement has been reached with the Commission. I have no reason to doubt that that good working relationship, which will ensure that we proceed on the basis of an agreed position, is continuing.

Of course there will be different points of view when it comes to implementation. As you know, in making decisions we cannot satisfy everyone. In one of your evidence sessions, a representative of one of the trade bodies paid tribute to the implementation of the fish sellers and buyers directive. That individual was full of praise for the amount of consultation with local stakeholders that the Executive had carried out over two years to ensure that it got the directive, which I have to say did not command great support among the fishing industry, right. As a result of the implementation of that directive and the control of landings, we have seen an increase in fish prices. There have been benefits to the fishing industry. We cannot generalise and say that implementation is not working right across the piece, given that the witness thought that it had worked well in that case.

There is no doubt in my mind that we are stronger when the trade bodies and Executive ministers and officials are singing from the same hymn sheet and are involved in what is happening in Brussels. In my experience on the lobbying side and on the other side, as a politician, that is where our strength lies. Ultimately, we are a small country in European terms and it is important that we fashion our position and argue it well in all the corridors of the Commission and ensure that the UK position takes it into account.

The Convener: If it is okay with Mr Wallace, I invite Mr Gallie and Mr Crawford to make small points, on which Mr Wallace can then pick up.

Phil Gallie: As promised, I will make only a small point. The minister mentioned infraction and suggested that we should have examples of it. One example is that France was fined a huge amount of money for what it did in relation to the beef ban against Britain. To my knowledge, not one European cent of that fine has been paid. If the minister can console me and tell me that France has paid the fine, I will be delighted. That is just one example of other countries totally abusing the system.

The Convener: I do not think that that is a matter for the minister.

Phil Gallie: The minister raised it. He talked about infraction.

The Convener: If the minister wants to address that point, he can do so in the greater round. Minister, you should take wee notes of what is being asked. If you start answering Mr Gallie and Mr Crawford as soon as they ask their questions, they will go on for ever.

Bruce Crawford: You have just put me in the same category as Phil Gallie.

Phil Gallie: That is a compliment, Bruce.

Bruce Crawford: I am now totally confused. John Home Robertson rightly mentioned the implementation of regulations, of which the one on nitrate vulnerable zones is a good example. Technically speaking, fertiliser and compost are different things, because compost locks up the nitrate and fertiliser releases it into the system a lot more quickly. When those two things are grouped together, there is overall loading to consider.

Experience shows that the regulation is starting to harm the composting industry in Scotland. When something is having an adverse effect, do we have a process that we can use to redress it? We might not sort things out before they happen, as John Home Robertson would want, but can we begin to unpick regulations so that we can get them right further along the line? I do not expect you to talk about the NVZ regulations in particular, but there are severe issues to address.

George Lyon: I understand your concerns about that regulation. I certainly do not think that it is beyond the realms of possibility to change things if they are felt to be disproportionate or inappropriate. On NVZs, unlike in England and Wales, we have not adopted a blanket approach right across the country, which would be a major burden on Scottish agriculture.

In Denmark and Holland, farmers have to gain a licence to transport raw manure 100 to 200 miles across the country to find a piece of land on which they have permission to spread it. When we consider the disproportionate effects on industry in other countries, we have to think, "There but for the grace of God goes Scottish agriculture." For example, the Danes and the Dutch have a huge problem with nitrate vulnerable zones and the restrictions that have been put on their agriculture industry.

If there is a genuine area of concern, I am sure that the minister will be willing to consider it closely. We have parliamentary time in which to make any change that is seen as being appropriate.

Bruce Crawford: I have written to the minister about that specific issue, but that was a useful answer, thank you.

The Convener: Could you make a quick comment on the French position with regard to British beef? You do not have to make a comment if you do not want to.

George Lyon: I hate to remind Mr Gallie why the beef ban arose—

Phil Gallie: It was similar to what happened with the turkeys.

George Lyon: It was because of a certain Government's complete and utter failure to implement regulations right across the United Kingdom, which resulted in meat and bone meal leaking into the food chain. In some ways, we got a reaction from the rest of Europe—

The Convener: You do not need to revel in it, minister.

George Lyon: I do not think that I need to say any more.

Phil Gallie: I think that you do, because the question still remains.

George Lyon: I will write to confirm whether Mr Gallie's view about whether the fine was paid is correct.

The Convener: Are you satisfied with that, Mr Gallie?

Phil Gallie: Yes.

The Convener: That will give you the answer to your question, although I imagine you could have found it out yourself very easily.

Phil Gallie: I would rather ask the minister and get him to do some work.

The Convener: We will move on to someone sensible now. Mr Wallace?

Mr Wallace: You tempt me, convener.

I would like to pick up some points on implementation and transposition. Bruce Crawford raised a number of points about the use of differential transposition. Mr Lyon will be aware of the paragraphs in my report to the committee that reflect the advice that we received from our adviser, Professor Page, about why differential implementation might not take place in Scotland. It is possible that there is no scope for it, which would be understandable, but paragraph 74 of my report quotes Professor Page's view that there might be occasions when the UK Government is opposed to such implementation. He says that, even if the United Kingdom Government is not directly opposed to differential implementation, the need

"to ensure that any differences of approach nonetheless produce consistency of effect and, where appropriate, of timing"

might act as a disincentive to the Executive going its own way. He also suggests that other reasons for there being no differential implementation might be that we have a lack of resources, that we have to rely on Whitehall to give us a template to follow or that we might be under threat of litigation and enforcement proceedings.

It has been suggested on other occasions that because of the Scotland Act 1998 and the absolute requirement to meet our European obligations, there is a tendency on the Executive's part to shy away from going too far in relation to differential implementation. Could you comment on Professor Page's suggestions about why, in many cases, differential implementation does not take place?

George Lyon: The first thing to say is that section 58 of the Scotland Act 1998 does not apply to European obligations at all. Therefore, the criticism that that section does not allow flexibility is completely wrong.

On the ability to have different implementation in Scotland and in the rest of the UK, the Department for Environment, Food and Rural Affairs south of the border is arguing in a court case that we have the right to do so. That confirms our position, which is that we have the right to take a different direction with regard to implementation. Indeed, that comes back to the question whether differential implementation is justified in relation to the Scottish concerns that have been raised. I believe that we should be able to take our own view on each directive as we transpose it.

Mr Wallace: I was not asking whether we can do it; I was asking about the practice. I suspect that, more often than not, we do not do it. Are there any reasons why we do not do it in circumstances in which we could do it? I was not doubting the legality of our position.

George Lyon: It comes down to a judgment about whether it is in our interest to take a different approach in any given case. In many instances, the view is taken that the UK approach suits Scotland, so we follow the UK implementation.

Mr Wallace: You helpfully gave two examples to do with the public procurement directive when, for good reason, we took a different direction, but evidence that we received from the Scottish Trades Union Congress suggested that we missed an opportunity with that directive. Stephen Boyd of the STUC felt that the directive offered additional scope and that we could have imported considerations of environmental and social matters. We chose not to. I am not saying whether

that was a good thing or bad thing, but why did we choose not to?

George Lyon: I do not have detailed knowledge of the discussions that took place but I will be happy for a letter to be written to the committee—either from me or from the relevant minister.

Mr Wallace: That would be helpful.

Mr Canavan asked about a correlation table; the other kind of table that we could have is a transposition table. For example, if the Scottish Executive has a set of regulations and, for the sake of argument, paragraph 1 correlates with part of an EU directive, that could appear in a table. That is certainly the recommended practice, and it has started to happen with some UK regulations. Such information would show whether there had been any gold plating. If a measure in Scottish legislation did not have its origin in European directives, it would be clear that the Scottish legislation had gone beyond the directive. There might well be good reasons for going beyond the directive, but some kind of table would give the Executive an opportunity to say why. Can we expect, as a matter of course, that transposition tables will be added to Scottish legislation that derives from European legislation?

George Lyon: I will ask Mr McMillan to update us on that.

Malcolm McMillan (Scottish Executive Legal and Parliamentary Services): Thank you for the opportunity. I can confirm that the Executive will provide transposition notes for new European directives to be implemented. The notes will highlight the key European obligation that we are implementing and the provision of the Scottish implementing regulations, except—and this is the one caveat—when the effort of providing the information is disproportionate or if it would not be helpful to the reader. In Executive policies on such matters we are being consistent with the line taken by the Cabinet Office.

Over the past couple of years, the Executive has run a pilot scheme; it has occasionally provided examples of transposition notes. A few transposition notes have been provided on environmental issues. The practice has become more widespread recently—for example, we provided transposition notes on the regulations on prohibited procedures relating to tail docking. There have been a number of other examples over the past year.

Mr Wallace: That was a helpful and welcome piece of evidence. For Scottish legislation with no European origin—which has tended to happen when there was a transposition but the Executive added something else in—will the information highlight the fact that what has been done is over

and above the requirement of the European directive?

Malcolm McMillan: I think the intention is to highlight in a transposition note any regulation that is stricter than required.

Mr Wallace: I want to ask about differential enforcement—when enforcement is different in other parts of the United Kingdom or the European Union. Some questions today have reflected concerns about that. Mr Home Robertson mentioned road planings. Small waste burners have been mentioned, too. How does the Executive go about this? Does it just say to SEPA, “Here are the regulations—get on and implement them”? Does it monitor what SEPA does? Is it concerned when differences in practice arise between Scotland and the rest of the UK? Such differences could lead to a greater financial burden on Scottish businesses.

George Lyon: I think that the deputy minister wrote to the committee on the incinerators issue.

Mr Wallace: The minister wrote to me and the letter was included in my report.

16:15

George Lyon: Yes. The view was taken that, according to our advice and the discussions that we had with the Commission, our interpretation was the correct one.

I understand that the road planings example arose in response to a petition that was presented to the Parliament by the Blairingone and Saline Action Group. The Minister for Environment and Rural Development agreed to take the regulation through the Parliament. As I understand it, a concern was raised about road planings going to landfill, and that was the argument put forward for taking the action.

John Home Robertson: Watch it—you are digging.

Mr Wallace: Are you sure about that, minister?

George Lyon: Sorry?

Mr Wallace: I do not know whether you were here when Mr Home Robertson commented on the matter at the beginning of the meeting. Inquiries to the Public Petitions Committee did not find any petition on road planings. There was a petition on sewage sludge—

John Home Robertson: Which is different.

Mr Wallace: Are you talking about the same—

George Lyon: Yes. Sorry. That is what the petition was about. I therefore—

John Home Robertson: It was nothing to do with road planings.

George Lyon: Yes. That is the information that I was given. I, too, inquired after reading—

The Convener: So, to clarify, you got the same information from SEPA as we did.

George Lyon: I—

Mr Wallace: Is it the Scottish Executive’s view that there is a distinction between sewage sludge and road planings?

George Lyon: Yes. I will endeavour to take the matter back to my colleagues for them to consider.

Mr Wallace: It is useful that you referred to the specific examples but, in general, does the Executive monitor how regulatory bodies discharge their enforcement functions?

George Lyon: Clearly, the sponsoring division of the Scottish Executive has a role to ensure that regulatory bodies such as SEPA respond proportionately when they enforce regulations and directives. I am sure that that is on-going, that scrutiny takes place, and that there are regular discussions between sponsoring departments and relevant bodies to discuss matters. If there are areas of concern, that is where they should be raised.

Mr Wallace: Finally, I have two quick questions.

The Convener: I am starting to feel sorry for the minister.

Mr Wallace: He is doing fine.

First, I do not necessarily expect an answer from you at the moment, but can you confirm whether infraction proceedings have been brought against the UK Government for its interpretation of the waste incineration directive?

Secondly, you will be aware that there is a Commission proposal—I think it will be discussed at a council in the spring—for a 25 per cent reduction in the administrative burden by a given date. Does the Scottish Executive have plans on how it will contribute to that?

George Lyon: We will respond to the first question in writing. On the second question, we fully support the Commission’s proposal and we want to spread it wider across legislation and regulation that is introduced in Scotland. The improving regulation in Scotland unit in the ETLLD is responsible for taking that forward in conjunction with the equivalent organisation that reports to the Cabinet Office down south. That involves dealing not only with EU regulations and directives but with UK and Scottish Parliament legislation as well, so there is a commitment to make progress.

The Convener: Minister, thank you for the amount of time you have given us and for the transparency of your answers. Thank you, too, to Mr McMillan and Ms Brown. I am sure that a lot of your evidence will inform our report in a detailed way.

George Lyon: Thank you.

16:19

Meeting suspended.

16:24

On resuming—

Sift

The Convener: The next item on our agenda is our regular scrutiny of the sift of European documents and draft legislation.

Mr Gordon: Can we just say, "Agreed"?

The Convener: Do members—

Mr Gordon: It was worth a try.

The Convener: Do members have any comments?

Phil Gallie: The document we have before us is vital: it shows how many directives and regulations are going through. I congratulate the committees that have picked up on various points and made reports to us, obviously using the sift as a guide. I hope that the sift will long continue.

The Convener: Thank you, Mr Gallie. That was, as always, very constructive.

Does anyone else have anything to add, or do members agree to refer the papers to the various committees as indicated in the sift document?

Members *indicated agreement.*

The Convener: That concludes the part of the meeting that is in public. I invite members of the public to leave the meeting now.

16:25

Meeting continued in private until 16:46.

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